



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

August 18, 2008

Mr. Eric Olson, Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

Dear Chairman Olson:

We have been coordinating with staff of the North Pacific Fishery Management Council (Council) and the Alaska Department of Fish and Game in the development of the draft environmental impact statement (EIS) to control Bering Sea Chinook salmon bycatch. One aspect of that analysis is an assessment of Alternative 4, the Council's preliminary preferred alternative (PPA) adopted at its June 2008 meeting. We have identified two issues concerning the Council's intent for the PPA. Depending on your assessment of these issues, the PPA may require Council refinement and further direction for staff analysis in the draft EIS if the Council continues to support Alternative 4 as the PPA.

Issue 1. Component 1, annual scenario 1 of the PPA would establish a hard cap of 68,392 Chinook salmon if the pollock industry formed an intercooperative agreement (ICA) that incorporates economic incentives to avoid salmon bycatch. This cap would be apportioned among AFA sectors, inshore cooperatives, and the CDQ groups as transferrable bycatch allocations. Annual scenario 1 allows for "operations", which we interpret to mean individual AFA eligible vessels or CDQ groups, to opt out of the ICA; but the bycatch by such operations would accrue against a backstop cap of 32,482 Chinook salmon. Under the PPA, all of the Chinook salmon bycatch by vessels that remain in the ICA also would accrue against the backstop cap. The PPA is silent on how the bycatch of salmon in the "opt-out" fishery would be accounted for in the sector allocations under the ICA.

We understand the Council's intent that the PPA would establish a hard cap. However, the Council provided no direction to staff on how this would be accomplished under annual scenario 1 and the proposed provision for an "opt out" fishery. Lacking further direction from the Council, we will assume for analytical purposes that the Chinook salmon harvested under the backstop cap in the "opt out" fishery would not be deducted from the 68,392 salmon allocated among the sectors, cooperatives, and CDQ groups participating in the ICA. Thus, if vessels fishing with transferable bycatch allocations under the ICA catch the full amount of those allocations, any bycatch in the "opt out" fishery would result in total Chinook salmon bycatch exceeding 68,392 salmon. Even if the ICA were successful in reducing Chinook salmon bycatch below the 68,392 cap, total bycatch could still exceed 68,392 salmon if the vessels fishing in the "opt out" fishery raced for pollock at the expense of Chinook bycatch and caught more salmon



than vessels fishing under the ICA were able to save. The exact amount by which the total bycatch could exceed 68,392 salmon under annual scenario 1 is unknown and depends on many assumptions and circumstances in the fishery, though it clearly could not exceed 32,482. If the Council continues to endorse the option for an “opt out” fishery and the concept of a hard cap, it would need to provide guidance to staff on how to allocate the hard cap between ICA participants and the “opt out” fishery so that the cumulative salmon bycatch between these two groups of pollock harvesters does not exceed 68,392 (see option 2 below).

Option 1: Remove the backstop cap from the PPA and set a hard cap of 47,591 Chinook salmon unless 100 percent of the vessel owners and CDQ groups eligible to participate in the AFA pollock fisheries form an ICA that meets the ICA requirements set forth in the PPA. If those conditions are met, then the cap would be increased to 68,392 Chinook salmon and allocated among the sectors, inshore cooperatives, and CDQ groups as described in the PPA. NMFS is aware that industry members have expressed significant doubt that an ICA with 100 percent participation could be formed. Regardless, if the Council does not schedule further discussion and possible refinement of the PPA at its October meeting, we will include a discussion of this option in the draft EIS so that it could be available for selection by the Council as a modification of the PPA at final action in April 2009.

Option 2: The Council could revise the PPA to ensure that the 68,352 cap can be managed as a “hard cap”. A number of ways exist to accomplish this. For example, the “opt out” fishery could be allocated a portion of the 32,482 backstop cap based on participants’ respective pollock catch history and this amount of Chinook salmon could be subtracted from the transferable bycatch allocations to sectors, CDQ groups and inshore cooperatives under the ICA. Thus two separate bycatch limits would be created for ICA and non-ICA pollock harvesters that, when added together, would not exceed the 68,352 cap. Council direction would be required to clarify the nature of the pollock history used to derive the aggregate “opt out” fishery bycatch limit for catcher vessels, motherships, and catcher/processors and how this amount would be prorated as reductions in sector, CDQ group, and inshore cooperative allocations under the ICA. This option also would require additional analysis of the revised PPA. These additional steps would mean that the draft EIS would not be completed in time to be released by early December and for the Council to take final action in April 2009.

Option 3: Change Council intent for the PPA and instead of a hard cap, establish a range of allowable Chinook salmon bycatch, e.g., 68,392 salmon plus some part of the 32,482 backstop cap. No additional action is needed from the Council to analyze this option because staff already is conducting this analysis through the assessment of the current PPA in the draft EIS. The Council could choose to adopt this alternative approach when it takes final action in April 2009.

Issue 2. Council discussion at its June 2008 meeting confirmed its intent that the PPA provide only for a single ICA. However, the PPA does not provide clear guidance about ICA formation, i.e., which entities must be a part of the ICA in order to operate under the 68,392 cap. The PPA does anticipate less than 100 percent ICA participation by inclusion of the backstop cap and

language referring to “those operations that opt out of such an ICA”. Allowing for less than 100 percent ICA participation under the PPA seems wise given the possibility that not all operations that fish for pollock will join the ICA. However, the PPA does not specify whether there are minimum levels of participation or sector composition required for the ICA to be valid. Absent additional clarification from the Council, NMFS assumes that there are no minimum participation or composition requirements for the ICA because none was specified in the PPA. This assumption means that entire sectors, inshore cooperatives, or CDQ groups could opt to not participate in the ICA, as well as any number of individual vessels within the catcher/processor, mothership, or inshore sectors. Ultimately, the Council may need to provide direction as to its intent if more than one ICA proposal were submitted to NMFS and if NMFS would be expected to choose which of the competing ICAs was the appropriate one.

In conclusion, if the Council would like to change the PPA to address these or other issues, we recommend that this occur as soon as practicable. Postponing major changes to the PPA until the scheduled final action in April 2009 may necessitate a new draft EIS or a supplement to the draft EIS and would delay implementation of the Council’s preferred alternative.

Even though the PPA is labeled as such, the Council still maintains the flexibility to choose any of the alternatives under consideration at final action. Further, the more streamlined and simple new Chinook salmon bycatch management measures are, the better positioned NMFS will be to meet the Council’s expectations for an implementation date.

Sincerely,

A handwritten signature in black ink that reads "Robert D. Mecum". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Robert D. Mecum
Acting Regional Administrator