

MEMORANDUM

TO: Council and AP Members

FROM: Chris Oliver *Chris*
Executive Director

DATE: December 1, 2005

SUBJECT: Gulf of Alaska Groundfish Rationalization

ESTIMATED TIME 6 HOURS (all C-5 items)
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ACTION REQUIRED

- (a) Review discussion paper on Gulf rationalization community programs and preliminary data; refine options as appropriate

BACKGROUND

The Council's motion on Gulf of Alaska Rationalization currently includes two community programs: the **Community Fisheries Quota (CFQ) Program** and the **Community Purchase Program (CPP)**. These programs are proposed for inclusion in either of the Council's primary Gulf rationalization action alternatives, and the Council could select one program or both (in combination) at final action. At its June 2005 meeting, the Council approved several changes to the options for both programs, the majority of which were recommended by the GOA Rationalization Community Committee. The June 2005 Council motion is provided as **Item C-5(a)(1)**.

Note that as part of its June motion, the Council also requested that staff provide community groundfish catch data (excluding IFQ sablefish) at a subsequent Council meeting, and noticed the public that after reviewing the catch data, a minimum landing threshold may be added to the options to address community groundfish dependency. Staff developed a discussion paper, both to meet this request and provide an overview of some outstanding legal concerns regarding the CFQ Program, for review at this meeting. **The purpose of this discussion paper is to:**

- Provide a general overview of the proposed community programs under Gulf of Alaska Rationalization and their intended implementation;
- Outline NOAA General Counsel's legal concerns with the implementation of the CFQ Program and recommendations to mitigate those concerns; and
- Provide fisheries participation and socio-economic data on the communities potentially eligible for the programs, as requested by the Council in June 2005.

The discussion paper is provided as **Item C-5(a)(2)** and was mailed to you on November 17. Note that this item was scheduled for the October 2005 Council meeting, but there was not sufficient time available for Council review. The current suite of options for the GOA community programs, as revised in June 2005, is provided as **Attachment 1** to the discussion paper. While no action is required at this meeting, the Council may take action as necessary. Specifically, the Council may choose to modify the options for the CFQ Program in order to mitigate the legal concerns outlined in the discussion paper. The Council also noticed the public in June that upon reviewing the community catch data, a minimum landing threshold may be added to the options to address community groundfish dependency in one or both programs.

**Council Motion on Gulf of Alaska (GOA) Rationalization Community Provisions
June 5, 2005**

The Council adopted the GOA Rationalization Community Committee recommendations as outlined in the staff report from the March 30, 2005 committee meeting with the following changes:

Community Fisheries Quota (CFQ) Program

C 1.1 Administrative Entity

If Option 2 Suboption 1 or Option 3 is selected, the CFQ for a specific management area (WG, CG, WY) would be initially allocated to the management entity representing communities located in that area based on: 1) equal basis and/or 2) population. No more than 50% of the CFQ for any area can be allocated to the entity on an equal basis.

C 1.2 Board Representation of the Administrative Entity

Option 3 (Applicable with C 1.1, Option 1): The makeup of the administrative entity's Board of Directors shall reflect population, local participants' harvest history, and geography.

C 1.3 Eligible Communities

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

~~Option 4. GOA (WG,CG,WY) communities eligible under GOA Am. 66 are eligible~~

C 1.11 Use of Lease Proceeds by Administrative Entity

Use of lease proceeds is restricted to administrative expenses. ~~and:~~

- Option 1. **and** purchase of additional GOA groundfish quota shares
- Option 2. **and** fisheries related investments
- Option 3. **and** investments in the economic development and social well being of member communities
- Option 4. **and** distribution to member community CQEs

C 1.15 Administrative Oversight

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

Community Purchase Program

C 2.4 Administrative Oversight

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

Additionally, the Council requests that staff provide community groundfish catch data (excluding IFQ sablefish). The Council is notifying the public that after reviewing catch data, a minimum landing threshold may be added to address community groundfish dependency.

The Council recommends the continued work of the GOA Rationalization Community Committee when additional data is available.

Gulf of Alaska Rationalization Community Provisions
Staff discussion paper
 December 2005

The Council's motion on Gulf of Alaska Rationalization currently includes two community programs: the **Community Fisheries Quota (CFQ) Program** and the **Community Purchase Program (CPP)**. The current motion, revised in June 2005, is provided as **Attachment 1**. Both programs are being analyzed for potential incorporation in the general GOA rationalization Alternatives 2 and 3. The Council could select one program or both (in combination) at final action. The purpose of this discussion paper is to:

- Provide a general overview of the proposed community programs under Gulf of Alaska Rationalization and their intended implementation;
- Outline NOAA General Counsel's legal concerns with the implementation of the CFQ Program and recommendations to mitigate those concerns; and
- Provide fisheries participation and socio-economic data on the communities potentially eligible for the programs, as requested by the Council in June 2005.

I. Overview of GOA Rationalization Community Programs

The Council has approved an overall purpose statement to guide the development of the community provisions, as well as purpose statements specific to the CFQ Program and Community Purchase Program. The following **overall purpose statement** is included in the current (June 2005) motion:

It is the Council's intent that the Community Fisheries Quota (CFQ) Program and the Community Purchase Program (CPP) be the subject of standalone staff analysis for future inclusion in GOA groundfish rationalization alternatives as appropriate. The intent is not to create these programs as a trailing amendment, but to implement them at the same time GOA rationalization goes into effect.

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 provision programs.

PURPOSE: The Council recognizes the importance of providing economic stability for communities historically dependent upon GOA groundfish fisheries. Consistent with the guidance provided by the Consolidated Appropriations Act of 2001, National Standard 8, and the National Research Council Report, the Council acknowledges that rationalization programs can have significant impacts on fishing-dependent communities. Community provisions are intended to address community impacts resulting from rationalization and seek to provide economic stability or create economic opportunity in fishing-dependent communities, and provide for the sustained participation of such communities.

Community Fisheries Quota (CFQ) Program

CFQ purpose statement in motion:

The CFQ program would allocate a percentage of the annual Federal TAC to an administrative entity that would subsequently determine how to use the annual harvest privileges according to criteria established in Federal regulation. Depending upon the structure and restrictions established, the non-profit entity would use the shares to enable eligible communities to fish the shares. CFQ will be fished only by eligible community residents and will not be leased outside of the community to be used for other economic development.

The intent of the CFQ program is to mitigate the economic impacts of Gulf groundfish rationalization on small (less than 1500), isolated GOA communities with a historical dependence on groundfish. Further, it is the intent of the program to sustain current participation and access to the fisheries by those communities.

Intended implementation:

- Individual communities are determined eligible at Council final action, based on criteria in the motion. Eligible communities and the criteria by which they were evaluated are listed in the Federal regulations implementing the Gulf rationalization program.
- The amount of initial allocation to CFQ program (5%, 10% or 15%) is determined at Council final action and established in Federal regulation. That allocation is fixed until subsequent rulemaking is proposed to make changes. Thus, there is no administrative determination subject to an appeal at the time of initial allocation.
- NMFS makes the initial allocation of CFQ (5%, 10% or 15%) to the management entity or entities representing eligible communities. If one management entity is established at final action, the entire CFQ allocation is allocated to that entity. If more than one management entity is established at final action, NMFS makes the initial allocation based on the objective criteria selected at final action. Options for this criteria (e.g., number of communities and population) were added to the current motion in June 2005.
- The management entity(ies) hold CFQ on behalf of eligible communities during the life of program. The management entity cannot sell CFQ.
- Eligibility requirements are established in Federal regulation to identify individuals eligible to lease CFQ (e.g., permanent resident of an eligible community; U.S. citizen; qualified to receive quota by transfer; vessel ownership and/or employment on a vessel and/or vessel leased under contract).¹ See section C 1.7.
- The Board of Directors (BOD) of the management entity determines the process and criteria by which to evaluate eligible residents that apply to lease CFQ for the fishing year. The universe of individuals to which the BOD may lease quota is subject to the eligibility requirements selected by the Council at final action (see above bullet), but the decision of how to distribute IFQ among qualified individuals is left up to the management entity. The management entity must submit the process it is going to use to solicit requests from residents to lease CFQ and the criteria it will use to determine the distribution of leases among qualified residents as part of the application to NMFS to qualify as the management entity that holds CFQ on behalf of communities (see C 1.14). NMFS approves the overall application, but does not require a specific process or criteria. Thus, the criteria used by the BOD to select individuals to lease CFQ is not in Federal regulation.

¹Comparisons have been made between this program and GOA Am. 66. Under Am. 66, the individual leasing annual IFQ derived from community-held QS must be an eligible community resident, U.S. citizen, and eligible to receive quota by transfer. There is also a restriction that the eligible resident may not hire a master (designate a skipper) to fish the community IFQ (50 CFR 679.7(f)(16)). The community resident leasing the IFQ must be onboard the vessel when the IFQ is being fished. The Council recommended this requirement to help ensure that the potential benefits of QS held by communities would be realized by resident fishermen of those communities and not leased outside the communities.

- RAM Division would administer and approve any transfer of an annual CFQ permit to an eligible community resident, using the mandated eligibility requirements in Federal regulation (e.g., permanent resident of an eligible community, U.S. citizen, qualified to receive quota by transfer, etc).
- Administrative due process would be provided should an individual dispute the determination by RAM that they did not meet the eligibility criteria in Federal regulation.
- The management entity submits an annual report, which includes findings related to the leasing of CFQ to community residents. Elements and timing of the report would be listed in Federal regulations.
- Revenues generated from leasing CFQ to community residents may be restricted in Federal regulations (C. 1.11).

Community Purchase Program (CPP)

CPP purpose statement in motion:

The CPP would allow a defined set of eligible communities to organize an administrative entity to purchase, hold, and use Gulf groundfish quota share within the rationalization program. In contrast to receiving an initial allocation, this provision would designate an administrative entity representing eligible communities as an eligible quota shareholder under the rationalization program, and that entity would be allowed to purchase GOA groundfish shares on the open market.

The purpose of the CPP is to provide the eligible communities with the opportunity to sustain their participation in the rationalized fisheries through the acquisition of Gulf groundfish fishing privileges. Further, it is the intent of the program to maintain and enhance current participation and access to Gulf groundfish fisheries by those communities.

Intended implementation:

- Individual communities are determined eligible at Council final action, based on criteria in the motion. Eligible communities and the criteria by which they were evaluated are listed in Federal regulations implementing the Gulf rationalization program. List of eligible communities may vary from CFQ Program communities.
- Upon implementation of the program, eligible communities may organize a new non-profit management entity or use an existing entity, which would submit an application to NMFS to represent one or more communities. Each community could select its own management entity or could choose to be represented by the same management entity. The elements of that statement will be in Federal regulation. The management entity is authorized under Federal regulation to purchase and hold Gulf groundfish QS on behalf of its member communities during the life of the program.
- Eligibility requirements are established in Federal regulation to identify individuals eligible to lease quota share purchased and held by the management entity (e.g., permanent resident of an eligible community, U.S. citizen, qualified to receive quota by transfer). This is similar to the Gulf Amendment 66 community quota share purchase program implemented in 2004. *May need to add statement in CPP motion that harvesting of shares is limited to residents of any eligible community, if that is the intent.*

- The Board of Directors (BOD) of the management entity determines the process and criteria by which to evaluate eligible individual residents that apply to lease community QS for the fishing year. The universe of individuals the BOD may lease quota to is subject to the eligibility requirements selected by the Council at final action (see above bullet), but the decision of how the entity distributes IFQ among qualified individuals is left up to the management entity.

The management entity must submit a detailed statement of eligibility to NMFS prior to representing communities (see C 2.3). *While not listed in the motion, one of the requirements of the management entity's application to represent communities could be a description of the process the BOD is going to use to solicit requests to lease CFQ and the criteria it will use to determine the distribution of leases among qualified individuals. This could be added under C. 2.3.* NMFS would not require a specific process or criteria, but the agency would ensure that these elements are submitted as part of the application to purchase quota on behalf of communities.

- RAM Division would administer and approve any transfer of an annual IFQ permit to a community resident, using the mandated eligibility requirements in Federal regulation (e.g., permanent resident of an eligible community, U.S. citizen, qualified to receive quota by transfer).
- Administrative due process would be provided should an individual dispute the determination by RAM that they did not meet the individual eligibility criteria in Federal regulation.
- The management entity submits an annual report detailing the use of Gulf quota share by the entity. Elements and timing of report are listed in Federal regulations (C 2.4).
- Revenues generated from leasing QS to community residents are not restricted in the current motion.
- The amount of Gulf groundfish QS that may be purchased by the entities representing communities is limited on an individual community basis and an aggregate basis. The current motion also notices the public that further limitations on the type of QS that can be purchased by a management entity representing communities may be considered.

II. NOAA's legal concerns with the CFQ Program and recommendations

Recall that NOAA General Counsel (GC) provided a legal opinion, dated October 3, 2003, on delegation of Secretarial authority concerns related to the Community Incentive Fisheries Trust (CIFT) Program that was included in the Council's motion for GOA rationalization at that time (Attachment 2). The CIFT Program was subsequently removed from the proposed community programs for analysis, due in part to the legal concerns and other issues. However, at that time, NOAA GC advised the Council that the legal concerns discussed in the context of the CIFT Program could likewise be applied to the CFQ Program as currently proposed. Several modifications to this program have been made since that time, in part to attempt to address NOAA GC's concerns. These changes include revisions to the purpose statement and the addition of implementation details.

Staff noted at the June 2005 Council meeting that ongoing consultation with NOAA GC is necessary to ensure that both programs' design is within the bounds established under the Federal law with regard to the delegation of Secretarial authority and due process. Staff met with NOAA GC in August, in order to continue this process for the proposed CFQ Program and Community Purchase Program.

The guidance received from NOAA GC is that legal concerns remain with the CFQ Program's current structure. The purpose and design of the program imply that the benefits of the CFQ allocation are intended not only for the non-profit management entity, but also for resident fishermen. The non-profit entity's discretionary authority over the sub-allocation of Gulf quota share triggers the same legal concern discussed in the October 2003 opinion. In sum, NOAA GC identified the following issues:

- **There is a legal concern with creating a program in which the primary purpose is to delegate discretionary authority to a private entity to sub-allocate quota (in this case, from a management entity to community residents), as currently stated in the CFQ Program purpose statement.** This is because, under Federal law, the SOC cannot approve a program in which discretionary authority to reallocate quota is delegated to a separate entity, which means parties aggrieved by such a decision would have no agency review or appeal right. As described in Part I of this paper, the intended implementation of the CFQ Program is to create some eligibility criteria in Federal regulation that would identify the universe of individuals that could lease quota from a community entity (e.g., U.S. citizen, resident of eligible community, eligible to receive QS by transfer). Clearly, however, further decisions on how to lease CFQ among individuals that met all of the mandated criteria would have to be made. The intent was that the BOD of the management entity would be required to develop a process to solicit applicants to lease annual IFQ as well as a method of selecting the individuals to which that IFQ would be leased. This selection criteria would be determined by the BOD after the program had been implemented, and thus would not be in Federal regulations. The primary legal concern with this program design relates to the fact that the SOC cannot delegate functions which are discretionary in nature or require the exercise of judgment, as that responsibility has been specifically given to the agency by Congress under the Magnuson-Stevens Act.² A major concern with the delegation of discretionary authority to outside entities is the Constitutional right of procedural due process.
- **If the Council wanted to allay the legal concerns but still leave the management entity flexibility to determine who leases/fishes the quota, one would need to design the program with a different purpose.** This purpose might be "to allocate Gulf groundfish quota (CFQ) to qualified applicants representing eligible Gulf communities, in order to use that allocation to provide benefits to communities." Changes to this effect would eliminate references in the purpose statement that CFQ will be fished only by eligible community residents. This implies that the entity is allowed to make the decision about how best to accomplish the goal of benefiting communities, and the 'sub-allocation' issue is no longer a primary aspect of the program. While allocating quota share to community residents is one way that the entity could use the allocation to benefit communities through the program, it is not a mandated course of action and thus, it is not the primary purpose of the program. This purpose is somewhat similar to the CDQ Program.
- **If the CFQ Program motion was left as stated currently, with the primary purpose being to lease quota to community residents, the program would have to be modified such that the management entity would not make any discretionary choices about leasing to person A versus person B.** All of the criteria used to make the leasing decisions would need to be in Federal regulations, and each decision must be subject to appeal through NOAA's Office of Administrative Appeals. This scenario makes the criteria used to determine how the CFQ allocation is leased an essential element of the program at final action. The criteria needs to be in Federal regulations in order for NOAA to determine whether those criteria were applied correctly

²Section 305(d) of the MSA states: 'RESPONSIBILITY OF THE SECRETARY.--The Secretary shall have general responsibility to carry out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this Act. The Secretary may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to discharge such responsibility or to carry out any other provision of this Act.'

by the management entity and to approve the individual leasing decisions. The leasing decisions would then be subject to an administrative appeals process, and the agency appeals process is subject to review by the Courts under the Administrative Procedure Act and the Constitution.

- **The issue of delegating SOC authority to allocate quota share to an outside entity has not been identified as a legal concern in the Community Purchase Program, as there is no allocation involved in that program.** That program only identifies another type of eligible 'person' (i.e., non-profit entity representing communities) that is allowed to receive quota by transfer (purchase).

Recommendations to change the CFQ Program to mitigate legal concerns:

NOAA GC and staff discussed several options for modifications to the CFQ Program that would mitigate the legal concerns identified above. The following four options are mutually exclusive.

- (1) **Program status quo, but establish all criteria used for making individual leasing decisions (e.g., boat ownership, crew size, how much IFQ an individual owns, etc.) in Federal regulations.** The nonprofit management entity would apply the criteria in Federal regulations and perform the first cut at individual leasing decisions; NMFS would review those recommendations and issue a decision. There would be an opportunity for administrative appeals of the agency's decision. The criteria would need to be clear, and preferably objective, in order to be effectively administered by NMFS. Depending on the level of resident participation in the program, a significantly longer timeframe and additional staff may be necessary to accommodate appeals.
- (2) **Program status quo, but make selection process for individual leasing a completely ministerial process (i.e., mathematical exercise).** As in #1 above, the criteria used to make individual leasing decisions would be in Federal regulations, and NMFS would review and approve all leasing recommendations made by the management entity, with the opportunity for administrative appeals. The difference is that the criteria to distribute quota among all applicants would be a formula. Thus, the appeals process would primarily be limited to ensuring that the management entity did the correct math to apply the formula, based on the number of applications received. The timeframe necessary for appeals would likely be reduced.
- (3) **Change the purpose of the program.** As mentioned previously, the purpose of the program could be modified as such: 'to allocate Gulf groundfish quota (CFQ) to qualified applicants representing eligible Gulf communities, in order to use that allocation to provide benefits to communities.' Under this design, the entity can use the quota in any way it sees fit to meet that purpose, whether by leasing quota to a community resident, purchasing a vessel to fish the shares, or some other means. If so inclined, the Council could include a transfer provision as part of the program, such that if an entity chooses to lease the quota to an individual to fish, it must be leased to an eligible community resident.
- (4) **Program status quo, but authorize the program under an MSA amendment.** Depending on the Council's preferred alternative, an amendment to the MSA (or new legislation) may be the only way to implement the entire Gulf rationalization program, so this option may be entirely feasible and anticipated. While this option may overcome the statutory limitations, however, it may still effect Constitutional concerns. One of the major concerns associated with the delegation of authority to private parties by Congress is the Constitutional concept of due process.

Staff notes that (1) and (2) above would leave the program purpose and structure nearly the same as designed in the current motion; the difference is that all of the criteria used to determine whether person A versus person B leases the CFQ would be in Federal regulation. The need for agency approval and appeal of each individual leasing decision may complicate the program, although this is largely dependent upon the criteria selected. Both #1 and #2 require that the management entity submit its allocation decisions with sufficient time to administer an appeals process.

If the Council opted to make the selection process for individual leasing a completely ministerial process as in (2), it would likely require less time for an appeals process. Some examples of a formulaic approach might be: equal distribution among applicants at a given lease price; 'first come, first served,' or a bid process with applicants providing a bid for the amount of CFQ they would like to lease. One could also employ caps on the amount of IFQ that could be leased by an individual fisherman, as proposed in C 1.8. This method would employ an application period, and the leasing recommendations would be submitted from the management entity to NMFS. NMFS would then ensure that each individual selected by the entity met the eligibility requirements (e.g., U.S. citizen, resident of the community, etc.) and that the entity followed the formula in regulation to distribute annual CFQ among qualified applicants.

Option (3) would change the stated purpose of the CFQ Program to one in which the management entity uses the allocation as it sees fit to benefit eligible communities. This is a very broad purpose, which implies that the entity is allowed to make the decision about how best to accomplish the goal of benefiting communities, and the 'sub-allocation' by the management entity is no longer the primary purpose of the program. This allays the legal concerns with creating a program in which the primary purpose is to provide an entity with the authority to annually re-allocate quota to individuals who will actually participate in the fishery. While changes to the purpose statement may not be desired, this may be a more straightforward method by which to mitigate the legal issues. If so inclined, the Council could include a transfer provision as part of the program, such that if an entity chooses to lease the quota to an individual to fish, it must be leased to an eligible community resident. This would retain the limitation on the use of CFQ that the Council supported in the current motion and purpose statement.

Finally, including the program as a statutory provision as described in (4) may be possible, as the entire Gulf rationalization program may require new legislation to implement. There are two issues to consider, however. First, the need for statutory authority to implement Gulf rationalization as a whole depends on the preferred alternative selected. Thus, if the rest of the package does not require new legislation, the Council may want to consider whether to adopt community provisions that would require separate Congressional authorization. Second, there remains some uncertainty with the overall feasibility of this option, as it raises the Constitutional issue of due process. Given these factors, NOAA GC should provide further guidance as to whether the Council could rely on this option if preferred.

In sum, if the Council wants to proceed with the CFQ Program, it could take action on any of these options or develop others to mitigate the legal concerns identified by NOAA GC at this December meeting. The Council is not, however, required to take any action at this time. Staff notes that option (3) may be sufficiently straightforward to address in a motion at this meeting; however, the Council may want to consider convening the GOA Rationalization Community Committee if options (1) or (2) are preferred. Option (4) would not require any Council action, but it is uncertain at this point whether it represents a feasible solution.

III. Preliminary data on potentially eligible communities

At its June 2005 meeting, in addition to making changes to the options provided for analysis, the Council requested that staff provide community groundfish catch data (excluding IFQ sablefish) at a subsequent meeting. The Council notified the public that after reviewing the catch data, a minimum landings threshold may be added to address community groundfish dependency. The remainder of this section summarizes the available groundfish (and non-groundfish) harvest data from 1993 to 2003, as well as some socio-economic data, for potentially eligible communities. This type of data will be provided and expanded upon in the EIS/RIR/IRFA required for this action. Note that the harvest data for a number of communities was consolidated or masked for confidentiality reasons.

At its June 2005 meeting, the Council adopted the GOA Rationalization Community Committee recommendations as outlined in March 30, 2005 committee report, with some modifications and additions. The current suite of options for the community programs is provided as **Attachment 1**. One of the Council recommendations was to make a minimum threshold for community eligibility in the CFQ Program that the community must have residents with commercial *groundfish* permit and fishing activity, as documented by CFEC some time during the period 1993 – 2002. The Council also recommended a minimum threshold for community eligibility in the Community Purchase Program: the community must have residents with *any* commercial permit and fishing activity, as documented by CFEC some time during the period 1993 – 2002. The option remains to further require that that participation be in the commercial groundfish fisheries.

Therefore, the current options for community eligibility in the CFQ and CPP are as follows:

<u>CFQ Program</u>	
C 1.3	Eligible communities
Option 1.	Population (based on 2000 U.S. Census) of less than 1,500 but not less than 25
Option 2.	Geography <ol style="list-style-type: none">Coastal communities without road connections to larger community highway networkCommunities 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
Option 3.	Historic Participation in Groundfish Fisheries <ol style="list-style-type: none">Communities with residents having any groundfish commercial permit and fishing activity as documented by CFEC in the last ten years (1993 – 2002)

<u>Community Purchase Program</u>	
C 2.2	Eligible Communities
Option 1.	Population (based on 2000 U.S. Census) <ol style="list-style-type: none">Less than 1,500 but not less than 25Less than 7,500 but not less than 25
Option 2.	Geography <ol style="list-style-type: none">Coastal communities without road connections to larger community highway networkCommunities 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). <ol style="list-style-type: none">Communities with residents having any groundfish commercial permit and fishing activity as documented by CFEC in the last ten years (1993 – 2002)
Option 4.	GOA (WG, CG, WY) communities eligible under GOA Am. 66

Given the eligibility criteria options above, two sets of eligibility tables are provided for each proposed program. **The first set of tables shows the potentially eligible communities for the CFQ Program.** Table 1 lists the 26 communities that are eligible when the population and geography criteria are applied from Options 1 and 2. Table 2 shows that the list of eligible communities is reduced to 17 when the groundfish participation criterion under Option 3 is applied.

The second set of tables identifies the potentially eligible communities for the Community Purchase Program. Table 3 lists the 31 potentially eligible communities when the population and geography criteria are applied from Options 1 and 2. Table 4 shows that the list of eligible communities is reduced to 20 when the Gulf groundfish participation criterion under Option 3a is applied. Note that if the fisheries participation criteria is not limited to groundfish, and is alternatively “communities with residents having any commercial permit and fishing activity as documented by CFEC in the last ten years” (Option 3), then four additional communities appear eligible. These communities are Akhiok, Cold Bay, Nanwalek, and Tyonek. The data indicate primarily salmon fishing activity in these communities, with limited halibut participation, during the 1993 – 2003 period.

The footnotes for each table provide further explanation on how the draft list of eligible communities was determined. Note that the fisheries participation criteria applied in Table 2 and Table 4 is commercial groundfish harvest by catcher vessels in the areas in which Gulf rationalization is proposed (WG, CG, WY). **If this is the intent of the eligibility criterion under C 1.3, Option 3, this option should be revised to clarify that only commercial Gulf (WG, CG, WY) groundfish harvests are considered.** The same clarification could be made for the Community Purchase Program, under C 2.2, Option 3a.

Note also that the time period specified for fisheries participation in the options for both programs is “the last ten years (1993 – 2002).” At the time these programs were initiated, 2002 was the most recent data available. In this paper, staff provided the most recent data available to date, which includes 2003. **If the intent is to maintain the 1993 – 2002 time period in the options, 2003 can be excluded in future iterations. However, the lists of eligible communities provided in Table 2 and Table 4 would not change if 2003 was excluded.**

Note also that only harvests by vessels operating as catcher vessels were considered for determining community eligibility in the tables. The city of the skipper's residence as indicated on the CFEC permit was used to determine community residency and link residency to harvest (fishtickets). Harvests by vessels operating as catcher processors were not considered, as the options specify “fishing activity as documented by CFEC.”³ Catcher processors are not required to fill out fishtickets and the CFEC permit is not recorded on the weekly processor report. However, if a catcher processor acted as a catcher vessel and filled out a fishticket, that harvest was counted toward a community's landings. Finally, note again that the city of the skipper's residence (not mailing address) as indicated on the CFEC permit was used to determine community residency. Thus, the data does not account for crew member residency nor does it indicate the community to which the fish were delivered.

Because the community eligibility criteria are unknown until a preferred alternative is selected, socio-economic data are provided for the maximum number of communities that appear to qualify under the population and geographic criteria for the CPP, i.e., the 31 unique communities listed in Table 3. Harvest data are provided for each of the 31 communities that had permit and fishing activity during 1993 – 2003. This represents a reasonable starting point to identify the universe of communities on which to provide data in the remainder of this section. None of these tables are intended to presuppose the eligibility criteria selected by the Council at final action; the tables are for illustrative purposes only.

³The overall rationalization analysis will provide catcher processor landings attributable to communities by vessel owner or LLP holder, but catcher processor harvests do not appear to be included for determining community eligibility at this time.

The following tables are provided in this section:

- Table 1.** GOA communities (26) potentially eligible for the CFQ Program, using population and geography criteria only
- Table 2.** GOA communities (17) potentially eligible for the CFQ Program, using population, geography, and fisheries participation criteria
- Table 3.** GOA communities (31) potentially eligible for the Community Purchase Program, using population and geography criteria only
- Table 4.** GOA communities (20) potentially eligible for the Community Purchase Program, using population, geography, and fisheries participation criteria
- Table 5.** Retained harvests (round lbs) of Gulf (WG, CG, WY) groundfish (excluding IFQ sablefish) and estimated ex-vessel values by community, 1993 – 2003
- Table 5a.** Percentage of the estimated ex-vessel value generated from WG, CG, WY groundfish harvests (excluding IFQ sablefish) attributed to Pacific cod, 1993 - 2003
- Table 6.** Retained harvests (round lbs) of groundfish outside of WG, CG, WY (and including IFQ sablefish) and estimated ex-vessel values by community, 1993 – 2003
- Table 7.** Retained harvests of non-groundfish (BSAI and GOA) by community, 1993 – 2003
- Table 8.** Estimated ex-vessel values for retained non-groundfish (BSAI and GOA) by community, 1993 – 2003
- Table 9.** Summary of estimated ex-vessel values attributable to potentially eligible communities from Gulf groundfish, non-Gulf groundfish, and non-groundfish, 1993 - 2003
- Table 10.** Description of location of 31 Gulf communities (23 in CG, 5 in WG, 3 in WY)
- Table 11.** Processing companies that filed an intent to operate in 2005 in potentially eligible GOA communities
- Table 12.** Demographic and economic statistics for 31 potentially eligible GOA communities

Table 1. GOA communities (26) potentially eligible for the CFQ Program, using population and geography criteria only

Draft list of WY, CG, and WG communities (recognized as places by the U.S. Census) that meet the following criteria: 1) population of fewer than 1,500; 2) no road connections to larger community highway network; and 3) within 5 nm of the Gulf coast. No fisheries participation criteria were used to develop this list.

	NAME	POP ¹	CENSUS PLACE DESIGNATION ²	GOVT STRUCTURE	BOROUGH	AREA
1	Akhiok	80	city	Second Class City	Kodiak Island	CG
2	Aleneva	68	CDP	Unincorporated	Kodiak Island	CG
3	Beluga	32	CDP	Unincorporated	Kenai Peninsula	CG
4	Chenega Bay	86	CDP	Unincorporated	Unorganized	CG
5	Chignik	79	city	Second Class City	Lake & Peninsula	CG
6	Chignik Lagoon	103	CDP	Unincorporated	Lake & Peninsula	CG
7	Chignik Lake	145	CDP	Unincorporated	Lake & Peninsula	CG
8	Cold Bay	88	city	Second Class City	Aleutians East	WG
9	Halibut Cove	35	CDP	Unincorporated	Kenai Peninsula	CG
10	Ivanof Bay	22	CDP	Unincorporated	Lake & Peninsula	WG
11	Karluk	27	CDP	Unincorporated	Kodiak Island	CG
12	King Cove	792	city	First Class City	Aleutians East	WG
13	Larsen Bay	115	city	Second Class City	Kodiak Island	CG
14	Nanwalek	177	CDP	Unincorporated	Kenai Peninsula	CG
15	Old Harbor	237	city	Second Class City	Kodiak Island	CG
16	Ouzinkie	225	city	Second Class City	Kodiak Island	CG
17	Perryville	107	CDP	Unincorporated	Lake & Peninsula	WG
18	Port Graham	171	CDP	Unincorporated	Kenai Peninsula	CG
19	Port Lions	256	city	Second Class City	Kodiak Island	CG
20	Sand Point	952	city	First Class City	Aleutians East	WG
21	Seldovia	286	city	First Class City	Kenai Peninsula	CG
22	Seldovia Village	144	CDP	Unincorporated	Kenai Peninsula	CG
23	Susitna	37	CDP	Unincorporated	Matanuska-Susitna	CG
24	Tatitlek ³	107	CDP	Unincorporated	Unorganized	WY
25	Tyonek	193	CDP	Unincorporated	Kenai Peninsula	CG
26	Yakutat ⁴	680	city	Home Rule	City & Borough of Yakutat	WY/SEO
	TOTAL	5,244				

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

²This means any location that the 2000 U.S. Census treats as a "place": either an incorporated community or a 'census designated place (CDP)' for unincorporated areas that are nonetheless recognized as place-level communities by the Census. This approach is consistent with the effort to profile fishing communities of the North Pacific by the NOAA staff at the Alaska Fisheries Science Center.

³Tatitlek is considered located in the West Yakutat area. Though located within PWS (Area 649), this community is inside the longitudinal line used to designate the WY (Area 640) and CG (Area 630) boundary.

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

Table 2. GOA communities (17) potentially eligible for the CFQ Program, using population, geography, and fisheries participation criteria

Draft list of WY, CG, and WG communities (recognized as places by the U.S. Census) that meet the following criteria: 1) population of fewer than 1,500; 2) no road connections to larger community highway network; 3) within 5 nm of the Gulf coast; and 4) residents with any commercial groundfish (excluding IFQ sablefish) permit and fishing activity in WY, CG, or WG as documented by CFEC during the period (1993 - 2003)

NAME	POP ¹	CENSUS PLACE DESIGNATION ²	GOVT STRUCTURE	BOROUGH	AREA
1 Chenega Bay	86	CDP	Unincorporated	Unorganized	CG
2 Chignik	79	city	Second Class City	Lake & Peninsula	CG
3 Chignik Lagoon	103	CDP	Unincorporated	Lake & Peninsula	CG
4 Chignik Lake	145	CDP	Unincorporated	Lake & Peninsula	CG
5 Halibut Cove	35	CDP	Unincorporated	Kenai Peninsula	CG
6 Ivanof Bay	22	CDP	Unincorporated	Lake & Peninsula	WG
7 King Cove	792	city	First Class City	Aleutians East	WG
8 Larsen Bay	115	city	Second Class City	Kodiak Island	CG
9 Old Harbor	237	city	Second Class City	Kodiak Island	CG
10 Ouzinkie	225	city	Second Class City	Kodiak Island	CG
11 Perryville	107	CDP	Unincorporated	Lake & Peninsula	WG
12 Port Graham	171	CDP	Unincorporated	Kenai Peninsula	CG
13 Port Lions	256	city	Second Class City	Kodiak Island	CG
14 Sand Point	952	city	First Class City	Aleutians East	WG
15 Seldovia	286	city	First Class City	Kenai Peninsula	CG
16 Tatitlek ³	107	CDP	Unincorporated	Unorganized	WY
17 Yakutat ⁴	680	city	Home Rule	City & Borough of Yakutat	WY/SEO
TOTAL	4,398				

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

²Staff considered as a community any location that the 2000 U.S. Census treats as a "place": either an incorporated community, or a 'census designated place (CDP)' for unincorporated areas that are nonetheless recognized as place-level communities.

³Tatitlek is considered located in the West Yakutat area. Though located within PWS (Area 649), this community is inside the longitudinal line used to designate the WY (Area 640) and CG (Area 630) boundary.

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

Note: The CFEC data used to determine whether a community met the fisheries participation criterion was fishticket data from 1993 - 2003. The city of the skipper's residence as indicated on the CFEC permit was used to determine community residency. Only harvests from vessels operating as catcher vessels are included. If a catcher processor operated as a catcher vessel, that harvest is included. IFQ sablefish data is excluded, as this fishery is not included in the proposed GOA rationalization.

Table 3. GOA communities (31) potentially eligible for the Community Purchase Program, using population and geography criteria only

Draft list of WY, CG, and WG communities (recognized as places by the U.S. Census) that meet the following criteria: 1) population of fewer than 7,500; 2) no road connections to larger community highway network; and 3) within 5 nm of the Gulf coast. No fisheries participation criteria were used to develop this list.

NAME	POP ¹	CENSUS PLACE ²	GOVT STRUCTURE	BOROUGH	AREA	ELIGIBLE AM. 66
1 Akhiok	80	city	Second Class City	Kodiak Island	CG	Y
2 Aleneva	68	CDP	Unincorporated	Kodiak Island	CG	N
3 Beluga	32	CDP	Unincorporated	Kenai Peninsula	CG	N
4 Chenega Bay	86	CDP	Unincorporated	Unorganized	CG	Y
5 Chignik	79	city	Second Class City	Lake & Peninsula	CG	Y
6 Chignik Lagoon	103	CDP	Unincorporated	Lake & Peninsula	CG	Y
7 Chignik Lake	145	CDP	Unincorporated	Lake & Peninsula	CG	Y
8 Chiniak	50	CDP	Unincorporated	Kodiak Island	CG	N
9 Cold Bay	88	city	Second Class City	Aleutians East	WG	N
10 Cordova	2,454	city	Home Rule	Unorganized	WY	N
11 Halibut Cove	35	CDP	Unincorporated	Kenai Peninsula	CG	Y
12 Ivanof Bay	22	CDP	Unincorporated	Lake & Peninsula	WG	Y
13 Karluk	27	CDP	Unincorporated	Kodiak Island	CG	Y
14 King Cove	792	city	First Class City	Aleutians East	WG	Y
15 Kodiak	6,334	city	Home Rule	Kodiak Island	CG	N
16 Kodiak Station	1,840	CDP	Unincorporated	Kodiak Island	CG	N
17 Larsen Bay	115	city	Second Class City	Kodiak Island	CG	Y
18 Nanwalek	177	CDP	Unincorporated	Kenai Peninsula	CG	Y
19 Old Harbor	237	city	Second Class City	Kodiak Island	CG	Y
20 Ouzinkie	225	city	Second Class City	Kodiak Island	CG	Y
21 Perryville	107	CDP	Unincorporated	Lake & Peninsula	WG	Y
22 Port Graham	171	CDP	Unincorporated	Kenai Peninsula	CG	Y
23 Port Lions	256	city	Second Class City	Kodiak Island	CG	Y
24 Sand Point	952	city	First Class City	Aleutians East	WG	Y
25 Seldovia	286	city	First Class City	Kenai Peninsula	CG	Y
26 Seldovia Village	144	CDP	Unincorporated	Kenai Peninsula	CG	N
27 Susitna	37	CDP	Unincorporated	Matanuska-Susitna	CG	N
28 Tatitlek ³	107	CDP	Unincorporated	Unorganized	WY	Y
29 Tyonek	193	CDP	Unincorporated	Kenai Peninsula	CG	Y
30 Womens Bay	690	CDP	Unincorporated	Kodiak Island	CG	N
31 Yakutat ⁴	680	city	Home Rule	City & Borough of Yakutat	WY/SEO	Y
TOTAL	16,612					

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

²Staff considered as a community any location that the 2000 U.S. Census treats as a "place": either an incorporated community, or a 'census designated place (CDP)' for unincorporated areas that are nonetheless recognized as place-level communities.

³Tatitlek is considered located in the West Yakutat area. Though located within PWS (Area 649), this community is inside the longitudinal line used to designate the WY (Area 640) and CG (Area 630) boundary.

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

Note: The last column denotes communities eligible under the GOA Community Quota Share Purchase Program for halibut and sablefish (GOA Am. 66). Option 4 of the eligibility criteria for the CPP would make all 21 WG, WY, and CG communities eligible under Am. 66 eligible for the CPP.

Table 4. GOA communities (20) potentially eligible for the Community Purchase Program, using population, geography, and fisheries participation criteria

Draft list of WY, CG, and WG communities (recognized as places by the U.S. Census) that meet the following criteria: 1) population of fewer than 7,500; 2) no road connections to larger community highway network; 3) within 5 nm of the Gulf coast; and 4) residents with any commercial groundfish (excluding IFQ sablefish) permit and fishing activity in WY, CG, or WG as documented by CFEC during the period (1993 - 2003)

NAME	POP ¹	CENSUS PLACE ²	GOVT STRUCTURE	BOROUGH	AREA
1 Chenega Bay	86	CDP	Unincorporated	Unorganized	CG
2 Chignik	79	city	Second Class City	Lake & Peninsula	CG
3 Chignik Lagoon	103	CDP	Unincorporated	Lake & Peninsula	CG
4 Chignik Lake	145	CDP	Unincorporated	Lake & Peninsula	CG
5 Chiniak	50	CDP	Unincorporated	Kodiak Island	CG
6 Cordova	2,454	city	Home Rule	Unorganized	WY
7 Halibut Cove	35	CDP	Unincorporated	Kenai Peninsula	CG
8 Ivanof Bay	22	CDP	Unincorporated	Lake & Peninsula	WG
9 King Cove	792	city	First Class City	Aleutians East	WG
10 Kodiak	6,334	city	Home Rule	Kodiak Island	CG
11 Larsen Bay	115	city	Second Class City	Kodiak Island	CG
12 Old Harbor	237	city	Second Class City	Kodiak Island	CG
13 Ouzinkie	225	city	Second Class City	Kodiak Island	CG
14 Perryville	107	CDP	Unincorporated	Lake & Peninsula	WG
15 Port Graham	171	CDP	Unincorporated	Kenai Peninsula	CG
16 Port Lions	256	city	Second Class City	Kodiak Island	CG
17 Sand Point	952	city	First Class City	Aleutians East	WG
18 Seldovia	286	city	First Class City	Kenai Peninsula	CG
19 Tatitlek ³	107	CDP	Unincorporated	Unorganized	WY
20 Yakutat ⁴	680	city	Home Rule	City & Borough of Yakutat	WY/SEO
TOTAL	13,236				

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

²Staff considered as a community any location that the 2000 U.S. Census treats as a "place": either an incorporated community, or a 'census designated place (CDP)' for unincorporated areas that are nonetheless recognized as place-

³Tatitlek is considered located in the West Yakutat area. Though located within PWS (Area 649), this community is inside the longitudinal line used to designate the WY (Area 640) and CG (Area 630) boundary.

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

Note: The CFEC data used to determine whether a community met the fisheries participation criterion was fishticket data from 1993 - 2003. The city of the skipper's residence as indicated on the CFEC permit was used to determine community residency. Only harvests from vessels operating as catcher vessels are included. If a catcher processor operated as a catcher vessel, that harvest is included. IFQ sablefish data is excluded, as this fishery is not included in the proposed GOA rationalization.

Note: If the fisheries participation criteria applied were any commercial permit and fishing activity (any species, all areas) as documented by CFEC in 1993 -2003, an additional 4 communities would qualify. These include Akhiok, Cold Bay, Nanwalek, and Tyonek.

Table 5. Retained harvests of Gulf (WG, CG, WY) groundfish (excluding IFQ sablefish) and estimated ex-vessel values by community, 1993 - 2003

Community	Unique persons CG	Unique persons WG	Unique persons WY	Total unique persons	Pounds CG	Pounds WG	Pounds WY	Total Pounds	Ex-vessel value CG	Ex-vessel value WG	Ex-vessel value WY	Total estimated value
CHENEGA BAY	2	0	2	2	**	**	**	**	**	**	**	**
CHIGNIKS ¹	41	10	0	n/a	17,697,471	3,396,640	0	21,094,111	\$4,251,616	\$749,090	\$0	\$5,000,706
CHINIAK	3	0	0	3	**	**	**	**	**	**	**	**
CORDOVA	52	4	102	119	5,704,808	31,762	8,489,402	14,225,972	\$1,319,883	\$6,356	\$2,819,618	\$4,145,858
HALIBUT COVE	7	0	1	7	**	**	**	182,933	**	**	**	\$45,975
IVANOF BAY	1	2	0	n/a	**	**	**	**	**	**	**	**
KING COVE	13	49	0	49	3,858,890	86,051,361	0	89,910,251	\$665,688	\$17,615,062	\$0	\$18,280,750
KODIAK	610	117	70	623	1,082,717,495	36,649,798	17,855,077	1,137,222,370	\$179,482,004	\$5,843,424	\$3,263,989	\$188,589,417
LARSEN BAY	12	0	0	12	1,076,889	0	0	1,076,889	\$318,297	\$0	\$0	\$318,297
OLD HARBOR	22	0	0	22	9,096,380	0	0	9,096,380	\$2,472,785	\$0	\$0	\$2,472,785
OUZINKIE	20	0	0	20	1,391,473	0	0	1,391,473	\$391,344	\$0	\$0	\$391,344
PERRYVILLE	4	5	0	5	194,046	429,708	0	623,754	\$51,329	\$103,782	\$0	\$155,111
PORT GRAHAM	2	0	0	2	**	**	**	**	**	**	**	**
PORT LIONS	16	1	0	16	**	**	**	3,426,023	**	**	**	\$852,966
SAND POINT	46	120	2	120	**	296,290,955	**	358,675,914	**	\$43,977,401	**	\$51,891,767
SELDOVIA	26	1	4	27	18,851,514	**	**	18,861,657	\$5,867,346	**	**	\$5,871,374
TATITLEK	0	0	2	2	**	**	**	**	**	**	**	**
YAKUTAT	0	0	12	12	0	0	81,744	81,744	\$0	\$0	\$87,828	\$87,828
All Communities	856	305	195	n/a	1,207,685,249	422,990,885	26,469,050	1,657,145,184	\$203,831,990	\$68,335,162	\$6,187,309	\$278,354,462

¹This row combines harvests for Chignik, Chignik Lagoon, and Chignik Lake, for confidentiality purposes.

Note: Harvest data was compiled for each of the 31 communities that met the following criteria: population of less than 7,500; no road connections to larger community highway network; and within 5 nm of the Gulf coast. Only the 20 communities listed above showed any WG, CG, or WY groundfish harvests (excluding IFQ sablefish) as documented by CFEC fishtickets, 1993 - 2003. The city of the skipper's residence as indicated on the CFEC permit was used to determine community residency. Only harvests from vessels operating as catcher vessels are included. If a catcher processor operated as a catcher vessel, that harvest is included. IFQ sablefish data is excluded, as this fishery is not included in the proposed GOA rationalization. Data does not include harvest destined for meal production.

Note: Confidential data is indicated by **.

Table 5a. Percentage of the estimated ex-vessel value generated from WG, CG, WY groundfish harvests (excluding IFQ sablefish) attributed to Pacific cod, 1993 - 2003

Greater than 90%	8 communities
Greater than 50%	15 communities
Greater than 25%	16 communities

Source: CFEC fishtickets, 1993 - 2003.

Note: The universe of communities is the 20 noted above in Table 5.

Table 6. Retained harvests of groundfish outside of WG, CG, WY (and including IFQ sablefish) and estimated ex-vessel values by community, 1993 – 2003

Community	Unique persons BSAI groundfish	Unique persons IFQ sablefish WG, CG, WY	Unique persons Southeast groundfish	BSAI groundfish pounds	IFQ sablefish pounds	Southeast groundfish pounds	Ex-vessel value BSAI groundfish	Ex-vessel value IFQ sablefish	Ex-vessel value Southeast groundfish	Total estimated value BSAI, IFQ sablefish, Southeast	Total estimated value WG, CG, WY groundfish (from Table 5)	Total estimated value groundfish all areas
CHENEGA BAY	0	2	0	0	0	0	\$0	**	\$0	**	\$5,000,706	**
CHIGNIKS ¹	0	1	0	0	0	0	\$0	**	**	**	**	**
CHIGNIAK	1	1	0	0	0	0	**	**	**	**	**	**
CORDOVA	5	62	4	**	3,047,572	**	**	\$5,426,266	**	\$6,142,484	\$4,145,858	\$10,288,342
HALIBUT COVE	0	2	0	0	0	0	\$0	**	\$0	\$0	\$45,975	**
IVANOF BAY	0	0	0	0	0	0	\$0	\$0	\$0	\$0	\$18,280,750	**
KING COVE	15	7	0	4,134,368	136,062	0	\$766,542	\$194,001	\$0	\$960,543	\$188,589,417	\$19,241,293
KODIAK	163	215	38	461,640,605	23,880,570	1,371,449	\$55,752,868	\$43,194,220	\$2,277,927	\$101,225,014	\$318,297	\$289,814,432
LARSEN BAY	0	2	0	0	0	0	\$0	**	**	**	\$2,472,785	**
OLD HARBOR	0	4	0	0	61,861	0	\$0	\$73,074	\$0	\$73,074	\$2,472,785	\$2,545,859
OUZINKIE	0	4	0	0	48,539	0	\$0	\$64,045	\$0	\$64,045	\$391,344	\$455,389
PERRYVILLE	0	0	0	0	0	0	\$0	\$0	\$0	\$0	\$155,111	\$155,111
PORT GRAHAM	0	2	0	0	0	0	\$0	**	**	**	\$852,966	**
PORT LIONS	1	2	0	0	0	0	**	**	**	**	\$51,891,767	\$55,270,544
SAND POINT	32	5	0	13,797,810	201,936	0	\$3,120,258	\$258,519	\$0	\$3,378,777	\$5,871,374	\$12,310,037
SELDOVIA	2	15	1	0	**	**	**	**	**	**	**	**
TATITLEK	0	1	0	0	0	0	\$0	**	**	**	**	**
YAKUTAT	0	4	48	0	121,931	80,520	\$0	\$194,067	\$27,508	\$221,575	\$87,828	\$309,403
All Communities	217	322	91	481,228,388	31,189,520	1,494,980	\$60,524,930	\$56,316,565	\$2,360,711	\$119,202,206	\$278,354,462	\$397,556,667

¹This row combines harvests for Chignik, Chignik Lagoon, and Chignik Lake, for confidentiality purposes.
 Note: Harvest data was compiled for each of the 31 communities that met the following criteria: population of less than 7,500; no road connections to larger community highway network; and within 5 nm of the Gulf coast. Only 18 communities showed any BSAI groundfish, IFQ sablefish in WG, CG, or WY, or Southeast groundfish harvests as documented by CFEC fish tickets, 1993 - 2003. The city of the skipper's residence as indicated on the CFEC permit was used to determine community residency. Only harvests from vessels operating as catcher vessels are included. If a catcher processor operated as a catcher vessel, that harvest is included. Data does not include harvest destined for meal production.

Table 7. Retained harvests of non-groundfish (BSAI and GOA) by community, 1993 – 2003

Community	Unique persons halibut	Unique persons salmon	Unique persons other species	Unique persons crab	Halibut retained pounds	Salmon retained pounds	Other species retained pounds	Crab retained pounds	Unique non-groundfish people	Total non-groundfish pounds
AKHIOK	1	12	0	0	**	**	0	0	13	1,888,881
CHENEGA BAY	3	5	1	0	**	**	**	0	8	974,617
CHIGNIKS ¹	40	79	28	5	2,133,203	68,451,976	12,823,045	614,226	91	84,022,450
CHINIAK	5	2	0	1	**	**	0	**	7	264,551
COLD BAY	0	7	0	0	0	1,455,733	0	0	7	1,455,733
CORDOVA	148	533	169	15	7,109,463	468,870,231	32,525,933	1,986,073	629	510,491,700
HALIBUT COVE	8	8	1	3	865,124	1,666,965	**	**	14	2,547,353
IVANOF BAY	2	4	1	0	**	**	**	0	4	3,045,445
KING COVE	61	82	14	30	2,993,787	117,931,863	3,801,668	11,432,334	100	136,159,652
KODIAK	589	569	266	362	103,395,243	533,567,186	112,905,495	157,984,449	1072	907,852,373
LARSEN BAY	10	35	3	7	76,204	18,905,154	**	**	39	19,287,682
NANWALEK	1	8	0	0	**	**	0	0	9	553,481
OLD HARBOR	24	41	17	16	438,546	48,590,393	18,332,548	247,009	49	67,608,496
OUZINKIE	24	20	3	5	759,768	14,881,465	**	**	32	15,662,092
PERRYVILLE	6	13	4	0	88,455	8,812,576	620,455	0	13	9,521,486
PORT GRAHAM	6	15	1	0	**	4,511,129	**	**	16	4,943,279
PORT LIONS	28	22	8	11	454,048	28,079,405	6,420,858	3,069,879	36	38,024,190
SAND POINT	107	149	20	43	7,309,787	215,361,051	15,679,531	8,854,536	173	247,204,905
SELDOVIA	37	54	9	16	3,843,374	13,636,328	3,040,262	5,810,354	83	26,330,318
TATITLEK	2	7	0	0	**	**	0	0	7	1,319,737
TYONEK	0	29	0	0	0	1,380,944	0	0	29	1,380,944
YAKUTAT	65	280	24	26	1,418,654	31,116,967	160,970	441,909	293	33,138,500
ALL communities	n/a	n/a	n/a	n/a	130,885,656	1,577,219,366	206,310,765	190,440,769	n/a	2,113,677,865

¹This row combines harvests for Chignik, Chignik Lagoon, and Chignik Lake, for confidentiality purposes.

Note: Harvest data was compiled for each of the 31 communities that met the following criteria: population of less than 7,500; no road connections to larger community highway network; and within 5 nm of the Gulf coast. Only the 24 communities listed above showed any non-groundfish (halibut, salmon, other species, crab) retained harvests in any area as documented by CFEC fishtickets, 1993 - 2003. The city of the skipper's residence as indicated on the CFEC permit was used to determine community residency. Only harvests from vessels operating as catcher vessels are included. If a catcher processor operated as a catcher vessel, that harvest is included.

Note: Confidential or masked data is indicated by **.

Table 8. Estimated ex-vessel values for retained non-groundfish (BSAI and GOA) by community, 1993 – 2003

Community	Ex-vessel value halibut	Ex-vessel value salmon	Ex-vessel value other species	Ex-vessel value crab	Total estimated ex-vessel value non-groundfish	Unique non-groundfish people (from Table 7)	Total non-groundfish pounds (from Table 7)
AKHIOK	**	**	\$0	\$0	\$949,489	13	1,888,881
CHENEGA BAY	**	**	**	\$0	\$678,446	8	974,617
CHIGNIKS ¹	\$4,190,051	\$49,751,346	\$2,574,115	\$931,960	\$57,447,472	91	84,022,450
CHINIAK	**	**	\$0	**	\$247,974	7	264,551
COLD BAY	\$0	\$1,158,325	\$0	\$0	\$1,158,325	7	1,455,733
CORDOVA	\$14,881,129	\$185,777,235	\$7,728,111	\$2,873,804	\$211,260,279	629	510,491,700
HALIBUT COVE	\$1,976,598	\$1,380,207	**	**	\$3,382,929	14	2,547,353
IVANOF BAY	**	**	**	\$0	\$2,469,909	4	3,045,445
KING COVE	\$5,626,541	\$35,433,014	\$721,959	\$17,749,261	\$59,530,774	100	136,159,652
KODIAK	\$212,144,058	\$179,285,963	\$44,169,751	\$233,765,811	\$669,365,584	1072	907,852,373
LARSEN BAY	\$130,514	\$6,933,228	**	**	\$7,420,102	39	19,287,682
NANWALEK	**	**	\$0	\$0	\$392,975	9	553,481
OLD HARBOR	\$798,839	\$13,566,271	\$6,440,105	\$558,081	\$21,363,296	49	67,608,496
OUZINKIE	\$1,615,196	\$3,914,094	**	**	\$5,559,187	32	15,662,092
PERRYVILLE	\$174,763	\$7,204,402	\$174,652	\$0	\$7,553,817	13	9,521,486
PORT GRAHAM	**	\$1,475,301	**	\$0	\$1,753,549	16	4,943,279
PORT LIONS	\$875,783	\$7,421,080	\$1,207,956	\$3,695,389	\$13,200,208	36	38,024,190
SAND POINT	\$14,675,643	\$76,397,247	\$3,001,378	\$11,612,568	\$105,686,836	173	247,204,905
SELDOVIA	\$8,085,316	\$8,920,167	\$886,273	\$8,457,405	\$26,349,161	83	26,330,318
TATITLEK	**	**	\$0	\$0	\$894,841	7	1,319,737
TYONEK	\$0	\$1,094,082	\$0	\$0	\$1,094,082	29	1,380,944
YAKUTAT	\$2,829,836	\$20,693,164	\$331,729	\$815,246	\$24,669,975	293	33,138,500
All communities	\$268,004,267	\$600,405,126	\$67,236,029	\$280,459,525	\$1,222,429,209	n/a	2,113,677,865

¹This row combines harvests for Chignik, Chignik Lagoon, and Chignik Lake, for confidentiality purposes.

Note: Harvest data was compiled for each of the 31 communities that met the following criteria: population of less than 7,500; no road connections to larger community highway network; and within 5 nm of the Gulf coast. Only the 24 communities listed above showed any non-groundfish (halibut, salmon, other species, crab) retained harvests in any area as documented by CFEC fishtickets, 1993 - 2003. The city of the skipper's residence as indicated on the CFEC permit was used to determine community residency. Only harvests from vessels operating as catcher vessels are included. If a catcher processor operated as a catcher vessel, that harvest is included.

Note: Confidential or masked data is indicated by **.

Table 9. Summary of estimated ex-vessel values attributed to potentially eligible communities from Gulf groundfish, non-Gulf groundfish, and non-groundfish, 1993 - 2003

Description of fishery	Estimated ex-vessel value	% of total
Gulf (WG, CG, WY) groundfish excluding IFQ sablefish	\$278,354,462	17.2%
Non-Gulf groundfish including IFQ sablefish ¹	\$119,202,206	7.4%
Non-groundfish all areas	\$1,222,429,209	75.5%
Total	\$1,619,985,877	100.0%

Note: Ex-vessel values are from Tables 6 and 8.

¹Includes IFQ sablefish from all areas, including WG, CG, WY

Table 10. Description of location of 31 Gulf communities (23 in CG, 5 in WG, 3 in WY)

Community	Description of Location
CG	
Akhiok	at the southern end of Kodiak Island at Alitak Bay, 80 miles southwest of the City of Kodiak
Aleneva	on the southern coast of Afognak Island, north of Kodiak Island, on the coast of Raspberry Strait
Beluga	8 miles northeast of Tyonek, along Cook Inlet in the Kenai Peninsula Borough
Chenega Bay	located on Evans Island at Crab Bay, 42 miles southeast of Whittier in Prince William Sound, 104 air miles SE of Anchorage
Chignik	Chignik is located on Anchorage Bay on south shore of the Alaska Peninsula, lies 260 miles southwest of Kodiak
Chignik Lagoon	on the south shore of the Alaska Peninsula, 8.5 miles west of Chignik and 16 miles east of Chignik Lake
Chignik Lake	south side of the Alaska Peninsula next to the body of water of the same name, 13 miles from Chignik
Chiniak	45 miles southeast of the City of Kodiak, on the easternmost point of Kodiak Island
Halibut Cove	Kachemak Bay State Park on the Kenai Peninsula, 12 miles across the inlet from the Homer Spit
Karluk	west coast of Kodiak Island, on the Karluk River, 88 air miles southwest of Kodiak and 301 miles southwest of Anchorage
Kodiak	near the north eastern tip of Kodiak Island in the Gulf of Alaska
Kodiak Station	located on the western shore of Kodiak Island, south and adjacent to the City of Kodiak
Larsen Bay	on Larsen Bay, on the northwest coast of Kodiak Island, 60 miles southwest of the City of Kodiak
Nanwalek	southern tip of the Kenai Peninsula, 10 miles southwest of Seldovia and east of Port Graham
Old Harbor	southeast coast of Kodiak Island, 70 miles southwest of the City of Kodiak
Ouzinkie	on the west coast of Spruce Island, adjacent to Kodiak Island. It lies northwest of the City of Kodiak
Port Graham	7.5 miles southwest of Seldovia and 28 air miles from Homer
Port Lions	located in Settler Cove, 247 air miles southwest of Anchorage
Seldovia	on the Kenai Peninsula across from Homer on the south shore of Kachemak Bay
Seldovia Village	northeast of the City of Seldovia, across from Homer on the south shore of Kachemak Bay
Susitna	on the west bank of the Susitna River, at the foot of Mount Susitna, 30 air miles northwest of Anchorage
Tyonek	on a bluff on the northwest shore of Cook Inlet, 43 miles southwest of Anchorage
Womens Bay	on the west coast of Kodiak Island, 8 miles south of Kodiak
WG	
Cold Bay	in the Izembek National Wildlife Refuge at the western end of the Alaska Peninsula, 634 miles southwest of Anchorage
Ivanof Bay	northeast end of the Kupreanof Peninsula, 500 miles southwest of Anchorage and 250 miles southeast of Dillingham
King Cove	south side of the Alaska Peninsula, 18 miles southeast of Cold Bay and 625 miles southwest of Anchorage
Perryville	located on the south coast of the Alaska Peninsula, 275 miles southwest of Kodiak and 500 miles southwest of Anchorage
Sand Point	on Humboldt Harbor on Popof Island, off the Alaska Peninsula, 570 air miles from Anchorage
WY	
Cordova	southeastern end of Prince William Sound in the Gulf of Alaska, 52 air miles southeast of Valdez
Tatitlek	lies 30 miles east of Valdez by sea near Bligh Island
Yakutat	225 miles northwest of Juneau

Source: Community profiles from State of Alaska, Dept. of Commerce Community and Economic Development.

Table 11. Processing companies that filed an intent to operate in 2005 in potentially eligible GOA communities

Community	# processors	processing companies
Chignik	2	Trident Seafoods Corp. Norquest Seafoods Inc.
Cordova	6	Ocean Beauty Prime Select Seafoods Inc Norquest Seafoods Inc. Bear and Wolf Salmon Co. Copper River Fine Seafoods Wild by Nature LLC
King Cove	1	Peter Pan Seafoods Inc.
Kodiak	16	Alaska Fresh Seafoods Inc True World Foods North Pacific Processors Inc. Kodiak Smoking and Processing LLC Ocean Beauty Seafoods Alpine Cove LLC (floater) Global Seafoods Trident Seafoods Corp. Kodiak Island Smokehouse (secondary proc.) Island Seafoods Kodiak Salmon Packers Westward Seafoods, Inc. Alaska Spirit LLC (secondary proc.) Aeronautical Unlimited (buyer/exporter)
Sand Point	1	Trident Seafoods Corp.
Yakutat	5	Captain's Alek Fisheries Raven's Table LLC Wild Situk Salmon and Seafood LLC Yakutat Seafoods LLC

Source: State of Alaska, Dept. of Fish and Game, Division of Commercial Fisheries. State of Alaska Processors and Buyers (intent to operate) Listing 2005, a complete listing of all licensed seafood processing/exporting/buying operations in the State of Alaska.

Table 12. Demographic and economic statistics for 31 potentially eligible GOA communities

Community	Population	Incorp. Type ¹	Native Org. ²	% Native Pop.	Median Value/Home (\$)	Housing Units Occup./Total	Average # Person per Household	Median Household Income (\$)	Estimated # Jobs	% Unemployment	% Adults not in the Workforce	% At or below poverty level
CG												
Akhiok	80	2	x	94	90,000	25/34	3.2	33,438	30	14	47	10
Aleneva	68	U		2	67,500	14/14	4.86	10,417	21	0	50	41
Beluga	32	U		25		13/54	2.46					
Chenega Bay	86	U	x	78	98,800	22/27	3.55	58,750	23	15	51	16
Chignik	79	2	x	61	90,800	29/80	3.29	34,250	35	35	46	5
Chignik Lagoon	103	U	x	83	160,400	33/68	3.12	92,297	40	0	47	2
Chignik Lake	145	U	x	88	71,300	40/50	3.63	41,458	32	9	61	22
Chiniak	50	U		4	115,000	24/32	2.08	14,167	38	0	16	20
Halibut Cove	35	U		3	162,500	18/123	1.92	127,010	37	0	38	0
Karluk	27	U	x	96	187,500	9/24	3	19,167	11	0	48	0
Kodiak	6,334	H	x	13	146,100	1,996/2,255	3.64	55,142	3,159	5	30	7
Kodiak Station	1,840	U		3		492/536	3.55	46,198	899	6	23	0
Larsen Bay	115	2	x	79	96,300	40/70	2.88	40,833	35	10	42	21
Nanwalek	177	U	x	93	82,500	45/54	3.93	42,500	75	5	33	18
Old Harbor	237	2	x	86	98,500	79/111	3	32,500	57	23	58	30
Ouzinkie	225	2	x	88	82,500	74/86	3.04	52,500	76	12	48	6
Port Graham	171	U	x	88	85,600	70/82	2.44	40,250	59	22	54	19
Port Lions	256	2	x	64	87,700	89/106	2.88	39,107	91	4	52	12
Seldovia	286	1	x	23	80,000	134/232	2.13	45,313	129	10	45	8
Seldovia Village	144	U	x	40	113,900	62/159	2.32	31,250	60	11	48	24
Susitna	37	U		11	187,500	19/102	1.95	22,500	5	0	77	16
Tyonek	193	U	x	95	29,600	66/134	2.92	22,667	64	27	56	14
Womens Bay	690			12	155,100	251/269	2.75	72,083	425	5	21	0
WG												
Cold Bay	88	2		17	325,000	36/98	2.28	55,750	48	33	46	27
Ivanof Bay	22	U	x	96	89,000	9/12	2.44	91,977	16	0	36	0
King Cove	792	1	x	48	113,900	170/207	2.9	45,893	450	6	32	12
Perryville	107	U	x	97	81,400	33/45	3.24	51,875	32	11	52	16
Sand Point	952	1	x	44	95,000	229/282	2.67	55,417	427	31	49	16
WY												
Cordova	2,454	H		15	152,800	958/1,099	2.48	50,114	1,221	7	34	8
Tatitlek	107	U	x	85	96,700	38/57	2.82	36,875	35	8	51	24
Yakutat	680	H	x	47	100,700	265/499	2.59	46,786	440	8	28	14

Source: Alaska Dept. of Commerce, Community & Economic Development. Population, housing, and economic information is from 2000 U.S. Census.

*Denotes that the community is located within an organized borough.

¹Incorporation type: 1 = 1st class city; 2 = 2nd class city; U = unincorporated; H = home rule city.

²This column indicates whether a Federally recognized Native organization is located within the community.

Gulf of Alaska Rationalization Community Provisions

Revised as of June 5, 2005

It is the Council's intent that the Community Fisheries Quota (CFQ) Program and the Community Purchase Program (CPP) be the subject of standalone staff analysis for future inclusion in GOA groundfish rationalization alternatives as appropriate. The intent is not to create these programs as a trailing amendment, but to implement them at the same time GOA rationalization goes into effect.

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 provision programs.

PURPOSE: The Council recognizes the importance of providing economic stability for communities historically dependent upon GOA groundfish fisheries. Consistent with the guidance provided by the Consolidated Appropriations Act of 2001, National Standard 8, and the National Research Council Report, the Council acknowledges that rationalization programs can have significant impacts on fishing-dependent communities. Community provisions are intended to address community impacts resulting from rationalization and seek to provide economic stability or create economic opportunity in fishing-dependent communities, and provide for the sustained participation of such communities.

C 1. Community Fisheries Quota (CFQ) Program

The CFQ program would allocate a percentage of the annual Federal TAC to an administrative entity that would subsequently determine how to use the annual harvest privileges according to criteria established in Federal regulation. Depending upon the structure and restrictions established, the non-profit entity would use the shares to enable eligible communities to fish the shares. CFQ will be fished only by eligible community residents and will not be leased outside of the community to be used for other economic development.

The intent of the CFQ program is to mitigate the economic impacts of Gulf groundfish rationalization on small (less than 1500), isolated GOA communities with a historical dependence on groundfish. Further, it is the intent of the program to sustain current participation and access to the fisheries by those communities.

C 1.1 Administrative Entity

The administrative entity representing one or more eligible communities must be a non-profit entity qualified by NMFS. The administrative entity shall be:

- Option 1. A single Gulf-wide administrative entity.
- Option 2. An administrative entity for each GOA groundfish management area. (One WG entity and one CG entity. The CG entity includes CG and WY communities.)
 - Suboption 1. Community membership in each entity may be adjusted based on common culture and history considerations.
- Option 3. An administrative entity representing a group of communities with common culture and history.

If Option 2 is selected, the initial allocation of CFQ would be such that WG CFQ is allocated to the management entity representing WG communities, and CG and WY CFQ is allocated to the management entity representing CG and WY communities.

If Option 2 Suboption 1 or Option 3 is selected, the CFQ for a specific management area (WG, CG, WY) would be initially allocated to the management entity representing communities located in that area based on: 1) equal basis and/or 2) population. No more than 50% of the CFQ for any area can be allocated to the entity on an equal basis.

C 1.2 Board Representation of the Administrative Entity

The administrative entity shall be comprised of a Board of Directors as follows:

- Option 1. (Applicable with C 1.1, Options 1 – 3). Equal Board membership established by an equal number of appointed representatives from each Community Quota Entity's (CQE's) member communities. (Should the CQE represent more than one community, the CQE would appoint representatives to the administrative entity for each member community.)
- Option 2. (Applicable with C 1.1, Option 1). A 13-member Board represented by members of CQEs by region as follows: Aleutians East Borough (3 reps); Lake and Peninsula Borough (3 reps); Kodiak Borough (3 reps); Yakutat (1 rep); Chugach (2 reps); Cook Inlet (1 rep).
- Option 3. (Applicable with C 1.1, Option 1): The makeup of the administrative entity's Board of Directors shall reflect population, local participants' harvest history, and geography.

C 1.3 Eligible Communities⁴

- Option 1. Population (based on 2000 U.S. Census) of less than 1,500 but not less than 25
- Option 2. Geography
 - a. Coastal communities without road connections to larger community highway network
 - b. 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
- Option 3. Historic Participation in Groundfish Fisheries
 - a. Communities with residents having any groundfish commercial permit and fishing activity as documented by CFEC in the last ten years (1993 – 2002)

C 1.4 Species

- Option 1. All rationalized groundfish species including PSC
- Option 2. Pollock and Pacific cod and associated species necessary to prosecute the allocation of pollock and Pacific cod

C 1.5 Allocation

CFQ awarded to an administrative entity cannot be permanently transferred.

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

⁴Should the City of Seldovia meet the eligibility criteria selected at final action, residents of Seldovia Village would be allowed to lease quota from the administrative entity representing the City of Seldovia.

C 1.6 Timing of the CFQ Allocation

- Option 1. 100% of the CFQ is allocated at the implementation of the program
- Option 2. 66% of the CFQ is allocated at the implementation of the program
- Option 3. 50% of the CFQ is allocated at the implementation of the program
- Option 4. 33% of the CFQ is allocated at the implementation of the program

Under Options 2 – 4, there is a guarantee that 20% of the remaining allocation to the CFQ Program will be made each year, such that all of the CFQ would be allocated to the program after a 5-year period. The following suboptions are applicable to Options 2 – 4:

- Suboption 1. Remainder CFQ to be allocated from a 10% reduction of QS at first transfer (sale). If the annual minimum allocation has not been reached through transfer, the remainder will be 'funded' by creating new QS and adding it to the QS pool(s).
 - i. Attenuation at first transfer of QS does not apply to gift transfers between family members (first degree of kin).
- Suboption 2. Remainder CFQ to be allocated from a 5% reduction of QS at first transfer (sale). If the annual minimum allocation has not been reached through transfer, the remainder will be 'funded' by creating new QS and adding it to the QS pool(s).
 - i. Attenuation at first transfer of QS does not apply to gift transfers between family members (first degree of kin).

C 1.7 Harvesting of Shares

Harvesting of shares is limited to residents of any eligible community. The administrative entity may lease quota share to eligible community residents with vessels owned by, retained under a contractual arrangement with, or on which a community resident has an employment contract. However, residents of eligible communities located in a specific management area (WG, CG, WY) should receive priority over other qualified applicants in the leasing of community quota used in that specific management area.

C 1.8 Individual Use Caps and Vessel IFQ Caps

An individual leasing CFQ and use of CFQ on a vessel shall be limited as follows (caps would be species specific and exclusive of any quota individually owned):

- Option 1. No individual QS use caps and vessel IFQ caps for fishing CFQ
- Option 2. An amount equal to the individual QS use caps and vessel IFQ caps in the rationalized Gulf groundfish fishery
- Option 3. An amount equal to an approximation of what is needed for viable participation in the fishery (to be specified later)
- Option 4. An amount equal to 150% of the individual QS use caps and vessel IFQ caps in the rationalized Gulf groundfish fishery

Suboption 1 (applies to Options 2 – 4):

Use (25%, 50%, or 75%) of the selected use cap for Pacific cod. This cap is inclusive of any quota individually owned.

C 1.9 Sector Designation

All IFQ resulting from QS held by communities shall be designated for use on catcher vessels.

C 1.10 Landing Requirements

Landing requirements will be applied on a species specific basis.

- Option 1. CFQ shall have regional landing requirements proportional to the regional landing requirements applied for the remainder of QS issued for that species.
- Option 2. 50% - 100% of the CFQ shall have regional landings requirements
 - Suboption 1. in perpetuity
 - Suboption 2. for a period of 5 years
 - Suboption 3. for a period of 10 years

C 1.11 Use of Lease Proceeds by Administrative Entity

Use of lease proceeds is restricted to administrative expenses.

- Option 1. and purchase of additional GOA groundfish quota shares
- Option 2. and fisheries related investments
- Option 3. and investments in the economic development and social well being of member communities
- Option 4. and distribution to member community CQEs

(Applicable to Option 4.) Use of CFQ lease proceeds by member community CQEs is restricted to administrative expenses and:

- Suboption 1. purchase of additional quota shares
- Suboption 2. fisheries related investments
- Suboption 3. investments in the economic development and social well being of member communities

C 1.12 Distribution of Lease Proceeds to Member Communities

- Option 1. The administrative entity is not required to annually distribute lease proceeds to member community CQEs
- Option 2. The administrative entity is required to annually distribute lease proceeds to member community CQEs in an amount equal to or exceeding:
 - Suboption 1. 10% annual lease income after administrative expenses
 - Suboption 2. 20% annual lease income after administrative expenses
 - Suboption 3. 30% annual lease income after administrative expenses

C 1.13 Allocation Basis for Lease Proceeds

- Option 1. Lease income would be distributed at sole discretion of administrative entity.
- Option 2. 0% - 100% of the annual lease income distributed by the administrative entity to member community CQEs would be distributed amongst qualified communities on an equal basis.
- Option 3. 0% - 100% of the annual lease income distributed by the administrative entity to member community CQEs would be distributed amongst qualified communities on a pro rata basis based on population.

C 1.14 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 and, at a minimum, include:

- Option 1. identification of the community CQEs represented by the administrative entity
- Option 2. allocation criteria between regions, communities, and fishermen
- Option 3. documentation concerning accountability to the communities represented by the administrative entity.
- Option 4. procedures used to solicit requests from residents to lease CFQ
- Option 5. criteria used to determine the distribution of CFQ leases among qualified community residents and the relative weighting of those criteria.

C 1.15 Administrative Oversight

An annual report submitted to NMFS and the NPFMC detailing the use of QS by the administrative entity. The report should include findings of the administrative entity related to community resident vessel ownership, community resident contractual relationships with a vessel owner, and community resident employment on a vessel, in its leasing of CFQ to community residents. The required elements and timing of the report will be outlined in regulation.

C 2. Community Purchase Program

The CPP would allow a defined set of eligible communities to organize an administrative entity to purchase, hold, and use Gulf groundfish quota share within the rationalization program. In contrast to receiving an initial allocation, this provision would designate an administrative entity representing eligible communities as an eligible quota shareholder under the rationalization program, and that entity would be allowed to purchase GOA groundfish shares on the open market.

The purpose of the CPP is to provide the eligible communities with the opportunity to sustain their participation in the rationalized fisheries through the acquisition of Gulf groundfish fishing privileges. Further, it is the intent of the program to maintain and enhance current participation and access to Gulf groundfish fisheries by those communities.

C 2.1 Administrative Entity

The administrative entity representing a community or communities must be a non-profit entity qualified by NMFS, and may include administrative entities established under the BSAI Crab Rationalization Program for the community of Kodiak, Community Fisheries Quota (CFQ) administrative entities, a community quota entity under GOA Am. 66, or a non-profit established by the community of Cordova or Cold Bay, using criteria similar to Am. 66 qualification of CQEs.

C 2.2 Eligible Communities⁵

- Option 1. Population (based on 2000 U.S. Census)
 - a. Less than 1,500 but not less than 25
 - b. Less than 7,500 but not less than 25

- Option 2. Geography
 - a. Coastal communities without road connections to larger community highway network
 - b. 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).
 - a. Communities with residents having any groundfish commercial permit and fishing activity as documented by CFEC in the last ten years (1993 – 2002)

- Option 4. GOA (WG, CG, WY) communities eligible under GOA Am. 66

C 2.3 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.

⁵Should the City of Kodiak meet the eligibility criteria selected at final action, residents of Chiniak, Kodiak Station, and Womens Bay would be allowed to lease quota from the administrative entity representing the City of Kodiak. Should the City of Seldovia meet the eligibility criteria selected at final action, residents of Seldovia Village would be allowed to lease quota from the administrative entity representing the City of Seldovia.

C 2.4 Administrative Oversight

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

- Option 1. A summary of business, employment, and fishing activities under the program.
- Option 2. A discussion of any corporate changes that alter the representational structure of the entity.
- Option 3. Discussion of known impacts to resources in the area.

C 2.5 Ownership/Use Caps

Individual community Gulf groundfish QS/GH cap on purchased quota:

- Option 1. 3%
- Option 2. An amount equal to the individual cap in the general program by species
- Option 3. An amount equal to two times the individual cap in the general program by species
- Option 4. An amount equal to three times the individual cap in the general program by species

Aggregate community Gulf groundfish QS/GH cap on purchased quota:

- Option 1. 10%
- Option 2. 15%
- Option 3. 20%
- Option 4. 30%
- Option 5. 45%
- Option 6. No aggregate cap

Suboption 1 (applies to Options 1 – 5): Split the aggregate cap between communities eligible for the CFQ Program and communities not eligible for the CFQ Program. Any purchases by the CFQ management entity(ies) would be applied toward the CFQ community aggregate cap.

Note: It may be necessary to limit community acquisition of quota with a particular block and/or gear designation.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of General Counsel
P.O. Box 21109
Juneau, Alaska 99802-1109

Attachment 2

DATE: October 3, 2003

FOR: Chris Oliver, Executive Director
North Pacific Fishery Management Council

THROUGH: Lisa Lindeman, Regional Attorney *Lisa Lindeman*
NOAA General Counsel, Alaska Region

FROM: Robert Babson, Attorney *RB*
NOAA General Counsel, Alaska Region

SUBJECT: Delegation of Authority and the Community Incentive Fisheries Trust Proposal.

As part of the Gulf of Alaska rationalization program, the North Pacific Fishery Management Council (NPFMC) is considering the Community Incentive Fisheries Trust (CIFT) proposal. The CIFT proposal involves an initial allocation of quota share (QS) to organizations representing communities located on the Gulf of Alaska. Under the proposal, these community organizations will then re-allocate the individual fishing quota (IFQ) derived from that QS on an annual basis to members of the community. Because the proposal is in its early stages, many of the details crucial to its implementation have not been developed. This memorandum discusses some of legal limitations the Council should consider in the development of those details.

Summary

While the Council could authorize allocations of QS to organizations representing communities and authorize such organizations to re-allocate IFQ annually, the authority thus delegated 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 through the Office of Administrative Appeals before the agency can take final action on the recommendation.

Discussion

Under the Magnuson-Stevens Fishery Conservation and Management Act (FCMA), the Secretary's responsibilities and authorities can be classified under two broad categories: rulemaking and administrative implementation. The Secretary's rulemaking responsibilities are provided in section



304. For regulations implementing fishery management plan (FMP) amendments proposed by the various Regional Fishery Management Councils:

...the Secretary shall - (A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, and other provisions of the Act, and any other applicable law....

16 U.S.C. 1854(a). *See also*, 16 U.S.C. 1854(b). Once regulations establishing an FMP amendment are promulgated, the Secretary's responsibilities for the implementation of such amendments is provided in section 305(d) of the Act, to wit:

The Secretary shall have general responsibility to carry out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this Act...

16 U.S.C. 1855(d).

Because of the novel aspects of the CIFT proposal, both its approval under section 304 of the Act, and its implementation under section 305(d), present unique legal concerns.

Rulemaking

Pursuant to sections 304(a) and (b) of the Act, in order for the Secretary to approve regulations establishing the CIFT proposal, he will have to determine that it meets the requirements of the national standards contained in the Act. 16 U.S.C. 1851. In addition, since the CIFT proposal is part of a limited access system, he also will have to determine that the proposal complies with the requirements of section 303(b)(6). 16 U.S.C. 1853(b)(6). The approval of the initial allocation of QS to the community organizations participating in the CIFT program should be fairly straight forward; it is the approval of that part of the proposal that calls for the annual re-allocation of IFQ that could be problematic. The latter will involve the approval of actions which, by definition, will not take place until some time in the future. It seems clear that in order for the Secretary to be able to review the regulations establishing the program pursuant to section 304 (a) and (b) of the Act, they will need to include a clear set of standards applicable to the annual re-allocation of IFQ to the individuals who will actually participate in the fishery. The Secretary can then review these standards for compliance with the Act.

Adjudication

Limited access systems involve "rulemaking" to establish the general standards to be used in

determining eligibility for initial issuance of QS. Once the standards for initial allocation are established by such rulemaking, it is then the Secretary's responsibility to apply those general regulatory standards to individual applicants. This is generally referred to as the process of "adjudication."¹ The adjudication of eligibility of applicants under limited access systems is an example of the responsibilities imposed on the Secretary by section 305(d) of the Act to "carry out" FMP's. As discussed above, the CIFT proposal differs from previous limited access systems implemented by the Secretary in that it proposes to delegate the annual re-allocation of IFQ from the Secretary to participating community organizations. The ability to delegate the Secretary's authority and responsibility under section 305(d) of the Act, however, is strictly limited.

The rules applicable to the delegation of administrative authority has been summarized as follows:

Administrative officers and bodies cannot alienate, surrender, or abridge their powers and duties, or delegate authority and functions which under the law may be exercised only by them; and although they may delegate merely ministerial functions, in the absence of statute or organic act permitting it, they cannot delegate powers and functions which are discretionary or quasi-judicial in character, or which require the exercise of judgment. [Emphasis added.]

¹ The Ninth Circuit Court of Appeals has differentiated between rulemaking and adjudication in the following manner:

A rule is:

[T]he whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency.... 5 U.S.C. [section] 551(4). An adjudication (which results in an order) is virtually any agency action that is not rulemaking. 5 U.S.C. [section] 551(6)-(7). Two principal characteristics distinguish rulemaking from adjudication. First, adjudications resolve disputes among specific individuals in specific cases, whereas rulemaking affects the rights of broad classes of unspecified individuals. [Citations omitted.] Second, because adjudications involve concrete disputes, they have and immediate effect on specific individuals (those involved in the dispute). Rulemaking, in contrast, is prospective, and has a definite effect on individuals only after the rule subsequently is applied. [Citations omitted.]

Yesler Terrace Community v. Cisneros, 37 F.3d 442, 448 (9th Cir. 1994). In short, rulemaking involves the creation of new law/regulation, whereas adjudication involves the application of existing law/regulation to individual situations.

73 C.J.S., *Public Administrative Law and Procedure* [section] 56 a. (1983). Thus, the general rule is

... that when Congress has specifically vested an agency with the authority to administer a statute, it may not shift that responsibility to a private actor....

Perot v. Federal Election Com'n, 97 F.3d 533, 559 (D.C. Cir. 1996), *cert. den.* *Hagelin v. Federal Election Com'n*, 520 U.S. 1210. See also *Population Institute v. McPherson*, 797 F.2d 1062, 1072 (D.C. Cir. 1986); *Sierra Club v. Sigler*, 695 F.2d 957, 962-63 n.3 (5th Cir. 1983); *Pistachio Group of Ass'n of Food Ind. v. U.S.*, 671 F.Supp. 31, 35 (CIT 1987). Although these concerns are lessened when the delegation is of ministerial duties (*McCarthy v. Wood*, 245 F.2d 848, 853 (5th Cir. 1957)), they are of particular concern when the delegation involves either quasi-judicial (*Id.*) or discretionary functions. Various Courts have held that the adjudication of license applications² is both a "quasi-judicial" (*Johnson v. Independent Life & Accident Ins. Co.*, 94 F.Supp. 959, 961 (E.D. S. Car. 1951)) and "discretionary" function (*Office of Communication of United Church of Christ v. F.C.C.*, 359 F.2d 994 (D.C. Cir. 1966), *appeal after remand* 425 F.2d 543).

One of the major concerns with the delegation of quasi-judicial functions to private parties concerns the Constitutional right of procedural due process. Normally, when the agency performs license adjudications, applicants have a constitutional right to an agency appeal.³ The agency's final action

² The Administrative Procedure Act defines "license" as including

...the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption, or other form of permission...

5 U.S.C. 551 (8). The APA also defines "licensing" as including

...agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license...

5 U.S.C. 551 (9). It is clear that an annual re-allocation of IFQ meets the definitions of licence and licensing, above.

³ It is clear that procedural due process, as provided under the Due Process Clause of the 5th Amendment of the U.S. Constitution, applies to agency adjudications, as defined under the APA, 5 U.S.C. 551 *et seq.* *Nuclear Data, Inc. V. Atomic Energy Commission*, 364 F.Supp.

on such appeals is then subject to judicial review under the APA. *Foss v. NMFS*, 161 F.3d 584, 588 (9th Cir. 1998). If the function of making adjudications were delegated to a private party, then parties aggrieved by such adjudications would have no such agency appeal right, and such adjudications would not be subject to review by the Courts under the APA. This sort of delegation of quasi-judicial authority to a private party has been uniformly rejected by the Courts. See generally *Pistachio Group of Ass'n of Food Ind. v. U.S.*, 671 F.Supp. 31 (CIT 1987).

The Courts' concern about delegations (sometimes referred to as "subdelegations") of quasi-judicial functions to private parties (such as the community organizations who would be allocated QS under the CIFT proposal) are lessened when agency and judicial review and control over those functions are retained. Compare *Texas Office of Public Utility Counsel v. F.C.C.*, 265 F.3d 313, 328 (5th Cir. 2001) with *Save Our Wetlands, Inc. v. Sands*, 711 F.2d 634, 641 (5th Cir. 1983); *Sierra Club v. Lynn*, 502 F.2d 43, 59 (5th Cir. 1974), cert. den. 421 U.S. 994. The United States Court of International Trade has stated:

The courts have consistently required subdelegations of significant functions to be checked by some form of review, either within the agency itself, or ultimately by the courts. Lower level procedural decisions generally require less oversight than decisions which affect the substantive rights of regulated parties, or which embody the agency's most potent use of its discretionary authority. In all cases cited by the parties, however, courts were willing to approve subdelegations only if they ultimately were subject to some form of scrutiny.

Such a decision cannot be abandoned to an independent agency with private sector components, and isolated from all types of review, administrative or judicial, merely for reasons of convenience.

Pistachio Group of Ass'n of Food Ind. v. U.S., supra at 37. The Court went on to state

...the availability of administrative and judicial review may cause a court to conclude that no delegation has occurred. [Citation omitted.]

By finding that "no delegation has occurred" rather than finding that a given delegation is proper, courts may avoid answering difficult separation of powers and related questions or objections to the degree of power transferred.

423, 425 (D.C.D.C. 1973). It is also clear that agency permit decision making is an adjudication under the APA. *National Wildlife Federation v. Marsh*, 568 F.Supp. 985, 992 n. 12 (D.C.D.C. 1983).

***Id. at 39.* Absent a statutory provision for direct judicial review of annual IFQ adjudications made by community organization participating in the CIST program, the only judicial review possible would be for "final agency action" under the APA. In order to have such "final agency action," the annual IFQ adjudications must be made subject to agency review and Secretarial approval.**

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