

North Pacific Fishery Management Council

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ADVISORY PANEL MINUTES North Pacific Fishery Management Council April 6-9, 2010

The following members were present for all or part of the meetings:

Joe Childers
Mark Cooper
Craig Cross
John Crowley
Julianne Curry
Jerry Downing
Tom Enlow

Tim Evers
Jeff Farvour
Becca Robbins Gisclair
Jan Jacobs
Bob Jacobson
Simon Kinneen
Chuck McCallum

Matt Moir
Theresa Peterson
Ed Poulsen
Beth Stewart
Lori Swanson
Anne Vanderhoeven

The AP unanimously approved the minutes from the previous meeting.

C-3(a) Non-Target Species Committee Report

The AP recommends the Council request staff prepare a discussion paper reflecting the list of items recommended by the Non-Target Species Committee on Page 2 of their minutes under agenda item C-3(a). *Motion passed 17-0*

C-3(b) Groundfish Annual Catch Limits

The AP recommends the Council adopt Alternative 2 for final action under this agenda item.
Motion passed 17/1

C-4 Central GOA Rockfish Program

The AP recommends the Council move forward with the existing elements and options for development of the new Central GOA rockfish management program as shown in the analysis, with the following language clarifications (new language is **bold/underline**, ~~strikeout~~ signifies deleted language, **bold/asterisk(*)** indicates a preferred preliminary option):

- 8 **Regionalization – Apply to catcher vessel sector only:**
***Option 1: All CV CQ must be landed in the Port of Kodiak at a shorebased processing facility. [*select as preferred option]**
- 9 Catcher vessel/shore based processor provisions (CV – all)
~~For alternatives with processor associations the drop year is selected by the processor and applied to all LLP licenses when determining those associations.~~

9.2 Option A - Harvester only cooperative (CV-2)

A holder of catcher vessel harvest history ~~may~~ **must** join a cooperative to coordinate the harvest of allocations. (Cooperatives are subject to general cooperative rules below.) Membership agreements will specify that processor affiliated cooperative members cannot participate in price setting negotiations except as permitted by general antitrust law.

9.3 Option B - Harvester cooperatives with processor allocation of harvest shares (CV – 3)

~~Option: Processor allocations of CV harvest shares may be harvested only by vessels that are not owned or controlled by the holder of those harvester shares (using the AFA rules for determining control and ownership).~~

A holder of catcher vessel harvest history or processor histories ~~may~~ **must** join a cooperative to coordinate the harvest of allocations. (Cooperatives are subject to general cooperative rules below.) Membership agreements will specify that processor affiliated cooperative members cannot participate in price setting negotiations except as permitted by general antitrust law.

11 **Cooperatives will be required to notify RAM division which LLP holders are in a cooperative by March 1st.**

12 Sector Transfer provisions

Harvest shares held by processors may be transferred to:

Option 1: Those processors, at the plant level, who were initially issued harvest shares

Option 2: Those processors who have processed at least 400- 250 metric tons of rockfish delivered by catcher vessels ~~within any two year period~~ **two years of the last four years** during the new program **prior to transfer**

Suboption 1: **to a shoreside processing facility** in the port of Kodiak

Suboption 2: to a shoreside processing facility

Option 3: a holder of a Central GOA rockfish program eligible **CV** LLP

Note: More than one option can be chosen.

13 Cooperative Harvest Use Caps

CV cooperatives

No person may hold or use more than 3-5% of the ~~CV historic shares~~ **CV QS (including any shares allocated to processors)**, using the individual and collective rule (Option: with grandfather provision).

No CV may catch more than 4-10 % of the target CV allocation **of POP**

(Option: with grandfather provision).

No person may hold or use more than 20-25% of the QS initially allocated to processors, using the individual and collective rule (Option: with grandfather provision).

~~Harvest shares held by processors will be subject to the same 3-5% cap for holding and use that applies to harvest shares held by harvesters~~

————— Suboption: 10% cap

————— Suboption: Grandfather initial recipients

Option: Eligible processors will be grandfathered for the processing cap based on total processed catch during the qualifying years.

(The year ~~average annual retained catch over~~ the qualifying years ~~2002~~ will be used as a base (or index) ~~year~~ for applying the aggregate caps.)

~~Option: Eligible processors will be grandfathered.~~

14 Harvesting provisions

All non-allocated species will be managed by MRA, as in the current regime. This includes Arrowtooth flounder, deep water flatfish, shallow water flatfish, flathead sole, rex sole, pollock, other species, Atka mackerel and other rockfish. Basis species for purposes of determining MRAs will be:

Option 1 - Only primary allocated rockfish species

***Option 2 - All allocated species [*select as preferred alternative]**

18 Sideboards

18.1 Catcher vessel options

West Yakutat and Western Gulf Primary Rockfish Species

***Option 2: For catcher vessels, prohibit directed fishing for WYAK and WGOA primary rockfish species. [*Select as preferred alternative]**

Suboption: Exempt a vessel that participated in the WYAK rockfish fishery for 2006-2008 and participated in the entry level pilot fishery at least one year. These vessels will be sideboarded at their catch history for 2006-2008
[motion for addition of suboption passed 14/5]

Bering Sea and Aleutian Island Sideboard Provisions

Yellowfin sole, other flatfish, and Pacific ocean perch fisheries

***Option 2: The qualifying vessels in the trawl catcher vessel sector can participate in the limited access yellowfin sole, other flatfish or Pacific Ocean perch fisheries in the BSAI in the month of July. [*Select as preferred alternative]**

Pacific cod fishery

***Option 2: The qualifying vessels in the trawl CV sector can participate in the BSAI Pacific cod fishery in the month of July without any sideboard limit. [*Select as preferred alternative]**

Final motion as amended passed 19/0

C-5(a) Emergency Exemptions from Regionalization – Stakeholder proposals

The AP recommends the Council move forward with the Purpose and Need Statement that is consensus, as well as the components and options that are described below. *Motion passed 18/0*

Purpose and Need Statement

In developing the crab rationalization program, the Council included several measures to protect regional and community interests. Among those provisions, the Council developed regional designations on individual processing quota and a portion of the individual fishing quota that require associated catch to be delivered and processed in the designated region. Since implementation of the program in late 2005, and except in the case of the Western Aleutian Islands Golden King Crab fishery, all of the crab IFQ has been harvested and processed as intended by the crab rationalization program. However, icing conditions in the Northern Region have created safety concerns, and delayed and in some cases prevented harvesters from entering harbors to deliver to shore-based and floating processors located in the regions, as required by the regional share designations. In addition, other unforeseeable events, events such as an earthquake or tsunami, or man-made disaster, could prevent deliveries to eligible processors in a region necessary for compliance with the regional designations on Class A IFQ and IPQ. A well-defined exemption from regional landing and processing requirements of Class A IFQ and IPQ that includes requirements for those receiving the exemption to take efforts to avoid the need for and limit the extent of the exemption could mitigate safety risks and economic hardships that arise out of unforeseeable events that prevent compliance with those regional landing requirements. Such an exemption should also provide a mechanism for reasonable compensation to all parties directly impacted by the granting of the exemption to ensure that the protections intended by the regional designations continue to be realized despite the exemption. The purpose of this action is to develop a regulation to allow waiver of the regional landings requirement for Class A shares in the event that eligible processing facilities are unable to receive crab for an extended period of time.

Components and Options

This action would establish an emergency relief exemption for the regional delivery requirement under the BSAI crab program. Component One specifies the eligibility requirements for the exemption and the contracting parties. Component Two establishes reserve pool certification and periodic reporting requirements. Component Three establishes how the emergency relief regulation is to be administered. Component Four establishes a Council review process.

Component One. The Contract Parties.

To be eligible to apply for and receive an exemption from a regional landing requirement, the IFQ holders, the matched IPQ holders and the affected community entity or entities in the region for which the regional landing exemption is sought shall have entered into a framework agreement, including mitigation requirements and a range of terms of compensation.

If compensation is to include compensatory deliveries in the year following the granting of an exemption, the community entity or entities in the region from which the compensatory deliveries will flow may also be parties to the framework agreement.

Option 1: prior to the opening of the season.

Option 2: by a fixed date (to be determined).

To receive an exemption from a regional landing requirement the IFQ holders, the matched IPQ holders and the affected community entity or entities in the region for which the regional landing exemption is sought shall have entered into an exemption contract prior to the day on which the exemption is sought.

The entity that will represent communities shall be (options):

- (a) the entity holding or formerly holding the ROFR for the PQS,
- (b) the entity identified by the community benefiting from (or formerly benefiting from) the ROFR,
- (c) a regional entity representing the communities benefiting from the ROFR or formerly benefiting from the ROFR.

The entity or entities determined by the Council to be the community representatives in a region shall develop an allocation or management plan for any PQS issued without a ROFR in that region by a date certain established by the Council.

Component Two. Reserve Pool and Reporting Requirements.

A reserve pool can provide industry wide, civil contract based delivery relief without regulatory or administrative intervention; therefore, regulatory relief is an explicit incentive available only to Class "A" participants who are members of approved reserve pools, to matched IPQ holders and to affected community entities.

Harvest sector reserve pools do not require NMFS approval; however, on an annual basis, before a date certain established by NMFS through regulation, participants in the BSAI crab fisheries must certify to NMFS their establishment of or membership in an existing reserve pool to be eligible for regional landing requirement relief. The certification shall name the Class A IFQ holders who have established or are members of the reserve pool. Subject to the other terms and conditions of this action, the parties to a reserve pool shall be eligible for regional landing requirement relief if: (1) their reserve pool certification states that the reserve pool agreement commits each party to be bound by the rules of the reserve pool; and (2) the parties to the reserve pool identified on the certification represent not less than (60%, 70%, 80%) of the "A" share IFQ held by (a) unaffiliated cooperatives and unaffiliated IFQ holders not in a cooperative, in the aggregate; or (b) held by affiliated cooperatives and affiliated IFQ holders not in a cooperative, in the aggregate.

Reserve pool representatives shall provide an annual Regional Landing Exemption Report to the Council which will include the following:

- 1) a comprehensive explanation of the membership composition of the reserve pool and the measures in effect in the previous year,
- 2) the number of times a delivery relief exemption was requested and used, if applicable,
- 3) the mitigating measures employed before requesting the exemption, if applicable,
- 4) an evaluation of whether regional delivery exemptions were necessary, and their impacts on the affected participants, if applicable.

Reserve Pool Representatives shall circulate the annual Regional Landing Exemption Report to communities that are parties to framework agreements with the reserve pool representatives two weeks before submission to the Council. Communities may submit to the Council a Community Impact Report that responds to the annual Regional Landing Exemption Report.

Component Three. Administration of the Exemption.

Administration of the exemption

In accordance with Component One, the three parties will file an affidavit with NMFS affirming that a framework agreement has been signed, and, if applicable, subsequently file a second affidavit affirming that an exemption contract has been signed. In the affidavits, the parties shall affirm that the framework agreement includes mitigation requirements and a range of terms of compensation, and that the exemption contract describes the conditions under which the exemption is being or would be requested, including mitigation requirements and terms of compensation specific to the exemption being sought.

Exemption

An exemption shall be granted upon timely submission of a framework agreement affidavit and subsequent filing of an exemption contract affidavit by the Class "A" IFQ holders, the matched IPQ holders and the affected community entity or entities that are parties to the framework agreement that they have entered into an exemption contract, and that the exemption contract describes the conditions under which the exemption is being requested, including mitigation requirements and the terms of compensation. Pursuant to Component Two, above, the Class A IFQ holder that is party to the framework agreement and the exemption contract must be identified as having established a reserve pool or as a reserve pool member on a timely filed reserve pool certification that meets the requirements of Component Two.

The exemption contract affidavit shall result in the regional tag being removed from the requested amount of Class "A" IFQ and the matched IPQ; and the requirement that NMFS apply any IPQ used at a facility through a custom processing arrangement against the IPQ use cap of the owners of that facility shall be suspended for all Class A IFQ and matched IPQ included in the exemption.

If an exemption contract includes an obligation to make compensatory deliveries, an exemption making such deliveries possible shall be granted upon submission of an affidavit by the Class A IFQ holders, the matched IPQ holders and the affected community entity or entities that the exemption is being requested to make compensatory deliveries pursuant to the terms of an exemption contract under which regional landing relief was previously granted and used.

Component Four. Council Review.

The Council will review the Regional Landing Exemption Program within:

- (a) two years
- (b) after the first season in which an exemption is granted.

Thereafter, the Council will review the Regional Landing Exemption Program as part of its programmatic review, and, based on the record, may amend or terminate the Regional Landing Exemption Program.

C-5(b) Final action on WAG King Crab Regional Delivery

The AP recommends the Council adopt Alternative 2, Option 2, with 20% selected in the definitions for quota share, as written below. *Motion passed 19/0*

Alternative 2: Contractually Defined Exemption

To receive an exemption from the regional landing requirement in the WAG fishery, specified QS holders, PQS holders, and municipalities shall have entered into a contract. The contract parties will annually file an affidavit with NMFS affirming that a master contract has been signed.

Definitions:

QS Holders: Any person or company that holds in excess of 20 percent of the west-designated WAG QS.

PQS Holders: Any person or company that holds in excess of 20 percent of the west-designated WAG PQS.

Municipalities: The municipalities of Adak and Atka.

Approval of Exemption:

An exemption to the regional landing requirement will be granted, if the contracting parties have filed an affidavit with NOAA Fisheries affirming that a master contract has been signed. In the affidavit, each of the parties as defined above, or their authorized representative, must signify their approval of the exemption in writing.

D-1(a) BSAI Crab ACLs and Snow/Tanner Crab Rebuilding Plans

The AP recommends that the Council:

Rebuilding Alternative

Consider an option to define rebuilding for crab stocks to include one year to be above Bmsy.

ACLs

Add option 4 under Process for ABC recommendation to include an option for St. Matthews that the SSC recommends ABC levels annually at the June meeting using survey data from the previous year.

Incorporate analysis showing historical exploitation rate and short-term future expected exploitation rate for the range of ACL options.

The AP is concerned about multiple buffering occurring due to ACL buffers as well as built in buffers currently incorporated in stock assessment models. The AP also recognizes the concerns regarding preemption of state management authority posed by implementation of ACLs and snow crab rebuilding requirements.

The AP endorses the Crab PT minutes regarding ACLs, accountability measures, and rebuilding plans.

Motion passes 17/0

D-1(b) Pribilof BKC rebuilding plan

The AP recommends the Council support the recommendations in the March 2010 Crab Plan Team minutes. In addition, the AP recommends that under Alternative 5, the analysis should examine PSC levels below the default OFL and that the analysis should examine the groundfish areas closures triggered by specific PSC levels. It is the AP's intent that this measure would provide a linkage between the crab and groundfish FMPs and that this concept should be examined in the context of accountability measures for all crab stocks.

Motion passed 16/0/1 (abstention)

D-2(a) Scallop SAFE

The AP recommends the Council approve the Scallop SAFE Report as presented. The AP also recommends that future SAFE reports include data on targeted scallop catch prior to 1993, and show crab bycatch both in terms of number of crab and weight of crab. *Motion passed 18/0*

D-2(b) Scallop Annual Catch Limit Analysis

The AP recommends that the Council forward the analysis of Scallop ACLs with the current slate of alternatives and options. In addition, the AP recommends the analysis be expanded to include:

- 1) A discussion of overages both before and after coop formation.
- 2) A discussion of the possibility of managing scallops as a complex which would include non-target scallop species.

Motion passed 18/0

D-3(a) Bairdi bycatch in GOA

The AP recommends that the document not be released for public review at this time. The AP was made aware that the SSC had a list of issues with the analysis that prevented the SSC from moving the analysis forward. The AP did not hear the SSC minutes but recognizes that the SSC had concerns.

The AP recommends the analysis be revised to include the following items:

- 1) Describe and attempt to quantify the impacts of pelagic trawling on bairdi crab.
- 2) Describe the State of Alaska and federal definitions of pelagic gear more fully.
- 3) An option to exempt hook-and-line gear from the proposed action.
- 4) The amount of fishable area (<500 meters) in area 630 presently closed to each gear type.
- 5) The amount of fishable area in each of the potential closure areas.
- 6) Assess the protection offered by present closure areas to tanner crab by gear type.
- 7) The impact of predation on tanner crab by groundfish species, including predation inside cod pots.
- 8) An estimate of crab harvest in the commercial tanner crab fishery, including an estimate of crab bycatch in the directed fishery.
- 9) A breakout of pelagic vs non-pelagic groundfish harvests to understand the overall economic impact of the proposed actions.
- 10) Staff recommendations for closure areas for pot gear that better reflect pot effort and bycatch.
- 11) Further analysis of the impacts of 100% observer coverage requirement and possible mitigation actions.
- 12) Assess the efficacy of existing crab protection measures.
- 13) Further analysis of the practical and economic impacts of 100% observer coverage on vessels <60 feet.
- 14) Information on unobserved catch locations using VMS data.
- 15) Bathymetrically designed areas within the proposed closures based on preferred crab habitats.
- 16) Closure of smaller areas within the proposed stat areas.
- 17) An option to select specific closures rather than all proposed areas.
- 18) Further discussion of the definition of pelagic trawl gear including the practicability of using bottom sensors.
- 19) The importance of the directed tanner crab fishery to permit holders.
- 20) Better information on the possible effects of displaced fisheries on other bycatch fisheries.

The AP also recommends the Council consider adding the following language to the existing problem statement:

“There is a greater prevalence of smaller vessels participating in the GOA groundfish fisheries. Because observer coverage requirements are based on vessel length there is less observed catch and more uncertainty regarding crab bycatch estimates. 100% observer coverage in the appropriate areas would provide the Council with a high level of confidence in the assessment of any crab bycatch caught in the designated areas, as a basis for future management actions as necessary.

Gear modifications may offer some reduced impacts on crab stocks.”

Motion passed 19/0

D-3(b) GOA Chinook Salmon Bycatch

The AP recommends that the Council initiate an amendment to require full retention of all salmon bycatch in the GOA pollock fishery. *Motion passed 19/0*

The AP recommends that the Council request that NMFS develop a program to enumerate salmon caught as bycatch and to develop a protocol so that DNA samples will be available for genetic testing when lab space is available. Samples should be taken to fill in any gaps in genetic baseline if needed.

Motion passed 19/0

The AP recommends that the Council ask staff to refine and expand the discussion paper on Chinook salmon bycatch in GOA groundfish fisheries to include:

1. expanded discussion of all salmon removals in GOA by ADFG management areas;
2. a chapter on potential effects of environmental changes on Chinook salmon stock abundance;
3. break out the groundfish fishery data by target fishery and by federal management area as appropriate;
4. further analysis of seasonal and yearly bycatch;
5. differentiating between state and federal bycatch rates;
6. updated spatial data on maps; and
7. data on all users (sport, subsistence, personal use, commercial, etc) to determine the level of use and dependence.

Motion passed 19/0

A motion to recommend that the Council not move forward with salmon bycatch action at this time failed 8/8.

D-3(c) Northern Bering Sea Research Area Plan

The AP recommends that the Council encourage NMFS to conduct tribal consultation before the 2010 groundfish bottom trawl survey takes place. *Motion passed 18/0*

The AP recommends that the Council adopt the revised NBSRA Research Plan schedule as outlined in item D-3(c)(5) with the following changes:

- 1) Include community and subsistence stakeholders in the science meeting scheduled for January 2011 for an integrated approach.

- 2) Move the updates scheduled for April 2011 to the June 2011 Council meeting in Nome, Alaska.

Motion passed 18/0

D-3(d) Amendment 80 Co-op Reports

The AP received a report from Jason Anderson on performance of the Best Use Cooperative in 2009.

D-3(e) Receive report of EFP testing of Chinook salmon excluder

The AP received a report from John Gauvin on development of a chinook salmon excluder.

D-4(a) EFH 5-year Review

The AP supports the summary of recommended changes to the FMPs resulting from the EFH 5-year review provided on page 87 of the EFH report. The AP also supports the recommendations from the Crab Plan Team which will result in a discussion paper. The AP supports the recommendations from the Ecosystem Committee on recommended changes to salmon EFH. *Motion passed 18/0*

D-4(b) HAPC Criteria & Priorities

The AP recommends the Council adopt the HAPC evaluation criteria for HAPC proposals as presented on page 1 of agenda item D-4(b)(2) with the following changes:

- 1) The AP feels that the standard for ecological importance is set too low for habitat areas of particular concern and is essentially a re-statement of EFH criteria. Level 0 criterion should be deleted and remaining criteria re-numbered starting with zero. Level 3 for ecological importance should read: "Complex habitat condition and substrate serve as refugia, concentrate prey, and/or are known to be important for overfished species."
- 2) Require a minimum score of three for rarity so that only proposals for truly rare habitat sites are HAPC candidates.
- 3) Delete footnote 1 on the proposed evaluation criteria for HAPC proposals (D-4(b)(2)).
- 4) Underscore in HAPC criteria that the NPFMC's HAPC process is for sites (rather than types) and that the ecological importance is for "managed species".
- 5) The HAPC cycle should be 5 years to be in sync with EFH review.

Motion passed 15/4

A substitute motion to recommend the Council adopt HAPC criteria as presented in D-4(b)(2) page 2 with no changes failed 9/10.

Minority Report: A minority of the AP supported a substitute motion that the AP recommends the Council adopt the HAPC criteria on page 2 of D-4(b)(2). The minority supported this substitute motion because the main motion contained a number of elements which significantly alter the criteria. First, it is not necessary to change the criteria for ecological importance to a higher standard because this is only one of four factors, and a habitat area will have to score well on the other factors and meet the rarity criteria to qualify as a HAPC. Second, the minority was not comfortable with requiring a rarity score of 3 to be considered, both because we were unapprised of the SSC's position regarding this requirement, and because the requirement for a score of 3 that the habitat occur in only one region seemed too stringent given that a similar habitat could exist in more than one region and provide habitat for different fish stocks. Finally, the minority did not feel it was appropriate to delete pelagic water from the

definition of habitat contained in footnote 1. Pelagic waters are a critical habitat area for many species and it is important that this type of habitat is eligible under the HAPC criteria.

Signed by: Rebecca Robbins Gisclair, Edward Poulsen, Chuck McCallum, Jeff Farvour, Tim Evers, Theresa Peterson, Julianne Curry

The AP recommends that the Council consider identifying Bristol Bay RKC spawning habitat as a HAPC priority type. *Motion passed 18/1*

The AP recommends that the Council identify skate nurseries and sablefish pre-recruit sites as HAPC priority types as indicated on table 15 of the EFH 5-year review summary report, including the accompanying explanatory text. *Motion passed 19/0*

Minority Report: A minority of the AP supported a motion recommending that the Council consider the Pribilof and Zemchug canyons as HAPC priorities. The motion failed 4/15. These canyons are unique as some of the deepest canyons in the world. They provide important habitat for rockfish, corals, sponges and other species and are part of the “greenbelt” of high production on the Bering Sea shelf edge. We have received numerous letters and public comments requesting that these canyons be considered, including requests from nearby communities. These canyons have also been submitted for consideration in previous HAPC proposal processes but did not meet the Council’s priorities at that time. Given the unique and highly productive habitat these canyons provide it is appropriate to consider them in this HAPC process.

Signed by: Rebecca Robbins Gisclair, Chuck McCallum, Theresa Peterson, Tim Evers

D-4(d) Rural Community Outreach report and Chum Bycatch Plan

The AP recommends that the Council approve the Rural Outreach Committee’s recommendations on page 1 and 2 of their report [item D-4(d)(1)]. The AP also recommends that the Council move forward with the Outreach Plan for the Chum Bycatch EA/RIR/IRFA as described in item D-4(d)(2). *Motion passed 18/0*

D-5 Staff Tasking

The AP recommends the Council initiate an analysis to determine whether the communities of Naukati Bay, Game Creek, Cold Bay, and Kupreanof should be included in the list of eligible communities contained in Table 21 of Amendment 66. *Motion passed 18/0*

The AP further recommends that the Council deny the halibut allocation request by the Native Village of Nanwalek. *Motion passed 15/0*