

Enforcement Committee Agenda

February 1, 2011

1pm – 5pm

Renaissance Hotel

Seattle, Washington

I. Developing West Coast enforcement priorities and objects

Mike Cenci, Deputy Chief for Enforcement, Washington Department of Fish and Wildlife, will provide an update on the development of West Coast enforcement priorities and objectives.

II. C-1 (a) Halibut/sablefish hired skipper

This action would narrow the restrictions for initial recipients of quota share (QS) to use a hired master to harvest their IFQs in all areas where hired skippers are allowed. In February 2010 the Council initiated an analysis to prohibit use of hired skippers for transfers of halibut and sablefish B, C, and D class QS, after a control date of February 12, 2010. This action would not affect category A QS or individual initial recipients in Area 2C (halibut) and Southeast (sablefish) (who are not allowed to use hired skippers).

The Council is concerned about the apparent consolidation and reduced opportunities for new entrants/second generation fishermen to enter the fishery. This action is necessary to promote an owner/operator catcher vessel fleet in the halibut and sablefish fixed gear fisheries off Alaska and to further the objectives of the IFQ Program.

This analysis considers two alternatives. Alternative 1 is the No Action Alternative. Alternative 2 would prohibit the use by a hired master for QS transferred after the control date. The proposed action would apply to all (corporation and individual) initial recipients. For non-individual (corporate) QS holders, the effect of the proposed action would be a prohibition on transfers of additional QS, as NMFS would not process transfers that would be prohibited for use, except by operation of law. For individual initial recipients, the effect of the proposed action would be a requirement that the QS holder fish the IFQs themselves or transfer them to another QS holder (who also would be required to fish them).

Enforcement Issues

The IFQ program has numerous restrictions on the transfer and use of QS to maintain an owner-operated fleet and to prevent consolidation into too few hands. Although many features promote this goal (e.g., active participant requirements for new entrants, prohibitions on separating IFQ from QS, ownership caps, etc.), there is no specific prohibition against leasing IFQ or QS. While leasing was allowed during the first three years of the program, no specific prohibition was implemented once this expired.

NOAA Office of Law Enforcement (OLE) has found several indications of leasing in the IFQ program. OLE has found a vessel interest sale where no true ownership interest was conveyed. The sale price was one dollar; the specified re-sale price was to be one dollar. The buyer received no income from the vessel (other than a share of his IFQ that was fished), paid none of the vessel expenses, had no say in the hiring of the captain or crew, and was not responsible for the acts of the captain or crew. Additionally, there is anecdotal information of vessel “owners” who have no connection to a vessel other than having their IFQ fished on the vessel.

Council concerns about alleged abuses of the hired skipper provision are well documented. Council efforts have focused on tightening ownership requirements, but these efforts are by nature reactive. The fundamental problem of these efforts is that they do not address the fundamental purpose of the sham ownership arrangements, that is, to lease IFQ. OLE recommends a prohibition on leasing IFQ to address the problems of sham ownership and address the other ways that leasing could be effected. (This is not to say that the work to tighten ownership arrangements should be stopped.)

At present, leasing is only addressed tangentially in regulation at 50 CFR 679.41(g)(4), which reads, “The Regional Administrator will not approve an Application for Transfer of QS assigned to vessel categories B, C, or D subject to a lease. . . .” RAM looks for indications of a lease during transfers and has disapproved transfers that appear to be a lease. However, RAM recognizes (and as the sham ownership problem demonstrates), there are other ways to lease IFQ.

Leasing is defined in Black’s Law Dictionary as “A contract by which a rightful possessor of real property conveys the right to use and occupy that property in exchange for consideration, usu. rent.” While it would be helpful, and probably necessary, to define leasing in regulation, the definition needs to be broad enough to encompass the variety of ways a lease can be affected. Similar to the definition of “control,” which was taken from Maritime Administration regulations, the NMFS could research definitions from other industries and regulatory agencies.

There are arrangements in the IFQ fisheries that use the term “lease,” but are not actually a lease. These are usually contracts where the holder of the IFQ, usually a legitimate vessel owner or someone on board the harvesting vessel, take a percentage of the landing proceeds before other expenses of the trip (bait, fuel, groceries, etc.) are deducted. This arrangement would not be prohibited, since the term is describing the payment terms from the fishing trip and is not transferring any fishing rights or privileges. Likewise, leasing of A shares, medical waivers, etc. would be excepted from the prohibition.

OLE acknowledges that enforcement of a leasing prohibition will be difficult. Nonetheless, OLE has prosecuted two cases of “control” involving AFA processors (cases that involve aspects similar to leasing) and is currently investigating an alleged LLP lease. Successful prosecution of these cases has a deterrent effect throughout the industry. A leasing prohibition will give OLE a significant tool to further the Council’s vision for the IFQ program.

III. C-3(a) BSAI Chum Salmon Bycatch

The proposed action is to implement new management measures to minimize chum salmon bycatch in the Bering Sea pollock fishery. The purpose of chum salmon bycatch management in the Bering Sea pollock fishery is to minimize chum salmon bycatch to the extent practicable, while achieving optimum yield. Minimizing chum salmon bycatch while achieving optimum yield is necessary to maintain a healthy marine ecosystem, ensure long-term conservation and abundance of chum salmon, provide maximum benefit to fishermen and communities that depend on chum salmon and pollock resources, and comply with the Magnuson-Stevens Act and other applicable federal law.

The alternative consider ways to manage chum salmon bycatch, including replacing the current Chum Salmon Savings Areas and voluntary rolling hotspot system intercooperative agreement (VHRS ICA) in the Bering Sea with salmon bycatch limits or new regulatory closures based on current salmon bycatch information. The alternatives represent a range of bycatch management measures for analysis that assist the decision-makers and the public in determining the best alternative to meet the purpose and need for the action. The alternatives meet the purpose and need by presenting different ways to minimize chum salmon bycatch in the Bering Sea pollock fishery to the extent practicable while achieving optimum yield.

Alternative 1: Status Quo (No Action)

Alternative 2: Hard cap

Alternative 3: Triggered closures

The alternatives represent a complex suite of components, options, and suboptions. However, each of the alternatives involves a limit or “cap” on the number of Chinook salmon that may be caught in the Bering Sea pollock fishery and closure of all or a part of the Bering Sea to pollock fishing once the cap is

reached. These closures would occur when a Chum salmon bycatch cap was reached even if a portion of the pollock total allowable catch (TAC) has not yet been harvested. Alternatives 2 and 3 represent a change in management of the pollock fishery because if the Chum salmon bycatch allocations are reached before the full harvest of the pollock quota, then pollock fishing must stop either BS-wide or in a specified area. Under Alternative 3, like Alternative 1, reaching the cap closes specific areas important to pollock fishing.

IV. C-4 (a) Discussion Paper on HAPC – Skates sites

At the April 2010 meeting, the Council set a habitat priority type—**skate nurseries**—and issued a call for proposals in conjunction with the completion of the EFH five-year review process. The Request for Proposals (RFP), which included the Council’s recently adopted revised evaluation criteria, was announced in the Federal Register (75 FR 21600) and Council newsletter. The proposal period opened April 26, 2010 and continued until August 31 (extended from August 16). Council staff initially screened proposals received to determine consistency with the habitat priority type, HAPC criteria (rarity is required), and for general adequacy and completeness. At the October 2010 meeting, staff presented the preliminary report of the screening results to the AP and the Council. The Council provided its selection of a proposal to forward on for further analysis for skate nursery HAPCs from the Alaska Fisheries Science Center (AFSC). At their fall 2011 meeting, the joint Groundfish Plan Teams reviewed the HAPC proposals for ecological merit; the plan teams’ recommendations are included in this discussion and within a matrix based on the Council’s revised evaluation criteria.

For the February 2011 meeting, Council and agency staff have reviewed the Council’s selected proposal for socioeconomic and enforcement and management considerations concerns. Note that the Ecosystem and Enforcement Committees are scheduled to take up the discussion paper during the February 2011 meeting and will report out to the Council. A schedule outlining the steps involved in the current HAPC proposal cycle is provided in Table 1.

Table 1. The current HAPC proposal cycle

Steps in the HAPC process	Timeline
Council identifies and sets HAPC priorities; criteria tables adopted.	April 2010
FR Notice of Request For Proposals (RFP); period to submit opens and closes.	April 26 – August 31 (18 weeks)
Council staff initial screening for adherence to priorities and completeness	September 2010
Plan Teams initial review for ecological merit	September 2011
Council review and decision on proposals to forward for further review	October 2010
Council staff review of proposals for socioeconomic considerations	October 2010 – January 2011
<i>Ecosystem and Enforcement Committees conduct review and provide comments</i>	<i>February 2010 (*)</i>
<i>Council decision on whether to formulate proposals into an amendment analysis</i>	<i>February 2011 (*)</i>
Analysis occurs	February – May 2011 (T)
Initial review of amendment analysis	June 2011 (T)
Final action on amendment analysis	October 2011 (T)

(*) = The Council is currently at this step of HAPC proposal cycle.

(T) = Tentatively scheduled.

Description of Action and Proposed Alternatives

Staff has developed the following alternatives for HAPC as proposed means to approach further analysis and possible implementation.

Alternative 1 – No Action; status quo.

Even if the Council wishes not to go forward with analysis and implementation of the HAPC sites proposed, there may be in practice inadvertent avoidance actions undertaken by fishing vessels. Industry, generally, is aware of some locations of known skate nurseries. Skate nursery sites may be unattractive from a commercial fishing perspective: anecdotal evidence suggests that trawling in areas with high egg case density results in unwanted high egg case catches that are very difficult to remove from trawl nets.

Since the Council last initiated a HAPC proposal cycle in 2003-2004, there have been various occasions when the Council has considered HAPC priorities or candidate sites and has not moved forward with further analysis. In some cases, the Council has directed that these priorities or areas be brought forward for their upcoming consideration of whether to re-initiate a HAPC proposal cycle, which could coincide with the next EFH 5-year review or be initiated at any time by the Council at its discretion. Further, these proposals could be considered “alive,” and thus would not need to be re-submitted, though it would behoove submitters to update and revise their proposals at that future time.

Alternative 2 – Identify skate nursery HAPCs without associated management measures

Under Alternative 2, the proposed HAPCs would only be designated and no new management measures would be implemented. As discussed above, there may be in practice actions undertaken by fishing vessels to avoid extensive bottom contact in the identified HAPC areas so as to avoid interference with fishing gear, though disturbance of reproducing skates and skate nurseries would still be permitted.

The following six areas are identified as skate nurseries for HAPC designation in the eastern Bering Sea (see Figures 1 and 7-12):

1. Bering 1, predominately Alaska skates, 63 km²;
2. Bering 2, predominately Aleutian skates, 60 km²;
3. Bristol, predominately Bering skates, 47 km²;
4. Pribilof, predominately Alaska skates, 4 km²;
5. Zhemchug, predominately Alaska skates, 11km²;
6. Pervenets, predominately Alaska, Bering, and Aleutian skates, 95 km².

Alternative 3 – Identify and conserve skate nursery HAPCs.

Under Alternative 3, the six areas identified above as skate nurseries would be designated as HAPCs, incorporated into Alternative 3 by reference. In addition, conservation management measures would be implemented to prevent disturbance. The Council would identify management measures for full analysis in Alternative 3 (see Figures 1-3). Possible conservation measures are described below, as options to Alternative 3.

Options for conservation measures:

Several options are possible for HAPC management measures, including the following (50 C.F.R. 679 [71 FR 36694, June 28, 2006], EFH specific to gear and HAPC):

- A. All fishing gears prohibited;
- B. Mobile bottom fishing gears prohibited:
 - nonpelagic trawl, dredge, or dinglebar gears prohibited;
- C. Bottom contact fishing gear prohibited:

- nonpelagic trawl, dredge, dinglebar, pot, or hook-and-line gears prohibited.

Additional conservation measures:

Additionally, the AFSC HAPC proposal recommends that:

- D. Skate egg case concentrations be monitored every 2 to 3 years using non-invasive research design, such as *in situ* observation; and
- E. The Council maintains skate conservation and skate egg concentration areas as a priority for EFH and HAPC management, and within Council and NMFS Research Plans.

V. D-1 (b) Update on GOA trawl sweep modifications discussion paper

In October 2010, in conjunction with final action on Gulf of Alaska (GOA) Tanner crab closures, the Council initiated a trailing amendment, to follow closely on the heels of the crab closures, to implement trawl sweep modifications for nonpelagic trawls vessels fishing in the Central GOA. A similar gear modification, which requires elevating devices to be placed on the trawl sweeps to lift the sweep off the seafloor, was implemented beginning in 2011 for flatfish vessels in the Bering Sea. Bering Sea research has demonstrated that elevated sweeps can reduce unobserved mortality of crab from interacting with the trawl sweeps.

Unlike the modification required to the Bering Sea (BS) trawl sweeps, however, which is limited to the directed flatfish fisheries, the proposed trawl sweep modification for the Central GOA would apply to all non-pelagic trawl fisheries (e.g., flatfish, Pacific cod, pollock, and rockfish). These other target fisheries were not included in the BS trawl sweep modification, and the BS analysis did not address whether sweep modifications would work effectively for other target fisheries. In addition, the Council spent time during the October Council meeting debating the merits of whether the trawl sweep modification should apply to all GOA trawl fisheries, or be limited to only the Central GOA. By including the western GOA trawl fleet in this analysis, the Council was concerned that they could be requiring a gear modification for a fleet of largely small vessels, on which the trawl sweep modification has not to date been tested.

During the October 2010 discussions, the Council recognized that there are some outstanding questions with respect to the extent research is necessary to ensure that the modifications are practicable in the fleet, and meet the Council's intent to reduce crab bycatch. Given these outstanding issues, the Council requested staff prepare a brief discussion paper. This paper will be presented at the Committee meeting.

VI. General discussion about incorporating safety issues in analyses

Included in the 5-year review of crab rationalization report was a report that analyzed the safety performance of the Bering Sea/Aleutian Island crab fleet since 2005. The report was written by Jennifer Lincoln, National Institute for Occupational Safety and Health and CDR Christopher Woodley, United States Coast Guard. After hearing the safety report, the Council asked the Enforcement Committee to develop, where necessary, guidance for incorporating safety issues in analyses of proposed actions.