

Fall 2010 Scoping Information on Trailing Actions for the Groundfish Trawl Catch Share Program

Management under the groundfish trawl rationalization program is scheduled to start January 1, 2011. Details on the program are available on the Council web site. When the Council took final action on the program, it recognized that there would be a number of follow-on actions (trailing actions) that it would want to consider. The Council is now scoping trailing actions. To help members of the public focus their comments, this document provides background information on the trailing actions the Council has prioritized for immediate consideration.

At its September 2010 the Council prioritized four trailing action issues for immediate consideration. With respect to these four issues, at its November 2010 meeting, the Council will review public comment on options that should be considered and impacts that should be analyzed. At that time the Council is scheduled to provide guidance on option development and a timetable for consideration of each of these issues. The issues the Council identified for immediate consideration are

- resubmission of its recommendation that the Amendment 21 intersector allocation action replace the allocations created when the Council recommended the groundfish license limited entry system (Amendment 6, implemented in 1994);
- cost recovery (setting up a fee program to cover the costs of management, data collection and analysis, and enforcement activities);
- safe harbors for the quota share control rule (exceptions to the control rule for: community fishing associations [CFAs], bycatch risk pools, and quota used as collateral for financing); and
- severability of the mothership catcher-vessel catch history/endorsements from the permits.

In November 2010, the Council will also review historic data on trawl bycatch of Pacific halibut in order to consider whether a change to the halibut bycatch allocation to the groundfish trawl fishery should become a priority for trailing action. In conjunction with the above issues, the Council may also consider specifying a pass through of the Adaptive Management Program quota pounds in the third year of the program (currently the pass through is scheduled only for years 1 and 2). Other trailing actions may be considered in the future. Public comment on scoping for the above trailing actions should be submitted to the Council by the briefing book deadline for the November 2010 Council meeting. Information on the supplemental deadline (October 26) is available on the Council website.

Replacing Limited Entry/Open Access Allocations (Amendment 6) With Trawl/Nontrawl Allocations (Amendment 21)

Two amendments to the fishery management plan (FMP) have considered formal allocations - Amendments 6 and 21. Amendment 6, implemented in 1994, specified allocations of groundfish stocks to limited entry and open access sectors (Table 1). Amendment 21 allocations (Table 2) scheduled to be implemented in 2011, consider allocations to trawl sectors, with the balance of the harvestable surplus allocated to non-trawl sectors (i.e., limited entry fixed gear, directed open access, and recreational sectors combined). Under Amendment 21, the annual catch limits (ACLs) are reduced to account for mortality in exempted fishing permits (EFPs), tribal fisheries, incidental open access fisheries, and research activities. The resulting value is the Fishery Harvest Guideline, which is the value that is used in the allocations.

Additionally formal sector allocations exist for Pacific whiting and sablefish north of 36° N. latitude (Figure 1). While these allocations have been specified in Federal regulations for many years, they are now incorporated in the FMP under Amendment 21.

Amendment 6, which established the commercial non-treaty limited entry system, also established allocation procedures for any species to be newly allocated between commercial open access (including directed and incidental open access) and limited entry sectors based on catch history for the license limitation allocation period (July 11, 1984 through August 1, 1988). These allocations worked well at the time since the fishery was not all that structurally different in the 1990s than it was in the 1984-1988 historical catch period upon which the allocations were based. However, the fishery changed significantly after passage of the Sustainable Fisheries Act (SFA) of 1996, which amended the Magnuson-Stevens Act (MSA) with more stringent conservation mandates, and the subsequent implementation of Amendment 11 in 1998, which codified the SFA mandates and the new National Standard 1 (NS1) guidelines interpreting these mandates.

Table 1. Limited entry and open access allocations established by FMP Amendment 6.

Stock or Stock Complex	Limited Entry Share	Open Access Share
Lingcod	81%	19%
Minor Rockfish South (including Chilipepper Rockfish)	55.7%	44.3%
Minor Rockfish North (including Yellowtail Rockfish)	91.7%	8.3%
Shortspine Thornyhead (north of Conception Area)	99.73%	0.27%

A direct result of implementing the more stringent conservation mandates of Amendment 11 was the first declarations of stocks being overfished. This led to dramatically lower fishing limits, widespread fishing closures on the continental shelf (e.g., Rockfish Conservation Areas [RCAs] and Cowcod Conservation Areas [CCAs]), and a complete re-structuring of the fishery. From that time to present, Amendment 6 allocations have not been effectively attained nor were they even considered in deciding annual or biennial management measures. Beyond direct suspension of these allocations for overfished species, access to other healthy stocks in the Exclusive Economic Zone (EEZ) has been constrained by the need to significantly reduce fishing mortality on overfished species. When there is little chance of attaining a harvestable surplus of

a stock, the established allocation has little significance in the management system. The limited entry and open access Amendment 6 allocations for bocaccio, canary, cowcod, and yelloweye are temporarily suspended since they are overfished. As such, the Council adopted two-year allocations for each biennial management cycle.

Amendment 21 allocations were borne of the necessity to allocate stocks that are predominantly or significantly caught in trawl fisheries to more effectively implement Amendment 20 trawl rationalization. The original Amendment 6 allocations for stocks that were subject to Amendment 21 allocations were superseded by the new Amendment 21 allocations. The Amendment 21 action also underscored the Amendment 6 policy to temporarily suspend any formal allocation for a stock that is declared overfished. The original FMP provision under Amendment 6 temporarily suspended any formal limited entry/open access allocation (i.e., Amendment 6 allocation) when a stock is declared overfished. Amendment 21 modified the provision to temporarily suspend any formal allocation for any stock declared overfished.

There are few, if any, stocks that are potentially subject to Amendment 6 allocation consideration in the 2011 and 2012 management cycle. Any significant harvestable surplus of shelf species that are not subject to Amendment 21 allocations, such as minor shelf rockfish, will not be accessible due to RCA restrictions. The allocation of minor nearshore rockfish species has been largely deferred to the states under the auspices of state fishing policies and/or state nearshore FMPs. The only other Amendment 6 species (i.e., lingcod, minor slope rockfish, and shortspine thornyhead north of Pt. Conception) are subject to Amendment 21 allocations.

Table 2. Amendment 21 allocations for 2011.

Species/Species Group/Area	2011 ACL	2011 ACT	Fishery HG b/	Trawl A21%	Non-trawl A21%	Trawl A21 mt	At-sea whiting set asides	Trawl after at-sea set asides	Non-Whiting	Whiting	Non-Whiting	Whiting	SS	CP	MS	Non-trawl A21 mt
									A21 %	A21 %	A21 mt	A21 mt				
Lingcod N of 42° N lat. (OR & WA)	2,330		2,059	45%	55%	927	6	921	99.7%	0.3%	918	3				1,132
Lingcod S of 42° N lat. (CA)	2,102		2,095	45%	55%	943	0	943	99.7%	0.3%	940	3				1,152
Pacific Cod	1,600		1,200	95%	5%	1,140	5	1,135	99.9%	0.1%	1,134	1				60
Sablefish S of 36° N lat.	1,298		1,264	42%	58%	531	0	531	100.0%		531	0				733
Dover sole	25,000		23,410	95%	5%	22,240	5	22,235	100.0%		22,235	0				1,171
English sole	19,761		19,661	95%	5%	18,678	5	18,673	99.9%	0.1%	18,654	19				983
PETRALE SOLE a/	976		911			876	5	871	100.0%		871	0				35
Arrowtooth flounder	15,174		13,096	95%	5%	12,441	10	12,431	100.0%		12,431	0				655
Starry Flounder	1,352		1,345	50%	50%	673	5	668	100.0%		668	0				673
Other flatfish	4,884		4,686	90%	10%	4,217	20	4,197	99.9%	0.1%	4,193	4				469
PACIFIC OCEAN PERCH	180	157	144	95%	5%	137	0	137	The rest	17% or 30 mt	107	30	13	10	7	7
WIDOW	600		539	91%	9%	491	0	491	The rest	52.0%	235	255	107	87	61	49
Chilipepper S of 40°10' N lat.	1,882		1,867	75%	25%	1,400	0	1,400	100.0%		1,400	0				467
Splitnose S of 40°10' N lat.	1,461		1,454	95%	5%	1,381	0	1,381	100.0%		1,381	0				73
Yellowtail N of 40°10' N lat.	4,364		3,865	88%	12%	3,401	300	3,101	The rest	300	2,801	300				464
Shortspine thornyhead N of 34 27' N lat.	1,573		1,528	95%	5%	1,452	20	1,432	99.9%	0.1%	1,430	1				76
Shortspine Thornyhead S of 34 27' N lat.	405		363	50 mt	The Rest	50	0	50	100.0%		50	0				313
Longspine thornyhead N of 34 27' N lat.	2,119		2,075	95%	5%	1,971	5	1,966	100.0%		1,966	0				104
DARKBLOTCHED	298		279	95%	5%	265	0	265	The rest	9% or 25 mt	240	25	11	9	6	14
Minor Slope Rockfish N of 40°10' N lat.	1,160		1,092	81%	19%	885	55	830	98.6%	1.4%	818	12				207
Minor Slope Rockfish S of 40°10' N lat.	626		599	63%	37%	377	0	377	100.0%		377	0				222

a/ Under the Final Preferred Alternative, the Council temporarily suspended the Amendment 21 allocation between trawl and non-trawl. The values in this table represent a two year allocation.

b/ The Fishery Harvest Guideline represent the amount of the ACL, after subtracting the off-the-top amounts that is available for allocations. Off-the-top amounts include total mortality estimates for scientific research, tribal fisheries, incidental open access and set asides for EFPs.

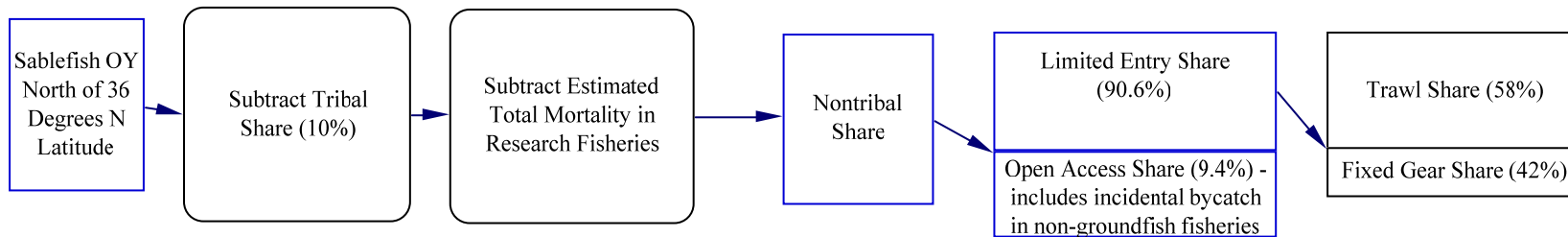


Figure 1. The formal allocation of sablefish north of 36° N. latitude.

Cost Recovery

The Council needs to further develop the methodology for identifying costs to be recovered through fees and specify a program of fees. The Section 303A(e) of the MSA states that:

In establishing a limited access privilege program a Council shall -- (1) develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the program; and (2) provide, under section 304(d)(2), for a program of fees paid by limited access privilege holders that will cover the costs of management, data collection and analysis, and enforcement activities.

The program adopted in Amendment 20 is now Appendix E of the groundfish FMP. Section A-2.3.3 of Appendix E states:

Program costs

- a. Cost recovery. Fees up to three percent of exvessel value, consistent with MSA 303A(e) may be assessed. Cost recover shall be for costs of management, data collection, analysis, and enforcement activities.
- b. Fee structure. To be determined. The Trawl Individual Quota Committee (TIQC) recommended a fee structure that reflects usage. A fee structure that allows for equitable sharing of observer costs for smaller vessels may be developed.

Some of the issues which might be addressed in developing a methodology include treatment of cost savings that result from the trawl rationalization program, including existing funds that are reprogrammed to other uses as a result of the catch share program (e.g. if under the catch share program the National Marine Fisheries Service (NMFS) Limited Entry Office experiences some efficiencies in some areas that result in cost savings that are reprogrammed to activities which are not directly related to the trawl rationalization program, how is this taken into account in determining catch share program costs).

An uncertainty at this point is whether and, if so, how the fee structure might to take into account the situation of smaller vessels with respect to equitable sharing of costs (A-2.3.3.b).

Safe Harbors

The Council has attempted to establish very strict rules for the application of limits on quota share/quota pounds (QS/QP) control. At the same time, the Council has been concerned that these limits not prevent certain types of activities which it considers beneficial to the fishery. These activities might include the formation of CFAs, risk pools, and the financing of QS/QP purchases by financial institutions. It has been suggested that the Council establish very specific safe harbor exceptions to allow these types of beneficial activities.

Community Fishing Associations: Prior to its final action on Amendment 20, the Council scoped possible provisions for CFAs. Entities are able to form community associations for a variety of purposes without Council action. For the Council, the main CFA issues are (1) what, if any, special privileges should be provided to CFAs, (2) what are the criteria such an entity would have to meet in order to qualify as one deserving of such privileges? To date, the main special privileges that have been noted as possibilities for CFAs are a safe harbor from control limits and a possible priority for receiving allocations of adaptive management program quota pounds. The Council prioritized for immediate consideration the provision of a control rule safe harbor exemption for CFAs. Potential provisions for CFAs that were presented to the Council at its September 2010 meeting are summarized in a section below. Potential CFA provisions identified in the spring of 2009 are provided as Appendix 2 to this document.

Risk Pools. During the development of the program there has been much concern about how industry might organize itself to make best use of the limited amounts of overfished species QS/QP that may be available. One concept that received much attention was the possibility that fishermen might organize themselves into risk pools, with each member of the pool contributing toward the total amount of overfished species QS/QP in the pool. In a footnote to section A-2.2.3.e of Appendix E, the Council stated:

It is the Council intent that control limits should not constrain the formation of risk pools to help the fishermen deal with overfished species constraints, so long as the pools do not undermine the effectiveness of the accumulation limits. A risk pool is one in which two or more people enter into an agreement whereby if one person does not have the QP the others would agree to provide the QP, if they have them. Whether these kinds of agreements are informal or formal, as other considerations and conditions are added to the agreements they may begin to constitute control. It is the Council intent to allow for these pooling agreements, so long as they do not become control.

Nevertheless, there is concern that QS/QP control rules could inhibit the formation of such pools either because of a clear conflict with the control rules or precaution due to uncertainty as to how the control rules might apply to risk pools. It has been proposed that provisions be added to create a clearly delineated safe harbor for those who may desire to form risk pools.

In public comment it has been proposed that there be no accumulation limit for risk pools established to manage risk of overfished species catch events (individuals participating in the risk pool would still be individually subject to the accumulation limit but the risk pool itself would not be subject to such limits). Those eligible to take part in agreement negotiations and become members of risk pools might be limited to QS holders and vessel owners (including processors that own vessels), or their representatives. Pooling agreements might cover multiple years and pool members might contract with agents to enforce the provisions of the pooling agreement or enforce such provisions themselves. Such agreements might not be allowed to dictate terms of catch delivery. Risk pool agreements might not automatically be provided to oversight agencies for approval but would be made available on request. Risk pools are also addressed below in comments on CFAs.

Financial Institutions. Concern was expressed that the control rules could inhibit financial institutions that might have an interest in QS/QP as loan collateral. NMFS modified the final initial allocation rule to at least partially address this issue. The following is an excerpt from the final initial allocation rule published in the *Federal Register* on October 1, 2010. Underlining has been added to highlight the additions made in the final rule to address the concern about the effect of the control rule on financial institutions. Public comment has suggested that: the exemption apply only if financing arrangements do not exert control over harvesting and delivering activity of loan recipients; and that lenders be prohibited from receiving QP, unless otherwise eligible.

<p>(4) <i>Accumulation limits</i>—(i) <i>QS and IBQ control limits</i>. QS and IBQ control limits are accumulation limits and are the amount of QS and IBQ that a person, individually or collectively, may own or control. QS and IBQ control limits are expressed as a percentage of the Shorebased IFQ Program’s allocation.</p> <p>(A) <i>Control limits for individual species</i>. No person may own or control, or have a controlling influence over, by any means whatsoever an amount of QS or IBQ for any individual species that exceeds the Shorebased IFQ Program accumulation limits.</p> <p>(B) <i>Control limit for aggregate</i> . . .</p> <p>(C) The Shorebased IFQ Program accumulation limits are as follows: [see Table 4</p> <p>(ii) <i>Ownership—individual and collective rule</i>. The QS or IBQ that counts toward a person’s accumulation limit will include:</p> <p>(A) The QS or IBQ owned by that person, and</p> <p>(B) That portion of the QS or IBQ owned by an entity in which that person has an economic or financial interest, where the person’s share of interest in that entity will determine the portion of that entity’s QS or IBQ that counts toward the person’s limit.</p>	<p>(iii) <i>Control</i>. Control means, but is not limited to, the following:</p> <p>(A) The person has the right to direct, or does direct, in whole or in part, the business of the entity to which the QS or IBQ are registered;</p> <p>(B) The person has the right to limit the actions of or replace, or does limit the actions of or replace, the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity to which the QS or IBQ are registered;</p> <p>(C) The person has the right to direct, or does direct, and/or the right to prevent or delay, or does prevent or delay, the transfer of QS or IBQ, or the resulting QP or IBQ pounds;</p> <p>(D) The person, through loan covenants or any other means, has the right to restrict, or does restrict, and/or has a controlling influence over the day to day business activities or management policies of the entity to which the QS or IBQ are registered;</p>	<p>(E) The person, <u>excluding banks and other financial institutions that rely on QS or IBQ as collateral for loans</u>, through loan covenants or any other means, has the right to restrict, or does restrict, any activity related to QS or IBQ or QP or IBQ pounds, including, but not limited to, use of QS or IBQ, or the resulting QP or IBQ pounds, or disposition of fish harvested under the resulting QP or IBQ pounds;</p> <p>(F) The person, <u>excluding banks and other financial institutions that rely on QS or IBQ as collateral for loans</u>, has the right to control, or does control, the management of, or to be a controlling factor in, the entity to which the QS or IBQ, or the resulting QP or IBQ pounds, are registered;</p> <p>(G) The person, <u>excluding banks and other financial institutions that rely on QS or IBQ as collateral for loans</u>, has the right to cause or prevent, or does cause or prevent, the sale, lease or other disposition of QS or IBQ, or the resulting QP or IBQ pounds; and</p> <p>(H) The person has the ability through any means whatsoever to control or have a controlling influence over the entity to which QS or IBQ is registered.</p>
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Summary of CFA Concepts from Public Comment

The Council scoping at the November Council meeting will be limited to the issue of whether or not there should be safe harbor control limits for CFAs, along with all the attendant and subsidiary issues such as criteria that an entity must meet to qualify as a CFA, the level of the limit, etc. However, public comment on a number of other CFA issues has been received and will be solicited at the public hearings scheduled for the end of October. This summary covers some of the public comment received on the issue of safe harbor control limits for CFAs as well as other CFA related issues.

The MSA includes specific provisions about fishing community eligibility to participate in a catch share program (see Appendix 1 to this document for MSA language). However, this language does not prevent the Council from establishing privileges for other kinds of entities associated with fishing communities. Specifically, the NOAA NOAA Technical Memorandum providing guidance on the MSA limited access privilege program (LAPP) provisions states:

In summary, the revised MSA sets up procedures which allows Councils to create FCs [fishing communities] or RFAs [regional fishery associations] using a specific set of eligibility criteria and a second set of considerations for developing participation criteria. Once formed, both can hold LAPs [limited access privileges, like QS/QP] if they meet the legally recognized criteria, however only FCs can receive LAPs in an initial allocation. Apparently, Councils can also develop LAP programs whereby LAPs can be held by or allocated to any other legally recognized entity, which do not necessarily have to be specified as RFAs or FCs. The program would have to comply with the general LAP mandates contained in the revised MSA. If community-based entities are used, Councils have the option of requiring operation plans to ensure stated criteria are met. (The Design and Use of Limited Access Privilege Programs, NOAA Technical Memorandum NMFS-F/SPO-86, p. 42).

Safe Harbors Control Limits

The Council has received some very specific public comment and proposals in support of safe harbor control limits for CFA (CFA control limits above those that apply to other entities) as well as comment in opposition to such safe harbor limits for CFAs. Groups with community interests have testified on both sides of this issue. Table 3 provides a summary of the types of provisions and options which were proposed in public comment at the September 2010 Council meeting, with respect to the creation of a CFA that would have a safe harbor. Appendix 2 provides CFA concepts from public comment the Council received on CFAs in the spring of 2009. The spring of 2009 document covers safe harbors as well as other CFA provisions.

Table 3. Some possible elements and options for CFA safe harbor control limits.

	Some Possible Types of Provisions	Some Options Suggested in Public Comment
CFA Special Privileges	Current Scoping Priority (for November 2010 Council meeting): Allow CFAs to control QS in excess of control limits. The Council voted to consider limits up to 2.5 times greater than those applying to other entities.	Allow CFAs to control 1.5 to 2 times what other entities are allowed to control (except for whiting) ¹ Alternatively, increase the control caps only for overfished species.
	Scoping for Future Actions (at CFA hearings) Provide CFAs with access to adaptive management program quota pounds.	
CFA Organization		
Type of Legal Organization	CFAs might be organized as corporations, trusts, etc.	Require organization as a non-profit profit corporation, 501(c)(4) social welfare organization. Allow CFAs to be organized as another type of entity, controlled by fishermen.
Control of CFA	Board of directors	Must be appointed by local municipality
	A minimum number of board members.	At least 5
	Limit vessel owner and processor participation on board.	No more than 20% vessel owners or their representatives. Alternatively: ensure that fishermen have the lead in CFAs. No more than 20% processors or their reps.
	Other	Must be community members.
CFA Agreements and Activities		
Organizational Agreements:	Include goals and enforceable performance standards to address goals.	Possible Goals: Community stability <ul style="list-style-type: none"> Facilitate new entry. Stabilize business environment (e.g. require landings be made locally). Enhance value (e.g. require particular fishing and delivery methods). Harvest Sustainability <ul style="list-style-type: none"> Minimize bycatch Participate in activities intended to successfully manage bycatch on a fishery-wide scale (research, risk pool participation, etc) Minimize adverse fishing gear impacts on habitat Enhance stock productivity (e.g. area management or measures to protect age structure).
Harvest and Harvest Agreements	Conditions applying to those harvesting CFA QP.	Prohibit CFAs from harvesting their own QP. Require that CFAs contract with co-operatives organized under the Fishermen's Collective Marketing Act. Require that individual <u>entities</u> comprising the FCMA coop not receive QP from the CFA that is in excess of the <u>vessel</u> QP accumulation limit. Include provisions needed for CFA to enforce standards and meet reporting requirements. Participate in fishery-wide initiatives for successfully managing overfished species catch

^{1/} Also, it was suggested the limits be 60% for sablefish south of 36° 0'N Latitude, and shortspine thornyheads south of 34°27' N Latitude. The alternative view was voiced that if one community accumulated 60% of the QS for a species that this would not leave much for another community in the same area.

Reports	Timing and content.	Require biennial reports to document compliance, progress on goals, and facilitate fishery policy evaluation. ²
CFA Approval and Renewal	Initial approval	NMFS would review and approve applications and CFA agreements ³ . Review and approval standard; i.e., insure required documents are submitted, and that required elements are reflected in the documents, but NMFS does not undertake substantive review for adequacy of elements relative to Council goal compliance. PFMC receives annual reports and reviews for goal compliance. PFMC initiates program modifications as necessary to insure PFMC goals are met.
	Periodic renewal	CFA agreements must be resubmitted for approval every. Option 1. Two years. Option 2. Five years (coinciding with program review cycle).
	Renewal on modification	Resubmit for approval with modification of agreement or change in board of director membership.

Other Potential CFA Policies

While the Council will not be scoping policy on issues other than those related to providing CFAs with a safe harbor exemption from control limits, it is interested in hearing more from the public about the possible uses for CFAs and the fishery policies that might facilitate those uses. The following are a few of the ideas which have been presented to date. Additional ideas are provided in Appendix 2 to this document.

CFA might operate risk pools. The CFA would not necessarily directly control the quota (QS or QP) obligated to the risk pool but would facilitate agreement between risk pool participants, management of the transfers required under the risk pool, and communications among risk pool members. Fishermen would be responsible to the group for their bycatch rates and modification to fishing behavior needed to reduce excessive rates. It is proposed that any QS or QP that is obligated to the pool but not directly controlled by the CFA would not be subject to the control limits. The CFA would also be able to control its own QS and QP but the CFA would be subject to control limits for such quota. Existing policy under the trawl rationalization program appears to allow the formation and operation of this type of CFA without additional modifications, assuming that it is correct that quota not directly controlled by the CFA would not count toward

^{2/} Items required for the biennial report might include:

- 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 ex-vessel 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.

³ Items required for application packet might include:

- 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;
- 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.

a CFA control limit. If that assumption is not correct, a policy modification would be required to create such an exception.

CFAs as a Trade and Communication Center. In addition and related to operating a risk pool, CFAs might facilitate the exchange of QP between larger deeper water vessels and smaller near shore vessels, as well as information about hot spots to fish in and avoid. No special policies are proposed to support this function.

CFAs as an Observer Pool Manager. CFAs might be used in a local port to coordinate fishing and offloading activities and thereby reduce costs for observers and shoreside monitors. The CFAs could provide a single offloading facility for fish that would be transferred to processing plants (making more efficient use of plant monitor time and meeting other infrastructure needs). No special policies are proposed to support this function.

CFAs as a Vehicle for QP for the Adaptive Management Program. Community based groups have voiced both support and opposition to the idea of distributing adaptive management QP to CFAs. On the one hand, if the adaptive management program (AMP) QP is to be used for the purpose of benefiting particular communities, the CFAs might provide a strong link between the policy intent and the community to be benefited. On the other hand, some see allocation of AMP QP to CFAs as a policy idea modeled after Alaska where the level of community dependence is much greater. This reallocation of trawl quota to a specific area would water-down the program. These are only two example views on this issue and do not represent the entire range of arguments on the topic. The Council will be addressing use of the AMP QP at a later time in the policy development process.

Hearings on Safe Harbors for CFAs

The Council will hold public hearings on development of CFA provisions for its groundfish trawl catch share plan. During the public hearing, comment will be solicited on the control limit exception for CFAs as well as other CFA provisions that might be added to the trawl rationalization program. Comment is sought on both alternatives and impacts to consider. At its November 2010 meeting, the only CFA issue the Council will be scoping is whether to provide CFAs with an exception to the control limit, however, other provisions for CFAs that are identified through these public hearings may be prioritized for later trailing actions. The CFA hearings will be held at the following locations, dates, times, and places:

Location	Date Day/Time	Meeting Place
EUREKA, CA	Oct 25 Monday 7 p.m.	Red Lion Hotel Eureka Evergreen Ballroom 1929 Fourth Street Eureka, CA 95501 707-445-0844
PORTLAND, OR	Oct 27 Wednesday 2 p.m.	Sheraton Portland Airport Mount Hood Room A 8235 NE Airport Way Portland, OR 97220 503-281-2500
MONTEREY, CA	Oct 28 Thursday 2 p.m.	Monterey Youth Center 777 Pearl Street Monterey, CA 93940 831-646-3873

Table 4. Control and vessel limits.

Species Category	Vessel Limit (Applies to all QP in a Vessel Account, Used and Unused)	Vessel Unused QP Limit**	QS Control Lim
Nonwhiting Groundfish Species	3.2%		2.7%
Lingcod - coastwide	3.8%		2.5%
Pacific Cod	20.0%		12.0%
Pacific whiting (shoreside)	15.0%		10.0%
Pacific whiting (mothership)	30.0%		20.0%
Sablefish			
N. of 36° (Monterey north)	4.5%		3.0%
S. of 36° (Conception area)	15.0%		10.0%
PACIFIC OCEAN PERCH	6.0%	4.0%	4.0%
WIDOW ROCKFISH *	8.5%	5.1%	5.1%
CANARY ROCKFISH	10.0%	4.4%	4.4%
Chilipepper Rockfish	15.0%		10.0%
BOCACCIO	15.4%	13.2%	13.2%
Splitnose Rockfish	15.0%		10.0%
Yellowtail Rockfish	7.5%		5.0%
Shortspine Thornyhead			
N. of 34°27'	9.0%		6.0%
S. of 34°27'	9.0%		6.0%
Longspine Thornyhead			
N. of 34°27'	9.0%		6.0%
COWCOD	17.7%	17.7%	17.7%
DARKBLOTCHED	6.8%	4.5%	4.5%
YELLOWEYE	11.4%	5.7%	5.7%
Minor Rockfish North			
Shelf Species	7.5%		5.0%
Slope Species	7.5%		5.0%
Minor Rockfish South			
Shelf Species	13.5%		9.0%
Slope Species	9.0%		6.0%
Dover sole	3.9%		2.6%
English Sole	7.5%		5.0%
Petrale Sole	4.5%		3.0%
Arrowtooth Flounder	20.0%		10.0%
Starry Flounder	20.0%		10.0%
Other Flatfish	15.0%		10.0%
Pacific Halibut	14.4%	5.4%	5.4%

* If widow rockfish is rebuilt before initial allocation of QS, the vessel limit will be set at 1.5 times the control limit.

** A limit on the amount of unused QP that may be in a vessel account at any one time.

Severability of The Mothership Catcher-Vessel Catch History/Endorsements From the Permits

At the end of the Amendment 20 process, the Washington Department of Fish and Wildlife (WDFW) clarified that it had been its intent that the Mothership Catcher-Vessel (MSCV) catch history be separable from the limited entry permit to which it is attached (see Agenda Item I.1.b, Supplemental WDFW Report, April 2010). Given the initial allocation structure of the mothership and shoreside sectors, all mothership-endorsed catcher-vessel (CV) permits will receive shoreside QS and catch history for both sectors. WDFW viewed the endorsement as being separate from the catch history and intended to allow the mothership whiting catch history for these sectors to be separated from the permit and transferable to other permits.

One of the concerns is that there are some MSCV permits with very small allocations. Those permit holders would want to either transfer ownership of that catch history to another MSCV permit (without having to sell their limited entry permit), or acquire additional catch history to remain in the fishery. For MSCV permits receiving very small allocations, acquiring additional catch history would require a substantial investment, so it is anticipated that such permits would likely choose to divest themselves of the small amount of quota they were issued. However, under the current MSCV permit structure, the opportunity to permanently acquire or divest catch history would not be available unless the catch history is made severable. Without severability, it is possible for permits receiving small allocations of catch history for at- mothership sector to arrange for the harvest of that allocation without necessarily participating in the fishery themselves, however, the process unnecessarily burdensome. Specifically, each year the permits with small allocations can join co-ops and allow other members of the co-op to harvest the allocation for them (essentially lease the allocation to another co-op member). Maintaining membership in the co-op and conducting the annual transfers would entail annual transaction costs for both the co-op and the permits receiving the small allocation. Allowing permanent severance of the catch history from the permit would be more effective and efficient.⁴

With respect to achieving severance of the catch history from the permits, options might be specified such that the catch history alone is severed (leaving the MSCV endorsement with the permit), or the MSCV endorsement is severed from the permit together with the catch history (i.e. the endorsement and catch history stay together). The latter approach, allowing the severance of catch history together with the endorsement, was included as an option in the EIS and is addressed on pages B-52, B-54, and B-60 of Appendix B to the Final Environmental Impact Statement (EIS). Under either approach, the severed catch history (or catch history and endorsement) could then be stacked on a permit which already has MSCV catch history and endorsement. Because the MSCV endorsement alone, without catch history, confers few additional privileges relative to a trawl permit that does not have an MSCV endorsement (an MSCV endorsement is not required to harvest fish for the co-op), the analysis which has already

^{4/} If because of the burden involved in joining a co-op some permit owner chooses not to go through that process, some fish may end up unharvested or a non-co-op fishery may develop. If a permit does not go into the co-op, its allocation would go to the non-co-op fishery and could go unharvested if no active vessels choose to fish in the non-co-op fishery. Alternatively, if there are a number of permits for which the small size of their allocation makes it not worthwhile to pursue co-op membership, the aggregate amount that ends up in the non-co-op fishery could provide an incentive for at least some vessels to opt out of the co-op system.

been produced generally applies to both approaches outlined in this paragraph (i.e. applies to separating the catch history from the MSCV endorsement or keeping the catch history with the MSCV endorsement and severing both from the permit).

When stacked, the catch history and endorsement could either be merged with that of the existing permit or maintained as separately on the permit. If an approach is developed in which the catch history is merged with that of the existing permit, the question arises as to whether the catch history might be subdivided at a later point. If subdivision is allowed but only back into exactly the same amounts that were originally combined, then whether the catch histories are truly merged is a matter of semantics. If subdivision is allowed into units of any size, then there would be administrative costs and other impacts to consider that would make this action more complex and outside of the scope of severability options that was addressed in the trawl rationalization EIS (Amendment 20).

Adaptive Management Quota Pounds Pass Year 3 Pass Through

The Council's trawl catch share program includes a set aside of 10% of the nonwhiting QS for an adaptive management program. For the first two years of the program, the annually issued QP derived from this set aside will be passed through to the QS holders in proportion to their holdings of QS. The catch share program specifies that the Council will develop alternative criteria for distribution the adaptive management QP beginning in year 3 of the program. At its September 2010 meeting, the Council indicated its intent to consider a one year continuance of the pass through as part of one of the main trailing action issues. Alternatively, a continuation of the pass through might be specified during the biennial specifications process for 2013-2014; or even if the Council specifies a third year pass through prior to the specifications process, it might come up with an alternative (non-pass through) distribution criteria during the 2013-2014 specifications process.

PFMC

10/14/10

APPENDIX 1: EXCERPT FROM THE MAGNUSON-STEVENSON ACT

109-479

SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS.

(c) REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.—

(3) FISHING COMMUNITIES.—

(A) IN GENERAL.—

(i) ELIGIBILITY.—To be eligible to participate in a limited access privilege program to harvest fish, a fishing community shall—

(I) be located within the management area of the relevant Council;

(II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;

(III) consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council's management area; and

(IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(ii) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section for any person who fails to comply with the requirements of the community sustainability plan. Any limited access privileges denied or revoked under this section may be reallocated to other eligible members of the fishing community.

(B) PARTICIPATION CRITERIA.—In developing participation criteria for eligible communities under this paragraph, a Council shall consider—

(i) traditional fishing or processing practices in, and dependence on, the fishery;

(ii) the cultural and social framework relevant to the fishery;

(iii) economic barriers to access to fishery;

(iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;

(v) the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and

(vi) the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.

APPENDIX 2:
Spring 2009 Materials on Community Fishing Associations

OUTLINE OF POTENTIAL ELEMENTS FOR COMMUNITY FISHING ASSOCIATION (CFA) PROVISIONS

At the March 2009 meeting, the Council tasked staff with presenting options for defining a Community Fishing Association (CFA) using the NOAA Technical Guidance Memorandum called the Design and Use of Limited Access Privilege Programs ((F.4.a, Attachment 1) and The Nature Conservancy's public comment letter (F.4.a, Attachment 2) and as a starting point. The NOAA Technical Guidance Memorandum referred the reader to language in the Magnuson-Stevens Act which describes eligibility and establishing criteria for Fishing Communities and Regional Fishing Associations. Those requirements are listed in Tables 1 and 2 below.

Table 1. Requirements of the MSA with respect to eligibility and CFAs and Regional Fishing Associations (RFA).

Eligibility Requirement	303A Reference	
	Fishing Communities	RFA
<i>A fishing community/RFA shall</i>		
Be located within a community	(3)(A)(i)(I)	(4)(A)(i)
Meet other Council criteria	(3)(A)(i)(II)	(4)(A)(ii)
Be a voluntary association with bylaws and operating procedures		(4)(A)(iii)
Consist of harvesters, processors, support businesses and communities	Residents within the area: (3)(A)(i)(III)	Those who hold QS (4)(A)(iv)
Not be eligible to receive QS		(4)(A)(v)
Provide a plan	(3)(A)(i)(IV)	(4)(A)(iv)

Table 2. Requirements of the MSA with respect to factors the Council is required to consider in establishing criteria for Fishing Communities and RFAs.

Participation Criteria	303A Reference	
	Fishing Communities	RFA
<i>The Council shall consider</i>		
traditional fishing or processing practices in and dependence on the fishery	(3)(B)(i)	(4)(B)(i)
the cultural and social framework	(3)(B)(ii)	(4)(B)(ii)
economic barriers to access the fishery	(3)(B)(iii)	(4)(B)(iii)
existence and severity of projected impacts	(3)(B)(iv)	(4)(B)(iv)
administrative and fiduciary soundness of the association		(4)(A)(v)
effectiveness, transparency and equitability	(3)(B)(v)	(4)(A)(vi)
potential for helping remote communities lacking resources	(3)(B)(vi)	

In addition to the MSA requirements, The Nature Conservancy and the Pacific Coast Federation of Fishermen’s Associations (PCFFA) submitted public comment letters regarding the definition, structure and guidelines of Community Fishing Associations (CFA). The following text is a “strawman” description of a Community Fishing Association developed using the MSA, The Nature Conservancy, and including a proposed definition, qualification criteria, and other requirements and standards. Text and concepts from the MSA, TNC and PCFFA were used in developing this “strawman” proposal. Please note that in the short amount of time available prior to the April Briefing Book deadline dictated that only a limited, rough presentation on possible elements be included. Additional analysis will be presented by Council staff at the April Council meeting. Council staff does not endorse any of the descriptive elements or associated language, but rather presents it here in the spirit of facilitating further development.

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Definition of a CFA

An association that acquires QS/QP and distributes QP for delivery within the geographic community that the CFA represents. CFAs receive special considerations that are not made available to other participants in the trawl rationalization program.

Qualification as a CFA

To be recognized as a CFA, an entity must

1. Meet the geographic designation and membership requirements.
2. Have the support of local governing entities (county, city or port district).
3. Meet the organizational standards.
4. Develop an adequate community sustainability plan (MSA 303A(c)(3)(i)(I) and (IV)).

Geographic Designations and Community Affiliations

CFAs must be located within the management area of the Council ((Based on MSA 303A(c)(3)).

Geographic Designation Option 1: The geographic areas served by a CFA may not overlap. (i.e. a community may be represented by only one CFA)

Geographic Designation Option 2: The geographic areas served by a CFA may overlap.

Community Affiliations Option 1: A CFA may only represent one community. A single management company **may/may not** administer multiple CFAs.

Community Affiliations Option 2: A CFA may represent multiple communities. The geographic area covered by a CFA may not exceed (X miles of the coast, X adjacent counties, X adjacent port districts).

Community Affiliations Option 3: A CFA may represent multiple communities. There will be no restriction on the geographic size of the CFA.

Community Support. A CFA must demonstrate substantial community support of community members and governing jurisdictions in the area it seeks to represent.

Membership Requirements

Members of the CFAs must be community residents that join together voluntarily.

Option 1 (Based on MSA 303A(c)(3)). Only community residents who conduct commercial fishing, processing businesses, or fishery dependent support businesses may be members of the CFA. Association members may include those who will directly benefit from the distribution of QS/QP. Direct benefits means they will either catch or receive fish in association with the QS/QP provided by the CFA.

Option 2. Only community residents may be members of the CFA. Association member may not include those who will directly benefit from the distribution of CFA QS/QP (“direct benefit” is defined in Option 1).⁵

Note: In further developing membership requirements, one might use a worksheet like the following to delineate the types of entities that must/may/may not participate in a CFA.

Type of Entity	Must Include	May Include	May Not Include
Governing Authorities (counties, cities, port districts)			
Harvesters	(e.g. at least two)		
Processors	(e.g. at least one)		
Industry Associations			
Other Public Interest Groups			
Corporations			
Partnerships			
Individuals			

Organization and Operational Standards

A CFA must be organized as a corporation under the laws of the United States.

Beneficiaries: CFAs

Must only distribute QP to their own members.

May distribute to their members as well as nonmembers.

Must offer those outside the association the same opportunity to qualify as a member in a reasonable timeframe.

Community Sustainability Plan

The CFA should develop a community sustainability plan that includes the following:

1. Specification of the organizations goals and objectives and the means by which it intends to meet those goals and objectives.
2. Description of 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. The description shall include anticipated efforts to address the following as necessary to maintain the characteristic of the community or support its economic development:
 - a. sustaining effort by trawl and other groundfish fisheries;
 - b. maintaining crew, processing and seasonal employment opportunities;
 - c. maintaining local processing activity;

⁵ For example, the CFA might distribute QP via auction using contracts that require the recipient to deliver to buyers within the community the QS and a certain amount of matching QS

- d. meeting local community and municipality needs;
- e. investing in local infrastructure; and
- f. addressing potential adverse impacts on the nontrawl sector.

Application for Status as a CFA

Applications will include:

1. Articles of incorporation and bylaws.
2. A list of members of the CFA and the nature of their involvement/interest in the fishery.
3. Organization chart and explanation of management structure.
4. A sustainability plan.
5. All information needed for NMFS to assess compliance with control limits.
6. Operating procedures including description of
 - a. roles and responsibilities of members of the association, staff, and contractors;
 - b. the process and criteria by which QP will be distributed; and
 - c. dispute resolution processes.
7. Documentation that shows that all other CFA eligibility requirements have been met.

Criteria for Evaluating Applications and Approval Process

CFAs will be approved provided

A complete application has been provided.

All requirements listed above are met and approved by the Council, including those pertaining to geographic representation and community support.

Approval will include specification of special responsibilities and considerations being afforded the CFA (e.g. the level of QS control that will be afforded the CFA).

General Participation and Special Considerations

CFAs will participate in common with all other participants in the IFQ program and have the same rights and responsibilities, except with respect to special responsibilities and considerations provided for by the Council and through NMFS regulations. General participation includes such things as the obligation to transfer QP to vessel accounts each year and the opportunity for those vessels to use nontrawl gears to harvest their QP under terms identical to those which apply to all other participants.

The special considerations provided may include, but not be limited to, higher accumulation limits than provided for other entities and a higher priority for the allocation of QP under an adaptive management program.

Special Consideration - Accumulation Limits

Accumulation limits may be different (higher) for CFAs than for other entities that are eligible to own quota shares.

Accumulation limits will be on the June 2009 Council agenda.

Special Consideration – Acquisition of QS During the Transfer Moratorium

Transfers of QS to CFAs during the first two years of the trawl rationalization program would not be approved, while all other transfers would be prohibited.

Special Consideration – Acquisition of QS During the Divestment Period

If the Council chooses to allow a divestiture period, CFAs could be the intended recipient or buyer of those QS.

Special Responsibility - Reporting Requirement

CFAs would be required to report on specific aspects of participants, CFA performance measures, etc.