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February 17, 2009

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

Honorable Pacific Fishery Management Council (PFMC) members,

Food & Water Watch (FWW) is a national consumer action organization that defends, and advocates for robust public management of essential resources, including fish.

For the consideration of Council, prior to taking final action on trailing actions related to the above matter, please find below FWW's general and specific comments and conclusion.

General Comments:

As you are aware, wild fish stocks in the U.S. are a public property resource. The government bears the significant responsibility for managing this resource on behalf of all U.S. people. Successful management means maintaining ecologically sustainable wild fish stocks, and allocating harvesting privileges in an equitable manner: providing for broad societal objectives, viable fishing industries, and management improvement over time.

FWW asserts that the preferred trawl rationalization alternative selected by the PFMC in November 2008, to be recommended to the Secretary of Commerce for implementation, will not allocate harvesting privileges in an equitable manner, or optimize social benefits from, or stewardship of, the valuable Pacific coast groundfish resource.

Contrary to the public interest, we have been given ample cause to believe that the unstated objective of the rationalization program is to secure, essentially in perpetuity, the economic position of the bigger incumbent companies, to lead directly to the creation of a feudal system in relation to groundfish harvesting.

Bigger initial beneficiaries will: consolidate quota shares and thus fishery participation; continue to fish for free by paying no resource rents to the public; lease quota pounds to 'sharecroppers' at exorbitant rates; attain massive cross-subsidies as taxpayers continues to pay the bulk of increased management costs; and sell their privilege and quota share when ready – pocketing the substantial unearned economic windfall.

Once in place, this system of guarded extraction of benefits from a public resource will be very difficult to reverse.



To be clear, IFQs are primarily an economic allocation tool, not a true conservation tool. It is the Total Allowable Catch (TAC) - the harvest cap - that is responsible for ending overfishing, not the way the TAC is divided and allocated. If a TAC is set above biological limits, over-fishing will still occur - even under an IFQ program.

This critical distinction was pointed out in the National Research Council (1999) report *Sharing the Fish, Towards a National Policy on Individual Fishing Quotas: ... 'IFQs are not primarily a biological conservation tool; the TAC and other management measures are the main conservation tools in IFQ-managed fisheries.'*¹

FWW applauds the National Marine Fisheries Service (NMFS) for recognizing the primary conservation role of harvest caps through the January 15, 2009, issue of final guidance on Annual Catch Limits (ACLs) designed to help restore federally managed marine fish stocks and end overfishing. Federal managers clearly understand that catch limits are their primary conservation tool – not how the catch is divided.²

Now that overfishing is to be addressed robustly, FWW will soon urge Congress to revisit controversial fish stock allocation issues.

The need for congressional attention to fish stock allocation issues is urgent. Whilst Congress included in the reauthorized Magnuson-Stevens Act (2007) many innovative ways to allocate fishing privileges - such as auctions or direct quota grants to communities - many of the eight regional fishery management councils, including the PFMC, have not rigorously explored equitable allocation options, and are charging ahead to protect and solidify private vested interests through the implementation of IFQs and related de facto privatization schemes. In the words of the late President Truman: *'Such raids on our natural resources are not examples of enterprise and initiative. They are an attempt to take from all people just for the benefit of a few.'*³

The Environmental Defense Fund and others that have pushed the present 'catch share' stampede have presented the public with a disingenuous characterization of the problems facing U.S. fisheries. These groups have forced the notion that a policy dichotomy exists: a choice between completely fictitious unregulated fisheries (all U.S. are now heavily regulated) leading to a "tragedy of the unmanaged commons" situation, or a quasi-private property IFQ regime that, if applied broadly, will purportedly *'...restore abundant oceans'*⁴.

The National Marine Fisheries Service has not adequately challenged or attempted to clarify the above inaccurate characterization, nor developed guidelines to direct councils

¹ National Research Council, Committee to Review individual Fishing Quotas, *Sharing the Fish: Toward a National Policy on Individual Fishing Quotas* (Commission on Geosciences, Environment and Resources Washington, D.C: National Academy Press, 1999), p.105

² National Marine Fisheries Service "Magnuson-Stevens Act Provisions; Annual Catch Limits; National Standard Guidelines, 50 CFR part 600" National Marine Fisheries Service website. http://www.nmfs.noaa.gov/msa2007/docs/acl_final_rule_as_signed_version.pdf

³ Harry. S. Truman, "[Address on conservation at dedication of Everglades National Park](#)", December 6, 1947, podcast, Harry. S. Truman. Library and Museum site, <http://www.trumanlibrary.org/audio/audio.htm>

⁴ Environmental Defense Fund, "Oceans of Abundance", Environmental Defense Fund website. http://www.edf.org/documents/8795_OceansOfAbundance.pdf



on the development of IFQs programs or other more socially desirable catch privilege allocation options.

With respect to catch privilege allocation, FWW asserts that in circumstances where quota shares are to be granted to individual entities, a mechanism of payment for the constrained (e.g. fixed term, non-transferable, eligible active fisherman only, cleaner gear, etc.) privilege of catching fish should be instituted. Once policy firmly establishes that commercial fishing entities must pay the public resource owners to catch fish in accord with a defined set of social values and objectives, the central issues then becomes: how contract agreements between the government steward and fishing entities should be structured; how revenue held in trust accounts should be managed and disbursed; and how the transition to and continual improvement of this system can be best undertaken.

Importantly, a contract system is easily understood as an endorsement and assertion of public control of public resources. Moreover, a contract system offers management flexibility for an uncertain future, and is consistent with the public policy approach used to manage many other natural resources.

FWW believes that such an equitable allocation approach would allow independent conservation minded fishermen to thrive through operational level community-based cooperative catching and marketing business models. Strategic analysis would reveal the greater value of these business models and the related value chains that produce low volume high value sustainable products for eager U.S. consumers.

Unfortunately, the PFMC has missed a critical opportunity to provide strategically informed leadership in relation to the balancing of economic, social and ecological systems possible through a well-crafted allocation system suited to the twenty-first century and the challenges foreseeable ahead. Amendment 20 has created groundfish royalty instead of equitable access, conservation and social benefits, management flexibility, and public royalties to fund management excellence.

Specific Comments:

With respect to outstanding elements of the rationalization program FWW notes that three elements of the shoreside sector IFQ program are still open for refinement:

1. IFQ ownership and use caps
2. Ownership eligibility
3. Mechanisms for the use of the 'adaptive management' set-aside, in which 10% of the non-whiting groundfish IFQ is to be used to address impacts of the new program.

On these issues, FWW asserts:

- Ownership and control of quota share and pounds should be restricted to owner-



operators, defined as active seafaring fishermen - captains and crew that meet reasonable eligibility criteria.

- Accumulation caps should be conservative, and structured to optimize social results as opposed to economic efficiency.
- The adaptive management set-aside should be used to mitigate one-off transition impacts including the one time resolution of proven stranded capital issues. It should then be held, to provide an incentive pool for conservation results and for further transitions as required to improve the program.

Conclusion:

In summary, the preferred trawl rationalization alternative privatizes profit and socializes loss. FWW asserts that the lasting imprint of Amendment 20 will be job losses, the preclusion of small business and small coastal community participation in groundfish fishing and processing, and the creation of a feudal class of quota 'owners'. Taxpayers will get the displeasure of addressing negative impacts, whilst paying the significant and ongoing costs of program management.⁵

FWW recommends PFMC members support options in respect to the outstanding elements of the rationalization program that minimize adverse societal impacts to the extent possible.

Sincerely,

Ben Bowman
Policy Analyst
Food and Water Watch

⁵ FWW notes council's request to the Secretary of Commerce for as yet unspecified additional funds to implement the preferred trawl rationalization alternative if approved.

February 18, 2009

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

Dear Chairman Hansen:

At the November 2008 meeting of the Pacific Fishery Management Council, The Nature Conservancy proposed that the Council make certain changes to the preliminary preferred alternative to remove barriers to the formation of Community Fishing Associations, for the purpose of mitigating the projected negative effects of trawl rationalization on some west coast fishing communities. A Community Fishing Association (CFA) or other such community-based entity would provide an *opportunity* for communities to maintain their participation in the fishery, and would not require an allocation of quota share.

Experience in other fisheries that have undergone rationalization has shown that the first 3 to 5 years after initial allocation of an individual fishing quota (IFQ) system is the period when most of the upheaval in the fishery and traditional fishing communities is likely to occur. After that period it becomes increasingly difficult for new participants or entities – including traditional fishing communities - to enter or re-enter the fishery. It will be important to establish measures to help mitigate community disruption prior to initial allocation such as rules for CFAs.

As explained in our previous submission, a CFA is a new entity that could hold quota share on behalf of a community. In the Central Coast of California, TNC intends to establish such an entity that would build on our existing efforts and eventually hold the permits TNC recently purchased from trawlers in this area and the associated quota share. We will strive to work with communities on the central coast to ensure that fishermen and communities are vested in the fishing entity and that the entity provides tangible benefits and enhances the future of the groundfish fishery. TNC has no intention or desire that its fishing privileges be “retired” or used to constrain the west coast groundfish fishery.

The Council’s final action on trawl rationalization in November 2008 was supportive of the CFA approach. The final motion package identified the need to consider the effect of individual accumulation limits – to be established through a trailing action - on the ability of communities

and individuals to work together to establish community based entities that could hold and manage quota following rationalization, such as CFAs.

The Conservancy and its partners appreciate the Council's continuing attention to the need for maintaining traditional fishing community access to the fishery and understand that establishing an appropriate accumulation limit for a community entity is likely to be difficult without a clear understanding of the need, purpose, and guidelines for such an entity. We offer this second proposal for specific guidelines for a CFA option to assist the Council in taking action on this important need. The recommendations here are based on experience we have had implementing an Exempted Fishing Permit to test a community based approach in Morro Bay and Port San Luis, California and research into similar efforts in other U.S. fisheries.

The benefits of a CFA-type approach are being tested and documented now in the Exempted Fishing Permit the Council approved for 2008 and 2009 and these encouraging results can inform the Council's plan. In order to offer any real opportunity for communities to act to preserve their access to the resource – federal guidelines for establishing community entities *must be in place at the time the IFQ program is implemented*. To ensure that this opportunity is available to communities, we request the Council take the following actions:

- Develop a framework for CFAs in the current set of trailing actions to be completed by June 2009, including specific accumulation limit rules for CFAs that meet the requirements.
- Allow entities that qualify for quota share in excess of individual accumulation limits the opportunity to divest of the excess after initial allocation. Low individual accumulation limits without a grandfather or divestiture provision could lead to a major redistribution of access with serious impacts on communities.

Thank you for your consideration of this request.

Sincerely,



Margaret Spring, Director
California Coastal & Marine Program

Proposed Framework for Establishment of Community Fishing Associations

February 18, 2009

Summary of CFA Proposal:

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1. Problem Statement

As the Council’s evaluation of the proposed groundfish trawl rationalization program indicates, rationalization and consolidation of the trawl fleet is likely a net benefit to the fishery as a whole, but projections of its effects at the individual and community scales are more varied and dislocation is predicted in some communities. Experts recommend advance planning and measures to prevent or mitigate these likely impacts.¹ This change in the management of the fishery arrives at a time when many west coast groundfish ports are struggling to adjust to changes in markets, infrastructure, and recent trawl capacity reduction efforts.

As permits migrate away from historic ports, and consolidation occurs, some communities will be left without trawl access to groundfish, and new entrants from these communities will have little opportunity to become active participants as the fishery recovers. Many groundfish ports on the west coast rely upon diverse fishing opportunities. Groundfish trawling has often been the foundation of these local economies, providing deliveries of fish in quantities that support local processors and other parts of the shoreside fishery infrastructure that in turn support other fisheries in the community. Loss of trawl access as a result of quota or permit migration and consolidation is a high economic and social price for these communities and fishing families to pay.

The Magnuson-Stevens Fishery Conservation and Management Act (“MSA”), 16 U.S.C. § 1801–1891d, as amended in 2006, contains several provisions requiring that fishery management decisions take into consideration and seek to minimize the impact on fishing communities. For example, National Standard #8 requires the government to consider and limit

¹ See, [1999 NRC Report]; GAO, “Individual Fishing Quotas: Methods for Community Protection and New Entry Require Periodic Evaluation” (GAO-04-277, February 2004); 2004 U.S. COP Report, Chapter 19 (*noting that concerns about community impacts led to establishment of the IFQ moratorium in 1996*).

the possible impacts on fishing communities from any proposed management plans or regulations.² Section 303A, which specifically allows for creation of an IFQ, directs the Council to “include measures to assist, when necessary and appropriate, entry-level and small vessel owner-operators, captains, crew, and fishing communities . . .” include provisions to prevent excessive consolidation, and recognize the current and historical participation of fishing communities.³

The Council’s analysis of the rationalization program⁴ has identified several anticipated impacts on fishing communities. The MSA requires that the rationalization program be implemented in a manner that minimizes such adverse impacts on fishing communities and provides for sustained participation of such communities. The preliminary draft Environmental Impact Statement (pdEIS) suggests that several provisions could be used to mitigate such impacts: (1) broad eligibility for QS, (2) a moratorium on transfer of QS, and (3) an adaptive management program (AMP). However, it is unclear how such provisions would work in practice to mitigate for local and community-based impacts, particularly because existing local government administrative structures lack the capacity, authority, expertise and focus to readily take advantage of these opportunities.

What is missing is a community-based entity that can fulfill this role and take advantage of these opportunities at the local level. The establishment of CFAs can help fill this gap and create a mechanism for communities to obtain future economic and social benefits (including jobs and revenues) that will follow the recovery of the groundfish fishery. Further, there is demand for allowing such entities, as seen by the fact that several ports have expressed an interest in pursuing the CFA approach.⁵

2. CFAs Can Help Meet National and Regional Fishery Goals and Objectives

Appropriate accumulation limits and a framework that allows establishment and operation of CFAs or other community entities to prevent or mitigate impacts on fishing communities will support not only the goals and objectives of the trawl rationalization process, but also those set forth in the Pacific Coast Groundfish Fishery Management Plan (PCGFMP) and the MSA. Such approaches are also strongly recommended by expert reports of the National Research Council, the U.S. Commission on Ocean Policy, and the Government Accountability Office.⁶

Such provisions for CFAs in the trawl rationalization process are also needed to meet existing management goals. The Council’s goal in rationalizing the west coast groundfish trawl fishery is to increase net economic benefits from the fishery, promote economic stability, reduce waste and

² 16 U.S.C. § 1851(a) (8).

³ 16 U.S.C. § 1853a.

⁴ Chapter 4; Section 4-14 of the pdEIS

⁵ 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 Salla, Mayor of Monterey, to Mr. Donald K. Hansen, October 24, 2008; Resolution No. 08-15, Port San Luis Harbor District, October 28, 2008.

⁶ Cite to 1999 NRC Report, 1994 GAO Report, USCOP.

promote full utilization of the resource, and improve accountability. One of the objectives supporting this goal is to minimize adverse effects from an IFQ program on fishing communities and other fisheries to the extent practical. Further, the objective of the PCGFMP⁷ is to provide for the sustained participation of fishing communities and minimize adverse economic impacts. Including provisions that would promote community stability and improved management through establishment of voluntary Community Fishing Associations would clearly serve these goals.

Moreover, such community-based approaches have proven critical to preventing disruption and political opposition in other fisheries, and as a result are specifically required by the MSRA and recommended by the Natural Research Council⁸ and other expert panels.⁹ Such community-based approaches were specifically adopted in both the pollock cooperative and halibut and sablefish IFQ programs in the North Pacific Council, as well as in other nations (e.g., see GAO 1994).

3. Benefits of Community Fishing Associations to Fishery Stakeholders

The MSA defines the term "fishing community" to mean a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and United States fish processors that are based in such community.¹⁰ Factors which affect individuals within a fishing community have a significant effect on the whole fishery economy. For example, market changes that diminish processing capacity or a management change or buyout that reduces fishing vessel capacity in a port impact the entire community. These effects have been seen clearly in the Morro Bay Port San Luis Area where the possibility of establishing a community-based entity is currently being tested under an Exempted Fishing Permit (EFP) in the Central Coast of California.

The benefits of the members of a fishery working cooperatively to address shared needs are well-established – and have been clearly evident in the Morro Bay/Port San Luis EFP demonstration project. We envision a CFA as a new entity that can permanently hold groundfish quota share (QS) and permits on behalf of a fishing community as defined in the MSA and that can manage and distribute quota pounds (QP) each year for the benefit of that community.

Creating rules that would allow the creation and operation of CFAs would provide a number of benefits for communities, fishermen, processors, and fishery managers:

- **Local Access and Opportunity:** By acquiring, holding and distributing an amount of quota share on behalf of one or several communities the entity is able to anchor access to the resource in a particular area for the benefit of the local fishing economy;

⁷ See Section 2.1, Objective 16. Pacific Coast Groundfish Fishery Management Plan for the California, Oregon, and Washington Groundfish Fishery. July 2008.

⁸ National Research Council. Sharing the Fish: Toward a National Policy on Individual Fishing Quotas. 1999.

⁹ GAO 1994 (pages 8-9); USCOP 2004 (p. 289-290; Recommendation 19-15)

¹⁰ 16 U.S.C. 1802(17)

- Fishing Participants: Providing a mechanism for pooling of risks (e.g. depleted species) and sharing costs (e.g. observers/monitoring) can benefit fishermen by mitigating the risks and reducing the costs of the new IFQ program to their businesses;
- Fishing Businesses: Ensuring deliveries of fish caught using community held quota share will benefit those who own fish processing or fish receiving businesses in the community;
- Crew and New Entrants: Offering a local source of access to quota share for individuals seeking to move up in the fishery, a fishing association can provide opportunity for crew members and new entrants;
- Fishery Managers: By sharing responsibility and accountability for abiding by fishery regulations with fishermen, a community fishing association can benefit fishery managers by improving accountability and aiding in compliance and enforcement;
- Shoreside Services: Sustaining fishing activity in a particular community will benefit other providers of shoreside services used by fishermen (fuel docks, bait services, haul-out facilities and boat yards, fabrication facilities, etc.).

Importantly, a CFA that provides these multiple benefits would also operate as a co-management entity that provides management services – as opposed to simply a risk pool or other agreement among fishery participants. It is possible that additional benefits for the conservation and management of the resource may become apparent as these entities are established. For example, the entity may be able to form partnerships with research institutions to undertake fishery research, or undertake private fundraising to support specific projects. The partners in the Morro Bay/Port San Luis EFP are interested in exploring these possibilities for a Central Coast CFA entity.

4. Requirements for Community Fishing Associations

Requirements for a Community Fishing Association (CFA) should be tailored to meet the conservation and management goals of the PCGFMP, including community impact concerns, but can also build on approaches used in other fisheries that have undergone rationalization. As envisioned for this fishery, a CFA may be a corporation, partnership, voluntary association, or other entity established under the laws of the United States.

A CFA could hold QS and each year distribute QP to its members. In order to hold quota share, it must comply with all of the requirements of the MSA, the PCGFMP, and the rules governing the trawl rationalization program generally. The Council and NMFS should consider also establishing specific eligibility and approval criteria for CFAs, as well as additional requirements specific to CFAs.

4.1. Eligibility criteria

The Council could consider some or all of the following conditions for eligibility:

- A single CFA may represent multiple communities, but a community may be represented by only one CFA. This requirement will eliminate the potential confusion caused by

multiple CFAs attempting to represent a single community or an overlapping set of communities.

- A CFA must demonstrate support from the eligible community(ies) it seeks to represent (e.g., letter from the mayor, or a city council resolution). This requirement ensures that the CFA is acknowledged as an entity that supports the community and that the community supports the CFA.
- A CFA must be able to demonstrate the participation of at least two fishermen and one fish receiver or fish processor. This requirement will ensure that the CFA represents and engages diverse fishing community sectors, not only a single sector.
- An application must be prepared and submitted to NMFS that includes the following:
 - Articles of incorporation and by-laws;
 - Organizational chart and explanation of management structure;
 - Information required by the agency regarding ownership, relationships, roles and responsibilities for staff and board members to be used to assess compliance with control limits and the individual and collective rule;
 - Statement describing procedures that will be used to distribute QP each year to members of the community;
 - Formal statements of support from governing body(ies) of the communities it seeks to represent; and,
 - An estimate of the amount of QS the CFA will seek to acquire and will identify the number and identities of fishermen and processor(s) that will participate in the CFA.
 - A description of the roles and responsibilities of the members of the association, including dispute resolution mechanisms.

4.2. Other Approval Criteria

In addition to the required elements described above, the applicants should also describe how the CFA will contribute to the social, economic development, and conservation and monitoring needs of the fishery locally, including the needs of entry-level and small vessel owner-operators, captains, and crew. These could include efforts to address potential community impacts identified in the IFQ analysis¹¹:

- The amount of trawl vessel activity in the community – and other groundfish fishing effort;
- The number of jobs as crew, in processing facility, seasonality of employment;
- The amount of local processing activity;
- Municipal or community needs or interests – e.g., revenues;
- Investments in local fishery infrastructure; or
- Factors that affect non-trawl fisheries in the community.

4.3. Reporting Requirements

¹¹ Based on Table 4-61- Overview of impacts, mechanisms, and metrics used to assess community impacts. Trawl Rationalization Decision Document.

Each CFA must file an Annual Report on behalf of its communities by a specified deadline each year. The report should be provided to the communities served by the CFA and to NMFS and the Council. The report should contain information to ensure it is meeting the goal and objectives of the PCGFMP and the trawl rationalization program:

- Description of criteria used to distribute QP among community members;
- Description of process used to identify recipients of CFA QP from among community members;
- Description of efforts undertaken to ensure local employment in the fishery or in fishery related businesses, sale of fish to local receivers and processors, and other local benefits.
- Summary of management changes, including changes in key personnel, board members, and corporate by-laws;
- Copies of relevant decision documents and minutes from CFA Board meetings.

5. Accumulation Limit

A CFA should be able to acquire and hold sufficient QS to provide opportunity for several harvesters and have a material community benefit. There is precedent in other rationalized fisheries for granting a higher limit for community entities. For example, the Bering Sea crab rationalization program granted a higher limit for QS held by Community Development Quota entities for the benefit of Alaska native communities.¹²

There are two options for establishing a CFA accumulation limit:

Option 1 – A CFA may control up to a specified cap (e.g., 10%) of groundfish QS with corresponding caps for individual species. The cap is easy for potential applicants to understand. However, there are likely significant challenges associated with conducting the analysis to justify a particular set of individual species caps up front in the rationalization process.

Option 2 –A CFA may control an amount of quota share (up to a specified cap or “budget” established by the PFMC or NMFS) that is justified based on its location, the number of fishermen likely to participate, the needs of the community, the species available and desired by the local fishery. Different communities may have different goals for their CFAs that would justify different approaches. For example,

Community 1 may have a history of trawling but has lost much of its access in the last decade. It sees its best future in taking advantage of gear switching to encourage continued trawling as well as a greater proportion of hook and line fishing. Because of

¹² See, Section 1.6 Bering Sea Crab Rationalization Program Alternatives adopted by the North Pacific Fishery Management Council. June 9, 2004. We also note that the California Department of Fish and Game, in its October 15, 2008, submittal for the November meeting Briefing Book, agreed that high accumulation limits for associations may be needed 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 (October 15, 2008).

impacts on their community from other fishery management decisions (e.g., closure of open access, closure of salmon fishing) they want the CFA to provide opportunity for displaced fixed gear fishermen. The CFAs quota “budget” would provide for leasing permits and QP each year to support these operations.

Community 2 may have a number of trawl IFQ holders resident who are concerned about their ability to cover costs of monitoring, pool depleted species quota, and desire to increase their opportunity or attract other trawl IFQ holders to the port. The port would like to increase the number of jobs in the fishing sector. They may establish a CFA that can offer fishermen a “bonus” for fishing out of and delivering to that port or the local processor. The CFAs quota “budget” would be justified as providing an additional percentage for these fishermen.

The Applicant would bear the burden of describing the goals of its CFA and requesting and justifying the desired QS budget of QS. This would be subject to the review process and must be approved by the agency. It may be simpler to cap the amount that a CFA may be allowed to hold overall and then review specific requests on a case-by-case basis. This would be only an authorization for the CFA to participate in the market to purchase QS up to a limit; this is not a direct allocation of QS. The Council and NMFS could develop more specific limits as the program matures.

6. Avoiding Excessive Control

CFAs would hold QS on behalf of the community for the use by multiple fishery participants, in order to function meaningfully on behalf of the fishery participants within a community. Consequently, a CFA must be allowed to control an amount of QS greater than the limits that apply to individual participants¹³. However, other than this exception, the CFA and those involved should be held subject to the rules of the trawl rationalization program designed to prevent excessive control. In particular, this refers to the own and control limit for individual ownership of QS.

The IFQ Alternatives Analysis states that the “individual and collective” control rule requires that the QS or QP that counts toward a person's accumulation limit will include (1) the QS or QP owned by them, and 2) a portion of the QS or QP owned by any entity in which that person has an interest. The person's share of interest in that entity will determine the portion of that entity's QS or QP that counts toward the person's limit.¹⁴

To avoid any person gaining excessive control in the fishery through a CFA, this rule may be augmented by the following requirements that could be made specific to CFAs.

¹³ The need for a different accumulation limit for CFAs is more fully described in Section IV.A of our October 29, 2008 letter.

¹⁴ The full description and analysis may be found in the Analysis of the Components, Elements, and Options for the IFQ Alternative, Section A-2.2.3.e Accumulation Limits (Vessel and Control), p. A-226.

- The specific nature of what constitutes an individual’s “interest” in the CFA must be specified in guidelines¹⁵ and described in the CFA application.
- If any individual controls or owns more than, for example, 10% of a CFA then 100% of the QS owned by the CFA is attributed to that individual. This is intended to serve as a barrier to excessive control over the operations of a CFA by an individual – if 100% of a CFA quota share is attributed to an individual, that individual would be in violation of the control rule and forced to divest. This should provide a strong disincentive for inappropriate arrangements in a CFA.
- The “individual and collective” rule should not be a barrier to fishermen working together to share costs and mitigate risks. This would allow the CFA model to benefit fishermen who hold trawl QS who might be barred by the rule from developing a formal partnership with other QS owners.
- Any management changes, including changes in key personnel, board members, and corporate by-laws - of a CFA must be reported to NMFS within a set period of time. This would provide transparency for the agency to monitor on an ongoing basis any management changes that could lead to excessive control.
- Failure to abide by these rules will result in sanctions and eventual revocation of approval of the CFA.

7. Approval Process

Because a CFA comprising multiple participants would need a higher accumulation limit to operate and provide community benefits, the specific nature of the approval should be a certificate that specifies the amount of QS the CFA is authorized to acquire and hold. The certificate may specify other terms and conditions, if necessary.

The application and approval process should be clear and minimize the administrative burden of reviewing applications and monitoring CFAs. The burden must be on the applicant to provide a complete application. Incomplete applications should not be moved forward in the process. States should have a role in reviewing complete, viable applications, but that role should be optional and subject to capacity and resource constraints. The Council may want to consider what its appropriate role would be in reviewing CFA applications.

NMFS should exercise its authority to recover permitting expenses (beyond IFQ program cost recovery) by requiring an application fee be paid. Such a fee would discourage insincere applications and could be waived for communities that can demonstrate hardship and inability to pay.

¹⁵ Comparable regulations have been developed to govern several Alaska fisheries – see 50 CFR 679.2