Greetings Council,

RE: Groundfish Fishery Management Plan Amendment 20

Please find attached below public comments from 68 members of the public urging the Pacific Fishery Management Council to: a) support the status quo management alternative b) 'go back to the drawing board' and develop a strategically informed alternative proposal focused on delivering public interest outcomes; and c) hold a referendum if the present plan goes ahead.

I trust you will take note of these comments and act responsibly.

Thanks and regards,

Ben Bowman

Begin forwarded message:

From: John & Margaret King <kingjmjc@roadrunner.com>
Date: October 24, 2008 7:06:27 PM PDT
To: bbowman@fwwatch.org
Subject: Rationalization of the Pacific Coast Groundfish Trawl Fishery
Reply-To: kingjmjc@roadrunner.com

Ben Bowman,
Food and Water Watch
25 Stillman Street
Suite 200
San Francisco, CA 94107
US

Dear Pacific Fishery Management Council members,

In respect to Amendment 20 to the groundfish fishery management plan, I urge you act in accord with your public interest role, and actively support the status quo management alternative at the upcoming November 2008 meeting.

Further, Council should then 'go back to the drawing board' and develop a fishery management program that strategically moves the groundfish fishery towards outcomes that benefit the fish, the fish habitats, the relevant fishing communities, and the general public - not just a small corporate cartel. If Council does push through this bad plan then a referendum of the affected fishers should be held to decide the fate of Amendment 20.

The Preferred Alternative (the big groundfish giveaway), despite reams of documentation and years of discussion, is no closer to being upfront about its goal, that is: to shift from the status quo to create a quasi-monopoly of corporate controlling interests that can extract abnormal profits from a public resource, in a highly secure and difficult to reverse context. When an industry is allowed to set its own conditions for economic competition, serious long-term problems result.

If clarity around the true goal of Amendment 20 was placed front and center before the public, there would be no way they, or anyone truly representing the public interest, could support it in good conscience. I urge you not to as well.

I appreciate the opportunity to comment on this matter and trust you will act responsibly.
Sincerely,

John & Margaret King
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From: Lisa Barrett <kumirami@aol.com>

Lisa Barrett
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Ben Bowman
Policy Analyst, Fish Program
Food and Water Watch
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415-271-1577 (Cell)
415-904-8395 (Landline)
Subject: Fwd: Rationalization of the Pacific Coast Groundfish Trawl Fishery
From: bbowman@fwwatch.org
Date: Wed, 29 Oct 2008 22:12:04 -0600
To: pfmc.comments@noaa.gov

----- Forwarded message from barbara@barbaragates.com -----  
From: Barbara Gates <barbara@barbaragates.com>  
Reply-To: barbara@barbaragates.com  
Subject: Rationalization of the Pacific Coast Groundfish Trawl Fishery  
To: bbowman@fwwatch.org

Ben Bowman,  
Food and Water Watch  
25 Stillman Street  
Suite 200  
San Francisco, CA 94107  
US

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I appreciate the opportunity to comment on this matter and trust you will act responsibly.

Sincerely,

Barbara Gates
1015 Hearst Avenue
Berkeley, CA 94710

----- End forwarded message -----
I appreciate the opportunity to comment on this matter and trust you will act responsibly.

Sincerely,

Sylvia Tennen
41 Patton Blvd
New Hyde Park, NY 11040

----- End forwarded message -----
October 29, 2008

Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220-1384

RE: Groundfish Fishery Management Plan Amendment 20: Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery

Dear Pacific Fishery Management Council,

Food & Water Watch (FWW) is a national consumer advocacy organization that works to resists corporate consolidation and market control of our food and water. For the consideration of Council prior to taking final action on the above matter, please find below, FWW’s general and specific recommendations, and conclusion.

General recommendations:

- **The Council should support the status quo management alternative.**

  The preferred preliminary alternative still does not contain adequate considerations for fair and equitable fisheries management. Failing a complete overhaul, Amendment 20, will not, in our view, optimize community benefits from, or good stewardship of, Pacific groundfish. The proposed Program, if implemented, will result in a myriad of irreversible or significantly difficult to ameliorate environmental and socio-economic impacts. From a balanced public policy perspective, these expected impacts far outweigh any perceived or hoped for benefits of the preliminary preferred alternative. A significant net social loss can be expected.

  Moreover, FWW recommends that the Council, prior to taking action; reflect critically on the ten National Standards of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) for drafting conservation and management measures. The proposed Program must conform to the National Standards - including Nation Standard 8 that requires for the sustained participation of communities.

  > (8) Conservation and management measures shall, consistent with the conservation measures of this Act (including the prevention of overfishing and rebuilding of 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 Council should ‘go back to the drawing board’.

FWW urges the Council, further to supporting the status quo, to ‘go back to drawing board’, and develop a long-term strategic assessment of the challenges and opportunities likely to affect the ecological and social systems of the Pacific Coast. This analysis should inform the development of alternative management programs for the groundfish fishery, including community-based fishery management models. We believe that robust analysis will reveal the superior merits of community-based models and related value chains. The Council has a real opportunity to provide strategic leadership in relation to the balancing of social and ecological systems possible through well-crafted community-based models.

Significantly, we understand that analysis of community models has not been conducted. Community models should be discussed as a reasonable alternative to the current preferred option.

P.L. 109-479, sec. 302(f) [uncodified]
PACIFIC FISHERY MANAGEMENT COUNCIL. —

(2) REQUIRED ANALYSIS. —In developing the proposal to rationalize the fishery, the Pacific Council shall fully analyze alternative program designs, including the allocation of limited access privileges to harvest fish to fishermen and processors working together in regional fishery associations or some other cooperative manner to harvest and process the fish, as well as the effects of these program designs and allocations on competition and conservation. The analysis shall include an assessment of the impact of the proposal on conservation and the economics of communities, fishermen, and processors participating in the trawl groundfish fisheries, including the shore-based sector of the Pacific whiting fishery. (MSA 2007 p.170)

FWW is further concerned that a robust social factor analysis, including interviews with affected stakeholders, and a related social impact assessment has not been conducted as suggested by the NMFS Operational Guidelines – Fishery Management Process Appendix 2(g).

The Council should conduct a referendum.

If the Council takes final action on the current proposal, FWW requests that a subsequent referendum of eligible permit holders be held. The National Oceanic and Atmospheric Administration has developed a proposed rule for the conduct of a referendum for application by the Gulf of Mexico Fishery Management Council. This proposed rule should prove easily transferable to the Pacific plan. This gives fishermen that will be regulated under the Plan a real voice in whether such new management should or should not move forward.
Specific recommendations on key issues:
(If the Council chooses to further refine Amendment 20)

A2: IFQ system details

- No initial allocation to processors.
- The buy-back pool of quota share is allocated initially to achieve management outcomes related to regime transition impacts; it is then the first quota share to be auctioned.

A2.2: Permit/IFQ holding requirements for acquisition

- No carry over is permitted.
- Owner operator requirements.
- Accumulation caps should be small enough to protect small fishers.
- Regional Fishing Association holding requirements given further thought.
- Develop a process to assist new entrants.

A2.2: Program administration

- Full cost recovery.
- Equitable sharing of costs including observer costs.
- Adaptive management tool used for the one time resolution of proven stranded capital issues only.

A3: Adaptive management

- At least 10% of quota pounds set aside for use in an ongoing adaptive management program with conservation and community impact outcomes prioritized.

A5: Alternative scope for IFQ management

- Separate bycatch caps for each sector.

A6: Fixed term duration of the IFQ program

- A fixed term duration of the IFQ program of no more than 10 years as dictated clearly by the MSA in Section 303A 7(f).
- Public capture of the fiscal amount made available for redistribution by the proposed IFQ. Capture should occur both at the time of allocation and thereafter through the capture of resource rent by rolling auctions of quota shares. Council should consider how best to deliver fiscal benefits to the public. Select auction partitions could be devised with certain scales or types of operation in mind, for instance small low impact operators and communities. Moreover, an auction system offers management flexibility for an uncertain future.

A7: Gear conversion

- Gear conversions provisions should focus on the minimization of ecological harm and...
increased fisher safety.

A8: Regional landing zones

- Implement regional landing zones and consider the division of optimal yield by spatial area.

Conclusion:

The rationalization plan is clearly the product of a political marketplace dominated by powerful interests, who, through consolidation, seek to privatize profit and socialize loss. FWW believes that the proposed preliminary alternative will most likely prove significantly more problematic and costly to manage than the status quo - in both the short and long-term. Rather than an inclusive, community-based new plan, the Council is about to approve a program that will give-away public resources to just a handful of people. This is not a fair or good outcome and there are other options.

Community-based management models offer significant promise as a superior management regime to the preliminary preferred alternative, but unfortunately, to our knowledge, these models have been seriously under-explored. Strategic analysis would reveal the value of these models and the related value chains that produce low volume high value product to eager consumers of safe and high quality local food.

In summary, to rescue its role as a manager of public resources for the benefit of all rather than a few, the Council should support the status quo management alternative at the November meeting and then ‘go back to the drawing board’ to develop a strategically informed management regime based on the ideal of optimizing community benefits from, and stewardship of, this valuable public property resource. This alternate course of action is your chance to display national leadership, and imprint a positive legacy.

If Council does push through this bad plan, then a referendum of the affected fishermen should be held so they have an opportunity to decide whether Amendment 20 does or does not go forward. Some of the other existing IFQ plans for U.S. fish have been handled this way.

Sincerely,

Ben Bowman
Policy Analyst
Food and Water Watch
October 14th, 2008

Pacific Fishery Management Council
Don Hansen, Chair
7700 NE Ambassador Place, Suite 101
Portland, OR 97220

Re: Trawl Rationalization Amendment 20 – Agenda Item F-3

Dear Chairman Hansen,

There are a couple areas in the analysis that could be stronger, and the issues they deal with may be best addressed by “adaptive management.”

**Captains and Crew – Section 4.7.2**

Consolidation in the harvest sector is a desired and expected outcome of the rationalization program. Consolidation is predicted in both the shoreside and mothership harvest sectors.

The analysis predicts 50-75% of the captain and crew positions will be lost due to consolidation. While the remaining jobs will produce higher incomes, this is little consolation to the captains and crew who lose their jobs. Consolidation among vessel owners will occur on a willing buyer, willing seller basis, providing appropriate compensation.

Like most of the Alaskan rationalization programs, the national standard of equitable treatment of all fishermen is being ignored once again. Some vessel owners are fishermen, but not all fishermen are vessel owners, and consideration for those fishermen is lacking in this program. The only thing that mitigates this issue, for captains at least, is the larger component of owner/operators or family operations in the west coast trawl fleet as compared to the Alaskan crab fleet.

The analytical model predicts that after consolidation vessel grosses will increase, but that the share of the gross to captains and crew will decrease 2.5-5%. Given the degree of consolidation predict, the model underestimates the extent to which the lease fees charged by quota owners will be passed on to the captains and crews.

It is unfortunate that there are no options in the analysis to deal with the human impacts of this desired consolidation, with the exception of adaptive management.

**MS Linkages – Section B-2.4**

The proposed linkages in the MS whiting coop proposal are more restrictive than either MS or inshore AFA coop movement rules.

In section B-2.4 on Whiting MS Processor Ties on page 83 it states:
Council members expressed that by selecting a 90 percent linkage option as part of their preferred alternative it was their intent to provide a means for vessels to move between motherships without entering into the non-co-op fishery. In order to achieve this intent, additional modifications will be required. Specifically, in the last paragraph...would need to be changed to read:

“Thereafter, each year, CV(MS) permit owners choosing to participate in a co-op will deliver their obligated catch to the mothership to which they delivered the majority of their catch in the previous year.”

I fully support the intent of providing an alternative way, other than an open access derby, for movement between markets. However, this program is a permit based program, in contrast to the AFA which is vessel based. The proposed language doesn’t achieve the goal, and the reason is that permits don’t deliver catch, vessels do.

The way the 90/10 provision works in AFA inshore coops (AFA MS coops have no linkages), a coop pools each vessel’s 10% to allow one vessel to deliver the majority of its catch to a different processor. Under the AFA it is the activity of the vessel that determines what processors it will be affiliated with in the next year. Even with the language proposed on page 83, each permit has an annual obligate of 90%, so even if the vessel owner makes the majority of its deliveries to another market, it can only do so using the 10% bits from other permit holders, but that vessel permit will still have the majority of its quota delivered to the original MS, and so won’t qualify for a new market.

It would be helpful if the analysis showed the amount of harvest quota in the MS sector going to permit owners with cross ownership with the processors. The historic instability in the MS sector that has resulted in under-harvest of the MS allocation in some years was not harvester driven, it was driven by the variability in participation by the MS’s themselves.

I support the new option proposed at the GAC, of no linkages. Adaptive management could be developed to address processor concerns in the MS sector if needed.

**Processor Impacts Section 4.9**

This section deals with the impacts of the program, including allocation of harvest shares to processors, on trawl groundfish, but the analysis lacks discussion of the impact of such an allocation to processors of non-groundfish species.

As someone marginally involved with a small processing company in Alaska that didn’t receive pollock “linkages” and 0.13% of the crab processing quota, I’ve seen first hand the impact these rationalization programs have had on a processor who depends on other species.

Even Section 4.14.2.5 Impacts on Fishery Processors, Infrastructure, and Suppliers ignores the impact on processors of Dungeness crab, shrimp, tuna, and salmon, as well as buyers of non-trawl groundfish, of allocating harvest shares to trawl groundfish and whiting processors.

Harvest quota shares given to processors serve two purposes:
1- leverage to get a harvester to deliver
2- asset value
Leverage – There are two ways processor owned harvest quota can be used as leverage. First, is to get a harvester to deliver at a price lower than he would otherwise accept, Second, is to exert a greater degree of control of what that harvester does in other fisheries in which the may participate.

It clearly puts a non-groundfish processor at a disadvantage in competing for landings of non-groundfish species if a harvester that participates in both fisheries has ties as a result of the leveraging of groundfish processor owned harvest shares.

Asset – Though groundfish processors advocate that they be allocated harvest shares as compensation for “stranded capital” the small number of processors that will receive the lion’s share of such an allocation will still be in business and so the harvest shares will go on their books not as a write-down of “stranded capital, but as a new asset.

The majority of processors who will receive minimal amounts, if any, of harvest quota will lack new assets. This will have the effect of skewing the playing field in favour of the big harvest quota holding processors. Independent processors of crab, tuna, shrimp, and salmon won’t have the new asset to collateralize a line of credit to finance their pack.

When quota shares were given out to Alaskan pollock and crab harvesters, they came with sideboards to limit expansion into other fisheries by quota recipients. The biggest quota holders under this program will be a couple processing companies. This program has no sideboards to prevent these processors from using their new assets to the disadvantage of processors of other species.

Once given out in one fishery, processor linkages and quotas are a cancer that can’t be contained. They become their own rationale. If whiting processors get linkages or quotas, then shrimp processors will need them to balance the playing field…and so it goes from there down the line.

Again, the Council should look to adaptive management as an option to be developed to address processors concerns.

Thank you.

[Signature]

dave fraser
PO Box 771
Port Townsend WA 98368
Please accept this summary of NRDC’s recommendations for the trawl rationalization program

Karen Garrison  
Natural Resources Defense Council  
111 Sutter Street, 20th Floor  
San Francisco, CA 94104  
Tel: 415.875.6100  
Fax: 415.875.6161
NRDC Recommendations for Trawl Rationalization  October 28, 2008

NRDC acknowledges the tremendous amount of work that has been done, but finds the analysis incomplete for some elements of the program. For example, we could find no clear description or analysis of alternatives for how overfished species would be allocated, and no mention in the discussion of which species would be covered with quota of triggers for assigning quota should conditions change. We recommend additional targeted analysis in the DEIS and a transparent process to address issues not fully analyzed or not resolved at the November Council meeting.

1. **Adaptive Management Provision (AMP)**. We support an AMP of at least 10% to be used for environmental and socio-economic purposes, such as addressing unforeseen impacts; promoting economic development, stable employment and processing capability in vulnerable communities; and promoting bycatch reduction/sustainable practices. The AMP should begin at the start of the program.

   **Rationale:** A multi-purpose AMP could promote lower-impact fishing practices, helping mitigate the ITQ program’s inherent lack of incentive to reduce bycatch and habitat impacts related to non-quota species. Setting aside quota for unintended consequences makes sense given our inability to predict the future. The AMP could address adverse impacts on smaller volume fishermen and processors, balancing the economic efficiency focus of an ITQ program with social and conservation values. It has the potential to provide a more targeted means of stemming the loss of small processors and stabilizing vulnerable communities than processor quota, which would likely benefit larger operations disproportionately and could be transferred out of a community by a processor with multiple operations. We would support an increase in the AMP to 15% or more if a significant portion remains available for conservation purposes.

2. **Gear Switching with Incentives for Permanent Conversion.** We recommend two gear-related options because of their potential conservation benefits: (1) combine the unrestricted gear-switching provision with endorsement of the concept of incentives for permanent conversion to lower impact gears; and (2) adopt, provisionally, an option that qualifies fixed-gear limited-entry permit holders to buy trawl QS (to use with presumption of 100% observer coverage), and analyze this option in the DEIS. A committee with trawl, fixed gear, and conservation representation could develop the details of these provisions.

   **Rationale:** With flexible switching, trawlers are likely to supplement trawling with fixed gear to increase their catch of target species without reducing trawl effort. No conservation benefit will result. In contrast, allowing fixed gear permit holders to purchase trawl quota share clearly shifts effort from trawl to gears with less bycatch and reduced habitat impacts, creating conservation benefits on a purely voluntary basis. Likewise, permanent conversion from trawl to pots could reduce the intensity and possibly the extent of trawling, benefiting bottom habitat and likely reducing the catch of overfished species. This proposal would achieve benefits purely through incentives, not requirements.

   Conversion will appeal to only a limited portion of the fleet, such as sablefish trawlers in areas of high bycatch risk (WA) or in places with high consumer demand for non-trawl-caught fish (central CA). A recent study found that pots consistently have the least overfished species bycatch and are the preferred choice of trawlers interested in conversion. An incentive program could make gear conversion a viable alternative to selling out; it thus diversifies the fleet and may help stem the loss of fishing activity from vulnerable communities. Incentives could include supplemental quota from the AMP for the first couple of years after permanent conversion or funds to buy new gear, among other options. Without the measures discussed above, the groundfish fleet may miss opportunities for a more optimal voluntary partition of quota between trawl and other sectors that could benefit fishermen, habitat and fish.

3. **Accumulation Limits, No Grandfather Clause, No Processor Quota.** We recommend an accumulation cap of 3%, no grandfather clause, and the use of the AMP to address community impacts.
Rationale: The combination of these measures should help limit monopolistic control by big players and help meet social objectives of the program. A provision requiring that the owner of quota share operate the permitted vessel would be even more effective and more difficult to circumvent.

4. Acknowledge Oceans as a Public Trust. We recommend including a fixed term option and a revenue generating option among several options that recognize public ownership of the oceans: (1) a fixed-term allocation of QS (e.g. the 15- to 16-year period considered in the PEIS), followed by auction of a portion of the QS on a rolling basis to create revenues for public purposes like conservation and research; (2) a fixed term followed by reallocation to the former holder if performance standards are met; (3) auctions of QS of rebuilt species; and (4) dedication of a portion of the AMP, once its initial transition purposes are met, to be auctioned to support public purposes. Any of these features could be designed to meet the objectives of the trawl ITQ program.

Rationale: The Council is contemplating an enormous permanent gift of groundfish to the trawl fleet. This grant is likely to create a great deal of wealth, yet there is no mechanism to transfer a portion of that wealth over time to the owner of the resource—the public. The preferred alternative lacks measures to ensure that bycatch of non-quota species will be reduced or habitat better conserved. The issuance of quota and 100% observer coverage will help keep quota holders within OYs, but will not automatically reduce bycatch of non-quota species or reduce habitat impacts. Funds from auctions can help achieve conservation and other public purposes not addressed by the ITQ program. A fixed term can provide management flexibility, an opportunity to phase in an auction system or apply performance standards, and an incentive to meet those standards. We urge the Council and NMFS to endorse design features that recognize the public trust, per the recommendations of the U.S. Commission on Ocean Policy.

5. Broadest List of Species to Be Covered with Quota. Based on the incomplete analysis now available, we suggest assigning quota for all sectors for a broader range of species than recommended by the GAC at its most recent meetings (possibly to include such species as black rockfish, spiny dogfish and nearshore rockfish). Additional analysis is needed on this subject, as well as a mechanism and appropriate triggers to bring initially excluded species into the quota system if conditions change. We concur that overfished species should be allocated as quota pounds, not QS, until they are rebuilt.

Rationale: Unless all overfished species are assigned quota, the most valuable commodity will not be subject to the market incentives for more selective fishing, and much of the potential benefit of the trawl rationalization program will be lost. Quota for other groundfish species creates individual accountability for unwanted impacts and incentives to reduce bycatch of those species. The analysis in Appendix A examines historic catch by trawlers of species under consideration for exclusion from quota, but not past catch by fixed gear, which is relevant given gear switching. Species excluded from quota should have triggers for assigning quota, based on factors like change in status or catch rates by quota holders.

6. 100% Observer Coverage. We recommend 100% observer coverage as a top priority.

Rationale: 100% coverage is critical to understanding the impacts of the ITQ system and achieving (1) ITQ program objectives to reduce bycatch, discard mortality and ecological impacts; (2) FMP objectives to reduce non-groundfish mortality; and (3) MSA objectives to promote conservation and rebuilding.

7. Community Fishing Associations. We support the concept offered by The Nature Conservancy as a way to provide communities with options for collectively benefitting from an ITQ program, proactively mitigating potential adverse impacts, and helping anchor fishing and quota in a community.

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1 Appendix A, Analysis of Components, Elements and Options for IFQ Alternative, Oct 2008, PFMC, NMFS A-25
Please accept these public comments from the Pacific Coast Federation of Fishermen's Associations on Amendment 20 to the Groundfish FMP.

Thank you,

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Nate Grader
Institute for Fisheries Resources
PO Box 29196
San Francisco, CA 94129
415-561-3474 ext. 227 (office)
415-561-5464 (fax)
415-341-7292 (cell)
www.ifrfish.org
Dear Dr. McIsaac and members of the Pacific Fishery Management Council,

The Pacific Coast Federation of Fishermen’s Associations (PCFFA) represents working fishing men and women in the West Coast commercial fishing fleet. PCFFA is the largest commercial fishermen’s organization on the West Coast.

PCFFA respectfully submits these comments on the environmental impact statement (EIS) to Amendment 20: Trawl Rationalization to the Pacific Coast Groundfish Fishery Management Plan. The preferred alternative contained in the EIS, if adopted by the Pacific Fishery Management Council (Council) and approved by the National Marine Fisheries Service (NMFS), would establish an Individual Fishing Quota (IFQ) program for the trawl sector of the groundfish fishery. The EIS predicts the implementation of the IFQ program will have far reaching consequences for the entire fishing community on the West Coast. The implementation of an IFQ program will directly affect our members who participate in the groundfish fishery and will indirectly affect our members who participate in other fisheries but depend on the trawl fleet to help support shoreside businesses and infrastructure in ports coast wide. As such PCFFA has a substantial stake in the trawl “rationalization” process.

PCFFA is concerned that the IFQ program, which the Council is considering primarily as a way to reduce bycatch in the trawl fishery of overfished species and to increase the economic stability and efficiency of the trawl fishery, will achieve neither of these goals more effectively
than status quo management or other alternative management approaches not considered in the
EIS. PCFFA is concerned that the IFQ program will, however, cause substantial socio-economic
disruption to fishing communities and lead to excessive geographic and economic consolidation
of the fishery for both the harvesting and processing sectors.

PCFFA does not support the preferred alternative that the Council has selected in the EIS and
urges the Council to keep status quo management until an alternative can be developed that
better matches the ecological and socio-economic requirements of the fishery. There are
alternative management approaches, such as community based management, that have shown
promise in promoting sustainable fisheries, particularly for groundfish, while also protecting
fishing communities. It would be premature at this juncture to move forward with an IFQ
program before considering how this fishery could be managed using regional fishery
associations, community based fisheries, or some other similar type of management structure,
which the Council was required to do under the most recently reauthorized Magnuson-Stevens
Act.

In short the IFQ program described in the preferred alternative is not ready for prime time.
There are too many questions that remain unanswered regarding the implementation of the IFQ
program. Before a final decision can be made to implement such a radical change in the
management of this fishery, a more thorough analysis is needed. The following letter will briefly
list our recommendations on features that must be considered for this and any future program to
“rationalize” the trawl groundfish fishery. We look forward to working with the Council to help
find a management solution that benefits the entire fishing community and promotes
conservation.

**The Council should not allocate any initial quota share to processors**

The allocation of 20% of the initial quota share to processors may be a violation of anti-trust
laws. Three processors currently handle 80% of non-whiting trawl landings and the EIS predicts
that if processors are awarded quota there will be further consolidation. Additionally, processors
already own around 14-17% of the active non-whiting trawl permits and will be awarded quota
through their permits. A 20% allocation on top of those permits would not be fair and equitable
as fishermen who hold permits will only receive quota based on their permits.

The Council should consider ways to protect processors and compensate processors for
“stranded capital” (it should be incumbent on processors to prove capital losses due to a change
in management), however, awarding processors quota share is not the right tool. One possibility
would be to allow fishermen and processors to participate together in regional fishery
associations or other community programs using fish set aside in a program similar to the
program described in A-3 Adaptive Management.

Using processor quota to protect jobs in fishing communities is truly like using a hatchet
where a scalpel is needed. Once processor quota is awarded there are no provisions that prevent a
processor from leaving a fishing community and relocating to a larger port. In fact, the economic
analysis in the EIS predicts this pattern. Jobs in the processing sector will be consolidated not
saved if processor quota is awarded. If the Council truly wants to protect jobs in the fishing
industry and coastal communities there have to be many fine scale provisions (programs for new
entrants, eligibility requirements, regional fishery associations, etc.), not just one blunt
instrument that will do precisely the opposite of what it is intended to do.
The Council should adopt eligibility requirements for quota holders

There is currently no provision to require that quota share be held by a person who actually participates in the fishery as captain or crew. This is an essential feature to any IFQ system that intends to keep the value of the fishery within fishing communities. The so-called “armchair fishermen” that can result is a real danger to the integrity of fishing communities if no provisions are in place to require that a quota holder participate in the fishery. It limits new entrants into the fishery and can turn those who do continue to participate in the fishery into little more than “sharecroppers” while allowing the wealth of the fishery to leave communities. The lack of holding requirements can undermine other aspects of an IFQ program including the conservation and safety benefits that are supposed to accrue from IFQs.

Processors that currently hold limited entry permits for groundfish will be awarded quota share in the preferred alternative or any future quota program. There should be requirements that processors only sell their quota share to captains or crew who participate in the fishery.

The Council should adopt low accumulation caps

Accumulation caps under the preferred alternative are too high. They should be small enough to protect fishermen from excessive consolidation. The Council should consider a 1% control cap and a 1.5% vessel cap.

The Council should consider pooling the costs of observers

Rather than having individual fishermen pay the cost of an observer it would be better to spread this cost among the fleet. The cost of observers unfairly burdens fishermen on smaller vessels. This will help prevent excessive consolidation.

Use buyback fish in an Adaptive Management program

The Adaptive Management option that calls for up to 10% to respond to unforeseen consequences of the transition is too conservative. The Council should hold back fish from the buyback program and allocate 50% to conservation and 50% to adaptive management. The fish initially allocated to conservation can be reallocated back to the fleet once new stock assessments have been completed and a Total Allowable Catch is set accordingly. The adaptive management fish should be used for community based associations, incentive programs for fishermen wishing to switch to cleaner gears, and for helping new entrants into the fishery. Fixed gear open access fishermen, who have been pushed out of the fishery by management decisions, should have access to the rockfish through community programs and trawlers should have access to the flatfish.

Develop a process to help new entrants acquire quota

The preferred alternative does not consider any measures to assist fishermen enter the fishery. The Council should consider developing a “limited access privilege assisted purchase program” to assist new entrants purchase first time limited access privileges. A regional fishery association and adaptive management are other ways to help new entrants into the fishery. It is essential to implement a program like these to entice new entrants into the fishery and promote the owner/operator model as the basis of the fleet.

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1 As specified under Magnuson Stevens Fishery Conservation and Management Act, §303A(g)
Allow Regional Fishery Associations to hold quota

The Council should allow Regional Fishery Associations to hold groundfish quota in excess of individual caps. The Council should develop criteria for Regional Fishery Associations to participate in the groundfish fishery. Quota pounds should be allocated to regional fishery associations from adaptive management to give fishermen and processors incentive to work together to land fish locally.

Allow and encourage gear switching where appropriate

The Council should adopt the gear conversion option. It is likely that this is the most important provision included in the preferred alternative that will contribute to the rebuilding of stocks and increase the value of the fishery. Furthermore, the Council should use quota from adaptive management as an incentive to fishermen who decide to switch to cleaner gears where appropriate.

Consider policies to promote participation of small owner-operated vessels and fishing communities

The options for regional landing zones and area management are inadequate protections for small owner-operated vessels and fishing communities. Processor quota is certainly not a protection and would aid in the collapse of small fishing communities. The Council’s own analysis in the EIS shows that the IFQ program will cause considerable consolidation in the harvesting and processing sectors with only 40 to 60 trawl vessels remaining in the fleet for the entire coast and smaller processing facilities likely to go out of business.

The Council needs to consider a suite of protections under an IFQ or community based program that protects small fishing communities, small owner-operator vessels, and new entrants into the fishery. Regional fishery associations, low accumulation caps (1%), allocation of holdback fish to fishing communities, gear switching, holding requirements, and programs to help new entrants are all ways to help small owner operated vessels and fishing communities continue to participate in the fishery. A proper EIS will consider all of these measures to protect vulnerable fishing communities.

Referendum

The Council needs to consider holding a referendum on the implementation of the IFQ program among permit holders and processors. A process will have to be developed for how this referendum will work, but it is essential that the Council bring more democratic features into the decision making process. The public comment that was submitted to the Council in the June 2008 Briefing Book shows considerable dissention to the idea of an IFQ program and processor quota from limited entry permit holders, smaller processors, and environmental and community groups. The fishermen whose lives will be affected by these management decisions deserve to be consulted.

We strongly urge the Council not to go forward with the preferred alternative at this time. The Council needs to go back to the drawing board and find a solution that truly benefits fishing communities and promotes conservation.

Sincerely,

W.F. “Zeke” Grader, Jr.
Executive Director
October 29, 2008

Mr. Donald Hansen
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220-1384

Re: Comments on Proposed Amendment 20: Trawl Rationalization

Dear Chairman Hansen and Members of the Pacific Fishery Management Council:

Pacific Marine Conservation Council (PMCC) is pleased to have the opportunity to provide these comments on the proposed west coast groundfish trawl rationalization. We will make some specific recommendations regarding features to be selected as the Pacific Fishery Management Council (Council) builds a preferred alternative. We also have some procedural concerns and observations regarding current deficiencies in the decision-making document.

**A-1.2 IFQ Management Units:** We support option to subdivide quota geographically, including use of latitudinal management units.

PMCC very much appreciates the serious consideration that the Council has given to issuing area-specific quota. The preliminary consideration to issue quota based on current geographic management lines, with a split at Cape Mendocino for those species without a current north-south split makes sense. To the extent practical an additional split at Point Conception should be utilized.

It is also important to be clear at the onset that quota may be sub-divided at finer scales in the future to adapt to new information regarding fish populations or to serve other biological or social goals.

We attaching the draft executive summary of *Matching Spatial Scales of Ecology, Economy, and Management for Groundfish of the U.S. West Coast Marine Ecosystem: A State of the Science Review*, prepared by R.C. Francis, J.E. Little, and J. Bloeser. This document supports the Council’s decision to use area-specific quota to achieve ecological and social benefits. We believe that this document has significant utility to inform fisheries management beyond this rationalization process, and we look forward to helping facilitate a presentation for the Council in spring 2009. If you would like a copy of the complete report, currently in peer review, please make a request to Jennifer Bloeser (jennifer@pmcc.org).
A.2.1.3 Allocation Formula: We support Option 2 for overfished species.

It would really make little sense to reward those who contributed most to the overfished status of these fish populations. Option 2 is the most equitable choice, providing all participants in the rationalization with a fair starting point.

A.2.2.1 Permit/IFQ holding requirement: Remove the option (#6) to allow a vessel to resume fishing after 2 years in deficit.

This option would be contrary to the concepts of individual accountability and market-based incentives that are central to the expected advantages of this program.

A.2.3.1 Tracking and Monitoring: We support Option 3 –100% observer coverage with cameras if effective and feasible. No small vessel exception.

The commitment to 100% observer coverage is the primary accountability tool that likely will produce a conservation benefit for the owners of the resource – the public. We expect that the Council agrees. For the record, PMCC will oppose the rationalization if full coverage is not a feature of the plan.

A-3 Adaptive Management Provision: We support having this option for the following potential uses:

- Achieving conservation results, such as rewarding selective fishing and reduction of habitat impacts
- Stabilizing vulnerable communities
- Managing unforeseen consequences

This may also be a tool to address demonstrable processor concerns, but we oppose any issuance of harvest quota to processors, through this or any other provision.

We also point out that the administration of this provision will be challenging and, although we support its inclusion the process for deciding use and distribution should be as explicit as possible.

This provision should not be used to in any way avoid a complete analysis and mitigation of identifiable adverse impacts. This is to be a way of adjusting unforeseen circumstance.

Auctions and other possible design elements

As this program is implemented, or even as more intensive analyses proceed, additional tools such as a partial auction system may prove valuable in driving the desirable outcomes. We encourage the Council to carefully consider the work of John Ledyard, Market Design for Fishery IFQ Programs (Oct 2008), as submitted by Natural Resources Defense Council for your briefing book. The skills of such market design professionals have been underutilized.

The decision-making document and the National Environmental Policy Act (NEPA)

It is somewhat confusing to review a document that appears to be organized similar to a NEPA environmental impact statement (EIS), yet it isn’t. We understand that the intent is to use this document and the public record to help the Council choose a preferred alternative. Thereafter, this document
would be slightly modified to become a draft EIS. As a reviewer I’m not sure whether the document before me is a NEPA instrument or not, and if for example the agency response requirements apply. On the Council’s website the document is referred to at one point as the EIS.

Beyond this confusion, if the assumption is made that this will essentially be the EIS that supports Amendment 20, then the deficiencies that we note below can be constructively applied as the document is revised to become a true NEPA vehicle.

**Economic analysis is not quantified**

Although the decision document describes varied and significant impacts both positive and negative, these impacts are not quantified. It is understandably difficult to predict behavior, but a range of more likely scenarios, with dollars attached, would be useful. Communities should be able to consider what they could gain or lose. Fishermen involved with the trawl industry, processors, and those participating in other fisheries should at least have ballpark numbers to evaluate to determine if they can support an alternative.

This is vital information that the Council and the public need for making informed decisions. These impacts should be quantified and included as this document morphs into the draft EIS.

**Social impacts are not directly evaluated**

The sociological analyses in the document are basically thoughtful inference based upon qualitative economic projections. This rationalization is a major change in the way fisheries are managed. Dramatic adjustments will be required as market forces take hold. The public has the right to expect direct and robust sociological evaluations that project foreseeable impacts. At minimum the EIS should fully comply with NOAA’s guidelines for social impact analysis as well as all other relevant mandates, including Executive Order 12898 Environmental Justice.

**Cumulative impacts and the relationship with the inter-sector allocation**

Amendment 21 Inter-Sector Allocation is proceeding roughly in parallel with Amendment 20. To make sense of the cumulative impacts of these related processes is challenging. A range of possible allocations could be projected, but there is then a danger that presumption might taint the inter-sector allocation. For example, if the trawl fleet needs very high allocations to justify going forward with the rationalization, then the fixed gear fleet may be at disadvantage when negotiating for access to higher percentages of the allowable catch of some species. This could harm the fixed gear fishermen and be detrimental for conservation, possibly triggering Magnuson-Stevens Act violations.

Bringing Amendments 20 and 21 into as close a synch as possible would be prudent.

Thank you for considering our comments.

Respectfully submitted,

Peter Huhtala
Director of Governmental Affairs
EXECUTIVE SUMMARY

This white paper is divided into the following three sections: 1) synthesis of the state of knowledge of scales of organization in the various U.S. west coast groundfish fisheries, 2) identification and prioritization of spatial matches and mismatches between various components of the west coast groundfish fishery, and 3) recommendations for spatial management of west coast groundfish within the context of ecosystem-based fishery management (Field and Francis 2006, Francis et al. 2007, Levin and Lubchenco 2008). In this regard, the paper suggests that spatial management should:

- Consider spatial aspects of interactions between humans and nature (McEvoy 1986, 1996),
- Incorporate the capacity for resilience thinking (Walker and Salt 2006),
- Be “second stream” in its approach to both science (interdisciplinary, holistic, focus on understanding rather than prediction) and management (facilitate existing processes and variables, proactive rather than reactive; Francis et al. 2007, Holling 1993, Holling and Meffe 1996),
- Employ rules which are as simple as possible in achieving the desired results (Berkes and Berkes in review).

SECTION 1 - SCALES OF ORGANIZATION - BIOPHYSICS, SOCIO-ECONOMICS, MANAGEMENT

In this first section, we examine spatial scales of organization for west coast groundfish biophysics, socio-economics, and management.

Spatial structure clearly exists throughout the entire area of the California Current Ecosystem (CCS), where a diverse fishing community pursues an equally dynamic and diverse resource from northern Washington to southern California, from Cape to Cape, from port to port. It can only, briefly, be viewed through snapshots we take in time. These snapshots all reveal clear spatial structure. Unfortunately the clarity is blurred as we pass from one snapshot to another. Space is an elusive moving target. The ocean is constantly in motion, pushed and pulled by winds and tides, agitating away within a basin with a complex bottom structure, creating spatial patterns that morph from year to year, season to season, month to month, and day to day. That is what both fish and fishers face. As a result, diversity ripples through the fishery - different upwelling zones, some separated by deep canyons; different prevalent groundfish assemblages (north and south, inshore and offshore); different fleet structures by state, county and port; different local, state, federal, non-governmental management jurisdictions - some overlapping and some not, the fishery is a mosaic of diverse activity.
Our analysis reveals how diverse the groundfish fishing communities are as you visit ports dotted from San Diego north to Neah Bay. Fleets have changed over the past several decades, the rise of the offshore domestic Pacific whiting (hake) fleet in the north and of the nearshore live-fish fleet in southern Oregon and California, the declines in overall revenues and the shift in the distribution of revenue between fleets and ports - shifts affected both by changes in the resource and changes in management. So, the picture is blurry but occasionally and briefly clear when taken at certain time scales. What we have reported in this section is based on, at best, annual observations. The following are our major spatial findings:

**Biophysics**

- **Depth** defines the major axis of west coast groundfish variation (advection and larval transport, metapopulation structure, species assemblages) (Gunderson and Vetter 2006, Gabriel 1982).
- Nearshore demersal habitats tend to be vastly different from deeper offshore areas of the continental shelf and slope. Nearshore regions are typified by “sticky water” with very low alongshore movement (Largier 2003). Offshore regions are generally colder, lower oxygen, and stable ocean environments with much stronger alongshore advective processes coming into play in the pelagic region.
- Metapopulation structures of west coast rocky reef fishes tend to change with depth (Gunderson and Vetter 2006). Broad dispersal and coastwide populations tend to occur offshore (outer shelf and slope). Mesoscale dispersal and populations structured by the capes tend to occur in mid to inner shelf regions. Nearshore populations exhibit very limited dispersal.
- **Latitude** is the second most important factor influencing population and assemblage boundaries (Gabriel 1982). Dynamic atmosphere-ocean processes such as wind stress and current patterns are likely the most important factors controlling these north-south structures. There are two major latitudinal breaks in groundfish biophysics: 1) the turbulent wedge between Capes Blanco and Mendocino - a transition region between north and south which has the strongest upwelling winds and most turbulent coastal flows of the entire CCS (GLOBEC 1994, Peterson et al. 2006, Botsford and Lawrence 2002), and 2) Point Conception - the area south of Conception is very different from the area to the north - much smaller local wind stress, warmer subtropical water, different timing in the upwelling season (Hickey 1998).
- Heavy fishing of rocky reef habitats can cause significant changes in ecosystem structure. Large piscivorous (rockfish) species have been fished out and replaced by smaller faster growing species. This has been demonstrated at the individual reef scale (Yoklavich et al. 2000) and at
the coastwide scale (Levin et al. 2006). These spatially explicit ecosystem effects of fishing have not been evenly distributed along the coast and have caused allocation of energy and reproductive potential to shift dramatically and vary from region to region. This has been shown in regional nearshore (O’Farrell and Botsford 2006) and shelf (Harvey et al. 2006) ecosystems.

**Socio-Economics**

In this section we attempted to describe the spatial scales of organization within the groundfish fishery by using statistics on landings, revenue and number of vessels by sector. In this summary we categorized trawl (limited entry, whiting), non-trawl (limited entry, directed open access, recreational and tribal). The focus is on how spatial statistics have changed between 1995 and 2006.

- The analysis of Groundfish Fleet Reduction (GFR - Scholz 2003) maps of spatial distribution of 2000 limited-entry (LE) landings revealed that overlap in harvest areas is low between distant ports, and high between adjacent ports. Highest percent overlap occurred between port groups north of Cape Mendocino, but high percent overlap also exists between San Francisco and its adjacent ports. The only high percent overlap across Cape Blanco, Cape Mendocino, or Point Conception was between Coos Bay and Brookings port groups.

- The whiting trawl fishery is the largest volume fishery on the west coast and primarily lands to ports north of Cape Blanco. Although it is a low value species (price per pound), it is landed in such high volume that whiting landings generate high revenues (PSMFC 2007).

- Landings by the LE non-whiting trawl fishery previously spanned the coast to Point Conception, but currently are concentrated north of Cape Blanco. Due primarily to severe overfishing of shelf rockfish, landings and revenues have declined across the fishery. Flatfish now comprise the majority of landings (PSMFC 2007).

- The non-trawl fishery (LE fixed gear and open access fleets) has maintained its distribution along the entire coastline. Landings have declined but revenues have not changed due to several spatial factors. High-value sablefish dominate landings and revenue north of Cape Mendocino. South of Cape Mendocino, landings have shifted away from shelf rockfish since 1995. From Cape Mendocino to Point Conception, the shift has been inshore to nearshore rockfish supplying the high value live fish market. South of Point Conception, the shift has been offshore to thornyheads (PSMFC 2007).
• The open access fleet has the most participants of any groundfish sector. Over 50% of the open access fleet landings and revenues are in California. Washington and Oregon directed open access fleets are rapidly expanding; their primary target is sablefish (California Department of Fish and Game (CDFG) 2007).

• The recreational sector is largest in California, north of Point Conception, and appears to be increasing coastwide, aside from southern California. Rockfish are the mainstay of the recreational sector, particularly black and other nearshore rockfish (PFMC and NMFS 2006, PFMC 2007).

• Rapid expansion in the tribal fishery conducted in Washington State waters has potential to continue until harvest reaches the maximum allowable harvest allowable under treaty rights (1/2 of harvestable surplus of groundfish available in the usual and accustomed tribal fishing grounds)(PFMC and NMFS 2006).

Management

This section of the paper describes the existing suite of spatial management tools currently being applied to the West Coast groundfish fishery by state and federal management agencies.

• Federal - The spatial management tools applied to the West Coast groundfish fishery are intended to accomplish a wide range of management objectives. These tools vary greatly in their size, temporal nature and goals. They range from coastwide Rockfish Conservation Areas to species-specific closures in the Southern California Bight (cowcod) and off northern Washington (yelloweye rockfish). They also include ecologically important habitat closed areas - 5 off Washington, 9 off Oregon and 20 off California - and bottom trawl footprint closures designed to prevent the seaward expansion of bottom trawling.

• California - The commercial and recreational fisheries for nearshore rockfishes in California are currently managed by Pacific Fishery Management Council (PFMC) in conjunction with the state using three adjacent management areas with the boundaries at Cape Mendocino and Point Conception. California Department of Fish and Game (CDFG) is developing a fishery management plan for nearshore fish (NFMP) species. At this time the NFMP Project identifies four management areas, yet to be fully implemented, with separate harvest guidelines. California is also attempting to apply the concepts of spatial management to state waters through implementation of the Marine Life Protection Act (MLPA) - a series of marine protected areas designed to protect and conserve marine life.
- **Oregon** - The Marine Resources Program of the Oregon Department of Fish and Wildlife is authorized by the State Legislature to administer the regulation, harvest and management of commercial and recreational fisheries in Oregon. The agency uses a variety of tools to manage these fisheries include trip and bag limits, area closures and species-specific management zones. Oregon is undergoing an additional spatially oriented management process through the Oregon Department of Fish and Wildlife and the Governor’s Ocean Policy Advisory Council (OPAC) to develop a network of marine reserves along the Oregon coast to protect the natural diversity and abundance of species that live in each type of habitat in Oregon’s Territorial Sea.

- **Washington** - Washington Department of Fish and Wildlife has jurisdiction over fishery resources within state waters (0-3 miles) as well as the inland fisheries of Puget Sound. WDFW employs a variety of management tools for nearshore groundfish. These tools have evolved over time and include area-based management such as the development and implementation of yelloweye rockfish conservation areas in federal waters through the Council process. In 2000, Washington banned all directed commercial harvest of groundfish in state waters.

SECTION 2 - MATCHES AND MISMATCHES BETWEEN ECOLOGY, ECONOMY AND MANAGEMENT

Almost two decades ago, and based on the history of California fisheries (McEvoy 1986), the environmental historian Arthur McEvoy presented an innovative, broad and comprehensive context for marine fishery science and management, with a strong emphasis on direct interactions and relationships, of which those occurring within the ecosystem are just a part. Ten years later he built on this experience to define a fishery as an interaction between three variables: an ecosystem, a group of people working (economy), and the system of social control within which the work takes place (management) (McEvoy 1996). His key assertion is that management must equally weigh the many social and economic relationships within the fishery and how, in turn, they both influence and are influenced by marine ecosystem processes and dynamics. In fact it is human interrelationships that are of particular concern to decision makers. What McEvoy (1996) says is that a fishery is a classic example of a social-ecological system (Berkes et al. 2003, Berkes 2004): an integrated concept of humans in nature. And the essence of a sustainable fishery is the health of the interactions between the ecosystem, economy and management (Field and Francis 2006).

What we are trying to do in this section is to operationalize McEvoy’s concept. Suppose, as proponents of a broader ecosystem-based approach to fishery management seem to agree, preserving biological structure (e.g., age or size structure of a stock, foodweb pathways of an assemblage or community, diversity of an ecosystem) is equally important to management as preserving
harvestable biomass. Clearly we manage human activity and not biological entities. And these human activities—fishing—are what create the interactions between a group of people working and an ecosystem. How might management facilitate sustaining these interactions through, in this case, the use of spatial structure? One way is for management to create incentives in the economy to preserve biological structure in the ecosystem, by tying an individual fisher’s opportunity to fish with the achievement of broader conservation objectives. Spatial management seems to provide the vehicle for doing this. In the words of O’Farrell and Botsford (2006), “the effects of fishing are not evenly distributed over space.” Whatever spatial structure is chosen, resource allocations would be weighted towards those regions with better track records of achieving identified conservation objectives. Management would thus create tight positive feedback between economic incentives (e.g., an individual’s opportunity to fish) and conservation objectives. As it stands now and, as the recent rockfish closures show, coastwide management provides no incentives for sustainable interactions between the economy and the ecosystem. Space seems essential to creating a sustainable groundfish fishery.

This section attempts to identify spatially explicit matches and mismatches between regional ecosystems, fleets, and management. Specifically, we ask the question: what are the McEvoy interactions and how are they spatially structured? Section 1 will serve as the basis for this analysis. Perhaps the most important question we could ask is: can the west coast groundfish fishery be spatially compartmentalized into modules where feedback is tight (economy and ecosystem highly connected) within modules and feedback is loose between modules? Our results are summarized as follows:

- The west coast capes may provide an initial modular framework described by Walker and Salt (2007). For example, one might partition the coast into 3 modules with divisions occurring somewhere in the transition zones between Capes Blanco and Mendocino, and at Point Conception. Evidence for this modular structure is supported by the biophysical and socio-economic summaries.

While the capes serve as a pivot point for our match-mismatch analysis, there are a number of more general matches and mismatches that seem useful in evaluating spatial structure as a groundfish management tool. They can be summarized as follows:

- There is a clear mismatch between the coastwide management of overfished groundfish species and the impact of coastwide closures on coastal fishing communities.

- As coastal communities, such as Morro Bay (CA) and Port Orford (OR), become more engaged in managing adjacent nearshore fisheries, they become more involved in scientific assessment and monitoring of their
local resources. Without careful coordination between local and Pacific Fishery Management Council (PFMC) scientific activities, local scientific efforts risk the likelihood of being ignored at the coastwide level, thus creating significant mismatches.

- There are significant mismatches between units on which stock assessment and management are based and those inferred from genetic data (Waples et al. in review). Reasons for the mismatches are that a) assessments are almost always single species whereas most stocks are influenced by multi-species (and ecosystem) effects, b) management is based on political boundaries which do not necessarily reflect biology or actual use patterns, c) management is of multiple species as one putative species and d) local management is implemented on too fine a scale thereby subjecting a single biological population to independent and perhaps conflicting management regimes in different areas of its range.”

- The resilience of coastal fishing communities, particularly those with a predominance of small vessels, tends to be dependent on diversity of fishing opportunities - the potential for fleets to shift among target species. There is concern that fleet-specific rationalization (e.g., proposed trawl Individual Fishing Quota program) could reduce the diversity of the portfolio available to members of these small boat fleets and to individual fishermen, thus fracturing the way some coastal communities currently fish.

- Because of their compressed and extensive depth ranges, many of the continental shelf banks create significant mismatches with the general metapopulation model proposed by Gunderson and Vetter (2006) and used to support the Cape to Cape area stratification discussed above.

- There is a distinct mismatch in terms of management informing decisions based on scientific assessments at the biological community and ecosystem scale. In addition, there is a mismatch between the use of biological and socio-economic assessments in informing the decision making process.

SECTION 3 - MANAGEMENT ALTERNATIVES AND RECOMMENDATIONS

If one looks at the fishery from the “McEvoy” perspective, ecosystem-based fishery management should strive to focus on maintaining or creating healthy interactions between the economy and the ecosystem. As mentioned earlier, sustainability of coastal communities would be enhanced where coastal ecosystems were healthy and the individual opportunities to fish were as high as possible. We feel that since the effects of fishing are not evenly distributed
over space, spatial management could help provide incentives for achieving conservation objectives.

This final section starts with the spatially explicit matches and mismatches between regional ecosystems, fleets, and management identified in the previous section (Scales of Organization). We then attempt to answer two critical questions: How to structure management to 1) enhance the matches and 2) reduce the mismatches?

- We think that the three modules, mentioned above, may actually work quite well for all three inshore-offshore components of the coastwide groundfish fishery. The states already manage their nearshore zones separately, and all three seem to be working toward some scale management. The three modules seem to be ideally suited for the shelf fisheries and their associated social-ecological interactions. And the slope fisheries (Pacific whiting, Dover sole, sablefish - NCC; thornyheads - SCC) tend to partition out along the three module scale.

We now look at how spatial management might enhance the more general matches and reduce the more general mismatches discussed in the previous (match-mismatch) section.

- We think that the three-area management proposed above could be a strong first step in linking individual access to the resource with the achievement of conservation objectives. The simplest way to start would be to manage the bycatch of all overfished species on this spatial grid. This would greatly reduce the likelihood of coastwide closure of the entire groundfish fishery.

- In order for coastal communities to become fully engaged in the scientific assessment and management of their adjacent nearshore fisheries, there need to be clear performance standards for the data used, assessment methodologies and criteria for community harvest allocations.

- Waples et al. (in review) outline a number of measures that could help to reduce the spatial mismatches between genetic assessments, stock assessments and management. One of the most prevalent uncertainties relates to how many populations exist and what their statuses are. These uncertainties can be reduced through use of a Management Strategy Evaluation (MSE) process to help assess the consequences of ignoring population structure.

- Every effort should be made to evaluate the impact of proposed management measures on coastal community resilience.
• Physical areas of high concentration of nearshore, slope and shelf species (e.g., banks, islands, canyons, headlands) need finer scale management than our three proposed management areas can provide.

• The groundfish management community needs to become more balanced and comprehensive in terms of the nature of its scientific assessments. If we are to move into the realm of ecosystem-based management, then assessments must be conducted at the ecosystem scale. The same can be said for socio-economic assessments. We encourage any EIS analyses of proposed management measures (e.g., trawl Individual Fishing Quotas) to include meaningful socio-economic assessments of potential impacts on coastal fishing communities.

In conclusion, it is clear that space can be a powerful tool in moving towards a more comprehensive and balanced west coast groundfish management. However simply applying the status quo to newly delineated management areas will, in our view, do little to move west coast groundfish policy into the 21st century. Spatial management must be accompanied by clear objectives for what is to be achieved. We think that space can be used as a powerful tool to enhance positive feedbacks between the west coast groundfish economy and ecosystem. The potential is there for management to use space to provide incentives for individual fishers to achieve ecosystem-based conservation objectives. However those objectives must be made explicit and their achievements monitored comprehensively and carefully.

As we state in the introduction to the white paper, “an ecosystem approach to management is management that is adaptive, specified geographically, takes into account ecosystem knowledge and uncertainties, considers multiple external influences, and strives to balance diverse social objectives” (Francis et al. 2007). An ecosystem management approach that is proactive and seeks to preserve existing ecological and social processes and variabilities. It is also an approach that requires resilience thinking, and its unifying concept of adaptive capacity, through heterogeneity, modularity and tight feedback. If adaptive capacity is at the heart of ecosystem-based fishery management, then it seems spatial management is a powerful and essential component of ecosystem based fishery management.
The bottom line for sustainability is that any proposal for sustainable development that does not explicitly acknowledge a system’s resilience is simply not going to keep delivering the goods (or services). The key to sustainability lies in enhancing the resilience of social-ecological systems, not in optimizing isolated components of the system. (Walker and Salt 2006)
Subject: Support of Preferred Alternative
From: Jeffrey March <jeffrey@tradexfoods.com>
To: pfmc.comments@noaa.gov

Please see attached letter supporting the Preferred Alternative passed by the Pacific Fisheries Management Council in June of 2008.

Thank you.

Sincerely,

Jeffrey March

________________________________________
Jeffrey March
Account Manager
Tradex Foods Inc.

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Tradex Foods - Supplier of Sinbad Products
Experience A Wave of Freshness!
October 28, 2008

Mr. Donald K. Hanson
Chairman
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220-1384

Re: Support of Preferred Alternative passed by Pacific Fisheries Management Council in June, 2008

Dear Chairman Hansen and Council Members:

My name is Robert Reierson, I am the president and CEO of Tradex Foods Inc. We are located in BC, but the State of Washington's Seafood is an important part of our business. We rely on the health of the seafood industry and our seafood suppliers. We directly and indirectly do business with many of the West Coast Seafood Processors. We support their position. It is for that reason that I am writing you today regarding your upcoming regulatory decision affecting the industry.

The Council action on individual quota plans in June of this year clearly reflects a compromise position that emerged over four years of debate, analysis, meetings, public comment and review. While the preferred alternative is not the optimum outcome for either of the primary stakeholders, it is a reasonable compromise. The preferred alternative provisions protect the interests of the industry, not just a segment of the industry. The split of the initial allocation will be a stabilizing factor in a major regulatory change. I appreciate the majority of the Council's hard work and the difficulty in reaching this decision.

Because IQ shares grant a right to catch fish, processors will use shares issued to them as an incentive to attract fishermen to deliver to their docks. While fishermen are free to deliver wherever they wish, the incentive of being able to catch more fish by using shares provided by processors will likely be a strong one, thus helping preserve the diversity of opportunities along the entire coast.

Sincerely,

[Signature]
October 29, 2008

Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220-1384

Re: Comments on Decision Document for the November 2008 Pacific Fisheries Management Council Meeting Concerning the Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery

Dear Council Members:

Thank you for the opportunity to comment on the Decision Document for the November 2008 Pacific Fisheries Management Council meeting relating to the Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery (“Decision Document”). We recognize the tremendous effort and time that the Council has put into this document and appreciate the Council’s efforts to reach out to all those in the fishing community and listen to concerns, including those raised by The Nature Conservancy.

Please consider the following comments which support The Nature Conservancy’s proposal for a Community Fishing Association, which was separately submitted for inclusion in the Briefing Book on October 15, 2008.

I. Executive Summary

**Community Fishing Associations.** The Nature Conservancy proposes that the Council make certain changes to the preliminary preferred alternative to remove impediments to the formation of Community Fishing Associations. Importantly, the Nature Conservancy’s proposal is supportive of, but distinct from, the Adaptive Management proposals and is not a Regional Fishery Association. The key required changes are:

- Different accumulation limits for qualifying Associations;
- Rules to ensure that Association members cannot gain access to or control more quota share (QS) than they would be able to control otherwise; and
- A three year divestiture period for larger entities to sell off excess QS.

*The MSA Permits Different Control Limits for Associations.* In order to be effective and achieve the goals for which they would be formed, Associations must be subject to different accumulation and control limits than individuals. With different limits than afforded individuals, Associations will help communities to pool their resources and achieve greater efficiencies when complying with fishery regulations. Associations will have sufficient quota to lease to entry level fishermen. In these and other ways described below, enabling formation of these Associations would benefit...
fishing communities, minimize disruption, and perhaps prevent excessive consolidation of the industry. These are key goals under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. § 1801–1891d, as amended in 2006. Further, the MSA provides the Council with flexibility to adopt creative approaches such as distinct rules for Associations.

Association Members Will be Subject to Regular Accumulation Caps. Individual Association members will be subject to the same individual accumulation and control caps as others, so excessive share requirements under the MSA will be met.

Transparency and Control Rules Can Prevent Excessive Share Issues. Associations may be subject to transparency requirements to ensure that members do not control quota in excess of accumulation and control caps through their Association membership or that others affiliated with an Association are able to exert excessive control over the fishery. Transparency requirements may also assist the National Marine Fisheries Service (NMFS) with anti-trust investigations.

The Council Should Adopt a Three Year Divestiture Rule. In order to address the fairness and equity concerns relating to larger entities being forced to forfeit a portion of their quota, as would occur under the preliminary preferred alternative’s redistribution model, entities with excess quota should be given a reasonable period of time (3 years) to sell their excess quota. Under the preliminary preferred alternative, excess quota would redistribute quota coast-wide, to the detriment of fishing communities with entities holding excess QS. Under a divestiture model, excess QS could be kept in the community, which is what The Nature Conservancy would do by transferring its quota to a newly formed Association.

Associations May Assist Fishing Communities and Promote Conservation and Management Goals. Associations may help fishing communities to obtain grants or special financing to purchase or lease QS. Such a role will minimize disruption of the IFQ and help with the viability of small vessel owner-operators and new entrants to the fishery. Further, it is expected that Associations will promote conservation and management goals of the groundfish FMP, as would be the case for the Association The Nature Conservancy plans to form.

The Nature Conservancy is a Substantial Participant in the Fishery and is Entitled to Receive Quota Share. Through The Nature Conservancy’s considerable past efforts in the West Coast groundfish fishery, particularly its work in partnership with communities on the Central Coast, it has become a substantial participant in the fishery. As a result, under the MSA, The Nature Conservancy is eligible to receive an initial allocation of QS according to the allocation formulas based on its permits’ catch histories.
II. Introduction and Overview

A. Background on The Nature Conservancy’s Participation in the Fishery

The Nature Conservancy has been working closely with fishermen and communities in the Central Coast of California over the last several years to develop approaches designed to lead to more sustainable approaches to harvesting groundfish in the limited entry trawl fishery, as well as to preserve local access to the groundfish resource in fishing communities. Starting in 2005, The Nature Conservancy partnered with regulatory agencies and trawl fishermen in Central Coast communities to develop a collaborative proposal that would implement recommendations of the National Academy of Sciences aimed at reducing the impact of bottom trawling. Jointly, we identified and successfully petitioned the Pacific Fishery Management Council for 3.8 million acres of important marine habitats that would be off limits to bottom trawl gear. Simultaneously, to reduce bottom trawl fishing effort and to mitigate the economic impact of bottom trawl closures, TNC purchased federal permits and vessels from local fishermen interested in leaving the trawl groundfish industry.

As a result of this effort, The Nature Conservancy owns a number of trawl permits with fishing history in the Central Coast area that we have redeployed, or plan to redeploy, in the area under demonstration projects with our community fishing partners. In 2007, the Conservancy leased one of its permits to a Morro Bay fisherman. The lease is a voluntary, private agreement designed to test methods for making trawl fishing more sustainable and economically viable, focusing on techniques to reduce bycatch and conserve habitat. In addition to this effort, the Conservancy and our fishing community and state partners are using six of the Conservancy’s permits in an Exempted Fishing Permit (EFP) approved by the Council for 2008 and 2009, to test community-based approaches that could be used in the upcoming transition to an individual fishable quota (IFQ) system. This EFP, operating out of Morro Bay and Port San Luis, is evaluating how the establishment of a community-based fishing association comprised of commercial fishers using fixed gear and shared species harvest caps will provide community and economic benefits.

Through these efforts we have become a substantial participant in the groundfish fishery with a strong interest in promoting a long-term sustainable fishing future for communities in the Central Coast of California. Our permit ownership, partnerships, and investment in these projects gives us a unique perspective and interest in ensuring that the transition to an IFQ system is done in a way that protects vulnerable fishing communities, preserves traditional access to groundfish in these areas, promotes marine conservation, and allocates QS fairly and equitably. In June 2008, The Nature Conservancy provided a statement of our goals and intentions with respect to use of these permits, stating that we would work with our fishing and community partners and experts on a Central Coast fishing entity that could hold and manage fishing permits or quota for three purposes: (1) local industry access to and benefits of conservation and improved resource productivity; (2) more sustainable harvesting methods and approaches; and (3) preserving and

B. **The Nature Conservancy Proposes Community Fishing Associations as Part of the Rationalization Plan**

Given our interests and activities in the Central Coast, particularly through our work in the FFP, the Conservancy has been following closely the Council’s development of a Rationalization proposal for the Pacific Coast Groundfish Limited Entry Trawl Fishery. The Council’s deliberations have been guided by a range of policy and legal requirements, including those designed to mitigate unanticipated impacts of rationalization by promoting fairness and equity, assisting communities, and minimizing disruption of current fishing practices. See, e.g., Decision Document, at Ch. 6. As a result, in its analyses, the Council has identified and acknowledged several expected impacts on fishing communities, including those in the Central Coast. See Decision Document, Section 4.14, pgs. 521-523. Morro Bay is specifically identified as a vulnerable community and likely to receive less during initial allocation of QS than the average for all ports. Chapter 4 also identifies Moss Landing as vulnerable to consolidation and predicts that Half Moon Bay is likely to experience loss of vessels and QS due to consolidation and migration of QS northward. Both communities could be constrained by managing depleted species under QS because they are located near high bycatch areas. The port of Monterey should similarly be considered at risk, although the Decision Document does not evaluate this historic Central Coast fishing port. In general, the projected migration of QS northward and resulting loss of infrastructure upon which other community fisheries depend will likely magnify impacts in this region.

In order to address these concerns and requirements, as well as achieve the goals set forth with our fishing and community partners, The Nature Conservancy proposes that the Council make some discrete changes to the Decision Document to promote community stability and improved management through establishment of voluntary “Community Fishing Associations” under which individual members (permit/quota holders and other fishermen) would work together in community-based harvesting operations to pool risks and costs, meet new conservation and management requirements, and retain local access to fishery resources. Specifically, we recommend that the Council endorse formation of such Associations and remove impediments in accumulation and

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1 The Conservancy notes, as it has noted in oral testimony before the Council at its June 2008 meeting, that the Document contains substantial errors in describing the current status of fishing in Morro Bay and the extent to which trawl permits owned by the Conservancy are being deployed there to fish. See Decision Document, at pg. 523. The correct information is that the Conservancy is leasing one of its trawl permits and vessels under a private conservation agreement; six other trawl permits are being fished by participants in the Exempted Fishing Permit. Landings are in Morro Bay as well as Port San Luis. Three fishermen participated in 2008 and up to six are expected in 2008. Landings are expected to increase as the EFP caps change to reflect permit landings history. Thus, any loss of QS represented by these permits would further harm Morro Bay and Port San Luis.

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control limits under A.2.2.3(c) to formation of such Associations. (The Nature Conservancy’s proposal is referred to herein as the “Association Proposal”)

The Nature Conservancy outlined the changes needed, including with respect to accumulation limits for such Associations, in its presentation to the Groundfish Allocation Committee (GAC) during its October 8-9, 2008 meeting. While the GAC did not make any recommendations to resolve impediments in the plan to formation of such associations (i.e., in the accumulation limit rules), it did recognize by consensus that community fishing associations may have a key role to play in the overall program, particularly in protecting and stabilizing vulnerable fishing communities. Groundfish Allocation Committee Report on Amendment 20 Trawl Rationalization Alternatives, at pg. 2 (“The GAC recommends that . . . [i]n implementing adaptive management, recognize formal regional (or community) fishing associations (consensus).”)

The states of California and Washington in their subsequent comments have already suggested formation of community fishing associations as one component of a proactive plan to stabilize fishing communities and prevent disruptive shifts in geographic patterns of landings and fishing activity, including pointing to potential the need for exemptions from accumulation limits to foster their creation. See, November 2008 Council Meeting Agenda, items F.3.e. A number of California ports and communities have also identified their interest in pursuing this community fishing association approach; these materials have been submitted under Agenda item F.3.h. See, e.g., Resolution No. 61-08, City Council of Morro Bay, October 13, 2008; Resolution No. 21-08, San Mateo County Harbor District, October 15, 2008; Letter from Chuck Della Sala, Mayor of Monterey, to Mr. Donald K. Hansen, October 24, 2008; Resolution No. 08-15, Port San Luis Harbor District, October 28, 2008.

The Nature Conservancy urges the Council to include the changes necessary to allow permit holders to come together to form Community Fishing Associations in the final preferred alternative that it will submit to the Secretary of Commerce for review pursuant to MSA Section 302(h)(1).

III. The Nature Conservancy’s Proposal for Community Fishing Associations

A. Overview of Proposal

The Nature Conservancy previously submitted its formal proposal to enable formation of Community Fishing Associations on October 15, 2008 and can be found in the Public Comment portion of the Briefing Book. For your convenience, we attach a copy of our October 15 submittal. Changes to the current plan are needed because multiple permit holders with QS working together in a Community Fishing Association that leases quota pounds (QP) to members would trigger the accumulation/control rules, which, paradoxically, were established for the same reasons as these Associations: to try to prevent consolidation and spread quota among communities. In addition, the current preferred alternative would not allow quota to remain in its home port if the holder is
over the accumulation limits – i.e., amounts over the limit would be redistributed coast-wide, rather than in the community that held the catch history.

While the details of the Community Fishing Association proposal can be found in the submission, we highlight here the key components:

• A Community Fishing Association (Association) would be a corporation created for community benefit, with participating members that could hold QS.

• Such an Association would not be eligible for initial issuance of QS, but could acquire QS through direct acquisition from willing sellers.

• Each year, the Association would make QP available, through a private agreement, to its members for their assistance in achieving the Association’s objectives, e.g., maintaining landings in a given community or achieving conservation goals.

• Any fisherman may elect each year whether to be a member of the Association and enter into a private agreement with the Association.

• Any member would be eligible to access Association-owned QP up to the vessel cap. For fishermen who hold a groundfish trawl permit and QS, this will be the aggregate of individually held QP plus any Association-owned QP controlled by the individual.

• Any member who does not hold a trawl permit or QS could apply to the Association to lease a groundfish trawl permit (if one is available) and QP.

• Members of the Association would have access to services from the Association (e.g., observers) and would have to abide by the rules of the Association (e.g., to land all or some of the fish in a particular community, to abide by area or gear limitations, to cooperate with bycatch reduction efforts, etc.).

• The Rationalization Plan would establish unique accumulation limits and transparency requirements for Associations, allowing them to hold QS above the accumulation limits for individuals, as long as the Association demonstrates that no individual member holds or controls any more QS or QP than permitted under the accumulation limits for individuals, or that any individual through participation in the Association is otherwise able exert excessive control over the fishery.

• The Rationalization Plan would enable retention of quota in its home region by allowing allocation of the full amount of QS to permit holders based on their permit history, but require that amounts over the accumulation limits be divested over a reasonable period (e.g., 3 years), thus allowing an orderly transition of QS and minimizing disruption to communities.
The Nature Conservancy recognizes that the Council must perform a careful balancing of various competing goals when setting up the IFQ program, chief among which is balancing increased efficiency of the fleet as whole with impacts to fishing communities. The Decision Document quotes from a Government Accountability Office study which sums up this issue: “because the goals of community protection and new entry run counter to the economic efficiency goals, fishery councils face a delicate balancing act to achieve all goals.” Decision Document, at 482-83. The purpose of The Nature Conservancy’s Community Fishing Association proposal is to help the Council with this “delicate balance.” As described more fully below, Associations will help to protect fishing communities, small vessel owner-operators, and new entrants to the fishery, yet will create a vehicle to allow small players to operate with greater efficiency, improved management, and increased financial viability.

In order for the Association Proposal to achieve these goals, it is essential that Associations be subject to different accumulation and control limits and rules than will apply to individual permit and QS holders within the Association. Under the alternatives before the Council, an Association would have to meet the same accumulation and control limits as an individual QS holder, even though each individual member within the Association is bound to the same limit. Council analyses have identified unintended impacts of the control limits on communities and associations as an issue to be addressed. Decision Document, Appendix A, A-2.2.3(e), pgs. A-230-235. Given projected economic pressures on vulnerable communities in the transition, it would be prudent to affirmatively establish specific rules in the plan designed to facilitate the formation of Community Associations that could hold QS historically harvested by members of such communities, provide benefits such as sharing costs and management burdens, and provide access to new entrants. See, e.g., Decision Document, § 4.6.3.1, pgs. 325-326 (“individual accountability for total catch associated with IFQs and coops increases the financial risks” suggesting the benefits of risk pools under voluntary associations); § 4.6.4.2 (describing cumulative impacts placing economic pressure on harvesters, e.g., fuel costs).

Accordingly, the Decision Document should include different accumulation and control limits and related guidance that would allow such Community Fishing Associations and arrangements to form. To address stated concerns that such arrangements could be used to circumvent or undermine the Council’s goal of avoiding excessive share consolidation (e.g., concerns regarding market power) Appendix A, pg. A-230, the Conservancy’s proposal specifies approaches to limit excessive control, including qualifying criteria and review by the National Marine Fisheries Service. This review could also require member information and disclosures to increase transparency, including information that could be used under MSA Section 303A(e) to identify anti-competitive, anti-trust, price collusion, or price fixing activities among QS holders within the Association or by persons otherwise affiliated with the Association. 16 U.S.C. § 1853a(e)(1)(J).

Such a community-based approach would actually work to prevent potential adverse community impacts related to excessive QS accumulation, and align with the
Council's attempts to reconcile economically-driven vessel consolidation with maintaining individual fishing participation. For example, the Decision Document sets vessel control limits higher than individual control limits, allowing more than one person’s QS to be used on a vessel, thus providing one means of maintaining individual fishing participation even as the fleet shrinks. Decision Document, at 483-84. In a similar way, an Association would provide a community-based platform for maintaining fishing participation in a particular location, even in the face of economic pressures and consolidation.

In addition, the Decision Document contemplates that the additional QS/QP needed to reach the higher vessel cap could be owned by other entities, including “communities, conservation organizations, or other parties.” Id. at 484. It is this type of role of holding QS and providing additional resources that an Association would play. In so doing, an Association would assist fishing communities, small vessel owner-operators and now entrants into the fishery, while also promoting the broader efficiency goals by being subject to a different cap and allowing Association members to pool resources.

II. The Association Proposal is Complimentary to, But Distinct From, the Adaptive Management Option

In order to avoid any confusion, we would like to clarify that the Association Proposal is separate and distinct from the proposal for an Adaptive Management Program (AMP) option. While the two programs may be complimentary and promote the same goals, the AMP takes a different approach and the Association Proposal is in no way dependent on the AMP. To effectuate the Association Proposal, the Council would only need to remove impediments in accumulation and control provisions of section A-2.2.3(e) to formation of such voluntary Associations; however, the AMP option could be modified to specify how such Associations would work with, and support, the AMP approach.

Under the AMP, up to 10% of the QP would be set aside which could be used as needed to, in part, “compensate for unforeseen outcomes from implementing the IPQ program.” Decision Document, at 42. Thus, the AMP takes a retrospective approach, in that it compensates for problems after they arise. In contrast, the Association Proposal is prospective in nature, in that it is designed to enable the participants to prevent or minimize the expected disruption to fishing communities. While an Association could work in conjunction with the AMP, such as by receiving or distributing QP, the Association Proposal is not dependent on the AMP option.

The Association Proposal’s approach could also serve as an institutional mechanism within a community that could provide the administrative and other support needed to apply to the AMP for QP, or distribute QP awarded by the AMP, for use in a particular community. This role could help address concerns raised about how the AMP would be administered in practice. See, e.g., comments of Washington Department of Fish and Wildlife, November 2008 Council Agenda Item F.3.c.
C. Community Fishing Associations Are Not "Regional Fishery Associations"

The Nature Conservancy's proposal is not to form "regional fishery associations" contemplated under MSA Section 303A(c)(4), though both support community stability goals.\(^2\) What we are proposing — QS holders and other harvesters working together in private arrangements to pool risks, share costs, and collaborate on conservation and management improvements — is already permissible under the MSA and is being tested now under our FFP. However, the current preliminary preferred alternative before the Council creates limitations that would interfere with such an arrangement, and we are asking that the final preferred alternative be changed to specifically accommodate and recognize the establishment of such private community benefit arrangements among fishery participants, to prevent community and harvester dislocation and allow fishermen to increase efficiencies, while still avoiding the problems of excessive share and geographic consolidation.

The MSA authorizes associations or other persons who substantially participate in the fishery to hold and acquire quota, even if such associations are not formed under the "regional fishery association" provisions. MSA Section 303A(c)(5)(b) provides that when setting up an IFQ program, the Council shall:

- authorize limited access privileges to harvest fish to be held, acquired, used by, or issued under the system to persons who substantially participate in the fishery, including in a specific sector of such fishery, as specified by the Council.

(emphasis added). Thus, the MSA directs the Council to determine the types of "person" that can hold quota. Elsewhere, the MSA defines the term "person" to include "associations," 16 U.S.C. § 1802(31). As such, the Council has the statutory authority, independent from the provisions on "regional fishery associations," to determine that associations made up of QS holders and other members may hold or acquire quota. The Council's quota holding eligibility provisions at A-2.2.3 are similarly broad (e.g., any "person or entity," with a 75% U.S. citizenship requirement for entities).

\(^2\) The Magnuson-Stevens Act states that voluntary regional fishery associations (RFAs) consist of participants in the fishery who hold QS "designated for use in the specific region or subregion." 16 U.S.C. 1853a(c)(4). We have not included regulatory linkage of QS to a specific geography in the current Association proposal. Legislative history explains that RFAs were authorized in lieu of allocating "processing privileges" and that RFAs attempted to address competing shore-side linkage and community impacts concerns: "The Committee chose to take a broader view and allow allocation of harvesting privileges to communities, and inclusion of processors and other shore-based businesses in RFAs with [QS] holders which would allow for the designation or linkage of [QS] to a region or community." S. Rept 109-229 page 25. "In an RFA, quota would be allocated to the harvester but classified for use in a specific region in order to maintain a relative balance between the harvesting sector receiving the quota and the communities, processors, and other fishery-related businesses that have become dependent on the resource entering their port." S. Report 109-229 page 27.
IV. The Community Fishing Association Proposal is Consistent with the MSA, the West Coast Groundfish FMP, and Amendment 20

Table 6-1 in Chapter 6 of the PDLIS contains a list of various goals and policies of the MSA, the West Coast groundfish FMP, and Amendment 20 which guide the Council’s decision on determining the preferred alternative. Exhibit A to this letter contains a similar chart which demonstrates that the Community Fishing Association proposal is consistent with those provisions. As demonstrated in Exhibit A, the Association Proposal complements the Council’s preliminary preferred alternative and is consistent with the MSA and other applicable regulations.

In particular, the Association Proposal provides a mechanism to protect vulnerable fishing communities from the disruption that is expected to occur when the IFQ program is implemented. See generally, Decision Document, Section 4.14. However, the preliminary preferred alternative lacks sufficient protection in this respect and will likely result in many small vessel owner-operators exiting the fishery, increased barriers to entry for new participants, and significant geographic shifts in effort. It is also expected that certain Associations will incorporate specific conservation and management requirements, such as catch and by-catch monitoring and reporting improvements, area or gear limitations, and other measures to reduce impacts on habitat or weak stock species. Importantly, the proposal meets the MSA community protection requirements and promotes conservation and management goals while preventing the acquisition of excessive shares and excessive consolidation. Further, the proposal contains elements, such as the 3 year divestiture period, which meet the MSA’s fair and equitable initial allocation requirements. Information provided to the agency concerning QS control by Association members could also meet the requirements of MSA Section 303A(c)(1)(J).

While Exhibit A provides an overview of the Proposal’s consistency with the MSA, the following sections provide a more detailed analysis of key issues.

A. Establishing Different Accumulation and Control Limit Requirements for Associations is Consistent with MSA Requirements

As described above, and more fully in the Proposal, because Associations would represent or hold QS to be used by multiple participants, they must be afforded different, higher accumulation limits (or special rules or exemptions) than individuals within the Association in order to achieve the efficiencies and resource pooling necessary to be effective. If an Association were subject to the accumulation and control caps applicable to individuals suggested in the Decision Document, the Association would not have sufficient QS to lease or transfer to its members to be effective or achieve necessary efficiencies. In short, Associations either would not form, or, if they did, they would not result in the benefits for which they are designed. Indeed, the California Department of Fish and Game, in its October 15, 2008, submittal for the Briefing Book, agreed with this need when it wrote that for Associations managing quota, “exceptions from
accumulation limits may be necessary.” Report on Adaptive Management, California Department of Fish and Game, at 2 (October 15, 2008).

The language in the MSA on designing limited access privilege programs provides the Council with sufficient flexibility to use creative solutions to assist entry level and small vessel owner-operators and fishing communities. For example, MSA Section 303A(c)(5)(C) provides that the Council “shall . . . include measures to assist, when necessary and appropriate, entry-level and small vessel owner-operators, captains, crew, and fishing communities through set-asides of harvesting allocations, including providing privileges, which may include set-asides or allocations of harvesting privileges, or economic assistance in the purchase of limited access privileges.” MSA Section 303A(c)(5)(B) contains a similar requirement to develop “policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including regional or port-specific landing or delivery requirements.” While these sections provide a mandate that the Council design the IFQ in a way that protects fishing communities, entry-level participants and small vessel owner-operators, the language leaves much discretion and flexibility to the Council to determine how best to meet those goals. Thus, to the extent that having different accumulation limits for Community Fishing Associations will assist in protecting fishing communities, small vessel owner-operators and entry-level participants, the Council has the legal authority to take this action.

In addition, providing for different, higher accumulation and control limits (or special rules or exemptions), for this narrow set of entities (Associations) will not run afoul of the MSA provisions prohibiting the acquisition of excessive share. See MSA § 303A(c)(5)(D). Importantly, although Associations would be subject to different, higher accumulation limits, individual members of an Association would remain subject to the regular accumulation and control limits. In order to prevent any “gaming of the system,” the Council can impose transparency and reporting provisions to ensure that Association members or other parties affiliated with the Association do not gain direct or indirect control over quota share held by the Association. Furthermore, parties would not be able to control quota through ownership of the Association or by other means. The Association could be required to report its ownership structure (including the identity of all direct and indirect shareholders) and material contracts relating to control of the Association, QS and/or QP to NMFS, or any other information relevant to resolving concerns about excessive control or market power, e.g., 16 U.S.C. 1853a(c)(1)(J). As a result of these protections, individual members will not gain access to or control more quota than they otherwise would if they were not a part of the Association. Thus, a special, different accumulation cap for Associations would not conflict with the MSA provisions pertaining to preventing the acquisition of excess share.
R. The Council Should Include a Divestiture Period for Entities with QS Over the Accumulation and Control Limits

1. The Divestiture Proposal Balances the MSA’s Fair and Equitable Initial Allocation Requirements with Preventing Acquisition of Excessive Share

The hallmark requirement under the MSA for the initial allocation of QS is that it must be done in a fair and equitable manner. MSA § 303A(c)(5)(A); National Standard 4. The MSA regulations recognize that allocating fishing privileges may inherently involve advantaging one group to the detriment of another. 50 C.F.R. 600.325(c)(3)(i)(A). However, if the Council is going to allocate in a manner that may advantage one group over another, it must justify its action:

An allocation of fishing privileges should be rationally connected to the achievement of OY or with the furtherance of a legitimate FMP objective. Inherent in an allocation is the advantaging of one group to the detriment of another. The motive for making a particular allocation should be justified in terms of the objectives of the FMP; otherwise, the disadvantaged user groups or individuals would suffer without cause.

Id. The Nature Conservancy believes that the preliminary preferred alternative to “redistribute” QS over the selected accumulation and control limits in a coast-wide manner would not only undermine the goals of the program with respect to vulnerable communities, but it is also unfair, inequitable, and not justified. Instead, initial allocation rules should apply equally to all permit holders, but those with excess QS should be required to divest within a reasonable period of time, such as 3 years from issuance of QS.

Among the initial allocation factors that must be considered are current and historical harvests and investments in the fishery. MSA § 303A(c)(5)(A). The Council’s preliminary preferred alternative goes most of the way toward meeting these requirements because it bases QS on the catch history associated with a permit and it recognizes investments in the fishery by only allocating QS to current permit holders. However, as currently proposed, this rule is not applied equally to all permit holders and does not reflect historical harvests, and thus is not fair and equitable.

Instead of permitting persons to divest excess QS and thus receive at least a monetary benefit in proportion to their investment in the fishery, the preliminary preferred alternative described in the Decision Document would redistribute the excess QS according to the allocation formulas to those persons whose QS is below the accumulation limit. Decision Document, Table 2-3, A-2.2.3.e, at pg. 55; see also, Decision Document, at pgs. A-239-240. Thus, not only would the permit holders with excess QS not realize the full benefit of their investment, but those who are under the cap would receive additional QS – essentially a windfall, an unfair and inequitable result.
In particular, harvesters owning permits which would otherwise entitle them to QS above the accumulation limit would receive no QS for amounts in excess of the limit, thus “losing” some of the catch history and forfeiting a portion of their investment in the fishery for redistribution coast-wide. Thus, the largest permit holders would not be treated the same as smaller permit holders, and the redistribution would not reflect historical harvests, making initial allocation unfair and inequitable.

Appendix A to the Decision Document identifies divestiture as an alternative to redistribution, noting in particular that it would have the benefit of providing a “wealth benefit to all individuals more in proportion to their relative history.” Decision Document, at A-239-40; see also id. at pgs. A-266-67. More succinctly, it is fair and equitable. Despite identifying this option and recognizing its fairness, the Decision Document does not adequately justify why redistribution is preferred. The only reason the Decision Document cites for preferring redistribution is that if entities are allowed to divest excess quota, they may do so in a way that allows them to continue to exert control over the quota. Id. at A-266-267. There is no factual basis cited for such an assertion, and if such a concern exists for some QS holders, coast-wide redistribution is an extreme response that would sweep to broadly. The Decision Document also predicts that redistribution of QS out of a community will unlikely be much of an issue because entities will divest themselves of excess permits prior to initial allocation, thus preventing a community “loss” of quota. However, the Decision Document fails to recognize that such sales of quota prior to initial allocation in order to avoid redistribution would have the same control issues as would sales of quota after initial allocation. That is, those entities that would try to “game the system” under a divestiture model by transferring QS to other entities under their control would also try to “game the system” under a redistribution model. Addressing this concern through transfer disclosure rules under excessive share limits would provide a more targeted and transparent result. Moreover, in certain regions slated to lose QS in the transition, such as the Central Coast, targeted local divestiture of QS would be a better result for communities than coast-wide redistribution.

Further, the redistribution proposal is likely to result in a greater economic loss to the permit seller. As alluded to by the Decision Document, divesting a permit prior to initial allocation would require documenting the permit’s catch history and assuring the buyer that it will qualify for QS through ownership of the permit. This uncertainty will likely result in discounting of the permit price—essentially a loss to the permit seller. As a result of this discounting for uncertain information, permit sellers could delay the sale of permits until the last possible moment, resulting in a rush of permit sales and confusion amid an inefficient market. Therefore, the Council should allow for a reasonable 3 year divestiture period to enable a more orderly market among buyers and sellers to develop, including among members of potentially vulnerable communities.

Not only is allowing divestiture fair and equitable, but divestiture is necessary for The Nature Conservancy’s efforts to preserve local access to the groundfish resource in Central Coast fishing communities. The Decision Document raises the concern that a strict redistribution model could cause disruption since those communities where large
entities are currently located would essentially lose quota and fishing effort would be transferred elsewhere. Decision Document, at 495-96. The Nature Conservancy understands that the permits it owns would exceed the accumulation limits and under the preferred alternative’s redistribution provisions, excess quota would be redistributed on a coast-wide basis. Such a result in the case of these permits would undermine the Council’s goal of preventing dislocation in fishing communities, including the Central Coast.

If redistribution were to occur, the Central Coast communities would suffer by losing QS earned in that location and The Nature Conservancy’s goals of preserving the Central Coast’s historical and traditional access to groundfish resource would be frustrated. The Nature Conservancy’s intent with its permits is to transfer them (or rather, transfer quota once received) to a newly formed Association or Associations located on the Central Coast. See, Statement of Intent. Doing so would keep quota in Central Coast communities and the Association or Associations would assist the communities with withstanding the disruption caused by the IFQ. In order to achieve this goal, however, The Nature Conservancy must be allocated its full QS and be allowed to divest excess QS into an Association.

In further support of this position, we note that it is expected that implementation of the IFQ program will result in a geographic shift of fishing activity northward away from Central California as a result of consolidation and individual and collective risk/cost impacts. Decision Document, §§ 4.15.2; 4.17.1.2. The Nature Conservancy’s efforts are aimed at minimizing this impact. However, to be successful, it must be allowed to divest excess quota it is allocated to an Association. Redirecting its excess quota, on the other hand, would exacerbate the shift away from California.

We also note that other entities are likely above the accumulation caps as well, and allowing divestiture for other entities would likely also reduce disruption to other communities. While redistribution would spread the excess QS throughout the coast, if allowed to divest, an entity may be more likely to divest locally and thus quota is more likely to stay in the community, thus minimizing disruption. The existence of a Community Fishing Association into which such QS could be transferred would facilitate this divestment of QS to stabilize communities.

Allowing owners of excess QS to divest QS above the cap during a reasonable period after initial allocation is the best solution because it is fair and equitable, it meets the objectives of preventing persons from acquiring an excessive share, it minimizes disruption, and it will promote the Association Proposal. By structuring the initial allocation so that entities obtain the full QS associated with their permits histories, all permit holders would be treated equally and all would receive the full benefit of their investments in the fishery. On the other hand, by requiring the divestment of QS in excess of the accumulation and control caps within a reasonable period of time (3 years), the excess share and geographic consolidation concerns will be addressed. This is the only option which fairly balances the MSA’s competing requirements.
The Nature Conservancy understands that the Council could still consider a grandfather clause under which permit holders would be allocated all QS associated with their permit history, regardless of whether it would exceed the limits, thus "grandfathering" in excess QS for the largest harvesters. The purpose of a grandfather clause is to prevent entities entitled to QS above the accumulation caps from forfeiting their excess QS. It thus recognizes all harvesters' investment in the fishery. However, for an Association such as the one the Conservancy contemplates, these rules would not accommodate changes in Association membership. The rules explicitly state that the grandfather clause would expire upon addition of a new member to the grandfathered entity (corporation, partnership). See, A-2.2.3.e. This construct is not only unworkable from the Association perspective, but it also would work against the Council's interest in providing broader economic benefits under the plan. We believe that in light of these concerns and limitations, as well as fairness issues, divestiture is preferable to a permanent grandfather clause.

As described above, the MSA requires the Council to balance several competing interests. On the initial allocation question, the "fair and equitable" requirement and the requirement to prevent entities from acquiring excess shares are in conflict. While we recognize that a grandfather clause would allocate QS to all qualified harvesters in an equal manner, and large entities would not forfeit their investment, we believe that it runs the risk of locking in an advantage for larger harvesters in perpetuity over smaller harvesters who did not qualify for grandfathered QS. In certain circumstances, an indefinite grandfather clause could also result in a particularly large permit holder owning an excessive share, and thereby run afoul of § 303A(c)(5)(D).

For these reasons, we agree with the preliminary preferred alternative not to include the proposed grandfather clause options. However, we are also sympathetic to concerns that a strict redistribution system will result in large permit holders forfeiting their investment in the fishery without compensation. A divestiture period could provide an equal allocation of QS according to catch histories, while still preventing excess shares and consolidation.

2. **Divestiture of QS, in Combination with Different Accumulation and Control Limits for Community Fishing Associations, is Preferable Means to Achieve Community Goals**

We understand that, as another way of recognizing existing investment in the fishery and address concerns of those with QS over the range of accumulation limits in the Decision Document, the Council may be considering accumulation and control limits that could be higher than that range, which were derived based on permit ownership concentrations as of 2006. The Nature Conservancy has not taken a position on the specific limits that should be placed on individual QS holders, given that the Council is deliberating on this matter and carefully considering the benefits and impacts of such an action on the goals of the program and the long term stability of the groundfish fishery.
However, in making these determinations, the Council is charged with including measures to protect fishing communities and prevent geographic consolidation. As described in the Decision Document, adopting much higher accumulation and control limits for individuals could negatively impact fishing communities, particularly those communities without large entity harvesters. Decision Document, at 495. Substantially higher individual limits could tend to promote industry consolidation, to the detriment of smaller fishing communities, and may make it more likely that individual entities are able to acquire an excessive share. These impacts are of concern to communities and harvesters coast-wide.

As noted by the Council, divestiture could still address the concerns of larger permit holders about “losing” their investment in QP if they exceed the individual limits, as long as they are offered the opportunity to sell their excess QP and thus realize the benefit of their investment. Because divestiture answers this objection while still protecting communities, we believe it is the preferred route for community stability, if combined with special rules for Community Fishing Associations, as described above. This alternative promotes efficiency yet protects against excessive share concerns.

C. Community Fishing Association Complements Other Proposals

The Association Proposal complements other proposals by providing industry participants and their communities capacity to affect the objectives of the Trawl Rationalization. As discussed earlier, the Association Proposal is different from the Adaptive Management Program option included in the Decision Document. However, an Association is complementary to this and other proposals before the Council to address community stability and conservation. For example, in concert with the AMP, the association could also serve as an institutional mechanism within a community that could provide the administrative and other support needed to apply for, or distribute, QP for use in a particular community. This role could help address concerns raised about how the AMP would be administered in practice.

Associations can also complement other aspects of Trawl Rationalization. Assume, for example, that a member of a vulnerable community exceeds the individual accumulation limits and is required to divest excess quota. It is possible that individual members of the community lack the financial capacity to purchase such quota. In this case, the Community Fishing Association may be able to secure sufficient funding sources to purchase the quota and therefore help the community avoid a loss of quota. An Association can also support local capacity needs. If the local County government, for example, determines that the County is interested in raising money to purchase Q3 and anchor the Q3 in the community, the Association can act on behalf of the County by and through a private agreement to own and administer the Q3/QP. Without an Association, representatives of several Central Coast governmental agencies have informed The Nature Conservancy that they would not be able to own or hold Q3/QP.

In another example, an Association could provide information and assistance to fishermen, processors and community representatives in applying for grants from private
foundations or public agencies, or loans from entities such as the California Fisheries Fund to enable the purchase of additional QS and further the MSA’s objective of community stability. Likewise, an Association could apply for research grants from academic institutions and conservation organizations to perform research aimed at promoting the MSA’s conservation and/or efficiency goals. Although some, and perhaps most, of these programs are available to individual fishermen, processors or communities, pooled applicants can often realize significant economies of scale and increased likelihood of success. As an individual, the benefits of the program may be outweighed by the time and effort it takes to gather the information, complete the application, track and report results and perform the analysis required in the follow up report. Furthermore, the grantor in this example must make an often difficult decision on the merits of an individual fisherman’s application. Pooled applicants under an association can be expected to realize greater success in securing these grants or loans and ultimately making progress toward achieving the MSA’s goals.

Similarly, the preliminary preferred alternative allows the use of non-trawl gear to harvest trawl quota pounds and Associations can facilitate the day-to-day management of potential gear conflicts. Converting from high-volume, relatively low per unit value trawl fishing to lower volume, higher value fishing is an opportunity for communities in the Central Coast and gear switching, such as proposed in the decision document, see Decision Document, at Section A-1.1, is important to that movement. A Community Fishing Association, by managing where and how its members fish, could reduce potential gear conflicts that could result from trawl and fixed gear being used in the same area.

In summary, an Association could contribute to the Council achieving the MSA’s goals by providing needed capacity within the community – to apply for AMP quota pounds, to prevent the loss of quota, to access grant funding or private capital to purchase quota shares or other necessities, by building research partnerships that could contribute to the sustainability of the community and the fishery or by assisting with the local management of gear conflicts.

D. The Association Proposal Promotes the Conservation and Management Goals of the IFQ

While QS owned by an Association and owned or fished by Association members will be subject to the same general conservation and management restrictions as other QS, including total catch accounting, the Association approach may offer some opportunities to improve both conservation and efficiency. The Community Fishing Association contemplated by the Conservancy and its partners in the Central Coast could take advantage of opportunities afforded by the Association structure as well as changes in the management of the fishery that promote fishing flexibility and improved science and management. Some of these benefits (and costs) are being tested and measured in the Central Coast EFP, under which the participants are fishing under the proposed “gear switching” and catch pooling options offered in the Trawl Rationalization plan.
The EFP and our Conservation Fishing Agreement (using modified trawl gear in geographically specified areas to target flatfish) are testing a suite of approaches that could be included in any Community Fishing Association in support of both conservation and industry/community goals. The specific conservation and management approaches being used in the Central Coast EFP are near real-time catch and bycatch monitoring and reporting, use of more selective fixed gear, and other approaches to reduce impacts on habitat or weak stock species. These include harvest planning to target abundant stocks, avoiding bycatch of overfished species, and reducing non-groundfish mortality. The inclusion of harvest planning, more selective gear, and near real-time monitoring in such Associations, while improving conservation and management performance, could also mitigate the risk of consolidation in certain high bycatch areas (e.g., some Central Coast ports).

V. As a Substantial Participant in the Fishery, The Nature Conservancy Should be Allocated Quota

The Nature Conservancy supports the preliminary preferred alternative’s broad policy for those who can receive initial allocations of QS or subsequently hold QS. The Nature Conservancy understands that, as the holder of existing limited entry trawl permits and as a substantial participant in the fishery, The Nature Conservancy will be entitled to receive QS based on the catch histories associated with the permits it owns.

As described in the Decision Document, the MSA has two broad restrictions on who can participate in a limited access privilege program. First, the person holding quota must be among the entities listed in MSA Section 303A(c)(1)(D), which include “a corporation, partnership or other entity established under the laws of the United States or any State,” MSA § 303A(c)(1)(D). Second, the person must “substantially participate in the fishery, as specified by the Council,” MSA § 303A(c)(5)(E). We understand that the Council is proposing a broad definition of who can participate (any “entity” with 75% U.S. ownership), which would include conservation organizations, such as The Nature Conservancy. See Decision Document, at A-214 (noting that a conservation organization may hold quota). The Conservancy notes that it is also using its permits, and would also meet any future Council “use-or-lose” provisions. See, Section A-2.2.2(c) (“use-or-lose” provisions deferred to consideration in program review).

As described fully in the Introduction section, The Nature Conservancy has become a substantial participant in the west coast groundfish fishery. The Nature Conservancy currently owns several limited entry trawl permits on the Central Coast and has partnered with fishermen and local communities to continue fishing those permits using more sustainable practices. It has expended significant funds and devoted significant resources to these programs and intends to remain an active participant in the fishery. See generally, Statement of Intent. These actions and our unique approach show a clear record of our substantial participation in the groundfish fishery and that The Nature Conservancy meets both the MSA and Council eligibility requirements for holding quota.
Thank you for your consideration of the comments of The Nature Conservancy.

Sincerely,

Margaret Spring  
Director  
California Coastal and Marine Program  
The Nature Conservancy

Enc.: Exhibit A. Consistency of Community Fishing Association with Applicable Law

October 29, 2008

Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220-1384

Re: Comments on Decision Document for the November 2008 Pacific Fisheries Management Council Meeting Concerning the Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery

Dear Council Members:

Thank you for the opportunity to comment on the Decision Document for the November 2008 Pacific Fisheries Management Council meeting relating to the Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery ("Decision Document"). We recognize the tremendous effort and time that the Council has put into this document and appreciate the Council's efforts to reach out to all those in the fishing community and listen to concerns, including those raised by The Nature Conservancy.

Please consider the following comments which support The Nature Conservancy's proposal for a Community Fishing Association, which was separately submitted for inclusion in the Briefing Book on October 15, 2008.

1. Executive Summary

   Community Fishing Associations. The Nature Conservancy proposes that the Council make certain changes to the preliminary preferred alternative to remove impediments to the formation of Community Fishing Associations. Importantly, the Nature Conservancy's proposal is supportive of, but distinct from, the Adaptive Management proposals and is not a Regional Fishery Association. The key required changes are:

   - Different accumulation limits for qualifying Associations;
   - Rules to ensure that Association members cannot gain access to or control more quota share (QS) than they would be able to control otherwise; and
   - A three year divestiture period for larger entities to sell off excess QS.

The MSA Permits Different Control Limits for Associations. In order to be effective and achieve the goals for which they would be formed, Associations must be subject to different accumulation and control limits than individuals. With different limits than afforded individuals, Associations will help communities to pool their resources and achieve greater efficiencies when complying with fishery regulations. Associations will have sufficient quota to lease to entry level fishermen. In these and other ways described below, enabling formation of these Associations would benefit
fishing communities, minimize disruption, and perhaps prevent excessive consolidation of the industry. These are key goals under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. § 1801–1891d, as amended in 2006. Further, the MSA provides the Council with flexibility to adopt creative approaches such as distinct rules for Associations.

**Association Members Will be Subject to Regular Accumulation Caps.** Individual Association members will be subject to the same individual accumulation and control caps as others, so excessive share requirements under the MSA will be met.

**Transparency and Control Rules Can Prevent Excessive Share Issues.** Associations may be subject to transparency requirements to ensure that members do not control quota in excess of accumulation and control caps through their Association membership or that others affiliated with an Association are able to exert excessive control over the fishery. Transparency requirements may also assist the National Marine Fisheries Service (NMFS) with anti-trust investigations.

**The Council Should Adopt a Three Year Divestiture Rule.** In order to address the fairness and equity concerns relating to larger entities being forced to forfeit a portion of their quota, as would occur under the preliminary preferred alternative’s redistribution model, entities with excess quota should be given a reasonable period of time (3 years) to sell their excess quota. Under the preliminary preferred alternative, excess quota would redistribute quota coast-wide, to the detriment of fishing communities with entities holding excess QS. Under a divestiture model, excess QS could be kept in the community, which is what The Nature Conservancy would do by transferring its quota to a newly formed Association.

**Associations May Assist Fishing Communities and Promote Conservation and Management Goals.** Associations may help fishing communities to obtain grants or special financing to purchase or lease QS. Such a role will minimize disruption of the IFQ and help with the viability of small vessel owner-operators and new entrants to the fishery. Further, it is expected that Associations will promote conservation and management goals of the groundfish FMP, as would be the case for the Association The Nature Conservancy plans to form.

**The Nature Conservancy is a Substantial Participant in the Fishery and is Entitled to Receive Quota Share.** Through The Nature Conservancy’s considerable past efforts in the West Coast groundfish fishery, particularly its work in partnership with communities on the Central Coast, it has become a substantial participant in the fishery. As a result, under the MSA, The Nature Conservancy is eligible to receive an initial allocation of QS according to the allocation formulas based on its permits’ catch histories.
II. Introduction and Overview

A. Background on The Nature Conservancy’s Participation in the Fishery

The Nature Conservancy has been working closely with fishermen and communities in the Central Coast of California over the last several years to develop approaches designed to lead to more sustainable approaches to harvesting groundfish in the limited entry trawl fishery, as well as to preserve local access to the groundfish resource in fishing communities. Starting in 2005, The Nature Conservancy partnered with regulatory agencies and trawl fisherman in Central Coast communities to develop a collaborative proposal that would implement recommendations of the National Academy of Sciences aimed at reducing the impact of bottom trawling. Jointly, we identified and successfully petitioned the Pacific Fishery Management Council for 3.8 million acres of important marine habitats that would be off limits to bottom trawl gear. Simultaneously, to reduce bottom trawl fishing effort and to mitigate the economic impact of bottom trawl closures, TNC purchased federal permits and vessels from local fishermen interested in leaving the trawl groundfish industry.

As a result of this effort, The Nature Conservancy owns a number of trawl permits with fishing history in the Central Coast area that we have redeployed, or plan to redeploy, in the area under demonstration projects with our community fishing partners. In 2007, the Conservancy leased one of its permits to a Morro Bay fisherman. The lease is a voluntary, private agreement designed to test methods for making trawl fishing more sustainable and economically viable, focusing on techniques to reduce bycatch and conserve habitat. In addition to this effort, the Conservancy and our fishing community and state partners are using six of the Conservancy’s permits in an Exempted Fishing Permit (EFP) approved by the Council for 2008 and 2009, to test community-based approaches that could be used in the upcoming transition to an individual fishable quota (IFQ) system. This EFP, operating out of Morro Bay and Port San Luis, is evaluating how the establishment of a community based fishing association comprised of commercial fishers using fixed gear and shared species harvest caps will provide community and economic benefits.

Through these efforts we have become a substantial participant in the groundfish fishery with a strong interest in promoting a long-term sustainable fishing future for communities in the Central Coast of California. Our permit ownership, partnerships, and investment in these projects gives us a unique perspective and interest in ensuring that the transition to an IFQ system is done in a way that protects vulnerable fishing communities, preserves traditional access to groundfish in these areas, promotes marine conservation, and allocates QS fairly and equitably. In June 2008, The Nature Conservancy provided a statement of our goals and intentions with respect to use of these permits, stating that we would work with our fishing and community partners and experts on a Central Coast fishing entity that could hold and manage fishing permits or quota for three purposes: (1) local industry access to and benefits of conservation and improved resource productivity; (2) more sustainable harvesting methods and approaches; and (3) preserving and

B. The Nature Conservancy Proposes Community Fishing Associations as Part of the Rationalization Plan

Given our interests and activities in the Central Coast, particularly through our work in the EFP, the Conservancy has been following closely the Council’s development of a Rationalization proposal for the Pacific Coast Groundfish Limited Entry Trawl Fishery. The Council’s deliberations have been guided by a range of policy and legal requirements, including those designed to mitigate unanticipated impacts of rationalization by promoting fairness and equity, assisting communities, and minimizing disruption of current fishing practices. See, e.g., Decision Document, at Ch. 6. As a result, in its analyses, the Council has identified and acknowledged several expected impacts on fishing communities, including those in the Central Coast. See Decision Document, Section 4.14, pgs. 521-523. Morro Bay is specifically identified as a vulnerable community and likely to receive less during initial allocation of QS than the average for all ports. Chapter 4 also identifies Moss Landing as vulnerable to consolidation and predicts that Half Moon Bay is likely to experience loss of vessels and QS due to consolidation and migration of QS northward. Both communities could be constrained by managing depleted species under QS because they are located near high bycatch areas. The port of Monterey should similarly be considered at risk, although the Decision Document does not evaluate this historic Central Coast fishing port. In general, the projected migration of QS northward and resulting loss of infrastructure upon which other community fisheries depend will likely magnify impacts in this region.

In order to address these concerns and requirements, as well as achieve the goals set forth with our fishing and community partners, The Nature Conservancy proposes that the Council make some discrete changes to the Decision Document to promote community stability and improved management through establishment of voluntary “Community Fishing Associations” under which individual members (permit/quota holders and other fishermen) would work together in community-based harvesting operations to pool risks and costs, meet new conservation and management requirements, and retain local access to fishery resources. Specifically, we recommend that the Council endorse formation of such Associations and remove impediments in accumulation and

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1 The Conservancy notes, as it has noted in oral testimony before the Council at its June 2008 meeting, that the Document contains substantial errors in describing the current status of fishing in Morro Bay and the extent to which trawl permits owned by the Conservancy are being deployed there to fish. See Decision Document, at pg. 523. The correct information is that the Conservancy is leasing one of its trawl permits and vessels under a private conservation agreement; six other trawl permits are being fished by participants in the Exempted Fishing Permit. Landings are in Morro Bay as well as Port San Luis. Three fishermen participated in 2008 and up to six are expected in 2008. Landings are expected to increase as the EFP caps change to reflect permit landings history. Thus, any loss of QS represented by these permits would further harm Morro Bay and Port San Luis.
control limits under A.2.2.3(e) to formation of such Associations. (The Nature Conservancy’s proposal is referred to herein as the “Association Proposal”)

The Nature Conservancy outlined the changes needed, including with respect to accumulation limits for such Associations, in its presentation to the Groundfish Allocation Committee (GAC) during its October 8-9, 2008 meeting. While the GAC did not make any recommendations to resolve impediments in the plan to formation of such associations (i.e., in the accumulation limit rules), it did recognize by consensus that community fishing associations may have a key role to play in the overall program, particularly in protecting and stabilizing vulnerable fishing communities. Groundfish Allocation Committee Report on Amendment 20 Trawl Rationalization Alternatives, at pg. 2 (“The GAC recommends that . . . [i]n implementing adaptive management, recognize formal regional (or community) fishing associations (consensus).”).

The states of California and Washington in their subsequent comments have already suggested formation of community fishing associations as one component of a proactive plan to stabilize fishing communities and prevent disruptive shifts in geographic patterns of landings and fishing activity, including pointing to potential the need for exemptions from accumulation limits to foster their creation. See, November 2008 Council Meeting Agenda, items F.3.f. A number of California ports and communities have also identified their interest in pursuing this community fishing association approach; these materials have been submitted under Agenda item F.3.h. See, e.g., Resolution No. 61-08, City Council of Morro Bay, October 13, 2008; Resolution No. 21-08, San Mateo County Harbor District, October 15, 2008; Letter from Chuck Della Sala, Mayor of Monterey, to Mr. Donald K. Hansen, October 24, 2008; Resolution No. 08-15, Port San Luis Harbor District, October 28, 2008.

The Nature Conservancy urges the Council to include the changes necessary to allow permit holders to come together to form Community Fishing Associations in the final preferred alternative that it will submit to the Secretary of Commerce for review pursuant to MSA Section 302(h)(1).

III. The Nature Conservancy’s Proposal for Community Fishing Associations

A. Overview of Proposal

The Nature Conservancy previously submitted its formal proposal to enable formation of Community Fishing Associations on October 15, 2008 and can be found in the Public Comment portion of the Briefing Book. For your convenience, we attach a copy of our October 15 submittal. Changes to the current plan are needed because multiple permit holders with Q8 working together in a Community Fishing Association that leases quota pounds (QP) to members would trigger the accumulation/control rules, which, paradoxically, were established for the same reasons as these Associations: to try to prevent consolidation and spread quota among communities. In addition, the current preferred alternative would not allow quota to remain in its home port if the holder is
over the accumulation limits – i.e., amounts over the limit would be redistributed coast-wide, rather than in the community that held the catch history.

While the details of the Community Fishing Association proposal can be found in the submittal, we highlight here the key components:

- A Community Fishing Association (Association) would be a corporation created for community benefit, with participating members that could hold QS.

- Such an Association would not be eligible for initial issuance of QS, but could acquire QS through direct acquisition from willing sellers.

- Each year, the Association would make QP available, through a private agreement, to its members for their assistance in achieving the Association’s objectives, e.g., maintaining landings in a given community or achieving conservation goals.

- Any fisherman may elect each year whether to be a member of the Association and enter into a private agreement with the Association.

- Any member would be eligible to access Association-owned QP up to the vessel cap. For fishermen who hold a groundfish trawl permit and QS, this will be the aggregate of individually held QP plus any Association-owned QP controlled by the individual.

- Any member who does not hold a trawl permit or QS could apply to the Association to lease a groundfish trawl permit (if one is available) and QP.

- Members of the Association would have access to services from the Association (e.g., observers) and would have to abide by the rules of the Association (e.g., to land all or some of the fish in a particular community, to abide by area or gear limitations, to cooperate with bycatch reduction efforts, etc.).

- The Rationalization Plan would establish unique accumulation limits and transparency requirements for Associations, allowing them to hold QS above the accumulation limits for individuals, as long as the Association demonstrates that no individual member holds or controls any more QS or QP than permitted under the accumulation limits for individuals, or that any individual through participation in the Association is otherwise able exert excessive control over the fishery.

- The Rationalization Plan would enable retention of quota in its home region by allowing allocation of the full amount of QS to permit holders based on their permit history, but require that amounts over the accumulation limits be divested over a reasonable period (e.g., 3 years), thus allowing an orderly transition of QS and minimizing disruption to communities.
The Nature Conservancy recognizes that the Council must perform a careful balancing of various competing goals when setting up the IFQ program, chief among which is balancing increased efficiency of the fleet as whole with impacts to fishing communities. The Decision Document quotes from a Government Accountability Office study which sums up this issue: “because the goals of community protection and new entry run counter to the economic efficiency goals, fishery councils face a delicate balancing act to achieve all goals.” Decision Document, at 482-83. The purpose of The Nature Conservancy’s Community Fishing Association proposal is to help the Council with this “delicate balance.” As described more fully below, Associations will help to protect fishing communities, small vessel owner-operators, and new entrants to the fishery, yet will create a vehicle to allow small players to operate with greater efficiency, improved management, and increased financial viability.

In order for the Association Proposal to achieve these goals, it is essential that Associations be subject to different accumulation and control limits and rules than will apply to individual permit and QS holders within the Association. Under the alternatives before the Council, an Association would have to meet the same accumulation and control limits as an individual QS holder, even though each individual member within the Association is bound to the same limit. Council analyses have identified unintended impacts of the control limits on communities and associations as an issue to be addressed. Decision Document, Appendix A, A-2.2.3(e), pgs. A-230-235. Given projected economic pressures on vulnerable communities in the transition, it would be prudent to affirmatively establish specific rules in the plan designed to facilitate the formation of Community Associations that could hold QS historically harvested by members of such communities, provide benefits such as sharing costs and management burdens, and provide access to new entrants. See, e.g., Decision Document, § 4.6.3.1, pgs. 325-326 (“individual accountability for total catch associated with IFQs and coops increases the financial risks” suggesting the benefits of risk pools under voluntary associations); § 4.6.4.2 (describing cumulative impacts placing economic pressure on harvesters, e.g., fuel costs).

Accordingly, the Decision Document should include different accumulation and control limits and related guidance that would allow such Community Fishing Associations and arrangements to form. To address stated concerns that such arrangements could be used to circumvent or undermine the Council’s goal of avoiding excessive share consolidation (e.g., concerns regarding market power) Appendix A, pg. A-230, the Conservancy’s proposal specifies approaches to limit excessive control, including qualifying criteria and review by the National Marine Fisheries Service. This review could also require member information and disclosures to increase transparency, including information that could be used under MSA Section 303A(c) to identify anti-competitive, anti-trust, price collusion, or price fixing activities among QS holders within the Association or by persons otherwise affiliated with the Association. 15 U.S.C. § 1853a(c)(1)(J).

Such a community-based approach would actually work to prevent potential adverse community impacts related to excessive QS accumulation, and align with the
Council’s attempts to reconcile economically-driven vessel consolidation with maintaining individual fishing participation. For example, the Decision Document sets vessel control limits higher than individual control limits, allowing more than one person’s QS to be used on a vessel, thus providing one means of maintaining individual fishing participation even as the fleet shrinks. Decision Document, at 483-84. In a similar way, an Association would provide a community-based platform for maintaining fishing participation in a particular location, even in the face of economic pressures and consolidation.

In addition, the Decision Document contemplates that the additional QS/QP needed to reach the higher vessel cap could be owned by other entities, including “communities, conservation organizations, or other parties.” Id. at 484. It is this type of role of holding QS and providing additional resources that an Association would play. In so doing, an Association would assist fishing communities, small vessel owner-operators and new entrants into the fishery, while also promoting the broader efficiency goals by being subject to a different cap and allowing Association members to pool resources.

B. The Association Proposal is Complimentary to, But Distinct From, the Adaptive Management Option

In order to avoid any confusion, we would like to clarify that the Association Proposal is separate and distinct from the proposal for an Adaptive Management Program (AMP) option. While the two programs may be complimentary and promote the same goals, the AMP takes a different approach and the Association Proposal is in no way dependent on the AMP. To effectuate the Association Proposal, the Council would only need to remove impediments in accumulation and control provisions of section A-2.2.3(e) to formation of such voluntary Associations; however, the AMP option could be modified to specify how such Associations would work with, and support, the AMP approach.

Under the AMP, up to 10% of the QP would be set aside which could be used as needed to, in part, “compensate for unforeseen outcomes from implementing the IFQ program.” Decision Document, at 42. Thus, the AMP takes a retrospective approach, in that it compensates for problems after they arise. In contrast, the Association Proposal is prospective in nature, in that it is designed to enable the participants to prevent or minimize the expected disruption to fishing communities. While an Association could work in conjunction with the AMP, such as by receiving or distributing QP, the Association Proposal is not dependent on the AMP option.

The Association Proposal’s approach could also serve as an institutional mechanism within a community that could provide the administrative and other support needed to apply to the AMP for QP, or distribute QP awarded by the AMP, for use in a particular community. This role could help address concerns raised about how the AMP would be administered in practice. See, e.g., comments of Washington Department of Fish and Wildlife, November 2008 Council Agenda Item F.3.e.
C. Community Fishing Associations Are Not “Regional Fishery Associations”

The Nature Conservancy’s proposal is not to form “regional fishery associations” contemplated under MSA Section 303A(c)(4), though both support community stability goals. What we are proposing – QS holders and other harvesters working together in private arrangements to pool risks, share costs, and collaborate on conservation and management improvements – is already permissible under the MSA and is being tested now under our IFP. However, the current preliminary preferred alternative before the Council creates limitations that would interfere with such an arrangement, and we are asking that the final preferred alternative be changed to specifically accommodate and recognize the establishment of such private community benefit arrangements among fishery participants, to prevent community and harvester dislocation and allow fishermen to increase efficiencies, while still avoiding the problems of excessive share and geographic consolidation.

The MSA authorizes associations or other persons who substantially participate in the fishery to hold and acquire quota, even if such associations are not formed under the “regional fishery association” provisions. MSA Section 303A(c)(5)(E) provides that when setting up an IFQ program, the Council shall:

authorize limited access privileges to harvest fish to be held, acquired, used by, or issued under the system to persons who substantially participate in the fishery, including in a specific sector of such fishery, as specified by the Council.

(emphasis added). Thus, the MSA directs the Council to determine the types of “person” that can hold quota. Elsewhere, the MSA defines the term “person” to include “associations.” 16 U.S.C. § 1802(31). As such, the Council has the statutory authority, independent from the provisions on “regional fishery associations,” to determine that associations made up of QS holders and other members may hold or acquire quota. The Council’s quota holding eligibility provisions at A-2.2.3 are similarly broad (e.g., any “person or entity,” with a 75% U.S. citizenship requirement for entities).

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2 The Magnuson-Stevens Act states that voluntary regional fishery associations (RFAs) consist of participants in the fishery who hold QS “designated for use in the specific region or subregion.” 16 U.S.C. 1853a(c)(4). We have not included regulatory linkage of QS to a specific geography in the current Association proposal. Legislative history explains that RFAs were authorized in lieu of allocating “processing privileges” and that RFAs attempted to address competing shoreside linkage and community impacts concerns. “The Committee chose to take a broader view and allow allocation of harvesting privileges to communities, and inclusion of processors and other shore-based businesses in RFAs with [QS] holders which would allow for the designation or linkage of [QS] to a region or community.” S. Reppt 109-229 page 25. “In an RFA, quota would be allocated to the harvester but classified for use in a specific region in order to maintain a relative balance between the harvesting sector receiving the quota and the communities, processors, and other fishery-related businesses that have become dependent on the resource entering their port.” S. Report 109-229 page 27.
IV. The Community Fishing Association Proposal is Consistent with the MSA, the West Coast Groundfish FMP, and Amendment 20

Table 6-1 in Chapter 6 of the PDEIS contains a list of various goals and policies of the MSA, the West Coast groundfish FMP, and Amendment 20 which guide the Council’s decision on determining the preferred alternative. Exhibit A to this letter contains a similar chart which demonstrates that the Community Fishing Association proposal is consistent with those provisions. As demonstrated in Exhibit A, the Association Proposal complements the Council’s preliminary preferred alternative and is consistent with the MSA and other applicable regulations.

In particular, the Association Proposal provides a mechanism to protect vulnerable fishing communities from the disruption that is expected to occur when the IPQ program is implemented. See generally, Decision Document, Section 4.14. However, the preliminary preferred alternative lacks sufficient protection in this respect and will likely result in many small vessel owner-operators exiting the fishery, increased barriers to entry for new participants, and significant geographic shifts in effort. It is also expected that certain Associations will incorporate specific conservation and management requirements, such as catch and by-catch monitoring and reporting improvements, area or gear limitations, and other measures to reduce impacts on habitat or weak stock species. Importantly, the proposal meets the MSA community protection requirements and promotes conservation and management goals while preventing the acquisition of excessive shares and excessive consolidation. Further, the proposal contains elements, such as the 3 year divestiture period, which meet the MSA’s fair and equitable initial allocation requirements. Information provided to the agency concerning QS control by Association members could also meet the requirements of MSA Section 303A(c)(1)(F).

While Exhibit A provides an overview of the Proposal’s consistency with the MSA, the following sections provide a more detailed analysis of key issues.

A. Establishing Different Accumulation and Control Limit Requirements for Associations is Consistent with MSA Requirements

As described above, and more fully in the Proposal, because Associations would represent or hold QS to be used by multiple participants, they must be afforded different, higher accumulation limits (or special rules or exemptions) than individuals within the Association in order to achieve the efficiencies and resource pooling necessary to be effective. If an Association were subject to the accumulation and control caps applicable to individuals suggested in the Decision Document, the Association would not have sufficient QS to lease or transfer to its members to be effective or achieve necessary efficiencies. In short, Associations either would not form, or, if they did, they would not result in the benefits for which they are designed. Indeed, the California Department of Fish and Game, in its October 15, 2008, submittal for the Briefing Book, agreed with this need when it wrote that for Associations managing quota, "exemptions from
accumulation limits may be necessary.” Report on Adaptive Management, California Department of Fish and Game, at 2 (October 15, 2008).

The language in the MSA on designing limited access privilege programs provides the Council with sufficient flexibility to use creative solutions to assist entry level and small vessel owner-operators and fishing communities. For example, MSA Section 303A(c)(5)(C) provides that the Council “shall . . . include measures to assist, when necessary and appropriate, entry-level and small vessel owner-operators, captains, crew, and fishing communities through set-asides or harvesting allocations, including providing privileges, which may include set-asides or allocations of harvesting privileges, or economic assistance in the purchase of limited access privileges.” MSA Section 303A(c)(5)(B) contains a similar requirement to develop “policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including regional or port-specific landing or delivery requirements.” While these sections provide a mandate that the Council design the TPQ to protect fishing communities, entry-level participants and small vessel owner-operators, the language leaves much discretion and flexibility to the Council to determine how best to meet those goals. Thus, to the extent that having different accumulation limits for Community Fishing Associations will assist in protecting fishing communities, small vessel owner-operators and entry-level participants, the Council has the legal authority to take this action.

In addition, providing for different, higher accumulation and control limits (or special rules or exemptions), for this narrow set of entities (Associations) will not run afoul of the MSA provisions prohibiting the acquisition of excessive share. See MSA § 303A(c)(5)(D). Importantly, although Associations would be subject to different, higher accumulation limits, individual members of an Association would remain subject to the regular accumulation and control limits. In order to prevent any “gaming of the system,” the Council can impose transparency and reporting provisions to ensure that Association members or other parties affiliated with the Association do not gain direct or indirect control over quota share held by the Association. Furthermore, parties would not be able to control quota through ownership of the Association or by other means. The Association could be required to report its ownership structure (including the identity of all direct and indirect shareholders) and material contracts relating to control of the Association, QS and/or QP to NMFS, or any other information relevant to resolving concerns about excessive control or market power, e.g., 16 U.S.C. 1853a(c)(1)(J). As a result of these protections, individual members will not gain access to or control more quota than they otherwise would if they were not a part of the Association. Thus, a special, different accumulation cap for Associations would not conflict with the MSA provisions pertaining to preventing the acquisition of excess share.
B. The Council Should Include a Divestiture Period for Entities with QS Over the Accumulation and Control Limits

1. The Divestiture Proposal Balances the MSA’s Fair and Equitable Initial Allocation Requirements with Preventing Acquisition of Excessive Share

The hallmark requirement under the MSA for the initial allocation of QS is that it must be done in a fair and equitable manner. MSA § 303A(c)(5)(A); National Standard 4. The MSA regulations recognize that allocating fishing privileges may inherently involve advantaging one group to the detriment of another. 50 C.F.R. 600.325(c)(3)(1)(A). However, if the Council is going to allocate in a manner that may advantage one group over another, it must justify its action:

An allocation of fishing privileges should be rationally connected to the achievement of OY or with the furtherance of a legitimate FMP objective. Inherent in an allocation is the advantaging of one group to the detriment of another. The motive for making a particular allocation should be justified in terms of the objectives of the FMP; otherwise, the disadvantaged user groups or individuals would suffer without cause.

Id. The Nature Conservancy believes that the preliminary preferred alternative to “redistribute” QS over the selected accumulation and control limits in a coast-wide manner would not only undermine the goals of the program with respect to vulnerable communities, but it is also unfair, inequitable, and not justified. Instead, initial allocation rules should apply equally to all permit holders, but those with excess QS should be required to divest within a reasonable period of time, such as 3 years from issuance of QS.

Among the initial allocation factors that must be considered are current and historical harvests and investments in the fishery. MSA § 303A(c)(5)(A). The Council’s preliminary preferred alternative goes most of the way toward meeting these requirements because it bases QS on the catch history associated with a permit and it recognizes investments in the fishery by only allocating QS to current permit holders. However, as currently proposed, this rule is not applied equally to all permit holders and does not reflect historical harvests, and thus is not fair and equitable.

Instead of permitting persons to divest excess QS and thus receive at least a monetary benefit in proportion to their investment in the fishery, the preliminary preferred alternative described in the Decision Document would redistribute the excess QS according to the allocation formulas to those persons whose QS is below the accumulation limit. Decision Document, Table 2-3, A-2,2.3.e, at pg. 55; see also, Decision Document, at pgs. A.239-240. Thus, not only would the permit holders with excess QS not realize the full benefit of their investment, but those who are under the cap would receive additional QS – essentially a windfall, an unfair and inequitable result.
In particular, harvesters owning permits which would otherwise entitle them to QS above the accumulation limit would receive no QS for amounts in excess of the limit, thus “losing” some of the catch history and forfeiting a portion of their investment in the fishery for redistribution coast-wide. Thus, the largest permit holders would not be treated the same as smaller permit holders, and the redistribution would not reflect historical harvests, making initial allocation unfair and inequitable.

Appendix A to the Decision Document identifies divestiture as an alternative to redistribution, noting in particular that it would have the benefit of providing a “wealth benefit to all individuals more in proportion to their relative history.” Decision Document, at A-239-40; see also id. at pgs. A-266-67. More succinctly, it is fair and equitable. Despite identifying this option and recognizing its fairness, the Decision Document does not adequately justify why redistribution is preferred. The only reason the Decision Document cites for preferring redistribution is that if entities are allowed to divest excess quota, they may do so in a way that allows them to continue to exert control over the quota. Id. at A-266-67. There is no factual basis cited for such an assertion, and if such a concern exists for some QS holders, coast-wide redistribution is an extreme response that would sweep to broadly. The Decision Document also predicts that redistribution of QS out of a community will unlikely be much of an issue because entities will divest themselves of excess permits prior to initial allocation, thus preventing a community “loss” of quota. However, the Decision Document fails to recognize that such sales of quota prior to initial allocation in order to avoid redistribution would have the same control issues as would sales of quota after initial allocation. That is, those entities that would try to “game the system” under a divestiture model by transferring QS to other entities under their control would also try to “game the system” under a redistribution model. Addressing this concern through transfer disclosure rules under excessive share limits would provide a more targeted and transparent result. Moreover, in certain regions slated to lose QS in the transition, such as the Central Coast, targeted local divestment of QS would be a better result for communities than coast-wide redistribution.

Further, the redistribution proposal is likely to result in a greater economic loss to the permit seller. As alluded to by the Decision Document, divesting a permit prior to initial allocation would require documenting the permit’s catch history and assuring the buyer that it will qualify for QS through ownership of the permit. This uncertainty will likely result in discounting of the permit price – essentially a loss to the permit seller. As a result of this discounting for uncertain information, permit sellers could delay the sale of permits until the last possible moment, resulting in a rush of permit sales and confusion amid an inefficient market. Therefore, the Council should allow for a reasonable 3 year divestiture period to enable a more orderly market among buyers and sellers to develop, including among members of potentially vulnerable communities.

Not only is allowing divestiture fair and equitable, but divestiture is necessary for The Nature Conservancy’s efforts to preserve local access to the groundfish resource in Central Coast fishing communities. The Decision Document raises the concern that a strict redistribution model could cause disruption since those communities where large
entities are currently located would essentially lose quota and fishing effort would be transferred elsewhere. Decision Document, at 495-96. The Nature Conservancy understands that the permits it owns would exceed the accumulation limits and under the preferred alternative's redistribution provisions, excess quota would be redistributed on a coast-wide basis. Such a result in the case of these permits would undermine the Council's goal of preventing dislocation in fishing communities, including the Central Coast.

If redistribution were to occur, the Central Coast communities would suffer by losing QS earned in that location and The Nature Conservancy's goals of preserving the Central Coast's historical and traditional access to groundfish resource would be frustrated. The Nature Conservancy's intent with its permits is to transfer them (or rather, transfer quota once received) to a newly formed Association or Associations located on the Central Coast. Sze, Statement of Intent. Doing so would keep quota in Central Coast communities and the Association or Associations would assist the communities with withstanding the disruption caused by the IFQ. In order to achieve this goal, however, The Nature Conservancy must be allocated its full QS and be allowed to divest excess QS into an Association.

In further support of this position, we note that it is expected that implementation of the IFQ program will result in a geographic shift of fishing activity northward away from Central California as a result of consolidation and individual and collective risk/cost impacts. Decision Document, §§ 4.15.2; 4.17.1.2. The Nature Conservancy's efforts are aimed at minimizing this impact. However, to be successful, it must be allowed to divest excess quota it is allocated to an Association. Redistributing its excess quota, on the other hand, would exacerbate the shift away from California.

We also note that other entities are likely above the accumulation caps as well, and allowing divestiture for other entities would likely also reduce disruption to other communities. While redistribution would spread the excess QS throughout the coast, if allowed to divest, an entity may be more likely to divest locally and thus quota is more likely to stay in the community, thus minimizing disruption. The existence of a Community Fishing Association into which such QS could be transferred would facilitate this divestment of QS to stabilize communities.

Allowing owners of excess QS to divest QS above the cap during a reasonable period after initial allocation is the best solution because it is fair and equitable, it meets the objectives of preventing persons from acquiring an excessive share, it minimizes disruption, and it will promote the Association Proposal. By structuring the initial allocation so that entities obtain the full QS associated with their permits histories, all permit holders would be treated equally and all would receive the full benefit of their investments in the fishery. On the other hand, by requiring the divestment of QS in excess of the accumulation and control caps within a reasonable period of time (3 years), the excess share and geographic consolidation concerns will be addressed. This is the only option which fairly balances the MSA's competing requirements.
The Nature Conservancy understands that the Council could still consider a grandfather clause under which permit holders would be allocated all QS associated with their permit history, regardless of whether it would exceed the limits, thus “grandfathering” in excess QS for the largest harvesters. The purpose of a grandfather clause is to prevent entities entitled to QS above the accumulation caps from forfeiting their excess QS. It thus recognizes all harvesters’ investment in the fishery. However, for an Association such as the one the Conservancy contemplates, these rules would not accommodate changes in Association membership. The rules explicitly state that the grandfather clause would expire upon addition of a new member to the grandfathered entity (corporation, partnership). See, A-2.2.3.e. This construct is not only unworkable from the Association perspective, but it also would work against the Council’s interest in providing broader economic benefits under the plan. We believe that in light of these concerns and limitations, as well as fairness issues, divestiture is preferable to a permanent grandfather clause.

As described above, the MSA requires the Council to balance several competing interests. On the initial allocation question, the “fair and equitable” requirement and the requirement to prevent entities from acquiring excess shares are in conflict. While we recognize that a grandfather clause would allocate QS to all qualified harvesters in an equal manner, and large entities would not forfeit their investment, we believe that it runs the risk of locking in an advantage for larger harvesters in perpetuity over smaller harvesters who did not qualify for grandfathered QS. In certain circumstances, an indefinite grandfather clause could also result in a particularly large permit holder owning an excessive share, and thereby run afoul of § 303A(c)(5)(D).

For these reasons, we agree with the preliminary preferred alternative not to include the proposed grandfather clause options. However, we are also sympathetic to concerns that a strict redistribution system will result in large permit holders forfeiting their investment in the fishery without compensation. A divestiture period could provide an equal allocation of QS according to catch histories, while still preventing excess shares and consolidation.

2. Divestiture of QS, in Combination with Different Accumulation and Control Limits for Community Fishing Associations, is Preferable Means to Achieve Community Goals

We understand that, as another way of recognizing existing investment in the fishery and address concerns of those with QS over the range of accumulation limits in the Decision Document, the Council may be considering accumulation and control limits that could be higher than that range, which were derived based on permit ownership concentrations as of 2006. The Nature Conservancy has not taken a position on the specific limits that should be placed on individual QS holders, given that the Council is deliberating on this matter and carefully considering the benefits and impacts of such an action on the goals of the program and the long-term stability of the groundfish fishery.
However, in making these determinations, the Council is charged with including measures to protect fishing communities and prevent geographic consolidation. As described in the Decision Document, adopting much higher accumulation and control limits for individuals could negatively impact fishing communities, particularly those communities without large entity harvesters. Decision Document, at 495. Substantially higher individual limits could tend to promote industry consolidation, to the detriment of smaller fishing communities, and may make it more likely that individual entities are able to acquire an excessive share. These impacts are of concern to communities and harvesters coast-wide.

As noted by the Council, divestiture could still address the concerns of larger permit holders about “losing” their investment in QS if they exceed the individual limits, as long as they are afforded the opportunity to sell their excess QS and thus realize the benefit of their investment. Because divestiture answers this objection while still protecting communities, we believe it is the preferred route for community stability, if combined with special rules for Community Fishing Associations, as described above. This alternative promotes efficiency yet protects against excessive share concerns.

C. Community Fishing Association Complements Other Proposals

The Association Proposal complements other proposals by providing industry participants and their communities capacity to affect the objectives of the Trawl Rationalization. As discussed earlier, the Association Proposal is different from the Adaptive Management Program option included in the Decision Document. However, an Association is complementary to this and other proposals before the Council to address community stability and conservation. For example, in concert with the AMP, the association could also serve as an institutional mechanism within a community that could provide the administrative and other support needed to apply for, or distribute, QP for use in a particular community. This role could help address concerns raised about how the AMP would be administered in practice.

Associations can also complement other aspects of Trawl Rationalization. Assume, for example, that a member of a vulnerable community exceeds the individual accumulation limits and is required to divest excess quota. It is possible that individual members of the community lack the financial capacity to purchase such quota. In this case, the Community Fishing Association may be able to secure sufficient funding sources to purchase the quota and therefore help the community avoid a loss of quota. An Association can also support local capacity needs. If the local County government, for example, determines that the County is interested in raising money to purchase QS and anchor the QS in the community, the Association can act on behalf of the County by and through a private agreement to own and administer the QS/QP. Without an Association, representatives of several Central Coast governmental agencies have informed The Nature Conservancy that they would not be able to own or hold QS/QP.

In another example, an Association could provide information and assistance to fishermen, processors and community representatives in applying for grants from the Federal government.
founded or public agencies, or loans from entities such as the California Fisheries Fund to enable the purchase of additional QS and further the MSA's objective of community stability. Likewise, an Association could apply for research grants from academic institutions and conservation organizations to perform research aimed at promoting the MSA's conservation and/or efficiency goals. Although some, and perhaps most, of these programs are available to individual fishermen, processors or communities, pooled applicants can often realize significant economies of scale and increased likelihood of success. As an individual, the benefits of the program may be outweighed by the time and effort it takes to gather the information, complete the application, track and report results and perform the analysis required in the follow up report. Furthermore, the grantor in this example must make an often difficult decision on the merits of an individual fisherman's application. Pooled applicants under an association can be expected to realize greater success in securing these grants or loans and ultimately making progress toward achieving the MSA's goals.

Similarly, the preliminary preferred alternative allows the use of non-trawl gear to harvest trawl quota pounds and Associations can facilitate the day-to-day management of potential gear conflicts. Converting from high-volume, relatively low per unit value trawl fishing to lower volume, higher value fishing is an opportunity for communities in the Central Coast and gear switching, such as proposed in the decision document, see Decision Document, at Section A-1.1, is important to that movement. A Community Fishing Association, by managing where and how its members fish, could reduce potential gear conflicts that could result from trawl and fixed gear being used in the same area.

In summary, an Association could contribute to the Council achieving the MSA's goals by providing needed capacity within the community — to apply for AMP quota pounds, to prevent the loss of quota, to access grant funding or private capital to purchase quota share or other necessities, by building research partnerships that could contribute to the sustainability of the community and the fishery or by assisting with the local management of gear conflicts.

D. The Association Proposal Promotes the Conservation and Management Goals of the IFQ

While QS owned by an Association and owned or fished by Association members will be subject to the same general conservation and management restrictions as other QS, including total catch accounting, the Association approach may offer some opportunities to improve both conservation and efficiency. The Community Fishing Association contemplated by the Conservancy and its partners in the Central Coast could take advantage of opportunities afforded by the Association structure as well as changes in the management of the fishery that promote fishing flexibility and improved science and management. Some of these benefits (and costs) are being tested and measured in the Central Coast EFP, under which the participants are fishing under the proposed "gear switching" and catch pooling options offered in the Trawl Rationalization plan.
The EFP and our Conservation Fishing Agreement (using modified trawl gear in geographically specified areas to target flatfish) are testing a suite of approaches that could be included in any Community Fishing Association in support of both conservation and industry/community goals. The specific conservation and management approaches being used in the Central Coast EFP are near real-time catch and bycatch monitoring and reporting, use of more selective fixed gear, and other approaches to reduce impacts on habitat or weak stock species. These include harvest planning to target abundant stocks, avoiding bycatch of overfished species, and reducing nongroundfish mortality. The inclusion of harvest planning, more selective gear, and near real-time monitoring in such Associations, while improving conservation and management performance, could also mitigate the risk of consolidation in certain high bycatch areas (e.g., some Central Coast ports).

V. As a Substantial Participant in the Fishery, The Nature Conservancy Should be Allocated Quota

The Nature Conservancy supports the preliminary preferred alternative's broad policy for those who can receive initial allocations of QS or subsequently hold QS. The Nature Conservancy understands that, as the holder of existing limited entry trawl permits and as a substantial participant in the fishery, The Nature Conservancy will be entitled to receive QS based on the catch histories associated with the permits it owns.

As described in the Decision Document, the MSA has two broad restrictions on who can participate in a limited access privilege program. First, the person holding quota must be among the entities listed in MSA Section 303A(c)(1)(D), which include "a corporation, partnership or other entity established under the laws of the United States or any State." MSA § 303A(c)(1)(D). Second, the person must "substantially participate in the fishery, as specified by the Council." MSA § 303A(c)(5)(F). We understand that the Council is proposing a broad definition of who can participate (any "entity" with 75% U.S. ownership), which would include conservation organizations, such as The Nature Conservancy. See Decision Document, at A-214 (noting that a conservation organization may hold quota). The Conservancy notes that it is also using its permits, and would also meet any future Council "use-or-lose" provisions. See, Section A-2.2.2(c) ("use-or-lose" provisions deferred to consideration in program review).

As described fully in the Introduction section, The Nature Conservancy has become a substantial participant in the west coast groundfish fishery. The Nature Conservancy currently owns several limited entry trawl permits on the Central Coast and has partnered with fishermen and local communities to continue fishing those permits using more sustainable practices. It has expended significant funds and devoted significant resources to these programs and intends to remain an active participant in the fishery. See generally, Statement of Intent. These actions and our unique approach show a clear record of our substantial participation in the groundfish fishery and thus that The Nature Conservancy meets both the MSA and Council eligibility requirements for holding quota.
Thank you for your consideration of the comments of The Nature Conservancy.

Sincerely,

[Signature]

Margaret Spring
Director
California Coastal and Marine Program
The Nature Conservancy

Enc.: Exhibit A. Consistency of Community Fishing Association with Applicable Law

Community Fishing Association Proposal for the
Pacific Fishery Management Council
offered by The Nature Conservancy

October 15, 2008

Background and Need:

The Council’s development of a Rationalization proposal for the Pacific Coast Groundfish Limited Entry Trawl Fishery has been guided by a range of policy and legal requirements, including those designed to mitigate unanticipated impacts of rationalization by promoting fairness and equity, assisting communities, and minimizing disruption of current fishing practices, see, e.g., Chapter 6 of the Decision Document (Document). As a result, in its analyses the Council has identified and acknowledged several expected impacts on fishing communities (Chapter 4; Section 4.14). The Document also points to a number of provisions that could theoretically address community needs, including: (1) broad eligibility for quota share (QS), (2) a moratorium on QS transfer, (3) control limits for QS to potentially spread QS among more communities, (4) adaptive management set-aside, and (5) regional and area management proposals. See, Appendix A, p. A-48.

However, the Document does not yet clearly articulate to potentially affected communities how these different provisions could be used separately or in aggregate to mitigate such impacts, nor does it identify changes to the rationalization proposal that would be necessary to achieve such a result.

This proposal for a Community Fishing Association describes an approach that would build on the current alternatives before the Council to address community needs, while achieving management, conservation and socioeconomic goals needed for long-term stability in the fishery.

Community Fishing Association Proposal:

We request the Council’s approval of provisions (listed in the next section) that would permit the formation and operation of voluntary Community Fishing Associations, as a means to help preserve a community’s fishing heritage and access to the resource, as well as contribute to the conservation and management of the fishery. Such Associations would be responsible for complying with the applicable requirements of the Magnuson-Stevens Fishery Conservation and Management Act and the West Coast Groundfish Fishery Management Plan. This proposal is intended to offer an option for a community or a group of permit or QS holders within a community to take proactive steps to help mitigate potential dislocation effects by anchoring access to the fishery in its area or sharing risks and costs. It would not require the Council to set aside a portion of QS for the participants, though such Associations could potentially interact with any adaptive management set-aside proposal the Council may adopt.

A Community Fishing Association (Association) would be a corporation\(^1\) created for community benefit, with participating members that could hold Quota Share (QS). Such an Association would not be eligible for initial issuance of QS, but could acquire QS through direct acquisition from willing sellers. Each year, the Association would make QP available, through a private agreement, to its members for their assistance in achieving the Association’s objectives, e.g., maintaining landings in a given community or achieving conservation goals. An example describing various potential roles and relationships in an association is included at the end of this proposal.

\(^1\) An Association could be either a for-profit or a non-profit corporation.
Any fisherman may elect each year whether to be a member of the Association and enter into a private agreement with the Association. Any member would be eligible to access Association-owned QP up to the vessel cap – for fishermen who hold a groundfish trawl permit and QS; this will be the aggregate of individually held QP plus any Association-owned QP. Any member who does not hold a trawl permit or QS could apply to the Association to lease a groundfish trawl permit (if one is available) and QP. In either case, members of the Association would have access to services from the Association (e.g., observers) and would have to abide by the rules of the Association (e.g., to land all or some of the fish in a particular community, to abide by area or gear limitations, to cooperate with bycatch reduction efforts, etc.).

While each Association would have its own specific objectives and propose its own rules, Association membership agreements will include a mandatory clause that participants comply with the rules of the Association. Because failure to comply with federal fishing regulations could be grounds for revoking approval for the Association, a Community Fishing Association would require all members’ full compliance. The Association could assist in enforcement by taking action to sanction a member who fails to comply – revoking Association privileges, imposing Association fines, expelling an individual from the Association, or turning over a case to state or federal law enforcement officials.

Participants will help shape the Association’s objectives. There are a number of options for determining which Associations will be formed. Associations could be formed as a community-level initiative – led by a harbor commission, commercial fishermen’s organization, local processor, or a non-governmental organization. The parties could present a proposal to NMFS and, if satisfactory, proceed to incorporate, raise capital, recruit a board of directors, invite participants, and purchase QS and/or permits. Participants could include, but are not limited to, fishermen, local government officials, a harbor director, commercial fishermen’s organization, local processors, and/or non-governmental organizations. An alternative approach would be to have each state agency to identify as eligible those communities that will benefit, and select an organization tasked to form the Association.

A fisherman or other participating entity may join different community Associations from year to year, or may belong to multiple Associations provided that vessel caps are not exceeded and his or her total control over the fishery is fully disclosed and certified.

**Basis for Proposal: Changes to Facilitate Formation of Associations:**

As noted in the Decision Documents, the current Rationalization proposal includes provisions that support, and could be adjusted to link with this Association approach to address community concerns, including: initial QS allocation and QS transfer rules (A-2), the Adaptive Management option (A-3), and area management or regional landing zones (A-1 and A-8).

To create such an Association for the benefit of multiple participants or a community, the Rationalization proposal would first need to establish an exemption or a different, higher accumulation limit for Community Fishing Associations to those proposed for individuals in A-2.2.3(e). The options before the Council were based on individual ownership of QS, and thus would set control limits designed to guard against excessive control of quota by one person. Paradoxically, the limits would undermine the formation of private co-management arrangements like cooperatives or Associations, which would acquire QS for the benefit of multiple participants in a community. Such Associations could be established in and benefit vulnerable communities in multiple ways;
including ensuring access to the resource or sharing costs and risks associated with the conservation and management requirements contemplated under the Rationalization.

**Avoiding Excessive Control through an Association:** Under this proposal each Association would be required to verify to NMFS subject to perjury that no single individual participant is able to use his or her affiliation with the Association to exercise excessive control over the fishery.

There are several alternative means to verify that the Association is not controlled by any individual. NMFS could require an affidavit certifying that all persons serving on the board of, employed by, or members of the Association will not have a controlling interest in the Association that takes them above any control caps established under the IFQ program. A second option would be to require that a plan for the Association – including measures to address excessive control – be submitted to NMFS prior to the Association acquiring QS. Reported violations of these limits would be investigated as appropriate.

The preliminary preferred alternative for rationalization would cap the proportion of groundfish a person could accumulate or control, directly or indirectly, individually or via ownership of catcher vessel permit(s). Thus, while the Association may own an amount of QS in excess of individual accumulation limits, the established individual ownership and vessel limits would apply to individual Association participants, i.e., no individual may exercise so much control over the Association that they would exceed their individual control cap and the Association may not transfer control of quota pounds (QP) to be used on a vessel so as to exceed established vessel caps. The Association will report its membership and transfers of QP to vessels to NMFS annually.

**Pacific Coast Trawl Fishery Rationalization - Requested Provisions for Community Fishing Associations:**

The Nature Conservancy is proposing to establish an Association as described above in the Central Coast of California using QS issued to permits owned by The Nature Conservancy. The Nature Conservancy would work with these communities to establish such an Association and would transfer its QS to the Association.

The Nature Conservancy believes it would be fair and equitable\(^2\) for the Council to issue to each permit holder the full amount of QS for which they qualify based on their catch history. In order to address MSA and Council concerns with excessive consolidation, The Nature Conservancy proposes that the Council require that holders of QS in excess of the accumulation caps divest of such excess within three years of initial issuance. Therefore, such holders of excess QS can be fairly and equitably compensated for their excess QS without compromising the Council’s policy goal of avoiding excessive consolidation. Failure to require divestiture, for example by “grandfathering” permanently such excess QS, could permanently undermine the Council’s objectives.

Consistent with the Council’s objective of minimizing adverse effects of the IFQ program on fishing communities, the Association proposal will benefit vulnerable or potentially vulnerable Central Coast communities and may serve as a model for other areas identified by Council members or included in the Decision Documents (e.g., Regional Landing Zone proposal, A-7). The approvals requested are well within the range of alternatives already contemplated and analyzed by the Council. While

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\(^2\) As set forth in Chapter 6, the M-SA requires fair and equitable treatment in allocation decisions, e.g. National Standard 4(a); Section 303A(c)(5).
establishment of private arrangements among harvesters and other participants through an Association does not require specific federal authorization, certain terms such as different accumulation limits for Associations, require provisions in the Trawl Rationalization proposal.

**Provisions to Allow Formation and Operation of Community-Based Fishing Associations**

The Community Based Fishing Association approach requires changes to A-2-2-.3(e) in the final alternative for the trawl sector IFQ program - as specified in provisions (a) and (b). These changes are needed to remove barriers to formation of multi-member associations, and to provide an opportunity for a holder of QS in excess of individual accumulation limits to divest of that QS to entities in the location where the catch history was earned, rather than having it automatically re-distributed coast-wide, as in the existing proposal.

In addition, the final plan should include direction and guidance to NMFS on the requirements for approval, operation, and compliance of such Associations, as specified in (c) – (e).

(a) **Amend A-2-2.3(e) to Establish Association Control Cap QS/QP Accumulation Provisions:** Notwithstanding any limitations on QS or QP under the West Coast groundfish trawl rationalization program, following review by NMFS of the Association as an entity formed for the benefit of the local communities and the purposes specified in the MSA (see b), an Association may own or control QS/QP in excess of the accumulation limits for individuals.

(b) **Amend A-2-2.3(e) to allow for Divestiture of QS in Excess of Control Cap:** Any party owning or controlling QS in excess of the accumulation provisions shall divest of such excess QS within three (3) years of the date on which these regulations take effect. The party may transfer such excess to any other party, including an Association, in accordance with the rules that govern such transfer.

(c) **Qualification of Community Fishing Associations to Obtain Alternative Accumulation/Control Limits:** The Alternatives should provide a framework for NMFS approval and review. The Council may want to consider later action to better define the details of this framework that could work as follows:

1. Upon receipt by NMFS of an acceptable proposal to form an Association for the purposes of addressing the needs of potentially vulnerable communities and conservation and fishery management objectives, NMFS may decide to authorize such Association. An Association can operate similar to a “harvesting cooperative.” In addition, an Association will have the power to own QS.

2. The Association will not be approved if the NMFS determines that the sole purpose or primary effect is to allow an entity to control quota shares in excess of the control caps which apply to entities that are not part of the Association; or the Association will allow, in any manner, the Association or its members to exert anticompetitive market power with respect to exvessel price negotiations between processors and harvesters.

3. NMFS may revoke approval of the Association at any time based on a NMFS determination that the Association has failed to comply with the terms and conditions for its approval or is otherwise being used to circumvent or undermine the goals of the trawl rationalization program.

(d) **Rules for Use of Association QP/QS:** An Association may lease, sell or transfer QP to commercial fishermen who are Association members in compliance with appropriate vessel or
control cap, provided, however, that such Association-owned QP must be relinquished to the Association if such member leaves or is asked to leave the Association. The sale or lease of Association-owned QS or QP shall be governed by the same rules that apply to all QS and QP holders.

(e) **Mechanism for Attribution of Quota Share for Purposes of Accumulation Caps:** The Council should approve a mechanism for determining attribution of quota share that requires disclosure and certification of quota ownership and the amount of control over the organization that individual wields to ensure that by either measure the individual cannot use their role in an organization to exceed the control caps or vessel caps.

**Requested Approvals of Related or Supporting Options:**

In addition to the required approvals requested above, the proponents of this proposal request the Council and NMFS adopt each of the following options:

(a) **The Adaptive Management Program Option:** Following approval of an Association, if the Council and NMFS adopt the Adaptive Management Program Alternative, the Association could be an applicant to the Adaptive Management Program or could assist its participants in developing proposals. The Association or its participants would utilize the QP in accordance with the guidelines for such use established by the Council and NMFS.

(b) **Geographic Management Units:** For species with a coastwide OY, the management units for QS will be subdivided geographically at the 40° 10’ N latitude line. Additional geographic management unit subdivisions should be considered in the future.

For more information, please contact Erika Feller (efeller@tnc.org or 415-281-0453) or George Yandell (gyandell@tnc.org or 415-281-0478) with The Nature Conservancy.
An Example of a Community Fishing Association

Associations can be established to achieve multiple objectives, including addressing community concerns, while achieving management, conservation and socioeconomic goals needed for long-term stability in the fishery. Therefore, it follows that Association-owned QS would be leased to fishermen under terms representing a balance of these objectives.

A Community Fishing Association is formed that holds 4 trawl permits and has acquired QS for various species. The Association serves two fishing communities and requires that 75% of all landings made by members take place in one of those two communities. The Association charges a modest lease rate for use of Association QS and has established a number of conservation guidelines to avoid bycatch.

A Board of Directors is formed. The Board includes one of the harbor directors, the president of the local commercial fishermen’s association, the director of a local conservation non-profit, a fisheries science professor from the local university, and the owner of a local restaurant who is also a fisherman. A management team that runs the day to day operations of the Association reports to the Board. The management team would be responsible for ensuring compliance with regulatory requirements, developing legal agreements, contracting with observers for use by Association members, developing bycatch risk sharing agreements, etc.

Fisherman A has a vessel with a permit and received quota share. However, he would like to target more on a particular species and joins the Association to gain access to some additional QP each year. As a condition of access to the Association QP, he lands 75% of all of his catches in one of the two ports.

Fisherman B runs a highly successful fishing operation but is now interested in retiring and selling his quota. He has fished out of one of the ports for 30 years and would like to see someone take over his operation locally – his deckhand was very interested - but no individual has financing to buy him out. The Association purchases his QS and permit and leases it back to the community.

Fisherman C was a deckhand for fisherman B and is interested in starting his own business – he would like to have bought Fisherman B’s quota but didn’t have the money. He joins the Association and leases a permit as well as QP to use on a vessel he recently purchased. Eventually he hopes to make enough money to purchase his own QS.

The owner of a local processing company/fish buyer has purchased QS and enters into an agreement with the Association in which his QS will be fished according to Association community and conservation guidelines. In exchange, he will be guaranteed the right to purchase fish caught under this quota share plus a bonus amount.

The local community recognizes that the Community Fishing Association does not own enough QS to meet the community’s objectives. With the support of local elected officials and community leaders, industry participants and the Association apply for loans and grants to enable the Association to purchase additional QS.
### Exhibit A. Consistency of Community Fishing Association with Applicable Law

<table>
<thead>
<tr>
<th>Conservation</th>
<th>Reference</th>
<th>Consistency</th>
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<tbody>
<tr>
<td>Allocations Reasonably Calculated to Promote Conservation</td>
<td>MSA - National Standard 4(b)</td>
<td>QS owned by an Association and owned or fished by Association members will be subject to the same general conservation and management restrictions as other QS, including catch accounting. To the extent that the Rationalization plan promotes conservation, the Associations will be consistent with, or could exceed, this requirement, based on their monitoring protocols and harvest planning approach. Associations may help to enhance or exceed compliance with the fishing regulations generally. Further, Associations are designed both to protect vulnerable fishing communities and promote conservation and management goals. It is expected that Associations, such as the Association The Nature Conservancy is proposing for the Central Coast, will incorporate specific conservation and management requirements, such as catch and bycatch monitoring and reporting improvements, area or gear limitations, and other measures to reduce impacts on habitat or weak stock species. In addition, Associations may pool knowledge and develop harvest planning approaches on how best to avoid bycatch, overfished species, and how to reduce non-groundfish mortality.</td>
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<tr>
<td>LAPPs shall assist in rebuilding overfished species</td>
<td>MSA – 303A(c)(1)(A)</td>
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<tr>
<td>LAPPs shall promote fishery conservation and management</td>
<td>MSA – 303A(c)(1)(C)(ii)</td>
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<tr>
<td>Maintain an information flow on the status of the fishery... as the fishery occurs</td>
<td>GF FMP Objective 1</td>
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<td>Reduce nongroundfish mortality</td>
<td>GF FMP Objective 4</td>
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<tr>
<td>Minimize adverse impacts on EFH</td>
<td>GF FMP – Objective 5</td>
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<tr>
<td>Total catch accounting; Reduce bycatch, discard mortality, and ecological impacts</td>
<td>A-20 Objective 1 &amp; 3</td>
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<tr>
<td>Consider biological stock structure, not exceeding the OY/ABC, minimizing localized concentrations of fishing effort, and accounting for total mortality</td>
<td>A-20 Constraints 1, 2, 3, &amp; 4</td>
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### Net Benefits and Efficiency

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<tr>
<td>Consider Efficiency</td>
<td>MSA - National Standard 5</td>
<td>Associations will provide a way for fishing communities and groups of harvesters potentially vulnerable to the expected shifts in fishing effort to pool resources in order to increase efficiencies and maintain their financial viability. This is designed to minimize dislocation and disruption caused by...</td>
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<tr>
<td>Contribute to reducing capacity</td>
<td>MSA - 303A(c)(1)(B)</td>
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<tr>
<td>Attempt to achieve the greatest net economic benefit to the nation</td>
<td>GF FMP Objective 6</td>
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<td>Guidance</td>
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<td>Consistency</td>
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<tr>
<td>Maximize the value of the groundfish resource as a whole</td>
<td>GF FMP Goal 2</td>
<td>the transition to IFQ, as well as provide for more certainty and stability, providing long-term economic benefits to local communities. Associations will also assist fishermen in achieving efficiencies, by allowing them to pool resources for MSA and IFQ requirements such as observers and reporting obligations. Associations may facilitate harvesting operations, such as fixed gear harvesting of traditionally trawl caught species, that results in a higher quality and therefore higher priced catch, thereby helping to maximize the value of the groundfish resource.</td>
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<tr>
<td>Provide for a[n] ... efficient groundfish fishery</td>
<td>A-20 Objective 2</td>
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<tr>
<td>Promote measurable economic benefits</td>
<td>A-20 Objective 6</td>
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**Disruption**

| Accomplish change with the least disruption of current domestic fishing practices, marketing procedures, and the environment | GF FMP Objective 14 | The primary goal of Associations is to stabilize and minimize disruption to permit holders and small fishing communities, particularly communities which may otherwise witness a departure of fishing effort and, as a result, onshore support capacity during the transitional time shortly after the initial allocation, while furthering the other goals of the MSA. In addition, the Association The Nature Conservancy is proposing for the Central Coast will incorporate conservation requirements and thus will not adversely impact the marine environment. |

**Excessive Shares**

<p>| No particular individual, corporation, or other entity [shall] acquire an excessive share of privileges | MSA - National Standard 4(c) | Individual members of an Association will be subject to the same accumulation caps as other participants in the fishery, so no one person will acquire an “excessive share.” |
| Address concerns over excessive geographic or other consolidation in the harvesting or processing sectors of the fishery | MSA – 303A(c)(5)(B)(ii) | Because Associations must have greater QS than an individual is allowed under the accumulation caps in order to materially benefit the communities they serve, Associations will be subject to a higher accumulation cap |</p>
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<th>Guidance</th>
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<tr>
<td>Ensure that LAPP holders do not acquire an excessive share by</td>
<td>MSA – 303A(c)(5)(D)</td>
<td>than individuals. However, Associations are still subject to a limit on QS. The proposal includes provisions to ensure that Association members do not gain control of more QS (or QP) than they could otherwise. Such provisions would require ownership and control of Associations to be transparent. Violation of such control provisions would result in termination of the Association’s certification and non-issuance of quota pounds to the Association in excess of the individual accumulation</td>
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<td>(i) establishing a maximum share to hold, acquire or use, and</td>
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<td>(ii) establishing other measures to prevent inequitable concentration</td>
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<tr>
<td>Avoid excessive quota concentration</td>
<td>A-20 Constraint 6</td>
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<td>Guidance</td>
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<td><strong>Fairness and Equity</strong></td>
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<td>The Nature Conservancy proposes that permit holders are initially allocated the entire QS associated with the permit’s catch history, regardless of the applicable accumulation limits. However, any QS in excess of the accumulation and control cap must be divested within 3 years. This proposal is fair and equitable to all permit holders because it gives full and equal credit to catch history and prior investments in the fishery. Under the Council’s preliminary preferred alternative, some fishermen will be allocated all QS associated with their catch histories, but others, i.e., those that have invested the most in the fishery, may only receive QS for a portion of their catch histories. The Nature Conservancy’s proposal treats all permit holders in a fair and equitable manner. At the same time, the divestiture requirement meets the goal of preventing individual entities from acquiring an excessive share of the fishery.</td>
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<tr>
<td>Allocation shall be fair and equitable to all such fishermen</td>
<td>MSA - National Standard 4(a)</td>
<td>This proposal is distinct from a traditional “grandfather” provision, which allows allocation of QS in excess of the accumulation limit without any divestiture requirement. Such a “grandfather” provision, if it were to provide too large accumulations of QS, could run afoul of National Standard 4(c) and MSA § 303A(c)(5)(D) by having the effect of locking others, including small QS holders and new entrants, out of future participation in the fishery.</td>
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<td>Establish procedures to ensure fair and equitable initial allocations, including consideration of</td>
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<tr>
<td>(i) current and historical harvests;</td>
<td>MSA – 303A(c)(5)(A)</td>
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<tr>
<td>(ii) employment in the harvesting and processing sectors;</td>
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<td>(iii) investments in, and dependence upon, the fishery; and</td>
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<tr>
<td>(iv) the current and historical participation of fishing communities;</td>
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<tr>
<td>Issue privileges to persons who substantially participate in the fishery (as specified by the Council)</td>
<td>MSA – 303A(c)(5)(E)</td>
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<tr>
<td>Provide an administrative appeals process regarding initial allocation decisions</td>
<td>MSA – 303A(c)(1)(l)</td>
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<tr>
<td>Environmental Justice: Identify and address, as appropriate, disproportionately high and adverse human health and environmental effects of its programs...on minority populations and low income populations.</td>
<td>EO 12898</td>
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<tr>
<td>Guidance</td>
<td>Reference</td>
<td>Consistency</td>
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<tr>
<td>Avoid provisions where the primary intent is a change in marketing power balance between harvesting and processing sectors</td>
<td>A-20 Constraint 5</td>
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<td><strong>Sector Health</strong></td>
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<tr>
<td>Provide for a viable, profitable ... groundfish fishery</td>
<td>A-20 Objective 2</td>
<td>The Association proposal will assist the health of the groundfish fishery in a variety of ways.</td>
</tr>
<tr>
<td>Promote measurable economic ... benefits through the seafood catching, processing, distribution elements, and support sectors of the industry</td>
<td>A-20 Objective 6</td>
<td>It promotes geographic diversity of the fishery by stabilizing vulnerable fishing communities and permit holders that might otherwise exit the fishery entirely. The Association can assist individuals to pool resources in order to develop a more diverse product that is value added, not just the large quantity/low value product that an individual would likely pursue acting outside of an Association context. Associations will have the effect of sheltering or stabilizing small entities that otherwise would not have the individual economic wherewithal to survive the transition. For example, the increased monitoring requirements will increase costs, costs which a small entity may have difficulty bearing without assistance from an Association.</td>
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<tr>
<td>Maximize the value of the groundfish resource as a whole</td>
<td>GF FMP Goal 2</td>
<td></td>
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<tr>
<td>Promote year-round marketing opportunities and extend those opportunities as long as practicable during the fishing year</td>
<td>GF FMP Objective 7</td>
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<tr>
<td>Avoid unnecessary adverse impacts on small entities</td>
<td>GF FMP Objective 15</td>
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<tr>
<td><strong>Labor: Captains, Crew, &amp; Processing Plant Workers</strong></td>
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<tr>
<td>Include measures to assist... entry-level and small vessel owner-operators, captains, crew... through set-asides of allocations... or economic assistance in the purchase of quota</td>
<td>MSA – 303A(c)(5)(C)</td>
<td>Associations may create opportunities for entry-level fishermen to enter the fishery. For example, an entry-level fisherman may not be able to afford to purchase QS, but an Association creates more opportunities to lease QP and thus it may provide a lower barrier entry to the fishery. Creating new entrants and new opportunities in a port helps</td>
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<td>Guidance</td>
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<td>Consistency</td>
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<tr>
<td>Promote measurable... employment benefits through the seafood catching,</td>
<td>A-20 Objective 6</td>
<td>diversify the shoreside marketing, processing, and sales opportunities. Associations may help to promote the safety of human life at sea. For example, Associations may have information on its members’ fishing activity, where and when they are going, when they are expected back, and may have access to VMS or other real-time data. Such information could be provided to the Coast Guard to assist with a search and rescue operation. Further, if vessels have to carry a human observer, they are required to have a USCG safety sticker and, in some cases, additional visual inspection of the vessel by the observer program to make sure it meets their needs as far as seaworthiness. An Association could also utilize these standards, requiring a Coast Guard sticker for active membership or inspection or safe vessel practices (e.g., no drifting in the shipping lanes overnight).</td>
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<td>processing, distribution elements, and support sectors of the industry</td>
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<tr>
<td>Promote the safety of human life at-sea</td>
<td>MSA - National Standard 10 GF FMP – Objective 17</td>
<td></td>
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<tr>
<th>Communities</th>
<th>MSA - National Standard 8 GF FMP Objective 16 A-20 Objective 5</th>
<th>The primary purpose of the Community Fishing Association proposal is to stabilize or protect vulnerable fishing communities that may otherwise suffer significant adverse impacts from the shifts in fishing efforts which the</th>
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<tr>
<td>Consider importance of fishing to communities in order to provide sustained participation and to minimize adverse impacts</td>
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<tr>
<td>Guidance</td>
<td>Reference</td>
<td>Consistency</td>
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<td>Consider basic cultural and social framework of the fishery through</td>
<td></td>
<td>Rationalization program is expected to cause.</td>
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<td>(i) the development of policies to promote sustained participation of...</td>
<td>MSA – 303A(c)(5)(B)</td>
<td>Associations, by agreement, may impose regional or port-specific landing requirements on its members as well as help track such landings and perform important reporting requirements to regulators. Associations, formed for community benefit purposes, will lower the barrier of entry to the fishery, for example by leasing QP at affordable rates. For fishermen interested in exiting the fishery, the local Association may acquire QS of those leaving the fishery, thereby keeping the QS previously owned by retired fishermen in the community. By stabilizing or protecting vulnerable fishing communities and local fishing operations, Associations may help to ensure that fishing efforts are spread throughout the West Coast and prevent excessive geographic consolidation of the fishery.</td>
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<td>(ii) procedures to address concerns over excessive geographic or other consolidation in the harvesting or processing sectors of the fishery</td>
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<td>Include measures to assist, when necessary and appropriate... fishing communities through set-asides of harvesting allocations... or economic assistance in the purchase of quota</td>
<td>MSA – 303A(c)(5)(C)</td>
<td></td>
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<td>Guidance</td>
<td>Reference</td>
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| If a program is created in which fishing communities are given a special standing (e.g., a direct allocation to qualified fishing communities), the Council is required to consider the following criteria:  
  (i) Traditional fishing or processing practices in, and dependency on, the fishery;  
  (ii) The cultural and social framework relevant to the fishery;  
  (iii) Economic barriers to access the fishery;  
  (iv) Existence and severity of projected economic and social impacts associated with implementation...;  
  (v) Expected effectiveness, transparency and equitability; and  
  (vi) Potential for improving economic conditions in remote coastal communities... | MSA – 303A(c)(3)(B) |             |
<p>| Minimize negative impacts resulting from localized concentrations of fishing effort (this constraint is also listed under “Conservation”) | A-20 Constraint 3  |             |
| Small Vessels, Small Entities, and New Entrants                         |                    |             |
| Promote sustained participation of small owner-operated fishing vessels | MSA – 303A(c)(5)(B)(i) | Associations may help small owner-operated fishing vessels to remain viable and remain in the fishery. For example, |</p>
<table>
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<th>Guidance</th>
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<th>Consistency</th>
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<tr>
<td>Include measures to assist, when necessary and appropriate, entry level and small vessel owner-operators... through set-asides of harvesting allocations... or economic assistance in the purchase of quota.</td>
<td>MSA – 303A(c)(5)(C)</td>
<td>Associations may help such small operators to pool resources to cover the costs of MSA requirements, such as on-board observers or other enforcement or safety requirements. Associations can lease QP to small vessel owner-operators or to entry level fishermen, providing a lower barrier to entering the fishery. Communities that prefer increased participation by small owner-operated vessels and new entrants can assist with the loan and grant applications to purchase of QS and contract with Associations to manage their QP to assist such small vessels and new entrants.</td>
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<td>Avoid unnecessary adverse impacts on small entities</td>
<td>GF FMP Objective 15</td>
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### Auctions and Cost Recovery

| Auctions, or other systems to collect royalties, shall be considered for initial or any subsequent allocation | MSA – 303A(d) | The Association proposal does not impact compliance with these provisions.                                                                    |
| Assess and provide a program of fees paid by the quota holders that will cover the costs of management, data collection and analysis, and enforcement activities | MSA – 303A(e) |                                                                                                                                               |

### Program Performance Monitoring and Modification

| Take into account the management and administrative costs of implementing and overseeing the IFQ or co-op program and complementary catch monitoring programs, and the limited state and federal resources available. | A-20 Constraint 9 | The Association could assist in the performance review process by providing coordinated reporting and compliance review of fishing operations by Association members. |
| Regular review and monitoring of the program for progress in meeting the goals, 5 year formal review | MSA – 303A(c)(1)(G) |                                                                                                                                               |
please accept this comment letter on the trawl rationalization agenda item.

60 copies will also be hand-delivered to the San Diego meeting.

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Content-Encoding: base64
October 24, 2008

Mr. Donald K. Hansen, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220-1384

Re: Comments on Amendment 20: Trawl Rationalization

Dear Chairman Hansen:

The City of Monterey hereby submits comments to the Pacific Fishery Management Council on the topic "Rationalization of the Pacific Coast Ground Fish Limited Entry Trawl Fishery: Decision Document for the November 2008 Pacific Fishery Management Council Meeting".

The City of Monterey has a long and rich history of commercial fishing. The City has worked hard to maintain its fishing infrastructure and to support this industry which is so much in the fabric of life in Monterey. The City Council has acted on numerous occasions over a period of years in support of our fishermen and to try to preserve the cultural heritage and economic values which we associated with that community. Most recently, City representatives have testified before the Pacific Fishery Management Council on the topic of the potential for the Monterey Bay National Marine Sanctuary to create additional closures in our area.

With regard to the Trawl Rationalization issue before you now, please be aware that our community is unclear about how the conversion of this fishery to an Individual Transferable Quota (ITQ) system will affect fishing activities in our area. Will it potentially consolidate fishing activities into fewer port areas? It would appear that there is some potential for this to occur in an ITQ program.

Because of this concern the City of Monterey requests that the Pacific Fishery Management Council consider some form of community allocation if fishermen within a region band together to form a community association or cooperative to manage quota and local allocation issues. If some quota was assigned to communities, there would be a safeguard against the potential for drastic consolidations of the fisheries into just a few larger port areas. With regard to the potential makeup of a fishery community association or cooperative, the City of Monterey is not intending that the City would be in charge of the allocation process; rather the association or cooperative should be made up of fishermen within the City or broader region who would decide among themselves as to the allocation. We understand that this would not be a simple task by itself.

In making this recommendation, we ask the Pacific Fishery Management Council to consider this need and to put thought into the specifics of such an allocation program.

A second issue of concern is the regard for the potential for further consolidations of the trawl fleet that could result in abandoned former trawl vessels in our harbor. The City of Monterey asks that the Pacific Fisheries Management Council also consider measures to avert or mitigate this potential consequence.

Thank you for considering the comments of the City of Monterey.

Sincerely,

Chuck Della Sala
Mayor