

WEST COAST SEAFOOD PROCESSORS ASSOCIATION

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Mr. Mark Cedergreen, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Ste. 101
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Dear Mr. Chairman:

The following comments are submitted on behalf of the West Coast Seafood Processors Association with regard to potential trailing actions to Amendment 20 of the Pacific Groundfish Fishery Management Plan that we believe the Council should consider moving forward. They are provided in order of priority.

1. **Halibut IBQs** – As noted during Council discussion at the June, 2010, meeting there is a need to re-evaluate allowable incidental catch levels of halibut by the trawl fishery. With petrale sole being designated as overfished, additional restrictions on fishing shoreward of the Rockfish Conservation Area (RCA) are likely to be implemented, which will force increased effort seaward of the RCA. Based on observer data presented to the Council in 2009 by the NW Fisheries Science Center, both the weight and mortality rate of halibut bycatch increase seaward of the RCA. We believe these data need to be analyzed and appropriate halibut bycatch rates set. It is our understanding that the halibut IBQ allocations can be changed through a regulatory amendment process, which will be simpler and quicker than a full plan amendment process.

2. **Control Rules / Safe Harbors** – We continue to be concerned about how the proposed implementation rules will affect QS / QP holders, including employees of companies that hold QS / QP, banks that are asked to consider QS as collateral, cooperatives, and risk pools formed by QS / QP holders to reduce the cost of observation and monitoring. We believe the Council needs to carefully reconsider how to balance avoiding excessive ownership with the practical operational needs of the fishery. Please note that we do not believe that community fishing associations, community fisheries, or regional fishery associations should be considered in this context but should be considered on their own merits. We provide further suggestions on this issue below.

3. **Cost Recovery** – Absent federal subsidies, which may or may not be provided by Congress in FY 2011 and beyond, there is a requirement under the Magnuson-Stevens Act for cost recovery for individual quota programs. As noted by NMFS at the June meeting, cost recovery rules must be developed by the Council. This effort needs to commence quickly so that the trawl rationalization program can continue to function.

4. **Dual use of observers and monitors** – We understand that some concerns have been raised about using a vessel observer in a dual role as an on-shore plant monitor to reduce costs and allow catch to be

followed from ocean to final processing. While we believe that the Council did not intend to preclude such an arrangement, it may be necessary to clarify that intent.

5. Use of adaptive management pounds – The Council currently has decided to let adaptive management pounds (AMP) “flow through” to permit holders for the first two years of the trawl rationalization program. However, if AMP are to be used as intended beginning in the third year of full program implementation, the Council needs to develop guidelines for the purposes for which they will be used and set up a process for distributing them.

6. Reconsideration of overfished species allocations – The Council has already modified its initial decision on allocating canary rockfish, but testimony from the public has indicated there may be other allocation issues. While these problems, if they exist, may be more identifiable after program implementation, the Council should be prepared to deal with them.

7. Community fishing associations / community fisheries / regional fishing associations – At the March, 2009, Council meeting, a series of motions was considered regarding guidance on defining community fishing associations. The decision of the Council at that time (see attached excerpt from March, 2009, Council Minutes) was to use as guidance both public comment provided at the meeting by the Nature Conservancy and the criteria from the NOAA technical memorandum on design and use of limited access privilege programs. While we believe that defining and enabling associations of this type is the lowest priority on our list of needed trailing actions, we strongly suggest that the Council use the decision in Motion 19 (as amended and passed) from March, 2009, as the basis for proceeding with this action whenever it occurs.

Thanks you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Susan Chambers', with a long horizontal flourish extending to the right.

Susan Chambers
Deputy Director

Mr. Moore moved and Dr. Hanson seconded a motion (Motion 18) to instruct Council staff to present at the April meeting options for defining what a CFA is for the purpose of soliciting comments from advisory bodies and public on that definition, with possible final action in June. Motion 18 was not voted on.

Ms. Vojkovich moved (Motion 19) to substitute that the Council staff define CFAs and the guidelines under which that CFA would operate, and use the proposal that is in public comment from The Nature Conservancy (TNC) as a baseline approach to start with, and the intent that the definitions and guidelines are completed by the time the whole trawl rationalization program is adopted in the final rule. Mr. Wolford seconded Motion 19.

To speak to her motion, Ms. Vojkovich said one of the elements we have been fighting is sending people off to develop things and then being concerned about the time and resources involved in that approach. There have already been suggestions made and well-developed approaches suggested to the Council through public comment as to what and who could be in a CFA. We should start with that, instead of starting from the beginning.

Mr. Williams asked for a clarification. Earlier this morning there was a suggestion that we had not seen any definition to help us with CFAs. And now you have a motion to narrow the options? Ms. Vojkovich said the motion is to start with that document that already has some definitions of CFAs and what it might look like. Council suggestions are already in that document.

Mr. Lockhart asked if the substitute motion does not preclude other options at all? That's true said Ms. Vojkovich.

Mr. Moore understands the motion and is not opposed to some of the ideas from TNC. But he has to oppose the motion because there is broader guidance on CFA criteria from the NOAA technical memorandum on Design and Use of LAPPs, and he would rather see formal guidance from NOAA used than suggestions from one particular constituent group.

Ms. Fosmark said the TNC Public Comment is G.4.c. We are under a short timeframe here and have some good ideas coming from TNC. She thinks no one has worked on it yet except TNC, and their ideas would give us a place to start.

Mr. Wolford concurred with Ms. Vojkovich's motion that it provides a starting point only and we can expand to include other definitions.

Mr. Lockhart said the motion would result in more than likely staff going forward with both the TNC and NOAA memorandum. Mr. Lockhart asked if both of those would be included. He moved to amend Motion 19 to include the guidance contained in the NOAA technical memorandum as well as TNC public comment letter. Mr. Myer seconded the amendment to Motion 19.

Ms. Culver asked Mr. Lockhart about his amendment, it did not speak at all to the process and timing. When would we get the options back? April or June? Mr. Lockhart said he is amending Ms. Vojkovich's motion, so it would follow her process. Ms. Vojkovich said the intent was that the definitions would be completed at the same time as the trawl rationalization program is implemented; did not have a month or meeting when it would come before the Council.

Amendment to Motion 19 passed unanimously.

Main Motion 19 (Ms. Vojkovich's substitute motion) passed unanimously.

Shoreside Trawl Individual Fishing Quota Program
Accumulation Limit Control Rule “Safe Harbors”

Trailing Amendment Justification Analysis

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1. Executive Summary

Without specific exceptions to the trawl IFQ program accumulation limits, the ability for fishermen to manage the risk of overfished species catch events may be compromised. In addition, without an exception which allows for Community Fishing Associations to hold quota share in excess of current accumulation limits, Pacific coast fishing communities may not obtain the full benefit of the rationalization program, and some of them may actually be disadvantaged by the program. Finally, it appears that fishermen will have difficulty securing financing needed to capitalize their fishing operations as necessary to respond to the challenges and opportunities presented by the trawl IFQ program without an exception to the control limit that allows lenders to hold quota share in excess of the accumulation limits as collateral for loans.

To minimize potentially adverse impacts and optimize fishery performance, these program amendments are necessary within the first two years of the program. Without these amendments, experience shows that successful prosecution of the Pacific coast groundfish fishery will be compromised, adverse community impacts will occur that could be difficult to reverse, and the ability of fishermen to finance change to their fishing operations will be highly constrained.

What we are requesting

We request that the Council establish “safe harbors” to the accumulation limits for the shoreside portion of the trawl IQ program. These safe harbors include:

- Allow vessel owners and quota share holders to form contractually binding, multi-year agreements for the sole purpose of managing bycatch (risk pools). These agreements may stipulate rewards and penalties for performance, harvesting restrictions (such as area closures, gear modifications, and tie up provisions), or otherwise exert control (in limited fashion) over vessel activities and quota usage. Such arrangements do not actually hold quota share, but merely dictate terms for risk management. We suggest that no accumulation limit should apply to such arrangements, so long as they meet strict criteria intended to prevent abuse.
- Allow community-based associations to hold quota share in excess of accumulation limits (either 1.5 or 2 times the control limit with exceptions for certain species). Such associations do not prosecute fishing activity themselves, but contract with a set of harvesters under specific terms. Communities are eligible to form an association which holds quota share in excess of accumulation limits for purposes of stabilizing or enhancing their fishery economies through measures that improve the sustained production of the fishery, promote healthy harvesting and processing sectors within their communities, and/or facilitate new entry into the shoreside trawl IQ fishery after rationalization.
- Allow lenders to use quota share as collateral in making loans to fishermen. Financial institutions which use quota share as collateral are not held to an ownership or control limit. However, such agreements cannot specify delivery terms or exvessel prices as part of that financial agreement.

Why this is necessary

The PFMC designed the IFQ program with stringent accumulation limits and a stringent definition of “control”. This approach maintains the integrity of the accumulation limits, but has the consequence of A) limiting the ability of fishermen to prosecute fishing activity given the risk associated with overfished species catch events, B) impairing the ability of interested communities to manage their interest in the fishery, and C) minimizing the ability of fishermen to use quota share to finance changes to their fishing businesses. Without these exceptions to the accumulation limits, the outcome of the trawl rationalization program appears to be less beneficial than would otherwise be the case.

2. Introduction

The Pacific coast Trawl IFQ program will bring substantial change to management, fishing communities, and the manner in which fishermen prosecute fishing activity. The program presents both significant opportunities, but also significant challenges to those engaged in, or dependent upon, the Pacific coast trawl fishery. Such challenges include the ability of fishermen to successfully prosecute fishing activity with the low amounts of quota for several overfished

species and the ability of fishing dependent communities to maintain their interest in the fishery, among others. In this document we identify three trailing amendments which, if approved by the Council, appear to enhance the probability of success for individual fishermen and fishing communities. We describe these requested amendments as “safe harbors” to the control rule and accumulation limits. These safe harbors include: the ability for fishermen to form risk pooling arrangements which set conditions upon members which may span multiple years; the ability for communities to form Community Fishing Associations or Community Quota Banks which hold quota share in excess of the control limit for the benefit of that community; and the ability for lenders to take a security interest in quota share as collateral and take possession of and sell or cause that quota to be sold in the event of loan default.

Bycatch Cooperatives (risk pools)

One of the most challenging aspects of the IFQ program appears to be the ability for fishermen to effectively prosecute the fishery with the small amounts of overfished species quota they individually hold. Collectively, trawlers will hold quota that is on par with catches which occur under status quo, meaning the fishery is technically capable of being prosecuted with the small volumes of quota available. However, the implementation of individual accountability for catch imposes a degree of risk that does not exist under current conditions due to catch uncertainty and the likely inability to regularly find overfished species quota on a market at a reasonable cost.

In order to address the overfished species problem, it appears that a series of collective associations formed among quota holders and vessel owners may be necessary in order to adequately manage risk, to prevent quota hoarding, to facilitate effective and efficient communication that will assist with successful overfished species avoidance, and to impose terms on members which may restrict their fishing operations in some fashion over several years.

To date, many have referred to overfished species risk management associations as “risk pools”, but little context has been given to this term. We suggest that a “risk pool” will function best if the following conditions are met, in addition to others:

- That the “risk pool” be a formal agreement with bylaws and contractual arrangements which can be civilly enforced among risk pool members.
- That the “risk pool” be able to create a long term, multi-year structure that rewards and penalizes bycatch performance among participating vessels on a multi-year basis, and may impose restrictions on the prosecution of quota by members over a multi-year basis. This may include re-distributing quota pounds and dictating terms under which members can prosecute fishing activity.

The existing language defining the “control limit” in the trawl IFQ program appears to prevent the formation of a risk pool with the above criteria. A multi-year reward and penalty structure that influences how quota pounds are used and distributed among risk pool members, or which limits the ability of members to prosecute fishing activity over several years, effectively translates into control over quota share. If such a risk pool is large enough, that pooling arrangement would be in violation of the accumulation limits and subject to an enforcement action.

The nature of the fishery and the small amount of quota available for several overfished species necessitates the formation of large risk pool arrangements. Indeed, a single, coastwide risk pool covering all fishery participants may be the most ideal situation for many species as adding members and quota spreads risk and increases information flow. However, this degree of scale poses challenges in forming arrangements among diverse stakeholders such as those in the Pacific trawl groundfish industry.

In her Nobel Prize winning work, Elinor Ostrom refers to the concept of “nested enterprises” which underpin the formation of larger forms of common pool resource institutions.¹ This concept is directly applicable to the formation of large risk pooling arrangements. Rather than asking 169 trawl permit holders to agree to terms over a large risk pool, it is much more likely that smaller groups of individuals will form agreements, those groups will form agreements with each other to form sub-regional associations, and the sub-regional associations may establish further agreements with one another, thus achieving a large scale risk pooling arrangement. In other words, the risk pool is formed through building blocks of smaller, nested, fishery associations which are connected to one another via an umbrella risk pool agreement. Notably, this nested structure is consistent with the institutional arrangements under which the Bering Sea pollock catcher vessel fleet manages Chinook salmon bycatch, which poses a comparable risk in that fishery.

It appears that the formation of risk pools will be critical in ensuring the success of the Pacific IFQ program. As experience and available literature indicates that the formation of large, overarching arrangements is inherently a bottom-up process, it appears critical that the smaller nested cooperatives which make up the foundation and building blocks of a risk pooling structure be given incentives to form, and assistance in forming if necessary. Conceptually, large risk pools could simply be comprised of smaller, more local, risk pools. However, the smaller risk pools which provide the foundation of the broader risk pool agreement can be shored up through additional, formalized measures, thus solidifying the foundation of a larger bycatch cooperative agreement.

As more fully explained below, Community Fishing Associations can facilitate risk pool formation if designed with the correct standards and requirements. In other

¹ Governing the Commons (Cambridge, 1990) page 91.

words, CFAs can serve as one of the nested institutions out of which a large scale risk pool could be constructed. It is for this reason that we view Community Fishing Associations and risk pools as complimentary systems, rather than mutually exclusive systems.

Community Fishing Associations

As indicated in the trawl rationalization EIS, different communities have different relative advantages under the rationalization program. The fluid nature of IFQ, combined with fleet consolidation, individual accountability for patchily distributed overfished species, and other variables are expected to redistribute fishery-related economic activity across the Pacific coast when the rationalization program goes into effect. While quota share transfers are prohibited in the first two years of the program, this does not appear to limit fleet consolidation or quota pound transfers to a different region or community during the first two years of the program, nor does it prevent QS holders from entering into prospective agreements to transfer QS when the moratorium on transfer expires. These developments could largely condition the distribution of IFQ and related revenues among communities of the Pacific coast early in the IQ program's implementation phase, absent action by the Council to provide disadvantaged communities with the means to protect their fisheries economies. Ironically, as indicated in the trawl rationalization EIS, some of those communities which may rely upon fishery-related economic activity the most appear to be at the greatest disadvantage under the pending IQ program.

Implementing an IFQ program for the Pacific coast groundfish fishery provides the means for addressing problems associated with competition for harvest share and is expected to contribute to recovery of overfished stocks, improve efficiency, and provide opportunities to increase the amount and value of products from the fishery. These effects can be complimented with a system which helps to distribute those benefits across a wide array of communities and across future generations. While a quota-based system can create challenges for new entrants and disadvantaged communities desiring entry or participation in the fishery, Community Fishing Associations can be structured in a fashion that counters this market-based tendency. It is possible, for instance, that CFAs can provide a pool of QS that is readily accessible to new entrants, that promotes active participation, promotes responsible stewardship, and provides a source of income that can be leveraged to purchase QS. By serving as a point of entrance to successive generations of new fishery participants, CFA QS could promote the sustained economic and social health of fishing communities through the transition to quota based management.

We view CFAs/CQBs as entities that hold quota share with the purposes of meeting economic, social, and conservation objectives. This differs from a risk pooling arrangement which does not hold quota share, but governs activities of its members. These differences inherently require different exceptions to the

control language and accumulation limits. We do not propose that CFAs prosecute fisheries themselves, but rather that they contract with a clearly identified group of trawl permitted harvesters to prosecute fishing activity in a manner that achieves those objectives. In this type of a structure, the PFMC would provide the overarching constitutional requirements under which the CFA could form, the CFA would establish the manner in which the fishing activities could be prosecuted to meet the goals and objectives established by the PFMC, and a group of harvesters would contract with the CFA to engage in harvesting and management activities consistent with the CFA regulations. In this model we envision the CFA as being the quota share holder for some, or all, species which the contracted set of trawl licensed vessels harvest.

While there is nothing prohibiting the formation of such an association under the IFQ program, such an association would be restricted by the accumulation limits. Using the principles outlined in the GMT/PFMC staff analysis on accumulation limits from the spring of 2009, the accumulation limits would allow an entity to control only enough quota share to effectively operate two full time trawl vessels. This does not seem adequate to support the economic and social needs of many communities, nor does it seem adequate to allow for the formation of community-linked fishermen's cooperatives at a scale appropriate for the formation of local risk pools. It is for this reason that we feel an exception to the control rule for CFAs is necessary.

CFAs appear to provide an additional mechanism that argues for timely development and implementation, and that is the potential role they play in administering the Adaptive Management Program ("AMP"). The Council voted to establish a quota set aside titled the Adaptive Management Program (AMP) to address several goals, including potential adverse economic and social effects as a result of the trawl IQ program. One notable goal was to assist communities that are potentially adversely impacted by the rationalization program. Several models have been discussed for distributing the AMP quota to communities, including dispersal through processors and/or harvesters. While dispersing quota to processors or harvesters within a community may be more advantageous to that community than receiving no AMP quota at all, such entities inherently take on a perspective that differs from the perspective of their community as a whole. A community's fishery interests include its fishery support business, its tax revenues, its port infrastructure and utilities, and its fishery culture. Harvesters and processors within a community may acknowledge the importance of these interests, but those interests will be subsidiary to generating profits for their individual business. For communities to receive the full benefit of AMP distributions that are intended to protect or promote their interests, it will be important that the AMP distributions be made through entities that consider those interests to be their highest priority. If the AMP is to be used effectively in year three of the rationalization program, communities need clear communication of CFA standards as soon as possible, and will need the time to organize in a manner that comports with those

standards. Experience with fisheries in the North Pacific indicates that such collective associations can take months to form and years to become fully functional.

At present, the manner in which the Adaptive Management Quota set aside would be administered is not clear. Existing options appear to be A) administratively burdensome, or B) administratively simple, but with apparent difficulties in guaranteeing the achievement of specified goals and objectives. CFAs, if developed with an appropriate set of goals and objectives, are capable of being a channel for AMP quota and serving as a limited administrator of that quota to the appropriate parties in order to meet the goals and objectives of the AMP. In order to ensure that the program is implemented as currently envisioned, we recommend that CFAs be structured to not only assist in the facilitation of risk pool formation, but also to serve as one of several possible conduits for AMP quota. If CFAs are explicitly identified as a conduit for the AMP, the formation of CFAs is “incentivized” through the receipt of AMP quota, which in turn may facilitate and reinforce the formation of risk pool building blocks.

Finally, experience with other quota programs, such as the Alaska halibut IFQ program, illustrates the need for development of a CFA amendment within the first two years of the trawl rationalization program. Following implementation of the Alaska halibut IFQ program, a substantial amount of halibut landings Kodiak had been receiving prior to the program migrated to other communities with infrastructure advantages (Seward and Homer) within the first two years. While the Pacific trawl fleet does not operate under the same harvest dynamics under status quo (a derby existed in the halibut fishery), there are similar disparities in fishery infrastructure which place communities at different relative advantages. Such changes in landing patterns have immediate consequences, especially for communities and processors which operate at the margin. The loss of a relatively small fraction of current landings could result in loss of community infrastructure or processing capacity which would be difficult to regain later. The existing trawl IQ program contemplates mitigating these potential effects through incentives such as the AMP, and possibly CFAs. Incentives are generally more flexible and adaptive than prescriptive measures, but can be difficult to develop and implement. If such incentives are expected to work successfully to achieve social outcomes, these programs will need to be developed early in the implementation process to allow time for the development of the related institutions, and to allow time for them to take effect. On a relatively aggressive Council schedule, a two year development process will likely be necessary (initial Council consideration to implementation). On this schedule, implementation of such amendments occurs at the same time the QS transfer moratorium expires, an event which will likely be important in determining relatively permanent shifts in fishery activity.

Quota Share as Collateral in Financing

QS holders and CFAs may need additional capital to pursue opportunities and address the challenges presented by the trawl IQ program. It is important that QS holders be able to use QS asset value to secure private or public sources of funding (loans) for those purposes. However, the shoreside component of the trawl IQ program includes a rigorous control rule, which is necessary and appropriate to insure that QS accumulation limits are not circumvented through contractual arrangements, including financing arrangements. The control rule does not distinguish between financing arrangements where the lender has the ability to take QS as collateral – and to take possession of it and sell it or cause it to be sold in the event of a loan default – versus financing arrangements under which the lender could dictate delivery terms for a period of years, and which could treat a failure to comply with those delivery terms as an event of default.

Financing exceptions also appear necessary as an option for communities to secure participation in fisheries, through CFAs or otherwise. Communities have the ability to issue public financing (such as bonds) for purposes of fishery-related investment. A community may wish to include quota share purchases as part of its economic development activity and should be able to use that quota share as collateral for its related financing.

To make new sources of capital available to QS holders while preserving the integrity of the shoreside IQ control rule, we propose that a safe harbor for financing arrangements which do not dictate QP delivery terms be adopted.

3. Amendment Development and Prioritization

Amendments to rationalization programs are a common occurrence and the Pacific groundfish trawl rationalization program will likely be no exception. The Council is presented with the difficult challenge of prioritizing a series of requested amendments to the rationalization process. Prioritization is key to ensuring that such amendments are done in a timely manner and to ensure the overarching success of the rationalization program. When considering the prioritization of amendments, it seems appropriate to refer to several basic principles as well as to refer to the initial goals, objectives, and guiding principles the Council outlined for the trawl rationalization program in early 2007. We suggested the following considerations for prioritizing amendments:

- Will basic fishery functionality be hindered without the implementation of the amendment?
- Will the PFMCs goals and objectives for the trawl rationalization program be enhanced by the amendment?
- Does the requested amendment benefit a discrete subset of fishery participants, or does it have wider ranging implications concerning effective prosecution of fisheries, community impacts, or similar?

In reviewing the expected impacts of the rationalization program along with an expanding base of literature outlining the implications of rationalization programs, we believe that there is a high priority need to begin an amendment process which provides specific exceptions (safe harbors) to the IFQ program accumulation limits. The need is both structural (that the alternatives help improve the functionality of the trawl IFQ program), as well as timely (addressing these issues at this early juncture will enable effective fishery prosecution and help prevent irreversible social impacts).

Each of the “Safe Harbor” alternatives will likely require different types of adjustments to the accumulation limits. In later sections of this analysis we identify the appropriate type and scale of adjustments to the accumulation limits to meet program goals and prevent program abuse.

4. Purpose and Need

In the broadest sense, the *purpose* for pursuing the three types of accumulation limit exceptions is to better achieve a viable, effective, and profitable groundfish fishery and to better achieve the PFMCs goals and objectives for the rationalization program. The *need* for pursuing the three accumulation limit exceptions is that the existing program impairs activities necessary for enhancing program performance. Specific, limited adjustments to the accumulation limits are necessary in order for those activities to take place at a scale that optimizes program performance.

Bycatch cooperatives (risk pools)

The purpose of allowing risk pooling arrangements to form – and to exert limited forms of control over its members – is to assist in the overfished species risk management which harvesters face when prosecuting fishery activities. The exception which allows those arrangements to exert limited forms of control over members is to manage and reduce the collective risk that exists in the form of disaster tows and increase the probability of successful fishery prosecution. The need for an exception exists because the existing control language has the effect of prohibiting, or severely limiting, the ability for harvesters to form arrangements which apply standards and policies to members which may span multiple years. Research done in the North Pacific has outlined the importance of multi-year standards, restrictions, and terms in managing bycatch events similar to those which are present in the Pacific groundfish fishery.

Community Fishing Associations/Community Quota Banks

The purpose of allowing CFAs and/or CQB to form is to provide a vehicle for communities to maintain fishery activity in their community and to establish terms for use of quota which benefits a broad community membership, rather than benefiting a single (or a handful of) for-profit entities. The exception to the

control rule is needed because existing control limits do not provide a CFA entity the ability to acquire quota sufficient for maintaining a viable fishing economy within that community. Timely development of a CFA amendment is needed in order for communities that wish to form such arrangements sufficient time develop the community association prior to significant quota transfers, vessel movement/consolidation, and irreversible loss of fishery related business and infrastructure.

Quota Share as Collateral in Financing

The purpose of providing an exception for financing arrangements which do not dictate delivery terms is to insure that fishermen have the ability to finance change to their fishing operations – an activity that will be necessary to adapt to the trawl IQ program. The purpose of limiting the exception to financial arrangements which do not stipulate delivery terms is to maintain the integrity of the Council's accumulation limits.

Financing institutions routinely prefer to use quota share as collateral in making loans. In order to use quota share as collateral, lenders must be able to take possession of and sell or cause that quota to be sold in event of loan default, thus exerting a form of control over the quota share. As lenders which make loans to fishery enterprises are limited in number, an exception to the control rule for these lenders is necessary in order to avoid circumstances where fishermen cannot secure much-needed financing because the available lenders have reached the control limit.

5. Description of Amendment Alternatives

The alternatives envisioned for trailing amendments to the rationalization program are all described, generically, as “safe harbors” to the IFQ program accumulation limits. These safe harbors are intended to help facilitate the attainment of PFMC goals and objectives for the rationalization program, to assist in basic fishery prosecution capabilities by trawl licensed vessels, and to ensure that fishermen can finance the change to their business operations that will be necessary to adapt to the new program. In order to help achieve these outcomes, we describe the alternatives in the following manner.

Suggested Amendment	Description
1. Bycatch Cooperatives (risk pools)	A contractual arrangement among trawl licensed vessels and quota share holders which stipulate terms over risk pooling and risk management, but no more. The risk pool is not an “entity” itself, but is an agreement meant to benefit its members. An exception to accumulation limits is necessary if these arrangements govern terms which span multiple years as such arrangements appear to effectively control quota share.
2. Community Fishing Associations	A non-profit entity governed by a Board of Directors composed of fishermen, processors, and community representatives which holds quota share. This entity adopts QP use performance standards that are consistent with the Council’s and the community’s economic, social and conservation goals. The entity contracts with a Fishermen’s Collective Marketing Act (FCMA) cooperative whose members are persons operating trawl licensed vessels to harvest QP, using methods and means that satisfy the community entity’s performance standards. CFAs may also be a conduit for Adaptive Management Program quota. An adjustment to accumulation limits is necessary if these institutions need to hold more QS than an individual fishing operation in order to stabilize or improve the community’s fishery economy.
3. Quota as collateral in financing arrangements	Lenders make loans to QS holders who pledge QS as collateral to secure the loans. Because there may be a limited number of lenders who have the expertise and resources necessary to make loans secured by QS, to insure adequate capital is available to QS holders, it may be necessary for those lenders to hold an aggregate amount of QS as collateral that exceeds the relevant accumulation limit. An amendment to the shorebased IQ program control rule is necessary to allow a lender to do so. However, to insure the intent and purpose of the control rule is not violated by these financing arrangements, this exception only extends to financing arrangements under which the lender does not impose any delivery terms or delivery restrictions.

5.1. Bycatch Cooperatives (risk pools)

Bycatch cooperatives are generally described as a governing agreement meant to benefit the members entering into that agreement, and may include the formation of an entity that monitors compliance and enforces the terms of that agreement. The purposes of the bycatch cooperative agreement are to reduce the risk that encountering overfished species will result in members having to cease fishing, and to provide members of the cooperative with appropriate incentives to adopt fishing practices that reduce the risk of “disaster tows” which may create a collective management problem.

A bycatch cooperative, or risk pool, is not an entity that holds quota share. Rather, a risk pool is a contract which stipulates terms outlining rewards and penalties that are applied to the QS holders and vessel owners who are members of the risk pooling collective to incentivize good behavior on rational terms. These pools may also stipulate fishery management actions which are intended to reduce the risk of non-target overfished species catch events, such as implementing area closures, tie up provisions, seasonal restrictions, or gear restrictions. Risk pools also are intended to address collective problems which may arise due to bycatch events. In the event of a “disaster tow”, the risk pool may have terms outlining a response by members of the pool to handle that event in a collective fashion.

Rewards and penalties applied to members of a bycatch cooperative may be financial, may dictate the use and transfer of quota pounds from offending vessels to “clean” vessels, or may include other mechanisms that encourage good behavior, reduce individual risk, and reduce collective risk. These terms may include limited forms of “control” over risk pool members, or their use of quota poundage. These measures may span multiple years, thus necessitating an exemption from the control limit. However, in order to ensure the integrity of the accumulation limits, these arrangements may only include measures intended to reduce the probability of bycatch events, to respond to inadvertent bycatch events, and to manage the risk individuals face when prosecuting fishery activity.

Bycatch cooperatives that obtain the benefit of the related control rule exemption will not have authority to dictate delivery terms (rather than harvesting terms) or negotiations over ex-vessel prices. However, FCMA cooperatives may both participate in “umbrella” bycatch cooperatives and independently conduct delivery term negotiations on behalf of their members.

The bycatch cooperative structure described here is built around the basic concept of insurance. Insurance arrangements tend to improve as they grow in size. As such, bycatch cooperative arrangements are not held to an accumulation limit on overfished species if they adhere to specified terms.

Exception, Element, or Criteria	Description
Accumulation Limits	<ul style="list-style-type: none"> • Risk pool agreements which govern use of quota by members are not held to an accumulation limit. • Each of the individuals making up the risk pool structure, or operating under the risk pool structure, are held to accumulation limits individually
Eligible members	<ul style="list-style-type: none"> • Risk pools are composed of limited entry trawl licensed vessel owners and quota share owners, or their representatives (such

	<p>as an association). Risk pool members may include (but are not limited to) independent harvesters, processors which own vessels, or quota share holders which neither process nor harvest.</p> <ul style="list-style-type: none"> • Entities which do not own trawl permitted vessels or quota share may not participate in risk pool activities, including negotiations over governance structures, unless they are acting on behalf of a vessel owner(s) or quota share holder(s).
Agents	<ul style="list-style-type: none"> • Risk pools may hire agents to enact and enforce the provisions of the risk pooling arrangement. These arrangements may include: monitoring vessel performance and enforcing the terms of any agreed-upon reward/penalty structure, or dictating harvesting activity with the intention of reducing bycatch. • Risk pools may also form an entity which self-monitors and self-enforces the agreement rather than using a third party.
Duration of arrangement	<ul style="list-style-type: none"> • Risk pools may forge agreements dictating the use and transferability requirement of quota pounds held by members which extend beyond a single year. The duration of those arrangements is not limited by regulation, but is the subject of private negotiation. • If vessel owners wish to leave the risk pooling arrangement, they must give other members at least: <ul style="list-style-type: none"> A) 12 months notice, or B) 24 months notice Departure from the risk pool may be conditioned on satisfying all obligations to the pool that have been incurred as of the date of the withdrawal notice and may not be formally recognized until the start of the calendar year following the date on which such obligations are satisfied.
Enforcement and Monitoring	<ul style="list-style-type: none"> • Risk pools are able to form and function without direct acceptance of their formation agreement by NMFS and without a requirement that they submit performance reports to an oversight body such as the PFMC or NMFS. However, risk pool contracts must be made available to NMFS or state agencies upon request. Contractual terms which violate standards subject all participants in the risk pool to the possibility of an enforcement action due to joint and several liability which applies to any such agreement.
Limited Scope of Agreement	<ul style="list-style-type: none"> • Risk pools which exceed specified accumulation limits may only be set up to manage risk of overfished species catch events. This includes active and reactive risk management terms such as: OFS quota pound sharing rules, harvest activity management (which may include provisions such as tie up provisions, area closures, or gear restrictions), and financial rewards and penalties over bycatch performance.

Risk pools may not include provisions which dictate delivery terms for harvested groundfish.

Any risk pool contract must include standards and requirements consistent with the elements, exceptions, and criteria above. Such agreements must be signed by risk pool members and those members (names of any person or corporation) must be clearly identifiable next to the signature. All members of the risk pool must hold signed copies (original or copied) of the governance agreement.

5.2. Community Fishing Associations/Community Quota Banks

CFAs/CQBs are non-profit entities which hold quota share. These entities operate for the benefit of a community². They are expected to meet the organizational and operational tests associated with qualifying for tax exempt status as 501(c)(4) social welfare organizations.

The entity's Board of Directors will be appointed by the municipal governing body of the CFA community or the municipal governing bodies of communities in the CFA region. Representatives holding seats on the CFA's Board of Directors must include harvesters or harvester representatives, processors or processor representatives, representatives of the municipal governing body, and may include representatives of other community, conservation and/or academic interests.

The CFA Board of Directors adopts a "community development plan" ("CDP"). The CDP describes how the CFA's QS and QP will be used to promote the long term sustainability of the community's or region's fishery economy, taking into account the interests of harvesters (including skippers and crew), processors, fishing support businesses and utilities. The CDP establishes harvesting performance standards for using the CFA QP that enhance fishery stock sustainability and value, such as requiring area-based management measures to promote stock sustainability, requiring gear modifications, restricting the use of certain gears, and means to be used to reduce incidental catch of overfished and non-target species. The CDP also establishes performance standards that promote the health of the local fishery economy, such as requiring that stocks harvested under CFA QP be landed and processed within the CFA community or region to the extent practicable, requiring use of responsible fishing, processing and distribution practices that promote product value, requiring that harvesters who benefit from the use of CFA QP maintain some degree of active participation

² For the purposes of this section an eligible community is defined as "a physical location within one of the three west coastal states where commercial fishing vessels dock and commercially harvested species are unloaded." The geographic scope of this definition is generally limited to an incorporated city surrounding a harbor, or other similar structure. In cases where an incorporated city has more than one physical harbor which meets the criteria of an "eligible fishing community", that incorporated city may have only a single CFA/CQB. This issue is addressed by requiring the CFA to obtain resolutions of support from the municipal governing body.

in the fishery, and that CFA QP be used to provide an opportunity for new entry into the fishery.

CFA/CQB's do not engage in fish harvesting activities themselves (though some members of the entity's Board of Directors may also engage in harvesting or processing). The entity contracts with an FCMA cooperative whose members are trawl limited entry license holders. The limited entry licenses and the vessels to which they are assigned are each owned/controlled by separate entities, meaning a single entity may not control more than one vessel contracted by the CFA/CQB. Each vessel is held to the same quota pound accumulation limits which apply to all vessels participating in the trawl IFQ program.

A CFA is similar to a mothership harvest cooperative, but with different standards, elements, and restrictions which are specified by the PFMC. Like a harvest cooperative, the CFA must apply to NMFS for formation, must submit the CFA's CDP and corporate documents, must identify the fishermen's cooperative to which its QP will be assigned, and must identify the trawl limited entry license holders and participating vessels. Further, each CFA will be expected to submit an annual report to the PFMC outlining the CFA's performance relative to its CDP, and relevant events impacting the CFA.

NMFS is expected to review each CFA application to insure that the required documents are submitted, but is not expected to conduct a substantive evaluation of the CFA's organizational structure, its performance standards or the methods proposed for attaining them. Rather, the CFA is expected to demonstrate that its formation and operations are consistent with Council intent through its annual reports to the Council. If the Council determines that one or more CFAs are not conducting their activities in a manner that is consistent with Council intent, the Council could initiate an amendment to the CFA element of the trawl IQ program that addresses that inconsistency. Under this approach, the CFA Board of Directors retains a significant degree of authority to determine how to shape the CFA and its performance standards to address the specific needs of its CFA community or region, and retains the ability to easily and rapidly modify the CDP to adapt to changing circumstances in the fishery, the community or the market into which CFA products are sold. On the other hand, the Council retains the ultimate authority to structure the CFA program consistent with the Council's goals for the Pacific coast groundfish fishery.

The CFA's Board of Directors must be composed of at least 5 members. Harvester representatives and processor representatives shall not have more than 20% direct or indirect control over the non-profit entity, respectively. All other members shall not have more than 20% control over the non-profit entity. The balance of direct or indirect control over the entity could be held by representatives of the municipal governing body or port district for the community, and representatives from the conservation community, academia or other parties with an interest in the fisheries economy of the community.

To insure that there are not conflicting claims from CFA entities, only one non-profit entity may serve as the CFA for a community or region seeking CFA approval. This entity's authority to represent a community or region in receiving CFA authorization would be evidenced by authorizations of support from the municipal governing entity or entities for the community or region.

Exception and Criteria	Description
Accumulation Limits	<p>CFAs/CQBs may hold quota share that is:</p> <ol style="list-style-type: none"> 1. 1.5 times the control limit, or 2. 2 times the control limit <ul style="list-style-type: none"> • With the following exceptions <ul style="list-style-type: none"> ○ Pacific whiting: No increase allowed ○ Sablefish S of 36 degrees: 60% of the trawl allocation ○ Shortspine S of 34 27: 60% of the trawl allocation
Eligible/ Required directors (including community support)	<p>A CFA/CQB must have at least 5 directors, who have authority for CFA management. Required directors include:</p> <ul style="list-style-type: none"> • A letter of support from the local municipal government • A non-harvester and non-processor member of a community • Harvester representative(s). Controlling interest cannot exceed 20% cumulatively • Processor representative(s). Controlling interest cannot exceed 20% cumulatively
Standards	<p>CFAs must adopt and enforce performance standards concerning use of the CFA's QP that address one or more of the following management goals:</p> <ul style="list-style-type: none"> • Community economic stability, by implementing: <ul style="list-style-type: none"> ○ A plan to facilitate entry into the local fishery by persons who hold no QS or small amounts of QS; ○ A plan to stabilize business plans of local processors/buyers, harvesters, and other fishery dependent businesses, by requiring that some minimum percentage of harvests under the CFA QP be landed in the CFA community or region, and/or processed within the community or region, as the CFA deems appropriate; and/or ○ Enhance the value of local groundfish stocks by adopting appropriate fishing and delivery methods and means • A harvest sustainability plan outlining methods to: <ul style="list-style-type: none"> ○ Minimize bycatch; ○ Minimize fishing gear impacts on habitat; and/or ○ Enhance productivity of local groundfish stocks

	through measures such as area management, measures to protect age structure, or other measures intended to enhance productivity and sustainability
Harvesting Agents	<p>CFAs do not harvest themselves, but instead contract with a set of harvesters.</p> <ul style="list-style-type: none"> • These harvesters must be members of a Fishermen’s Collective Marketing Act cooperative. • Each vessel must adhere to vessel accumulation limits which apply to all vessels participating in the trawl IFQ program • Only one entity may own, operate, or otherwise control more than a single vessel operating for the CFA • The FCMA cooperative must submit reports to the CFA documenting the harvesting activities which the CFA is required to supply in a report to the PFMC
Duration of arrangement	<p>CFA arrangements which are approved by NMFS last:</p> <ol style="list-style-type: none"> 1. Two years, or 2. Five years (intended to coincide with program review) <p>Until agreements must be re-submitted. Agreements must be resubmitted if the agreement is modified or a change to the board’s membership occurs</p>
Enforcement and Monitoring	<p>CFAs must submit a biennial report intended to coincide with the “off year” of the harvest specifications process. The report shall outline:</p> <ul style="list-style-type: none"> • Total amount of quota share and quota poundage, by species, held or harvested on behalf of the CFA by year • Economic impacts of CFA activities on the community including exvessel revenue, location of processing, and distribution of economic activity generated as a result of CFA regulations and harvester/processor activities • Social impacts on the community, such as documentation of new entry, creation of local fishermen’s cooperatives , or other non-market social effects attributed or related to CFA existence • Harvest volume including bycatch and discard quantities by year and month • Spatial footprint of fishing effort, including documentation of particular habitat areas that are of interest and measures taken in response to the identification of those areas • Other measures taken to enhance sustainability or modify the activities of the harvesting cooperative
Items which must be included as	<ul style="list-style-type: none"> • Corporate documents (i.e., Articles of Incorporation and Bylaws) for the CFA and for the FCMA cooperative to which the CFA will assign its QP;

part of
application

- The agreement under which the CFA assigns QP to the FCMA cooperative, which identifies the performance standards to be met by the FCMA cooperative;
 - Resolution(s) of support from the municipal governing body of the CFA community or communities in the CFA region
-

5.3. Quota Share as Collateral in Financial Transactions

In order to adapt to the trawl rationalization program, fishermen will need to make many changes. Some of those changes will include vessel and equipment upgrades, modifications, equipment purchases, and quota share purchases. In many cases, certain types of financing will be necessary to fund such adaptations. Fishermen operating in quota managed fisheries in the North Pacific routinely use quota share as collateral in securing financing from institutions. Several institutions prefer to use quota share (rather than vessels or equipment) as such collateral.

The Council's control language appears to restrict the ability of lenders to take a security interest in quota share as collateral in making loans. While this tight control rule will help to maintain the integrity of the accumulation limits, a specific exception for financing arrangements appears necessary to allow fishermen to finance change to their fishing operations. This is because the use of quota share as collateral implies that a lender be able take possession of and sell or cause that quota to be sold (exerting a controlling influence over the quota share) and this appears to violate the control language specified as part of the trawl IFQ program.

We propose that such an exception be developed to simply restrict the terms over which those financing arrangements can be specified. The appropriate exception would not restrict types of financing institutions, merely the terms over financing. The exception is specified in the following bullet:

- Financing exception: that financing arrangements can be developed which use quota share as collateral. No accumulation limit applies to such an arrangement so long as that arrangement does not exert control over the harvesting and delivery activity of the quota share holder requesting or applying for the loan. This includes, but is not necessarily limited to, restricting delivery location and specifying exvessel prices.
- Lenders may take possession of and sell or cause quota share to be sold as permitted under State law in connection with a loan default. If a lender takes possession of QS in connection with an event of default, the lender shall not receive the related QP unless the lender is otherwise eligible to do so under trawl IQ program regulations.

6. Rationale and Analysis

6.1. Broad Level Effects of Risk Pooling

The risk that harvesters face when prosecuting fishery activities under the IFQ program appears to provide an incentive to form arrangements which reduces the risk to individuals. The incentive to minimize one's individual risk through a collective arrangement can lead to a reduction in collective risk stemming from the possibility of a "disaster tow" through collective action made possible by that collective agreement. While such incentives appear to exist, the control limit appears to restrict the application and development of any such arrangement to a single year. Research and analysis done on bycatch management in the Bering Sea Pollock fishery³ has indicated that bycatch reduction and risk sharing arrangements can be dramatically enhanced if those arrangements are able to span multiple years and this may include: dictating multi-year harvesting terms for individual vessels based on past multi-year performance, dictating the amount of overfished species quota each vessel has at the start of each season based on past multi-year performance, specifying financial rewards and penalties for current year performance, and stipulating tie up provisions, gear restrictions, or area restrictions for individual vessels, among others. Dictating the use of quota over several years and the terms under which a vessel can prosecute fishery activities for more than a single year appears to violate the control limit, even though such an agreement may be strictly voluntary and agreed upon by members of the risk pool.

Without the ability to form risk sharing arrangements which dictate certain harvest conditions on members for several years – and which examine bycatch performance over a several year time horizon – it appears that risk pools will be less effective than could otherwise be the case. If risk pools are only able to act in a manner that takes a single year snapshot of events and rewards/penalizes vessels based on that single year, it is possible that some of the "cleanest" fishermen will be penalized heavily, thus eroding the reasons and incentives for risk pool formation in the first place. In other words, bycatch events occur sporadically and our experience with the west coast fishery indicates that most vessels in the fishery face the possibility of a "disaster tow" event at almost any point in time. Generically speaking, the cleanest fisherman in the fleet may have one disaster tow every ten years for example, while less successful fishermen may have one every year. If risk pools are able to take a multi-year perspective and dictate terms on members based on that perspective, a vessel with a single event every ten years may be excused or treated differently than a vessel which incurs an event every year. If risk pools can only be developed with a single year perspective, and single year reward/penalty structure, the bycatch event from the "clean" fisherman will almost certainly be treated the same as a bycatch event from a higher bycatch fisherman. This equal treatment will erode the

³ Sugihara and Ye. 2009. Reducing Chinook Salmon Bycatch with Market-Based Incentives: Individual Tradable Encounter Credits

benefits and incentives of risk pool formation, thereby eroding the collective good created by collective action.

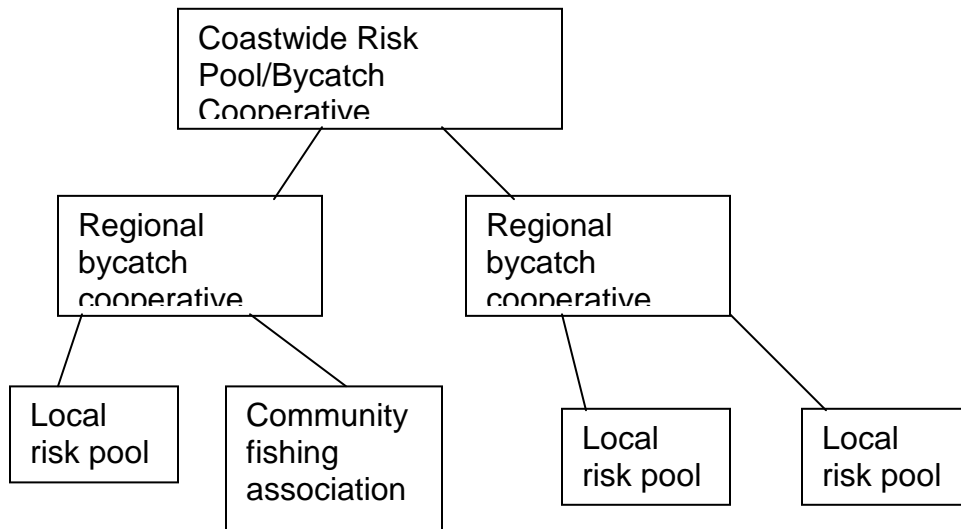
In order for a risk pool to effectively impose different rewards/penalties on vessels in this instance, such an agreement would need to be able to forge binding terms among members which apply for multiple years. These terms may very well include dictating the use of quota over a multi-year horizon, gear restrictions, and area restrictions over a multi-year horizon. These agreements also must be able to impose terms which require a vessel to stay with the risk pool for a minimum duration of time which exceeds one year (so that he/she cannot simply leave the pool if facing a penalty). Many of these elements appear to violate the control rule in its present form.

If a safe harbor is allowed for risk pooling agreements as specified above, the development of those arrangements is likely to occur through a “bottom-up” process where a broad risk pool agreement is made up through building blocks of smaller, “nested cooperatives”. This bottom up process is important for at least two reasons:

1. Fishermen will need the latitude to form arrangements with other harvesters with which they hold significant degrees of similar goals, objectives, and characteristics. Forcing fishermen to construct detailed arrangements with large numbers of other fishermen with whom they have little in common and do not have a trust relationship will make association formation challenging.
2. Relatively small associations (which are built around a small geographic area) will be more responsive to and knowledgeable of the characteristics of the local waters, including bycatch hotspots, oceanographic conditions, etc. These smaller associations will need to develop terms among their members which respond and acknowledge such local conditions and local knowledge. That knowledge of the local fishery condition, and detailed terms among association members which respond to those local conditions, helps to ensure the success of the broader risk pool umbrella.

The bottom up process may tend to result in an overarching risk pool structure which is comprised of several, smaller risk pools along with several “Community Fishing Associations” or “Community Quota Banks” if such entities are allowed to form and receive a safe harbor from the accumulation limit. The organizational structure (if viewed from a top-down perspective) is likely to result in a large risk pool structure which defines relatively broad, general terms over bycatch avoidance measures, penalty/reward structures, and other aspects of risk pooling which are fairly “high level”. As the organizational structure moves down the “pyramid” and becomes more localized, the specificity and complexity of the arrangements within those smaller, more local, associations will (necessarily) tend to increase. Such specificity and complexity in the organization would tend to provide detailed information on issues such as bycatch hot spots, the degree

of joint versus several liability, the degree of risk sharing for bycatch events, and other terms. All of these terms are private arrangements developed outside the Council process by association members, but are consistent with policies established by the Council.



6.2. Rationale and Analysis of Risk Pool Exceptions, Elements, and Criteria

This section attempts to provide a point by point discussion of the rationale and effects of each of the required elements/exceptions/etc for a risk pooling governance agreement. Where applicable and able, interconnectivities between these exceptions and criteria are identified and discussed

Accumulation Limits

Risk pools are not held to an accumulation limit because they are built around the basic notion of insurance. As the size of an insurance arrangement increases, that arrangement begins to become more effective in terms of risk reduction and establishing/incentivizing behavior which is beneficial to all members of that arrangement. It is for this reason that accumulation limits do not

apply to any risk pooling structure *so long as they adhere to specific criteria*. Since risk pooling arrangements may specify terms which exert control over members' use of overfished species quota, dictate harvesting restrictions upon members, or other activities, such arrangements must be strictly limited to managing the risk of overfished/non-target species bycatch events. Dictating delivery terms or exvessel prices, for instance, would fall outside this definition. Individuals which are partners in such an agreement are still held to limits individually, including limits on control of quota share and vessel accumulation limits.

Eligible Members

Members allowed to forge such agreements are limited to holders of quota share and owners of limited entry trawl licensed vessels. Since the purpose of any such agreement is to manage the risk associated with *harvesting* activity, other interests would tend to complicate matters and introduce goals and objectives which are not related to, or conducive to, risk pool formation and agreements.

Quota share holders are specifically allowed as part of any risk pooling arrangement because their interest as a quota share holder is effectively that of a harvester, even if those quota share holders do not actually fish themselves. Quota share holders which do not own or operate trawl licensed vessels will enter into agreements with licensed trawl vessel owners to harvest their quota. In order to accommodate the interest of quota share holders, they are given the opportunity to become members of the risk pooling structure and assist in the development of terms which increase the likelihood of successful prosecution of fishing activity and reduce risk to members of that agreement.

Trawl licensed vessel owners are specifically allowed as part of any risk pooling arrangement because it is their activities which are managed and affected by the risk pool agreement. Each of the above groups (quota share holders and licensed trawl vessel owners) may dedicate representatives in governance structure negotiations.

Agents

A risk pool may form an entity that operates with the purpose of managing and enforcing the terms of a risk pool agreement. A risk pool may also secure a third party agent to manage and enforce the terms of the risk pooling agreement. In either case, the rationale for having such an entity or agent is to carry out the agreement to which risk pool members have agreed to. The lack of such an authority may compromise the ability of the risk pool to effectively and efficiently carry out the agreement, thus reducing the capability of that risk pool to achieve its objectives.

Duration of Arrangement

Allowing risk pooling arrangements to dictate terms which extend beyond one year is the foundational piece which requires an exemption to the control rule. In order to ensure that multi-year terms can be effective, such agreements must be binding and not enable a member to simply leave the risk pool agreement if facing a restriction or penalty. In an attempt at ensuring that such agreements are binding and have the desired effect, those agreements must stipulate that members cannot leave the risk pool unless they give at least A) 12 months notice, or B) 24 months notice. In either case, those departures are not recognized until the start of the following year. These measures may also stipulate that members cannot leave a risk pool until all obligations to that risk pool have been met. These requirements are necessary in order to ensure that members do not simply leave the risk pool structure if they are facing a penalty or restriction.

Enforcement and Monitoring

During the development of the trawl rationalization program, the Council indicated that it was their intent to allow risk pools to form. However, the existing control rule appears to restrict the development of highly effective risk pooling arrangements. It is for this reason that an exception is needed, but the question arises regarding oversight or auditing of any such arrangement.

During the Council's deliberation of the trawl rationalization program, discussion of risk pools as voluntary arrangements occurred regularly. The majority of those discussions did not involve having any oversight or auditing function by the PFMC or NMFS as part of those arrangements. The required enforcement and monitoring provisions described above are consistent with those discussions. At the same time, the risk pool exception to the control rule is intended to retain the integrity of the control rule and accumulation limits. Therefore, any risk pooling arrangement governing agreements must be accessible to NMFS or the state agencies upon request. While an official auditing or application function does not exist, this accessibility requirement provides a mechanism for easily ensuring compliance with the control rule exception.

Limited Scope of Agreement

Risk pooling arrangements are limited in their degree of application, or capacity. In short, their sole purpose is to manage the risk of overfished, non-target, species bycatch events. In order to limit the application of any such agreements to this purpose, such arrangements may not stipulate delivery terms upon members, specify exvessel prices, or engage in other arrangements which are not related to *managing and incentivizing harvesting activity*.

It is envisioned that such arrangements may develop measures which include, but are not limited to, a reward and penalty structure upon members based upon

their bycatch performance, may impose and enforce area closures upon members, may impose tie up provisions upon members, and other activities solely related to harvesting and managing bycatch.

6.3. Broad Level Effects of Community Fishing Associations

The trawl IQ program contains numerous components to promote recovery of Pacific Coast fish stocks and to improve the economic health and stability of the Pacific coast groundfish trawl fleet. If the program performs as expected, the related benefits will accrue to the participating fishermen, and indirectly to the communities in which they live.

However, as noted above, implementing an IFQ program also creates opportunities for port communities with infrastructure advantages to capture additional landings from the fishery, as fishermen cease competing for harvest share and are freed to spend time seeking additional value for their catches. Allocating IFQ also provides the initial QS recipients with an asset they can leverage to acquire additional QS or QP, which creates an opportunity for those fishermen (and the communities in which they are based) to increase their share of the fishery.

The potential concentration of landings and QS ownership in some Pacific coast communities can only come at the expense of others. Communities with infrastructure disadvantages or whose fishermen receive allocations of QS that are not sufficient to support their community's fishing economy are at risk of losing their fishing income and fishing culture as a result.

Without a CFA component, the trawl IQ program leaves disadvantaged Pacific coast communities with a limited set of tools to protect them from the market forces associated with the transition from limited access management to quota-based management. Under the current program rules, a community that wishes to purchase QS to stabilize its fishery economy is limited to holding an amount of QS that can be held by a single model fishing business. This does not provide a disadvantaged community with sufficient quota leverage to compete for landings on a meaningful basis with communities that have well developed port infrastructure, high volume processing capacity and fishing fleets with substantial QS allocations. Adjusting the accumulation limit to allow CFAs to hold QS in excess of the amount that can be held by a model fishing business provides disadvantaged communities with some limited capability to offset the effect of the IQ program's market forces on their local economy, and to preserve their fishing culture.

Implementing an IFQ program tends to reshape the financial and economic landscape in many ways. One example affecting inter-generational entry into the fishery concerns the ability of initial QS recipients to leverage their allocations by using them as collateral and increasing their holdings of QS in the fishery. This

effect can inhibit the ability for new entrants to enter the fishery unless those new entrants have significant collateral of another sort, or significant cash on hand. Absent a mechanism that addresses these effects, the ability of new entrants to accumulate the capital to acquire QS or build a fishery operation can be impaired.

In other IFQ programs, these effects have been addressed through “blocking” small allocations of quota to keep them from being consolidated (the North Pacific halibut and sablefish IFQ program), through direct allocations of IFQ to skippers (the North Pacific crab rationalization program), and through subsidized loans to skippers and crew members (halibut and sablefish and crab rationalization IFQ programs). These initiatives provide entry level opportunities and “stair-steps” that promote progressively greater involvement and investment by new entrants.

The trawl IQ program includes an AMP component which could be developed and implemented to provide comparable opportunities for entry into and progressively greater involvement in the Pacific Coast groundfish fishery. However, implementing that program on a coast-wide basis poses some of the same challenges inherent in developing a coast-wide risk pool. Absent nested local institutions that tailor QP allocations to the circumstances and needs of the different communities and regions comprehended by the program, the AMP is likely to impose a significant administrative burden on NMFS, or be implemented on a less than optimal basis, or both. This is not to suggest that CFAs should be the only channel for allocating AMP quota. However, they could certainly be a channel that both provides an early opportunity for AMP quota distribution, and could provide very useful information concerning the institutional design for effective, efficient AMP quota distribution.

Until the AMP is fully implemented, CFA QS could be used to address the new entry problem, by adding an appropriate suite of usage standards that require FCMA cooperatives using CFA QP to promote new entry and advancement in the fishery. Because the new entry problem is faced by every Pacific coast community affected by the trawl IQ program, not just disadvantaged communities, this function could be the basis for making the CFA option available to all fishing communities within the trawl IQ program region.

6.4. Rationale and Analysis of Community Fishing Association Exceptions, Elements, and Criteria

Accumulation Limits

CFAs would not be exempted from accumulation limits. Rather, they would receive a higher accumulation limit, which is commensurate with their purpose and function. We propose either 1.5 times the existing limits or 2 times the

existing limits, with some specific adjustments, for initial analysis. This range is proposed based on the notion that 1.5 times and 2 times the control limit appears to provide an entity with enough quota share to effectively operate 3 to 4 full time trawl vessels. This level is similar to the participation level of several smaller communities that seek to use CFAs to preserve their fishery participation.

The rationale for the species-specific exceptions are as follows:

- Pacific whiting: while Pacific whiting is important for several west coast communities, the economic and social dynamics we discuss in this document appear more relevant to the non-whiting portion of the fishery. As a result, we do not propose CFA exceptions for Pacific whiting because we do not find sufficient need to do so
- Sablefish South of 36 degrees: We propose 60% of the southern trawl allocation because this level is generally consistent with the quantity of sablefish allocated to the CFA EFP that has been operating out of Morro Bay for the past several years. That EFP serves as a model for a future CFA. Adjusting the amount of sablefish available to fishermen in the EFP out of Morro Bay would likely prove to be more disruptive than it would be beneficial
- Shortspine South of 34 degrees 27 minutes: We propose 60% of the southern shortspine allocation due to the limited geographic range of this ACL, and the likelihood of a small number of CFAs being set up in the area (necessitating a large accumulation limit exception for those CFAs).

Eligible/Required Directors

CFAs are governed by a Board of Directors composed of representatives of the local community's harvesting sector and processing sector, and representatives with an interest in the fishery drawn from the larger fishery economy of the community, the conservation community or academia. The local municipal governing body or bodies with jurisdiction over the community or region for which the CFA is formed select the Board of Directors, or develop a process by which it is constituted. The reason for this diversity in required membership is to help insure that the directors of the CFA share the perspective of the broader community, rather than the perspective of a single for-profit entity. The CFA is also required to have a letter of support from a municipal governing body (or similar) for several reasons, including:

- Eliminating the possibility of multiple organizations attempting to set up CFAs in a single community and forcing NMFS to accept them on a "first come first serve" basis,
- Insuring that the CFA answers to a community governing body and reflects the interest of the broader community.

To prevent CFAs from being “captured” and used to promote the interests of one sector or interest group over another, the amount of control that the harvesting sector and processing sector can directly or indirectly exercise on the Board of Directors is limited to 20%. This level is recommended due to the requirement that the Board have at least 5 members (thereby giving processor and harvester interests equal voting power with other Directors) while striking a balance between significant voting authority by industry and maintaining the broader interest of the community (combined industry membership approaches, but does not exceed, 50 percent).

Performance Standards

The CFA is expected to develop a “community development plan” (CDP) that describes the CFA’s goals and objectives, and describes the methods and means the CFA will use to achieve those goals and purposes. The CDP reflects the CFA Board’s judgment concerning the needs of the community or region that are appropriately addressed by the CFA, and establishes general performance standards concerning CFA QP use that in the Board’s judgment will address those needs. The CDP for a disadvantaged community could be focused on maintaining or enhancing the overall health of the community’s or regions fishery economy, while the CFA for a community that is not disadvantaged could be focused on facilitating new entry into the shoreside IQ fishery.

This requirement exists for the purposes of transparency with NMFS and the PFMC in order to ensure that the actions being carried out by the CFA are consistent with the intentions of the PFMC in allowing for CFAs to form. This requirement also helps in understanding the effects of the rationalization program and the effects of CFAs in particular.

Duration and Administration of Agreement

The CFA’s CDP and related agreements are required to be submitted to NMFS and the Council periodically. This insures that the CFA revisits and updates them, and that NMFS has a current suite of documents on file. As noted above, NMFS will not conduct a substantive review of the contents of the CDP and related documents. Rather, NMFS will insure that the required documents have been completed, and will require that the CFA Board certify that their provisions are consistent with the CFA program standards adopted by the Council. The Council will periodically review the CFA CDPs and related documents and the CFA reports, and determine if the CFAs are indeed operating in a manner consistent with Council intent. However, the Council will not specifically approve or disapprove any specific CFA or CDP; Rather, the Council will revise the CFA program standards if the Council believes one or more CFAs are operating in a manner inconsistent with Council intent.

The purpose of this agreement duration and submittal process is to insure that CFAs adhere to PFMC and NMFS policies regarding the formation and administration of these associations. Periodic submittal of agreements helps to insure effective oversight.

Harvesting Agents

The CFA is required to contract with a fishermen's association rather than individual fishermen because CFAs are expected to facilitate risk pool formation, because an intermediate entity is necessary to monitor and manage QP harvesting and delivery for performance standard compliance, and because a high degree of coordination and integration of QP harvesting and delivery activity will be necessary to achieve performance standard compliance.

The CFA fishermen's association is required to be a qualifying "Fishermen's Collective Marketing Act" or "FCMA" cooperative⁴, to ensure that the association is composed of fishermen, and to facilitate ex-vessel price and delivery term negotiations to maintain an economic balance between the interests of harvesters and processors within a given community⁵.

Enforcement and Monitoring

CFAs will require the FCMA cooperative harvesting CFA QP to provide periodic reports regarding its use that demonstrate compliance with the CDP performance standards. CFAs will establish their own monitoring, auditing and enforcement requirements related to use of their CFA QP by the local FCMA cooperative. CFAs will have the ability to take appropriate action in response to failure to comply with performance standards per the CFA contract with the FCMA cooperative, which could include contract damages or withdrawal of some or all CFA QP until the failure to comply is cured.

CFAs will prepare a report for the Council that documents the CFA's compliance with its CDP, which could include an independent audit of CFA performance.

These reporting requirements are required in the interest of maintaining transparency over the CFA program and to allow the PFMC, NMFS, and

⁴ See 15 USC 521 and related case law.

⁵ Requiring that vessels deliver catch to a specified location (which is a requirement of a CFA/CQB) effectively reduces the scope of markets for the harvesters and ensures a quantity of catch to processors located in that area. Due to the importance of both healthy processors and healthy harvesters in determining the health of a community, this change in economic dynamics caused by CFA/CQB formation is complimented with the requirement that harvesters be members of an FCMA cooperative as an attempt to balance economic negotiations between the two groups. In cases where a processor has a significant degree of market power in the ex-vessel delivery market within a CFA's community or region, additional measures to preserve a competitive market for ex-vessel deliveries may be necessary. The Council may wish to relegate responsibility for these additional measures to CFAs.

interested members of the public to adequately understand and assess the implication of the PFMC's policies. The time line for submitting such reports is suggested to be either 2 or 5 years because drafting such reports can be labor intensive, burdensome exercises, and CFA organizations are likely to be relatively small with correspondingly little resources.

6.5. Relationship Between CFAs, Risk Pools, and the Adaptive Management Program

The risk pool and CFA alternatives described above appear to create a “tri-fecta” between Risk Pools, Community Fishing Associations, and the Adaptive Management Program. If CFAs are used as the conduit for AMP quota, the formation of those CFAs is incentivized by the receipt of that quota, allowing CFAs to boot-strap their way into existence and overcome the hurdles of new entry. Since the requirements of a CFA include bycatch minimization measures, and other measures conducive to minimizing bycatch risk, the CFA acts as a foundational building block to the formation of broader risk pooling arrangements. Through the risk management measures developed by the risk pooling arrangement, collective risk is reduced across a wide geographic area which is defined by the scope of the risk pool. This reduction in collective risk protects the CFAs from one another, helping those CFAs to meet their overall goals and objectives. Assuming those CFAs are the recipient of the AMP quota, then the successful operation of the CFA helps the AMP meet the purpose specified for that program as well. In other words, each of the three programs (Risk Pools, CFAs, and AMP) appear to provide support, and are supported by, one another.