

MEMORANDUM

TO: Council, SSC, and AP Members  
FROM: DAVID ce  
Chris Oliver  
Executive Director

ESTIMATED TIME  
12 HOURS

DATE: January 22, 2003  
SUBJECT: GOA Groundfish Rationalization

**ACTION REQUIRED**

- (a) Review discussion paper on elements and options for analysis.
- (b) Receive NOAA GC legal opinion on regionalization alternatives.
- (c) Receive report on state/federal parallel fisheries.
- (d) Identify alternatives, elements, and options for analysis.

**BACKGROUND**

Staff discussion paper

In December, the Gulf of Alaska Work Group provided the Council with final recommendations for alternatives, elements, and options for analysis on a proposed action to rationalize the GOA groundfish fisheries. The Council deferred action on initiating formal analysis until February, and requested that staff prepare a discussion paper on the draft list of elements and options, to provide a more detailed review of the analytical, legal, administrative, and enforcement aspects associated with them. Specific issues to be addressed include data limitations, duplicative proposals, administrative issues, legal issues, enforcement issues related to regionalization elements, ill-defined elements, possible missing elements of catcher/processor proposals, and identification of GOA communities that may be eligible for regionalization measures. This discussion paper was mailed out on January 22.

NOAA GC legal opinion

At its December 2002 meeting, the Council formally requested a legal opinion on the four regionalization options recommended for analysis by the Gulf of Alaska Working Group. The letter dated December 30, 2002, from Chris Oliver to Lisa Lindeman, NOAA GC is attached as Item C-1(a). NOAA GC will provide an opinion at the meeting.

ADFG report on state/federal parallel fisheries

At its October 2002 meeting, the Council formally requested assistance from the State of Alaska in identifying potential solutions to the issue of additional fishing access in state waters after the federal fisheries are rationalized. The goal would be for the Board of Fisheries to take complementary action to the Council's future preferred alternative in state waters. The letter dated October 15, 2002 from Chris Oliver to Kevin Duffy, ADFG, is attached as Item C-1(b). This report will be provided at the meeting.

Identify alternatives, elements, and options for analysis

After receiving the above three reports, AP recommendations, and public testimony, the Council will identify a suite of alternatives, elements, and options for analysis. Staff then could provide an analytical outline and timetable on the suite at the June 2003 Council meeting

# North Pacific Fishery Management Council

David Benton, Chairman  
Chris Oliver, Executive Director

Telephone: (907) 271-2809



605 W 4<sup>th</sup> Ste 306  
Anchorage AK 99501-2252  
AGENDA C-1(b)  
Fa: JANUARY 2003

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December 30, 2002

Ms. Lisa Lindeman  
NOAA GC-AK  
P.O. Box 21109  
Juneau, AK 99802

Dear Lisa:

At its December 2002 meeting, the Council formally requested a legal opinion on the four regionalization options recommended for analysis by the Gulf of Alaska Working Group (Attachment). These include a regionalization program similar to the crab rationalization program, a Community Incentive Fisheries Trust (CIFT), a Community Fisheries Quota (CFQ), and Community Territorial Use Rights In Fisheries (TURFs). An overriding legal question relates to Council authority under the MSA for deferring allocation decisions to community entities. Other features of the proposed rationalization programs which may raise legal concerns include co-op structures, arbitration, anti-trust issues related to processor shares, and data collection issues including confidentiality issues.

A proposed program to identify boundary lines around Kodiak and Sand Point to classify harvesting and perhaps processing quota shares to regionalize shore based catches is similar to a feature of the Council's crab rationalization preferred alternative. Catcher vessel harvest shares would be regionalized based on where the catch was processed, and not where it was caught. Processing shares, if adopted, would be regionally designated and could not be reassigned to another region. Catcher processor shares would be excluded. The proposed GOA boundaries are depicted in the attached map and the proposal is described under *Alternative 12, Issue 1, Option 1*. The legal issue is whether the Council has the authority to assign such shares within such boundaries, and whether it may set such restrictions for both an east and west boundary as proposed for Sand Point.

A proposed program to create a CIFT or multiple CIFTs is listed under *Alternative 12, Issue 1, Option 2*. It is a self-described social engineering feature that would create a non-profit entity which would hold in trust between 10 and 40 percent of GOA groundfish QS. The CIFT(s) and individual QS holders would enter into contractual agreements for the QS holder to receive additional IFQs proportional to individual initial allocations, if individuals meet the contractual obligations. Its stated intent is to develop criteria by each sector to mitigate impacts directly associated with the proposed QS program and other regional needs. The CIFT(s) could purchase QS to increase the pool of IFQ it has to distribute to eligible QS holders. The proposal provides detail on the composition and procedures of the CIFT(s), but does not address the particular contents of the proposed contractual obligations that would be the basis of whether eligible QS holders receive IFQs held by the CIFT(s). The legal issue is whether the Council has the authority to defer such allocation decisions to a community entity and the extent of Council direction and oversight required for such a program. These issues may be similar to those raised in association with the Council's preferred alternative to allocate shares of the western Aleutian Islands golden king crab fishery to an Adak non-profit entity.

The third proposal for TURFs would restrict fishing in certain waters to local residents (*Alternative 12, Issue 1, Option 4*). Non-resident QS holders would simply fish outside those restricted waters, and local residents of communities with TURFs would have no advantage without an allocation of quota shares. The legal issue is whether the Council could allocate fishing privileges based on residency.

A fourth proposal for CFQs addresses similar goals and objectives associated with the Council's preferred alternative to allow GOA coastal communities to purchase halibut and sablefish QS (*Alternative 12, Issue 1, Option 3*). There are no specific questions identified related to this option, but is included for legal review.

The Council is scheduled to receive this report along with other staff reports at its January 2003 meeting. They may identify alternatives, elements, and options for formal (EIS) analysis at that time. Please let me know if you will not be able to provide a response in time for Council deliberations.

Sincerely,

Chris Oliver  
Executive Director

cc: Glenn Merrill

enclosures

# North Pacific Fishery Management Council

David Benton, Chairman  
Chris Oliver, Executive Director



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October 15, 2002

Kevin Duffy  
ADF&G  
P.O. Box 25526  
Juneau, AK 99802

Dear Kevin:

The Council and its Gulf of Alaska (GOA) Work Group have been considering management of State parallel fisheries in the context of proposing alternatives to rationalize GOA groundfish fisheries. In September, the committee discussed potential state solutions to the issue of additional fishing access in state waters after the federal fisheries are rationalized. These include consultation with the State Attorney General's Office on legal options that include petitioning the State Legislature to provide the Commercial Fisheries Entry Commission with the authority to place additional limitations on vessels fishing in state waters, and an amendment to the State Constitution. The Council is requesting that the State continue to assess its ability to implement regulations that eventually would complement Council action to rationalize the federal groundfish fisheries in the Gulf of Alaska.

The Council, based on input from the GOA Work Group, recommends that State staff make the following assumptions in preparing a response that will provide the information needed for the Council and its committees to assess potential success of history-based rationalization programs. ADF&G staff may benefit from consulting with potentially affected fishermen.

- Assume that the North Pacific Fishery Management Council adopts a quota share system for rationalizing Gulf of Alaska groundfish fisheries.
- Assume that quota share recipients have typically fished both federal and state waters during the federal season.
- Assume that vessels that are not recipients of quota share continue to fish in state waters during the federal fishery.

The following assumes the Council's attempts to rationalize the fishery are negated, or compromised, by the State parallel fisheries. The race for fish continues because the vessels that remain inside state waters during federal fisheries are decreasing the TAC available to quota share holders. The questions proposed for State response follow:

What tools does the state have that can solve this problem?

(describe the tools and any potential problems the state would face in implementing such solutions)

What tools would the state need to solve this problem?

(describe the difficulties in obtaining these tools)

The Council also requests that ADF&G develop the following information regarding groundfish removals in State waters. The intent is to explore methods that may be possible under existing CFEC regulations to limit the state waters parallel fisheries while ending the olympic style of harvesting.

- Have ADF&G provide their best estimate of the total directed State Water Parallel Groundfish Fisheries catch, by gear type, in state waters during the 1995 - 2001 seasons?
- Have ADF&G provide their best estimate of the total bycatch by species, for example Pacific Cod, Pollock, Rockfish etc. by gear type, in state waters during the 1995 - 2001 seasons?
- Estimates of the maximum number of permit holders qualifying for a limited entry permit by gear type in the state waters Parallel Groundfish Fisheries using existing CFEC regulation. The number of vessels that made the landing for the years 1995 - 2001, that would be the possible base years.
- An examination of how the Chatham sablefish Limited Entry model may be applied to the GOA Groundfish fisheries, and the ability to establish different limits by gear type.
- Estimates of the numbers of discreet vessels participating in state waters during the years 1998, 1999, 2000, and 2001. Numbers of vessels participating in both state parallel fisheries and the federal fisheries during 1995 - 2001. If possible determine the number of individuals permit holders that made deliveries on the respective vessels per fishery.

The committee would appreciate receiving feedback on these questions prior to its November 25-26 meeting in Anchorage. Please have your staff consult with Jane DiCosimo on our staff if they have any questions regarding the request.

Sincerely,

Chris Oliver  
Executive Director

cc: Stephanie Madsen  
Stosh Anderson



RECEIVED  
JAN 16 2003  
N.P.F.M.C

16 January 2003

Dave Benton  
North Pacific Fishery Management Council  
605 West 4<sup>th</sup>, Suite 306  
Anchorage, AK 99501

Dear Mr. Benton,

As the owner of Kodiak's smallest independent processor, I would like to state my position regarding Gulf Rationalization and particularly Individual Processor Quotas (IPQ's). Island Seafoods has been in operation since 1995. The business has evolved since its inception to its current status as a customer processor of Pacific Cod, rockfish, halibut, and salmon. We have grown from three employees to a peak of 35 employees. Additionally, Island Seafoods processes sport fish during the summer season and operates a retail fish market year round. .

Given the various options on the table regarding distribution of processor shares, there are very few that would allow us to continue in business. Because we are smaller than the other processors in town, we have diversified our profit centers to include both retail and wholesale. We are an integral component of the tourism industry during the summer and with the changes in the salmon industry, we are working closely with salmon fishermen to provide them with options for their fish. In short, we have been innovative and creative, partly by necessity, but also because opportunities were presented.

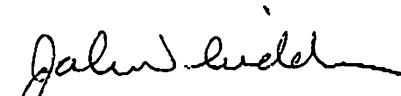
The institution of IPQ's will virtually close the door on new entrants to the processing industry. The barriers to entry in this industry are already extremely high due to the capitalization requirements which are compounded by a high degree of risk of attaining a consistent return. Island Seafoods was willing to accept the risks and obtain the necessary capital to start this business and we continue to grow each year. However, the threat of having limited access to groundfish puts our business in extreme jeopardy. I have been assured by the major processors in Kodiak that they will "look out for Island Seafoods" in the event that IPQ's are assigned. While I appreciate their concern, it is no real comfort and I do not expect any guarantees of access to product. An 80/20 or 90/10 allocation of fish to the closed and open class of processors looks manageable on paper, but in reality is highly improbable. The assignment of production bonuses or the threat of withholding tendering contracts or salmon markets makes the open class concept a practical unreality for the closed class processor or small processor.

For Island Seafoods, the best case scenario would be no imposition of processor quotas. We would prefer to continue to compete for fish on the open market. In the event that IPQ's are imposed, then we need to be included in the closed class. An open class concept simply will not work for the reasons stated above.

From a personal perspective as President and General Manager of Island Seafoods and as one of two shareholders, I spent twenty years in the Coast Guard as a search and rescue helicopter pilot, including nine years in Alaska where I was awarded two Distinguished Flying Crosses and the Alaska Medal of Heroism for rescues in Kodiak and Sitka. My family and I chose to retire in Kodiak because there was an opportunity for my family to develop this business. We chose to stay in Kodiak because it is a wonderful place to raise a family and because we wanted to contribute to the local economy and give back to this community. It would be ironic to lose this business because the Federal Government, which I served for twenty years, put us out of business.

I would appreciate your consideration of small processor concerns, not just in Kodiak, but throughout coastal Alaska. The decisions the Council will make will irrevocably change the economic structure of our communities and the future of our fisheries.

Sincerely,



John Whiddon  
President/General Manager  
Island Seafoods

Cc: Mr. James Balsinger, Director  
National Marine Fisheries Service  
Alaska Region  
PO Box 21668  
Juneau, AK 99802



F/V COHO INC

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January 10, 2003

Dave Benton, Chairman  
North Pacific Fisheries Management Council  
605 West 4<sup>th</sup> Avenue, Suite 306  
Anchorage, AK 99501-2252

RECEIVED

JAN 23 2003

N.P.F.M.C


RE: Gulf Rationalization Scoping Comments

Dear Chairman Benton and members of the NPFMC,

I own and operate a small trawler based out of Kodiak, Alaska. I have been involved in the Gulf Rationalization since it began. One issue that concerns me is the lack of consensus regarding Pollock catch history generated inside State waters or, as some would call it, State water fisheries, such as Prince William Sound Pollock. The quota for this fishery was taken off of the Eastern Gulf quota in 1995 and maybe 1996. After those years it was deducted from the overall Gulf quota before being divided into 610, 620, 630 and 640 quotas.

My vessel is small and I was still able to fish in these semi-protected waters in bad weather. I would greatly appreciate your allowing Prince William Sound (649) Pollock history to be included as qualifying landings as part of a vessel's history in the Rationalization process.

Respectfully,

  
\_\_\_\_\_  
Capt. Philip S. Drage



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

C-16

January 28, 2003

MEMORANDUM FOR: North Pacific Fishery Management Council

FROM: Lisa L. Lindeman  
 Alaska Regional Counsel *Lisa Lindeman*

SUBJECT: Gulf of Alaska Rationalization Program Community Protection Measures

**BACKGROUND:**

The North Pacific Fishery Management Council (the Council) is currently reviewing potential elements and options for a Gulf of Alaska (GOA) groundfish rationalization program. They include the formation of fishing cooperatives, allocation of harvester and processor quota shares, and the development of measures designed to ensure the economic viability of groundfish fisheries for GOA communities ("community protection measures"). The Council established a GOA Working Group to develop alternatives for GOA Rationalization, and in December 2002, the Working Group released a draft list of alternative elements and options for community protection measures. The draft list includes a regionalization plan, which would draw lines around Kodiak and Sand Point – the Central Gulf and the Western Gulf – and require that amounts of fish historically processed in those regions would have to be processed in those regions in the future. Another option is a Community Incentive Fisheries Trust (CIFT), under which the Secretary would allocate quota shares to a non-profit entity that would hold QS in trust to issue IFQ annually to QS holders that meet the requirements established by a governing body. According to the Draft Discussion Paper, GOA Groundfish Rationalization Program (January 2003), the CIFT would be comprised of a group of stakeholders, including processors, community representatives, crew members as well as other persons or entities selected by the stakeholders. The non-profit entity would be authorized to allocate IFQ to QS holders who sign a contract to meet the objectives of the CIFT to enable those QS holders to increase the amount of IFQs they can fish annually. The CIFT system is intended to provide the community, industry and stakeholders the ability to influence the practices of fishermen to protect their interests and investments. The CIFT would collect fees to cover administration, establish allocation procedures to distribute IFQ, and provide for dispute resolution mechanisms. The National Marine Fisheries Service would distribute the IFQ to the contracted recipient pursuant to authorization from the CIFT.

A third community protection proposal is a Community Fisheries Quota (CFQ) under which the Secretary would allocate QS directly to an administrative entity representing a group of eligible communities. The entity then could lease the annual IFQs to community residents or other eligible entities. This proposal appears to have similarities to the CDQ program. A resident of



an eligible community would be eligible to receive IFQs from the administrative entity. Revenue generated from the lease of IFQs would be used for specific, as yet undefined, purposes. A fourth option is the Community Territorial Use Rights in Fisheries (TURFs). Under this proposal, the Secretary would establish exclusive use of fishery resources in a geographical area for residents of an eligible community for the purpose of fishing IFQs. Non-resident QS holders would be prohibited from harvesting IFQs within the geographical area. The community could either designate an existing entity or create a non-profit entity to manage the QS, including determining who would be eligible to harvest the IFQ.

The Council has requested a legal opinion from NOAA General Counsel as to whether the Secretary has the statutory authority under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to implement any of the community protection/enhancement options recommended for analysis by the GOA Working Group. Some of the measures set forth below assume that processor shares will be allocated. While the MSA authorizes the allocation of fishing privileges, including at-sea processing privileges, it does not authorize the allocation of on-shore processing privileges.<sup>1</sup> The Council could not recommend and the Secretary could not approve any measure allocating processor quota shares unless the MSA were amended to provide such authority. The draft list and the draft discussion paper also lack sufficient analysis of the proposed options to enable GCAK to provide an in-depth legal analysis. As a consequence, in this memorandum, we provide only general legal guidance as to whether any of the general concepts is legally prohibited by the MSA. We will continue to advise the Working Group and the Council on legal issues that arise during the development of a GOA Rationalization Program.

#### DISCUSSION:

The MSA provides broad authority to the Secretary to conserve and manage fisheries in the Exclusive Economic Zone (EEZ).<sup>2</sup> The MSA lays out ten national standards<sup>3</sup> that the Secretary must follow in the development of fishery management plans (FMPs) to achieve conservation and management of United States fishery resources. The MSA also requires the Secretary to establish advisory guidelines, that do not have the force and effect of law, based upon the national standards, to assist in the development of FMPs.<sup>4</sup> In 1996, the Sustainable Fisheries Act<sup>5</sup>

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<sup>1</sup>See NOAA General Counsel Memorandum dated September 20, 1991, for the North Pacific Fishery Management Council from Lisa L. Lindeman re: Magnuson Act authority to allocate fishing and processing privileges to processors.

<sup>2</sup>*National Fisheries Institute, Inc. v. Mosbacher*, 732 F.Supp. 210, 216 (D.D.C. 1990).

<sup>3</sup>16 U.S.C. 1851(a).

<sup>4</sup>16 U.S.C. 1851(b).

<sup>5</sup>Pub. L. No. 104-297 (1996).

added several new national standards, including national standard eight,<sup>6</sup> which requires that: “[c]onservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.”

The guidelines,<sup>7</sup> explain that an FMP must take into account the importance of fishery resources to fishing communities. Such consideration, however, must be within the context of the conservation requirements of the MSA and must not be used to compromise the achievement of conservation requirements and goals of the FMP. The guidelines further provide:

Where the preferred alternative negatively affects the sustained participation of fishing communities, the FMP should discuss the rationale for selecting this alternative over another with a lesser impact on fishing communities. All other things being equal, where two alternatives achieve similar conservation goals, the alternative that provides the greatest potential for sustained participation of such communities and minimizes the adverse economic impacts on such communities would be the preferred alternative. . . . This standard does not constitute a basis for allocating resources to a specific fishing community nor for providing preferential treatment based on residence in a fishing community.<sup>8</sup>

The legislative history for the SFA clearly supports the interpretation reflected in the guidelines that conservation concerns take precedence over adverse effects on fishing communities. The Senate report states:

New national standard eight would require that conservation and management measures take into account the importance of the harvest of fishery resources to minimize (to the extent practicable) adverse economic impacts on, and provide for the sustained participation of, fishing communities, but would prevent such measures from having an economic allocation as their sole purpose. This standard is not intended to constitute a basis for allocating resources to a specific fishing community or provide preferential treatment based on residence in a fishing community. As clearly stated in existing national standard four, conservation and management measures shall not discriminate between residents of different States, and any necessary allocation or assignment of fishing privileges must be fair and equitable to all fishermen. This standard also is not

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<sup>6</sup>16 U.S.C. 1851(a)(8).

<sup>7</sup>50 C.F.R. 600.345.

<sup>8</sup>50 CFR 600.345(b).

intended to be used as a basis for circumventing conservation requirements.<sup>9</sup>

A GOA rationalization FMP also would need to comply with national standard four,<sup>10</sup> directing that conservation and management measures shall not discriminate between residents of different states. It also states any allocation or assignment of fishing privileges among U.S. fishermen shall be "(A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges."

The guidelines for national standard four explain that conservation and management measures may affect persons in various geographic locations differently as long as they satisfy the other requirements of national standard four.<sup>11</sup> The Council will need to lay out specific criteria for determining which communities would be eligible for an allocation and explain how those criteria are rationally related to the objectives of the program, the national standards and the MSA. Evaluation of whether a fishery management measure would discriminate between the residents of different states has focused on the incidence of the burden, not the benefit, of the measure. In our opinion, a community allocation or set-aside, such as the TURFs, would not violate the national standard four prohibition against discrimination on the basis of state residence. Although some Alaskan residents would benefit, the basis of the allocation would not be state residence; it would be community residence. Therefore, not all Alaskans would benefit from the measure. Although an argument could be made that the measure discriminates between residents of different states because maybe only Alaskan residents would meet the criteria established by the Secretary for community residence, NOAA General Counsel rejected this argument in the development and review of the sablefish/halibut CDQ program. The communities not receiving the benefit were not excluded on the basis of state residence (i.e., both Alaskan and non-Alaskan communities were not included in the program.) The Council and the Secretary must build a record that shows the allocations further the Council's legitimate objectives and a clear lack of discriminatory intent between residents of different states.

The guidelines also interpret "fairness and equity" and "avoidance of excessive shares." An

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<sup>9</sup>SENATE REP. NO. 276, 104<sup>th</sup> Cong., at S4086 (1996).

<sup>10</sup>M-S Act Section 301(a)(4), 16 U.S.C. Section 1851.

<sup>11</sup>50 CFR 600.325(c). The guidelines for national standard four provide:

An FMP may not differentiate among U.S. citizens, nationals, resident aliens, or corporations on the basis of their state of residence. . . Conservation and management measures that have different effects on persons in various geographic locations are permissible if they satisfy the other guidelines under Standard 4. An FMP may contain management measures that allocate fishing privileges if such measures are necessary or helpful in furthering legitimate objectives or in achieving the OY.

allocation of fishing privileges should be rationally connected to the achievement of optimum yield (OY) or the furtherance of a legitimate FMP objective. Inherent in any allocation is the advantaging of one group to the detriment of another, and the administrative record must justify a particular allocation in terms of the objectives of the FMP. An allocation scheme should promote conservation goals, possibly by encouraging a rational or more easily managed use of the resource; or, promoting conservation (in the sense of wise use) by optimizing the yield in terms of size, value, market mix, price or economic or social benefit of the product. The administrative record supporting an allocation of quota to a community or other entity also must show consideration of the factors laid out in section 303(b)(6) of the MSA.<sup>12</sup> It also must identify conservation concerns and goals that community allocations are intended to address. In addition, national standard five prohibits conservation and management measures that have economic allocation as their sole purpose.<sup>13</sup>

### Concerns with Regionalization Proposals

The Secretary has broad authority to consider measures to protect or assist communities as long as the administrative record for the proposal demonstrates the Secretary could rationally conclude that the proposal accomplishes a legitimate conservation and management goal. The Council may be able to establish regions within the GOA, but the record will need to show how the geographical boundaries and tying QS to those areas serve as yet undefined conservation and management goals. The Secretary must adequately justify an allocation scheme that restricts fishing in a defined geographical area to certain community residents but not to other communities or residents that have some dependence on the fishery or that might want to develop fisheries. The Secretary must rely upon clearly articulated, rational criteria for determining the boundaries of the geographical area, the eligible communities and residents who may fish in the area, and the other elements of the measure as well as explain how such criteria are rationally related to the objectives and goals identified for the program.

### Concerns with Residency requirements

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<sup>12</sup>16 U.S.C. 1853(b)(6). Section 303(b)(6) states that if the Council and Secretary choose to establish a limited access program, they must take into account –

- (A) present participation in the fishery,
- (B) historical fishing practices in, and dependence on, the fishery,
- (C) the economics of the fishery,
- (D) the capability of fishing vessels used in the fishery to engage in other fisheries,
- (E) the cultural and social framework relevant to the fishery and any affected fishing communities, and
- (F) any other relevant considerations.

<sup>13</sup>16 U.S.C. 1851(a)(5).

Two of the measures set forth earlier in this memo, CFQ and TURF, would allocate QS only to a resident of a community in the GOA. The proposals would require a person to be a resident of a particular community as a condition to receiving QS or having access to a particular right or privilege.

Again, a community allocation or set-aside, such as the TURFs, would not violate the national standard four prohibition against discrimination on the basis of state residence. Although some Alaskan residents would benefit, the basis of the allocation would not be state residence; it would be community residence. The Council and the Secretary must build a record that shows the allocations further the Council's legitimate objectives and a clear lack of discriminatory intent between residents of different states.

### Concerns with Geographical Requirements

One protection measure, TURF, proposed in the Draft List would create a geographically-defined exclusive fishing zone – a zone fishable only by a resident of the community located in the geographical area. This measure creates a smaller geographically-based area for restriction of use of QS in comparison to the regionalization option set forth above. As with other community protection measures that are based on allocation of fishing privileges, the administrative record for this measure would need to clearly articulate the Council's legitimate conservation and management objectives and demonstrate how this proposal meets those goals.

### SUMMARY:

Based on a review of the elements and options for the community protection measures as presented in the Working Group's discussion paper and draft list of elements and options – regionalization, the CIFT, the CFQ and the TURF – we believe none of the concepts is legally prohibited by the MSA. We note the draft list and the draft discussion paper lack sufficient analysis of the proposed options to enable GCAK to provide an in-depth legal analysis and so, at this point, we can provide only general legal guidance. The Council also requested an opinion relative to the CIFT proposal as to whether the Secretary has the authority to defer allocation decisions to a community entity and the extent of Secretarial oversight required for such allocations. We need more clarity about how the program would be intended to work before we can provide an opinion. We will continue to advise the Working Group and the Council on legal issues that arise during the development of a GOA Rationalization Program.

cc: Jane Chalmers  
Mariam McCall  
Regional Attorneys  
Jim Balsiger

C-1C

# STATE OF ALASKA

FRANK MURKOWSKI, GOVERNOR

①

## DEPARTMENT OF FISH AND GAME OFFICE OF THE COMMISSIONER

P.O. BOX 25526  
JUNEAU, AK 99802-5526  
PHONE: (907) 465-4100  
FAX: (907) 465-2332

January 24, 2003

Chris Oliver, Executive Director  
North Pacific Fishery Management Council  
605 W. 4<sup>th</sup> Street, Suite 306  
Anchorage, AK 99501-2252

Dear Mr. Oliver:

The attached tables contain the data on 1995-2001 parallel groundfish fisheries occurring in state waters that you requested in your October 15, 2002 letter. Our responses to other issues addressed in that letter have been provided under separate cover.

The tables herein provide catch in whole pounds, by species, gear type, year, and NMFS management area. Because the subject fisheries are federally managed, the Department of Fish and Game does not have the inseason management information necessary to distinguish between catch in directed fisheries and bycatch. The data presented in the tables represent combined directed catch and bycatch. Some of the data in the tables has been filtered out because it is considered confidential under state law due to low participation levels.

If a distinction between directed catch and bycatch becomes important in the Gulf of Alaska rationalization process, we suggest that those assessments be made in both federal and state waters by the same agency so that the methods, assumptions, and decisions used to define bycatch are applied consistently over all areas.

Some other information requested in the October 15 letter is not provided in this letter. We are continuing our work on estimating the number of vessels that participated for each year, species, and area, and will be providing that data under separate cover in the near future. We also have not provided the number of permit holders making landings. While the Commercial Fisheries Entry Commission might consider using the existing limited entry program in these parallel fisheries if the program proved to be the best available alternative, they do not want to proceed with this part of the request until the Council's intent and direction become clearer. It may be that an alternative type of limited entry program would be preferable.



Chris Oliver

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January 24, 2003

The staff will be available to answer questions regarding these data as the rationalization process continues.

Sincerely,

A handwritten signature in cursive script that reads "Kevin C. Duffy". The signature is written in black ink and is positioned above a horizontal line that extends to the right.

Kevin C. Duffy  
Acting Commissioner

Attachment

Table 1. Pacific cod harvest in whole pounds from the parallel fishery in state waters of the PWS Outside District - Western Section and corresponding to National Marine Fisheries Service Management Area 630, 1995-2001.

Year	Gear Types					Total
	Pots	Longline	Bottom Trawl	Pelagic Trawl	Jig	
1995		638			confidential	638
1996		confidential			confidential	0
1997		98,593			confidential	98,593
1998		1,275				1,275
1999	confidential	64,608				64,608
2000	confidential	3,761		confidential		3,761
2001	confidential	3,301				3,301

Table 2. Pacific cod harvest in whole pounds from the parallel fishery in state waters of the PWS Outside District - Eastern Section and corresponding to National Marine Fisheries Service Management Area 640, 1995-2001.

Year	Gear Types					Total
	Pots	Longline	Bottom Trawl	Pelagic Trawl	Jig	
1995		confidential				0
1996	confidential	18,061	confidential			18,061
1997	confidential					0
1998		confidential				0
1999		confidential				0
2000		2,489				2,489
2001						0

Table 3. Pacific cod harvest in whole pounds from the parallel fishery in state waters of the PWS Inside District and corresponding to National Marine Fisheries Service Management Area 649, 1995-2001.

Year	Gear Types					Total
	Pots	Longline	Bottom Trawl	Pelagic Trawl	Jig	
1995	confidential	339,752	24,539		confidential	364,291
1996	confidential	145,794	207,914		confidential	353,708
1997	555,742	235,493		1,506	confidential	792,741
1998	confidential	533,149		5,879		539,028
1999	600,530	621,162		confidential	confidential	1,221,692
2000	297,326	396,946		confidential		694,271
2001	confidential	140,340		confidential		140,340

Notes: 1. Discards at sea included.  
2. Testfish included.

Table 4. Pacific cod harvest in whole pounds from the parallel fishery in state waters of the Cook Inlet Management Area and corresponding to National Marine Fisheries Service Management Area 630, 1995-2001.

Year	Gear Types					Total
	Pots	Longline	Bottom Trawl	Pelagic Trawl	Jig	
1995	1,721,079	2,250,472		433,528	3,572	4,408,651
1996	987,626	2,219,948		1,411,726	25,645	4,644,945
1997	1,114,131	2,049,394		72,354	37,362	3,273,240
1998	529,355	1,900,375		211,406	42,453	2,683,589
1999	981,674	2,171,877		8,296	21,331	3,183,178
2000	770,298	815,742			confidential	1,586,041
2001	314,098	301,654				615,752

Notes: 1. Discards at sea included.  
2. Testfish included.

Table 5. Walleye pollock harvest in whole pounds from state waters of Prince William Sound during the parallel fishery corresponding to National Marine Fisheries Service Management Area 640, 1995-2001.

Year	Gear Types					Total
	Pots	Longline	Bottom Trawl	Pelagic Trawl	Jig	
1995						0
1996				confidential		confidential
1997				confidential		confidential
1998						0
1999						0
2000						0
2001						0

Table 6. Walleye pollock harvest in whole pounds from state waters of Prince William Sound during the parallel fishery corresponding to National Marine Fisheries Service Management Area 630, 1995-2001.

Year	Gear Types					Total
	Pots	Longline	Bottom Trawl	Pelagic Trawl	Jig	
1995						0
1996						0
1997		confidential				confidential
1998						0
1999						0
2000				confidential		confidential
2001						0

Table 7. Walleye pollock harvest in whole pounds from the parallel fishery in state waters of the Cook Inlet Management Area and corresponding to National Marine Fisheries Service Management Area 630, 1995-2001.

Year	Gear Types					Total
	Pots	Longline	Bottom Trawl	Pelagic Trawl	Jig	
1995	confidential	confidential		confidential		0
1996		2,045		1,941,489	confidential	1,943,534
1997	confidential	10,536		3,883,838	confidential	3,894,374
1998		confidential		9,692,823	confidential	9,692,823
1999		confidential		2,983,335	confidential	2,983,335
2000	confidential	607			confidential	607
2001	confidential	3,107				3,107

Notes: 1. Discards at sea included.  
2. Testfish included.

Table 8. Pacific cod harvest in whole pounds from state waters during the parallel fishery in National Marine Fisheries Service Area 610, 1995-2001.

Year	Gear Types					Total
	Pot	Longline	Bottom Trawl	Pelagic Trawl	Jig <sup>a</sup>	
1995	4,203,934	56,594	4,229,793	239,479	99,331	8,829,131
1996	4,527,767	224,119	7,669,485	349,312	95,015	12,865,698
1997	205,318	36,750	7,582,194	179,180	Confidential	8,003,442
1998	4,208,522	522,828	3,738,842	128,940	Confidential	8,599,132
1999	3299160 <sup>b</sup>	35,968	5,121,501	185,485	0	8,642,114
2000	5,340,847	246,563	6,302,217	386,457	Confidential	12,276,084
2001	3,247,110	57,318	1,791,785	550,528	0	5,646,741

<sup>a</sup>Includes handline and mechanical jig.

<sup>b</sup>75,465 pounds were landed from state waters closed to directed fishing for P. cod.

Table 9. Pacific cod harvest in whole pounds from state waters during the parallel fishery in National Marine Fisheries Service Area 620, 1995-2001.

Year	Gear Types					Total
	Pot	Longline	Bottom Trawl	Pelagic Trawl	Jig <sup>a</sup>	
1995	4,847,836	27,500	282,022	24,069	8,659	5,190,086
1996	4,195,519	52,892	623,091	70,984	Confidential	4,942,486
1997	3,150,737	44,472	346,221	67,464	0	3,608,894
1998	3,354,150	29,429	385,259	265,331	0	4,034,169
1999	5,011,407	99,224	886,291	121,763	Confidential	6,118,685
2000	2,287,205	107,956	103,026	1,473	0	2,499,660
2001	1,513,283	46,863	13,082	51,320	0	1,624,548

<sup>a</sup>Includes handline and mechanical jig.

Table 10. Pacific cod harvest in whole pounds from state waters during the parallel fishery in the Westward Region portion of National Marine Fisheries Service Area 630, 1995-2001.

Year	Gear Types					Total
	Pot	Longline	Bottom Trawl	Pelagic Trawl	Jig <sup>a</sup>	
1995	9,209,214	2,244,634	617,973	39,134	73,718	12,184,673
1996	5,189,492	1,724,188	427,367	11,767	Confidential	7,352,814
1997	5,052,135	1,851,760	431,956	55,981	Confidential	7,391,832
1998	1,644,173	2,138,352	337,080	37,747	27,246	4,184,598
1999	3,739,614	2,469,561	155,825	97,371	Confidential	6,462,371
2000	2,464,806	3,513,177	139,682	5,044	73,477	6,196,186
2001	1,423,927	2,241,342	33,838	137,171	22,414	3,858,692

<sup>a</sup>Includes handline and mechanical jig.

Table 11. Walleye pollock harvest in whole pounds from state waters during the parallel fishery in National Marine Fisheries Service Management Area 610, 1995-2001.

Year	Gear Types					Total
	Pot	Longline	Bottom Trawl	Pelagic Trawl	Jig <sup>a</sup>	
1995	Confidential	0	653,786	21,980,751	0	22,634,537
1996	Confidential	0	Confidential	31,264,759	0	31,264,759
1997	0	0	163,608	19,152,509	0	19,316,117
1998	0	0	704,918	37,732,511	0	38,437,429
1999	Confidential	0	67,011	27,795,120	0	27,862,131
2000	1,870	Confidential	3,181,279	Confidential	0	3,183,149
2001	Confidential	Confidential	78,588	48,194,475	Confidential	48,273,063

<sup>a</sup>Includes handline and mechanical jig.

Table 12. Walleye pollock harvest in whole pounds from state waters during the parallel fishery in National Marine Fisheries Service Management Area 620, 1995-2001.

Year	Gear Types					Total
	Pot	Longline	Bottom Trawl	Pelagic Trawl	Jig <sup>a</sup>	
1995	Confidential	Confidential	649,442	4,594,444	Confidential	5,243,886
1996	Confidential	Confidential	1,528,290	8,186,831	0	9,715,121
1997	1,203	Confidential	1,480,036	27,090,059	Confidential	28,571,298
1998	647	0	3,410,246	51,044,480	Confidential	54,455,373
1999	Confidential	Confidential	593,668	19,985,123	0	20,578,791
2000	Confidential	366	468,697	1,376,176	0	1,845,239
2001	Confidential	Confidential	290,548	6,654,279	0	6,944,827

<sup>a</sup>Includes handline and mechanical jig.

Table 13. Walleye pollock harvest in whole pounds from state waters during the parallel fishery in the Westward Region portion of National Marine Fisheries Service Area 630, 1995-2001.

Year	Gear Types					Total
	Pot	Longline	Bottom Trawl	Pelagic Trawl	Jig <sup>a</sup>	
1995	2,714	21,130	796,212	3,012,098	Confidential	3,832,154
1996	3,809	24,365	1,899,880	Confidential	0	1,928,054
1997	4,204	43,365	1,447,733	4,237,140	4,435	5,736,877
1998	0	39,722	956,144	5,421,345	1,226	6,418,437
1999	Confidential	25,121	177,013	16,629,923	1,629	16,833,686
2000	347	27,726	167,457	2,435,926	Confidential	2,631,456
2001	Confidential	31,097	155,990	10,935,186	Confidential	11,122,273

<sup>a</sup>Includes handline and mechanical jig.

Table 14. Deep water flatfish harvest in whole pounds from state waters during the parallel fishery in National Marine Fisheries Service Area 510, 1995-2001.

Year	Gear Types				Total
	Pot	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	0	0	938	0	938
1996	0	Confidential	0	0	0
1997	0	Confidential	10	0	10
1998	0	0	48	0	48
1999	Confidential	Confidential	761	0	761
2000	Confidential	0	5	0	5
2001	0	0	0	0	0

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.

Table 15. Deep water flatfish harvest in whole pounds from state waters during the parallel fishery in National Marine Fisheries Service Area 620, 1995-2001.

Year	Gear Types				Total
	Pots	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	0	0	3,258	0	3,258
1996	0	0	6,990	0	6,990
1997	0	0	3,548	0	3,548
1998	0	0	1,574	0	1,574
1999	0	0	Confidential	0	0
2000	0	0	Confidential	0	0
2001	0	0	0	0	0

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.

Table 16. Deep water flatfish harvest in whole pounds from state waters during the parallel fishery in the Westward Region portion of National Marine Fisheries Service Area 630, 1995-2001.

Year	Gear Types				Total
	Pots	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	0	0	33,310	0	33,310
1996	0	0	16,936	0	16,936
1997	0	0	15,689	0	15,689
1998	0	0	9,188	0	9,188
1999	0	Confidential	Confidential	0	Confidential
2000	Confidential	0	Confidential	0	Confidential
2001	0	0	Confidential	0	Confidential

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.

Table 17. Shallow water flatfish harvest in whole pounds from state waters during the parallel fishery in National Marine Fisheries Service Area 610, 1995-2001.

Year	Gear Types				Total
	Pot	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	Confidential	0	13,902	0	13,902
1996	0	0	6,280	0	6,280
1997	Confidential	0	1,264	0	1,264
1998	Confidential	0	5,275	0	5,275
1999	0	0	Confidential	0	0
2000	Confidential	0	23,032	0	23,032
2001	Confidential	0	15,877	0	15,877

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.

Table 18. Shallow water flatfish harvest in whole pounds from state waters during the parallel fishery in National Marine Fisheries Service Area 620, 1995-2001.

Year	Gear Types				Total
	Pot	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	Confidential	0	830,014	0	830,014
1996	0	0	2,900,733	0	2,900,733
1997	0	0	1,358,053	0	1,358,053
1998	0	0	386,657	0	386,657
1999	Confidential	0	6,585	0	6,585
2000	0	0	80,696	0	80,696
2001	Confidential	0	42,065	0	42,065

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.

Table 19. Shallow water flatfish harvest in whole pounds from state waters during the parallel fishery in the Westward Region portion of National Marine Fisheries Service Area 630, 1995-2001.

Year	Gear Types				Total
	Pot	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	Confidential	Confidential	875,860	0	875,860
1996	0	830	610,951	0	611,781
1997	0	Confidential	565,386	0	565,386
1998	0	Confidential	394,445	0	394,445
1999	0	0	41,956	0	41,956
2000	0	Confidential	127,119	Confidential	127,119
2001	0	Confidential	24,234	Confidential	24,234

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.



Table 20. Rex sole harvest in whole pounds from state waters during the parallel fishery in National Marine Fisheries Service Area 610, 1995-2001.

Year	Gear Types				Total
	Pot	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	10	0	1,712	0	1,722
1996	0	0	Confidential	0	Confidential
1997	0	0	Confidential	0	Confidential
1998	0	0	841	0	841
1999	0	0	Confidential	0	Confidential
2000	0	0	Confidential	0	Confidential
2001	0	0	Confidential	0	Confidential

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.

Table 21. Rex sole harvest in whole pounds from state waters during the parallel fishery in National Marine Fisheries Service Area 620, 1995-2001.

Year	Gear Types				Total
	Pot	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	0	0	4,511	0	4,511
1996	0	0	5,384	0	5,384
1997	0	0	3,034	0	3,034
1998	0	0	9,146	0	9,146
1999	0	0	Confidential	0	Confidential
2000	0	0	Confidential	0	Confidential
2001	0	0	2,030	0	2,030

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.

Table 22. Rex sole harvest in whole pounds from state waters during the parallel fishery in the Westward Region portion of National Marine Fisheries Service Area 630, 1995-2001.

Year	Gear Types				Total
	Pot	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	0	0	16,418	0	16,418
1996	0	0	15,099	0	15,099
1997	0	0	10,331	0	10,331
1998	0	0	6,535	0	6,535
1999	0	0	659	0	659
2000	0	0	464	0	464
2001	0	0	7,248	0	7,248

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.

Table 23. Flathead sole harvest in whole pounds from state waters during the parallel fishery in National Marine Fisheries Service Area 610, 1995-2001.

Year	Gear Types				Total
	Pot	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	Confidential	0	18,763	0	18,763
1996	0	0	10,825	0	10,825
1997	Confidential	0	16,494	0	16,494
1998	0	0	13,143	0	13,143
1999	0	0	10,004	0	10,004
2000	201	0	103,624	0	103,825
2001	Confidential	0	220,900	0	220,900

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.

Table 24. Flathead sole harvest in whole pounds from state waters during the parallel fishery in National Marine Fisheries Service Area 620, 1995-2001.

Year	Gear Types				Total
	Pot	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	0	0	94,606	0	94,606
1996	0	0	280,634	0	280,634
1997	0	0	201,045	0	201,045
1998	0	0	154,998	0	154,998
1999	0	0	18,051	0	18,051
2000	0	0	13,231	0	13,231
2001	0	0	26,877	0	26,877

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.

Table 25. Flathead sole harvest in whole pounds from state waters during the parallel fishery in the Westward Region portion of National Marine Fisheries Service Area 630, 1995-2001.

Year	Gear Types				Total
	Pot	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	0	831	184,734	0	185,565
1996	0	927	151,257	0	152,184
1997	0	Confidential	203,637	0	203,637
1998	0	Confidential	158,279	0	158,279
1999	0	0	23,513	0	23,513
2000	0	Confidential	8,295	0	8,295
2001	0	0	75,522	0	75,522

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.

Table 26. Arrowtooth flounder harvest in whole pounds from state waters during the parallel fishery in National Marine Fisheries Service Area 610, 1995-2001.

Year	Gear Types				Total
	Pot	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	Confidential	Confidential	33,696	Confidential	33,696
1996	Confidential	Confidential	31,655	0	31,655
1997	Confidential	Confidential	16,878	0	16,878
1998	Confidential	Confidential	17,129	0	17,129
1999	Confidential	Confidential	25,527	0	25,527
2000	1,121	391	189,023	0	190,535
2001	Confidential	1,245	469,411	0	470,656

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.

Table 27. Arrowtooth flounder harvest in whole pounds from state waters during the parallel fishery in National Marine Fisheries Service Area 620, 1995-2001.

Year	Gear Types				Total
	Pots	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	Confidential	0	151,403	0	151,403
1996	Confidential	0	479,039	0	479,039
1997	0	Confidential	308,724	0	308,724
1998	Confidential	Confidential	259,206	0	259,206
1999	Confidential	Confidential	90,907	0	90,907
2000	0	Confidential	61,300	0	61,300
2001	Confidential	505	205,029	0	205,534

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.

Table 28. Arrowtooth flounder harvest in whole pounds from state waters during the parallel fishery in the Westward Region portion of National Marine Fisheries Service Area 630, 1995-2001.

Year	Gear Types				Total
	Pots	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	1,390	39,795	256,837	0	298,022
1996	Confidential	15,130	220,979	0	236,109
1997	Confidential	1,256	250,177	0	251,433
1998	Confidential	201	172,444	0	172,645
1999	Confidential	1,415	199,793	0	201,208
2000	Confidential	9,021	61,103	0	70,124
2001	Confidential	542	600,996	0	601,538

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.

Table 29. Pelagic shelf rockfish harvest in whole pounds from state waters during the parallel fishery in National Marine Fisheries Service Area 610, 1995-2001.

Year	Gear Types				Total
	Pot	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	Confidential	0	Confidential	120,754	120,754
1996	Confidential	0	Confidential	233,187	233,187
1997	Confidential	Confidential	Confidential	201,736	201,736
1998	Confidential	0	Confidential	0	Confidential
1999	Confidential	0	Confidential	0	Confidential
2000	0	Confidential	0	Confidential	Confidential
2001	0	0	Confidential	Confidential	Confidential

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.

Table 30. Pelagic shelf rockfish harvest in whole pounds from state waters during the parallel fishery in National Marine Fisheries Service Area 620, 1995-2001.

Year	Gear Types				Total
	Pots	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	Confidential	0	1,383	Confidential	1,383
1996	0	0	538	107,702	108,240
1997	0	0	4,554	62,240	66,794
1998	0	Confidential	4,973	2,673	7,646
1999	Confidential	0	Confidential	0	0
2000	0	0	Confidential	1,265	1,265
2001	0	Confidential	471	2,356	2,827

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.

Table 31. Pelagic shelf rockfish harvest in whole pounds from state waters during the parallel fishery in the Westward Region portion of National Marine Fisheries Service Area 630, 1995-2001.

Year	Gear Types				Total
	Pots	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	Confidential	2,525	1,632	281,602	285,759
1996	0	998	43,306	275,056	319,360
1997	Confidential	1,311	8,885	197,522	207,718
1998	0	Confidential	4,973	2,673	7,646
1999	0	2,010	2,983	5,405	10,398
2000	0	312	Confidential	11,150	11,462
2001	Confidential	908	Confidential	19,931	20,839

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.

Table 32. Slope rockfish harvest in whole pounds from state waters during the parallel fishery in National Marine Fisheries Service Area 610, 1995-2001.

Year	Gear Types				Total
	Pot	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	Confidential	1,538	Confidential	Confidential	1,538
1996	0	Confidential	Confidential	Confidential	0
1997	0	928	Confidential	0	928
1998	0	1,402	Confidential	0	1,402
1999	Confidential	1,306	Confidential	0	1,306
2000	0	3,389	Confidential	0	3,389
2001	0	1,530	Confidential	Confidential	1,530

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.

Table 33. Slope rockfish harvest in whole pounds from state waters during the parallel fishery in National Marine Fisheries Service Area 620, 1995-2001.

Year	Gear Types				Total
	Pots	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	0	0	796	0	796
1996	0	Confidential	624	Confidential	624
1997	0	407	2,297	0	2,704
1998	0	Confidential	Confidential	Confidential	0
1999	0	182	Confidential	0	182
2000	0	237	Confidential	0	237
2001	0	2,321	227	Confidential	2,548

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.

Table 34. Slope rockfish harvest in whole pounds from state waters during the parallel fishery in the Westward Region portion of National Marine Fisheries Service Area 630, 1995-2001.

Year	Gear Types				Total
	Pots	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	Confidential	1,539	16,461	4,062	22,062
1996	0	1,258	Confidential	8,993	10,251
1997	0	2,035	Confidential	4,168	6,203
1998	0	2,720	14,699	1,337	18,756
1999	Confidential	2,471	Confidential	Confidential	2,471
2000	0	2,475	Confidential	Confidential	2,475
2001	Confidential	2,513	Confidential	254	2,767

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.

Table 35. Northern rockfish harvest in whole pounds from state waters during the parallel fishery in National Marine Fisheries Service Area 610, 1995-2001.

Year	Gear Types				Total
	Pot	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	0	0	Confidential	0	Confidential
1996	0	0	Confidential	0	Confidential
1997	0	0	Confidential	0	Confidential
1998	0	0	Confidential	0	Confidential
1999	0	0	0	0	0
2000	0	0	Confidential	0	Confidential
2001	0	0	Confidential	1	Confidential

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.

Table 36. Northern rockfish harvest in whole pounds from state waters during the parallel fishery in National Marine Fisheries Service Area 620, 1995-2001.

Year	Gear Types				Total
	Pots	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	0	0	0	0	0
1996	0	0	Confidential	0	0
1997	0	0	8,844	0	8,844
1998	0	0	6,227	0	6,227
1999	0	0	0	0	0
2000	0	0	Confidential	0	0
2001	0	0	0	0	0

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.

Table 37. Northern rockfish harvest in whole pounds from state waters during the parallel fishery in the Westward Region portion of National Marine Fisheries Service Area 630, 1995-2001.

Year	Gear Types				Total
	Pots	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	0	Confidential	Confidential	0	0
1996	0	0	Confidential	0	0
1997	0	Confidential	Confidential	Confidential	0
1998	0	0	5,070	0	0
1999	0	0	Confidential	0	0
2000	0	0	324	0	0
2001	0	0	Confidential	0	0

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.

Table 38. Pacific ocean perch harvest in whole pounds from state waters during the parallel fishery in National Marine Fisheries Service Area 51C, 1995-2001.

Year	Gear Types				Total
	Pot	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	0	0	Confidential	0	0
1996	0	0	Confidential	0	52
1997	0	0	Confidential	0	0
1998	0	0	Confidential	0	0
1999	Confidential	0	Confidential	0	0
2000	0	0	538	0	538
2001	0	0	Confidential	0	0

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.

Table 39. Pacific ocean perch harvest in whole pounds from state waters during the parallel fishery in National Marine Fisheries Service Area 620, 1995-2001.

Year	Gear Types				Total
	Pot	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	0	0	Confidential	0	Confidential
1996	0	0	0	0	0
1997	0	0	Confidential	0	Confidential
1998	0	0	812	0	812
1999	0	0	Confidential	0	Confidential
2000	0	0	0	0	0
2001	0	0	Confidential	Confidential	Confidential

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.

Table 40. Pacific ocean perch harvest in whole pounds from state waters during the parallel fishery in the Westward Region portion of National Marine Fisheries Service Area 630, 1995-2001.

Year	Gear Types				Total
	Pot	Longline	Trawl <sup>a</sup>	Jig <sup>b</sup>	
1995	0	0	Confidential	0	Confidential
1996	0	0	Confidential	0	Confidential
1997	0	Confidential	Confidential	Confidential	Confidential
1998	0	0	3,449	0	3,449
1999	0	0	Confidential	0	Confidential
2000	0	0	Confidential	0	Confidential
2001	0	0	Confidential	0	Confidential

<sup>a</sup>Includes pelagic and bottom trawl.

<sup>b</sup>Includes handline and mechanical jig.

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[Code of Federal Regulations]  
[Title 50, Volume 3, Parts 600 to End]  
[Revised as of October 1, 1999]  
From the U.S. Government Printing Office via GPO Access  
[CITE: 50CFR600.345]

[Page 40-41]

TITLE 50--WILDLIFE AND FISHERIES

DEPARTMENT OF COMMERCE

PART 600--MAGNUSON-STEVENS ACT PROVISIONS--Table of Contents

Subpart D--National Standards

Sec. 600.345 National Standard 8--Communities.

(a) Standard 8. Conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to:

- (1) Provide for the sustained participation of such communities; and
- (2) To the extent practicable, minimize adverse economic impacts on such communities.

(b) General. (1) This standard requires that an FMP take into account the importance of fishery resources to fishing communities. This consideration, however, is within the context of the conservation requirements of the Magnuson-Stevens Act. Deliberations regarding the importance of fishery resources to affected fishing communities, therefore, must not compromise the achievement of conservation requirements and goals of the FMP. Where the preferred alternative negatively affects the sustained participation of fishing communities, the FMP should discuss the rationale for selecting this alternative over another with a lesser impact on fishing communities. All other things being equal, where two alternatives achieve similar conservation goals, the alternative that provides the greater potential for sustained participation of such communities and minimizes the adverse economic impacts on such communities would be the preferred alternative.

(2) This standard does not constitute a basis for allocating resources to a specific fishing community nor for providing preferential treatment based on residence in a fishing community.

(3) The term "fishing community" means a community that is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew, and fish processors that are based in such communities. A fishing community is a social or economic group whose members reside in a specific location and share a common dependency on commercial, recreational, or subsistence fishing or on directly related fisheries-dependent services and industries (for example, boatyards, ice suppliers, tackle shops).

(4) The term "sustained participation" means continued access to the fishery within the constraints of the condition of the resource.

(c) Analysis. (1) FMPs must examine the social and economic importance of fisheries to communities potentially affected by management measures. For example, severe reductions of harvests for conservation purposes may decrease employment opportunities for fishermen and processing plant workers, thereby adversely affecting their families and communities. Similarly, a management measure that results in the allocation of fishery resources among competing sectors of a fishery may benefit some communities at the expense of others.

(2) An appropriate vehicle for the analyses under this standard is the fishery impact statement required by section 303(a)(9) of the Magnuson-Stevens Act. Qualitative and quantitative data may be used,



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### Future Action by the Council and NMFS

Based on the comments received through this public scoping process and the work products from the Council's GOA Work Group, the Council may wish to further refine the precise nature and extent of the proposed action, the range of alternatives, the specific impacts to be evaluated, and the methods used to determine their evaluation. This refinement will benefit the analysis by focusing the work of NMFS and Council staff on those alternatives that specifically address the proposed action. NEPA does not require that every alternative must be considered.

We anticipate that the SEIS will be used to fulfill the request by Congress in the Consolidated Appropriations Act of 2001 (P.L. 106-554) which requires the Council to examine fisheries under its jurisdiction, particularly Gulf of Alaska groundfish fisheries, to determine whether rationalization is needed. and requests the Council to

“analyze individual fishing quotas, processor quotas, cooperatives, and quotas held by communities. The analysis should include an economic analysis of the impact of all options on communities and processors as well as the fishing fleets. The North Pacific Council shall present its analysis to the appropriations and authorizing committees of the Senate and House of Representatives in a timely manner.”

The Council may wish to consider the Consolidated Appropriations Act, the comments from this scoping document and the Elements and Options as developed by the GOA Work Group as it further refines the Proposed Action, Scope, Alternatives, and specific issues to be analyzed in the SEIS.

# STATE OF ALASKA

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②  
FRANK H. MURKOWSKI  
GOVERNOR

## DEPARTMENT OF FISH AND GAME OFFICE OF THE COMMISSIONER

P.O. BOX 25525  
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PHONE: (907) 465-4100  
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January 24, 2003

Chris Oliver, Executive Director  
North Pacific Fishery Management Council  
605 W Fourth Avenue, Ste 306  
Anchorage, Alaska 99501-2252

Dear Mr. Oliver:

This letter is in response to your letter of October 15, 2002, wherein you requested data and options for the State parallel cod and pollock fisheries relative to the Council's effort to rationalize the Gulf of Alaska (GOA) groundfish fisheries. Before getting into the specifics of your request, I would like to reiterate that the Alaska Department of Fish and Game (ADF&G) is fully supportive of rationalization efforts that meet the objectives previously adopted by the Council.

We recognize that seeking to end the race for fish means that the parallel fisheries must undergo some form of modification, because leaving them in their current 'open access' status may negate or significantly compromise the benefits of GOA rationalization. Although our 'rationalization' processes differ in scope and timeliness, rest assured that it is our intent to engage the regulatory process of the Board of Fisheries (BOF) and, if necessary, the statutory processes of the Alaska Legislature in a manner that coordinates with the Council's effort on GOA rationalization.

The Council's letter of October 15 asked ADF&G to respond to two specific questions:

- 1) What tools does the state have that can solve this problem?
- 2) What tools would the state need to solve this problem?

We were also asked to describe any potential problems the state would face in implementing solutions or in obtaining the desired tool.

In developing answers and exploring options for the parallel fisheries, we first examined what could be done under the existing limited entry law. Alaska's limited entry law allows fisheries to be defined for limitation purposes based upon the fishery resource(s) involved, the gear types used, and administrative areas. The Pacific cod parallel fisheries involve multiple gear types and multiple registration areas. If limitation under Alaska's limited entry law is the best available alternative for these fisheries, then the Commercial Fisheries Entry Commission (CFEC) will need to a) analyze how best to define each of these fisheries for limitation purposes and b) develop regulatory proposals for limitation including maximum numbers for each of the fisheries.

Once a fishery is limited under Alaska law, there can often be years before the number of participants is limited to the maximum number. Persons who make commercial harvests in the fishery as interim-use permit holders (skippers) prior to the qualification date and during the eligibility period defined by regulation are eligible to apply for one of the limited entry permits. Typically, the number of persons eligible to apply exceeds the maximum number. By law, CFEC is required to develop a hardship ranking system (a.k.a. point system) to determine which of the eligible applicants will receive limited entry permits. A hardship ranking system for a fishery is based on past participation in the fishery and economic dependence on the fishery. Applicants are ranked under the point system that is adopted by regulation and the entry permits are issued to those who rank highest until the established maximum is reached.

This initial distribution of entry permits often takes many years to complete because of conflicting evidence and appeals. An entry permit cannot be issued until the point claims of others are adjudicated and the relative ranking of applicants are finalized. In the meantime, those who applied can continue to fish on an interim-use permit until their cases are resolved. Then when all the permits are finally issued, all that's been achieved is limiting the number of participants who can fish. As such, limiting the parallel fisheries under Alaska's current limited entry program would not necessarily remove the possibility that the percent of the Total Allowable Catch (TAC) harvested in state waters during the parallel fisheries could increase. Furthermore, efforts to allocate permanent use-privileges in state waters under the current limited entry law potentially could complicate and delay efforts to develop an integrated system of harvest use-privileges for rationalizing these parallel fisheries concurrent with all other GOA groundfish.

Given these time and management constraints with the existing limited entry program, it is apparent that the standard limited entry approach may not even work as an intermediary approach and that adopting some form of an integrated quota share program might be the most straightforward and comprehensive approach to address the parallel fisheries. As you may know, the Board of Fisheries has adopted equal share IFQ systems for sablefish fisheries in Southeast, so there is a precedent for some type of IFQ system in state fisheries.

Unequal quota systems based on historical catches, however, raises some concerns under the Alaska Constitution, and there is currently no express statutory authorization for that type of unequal allocation. An informal State Attorney General opinion (attached for reference) in 1995 concluded that there may be some circumstances in which a history-based quota system could be deemed a constitutionally permissible way of limiting entry to a fishery. This opinion specifically emphasizes that an IFQ system would need to be properly justified and designed to have the least possible impingement on the open access provisions of the Alaska Constitution. This opinion, however, also concluded that the federal halibut and sablefish IFQ system was not designed to meet the test of least possible impingement and as such, would likely not survive a challenge under the Alaska Constitution.

With this background, here is a summary of options for the parallel fisheries:

1. Integrated Quota Program

Provided the Council includes non-Limited License Program (LLP) vessel owners with legal landings (currently proposed as an option) into the quota based program for GOA groundfish, then ADF&G could seek statutory authority to allow owners to harvest their share in state waters during the parallel fisheries. Granting of this authority would need to be as specific as possible and not general in nature. In other words, the enabling legislation should be fishery specific and include eligibility requirements similar to those being proposed for federal waters. A key advantage of obtaining explicit, specific statutory authority to assign quota shares is that it provides a more expeditious means of issuing fishing use privileges.

Implementation Comments: Seeking statutory authority is not without risks and challenges. To be successful, the affected constituencies and the coastal communities will need to be actively engaged. Furthermore, any proposed legislation will need to remain synchronized with Council actions as it moves through the legislative process. This can only be accomplished with a coordinated effort from the administration, the Alaska legislature and the coastal communities. The BOF would also need to adopt regulations specifically implementing any statute that authorizes an IFQ system integrated with the federal fishery.

## 2. Tiered Licenses

It has been suggested that ADF&G could seek statutory authority to allow CFEC to adopt a tiered program that would limit licenses to those individuals with participation within the same set of years as established for the federally managed program. CFEC would issue licenses that are tiered to the initial allocation received by those vessels. As an example, a vessel that would receive a 100 mt allocation of Pacific cod would receive a CFEC license "A" that allowed that vessel to harvest up to 20 mt in State waters during the parallel fishery; a vessel with 50 mt would receive a "B" license that allows harvests up to 10 mt. Vessels without a federal allocation could receive a license that allows a limited harvest (e.g., up to 5 mt.). This approach would allow vessels to continue to harvest within State waters in rough proportion to the historic harvests of a vessel, but the overall harvests would be limited.

Implementation Comments: Presently, CFEC has no statutory authority to do a tiered license program described in this option and would need to seek that authority. Under current statutes, CFEC can issue permits limited to partial limits of gear [AS 16.40.270 (d)] to control the amount of fishing capacity under a limited entry program. It should also be noted that licenses tied to some level of historical catches would likely raise constitutional concerns similar to an IFQ program and as such, would need to be designed for least possible impingement on open access.

## 3. Trip Limits Within State Waters

It has also been suggested that the BOF could establish a trip limit that would curtail harvests by vessels unless they are participants in a Quota Share (QS) program. Vessels that fish in the parallel fishery would be limited to a fairly low and constraining trip limit on either a weekly or a daily basis. However, the BOF could stipulate that vessels could deliver up to this trip limit or the amount of IFQ held by that vessel. The trip limit would have to be set low enough to discourage participation by vessels without IFQ. Relatively small trip limits will enable harvests by entry-level vessels.

Implementation Comments: The BOF can impose trip limits to control harvesting capacity, however the Board probably cannot treat federal IFQ holders differently than other fishermen. Additionally, CFEC does not have authority to limit entry only partially. If entry is limited, new entrants have to receive a permit by transfer.

#### 4. Economic Disincentives

One option suggests that the BOF could indirectly create situations that make it uneconomical to harvest fish within the parallel fishery unless the vessel is participating in a cooperative or other rights-based management system. As an example, the BOF could require that all vessels larger than some size (e.g., 50') must carry observers during the parallel fishery unless those vessels are participating in the federal quota based program. Here, the control comes in creating a strong economic disincentive to participate in the parallel fishery unless the vessel is part of the federally managed QS program. Once the vessels are participating in the federally managed program, all harvests would come off of the federal quota. Alternatively, the BOF could limit the size of vessels that can fish inside state waters. If the vessel size limit is combined with a trip limit, the incentive to enter the "open" parallel fishery is further reduced.

Implementation Comments: The BOF probably could not impose a burdensome regulation for the purpose of forcing fisherman to voluntarily comply with a rule that the BOF does not have the authority to adopt as a regulation. The BOF can limit vessel size, but not with such a stipulation to participate in a federal program. However, the Board could, under current laws, adopt exclusive or superexclusive areas. Similarly, the Board might be able to adopt exclusive seasons, according to which a vessel owner would have to choose which season to participate in.

#### 5. Equal Shares

Note: Examining this option also responds to the Council's request to look at how the Chatham Sablefish model might be applied to GOA Groundfish fisheries.

Another option is to divide the TAC into federal and state waters portions, and then for the state waters portion of the parallel fishery, impose an equal share quota in each fishery, similar to SE Sablefish. The equal shares would be defined by fishery, by region, by gear and, if needed, by vessel size category. To proceed on this approach, there are two options: a) have CFEC limit entry and issue permits for each fishery, then through the BOF divide the shares equally among permit holders and b) through the BOF require all those wanting to fish to sign up by a certain date and then divide the available TAC equally.

Implementation Comments: The Southeast Inside Sablefish Longline Fishery (Chatham Strait fishery) was limited to entry by CFEC in 1985. Following limitation, harvests often exceeded the upper limit of the guideline harvest range established by the BOF despite reductions in the amount of fishing time. In order to improve management's ability to control the harvest and to promote a safer fishery, the Board adopted a regulation, which provides for a *de facto* equal quota share system for the Chatham Sablefish fishery beginning in 1994. All permit holders receive an equal seasonal share of the harvest. The plan had been recommended by a working

group of industry representatives and agency personnel. The regulation appears to be meeting the objectives of simply controlling harvest and promoting safety.

6. Close State Waters

Closing state waters during the federal fisheries would be a simple, direct way to eliminate the 'race for fish' opportunity and to protect the TAC available for quota share recipients.

Implementation Comments: This could be done under current statutes and through BOF regulation, but it undermines the economic advantages of having the parallel fisheries in the first place. Furthermore, significant opportunities would be foregone as in some years and areas up to 70% of the pollock harvest and 30% of the cod harvest occurs in the state waters portion of the parallel fishery. As such, closing state waters would likely impose too high of a price to justify rationalization for many vessel owners.

I want to emphasize that while this discussion of options answers the questions posed in the October 15 letter, we have more work to do before fully committing on any particular course of action. First and foremost, we need to discuss these options with the affected fleets and the coastal communities. We also need to begin the discussions with the administration, the Alaska Legislature and BOF. This letter is designed to initiate the public dialogue that must occur relative to the parallel fisheries issues. In closing, I want to identify that initial discussions with staff suggest that an integrated quota program appears to be the most reasonable and comprehensive course of action.

I look forward to working with the industry and Council as we proceed with a rationalization program for Gulf of Alaska groundfish fisheries.

Sincerely,

  
Kevin C. ~~Duffy~~  
Acting Commissioner

Enclosure: State Attorney General Opinion, 1995

cc: Ed Dersham, Board of Fisheries  
Lance Nelson, Department of Law  
Jon Goltz, Department of Law  
Kurt Schelle, Commercial Fisheries Entry Commission  
Director Doug Mecum, Division of Commercial Fisheries

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Office of the Attorney General  
State of Alaska

File No. A.G. File No: 223-95-0472  
July 31, 1995

Re: Legality and Constitutionality of IFQ Programs

The Honorable Alan Austerman  
Representative  
Alaska State Legislature  
P.O. Box 2368  
Kodiak, AK 99615

Dear Representative Austerman:

### I. Questions

You have asked four questions regarding Individual Fishing Quota (IFQ) programs. First, you have asked whether the Northern Pacific Halibut Act and the International Halibut Treaty preempt state management of halibut in state waters. Second, you have asked whether the IFQ program for halibut, adopted by the North Pacific Fishery Management Council (NPFMC), was legally implemented for state waters. Third, you have asked whether the IFQ program for sablefish was legally adopted and implemented for state waters. Finally, you have asked whether it would be constitutional for the state to adopt IFQ programs for state waters similar to those adopted by the NPFMC.

### II. Background

In order to answer these questions, it is necessary to recognize the three maritime zones that are subject to federal or state jurisdiction for managing fisheries.

Waters that are immediately adjacent to or inside the coastline are usually called "internal waters." For example, in the Magnuson Fishery Conservation and Management Act, 16 U.S.C. §§ 1801-1882 (hereinafter Magnuson Act), "internal waters of a State" are defined as "all waters within the boundaries of a State except those seaward of the baseline from which the territorial sea is measured." 16 U.S.C. § 1856(c)(3) (Law. Co-op. 1984 & Supp 1995).

The baseline is an important feature of the maritime zones. It consists of a series of straight lines which touch the coastline at various points. The baseline translates the natural undulations of bays and promontories into a series of connected straight lines of various lengths that conform to the general outline of the natural coast. It marks both the seaward boundary of "internal waters" and the start of the next maritime zone, the "territorial sea." *See, e.g.*, Convention on the Territorial Sea and Contiguous Zone, Apr. 29, 1958, *entered into force* Sept. 10, 1964, 15 U.S.T. 1606, 516 U.N.T.S. 205.

As noted above, the next zone, the "territorial sea" is a band that begins at the baseline and extends seaward for three miles. *Id.* The edge of the territorial sea generally marks the state's seaward boundary and the boundary of the state's fishery jurisdiction. 43 U.S.C. §§ 1312; 16 U.S.C. § 1856(a)(2).

The third zone, called the "exclusive economic zone" (hereinafter EEZ) is contiguous to the territorial sea and is also measured from the baseline. It extends from the edge of the territorial sea to a line two hundred miles off-shore from the baseline. Exclusive Economic Zone of the United States of America.

Proclamation No. 5030, 48 Fed. Reg. 10605 (1983); 16 U.S.C.S. § 1802(6) (Law. Co-op. Supp. 1995).

This brings us to the question of how the maritime boundaries, the federal fisheries laws, and the state constitution interact. Pursuant to the Supremacy Clause of the United States Constitution, art. VI, cl. 2, the laws of the United States, including both federal statutes and properly adopted federal regulations, take precedence over, or "preempt," state laws. City of New York v. FCC, 486 U.S. 57, 63-64, 100 L.Ed.2d 48 (1988). If it is impossible to comply with both federal law and state law, then the federal law preempts the state law. See Schneidewind v. ANR Pipeline Co., 485 U.S. 293, 300, 99 L.Ed.2d 316, 325 (1988). In addition, federal law may preempt more restrictive state laws even when it would be possible to comply with both federal and state law if there is evidence that Congress has made a decision to "occupy the field" in the subject area. See, e.g., Silkwood v. Kerr-McGee Corp., 464 U.S. 238, 248 (1984).

States have historically managed fishery resources in the waters adjacent to the state. See, e.g., Duvrod Corp. v. Coates, 971 F.2d 778, 785-86 (1st Cir. 1992). The Magnuson Act does not normally diminish state jurisdiction over fisheries within the state's territorial sea, 16 U.S.C. § 1856(a)(1-2) (Law. Co-op. & Supp 1995); however, it does prohibit states from regulating fishing in waters outside the territorial sea unless the vessel is registered in the regulating state. Id. § 1856(a)(3). Further, the Magnuson Act provides for federal preemption of state jurisdiction over fishery resources within the territorial sea in limited circumstances. Id. § 1856(b). Through federal preemption, the state can be deprived of management authority over a fishery and the federal government can obtain exclusive management authority over that fishery. Before preemption can occur under the Magnuson Act, the Secretary of Commerce must (1) give notice and provide an opportunity for a hearing, and (2) determine that the state has taken action, or has failed to take action, adversely affecting the implementation of a Magnuson Act federal fishery management plan for a fishery that predominately occurs in or beyond the EEZ. Id.

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### III. Short Answers

First, federal law preempts state management of halibut in state waters as a result of the Northern Pacific Halibut Act which implements a treaty between the United States and Canada. Second, the NPFMC halibut IFQ plan was legally adopted and implemented for state waters. Third, although NPFMC sablefish IFQ regulations purport to apply to IFQ holders in state waters, preemption procedures required by the Magnuson Act were not followed in their adoption. Thus, the state still retains management authority and the federal regulations may not prove enforceable in state waters. Fourth, IFQ systems appear to be a form of limited entry and are thus authorized by the Alaska Constitution. However, because a limited entry system must present the least possible impingement on the open access provisions of the state's constitution, the current NPFMC IFQ program, which was not designed to meet this stringent test, does not provide a model for an IFQ program that would have a high likelihood of surviving a constitutional challenge.

### IV. Discussion

#### A. The Northern Pacific Halibut Act Preempts State Management of Halibut in State Waters.

Since 1924, Pacific halibut fishing has been federally managed according to an international agreement with Canada. See 43 Stat. 648 (1924). Exclusive federal halibut management currently arises under the Northern Pacific Halibut Act of 1982, 16 U.S.C. § 773-773k (Law. Co-op. 1994) [hereinafter Halibut Act], which implements a treaty between the United States and Canada that was entered into in 1953 and amended in 1979. See Protocol Amending the Convention Between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, March 29, 1979, 32 U.S.T. 2485 [hereinafter Halibut Treaty]. Under the Halibut Act, regulatory authority over halibut is held by the International Pacific Halibut Commission and the Secretary of Commerce. 16 U.S.C.S. § 773c (Law. Co-op. 1994); United States v. Cameron, 888 F.2d 1279, 1280 (9th Cir. 1989). The Halibut Treaty applies to all waters over which the United States has exclusive fisheries jurisdiction.



including, "without distinction areas within and seaward of the territorial sea or internal waters." 32 U.S.T. at 2487. The Halibut Treaty thus reflects congressional intent to occupy the field of halibut management and therefore preempts state authority in matters pertaining to halibut management.

The Halibut Act gives regional fishery management councils authority to adopt additional regulations, including limited access regulations, subject to certain criteria. 16 U.S.C.S. § 773c(c). Although council regulations are required to comply with some Magnuson Act criteria, *id.*, it is the Halibut Act and not the Magnuson Act that controls in matters relating to the regulation of halibut fishing. *Id.*; see also 50 C.F.R. pt. 301 (1994); 50 C.F.R. pt. 676 (1994). The Halibut Act does not contain any provision providing for any regulation of halibut by states.

Thus, state management of halibut, within both the territorial sea and the internal waters of the state, has been preempted by the Halibut Treaty and its implementing statutes and regulations. (FN1)

#### **B. The NPFMC IFQ Program for Halibut Was Legally Implemented and Adopted for State Waters.**

The Halibut Act specifically authorizes regional fishery management councils to adopt additional regulations, including limited access regulations, for waters of the United States that are subject to the Halibut Treaty. 16 U.S.C.S. § 773c(c) (Law. Co-op 1994). The standards imposed for these regulations require adherence to the Magnuson Act's limited entry requirements, see 16 U.S.C. § 1853(b)(6) (Law. Co-op. 1984), and the standards also require promotion of conservation, nondiscrimination in allocation, and implementation so as to prevent any person or entity from acquiring an excessive share of halibut fishing privileges. 16 U.S.C.S. § 773c(c). However, because federal preemption of state management has already occurred as a result of the Halibut Treaty and the Halibut Act, the regional councils are not required to follow the preemptive steps set out in Magnuson Act. See 16 U.S.C.S. § 773c(c).

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The Secretary of Commerce adopted the halibut IFQ regulations after taking into account the criteria that the Magnuson Act requires to be considered before adoption of a limited access program. (FN2) The IFQ regulations were also designed to serve conservation purposes, to be nondiscriminatory, and to prevent any person or entity from acquiring an excessive share in the halibut fishery. See, e.g., 50 C.F.R. pt. 676 (1994). State management of halibut had already been preempted and no additional preemptive steps were required for new federal IFQ regulations. Therefore, the NPFMC IFQ program for halibut was legally adopted for state waters.

#### **C. The NPFMC's Adoption and Implementation of the Sablefish IFQ Program for State Waters Did Not Comply with Procedures Required by the Magnuson Act for Preemption of State Management.**

Like the halibut IFQ regulations, the sablefish IFQ regulations meet the Magnuson Act's basic requirements for limited access programs. *Supra* note 2. However, unlike the halibut fishery, the sablefish fishery is not subject to an international treaty, nor is its management controlled by federal statutes outside of the Magnuson Act. As discussed above, in order for the NPFMC's regulations to control in state waters, the preemption requirements of the Magnuson Act must be met. See 16 U.S.C. § 1856(b).

The sablefish IFQ regulations purport to apply to holders of federal IFQ permits fishing in waters of the State of Alaska. (FN3) Most sablefish fisheries in state waters fall within specific exceptions from the NPFMC regulations for sablefish fishing in Prince William Sound or under a limited entry program of the State of Alaska. 50 C.F.R. § 676.10(b) (1994). Federal authorities are attempting to apply the IFQ regulations to sablefish fisheries in state waters in the Kenai area and in the Aleutians, despite the fact that the NPFMC has not complied with Magnuson Act preemption requirements. However, the NPFMC regulations do not authorize federal IFQ holders to violate state regulations. *Id.* § 676.12(c).

The NPFMC has not expressed an intent to preempt state management, but does believe that it has authority to regulate holders of federal IFQs in state waters where there are no conflicting state regulations. The state has taken the position that there is no authority for federal regulation in state waters unless the

preemption requirements of the Magnuson Act are met. See *Alliance Against IFQs v. Brown*, No. A93-480 CV (JKS). Memorandum of Alaska Concerning IFQ Issue (Aug. 26, 1994) (D. Alaska). The state is not currently litigating the validity of the sablefish regulations, but may decide to challenge them at a later time. (FN4)

In any case, it is clear that the state is still free to adopt regulations in addition to those of the NPFMC, or even regulations which are inconsistent with the NPFMC sablefish IFQ program. Such regulations would be effective within state waters in the territorial sea unless, and until, the Secretary of Commerce completed the preemption process provided in 16 U.S.C. § 1856(b). State regulations would also remain effective in internal waters of the state because the Magnuson Act does not provide for preemption in these waters. 16 U.S.C. § 1856(b), (c)(4)(B). Federal IFQ holders cannot fish in a regulatory area within state waters unless the state opens the area for commercial sablefish fishing. See AS 16.05.920(a).

Although the state is not currently litigating the NPFMC's federal regulation within state waters, the state has not accepted the NPFMC's jurisdictional assertions. The state has not limited any of its sablefish fisheries to holders of federal IFQs, nor has it excluded federal IFQ holders from these fisheries; (FN5) thus, the provisions of the state constitution prohibiting exclusive rights of fishery are not implicated at this time because no exclusive rights of fishery have been granted within state waters. (FN6)

#### **D. IFQ Programs Appear to Be a Form of Limited Entry Which Would Be Constitutional; However, the Federal IFQ Program Does Not Provide a Model Designed to Withstand Constitutional Challenge.**

Alaska's Constitution contains a number of provisions, generally referred to as the "equal access clauses," that would be relevant to any attempt to implement a state IFQ system. Article VIII, section 15, of the constitution generally prohibits exclusive or special rights of fishery, but does allow for limitation of entry into any fishery for certain specified purposes. The common use clause provides, "[w]herever occurring in their natural state, fish, wildlife, and waters are reserved to the people for their common use." Alaska Const. art. VIII, § 3. The uniform application clause provides:

Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

Alaska Const. art. VIII, § 17. In addition to the preceding "equal access clauses," Alaska's equal protection clause provides, "all persons are equal and entitled to equal rights, opportunities and protection under the law." Alaska Const. art. I, § 1.

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#### **1. The Alaska Constitution Allows Limitation of Entry Into Fisheries.**

The Alaska Constitution explicitly provides that the state can limit entry into any fishery for specified purposes:

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

Alaska Const. art. VIII, § 15. The second sentence of section 15, the limited entry clause, was not present in the original constitution, but was added as an amendment that became effective after voter ratification in October of 1972.

The courts have recognized the tension between the limited entry clause and the equal access clauses. In *Ostrosky v. State*, however, the Alaska Supreme Court concluded. "the purpose of the amendment to Article VIII, section 15, was to grant the state the power to impose a limited entry system in any fishery. *notwithstanding any state constitutional provisions otherwise prohibiting such a system.*" 667 P.2d 1184, 1190 (Alaska 1983) (emphasis added). (FN7)

## 2. An IFQ System Can Probably Be Considered a Method of Limiting Entry, and an IFQ System Could Serve the Purposes of the Limited Entry Amendment.

Constitutional provisions are to be "given a reasonable and practical interpretation in accordance with common sense." *ARCO Alaska, Inc. v. State*, 824 P.2d 708, 710 (Alaska 1992). Interpretation of a constitutional provision requires an examination of the plain meaning of a provision, its purpose, and the intent of the framers. *Id.* Where the constitutional provision in question is an amendment, ratified by the voters, "it is also necessary to look to the meaning that the voters would have placed on [the] provision." *State v. Lewis*, 559 P.2d 630, 637 (1977); see also *State v. Gonzalez*, 825 P.2d 920, 928 (Alaska App. 1992). "While prior practice and the framer's purposes are not necessarily conclusive, an historical perspective is essential to an enlightened contemporary interpretation of" the constitution. *Hootch v. Alaska State-Operated School*, 536 P.2d 793, 800 (Alaska 1975). It must also be remembered that constitutional provisions are not static, "must be construed in light of changing social conditions," *id.* at 804, and must be considered "adaptable to changing conditions and circumstances unanticipated at the time . . . written." *Warwick v. State ex rel. Chance*, 548 P.2d 384, 391 (Alaska 1976). At the same time, "exceptions to general constitution provisions must be narrowly and strictly construed." 16 C.J.S. *Constitutional Law* § 18 (1984).

Thus, an analysis of whether an IFQ system might be constitutional requires an exploration of the history of the limited entry amendment and of its purposes.

### a. History of the limited entry amendment.

The amendment of article VIII, section 15, followed a decade of rapid growth of participation in Alaska's commercial fisheries and unsuccessful efforts to limit that growth, particularly in the lucrative Bristol Bay salmon fishery where the number of commercial licenses more than doubled between 1960 and 1970. See *Alaska Fisheries Policy: Economics, Resources, and Management*, 306-331 (Arlon R. Tussing, et al. eds., 1972); *Commercial Fisheries Entry Comm'n v. Apokedak*, 606 P.2d 1255, 1258-59 (Alaska 1980). See also *Bozanich v. Reetz*, 297 F. Supp. 300 (D. Alaska 1969), vacated on other grounds and remanded, 397 U.S. 82 (1970); *Bozanich v. Noerenberg*, Civil No. 70-389 (Alaska Super. Ct., 1st Judicial Dist., March 8, 1971).

The original language proposed for the limited entry amendment stated: "The State may restrict entry to any fishery for purposes of conservation of the resource, to relieve economic distress among fishermen and those dependent upon them for a livelihood and to insure fair competition among those engaged in commercial fishing." S.J. Res. 10, 7th Leg., 1971. The intent of the amendment, according to its sponsor, Governor William A. Egan, was to "insure that this section, which prohibits exclusive rights of fishery, does not stand in the way of the ability of the state to institute programs for reasonable management of its fisheries." 1971 Senate J. 116. As an alternative, the legislature considered an amendment that would have simply added the clause "except as authorized by law," effectively repealing the section as a constitutional constraint. See 1971 House J. 761; H.J. Res. 31, 7th Leg., 1971.

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During the legislative process, the original language of the proposed amendment was altered to focus on prevention of economic distress instead of relief, and to include the development of aquaculture. The language pertaining to insuring fair competition among those engaged in commercial fishing was dropped. See Comm. Substitute for S.J. Res. 10, 7th Leg., 1971. Legislative history indicates that the final language of the amendment was altered "to show that the state's power to limit entry is a specific exception to the 'exclusive right' prohibition," and to broaden the grounds for restricting entry "to include

conservation not only of the fisheries themselves, but of the capital and labor resources which are expended in harvesting them. " House Comm. Substitute for Comm. Substitute for S.J. Res. 10, 7th Leg., 1st Sess. (1971)(emphasis added); 1971 House J. 761; see also Ostroski v. State, 667 P.2d 1184, 1189 (Alaska 1983).

**b. The meaning of the term "limit entry."**

The legislative history of the amendment of article VIII, section 15 of the Alaska Constitution indicates that the drafters believed that allowing the state to "limit entry" provided a new tool for fisheries management. See, e.g., 1971 House J. 760. The language of the amendment does not mandate a specific method of limiting entry. We have reviewed the legislative history of both the limited entry amendment and the Limited Entry Act, AS 16.43, which was passed in the first legislative session after the adoption of the amendment. Nothing in this history indicates that in drafting the limited entry amendment the legislature was thinking of a particular form of limited entry, or that when the legislature adopted the Limited Entry Act, it considered the Act to be the only permissible form of limiting entry into Alaska's fisheries.

License limitation is the most commonly known form of control over entry into a fishery, *Limited Entry As A Fishery Management Tool*, 158 (R. Bruce Rettig and J.C. Ginter, eds., 1978), and prior to the limited entry amendment, previous unsuccessful efforts to reduce the gear in Alaska's fisheries focused on gear license moratoriums and restrictions on gear license eligibility. See, e.g., *Alaska Fisheries Policy: Economics, Resources, and Management*, 306-331 (Arlon R. Tussing, et al. eds., 1972); Commercial Fisheries Entry Comm'n v. Apokedak, 606 P.2d 1255, 1258-59 (Alaska 1980). However, "any control of a fishery that curtails or restricts the addition of fishermen, fishing vessels, or equipment is limited entry." *Limited Entry As A Fishery Management Tool* at 158. Thus, other methods of controlling access to fisheries, such as quotas for fishermen or vessels, could be considered limited entry. See *id.* at 158, 193-94, 213, 217-219.

While, at the time that the limited entry amendment was adopted, license limitations may have been the most common conception of how entry into fisheries would be limited, this should not be determinative. The need for flexibility and adaptability in a constitutional provision must be considered. See *supra*. License limitations may have been well suited as a means of limiting entry and dealing with problems that had arisen in fisheries at the time of the amendment, but such limitations may not provide the most suitable management tool for other fisheries or for other problems such as increasing efficiency within fisheries, waste of bycatch, and market problems resulting from large harvests during short intensive fishing seasons. (FN8)

IFQ management could take a number of different forms. However, regardless of what form an IFQ management program took, we believe that the practical result of an IFQ system would be that participation in fisheries, i.e., "entry" into fisheries, would be limited. Participation would be limited to persons holding an IFQ, a permit that differs from the present limited entry permit primarily because the amount of fish that can be harvested under an IFQ is restricted. (FN9) IFQs are typically for rather small amounts of fish. Thus, an IFQ system would allow a larger number of permits to be issued and allow larger numbers of individuals to hold permits for a fishery than would be the case under the state's current limited entry program. For these reasons, it is possible that, for some fisheries, an IFQ system could be designed which would impinge on the equal access values of the Alaska Constitution less than a limited license program. (FN10) Consequently, the constitutionality of an IFQ system should be determined by the same requirements that have been imposed on the current Limited Entry Act, and an IFQ system that served the purposes of the limited entry amendment and minimized impingement on equal access values would probably be found constitutional.

**c. IFQs could be designed to address the purposes of the limited entry amendment.**

Under the limited entry amendment, entry into a fishery may be restricted only "for purposes of

resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State." Alaska Const. art. VIII, § 15. Neither the language of the provision nor its history makes it clear whether these purposes are to be read disjunctively, as three separate grounds for limiting entry, or conjunctively, requiring all three purposes to be addressed before limiting entry into a fishery. Because the purposes are not closely related to each other and there is some indication in the legislative history that the terms were "three grounds," see 1971 House J. 761, it would normally be permissible to read the terms as disjunctive. See, e.g., Norman J. Singer, 1A *Sutherland Stat. Const.* § 21.14 (5th ed. 1993); 16 C.J.S. *Constitutional Law* § 20 (1984); *Territory of Alaska v. Five Gallons of Alcohol*, 10 Alaska 1 (D. Alaska 1940). However, "exceptions to general constitution provisions must be narrowly and strictly construed." 16 C.J.S. *Constitutional Law* § 18 (1984). Therefore, while it is not clear that all three purposes are necessary for limiting entry, if an IFQ program is developed, it should be designed to address all three purposes in order to minimize the risk of being found unconstitutional.

The first purpose, conservation of resources, is a purpose for which an IFQ system is suitable. The legislative history of the limited entry amendment indicates that this reference included conservation "not only of the fisheries themselves, but of the capital and labor resources which are expended in harvesting them." 1971 House J. 761. The legislative history also noted that "limited entry finds its primary significance more in the context of economics than biology." *Id.* Therefore, this purpose can be satisfied by reducing overcapitalization, promoting economic efficiency, or addressing concerns for the biological management of a fishery. An IFQ system could serve any or all of these purposes.

Similarly, the second purpose, preventing economic distress among fishermen and those dependent on them for a livelihood, can also be achieved through an IFQ system. This purpose can be served if continued open access management would lead to economic distress among fishers and those dependent on them for a livelihood. Where there is already a limited entry fishery, substitution or addition of an IFQ system would serve this purpose if the IFQ system would be better suited to prevent economic distress or would achieve the same purpose as an existing limited license program. (FN11)

Finally, the third purpose, promotion of efficient development of aquaculture, might be addressed in a variety of ways. Although aquaculture is sometimes narrowly defined as fish farming or hydroponics, the term can be more generally defined as "the art of cultivating the natural produce of the water," *Webster's Third New International Dictionary of the English Language Unabridged* 108 (1966). Under this more general definition, operation of fish hatcheries, and even encouragement of management practices that increase the survival of fish in the wild or that reduce bycatch waste and discard could be considered promotion of aquaculture.

The existing Limited Entry Act has withstood challenges to its constitutionality despite the fact that it contains no explicit provisions dealing directly with enhancement or promotion of aquaculture. The free transferability provisions of the Limited Entry Act have been held to include the purpose of advancing "the causes of conservation, aquaculture, and the adherence to fish and game laws by giving gear license holders a stake in the resource." *State v. Ostrosky*, 667 P.2d 1184, 1195 (Alaska 1983). Further, aquaculture is encouraged through statutes that provide that Limited Entry Permit holders can form associations for salmon enhancement and, in some cases, can levy and collect assessments on members for fishery enhancement purposes. See, e.g., AS 16.10.380; AS 16.10.540. Statutes authorizing an IFQ system could contain similar or even more explicit provisions for benefiting aquaculture and sound fisheries management. In that way they could serve the purpose of efficient development of aquaculture.

### 3. Constitutional Concerns May Prevent the Federal IFQ System from Serving As a Viable Model for a State IFQ System.

Even though an IFQ system appears to be generally permissible under the limited entry clause of the Alaska Constitution, there are a number of constitutional concerns that must be addressed when drafting the specifics of any system. Although the NPFMC IFQ system might be defensible, these issues weigh against

the adoption of a state IFQ system exactly mirroring the federal model.

a. Constitutional requirements of least possible impingement on open access.

Although the courts have generally upheld the principle of limited entry, they have adopted a test of "least possible impingement." suggesting that to be constitutional:

[A] limited entry system should impinge as little as possible on the open fishery clauses consistent with the constitutional purposes of limited entry, namely, prevention of economic distress to fishermen and resource conservation.

Johns v. Commercial Fisheries Entry Commission, 758 P.2d 1256, 1266 (Alaska 1988). (FN12) The court has stated that this purpose is achieved under the Limited Entry Act through the provisions of AS 16.43.290, which requires the Commercial Fisheries Entry Commission (CFEC) to establish the optimum number of permits. Id. at 1265-66. Under this provision, the CFEC may revise the optimum number in response to changed circumstances, and it must either issue additional permits or buy back permits to reach that optimum number. AS 16.43.300-16.43.330. Referring to the optimum number provision, the court has stated:

Without this mechanism, limited entry has the potential to be a system which has the effect of creating an exclusive fishery to ensure the wealth of permit holders and permit values, while exceeding the constitutional purposes of limited entry.

Johns, 758 P.2d at 1266.

Thus, any state IFQ system must serve an important state purpose and must be narrowly tailored to avoid unnecessary impingement on the equal access principles of article VIII. If it can be shown that an IFQ system will serve the purposes of conservation of resources, prevention of economic distress, and promotion of the efficient development of aquaculture, then it will pass the "important state interest" test. An IFQ system, however, would also have to be implemented in a manner that involved the least possible impingement on equal access values. See 1991 Inf. Op. Att'y Gen. (Sept. 27; 993-90-0049/993-91-105) (Kenai River guide limitation unconstitutional because system discriminatory against new entrants); McDowell v. State, 785 P.2d 1, 10 (subsistence legislation unconstitutional because, although it served an important state purpose, the means were extremely crude in that they were both over and under inclusive).

Economic dependence and investment in the fishery would be valid factors to consider in establishing criteria for an IFQ system, see Commercial Fisheries Entry Commission v. Apokeduk, 606 P.2d 1255, 1266 (Alaska 1980). However, it would also be necessary to provide an opportunity for new entrants to the fishery. (FN13) Further, provisions to prevent the IFQ system from being a system which creates "an exclusive fishery to ensure the wealth of permit holders and permit values" would be necessary. See, e.g., Johns v. Commercial Fisheries Entry Commission, 758 P.2d 1256, 1266 (Alaska 1988). (FN14) It would be necessary to restrict IFQ programs to only those areas of the state where they would serve the purposes of the limited entry amendment. It would also be important, in order to avoid an impermissible abdication of public trust responsibilities, see Owsichuk v. State, 763 P.2d 488, 496-97 (Alaska 1988), for the state to either make the IFQ permits of limited duration or to retain authority to revoke or modify the IFQ program in response to changing economic conditions and public needs. (FN15)

b. The NPFMC IFQ regulations are not designed to meet the test of least possible impingement.

Although the NPFMC IFQ system was not designed specifically to address the three purposes of the limited entry amendment, an examination of the preambles of the proposed and adopted regulations indicates that primary goals of the IFQ system include biological and economic resource conservation, economic stability for fishers and fishing communities, and reduction of bycatch loss and discard mortality. See, e.g., 57 Fed. Reg. 57, 130, 57, 132 (1992). Thus, the NPFMC IFQ regulations appear to serve the purposes of the limited entry amendment.

The NPFMC IFQ regulations also have a number of provisions designed to promote access to the IFQ fisheries. These include provisions for transferability, 50 C.F.R. § 676.21 (1994), restrictions on transferability, *id.* § 676.21(b), restrictions on the amount of quota share which an individual can use, *id.* § 676.22(e)-(h), requirements that IFQ holders must be on board vessels which are harvesting fish in IFQ fisheries, *id.* § 676.13(f) and restrictions on the transferability of IFQ shares between different sizes and types of vessels. *Id.* § 676.21(a). Other measures that promote access include CDQ fisheries and small vessel and jig exemptions that have recently been adopted by the NPFMC. (FN16) The NPFMC regulations also provide that IFQ shares do not constitute "either an absolute right to the resource or any interest that is subject to the 'takings' provision of the Fifth Amendment of the U.S. Constitution." *id.* at § 676.20(g), and may be revoked or amended under the Magnuson Act and other applicable law. *Id.*

Nonetheless, the NPFMC regulations probably do not provide an adequate model for a state IFQ system because the NPFMC regulations are not designed to survive the "least possible impingement" test. The NPFMC system contains a number of provisions that may be in conflict with open access values. First, the NPFMC regulations contain transferability restrictions that discourage new entrants into the fishery by limiting transfers to current IFQ holders or to individuals who have at least 150 days of experience as crew members in a United States commercial fishery. See 50 C.F.R §§ 676.11, 676.21(i). Although this may serve legitimate purposes (i.e., ensuring that permit holders are familiar with the means of operating vessels and gear safely and reducing the opportunity for investment speculation in IFQs), it also presents an obstacle to new entrants. (FN17)

Second, the NPFMC regulations allow some leases of quota shares, (FN18) a measure that would allow some non-participating permit holders to retain and reap benefits from their quota shares instead of transferring them to potential entrants into the fishery. (FN19) Further, the NPFMC IFQ system does not have a provision equivalent to the Limited Entry Act's optimum number provision that allows the issuance of new permits or the buy-back of existing permits in response to changes in the fishery. (FN20) Instead, the NPFMC IFQ system relies on market forces to regulate entry into the fishery and increases or decreases the allocation of fish to shareholders on an annual basis in response to changes in the total allowable fixed gear catch. 50 C.F.R. § 676.20(f). (FN21)

The NPFMC IFQ system also allows corporations and partnerships to hold IFQs. (FN22) This may provide increased access to the fishery for some individuals because it allows pooling of resources in small partnerships and privately held corporations. However, it may also result in reduced turnover of IFQs, presenting a potential that fisheries may become, at least in part, (FN23) exclusive fisheries into which there is essentially no new entry. While holding of IFQs by corporations and partnerships would not necessarily be impermissible for a state IFQ system, the federal IFQ system was designed without regard to the Alaska Constitution's equal access values. Development of a state IFQ system would require careful evaluation of the effects of the IFQ program and of means by which impingement on equal access values could be minimized.

## V. Conclusion

In summary, management of halibut in state waters is under exclusive federal authority, and the NPFMC halibut IFQ plan was legally adopted and implemented for state waters under the requirements of the Halibut Act. The NPFMC sablefish IFQ plan, although legally adopted for the EEZ, did not follow procedures required by the Magnuson Act for federal regulation within state waters and may not prove enforceable in state waters. Finally, IFQ systems appear to be a form of limited entry and would thus be permissible under the Alaska Constitution.

Many elements of the NPFMC IFQ program could serve the purposes of the limited entry amendment of the Alaska Constitution. However, because state limited entry programs must involve the least possible impingement on the open access provisions of the Alaska Constitution, and because the NPFMC IFQ program was not designed to meet these requirements, adoption of the NPFMC program by the state, without further exploration of alternatives, might not result in a state IFQ program that would

have a high likelihood of surviving constitutional analysis.

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We hope this analysis answers your questions. Please contact us if further assistance is desired.

Sincerely,

Bruce M. Botelho

Attorney General

By: Steven A. Daugherty

Assistant Attorney General

(FN1). There are regulations pertaining to halibut in the Alaska Administrative Code (AAC), but these regulations are identical to federal regulations. They do not provide state jurisdiction but are printed in the AAC as a public service to fishers. *See* 50 C.F.R. pt. 301 (1994).

(FN2). *See, e.g.*, 57 Fed. Reg. 57,130, 57,130-43 (1992) (Preamble for proposed rule). *See also* 16 U.S.C.S. § 1853(b)(6) (Law. Co-op. 1984) (Criteria that must be considered in limiting entry include: (1) present participation, (2) historical fishing practices and dependence on the fishery, (3) economics of the fishery, (4) capability of fishing vessels to engage in other fisheries, (5) cultural and social framework, and (6) other relevant considerations).

(FN3). At the June 1995 NPFMC meeting, the National Marine Fisheries Service (NMFS) announced that it was reinterpreting its sablefish regulations to apply only to holders of sablefish IFQ permits.

(FN4). The National Marine Fisheries Service (NMFS) has attributed the sablefish regulations to poor communications with the state and has agreed to attempt to resolve future jurisdictional issues prior to promulgating regulations. Further, NMFS has conceded that in the absence of a formal preemption proceeding, "all existing state laws would remain in effect, and the State would retain jurisdiction and authority to promulgate additional fishery laws that could nullify these federal measures in State waters." Letter from Steve Pennoyer, Alaska Regional Director, National Marine Fisheries Service, to Frank Rue, Commissioner, Alaska Department of Fish and Game (March 6, 1995).

(FN5). However, under federal law, holders of sablefish IFQs who fish in state waters in violation of the terms of an IFQ permit risk the possibility of suspension or revocation of the permit if the federal IFQ regulations are determined to be enforceable in state waters. *See* 15 C.F.R. § 300.

(FN6). We note that, if procedures for federal preemption are followed, state constitutional provisions will be preempted along with state regulations. Federal authorities will then be able to create exclusive fisheries in state waters regardless of any provision of the Alaska Constitution which might prohibit the state from taking similar action.

(FN7). However, while the other equal access clauses do not serve as a bar to limited entry, a limited entry program must minimize impingement on equal access values. *See Johns v. Commercial Fisheries Entry Commission*, 758 P.2d 1256, 1266 (Alaska 1988). *See also infra* section IV.D.3.a.

(FN8). We note that problems in the salmon net fisheries provided the primary impetus for adoption of the limited entry amendment and the subsequent Limited Entry Act. Salmon net fisheries, because of their uncertain returns and rapid pace, are not well suited for an IFQ system. *See, e.g.* Ben Muse, *Individual Fisherman's Quotas and Fisheries Values 2* (November 16, 1988) (a paper prepared for a meeting of the Alaska chapter of the American Fisheries Society).



(FN9). By limiting the amount of fish that fishers can take, an IFQ system reduces the "race for the fish" mentality of commercial fisheries and virtually eliminates direct competition between fishermen for fishery resources. Thus, an IFQ system might be more problematic if the limited entry amendment had been passed in its original form, which included in its purposes insuring "fair competition" among commercial fishers. However, as adopted, the limited entry amendment focuses on prevention of economic distress and on conservation of resources, including capital and labor as well as the fisheries themselves. IFQ systems are well suited for addressing these purposes.

(FN10). Under a limited license program, the number of licenses that can be issued is quite constrained; the legislature has recently addressed this problem, in part, by providing for licenses with restricted fishing capacity, *see* 82 SLA 1985. However, even under a restricted capacity license program, fishers who might be able to participate in an IFQ fishery might be excluded because they were unable to compete in a fishery that is still driven by a "race for the fish" (i.e., fishers who use small boats and supply fresh fish to restaurants and grocery stores). Further, an IFQ program might provide greater opportunity for both new entrants and expansion in fishing capacity by existing participants than would be provided under a restricted capacity limited entry program.

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(FN11). An IFQ system might be better suited for preventing economic distress than a limited license system for a number of reasons including (1) a greater number of participants, (2) better prices as a result of longer fishing seasons and greater ability to adapt to market conditions, (3) increased opportunity to sell bycatch species which might be discarded in a more rapidly paced limited license fishery, and (4) increased financing opportunities due to more predictable catch levels.

(FN12). The equal protection clause of article I, section 1 is also implicated by limited entry decisions. However, a limitation that meets the requirements of an important state interest and least possible impingement-- necessary for burdens on the equal access clauses, *see McDowell v. State*, 785 P.2d 1, 10 (Alaska 1989)--would also meet the requirements of the equal protection clause. *See Baker v. State*, 878 P.2d 642, 644-45 (Alaska Ct. App. 1994).

(FN13). We note that the barriers to entry in an IFQ system may be lower than the barriers in a limited license system, particularly if the IFQ system allows sales of small amounts of quota and imposes restrictions to prevent the concentration of large quantities of quota. At the NPFMC meeting in March of 1995, the NPFMC addressed the problem of providing opportunity for new entrants in the federal IFQ system by providing limited small vessel and jig exemptions and by continuing the community development quota (CDQ) program.

(FN14). An exploration of possible means of providing continued opportunities for new entrants and of preventing the system from ensuring the wealth of permit holders is beyond the scope of this analysis. However, we note that economic pressures, combined with a limitation of the amount of quota that individuals can hold, may be sufficient. We also note that IFQs do not have to be permanent, but can be limited to terms, *see e.g.*, Ben Muse and Kurt Schelle, Commercial Fisheries Entry Commission, *Individual Fisherman's Quota: A Preliminary Review of Some Recent Programs*, 98-102 (1989), and that other methods, such as having a percentage of each permit holder's quota revert to the state and be made available for sale on the open market each year, or providing for periodic reevaluation of an IFQ system, might also be means of preventing an IFQ system from ensuring the wealth of an exclusive class of permit holders. Another option might be for the state to retain ownership of IFQs and simply lease them out, much as it has done with tideland leases. *See, e.g., Ovsichuk v. State*, 763 P.2d 488, 496-497 (Alaska 1988).

(FN15). This responsibility is achieved under the current limited entry program through the optimum number provision. *See supra*.

(FN16). *See supra* note 13.

(FN17). In *Bozanich v. Noerenberg*, No. 70-389 Civil (D. Alaska 1971), a case decided prior to adoption of the limited entry amendment, a statute limiting the issuance of gear licenses to those who had previously held a license or who had three years of experience in the fishery was held unconstitutional under the equal access clauses. The time requirements in the federal IFQ regulations are considerably shorter and do not require experience in the particular fishery for which an IFQ is sought, and thus might be found reasonable despite the burden they impose on entry into a fishery.

(FN18). Catcher vessels are allowed to lease 10 percent of their quota share, and the lease of freezer vessel quota share is unlimited. 50 C.F.R. § 221(f).

(FN19). There is a countervailing argument that leases may allow new entrants to get their feet into the fishery more easily than if a purchase of quota share was required. However, lease rights contribute to the wealth of the permit holder even when the permit holder does not participate in the fishery. Lease rights also increase the value of quota shares and discourage sale of quota share, and thus create an additional obstacle to new entrants.

(FN20). The personal holding limits of the NPFMC IFQ plan do have some similarities with the Alaska optimum number provisions, in that they can be used to effectively set the minimum number of IFQ holders for an IFQ fishery. The personal holding limits can be altered by a change in federal regulations, and could thus be used to increase or decrease the minimum number of individuals in a fishery. However, unlike the Limited Entry Act, the federal IFQ regulations do not require such changes to be made in response to changing economic or biological conditions in a fishery.

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(FN21). Increased value may provide some incentive for sale of quota share. However, it appears more likely that existing quota share holders will simply reap increased profits from increased allocations rather than sell some of their quota in response to increased allocations. We are not saying that reliance on market forces to regulate entry into a fishery would necessarily be unconstitutional, but a decision to rely on such forces could not be made on an arbitrary basis without a thorough exploration of alternatives.

(FN22). Transfers of catcher vessel IFQ are generally limited to individuals and initial IFQ holders. However, there are no restrictions on who may hold initial IFQ, and there is no restriction on ownership or transfer of freezer vessel IFQ. See 50 C.F.R. §§ 676.20, 676.21, 676.22.

(FN23). The danger is much greater for the freezer vessel IFQ program because freezer vessel IFQ can be transferred to corporations and can also be leased without restriction. This may be counterbalanced to some extent by the IFQ holding limits of 50 C.F.R. § 676.22, but these limits do not currently apply to initial quota shares.

# PUBLIC TESTIMONY SIGN-UP SHEET FOR AGENDA ITEM C-1

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2.	Chaig Cochran	M.T.C.
3.	Dorothy Childers	AMCC
4.	Duncan Fields	GOAC <sup>3</sup>
5.	Michael MARTIN	SUZALETH F. INC
6.	Beth Stewart	AEB
7.	JOE Childers	WGOAF
8.	STEVE DRAGE	F/V COHO
9.	DOUG HOERBEK <del>Inda HOERBEK</del>	F/V Peggys Cove Hoerak #99K580C.
10.	ED LUTTRELL/LORI SWANSON	GFF
11.	Julie BARRY	IGDB
12.	GERRY MEZZANON	PROVINCIAL FISHERIES
13.	PAT CARLSON	KIB
14.	Donna Parker	Sea Storm
15.	Brent Paine	UCB
16.	Freddie CHRISTIANSEN	
17.	Bob Krueger	F/V Mar Del Norte
18.	Susan Robinson	Fishermen's Finest
19.	THORN SMITH	NPCA
20.	Chuck McCallum	Chiyuk Service ASSOC.
21.	Mark Chandler	F/V Topaz
22.	TERESSA Kandianis	Kodiak Fish Company
23.	Howard Torsen - Nick Pstrikov <del>JIM Skanberg</del>	Suzinkie NAT Corp
24.	Don Falvey	<del>ALTA</del> SECT
25.		

# PUBLIC TESTIMONY SIGN-UP SHEET FOR

Page 2

## AGENDA ITEM C-1 GOA Groundfish Rationalization

PLEASE SIGN ON THE NEXT BLANK LINE.  
LINES LEFT BLANK WILL BE DELETED.

	NAME	AFFILIATION
21.	MATTHEW MOIR	ALASKA PACIFIC SEAFOODS
22.	Ken Tippett	ALASKA BOAT CO
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ALASKA MARINE CONSERVATION COUNCIL

C-1  
Dorothy Childers  
AMCC

To: David Benton, Chair  
North Pacific Fishery Management Council

Fr: Dorothy Childers

Dt: January 29, 2003

Re: Agenda Item C-1 Gulf Rationalization

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The GOA Rationalization Committee recommended including two conservation components to the alternatives for analysis:

- Element 7, Issue 6 (p. 11 of red line version): PSC Caps for crab, salmon and other species  
Based on a discussion paper, the Council will determine if other or additional approaches (compared to what exist under the open access system) are appropriate to include in a rationalized fishery to reduce bycatch of crab, salmon, herring and other forage fish species.
- Element 13 (p. 24 of red line version): Habitat conservation plan  
Establish a habitat conservation plan to address identified problems or research needs as a trailing amendment after the development of a specific preferred rationalization alternative.

Both conservation elements are recommended as trailing amendments. Both are intended to build conservation measures appropriate for a rationalized fishery and to address the Council's problem statement and meet program objectives.<sup>1</sup>

AMCC's Recommendation:

Do not remove these elements from the document but retain conservation elements in the program as trailing amendments. This reminds future councils of the programmatic intent and shows the public how the Council intends to address habitat and outstanding bycatch reduction issues.

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<sup>1</sup> Meet Magnuson-Stevens Act requirements, including conservation requirements.

# Gulf of Alaska Coastal Communities Coalition

Duncan Fields

January 29, 2003

The Gulf of Alaska Coastal Communities Coalition (GOAC<sup>3</sup>) represents many of the smaller coastal communities across the Gulf of Alaska. Rationalization of federally managed marine resources in the Gulf will impact all of these communities. The National Standards of the Magnuson-Stevens Fishery Conservation and Management Act mandate that "Conservation and management measures shall, consistent with the conservation requirements of this Act ... take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts in such communities." These criteria for rationalization, balanced with the other national standards, reflect our communities' desire for sustained participation in the fisheries and the minimalization of adverse economic impacts through a rationalization program.

The Gulf of Alaska Coastal Communities Coalition's overarching concern is that, through rationalization, smaller Gulf of Alaska communities obtain opportunity for sustained participation in the rationalized fisheries and receive economic benefit from rationalization to minimize adverse economic consequences to these communities. When reviewing elements and options for analysis, the Council should allow staff to explore all of the concepts currently proposed to protect smaller communities. I understand that you may want to benchmark an allocation amount for community protection and move substantive analysis of these alternatives to a trailing amendment. I appreciate the economy of this approach but am concerned that the Council retain in the initial analysis enough substantive issues regarding coastal communities to provide an informational basis for the council's benchmark allocation — community eligibility, species and possible allocation values.

It should be noted that there are two general types of communities in the Gulf of Alaska larger communities with significant processing infrastructure and those without. Each type of community has

different concerns and consequently may need separate protections. For example, Kodiak's interests through fishery rationalization are, generally, to minimize adverse economic impacts by focusing on protections for local seafood processors and their employees. In contrast, Old Harbor and other small communities' rationalization concerns center on loss of opportunity to participate in and lost economic value from rationalized fisheries. The Coalition strongly believes that community protections needed for Kodiak will be substantively different than those applicable to smaller Alaska communities—this is the basis for having several community protection options.

The analysis suggests that the Council identify community “protections” and community “enhancements”. We believe that the staff's use of these terms are pejorative.. As the Council knows, virtually all stakeholders advocate and believe that they are only seeking, through rationalization, an approximation of their “fair share”. At the same time, other stakeholders are convinced that the “fair share” is, in reality, an “enhancement” or windfall. Consequently, it's unfortunate that the analysis incorporates the language of advocacy. Communities are seeking protections. Protections, by definition will provide benefit to qualifying communities. Current community protection alternatives provide the Council options along a continuum of community benefit ---- “benefit” has a protective conotation that avoids the stigma associated with the “enhancement” language.

The two community protections stripped from the elements and options by the AP will provide important tools for the Council. The AP minority report on the CIFT is instructive and streamlines the CIFT concept. We support analysis of the revised CIFT as outlined in the AP minutes. The TURF concept, as noted by the minority of the AP, is very flexible and adaptable. Several communities have testified that they would like further amplification the TURF and believe that the TURF tool may provide the protections they are seeking.

Another aspect of the AP motion is strongly opposed by coastal communities. Under the two pie

system, the AP stripped processor quota allocations options from the analysis. Again, at this early stage, fairness and parity should be maintained and, under the Community Fisheries Quota framework, the option to award processing quota shares to protect communities should be returned to the analysis.

I understand the Council's desire to "fast track" gulf rationalization. As you know, the Gulf Communities Coalition has worked with the Gulf Rationalization committee to facilitate Council's concerns. However, member communities have supported each of the four community protections currently in the draft document and, should these options be eliminated without any analysis, some of these communities may come to believe that the Council has ignored their concerns. Opposition to the entire rationalization process may expand and intensify in these communities. Perhaps, going a bit slower with a trailing analysis of the four community protections alternatives will better facilitate our common goal.

I have enclosed for your reference a checklist of modifications the GOAC<sup>3</sup> recommends to the AP motion.

1. Return to the draft, for analysis, the modified CIFT as outlined in the AP minority opinion.
2. Include, under the "two pie" alternative an option for IPQ to be awarded to qualifying communities. The details for IPQ allocation would track the Community Fisheries Quota (CFQ) option under element 12.
3. Return, for analysis, the TURF proposal. The analysis would be qualitative and provide the Council with information regarding the use of the TURF concept in existing fisheries in the U.S. and throughout the world.



Charlie Parsons  
PO Box 2339  
Homer, AK 99603  
907-235-2606 phone  
907-235-0168 fax  
Nitwatch@xvz.net

C-1  
Jol  
Childers  
W-Alaska  
Fisher

F/V Night Watch

North Pacific Management Council

Chairman Benton, Council Members,

As the race for fish goes on the price for life resource and property gets cheaper. On Jan. 20 the start of western gulf, 2003 pollock was to begin with the wind blowing 45 with gusts to 80. With 20% of your year's income riding on the next three days, you wonder about your sanity but you start to fish any way. There is a lot of fish around I here of lots of people over filling their nets, gear starts breaking, riblines parting, meshes ripping. With the wind getting stronger and heavy bags gear on the boats starts to break. We have about 90,000 lbs. in our bag when a fitting on our forward net reel splits apart, sending hydraulic oil everywhere and the net paying back out, wrestling to get a strap on it before it comes to its end and parts off. Getting the net aboard we discover the belly is gone. We go in behind an island for protection and change nets, coming back out I hear Robin on another boat has lost a man overboard. The man was lucky, he was able to get hold of the codend and crawl back aboard. The chances of finding him in the dark in that wind where nil. With the wind blowing harder now, we began to make another set. An hour later the eggs go down( catch sensors ) and we haul back. We have a good catch of fish this time also but the belly is gone out of our net. We were done for awhile. In town we offload and fix one of our nets. Going back out its 11:30 PM and we hear it will close at noon tomorrow.

Our story is a good one. We got two trips and nobody got killed. The point is the race for fish has to stop before it's the other way around and somebody does get killed.

Charlie Parsons  
Owner, operator F/V Night Watch

Fish is food for life

1-25-03

Dear Council members

I have just completed the area 610 pollock derby, and I have never witnessed a more expensive fishery. Knowing it would be, at best, a three day season, this was the ultimate race for fish.

I have been fishing Pollock now for thirteen years and this was the worst weather I have ever worked in. There was gear destroyed, a man overboard, another had to be taken to the clinic, and resource destroyed.

And at the end of the day, I don't know of anyone who made any money.

I ask you please to fast track Gulf Rationalization.

most sincerely  
Tom Evich  
F/V Karen Evich  
Sand Pt. Alaska

1/25/03

To Whom It May Concern:

A statement for rationalization of groundfish in the Gulf of Alaska.

This is what happened on the F/V Primus during the Pollock A season in 2003. Primus is a 58 foot combination trawl, longline, seine and pot fishing boat. We pride ourselves on being able to do it all. This season started normally with the crew and myself arriving in Sand Point, AK on the 14<sup>th</sup> of January. We got all of our preseason work done and did some testing of the gear. We were ready to fish.

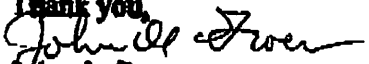
The 2003 Pollock A season for the Western Gulf of Alaska is only about 6,000,000 lbs. There are now about 30 boats that try to catch the quota. That works out to about a 200,000 pound.

The season opens at noon on the 20<sup>th</sup> of January. The weather has been bad and is 35 to 40 K from the NE with a swell of over 12 feet. We anticipate a very short season. The decision is made to go out and catch fish. The rest of the fleet makes the same decision. Our net goes out easy and looks to be fishing well. There appears to be plenty of fish when the sun goes down. We tow long enough to fill the net but knowing the season will be short we want to make sure we have enough and tow just a little longer. The result is a tow with way too much fish. We manage to wind up the net and get to the fish. In the process of putting on a strap on the net to tow it to calmer water a big wave went by and it's ~~strap~~ causes a hydraulic fitting to fail on the net reel. This was just one of our problems that night. We had a 1" spectra gilson fail. We had water in the fuel causing the big auxiliary which drives the hydraulics to work at half power. We had problems with the intermediate and cod-end. Fortunately no one got hurt. Because of the weather most of the fish were lost. We delivered the fish and worked through the next day making repairs. We managed to make one more tow before the season ended. This was done in bad weather also.

Through the grapevine we heard that others had problems also. One boat had a man fall overboard. He was saved. Another crew was hit on the head and knocked unconscious and list goes on and on.

Fishermen need rationalization. As the number of participants grows the seasons will grow shorter. Management of the fisheries will get more difficult. Quality is not nearly as good as it should be. Roe percentage in the fish is not regarded at all for the A season. Volume is the only consideration. Safety? What is safety when the season is this short. Rationalization will give us a better opportunity to work around environmental problems. Rationalization is the only way to go. Whatever form rationalization takes will be better than what we have now.

Thank you,

  
John de Groen  
F/V Primus

*North Pacific Fishery Management Council  
606 W. 4<sup>th</sup> Ste 306  
Anchorage, Ak. 99501*

*January 26, 2003,*

*Dear Chairman Benton:*

*This past 'A' Pollack season in the western gulf ( area 610) really sucked. The weather was terrible, the roe was low, crewmembers going overboard and it goes on and on. This race for the fish is getting dangerous. Everybody want's to get there share of the pie, so there is a lot chances taken.*

*We wrecked our net, broke gilson lines, blew hydraulic lines and broke a lifting block. Some thing has to be done to make this a safer fishery.*

*Raymond Ogata*

**MIKE ALFIERI  
OCEAN STORM FISHERIES INC.  
2273 66<sup>TH</sup> AVENUE SOUTH EAST  
MERCER ISLAND. WASHINGTON 98040  
206 232 6647**

January, 25 2003

Mr. David Benton  
North Pacific Fishery Management Council  
605 West 4<sup>th</sup> Avenue  
Suite 306  
Anchorage, Ak. 99501

Dear Mr. Chairman and Council members,

I have spoke in front of the council on numerous occasions as President of Western Gulf of Alaska Fishermen (WGOAF). I am writing this letter as an owner operator of a 58' Trawler operating out of Sand Point, Alaska. I just finished my 2<sup>nd</sup> consecutive 3 day Pollock "A" season in area 610. The ultimate race for fish, as bad as any of the Halibut derby days. I take that back it was worse, we aren't dealing with 1 Halibut hanging on a hook, we are dealing with 40 to 80 Tons of Pollock hanging off the stern of my boat in savage sea conditions,

When the season opened the weather was tolerable, but it got progressively worse. When we hauled our first tow back it was downright miserable. After we managed to get the codend to the stern we hooked the first gilson line to the net. Due to the sea conditions the line parted causing the codend to shoot back out the stern. Luckily none of my crew was injured. We had a new gilson line aboard and installed it on the winch then we proceeded to bring the codend aboard. Over the next three hours of wallowing around in violent seas and dumping our codend we also parted a single block on the main boom and literally ripped the dog mechanism off the trawl drum. It was to rough to set back so we went to town and unloaded what we managed to salvage from the tow.

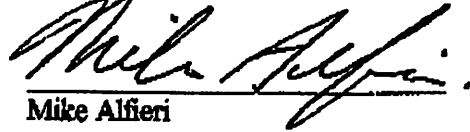
A number of vessels, because of the race for fish and having to fish the tough weather had serious problems. Another boat like mine also broke his gilson line but he had a crewmember actually go into the water from that incident. Luckily he was able to crawl back up the codend onto the vessel. Another vessel bent his main boom. There was a lot of net damage due to dealing with fish in that kind of weather. On what turned out to be our last tow of the season a wave washed my net under the stern of my boat into the propeller doing major damage to the net.

Also due to the race for fish we can't target the roe fish correctly. Some boats fished a different area than I did to try and avoid the weather but there was very little roe in the fish they caught. Where we fished the roe seemed to be better at night but when you're in a race you can't wait. The roe might have been better two weeks from now but we'll never know that.

I keep preaching that one of the days somebody will get hurt. While we dodged the bullet this time we didn't dodge it by much. Last winter during the cod fishery a local boat fishing tough weather iced up and rolled over, luckily all hands were saved.

Please, Please, Please, do all that you can to implement a rationalized fishery in the Gulf AS SOON AS POSSIBLE. We all need and want it to happen

Thank You,



Mike Alfieri

Mr. R. J.

Thanks

Don Surve,

we make a good percentage of our income from these seasons, and we have made more and more people are getting hurt. It cost you to please consider a different approach to this. Other things have programs, I see no reason why we should. Lets get together and fix this. So we can do the community.

My name is Hudson Bear, I own & operate, a tractor (Miky way). I have been fishing in Sandpoint for years since 1997. We recently had a 3 day pollock season, where two of those days it blew 40 miles or higher, pretty dangerous. I stayed in for about 19 days. when it did go out for 22 day, we for our net had because of weather and also, one of my crew members, got struck on the head, he is still recovering. It, lucky he didn't get killed.

H: Doc, hope all is well with the year.

206-517-2707

C-1  
Jerry Merrigan

## Suggested Revisions to Elements and Options: GOA Rationalization

1.) **CDQ Holdings:** In the draft discussion paper there is no rationale provided for the inclusion of this element. There was no discussion at the AP nor mention in public testimony. BSAI CDQ groups have been encouraged to invest in fisheries. This measure is punitive for CDQ groups that have made fisheries investments as well punitive for the fishing businesses in which they have invested. This element unduly restricts QS recipients with CDQ partners for no apparent benefit or rationale. **Recommend deletion of this item.**

2.) **Community Fisheries Quota Allocation:** In the problem statement, the main purpose of rationalization is to end the “race for fish” and not reallocation. While there is an objective to provide opportunities for coastal communities, there is also an objective to prevent historic users of the resource from losing the relative value of their existing investments. At the AP, almost all the public testimony consisted of GOA participants asking for their historical catch.

“Enhancement” of opportunity for communities will therefore involve reallocation from existing sectors. It has been argued that under National Standard Eight, this reallocation could be for mitigation purposes resulting from conservation and management measures. However, the same national standard prevents such measures from having economic allocation as their sole purpose. The distinction between mitigation and economic allocation is not eminently clear.

Therefore, **recommend amending allocation range to 5 - 15% of TAC. Species need to be specified. Also recommend deleting allocation option in terms of annual product value as this will be “...extremely difficult to analyze and (and extremely difficult, and unnecessarily cumbersome to implement)”**. [Discussion Paper, p. 26].

Also **recommend including an option to award a range of 5 – 15% of the IPQ directly to the communities consistent with the reasoning stated in the AP minority report, “It is unfair to place the entire cost of the CFQ program on the harvest sector.”**

3.) **Sideboards:** There is a sideboard element in each alternative that reads “*Participants in the GOA rationalized fisheries are limited to their historical*



*participation based on GOA rationalized qualifying years in BSAI groundfish fisheries.”*

It is not clear what this section means? Does it involve participation or catch? For what species? Staff recommended that the Council should identify options for analysis as no options were identified by the committee or AP. Sideboard issues will be problematic for vessels with both GOA and BSAI history and particularly with non-AFA BSAI history such as participation in the fixed gear cod fisheries.. Exemption thresholds may be necessary. Complications may also arise from future rationalization efforts in the BSAI. **Recommend adding options:**

- 1.) No sideboards (are sideboards necessary?)**
- 2.) (if catch) 100% of history**
- 3.) (if catch) 125% of history**

**4.) Qualifying Periods:** Add 98-02 (drop 1)

**5.) Leasing:** Revise Suboption 4 to also include qualified entities (other than individuals).

## Consideration of Cooperative Alternative

- Consolidated Appropriations Act of 2001 directed Council to consider several approaches rationalizing GOA groundfish fisheries including cooperatives.
- Council has previous experience with cooperatives (AFA).
- During public hearings on scoping, *“There was limited support for an IFQ rationalization alternative... .. Cooperative management was the most frequently supported of the rationalization alternatives. Most public commenters supported this alternative because it was generally perceived that this alternative would provide the greatest flexibility to address management needs and avoid potentially limiting allocations of small blocks of QS to individual vessels. [p. 4, Public Scoping Report: Alternatives].*
- While not on the GOA Committee, CP representatives requested the inclusion of a cooperative alternative (as in AFA). This alternative was not included in the Committee’s Elements and Options.
- The Council directed the CP sector to submit a proposal to the GOA Committee for the CP sector by November 1. CP H&L representatives supplied an alternative to the GOA Committee based on a sector split followed by coop formation for the CP H&L sector. CP Trawl representatives also submitted a proposal. Neither proposal was an IFQ QS system.
- The Committee incorporated portions of the CP proposals into the Elements and Options for the December Council meeting. However coop alternatives were only included under IFQ QS alternatives.
- At the December NPFMC at the AP, since the CP proposal was not in the elements and options, CP once again tried to

reintroduce their proposal as a stand alone option. ~~The AP did not accept the proposal.~~

- Also at the December Council meeting, the Council added the CP proposal for consideration and directed staff to “...*identify which elements of catcher processor proposals are not currently included in the main suite of options and discuss issues associated with those elements that were not carried into the suite of elements and options compared with retaining the structure of the original proposals as stand alone alternatives.*”
- For the January meeting, due to time restraints, staff has not reviewed the CP recommendations for inclusion in the analysis as thoroughly as was done for the committee recommendations. There is a discussion of CP proposals on p. 6 & 36 in the paper as well as an attached 8 page paper of clarifications requested.
- The Discussion paper states (p. 14) that “*Council clarification of its intent in the formatting of the analytical alternatives is requested, i.e. are “plain coops” implicitly included as subalternative? The Council might consider whether a sixth alternative for an AFA-style cooperative not under a QS program should be included.*”
- The Discussion paper also states (p. 34) that “*Two additional management actions were raised during scoping but are not included in the committee recommendations [1.) AFA-style cooperative, and 2.) fair start]. Staff has earlier recommended consideration of adding an AFA-style cooperative alternative to the analysis, but cautions whether a fair start alternative sufficiently addresses the goal of comprehensive rationalization of GOA groundfish fisheries.*”
- At this meeting, the AP added a sector split and asked the CP sector to provide a cooperative subalternative that can be incorporated into and corresponds with the appropriate elements in Alternative 3. This was done and approved by the AP.