

ADVISORY PANEL MINUTES
January 27, 2003 to February 1, 2003
The Madison, Seattle, Washington

Advisory Panel members in attendance:

Benson, Dave	Kilborn, Mitch
Boisseau, Dave	Leslie, Kent
Bruce, John (Chair)	Mayhew, Tracey
Burch, Alvin	Moller, Sandra
Cross, Craig	Norosz, Kris
Enlow, Tom	Olson, Eric
Falvey, Dan	Preston, Jim
Fields, Duncan	Ridgway, Michelle
Fraser, Dave	Steele, Jeff
Fuglvog, Arne	Stephan, Jeff
Jacobson, Bill	
Kandianis, Teresa	

C-1 GULF RATIONALIZATION

The AP endorses the Staff changes presented in the “redline” version of the elements and options with the following changes/additions:

ALTERNATIVE 2 –MODIFICATION OF LLP PERMIT

AP recommended eliminating Alternative 2 from analysis. *Motion passed 19/2.*

ALTERNATIVE 3__QUOTA SHARED BASED PROGRAM

Element 1 Qualifying period— AP recommended removing Suboption 2 (which added 2002 to all alternatives) *Motion passed 21/0.*

Element 2, Qualifying landing criteria,

- 1) Issue 1—Retain suboption ii under both option 1 and 2 which does not include meal. CP retained catch should be based on actual WPR reports (rather than NMFS blend data). Add a Suboption iii under both option 1 and 2 allowing CP vessels which did not produce meal to have their catch history increased by a specified amount. *Motion passed 20/0.*
- 2) Issue 2 —Retain original 2 options to analyze vessel owners with permits (must meet same standard as in Crab program) and all vessels with or without permits who made legal landings. This provides the most information and contrast regarding the State parallel fishery. LLP permit holders cannot be tied to a vessel or fish ticket, presenting analytical problems and should not be pursued further. *Motion passed 20/0.*
- 3) Clarify that total pounds landed will be used as the denominator in determining allocations. *Motion passed 20/0*

Element 3, Target species rationalization plan—

- 1) Retain a place-holder comment under all elements and options which are being deferred to trailing amendments.
- 2) Add new Issue 1, Initial allocation of catch history, with 2 options: option 1, allocate catch history by sector and gear type; option 2, allocate catch history on an individual basis. *Motion passed 20/0.*
- 3) Issue 2 QS/IFQ designations—Keep original “no designations” Suboption under vessel categories, QS sector designations, and QS gear designations options as it more explicitly allows different options to be applied to different sectors. *Motion passed 20/0.*
- 4) Issue 2, QS/IFQ designations—add under option b (QS Sector Designations):

- a) Reinstate suboption ii and modify to: All catch in a given year if any was legally processed onboard a vessel by species.
 - b) A new suboption iii CP or CV designation is based on legally landed CV harvest or legally processed CP harvests in the last year of the qualification period by species.
- 5) Issue 2, option a. Transferability restrictions between CP and CV QS: Delete options 1-5. *Motion passed 16/4/1.*
A motion to create a first right of refusal option for communities was put on the table but was defeated by the majority in the above vote to delete options 1 through 5.

Minority Report:

A minority of the AP supported a community right of first refusal in the sale or transfer of catcher processor quota shares (CP shares). The AP then voted to take all right of first refusal options out of the analysis. The AP minority that supported keeping first refusal options also supported analysis of a community right of first refusal. As a matter of public policy, reinforced by the MSA, publicly owned fishery resources should benefit communities that provide infrastructure support for the fisheries. Moving CP QS to community ownership and converting these shares to CV shares will increase community benefits by providing shoreside jobs, tax revenues and increasing shoreside processing volumes. The CP sector would receive full economic value for these shares and, should communities not be willing to purchase CP shares, they could be freely sold with the CP designation.

Duncan Fields, Michelle Ridgeway, Dan Falvey, Jeff Steele, Eric Olson, Jeff Stephan

A motion to re-designate CP shares as CV shares upon transfer to a person who was not an initial recipient of CP shares failed 6/12.

Minority Report:

The minority of the AP supports an amendment to the main motion to include, for analytical purposes, an option to purchase catcher processor quota shares (CP shares) and change them to catcher vessel shares (CV shares).[Issue 2 -Transferability restrictions, page 5 of red line] The motion would allow purchase of CP quota by any initial CP recipients and retain the CP designation. However, transfer of CP shares to a non-qualified CP purchaser would convert these shares to CV shares. The minority thought that, as a matter of public policy, the exchange of CP quota share for CV quota share ---- moving processing activity and economic value ashore --- should be considered.

Mitch Kilborn, Jeff Steele, Al Burch, Duncan Fields, Jeff Stephan

- 6) Issue 3, Transferability restrictions, Option 1 Persons eligible to receive QS by transfer:
- a) Revised Suboption 3 to include initial recipients of CP QS;
 - b) Added a new Suboption 5, GOA Fishery dependent communities (communities with greater than 10 – 30% of base industry economy is harvesting or processing related) *Motion passed 15/3/1.*
A motion to exclude SE communities failed 10/10/1
 - c) Move Suboption 4 and New 5 community eligibility to community protection option 12 section as new option 1 and retain a place holder for eligible communities
 - d) Add Suboption 6 US citizens eligible to documents a vessel. *Motions passed 20/0.*

Under Issue 3, Option 2, CDQ holdings, clarify that Suboption 2 refers to no additional restriction to CDQ ownership beyond those applying to all QS owners. *Motion passed 20/0.*

- 7) Option 9, Owner on Board provisions,--Keep “no owner on board” Suboption as it more explicitly allows different options to be applied to different sectors. *Motion passed 19/0.*
- 8) Option 10 Overage Provisions: Use whole numbers for range (i.e. 6-10 mt). *Motion passed 19/0.*
- 9) Option 12 Limited Processing-- Retain option 1, limited processing of rockfish species. Move options 2 & 3 to new option 13, heading titled “Processing Restrictions” as follows:
 - Suboption 1 CP may buy CV fish.
 - Suboption 2 CP’s are not permitted to buy fully utilized species (cod, pollock, rockfish, sablefish and QS portions of flatfish) from CV’s
 - Suboption3 exempt bycatch amounts of these species. *Motion passed 20/0.*

Element 6 Allocation of bycatch species—Remove option 4 in the WG and CG. In WY retain option 4 and suboption 1. *Motion passed 11/8.*

Element 7 PSC species, Issue 1, Accounting of Halibut Bycatch—retain Suboption 2 for hook and line vessels as this method is currently used in sablefish IFQ fishery and is working well.

Element 9 Entry Level Rockfish—

- 1) Retain Suboption b as an accounting mechanism
 - 2) Add following options
 - a) No entry level rockfish fishery
 - i gulf wide
 - ii central gulf including w yak
 - iii Western Gulf
- Motion passed 20/0.*

A motion to add POP as a candidate species failed (6/12/2)

Element 11 Reinstatement option 1 no skipper and crew share option. *Motion passed 16/0.*

Element 12 Community protection

AP recommends eliminating CIFTS. *Motion passed 11/9/1.*

Minority Report:

A minority of the AP supports, for analysis, the CIFT concept. A substitute motion replaced a motion to amend the CIFT proposal in the staff document. The amended CIFT is as follows:

Element 12 Community protection

- 1) *Option 2 CIFTS—clarify that the CIFT has full ownership of CIFT QS and holds these shares in trust for the communities, processors and crew members in the region to use as leverage to mitigate impact directly associated with implementation of a rationalization program.*
- 2) *Option 2, Issue 1, reduce CIFT allocation range to 10 to 30 %.*
- 3) *Option 2, Issue 6, Replace as follows “Distribution of IFQ” (title)*
 - a. *CV CIFT Crew member representatives shall develop criteria which ensure that vessels participating in the CIFT program retain their historic crew payment formula and award 1/3 of the CIFT IFQ to vessels agreeing to these terms.*
 - b. *CV CIFT Community representatives shall develop criteria which ensure that vessels participating in the CIFT program maintain delivery patterns in communities which gave rise to their qualifying catch histories and award 1/3 of the CIFT IFQ to vessels agreeing to these terms.*

- c. *CV CIFT Processing representatives shall develop criteria which ensure that vessels participating in the CIFT program have price agreements and/or maintain the delivery patterns which gave rise to their qualifying catch histories and award 1/3 of the CIFT IFQ to vessels agreeing to these terms.*
 - d. *The CP CIFT shall have Crew member representatives which develop criteria to ensure that vessels participating in the CIFT program retain their historic crew payment formula and award 1/3 of the CIFT to vessels agreeing to these terms.*
 - e. *The CP CIFT shall have CP representatives which develop criteria to ensure that vessels participating in the CIFT program have contractual agreements controlling bycatch, enforcing IR/IU standards and other matters as necessary. The CP CIFT representatives shall award 2/3 of the CIFT IFQ to vessels agreeing to these terms.*
- 4) *Issue 7 allocation procedure – Retain options 1—4.*
 - 5) *Defer all remaining elements and options to a trailing amendment.*

The AP minority believes that the amended CIFT merits staff analysis because a CIFT concept may be the best mechanism to address issues of crew protection, maintaining historical processing in the communities, and insuring historical deliveries to processors. In addition, all of the community representatives that testified at the AP supported the analysis of the CIFT proposal. While staff resources are limited, the concept could easily be part of a trailing amendment package. Consequently, the minority of the AP would encourage the Council to adopt the above amended CIFT proposal for analysis.

Eric Olson, Dan Falvey, Tracy Mayhew, Arne Fuglvog, Michele Ridgeway, Jim Preston, Duncan Fields.

The AP recommends eliminating TURFS in the analysis (*Motion passed 14/6/1.*)

Minority Report:

The minority of the AP encourages the council, for analytic purpose, to retain the TURF proposal as revised by the staff in the redline edition. TURFS are another community protection tool that may be beneficial to the Council as it addresses area specific issues within the gulf rationalization package. Scoping comments, particularly from Cordova, indicated potential access problems that could be addressed by a preferential TURF that the minority believes staff's comments regarding TURFS are limited to the extreme example of exclusive area for all species and all time. The TURF concept is much more flexible and may have applications for limited amounts of time, limited species, and adaptable areas.

Eric Olson, Duncan Fields, Jim Preston, Dan Falvey, Tracy Mayhew, Michelle Ridgeway

CFQs (Community Fishing Quotas)

- 1) Option 2 CFQ, Issue 2 eligible communities, option 1 population add new suboption d. less than 7500.
- 2) Option 2 CFQ, Issue 2 eligible communities, define option3 a. fisheries dependant communities as follows: GOA Fishery dependant communities (communities with greater than range 10 – 30% of base industry economy is harvesting or processing related)
- 3) Option 2 CFQ, Issue 2 eligible communities, define option3 b. fisheries supplemented communities as follows: GOA Fishery supplemented communities (communities with a range of 5 – 10% of base industry economy is harvesting or processing related)

A motion eliminating CFQs from the analysis failed 7/10/2.

A motion to award a range of 5 to 15 % of IPQ directly to communities failed 8/10.

Minority Report:

The undersigned AP members believe that the analysis should include an option to allocate a percentage of IPQ to communities under the CFQ option. It is unfair to place the entire cost of the CFQ program on the harvest sector.

Dave Fraser, Arne Fuglvog, Jeff Steele, Jeff Stephan, Craig Cross, Tracy Mayhew, Duncan Fields, Jim Preston

Element 13 Habitat

A motion to reinstate language addressing the Habitat conservation plan and note its status as a trailing amendment failed 6/14/1.

Minority Report:

The minority feels that inclusion of Element 13, the Habitat Conservation Plan, as recommended by the GOA rationalization committee, will serve to more fully realize the habitat benefits we anticipate will accrue under a rationalized fishery.

Jim Preston, Bill Jacobson, Tracy Mayhew, Michelle Ridgeway, Dan Falvey, Duncan Fields

ALTERNATIVE 3— QUOTA SHARE BASE PROGRAM

Subalternative 2—Harvester only QS program with a cooperative.

- 1) Move # 10 to community protection section as a new option 5 (requiring ranges of coop IFQs to be processed in the community giving origin to the processing license). *Motion passed 20/0.*
- 2) Suboption 2, mandatory Coops, add a new 98 as follows: QS holders that do not chose to join a coop:
 - a) May fish in open access
 - b) Are not allowed to participate in the rationalized fisheries until they join a coop.*Motion passed 19/0.*
- 3) Add a new 2. allowing CPs to form a sector coop which is not subject to provisions 3-8. *Motion passed 18/0.*

The AP recommends including a new Subalternative 3 to Alternative 3: Sector allocation program with cooperatives. Motion passed 19/1/1.

(Management Areas, Gear, Elements 1: Qualifying periods, and 2: Qualifying landing criteria, of Alternative 3, Subalternative One apply throughout)

Element 3: Sector Identification

The following sectors are eligible to receive a sectoral allocation by area:

1. CV Trawl
2. CP Trawl
3. CV Longline
4. CP Longline
5. CV Pot
6. CP Pot

Element 4: Target Species

As listed in Alternative 3, Subalternative 1, Element 3

Element 5: Bycatch Species

As listed in Alternative 3, Subalternative 1, Element 6

Option 1.

a) Allocate quota to all sectors based on sector bycatch rates.

 Suboption 1. Based on average catch history by area and target fishery

 Suboption 2. Based on 75th percentile by area by target fishery

b) Allocation will be adjusted pro rata to allocate 100% of the annual TAC for each bycatch species.

 Suboption. Other rockfish in the Western Gulf will not be allocated, but will be managed by MRB and will go to PSC status when the TAC is reached.

Option 2. Retain these species on bycatch status for all sectors with current MRBs.

Element 6: PSC Species

Issue 1. Accounting of Halibut Bycatch

 Halibut bycatch would be managed by NMFS at the sector level.

Issue 2. Halibut PSC Allocation

 Initial allocation based on sector average bycatch rates for the qualifying years. Allocations will be adjusted pro rata to equal the existing PSC.

Element 7: Underutilized Species

Underutilized unallocated species are available for harvest by any sector with sufficient PSC and bycatch to prosecute the fishery, once that sector's allocation of that underutilized species has been used.

Element 8: Communities

As in Alternative 3, Subalternative 1, Element 12, Option 1 (Regionalization), Issues 1 (Regional Areas) and 2 (Qualifying Years), and Option 3 (Community Fisheries Quota).

Element 9: Review and Evaluation:

Issue 1. Review

 Evaluate the results of program based on overall GOA rationalization objectives.

Issue 2. Sunset

 Add per Alternative 3, Subalternative One.

Element 10: Sideboards

Participants in the GOA rationalized fisheries are limited to their aggregate historical participation based on GOA rationalized qualifying years in BSAI groundfish fisheries.

Element 11: Coops

Members of a sector may choose to form a cooperative with a civil contract to manage harvest levels and other issues as determined by agreement of the cooperative.

NMFS will allocate quota to the cooperative based on the aggregate historical catch of target, bycatch and PSC species.

Cooperative will be responsible for managing the aggregate catch of the cooperative so as not to exceed the cooperatives allocation of target, bycatch and PSC species.

Vessels that choose not to participate in the cooperative are allocated the remaining sectoral TAC, bycatch and PSC allocations after deduction of the cooperative allocation and any other sector-wide deductions.

 NMFS may establish a minimum level of cooperative membership by sector

 Option 1: Minimum number of license holders

 Option 2: Minimum percentage of catch history

 NMFS may establish a maximum number of cooperatives by sector.

Issue 1. Coop participation

Option 1. Coops are voluntary

Suboption 1. Coop may be formed upon agreement of 100% of sector (AFA Offshore type coop)

Suboption 2. One coop may form per sector

a. Require a minimum percentage (50 – 75 and 80%) of eligible vessels in order to form coop

b. Require a minimum percentage (50 – 75 and 80%) of catch history in order to form coop

Suboption 3: Establish a maximum number of cooperatives per sector

a. Require a minimum percentage of eligible vessels in order to form coop

b. Require a minimum percentage of catch history in order to form coop

Option 2. Coops can be comprised of one sector/gear type only

Option 3. Coops from different sectors may enter into inter-coop agreements.

Issue 2. Coop Allocations

Option 1. Coop allocations will be based on same formula as used for sectoral allocations

Issue 3. Open Access

Option 1. Any vessels that do not want to enter into coop agreements will fish in open access. The aggregate catch history from non-participating vessels, based on same qualifying years, will go into the open access pool.

ALTERNATIVE 4—HARVESTER QS WITH CLOSED PROCESSOR CLASS.

- 1) Clarify that both Subalternatives 1 and 2 apply only to the CV sector.
- 2) Element 19 (Closed Class Processor Qualifications) Option 4: Replace current alternative as follows: Analyze processing use caps by closed class processor type (trawl, fixed, or trawl and fixed), by CG and WG regulatory areas using a range of 70 to 130% of the TAC processed for all groundfish species, combined, during the qualifying years for the largest closed class processor.

ALTERNATIVE 5—HARVESTER AND PROCESSOR QS

- 1) Issue 2 categories of Processing QS—Add a new option 4 as follows:
Option: Catcher processors will be issued CP QS which combines the privilege of catching and processing product.
- 2) Issue 8 (Community protection provisions)
Moved issue 8 as new option 5 under Element 12 under Alternative 3. *Motion Passed 20/0.*

C-2 BSAI CRAB RATIONALIZATION

I. Binding Arbitration: The AP recommends the Council adopt the fleet-wide binding arbitration model as described in the report of the working group on binding arbitration. *Motion passed 13/7.*

Minority Report:

We the undersigned support the Last Best Offer proposal including the following “fleetwide” amendment. Add the following to the Report of the Working Group on Binding Arbitration Committee under the “PROCESS” section, subparagraph #4, page 6, “Arbitration Decisions”, the first paragraph.

“The arbitrator who makes the last pre-season arbitration decision will review all of the arbitration decisions for that season and select the highest arbitrated price(s) which is representative of 7% of the market. That price shall become the price for all arbitrated prices for that season, inclusive of the opt-in provision, and, independent of delivery terms at the harvester’s option. If the arbitration decisions include both formula and straight price decisions, the arbitrator shall have the discretion to select and apply one of each type.”

The arbitrator who makes the fleetwide price decision should have the flexibility to determine the mechanism for selecting the highest price. He could, for example, take a single arbitrated price if it covers at least 7% of the market, or could take a weighted average of three prices to cover 7% of the market, etc. This process will be very similar to the current price negotiations in which harvesters negotiate delivery with their intended market and then obtain a fleetwide price close to the season opening.

The undersigned support the modified Last Best Offer/Fleetwide proposal for the following reasons:

- *Timely, businesslike procedure: Process initiates only 25 days before the season opening date, instead of 125 days prior to season opening date. Fleetwide is a complex and legalistic framework.*
- *Flexibility: Industry can choose to use either traditional dockside price or a formula-based price in arbitration. Fleetwide does not allow for use of dockside price.*
- *Arbitration is optional: Last best offer/fleetwide price is only initiated in the case of failed price negotiations, whereas the fleetwide model mandates arbitration for every fishery.*
- *Contract required between matched parties prior to entering arbitration: Fleetwide does not require a contract until a price is arbitrated and agreed upon by the parties—but either party can still opt out. In the Newfoundland fishery, processors have recently announced their intent to withdraw from the process as a result of fishermen being able to opt out after a price has been arbitrated.*
- *Reduced cost and efficiency: There is a single arbitration for price, delivery window and place in the last best offer/fleetwide. Fleetwide has two step process and two arbitrations, first for price, then delivery time and locations.*

Signed Jeff Steele, Al Burch, Kris Norosz, Dave Benson, Tom Enlow, Dave Boisseau, Mitch Kilborn

II. Community Protection:

The AP recommends the Council select the cool down period provisions of the Community Protection Committee recommendations as a preferred alternative with the following change:

3. 10 % of the IPQs may leave a community on annual basis, or up to 500,000 pounds, whichever is less. *The requested clarification of the “slippage” rules should be that slippage is measured on a fishery-by-fishery basis. Motion passed 20/0.*

The AP recommends the Council select, as a preferred alternative, IPQ caps of:

For opilio: IPQ percentage times a TAC of 125 million pounds.

For Bristol Bay Red King: IPQ percentage times a TAC of 9 million pounds. *Motion passed 12/7/1.*

The AP recommends an option be added under the community protection provisions, that those vessels homeported within the city of Kodiak, as determined by registration with the Kodiak harbormaster, as a current lessee of a Kodiak boat harbor stall, shall have the option to declare their last trip of the season for delivery to Kodiak, and it shall not be subject to regionalization and IPQ requirements. *Motion passed 13/8.*

The AP recommends the Council add an option to the community protection provisions as follows:

PQS with regional categories for deliveries of opilio crab and Bristol Bay red king crab shall be allocated proportionally from the Northern and Southern regions, to those communities with more than 3% of the aggregate historic landings of either of these species, within the area of the Gulf of Alaska lying north of 56 degrees, 20 minutes north latitude by using the best 4 season in 1996-2000 and deducting any PQS acquired by eligible processors in that region using the qualifying years. The entity that will receive the allocation will be identified by agreement between the City of Kodiak and the Kodiak Island Borough. If no entity is jointly identified and approved by the city and borough by the date of the first annual allocation, the allocation will be held in an enterprise account administered jointly by the city and borough until an entity is created by the city and borough. The allocation will be subject to rules that are similar to those that govern the Adak allocation. *Motion passed 12/9.*

The AP recommends the Council adopt as its preferred alternative the following community protection committee's recommendations for first right of refusal options as amended.

1. BSAI

For communities with at least three percent of the initial PQS allocation in any BSAI crab fishery based on history in the community except for those communities that receive a direct allocation of any crab species (currently only Adak), allow CDQ groups, qualified communities, or community groups representing qualified communities a first right of refusal to purchase processing quota shares that are based on history from the community which are being proposed to be sold for processing outside the boundaries of the community of original processing history. Intra-company transfers within a region are exempt from this provision. To be exempt from the first right of refusal, the use of PQS must be by the same company.

There needs to be some assurance that the buyer exercising the right has the financial capability to consummate the transaction.

If an owner of IPQ decides to sell the IPQ, a first right of refusal shall go to:

- 1) In CDQ communities, the CDQ group.
- 2) In non-CDQ Communities:

The first right of refusal goes to the entity identified by the community. Under this paragraph the entity must exercise the right within 60 days of presentation. Any right of first refusal must be on the same terms and conditions of the underlying agreement. Specifically, it must be clear that the transaction must be completed in its totality, not just in pieces—if the sale of PQ includes other assets, the right must be exercised on the whole transaction unless the seller agrees otherwise.

The right of first refusal applies only to the community within which the processing history was earned. If processing quota is transferred to another community (in a manner authorized by these provisions), it no longer is subject to a right of first refusal.

A public entity exercising a right of first refusal will likely gain access to proprietary confidential information. A mechanism is needed to protect the seller (and the third party buyer) from public disclosure of that data. Sunshine laws may make it difficult to protect information disclosed to a public entity.

For CDQ communities, CDQ groups would be the entity eligible to exercise any right of first refusal or purchase shares on behalf of the community. Ownership and management of harvest and processing shares by CDQ groups will be subject to rules similar to CDQ regulations.

For non-CDQ communities, the entity eligible to exercise the right of first refusal or purchase shares on behalf of a community will be identified by the qualified city or borough, except if a qualified city is in a borough, in which case the qualified city and borough must agree on the entity. If no entity is identified and approved by the date of presentation of an offer over which the entity would have a right a first refusal, no community entity will be have the right. Ownership and management of harvest and processing shares by community entities in non-CDQ communities will be subject to rules similar to those of the halibut and sablefish community purchase program. *The motion amending the committee's recommendation passed 11/8.*

2. GOA

For communities with at least three percent of the initial PQS allocation of any BSAI crab fishery based on history in the community that are in the area on the Gulf of Alaska north of 56 20' N latitude, groups representing qualified communities will have a first right of refusal to purchase processing quota shares which are being proposed to be transferred from unqualified communities in the identified Gulf of Alaska area. Intra-company transfers within a region are exempt from this provision. To be exempt from the first right of refusal, the use of the PQS must be by the same company.

For communities, the entity eligible to exercise the right of first refusal or purchase shares on behalf of a community will be identified by the qualified city or borough, except if a qualified city is in a borough, in which case the qualified city and borough must agree on the entity. If no entity is identified and approved by the date of presentation of an offer over which the entity would have a right a first refusal, no community entity will be have the right. Ownership and management of harvest and processing shares by community entities in non-CDQ communities will be subject to rules similar to those of the halibut and sablefish community purchase program.

The first right of refusal goes (first) to the remaining processors(s) and (second) to the entity identified by the community. Under this paragraph a processor must exercise the right within 30 days of presentation. If not exercised by a processor, the community entity must exercise the right within 60 days of the presentation to processors.

Any right of first refusal must be on the same terms and conditions of the underlying agreement. If the first right of refusal is exercised by a processor, further transfers of the shares from the purchasing community are subject to the general first right of refusal of the new community under 1 above. *The motion to adopt the committee's recommendation passed 11/6/3.*

3. Community Purchase Option

Allow for a community organization in those communities that have at least 3 percent of the initial PQS allocation of any BSAI crab fishery based on history in the community to be exempted from the restriction for the 150 days of sea time requirement under 1.6, Transferability and Restrictions on Ownership of QS. *Motion passed 19/0.*

4. Identification of Community Groups and Oversight

For CDQ communities, CDQ groups would be the entity eligible to exercise any right of first refusal or purchase shares on behalf of the community. Ownership and management of harvest and processing shares by CDQ groups will be subject to rules similar to CDQ regulations.

For non-CDQ communities, the entity eligible to exercise the right of first refusal or purchase shares on behalf of a community will be identified by the qualified city or borough, except if a qualified city is in a borough, in which case the qualified city and borough must agree on the entity. If no entity is identified and approved by the date of presentation of an offer over which the entity would have a right a first refusal, no community entity will be have the right. Ownership and management of harvest and processing shares by community entities in non-CDQ communities will be subject to rules similar to those of the halibut and sablefish community purchase program.

III. Data Collection

The AP recommends that the Council re-examine the transfer of B shares to processors, and whether B shares can be transferred independently of A shares. *Motion passed 14/5.*

IV. CDQ Ownership Caps

The AP reiterates their comments from the December, 2002, AP meeting where the AP recommended the council amend the proposal and analysis of CDQ ownership and use caps to include analysis of the same range of caps for non-CDQ participants, with the clarification that the same harvest QS caps apply to all non-CDQ participants, including processors. *Motion passed 15/5 after reconsideration. It originally failed 9/10.*

A motion to set the CDQ QS caps at 3% for BBRKC, 3% for opilio, and 3% for bairdi failed 8/11.

A motion to set the CDQ QS caps at 5% for BBRKC, 5% for opilio, and 5% for bairdi, 10% for Pribilof R&BKC, 10% for St. Matthew BKC, 20% for EAI brown king crab, 20% for WAI red king crab, and 20% for WAI brown king crab failed 3/15.

The AP recommends that the CDQ QS caps be set at the individual and collective level. *Motion passed 19/0.*

C—3 Steller Sea Lion Issues

The AP recommends that the Council concur with approach outlined in the letter from Dr. Balsinger to Dr. Hogarth dated January 16, 2003. *Motion passed 18/0.*

C—4 Essential Fish Habitat

The original EFH motion excluded alternatives 5B and 6. That original motion was modified to include alternatives 1 through 6 by a vote of 14/7, leading to development of the main motion, which follows:

The AP recommends alternatives 1 through 6 are included in the EIS. However, we note that alternative 6 was included at the request of the Plaintiffs using criteria identified by them. The AP reiterates its previous statements that a blanket 20% closure measure is better developed through an extensive Marine Protected Area process. The package should move forward for analysis with **no new or modified alternatives added**. The AP is concerned with plaintiffs' negotiating an extension of time outside the public process in exchange for new or modified alternatives. The AP does not believe extending the comment period will substantially refine proposals 5b and 6.

With respect to the proposed research closures, the AP believes that the potential number of combinations of the EFH, HAPC and Mitigation alternatives make defining a specific research proposal problematic at this time. We recommend the concept of a research program be imbedded in each alternative, but specific areas and design be developed as a trailing amendment after the preferred alternative for EFH, HAPC and Mitigation are identified. No EFH alternative may be implemented without a fully developed research plan.

The AP concurs with the SSC's minutes that the current set of EFH alternatives lack any component for effort reduction. As the SSC point out, the National Research Council's recent study on effects of fishing recommends that effort reduction be one of the three principle tools for EFH mitigation. Despite this none of the EFH alternatives have economic rationalization or any other approach to effort reduction.

Motion passed 20/0.

C—6 IR/IU

1. The AP acknowledges that the Amendment C analysis is not ready to send out for public review and is unlikely to be a Final Rule by June, 2004, when flatfish IR/IU goes into effect in the BSAI.

The AP, accordingly, recommends that the Council reconsider its action of October 2002 that delayed implementation of IR/IU for 18 months. At reconsideration, the Council should delay implementation indefinitely until IR/IU is replaced by a legal and enforceable action that will accomplish the goal of reducing bycatch in the BSAI groundfish fisheries to the extent practicable.

The AP also recommends that the Council reactivate the Enforcement Committee to work with agency staff in crafting recommendations that will allow implementation of programs requiring monitoring.

2. The AP further recommends accelerating the analysis of Amendment A, modified from a PSC cooperative to a multispecies cooperative. The AP believes this is the action that will accomplish the reduction of bycatch in the BSAI groundfish fisheries to the extent practicable.

The AP also believes that further work on Amendment C should focus on the development of retention goals and include:

A clear statement that the goal and purpose of the program is to reduce the bycatch of all groundfish in the BSAI and draft an exemption process by fishery and gear based on:

1. Enforceability
2. Total groundfish retention levels, analyzing a range of 60%, 70% and 80%,
3. Minimum retention standards.

The AP also recommends that the MRB for pollock be moved from the Amendment C analysis to the Amendment A analysis and that the Council request staff complete analysis of amendment C with the following modifications:

1. Ground truth actual costs for purchase, installation and operation of flow scales (Section 1.4).
2. Examine variability in PRRs.
3. Expand the quantitative discussion of the section regarding use of bin volumes as an enforceable means of monitoring.

Trailing Amendment D—5% exemption.

The AP recommends that the EAR/RIR/IRFA for Amendment 76 to the BSAI Groundfish FMP and Amendment 72 to the GOA Groundfish FMP be sent out for public review.

Motion passed 16/5.

A Motion was made to recommend the council send out the document for public review, with modifications to alternative C and continued analysis of amendment A on a separate track, as the council directed in Dec. 2002. This motion failed 9/9/1.

Minority Report:

The minority feels that IRIU Amendment C, the general groundfish retention standard (GRS) should be analyzed separately from A, B and D – as directed by the Council in December 2002. We recognize that this amendment provides an alternative to 100% flatfish retention that gives the fleet flexibility while encouraging reduction in discards and increased utilization in the fleet. The minority concurs with the modifications to Amendment C listed in the main motion. Further, we concur with these IRIU technical committee recommendations noted in the action memo:

OPTION 1. Enforcement should be applied at what level?

- a. ~~Fleetwide~~*
- b. Pools*
- c. Individual vessel*

OPTION 2. To which fisheries would the standard apply?

- a. all fisheries*
- b. ~~selected fisheries or gear types~~*

And: GRS should be applied to all fisheries unless specifically exempted; the Pollock fishery should be exempted.

OPTION 5: Minimum utilization standard

- a. 15%*
- b. ~~some other minimum utilization standard~~*

OPTION 6. Enforcement time period

“cumulative running total”

In order to reduce the complexity of this amendment, we recommend striking option 3b, thereby focusing the analysis on a single GRS for all fisheries, and striking options 6a and 6b, focusing the enforcement time period on monthly or quarterly intervals.

Signed Michelle Ridgeway, Sandra Moller, Dan Falvey, Tracy Mayhew

C—7 Observer Program

The AP recommends that the Council approve the following problem statement for restructuring the North Pacific Groundfish Observer Program (as approved by the Observer Advisory Committee):

The North Pacific Groundfish Observer Program (Observer Program) is widely recognized as a successful and essential program for management of the North Pacific groundfish fisheries. However, the Observer Program faces a number of longstanding problems that result primarily from its current structure. The existing program design is driven by coverage levels based on vessel size that, for the most part, have been established in

regulation since 1990. The quality and utility of observer data suffer because coverage levels and deployment patterns cannot be effectively tailored to respond to current and future management needs and circumstances of individual fisheries. In addition, the existing program does not allow fishery managers to control when and where observers are deployed. This results in potential sources of bias that could jeopardize the statistical reliability of catch and bycatch data. The current program is also one in which many smaller vessels face observer costs that are disproportionately high relative to their gross earnings. Furthermore, the complicated and rigid coverage rules have led to observer availability and coverage compliance problems. The current funding mechanism and program structure do not provide the flexibility to solve many of these problems, nor do they allow the program to effectively respond to evolving and dynamic fisheries management objectives.

Further, the AP recommends that staff develop a timeline and analytical outline for a potential analysis based on the recommendations of the Observer Advisory Committee (OAC) to restructure the Observer Program design and funding mechanism to address the data quality and disproportionate cost issues resulting from the current program structure. The primary alternative should focus on modifying the Observer Program for all vessels and processors operating in the Gulf of Alaska, with a suboption to extend the fee-based program to all vessels with currently less than 100% coverage requirements in the BSAI. The AP concurs with the conclusions of the OAC as stated on p. ii of the executive summary of the OAC report, with the following change to bullet #1:

- The Council and NMFS proceed with an analysis to modify the current Observer Program design and funding mechanism to address the data quality and disproportionate cost issues resulting from the current program structure. This analysis would propose changing the current program to one in which NMFS contracts directly with observer provider(s) for observer services and the costs of observer coverage are paid for through a combination of Federal funding and a fee program.

Motion passed 19/0.

C—8 Halibut Management

The AP recommends the Council send the preferred alternative for the charter halibut IFQ program adopted in April, 2001, to NMFS for preparation of a proposed rule. *Motion passed 16/0.*

D—1 Groundfish Issues:

CDQ ‘Other Species’ Management:

The AP recommends that the Council request NMFS to prepare a proposed rule for final action at the June NPFMC meeting to manage ‘other species’ CDQ similarly to Bering Sea shortraker, roughey, and northern rockfish. That is, that ‘other species’ be allocated to the CDQ reserve, but not allocated to individual CDQ groups, that maximum retainable bycatch levels be established for the CDQ fisheries, that once aggregate CDQ harvests of ‘other species’ reaches 7.5% of the ‘other species’ TAC, that CDQ ‘other species’ would become PSC. CDQ fisheries would be treated the same as non-CDQ fisheries with regard to reaching the ‘other species’ OFL.

The AP recommends the Council request that NMFS prepare a similar emergency rule to proceed on a parallel track with the proposed rule in order to implement these fishery management changes as soon as possible in the 2003 CDQ fisheries. *Motion passed 18/0.*

D—1(d) DSR Full Retention

The AP commends NMFS staff for their efforts to resolve the issue of full retention of DSR. The AP recommends the Council delay final action until the April council meeting on this agenda item. The AP requests the Council request that NMFS investigate and comment on the applicability of a retention and forfeiture program under an EFP under the jurisdiction of the PFMC.

The AP further recommends the Council request NMFS explore the options for a donation program under alternative 3 and explore the applicability of video-observer technology in the DSR fishery. *Motion passed 15/0.*