

MINUTES

158th Plenary Session
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL
October 2-8, 2002
Seattle, Washington

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North Pacific Fishery Management Council



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Certified _____

David Benton, Chairman

Date _____

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158th Plenary Session NORTH PACIFIC FISHERY MANAGEMENT COUNCIL October 2-8, 2002 Seattle, Washington

The North Pacific Fishery Management Council met October 2-8, 2002, at the Doubletree Hotel in Seattle, Washington. The Scientific and Statistical Committee met September 30-October 3 and the Advisory Panel met September 30-October 5 at the same location. The following members of the Council, staff, SSC and AP attended the meetings.

Council

David Benton, Chairman
Stosh Anderson
Dr. Jim Balsiger
John Bundy
Kevin Duffy/Earl Krygier for Frank Rue
Dr. Dave Hanson

Dennis Austin, Vice Chair
Dr. David Fluharty
Roy Hyder for Lindsay Ball
Stephanie Madsen
Bob Penney
CAPT Richard Preston
Hazel Nelson

NPFMC Staff

Chris Oliver, Executive Director
Cathy Coon
Jane DiCosimo
Elaine Dinneford
Dr. Mark Fina
Nicole Kimball
Jon McCracken

David Witherell
Gail Bendixen
Maria Shawback
Shannon Vivian
Diana Evans
Dr. Diana Stram

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Support Staff

John Lepore, NOAA-GCAK
Tom Meyer, NOAA-GCAK
Joe McCabe, NOAA-GCAK
Jay Ginter, NMFS-AKR
Glen Merrill, NMFS-AKR
Steve Davis, NMFS
Michael Payne, NMFS-AKR

Jeff Passer, NMFS-Enforcement
Tamra Faris, NMFS-AKR
Jon Kurland, NMFS-AKR
Shane Capron, NMFS-AKR
Cindy Hartmann, NMFS-AKR
Herman Savikko, ADF&G
Wayne Donaldson, ADF&G

Scientific and Statistical Committee

Rich Marasco, Chair
Jack Tagart, Vice Chair
Steve Berkeley
Keith Criddle
Doug Eggers
Steve Hare

Jeff Hartman
Mark Herrmann
Sue Hills
Dan Kimura
Seth Macinko
Ken Pitcher
Terry Quinn

Advisory Panel

John Bruce, Chairman
Ragnar Alstrom
Dave Benson
Dave Boisseau
Al Burch
Craig Cross
Ben Ellis
Tom Enlow

Dan Falvey, Co-Vice Chair
Lance Farr
Duncan Fields
Dave Fraser
Arne Fuglvog
Teresa Kandianis
Bill Jacobsen
Tracey Mayhew

Kris Norosz
Eric Olson
Jim Preston
Michelle Ridgway
Jeff Steele
Jeff Stephan
Lyle Yeck

Other Attendees

The following people signed the attendance register:

Robert Mikol
Katherine McGlashen
Frank Kelty
Max Malavansky
Marcus Alden
James Mize
Stephen Taufen
Heather McCarty
Ben Enticknap
Craig Cross

Janet Smoker
Thorn Smith
Donna Parker
Ilarion I. Philemonof
John Henderschedt
Jim McManus
Brent Paine
Joe Childers
Russell Pritchett

A list of those who provided public comment during the meeting is found in Appendix I to these minutes.

A. CALL TO ORDER/APPROVAL OF AGENDA/MINUTES OF PREVIOUS MEETING(S)

Chairman David Benton called the meeting to order at approximately 8:09AM on Wednesday, October 2, 2002. Chairman Benton began by welcoming new Council Member Hazel Nelson and asking Dr. Jim Balsiger to swear in Ms. Nelson and John Bundy who was recently re-appointed to the Council. The Chairman then opened the floor for nomination of officers. Stephanie Madsen moved to nominate David Benton as Chairman and Dennis Austin as Vice Chairman of the Council. The motion was seconded and, having attained unanimous consent, Ms. Madsen moved to close nominations. The motion was seconded and carried without objection.

Chairman Benton then thanked everyone for the care and professional interaction displayed by the Council at the Dutch Harbor meeting in June. He also applauded the great efforts of Frank Kelty in helping Council Members, staff and the public in getting out of town when the weather started looking grim.

Chairman Benton also acknowledged Council Member Bob Penney and his decision to retire from the Council process. Mr. Penney came in fresh without a historical perspective, became a quick study, and has been an excellent Council member. Chairman Benton thanked Mr. Penney for his service, on behalf of the Council, and wished him well in his new endeavors.

Agenda. Chairman Benton mentioned that he had been asked to move the halibut issue (Agenda Item C-10) up in the schedule. He and Executive Director Chris Oliver will discuss the issue and then consider adjusting the schedule later in the meeting. Stephanie Madsen moved to approve the Agenda. Kevin Duffy seconded the motion and it carried without objection.

Minutes. The minutes of the April and June 2002 meetings were neither discussed nor approved but will be taken up at the December 2002 Meeting.

B. REPORTS

In addition to oral presentations, the Council also received written reports from NMFS Management (B-2), ADF&G Management (B-3), and the Coast Guard Enforcement Report (B-4).

DISCUSSION RESULTING FROM REPORTS

Executive Director's Report

Mr. Chris Oliver, Executive Director, began his report by reminding the Council that Bob Penney resigned from the Council effective after this meeting and, according to the Magnuson-Stevens Act, Council appointments (including replacements) must be named 45 days prior to actually taking part in a Council Meeting. That individual would serve the remainder of Mr. Penney's term and then be up for reappointment.

Mr. Oliver introduced new staff member Dr. Diana Stram as the Plan Coordinator for the Gulf of Alaska. Jane DiCosimo was promoted to Senior Plan Coordinator handling Bering Sea issues as well as Gulf of Alaska Rationalization and other projects. Mr. Oliver then spoke briefly about the U.S. Ocean Commission's meetings in Seattle and Anchorage.

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The Executive Director then reported on two independent reviews that were completed over the summer. One was an Independent Legal Review which examines the role of the Council relative to the Endangered Species Act, the application of that Act as well as the Magnuson-Stevens Act, and NEPA. The written report is found under Agenda Item B-5. The other independent review examined the F₄₀ Exploitation Review for which the Council will receive a report under Agenda Item D-1a later in the meeting.

Mr. Oliver also distributed reports from the Annual Donut Hole ICC Meetings held in Moscow, Russia.

Mr. Oliver then spoke about the change to our normal meeting schedule. The February 2003 meeting will be held in Seattle instead of Anchorage, and then in Anchorage in October 2003 instead of in Seattle. In discussions with the Board of Fish Directors, they tentatively agreed to meet just before the April 2003 meeting (in Anchorage). The Joint Protocol Committee met in July 2002 and copies of their minutes are enclosed in the Council notebooks. The Committee will meet again in early December to discuss Council progress on MPAs, EFH, Board of Fish Groundfish proposals, and receive an update of Gulf of Alaska Rationalization.

Mr. Oliver then reminded the Council of a video presentation by Tom Laughlin, AFSC, summarizing Steller sea lion telemetry technique at 6:00PM after the Council adjourned for the evening. Also, Mr. Oliver reminded people of the industry reception being held at Salty's on Alki Beach Thursday evening.

Mr. Oliver briefly detailed the Marine Mammal Protection Act (MMPA) lawsuit challenging NMFS with compliance to provisions of the MMPA in terms of take reductions of marine mammals, death or injury.

Mr. Oliver also mentioned a letter from the Lieutenant Governor of Alaska to the Secretary of Commerce urging the agency's compliance and development of take reduction plans up to and including assistance from the Council. A copy of which was enclosed in Council notebooks.

Mr. Oliver then talked about a letter received from James Hebert, Chairman of the U.S. Coast Guard Commercial Fishing Industry Vessel Safety Advisory Committee, offering their advice to all Councils on safety implications of proposed FMP Amendments or other actions being considered by the Council. He suggested that, with Council concurrence, he respond by consulting with fellow Council Member Capt. Rich Preston, USCG, as various actions progress and they determine whether any of those actions warrant being forwarded to the Committee for their input.

Earlier this year the Council received a letter from the Alaska Subsistence Regional Advisory Councils indicating their concern over salmon bycatch and requested the Council to work and coordinate with them in terms of managing salmon and salmon bycatch. Mr. Oliver responded in April with an offer to meet November 7th, 2002 in Anchorage to discuss and exchange information on the issue. They replied favorably to his offer. Mr. Oliver invited Tom Boyd, Office of Subsistence Management, as well as several Regional Advisory Council Chairmen and representatives of the pollock cooperatives to attend the meeting as well. Mr. Oliver mentioned that he would be contacting Kevin Duffy as well as Jim Balsiger to see if they would like to be represented at the meeting.

Mr. Oliver reminded everyone about the interactive calendar on the Council's website that lays out meetings and conferences.

Mr. Oliver then brought up a questionnaire recently received by Council members from Ms. Sarah Newkirk, Fellow with the Stanford Fisheries Policy Project. The questionnaire studies various aspects of the regional fishery management council process and a copy was enclosed in Council notebooks. Ms. Newkirk requested Chris spend a few minutes explaining what the questionnaire and the project are about and how the information

will be used. Ms. Newkirk then spoke briefly to the Council about her background and the study they're conducting.

FORMAT FOR COUNCIL MEETING MINUTES

Each agenda item requiring Council action will begin with a copy of the original "**Action Memo**" from the Council meeting notebook. This will provide an "historical" background leading up to the current action. This section will be set in a different type than the actual minutes. Any attachments referred to in the Action Memo will **not** be attached to the minutes, but will be part of the meeting record and available from the Council office on request. Following the Action Memo will be the **reports** of the Scientific and Statistical Committee, Advisory Panel, and any other relevant committee or workgroup on the subject. Last will be a section describing Council **Discussion and Action**, if any.

C. NEW OR CONTINUING BUSINESS

C-1(a) Crab Management – Clarification of June 2002 Motion

ACTION REQUIRED

a) Provide clarification on aspects of the June 2002 motion.

BACKGROUND

At its June 2002 meeting the Council adopted a motion identifying a preferred alternative for rationalizing the Bering Sea/Aleutian Islands crab fisheries (Item C-1(a)(1)). Although the motion identifies a comprehensive management structure, the intent of the Council concerning certain items requires clarification for preparation of the environmental impact statement for these fisheries. Clarification of the following items will aid the preparers of the EIS:

1. No control date on processor shares ownership cap grandfather provision - Ownership caps on harvest shares and caps on vertical integration both have control dates that would prevent persons from acquiring shares in excess of specific caps. The Council did not explicitly specify a control date for the grandfathering of processor shares in excess of that cap. The Council should clarify whether the control dates are intended to apply to the consolidation of processing shares.
2. Ownership/use cap distinction - The current council motion contains several provisions that limit ownership and use of the harvest and processing shares. These provisions include the following:
 - 1.6.3 contains provisions limiting the ownership of QS
 - 1.6.4 contains provisions limiting processor ownership of QS
 - 1.7.4 contains provisions limiting a vessels use of IFQs
 - 2.7.1 contains provisions limiting ownership of the PQS pool
 - 2.7.2 contains a use cap of 60 percent for the Northern region opilio crab fishery

Application of these provisions requires that the Council determine the shares subject to the ownership cap. Different levels of consolidation would be permitted under different interpretations of the scope of the caps. The following different interpretations are possible:

- A) Ownership caps limit only ownership of the QS and PQS, which carry a long-term privilege.

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- B) Ownership caps limit ownership of the QS and PQS, which carry a long-term privilege, and IFQs and IPQs, which are annual allocations.

Application of the caps to both types of shares would be consistent with interpretation of caps in the halibut and sablefish IFQ program, in which use caps are interpreted as limiting IFQ use and the ownership of both QS and IFQs. A similar broad interpretation in this program would apply the ownership caps to both the ownership of QS and PQS and IFQs and IPQs. This broad interpretation would have two primary effects. First, this interpretation would prevent individuals from accumulating shares in excess of the cap through leasing arrangements. Long term leasing, unlimited under a narrow interpretation of the caps, could allow a person to effectively control shares well in excess of cap. Second, a broad interpretation of the cap would also operate as a use cap since IFQ holdings determine use. Under the narrow interpretation, the only "individual" use caps applicable to either harvesting or processing shares would be in processing in the North region *C. opilio* fishery.¹ Similar to IFQ and IPQ ownership caps, individual use caps would prevent consolidation of the fishery beyond that permitted by narrowly interpreted QS and PQS ownership caps. Each shareholder's share use would be limited to the specified cap.

Although custom processing is permitted by the Council motion, the applicability of the limits on ownership and use to custom processing should be clarified. Although custom processing can provide additional opportunities and markets for harvesters, if custom processing is permitted in excess of the cap, the resulting consolidation could limit markets for deliveries to harvesters.

3. Norton Sound red king crab fishery CDQ allocation - The Council action applies to several of the BSAI crab fisheries, but excludes the Norton Sound red king crab fishery. The Norton Sound fishery was excluded from the rationalization program because its currently regulated under a super exclusive permit program that prohibits its participants from participating in any of the other BSAI crab fisheries. This Norton Sound permit rules are for the benefit local, small vessel participants in that fishery. Section 4, Option 3 of the Council motion provides that the CDQ allocation would be increased to 10 percent for "all crab species". Since the Norton Sound fishery is part of the CDQ program but is not part of the rationalization program, an inference could be drawn that the motion is intended to increase the CDQ allocation in the Norton Sound fishery to 10 percent. The absence of discussion of the Norton Sound fisheries during deliberations suggest that the increase in CDQ allocations does not apply to the Norton Sound fisheries.
4. Adak allocation in the WAI(Adak) golden king crab fishery - The Council motion provides for the allocation of unused resource (up to 10 percent) in the WAI (Adak) golden king crab fishery to the community of Adak. The Council will need to decide the entity that will receive this allocation or outline the method by which the entity will be determined.
5. Regionalization of the initial allocation in the WAI (Adak) golden king crab fishery - In the Council's motion, the WAI golden king crab fishery is regionalized by designation of 50 percent of A shares (and corresponding processor shares) as west shares and by the remaining 50 percent of A shares (and corresponding processor shares) being undesignated. The Council should specify the method by which these regional designations will be made. Two methods have been suggested. The Council may choose different methods for harvesters and processors, if appropriate. The methods are:

¹ The vessel use cap, which is double the individual ownership cap, would limit use of shares on a single vessel. The vessel use cap, however, would not prevent an individual from using any amount of shares on multiple vessels.

- A) Divide each allocation of shares 50 percent west and 50 percent undesignated. This could be justified on the basis that it would treat all shareholders equally. This method could result in allocations to persons in the west despite having no history or facilities in the west.
- B) Allocate the 50 percent west shares to participants with facilities (or history) in the west. If the allocations of those with facilities (or history) in the west does not equal 50 percent, the remaining west allocation could be allocated on a pro rated basis to participants without facilities (or history) in the west. These remaining west shares could be pro rated so that each shareholder with west facilities (or history) would get the same portion of its initial allocation as west shares. This could be justified as a means of minimizing allocations to participants in an area in which they have no historical participation (or no facilities).

Under either method share trades and custom processing may be required for efficiency. The number of those transactions might be reduced under option B.

- 6. Catcher/processor definition - A catcher/processor must be defined for purposes of applying the restriction on deliveries of B shares to catcher/processors (Section 1.3.3(b)). In a share based program, definition of this sector can be problematic because vessels used as catcher/processors are also used as floating processors. For purposes of implementing this provision, the Council must decide when a vessel is acting as a floating processor, as opposed to a catcher/processor. Under the current regulations of the State of Alaska, a vessel becomes a floating processor by registering with and providing notice of location to ADF&G (see 5 AAC 34.055 and 5 AAC 35.055).
- 7. Sector cap on catcher/processors - Catcher/processors are permitted to purchase PQS from shore based facilities for use within 3 miles of shore (Section 1.7.2.3, Option 2). The "catcher/processor sector" also is capped at "the aggregate level of the initial sector-wide allocation" (Section 1.7.2.3, Option 8). These provisions together raise several questions:
 - A) Does the catcher/processor sector-wide cap limit the ownership and use of PQS and IPQ by catcher/processors. Deliberations suggest that the catcher/processor sector-wide cap applies only to catcher/processor shares and not to the use or ownership of processing shares.
 - B) Are catcher/processors permitted to purchase PQS and Class A QS for use together as catcher/processor QS. If so, would that use be capped at the initial allocation, in effect limiting total catcher/processor activity to a share of each fishery in the amount of the initial allocation of catcher/processor QS. Deliberations suggest that catcher/processor shares cannot be created by combining PQS and Class A QS.
 - C) Would the cap on the aggregate level of the initial sector-wide allocation affect the ability of catcher/processors to purchase catcher vessel QS and IFQ for delivery to shore plants. Deliberations suggest that the catcher/processor sector-wide cap applies only to catcher/processor shares and not to the use or ownership of catcher vessel harvest shares.
- 8. Regionalization of PQS allocations to catcher/processors - Some catcher/processors have taken delivery of harvest during the qualifying years and meet the processor eligibility criteria. Under the rules of the program these catcher/processors would be allocated PQS for this processing activity. These PQS should be regionalized for consistency with the corresponding Class A QS pool. A few different alternatives exist for regionally classifying these shares:

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- A) The shares could be regionally designated based on the historic area of processing. This would require accurate location records for processing history of these vessels, which might be difficult to obtain and verify.
- B) These shares could be regionally designated by a one time choice of the share recipient made at the initial allocation. This would permit the recipient of the shares to make the designation based on operating requirements and for efficiency.

Under either of the potential methods for designating PQS, the coordination of regional shares between the two sectors will not be greatly affected, since the difference between regional distribution of harvest and processing shares will be rectified with an adjustment of harvest shares at the initial allocation.

Allocations to catcher/processors in the Western Aleutian Islands (Adak) golden king crab fishery could be subject to the rule selected for all other fisheries or all allocations could to catcher/processors in that fishery could be designated as West to accommodate processors that have no facilities or history in the West in that fishery (See 5 above).

- 9. Definition of a lease - The word “not” was omitted from the definition of a lease. Under the current language a lease would occur when an IFQ is used on a vessel on which the holder of the “underlying QS is present.” (Section 1.6.2)
- 10. Grandfathering vessel use allocations in excess of the cap - The current vessel use cap provision does not appear to grandfather vessels with qualified catch in excess of the vessel use cap. All other activities of harvesting and processing are subject to the grandfathering of historical activities. If grandfathering provisions are intended to apply to all activities, vessels that are the basis for an allocation in excess of the vessel use cap would be grandfathered with respect to that allocation.
- 11. Cost recovery definition - The Council motion does not specify the details of the cost recovery arrangement. The current motion contains two provisions for the allocation of funds from the cost recovery program. One section allocates 25 percent of the collected funds to a low interest loan program for captains and crew (Section 1.8.1). A second provision would divide the remaining fees proportionally (Section 5, Option 5). These provisions suggest that a cost recovery program would be implemented but do not specify the amount of funds to be collected or from whom (i.e., from harvesters, processors, or both). These two different aspects of the program should be specified:
 - A) The entity or entities from whom cost recovery funds should be collected.
 - B) The amount of funds to be collected from each such entity.

The Magnuson-Stevens Act currently authorizes the collection of up to 3 percent of ex vessel revenues from the harvest sector. This amount could be collected from either sector or could be split between the two sectors.

- 12. Regionalization of the WAI (Adak) red king crab fishery - Class A harvest shares and the corresponding processing shares are regionally designated under the program. While historical activity in each sector determines the regional designation of the specific shares, the overall regional split is based on the processor historical activity during the qualifying years. Harvest shares are subject to an adjustment so that the regional allocations of two sectors will be equal. The processor share allocation in the WAI (Adak) red king crab fishery would be based on the historical landings in the WAI (Adak) golden king crab fishery. No landings in the golden king crab fishery were in the North during the qualifying years. The

Adak red king crab fishery would therefore be entirely South. Records from the WAI (Adak) red king crab fishery show that a portion of the harvests in the qualifying years was delivered in the North region. Anecdotal evidence suggests that these deliveries were made at the end of the season by catcher vessels that stored their pots in the Pribilofs. The Council should verify that it intends this fishery to be regionally designated based on the processing allocation, which results in the entire fishery being designated South.

13. Rules governing cooperatives - The Council motion describes several purposes for including cooperatives in the program and a general description of the function of cooperatives. The motion, however, lacks some clarity on the rules that would govern cooperatives and how those rules differ from the rules governing IFQ holders that do not join cooperatives. The following rules are consistent with the Council motion:
- A) Exemption from use caps - Cooperative members would not be subject to either the individual or vessel use caps, which would apply to IFQ holders that are not cooperative members.
 - B) Application of ownership caps - To effectively limit ownership, the number of shares (IFQs and QS) that each cooperative member could bring to a cooperative would be subject to the ownership caps (with initial allocations grandfathered).
 - C) IFQ allocations to cooperatives - The annual allocations of IFQs of cooperative members would be made to the cooperative, with use of those shares governed by the cooperative agreement.
 - D) Leasing - Leasing among cooperative members would be unlimited. For IFQ holders that are not cooperative members, leasing would be prohibited after 5 years.
 - E) Inter-cooperative transfers - Transfers between cooperatives would be undertaken by the members individually, subject to ownership caps. Requiring the inter-cooperative transfers to occur through members is necessary for the application of the ownership caps.
 - F) Four entities are required for a cooperative - The requirement for four owners to create a cooperative could be interpreted two ways. The AFA requires four unique entities to form a cooperative. Independent entities must be less than 10 percent common ownership without common control. A weaker standard would not consider common ownership but simply require four distinct QS owners.

Scientific and Statistical Committee Report

The Scientific and Statistical Committee did not address this agenda item.

Advisory Panel Report

The Advisory Panel did not address this agenda item.

DISCUSSION/ACTION

The Council discussed how to handle clarifying the June 2002 final motion and ultimately decided that Chairman Benton would, for the crab rationalization issue only, suspend the normal rule of a two-thirds majority vote to amend the June action, and that decisions on clarifications and trailing amendments would be by simple majority

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vote. David Hanson, parliamentarian, agreed Chairman Benton could present these rules. The Council then agreed that discussion and debate would be much more efficient and would help the public understand their intent of being open and fair. Council members clarified their desire for fair play, and agreed to not open up every issue or take another shot at what they might have missed in the June action. Chairman Benton then asked the Council for any objection to suspending these rules and allowing their decisions to be made on a simple majority basis. Council members had no objection.

Chairman Benton then explained the order in which the Council would address the issues starting with clarifications outlined in the Action Memo, then addressing trailing amendments from the June action, and finally new issues that have surfaced at this Council meeting. Chairman Benton suggested Kevin Duffy, the maker of the June motion, explain his understanding of the Council's intent. If an objection to Mr. Duffy's interpretation arose, the Council would then vote.

Mr. Duffy suggested Mark Fina, NPFMC Staff on this issue, describe each clarification and then Mr. Duffy would respond whether the clarification carried the intent of his original motion. Each clarification is outlined below.

Issue 1: No cutoff or control date on processor ownership caps. Intent was that June 10, 2002 was the control date (cutoff date) and were intended to apply to grandfathering processor ownership caps.

Issue 2A: Are ownership caps intended to be interpreted as capping holdings of QS and IFQ capping holdings of PQS and QS and if they extend to IFQs and IPQs, would they operate as use caps as well? Intent was that when writing the regulations, NOAA Fisheries include both terms for clarity and both "use and ownership" are capped.

Issue 2B: Use cap on custom processing. Custom processing falls within use caps. There are caps on IFQs, IPQs, PQs. Ownership caps are general. The 30% cap would be of the entire PQS pool in the north and south, the only regionalized cap is the north opilio cap. The other caps all apply without considering the N/S line.

Issue 3: Increase Red King Crab CDQ allocation to 10% in Norton Sound. Intent was that Norton Sound Red King Crab was not part of the rationalization program nor was it intended to increase the CDQ allocation from 7.5% to 10%.

Issue 4: Adak allocation in Western Aleutians Golden King Crab Fishery. Council intent was unclear as to who the allocation went to – either Aleut Enterprise Corporation or a non-profit entity representing the community of Adak with the Board elected by residents of that community and the performance standards of that group be similar to that of the CDQ program and clarification after added information from staff at a later meeting.

Issue 5: Regionalization of the initial allocation in the Western Aleutian Islands Golden King Crab Fishery. Intent was to allocate 50% west shares to participants with history in the west. (See #5(B), pg. 7, of these Minutes)

Issue 6: Catcher/Processor definition. A Catcher/Processor has to make a declaration – a business decision – as to whether they are a CP or a floater on a fishery-by-fishery basis or season-by-season basis. Intent was that CPs be unable to access B share crab. If a CP operates their vessel as a CP during the season, they're precluded from buying B share crab in that season.

Issue 7: Sector cap on Catcher Processors. A) Intent is that CP sector-wide cap only applies to CP shares; not to ownership and use of processing shares. B) Somewhat combines (A) and (C) in that a CP can't buy A shares and PQS, and operate as a CP having harvesting privilege in the A shares and the processing privilege in the IPQ. Doesn't preclude the CP from operating as either a CV, with Class A or Class B shares; or as a Processor under the IPQ/PQS provisions. C) Same as (A) above is true on harvest side; a CP could participate as a catcher vessel by buying either A or B shares provided they're delivered to another facility for processing.

Issue 8: Regionalization of PQS Allocation to Catcher/Processors. Problem determining whether they get North or South shares because of taking deliveries and getting PQS for it, but not knowing where they were active. Kevin Duffy handed out a list outlining State of Alaska regulations for registration requirements and vessel location is part of that requirement. (A) will work under provision 8.

Issue 9: Definition of a Lease. The word "not" was omitted from the definition of a lease. Language should read "... when the owner of the underlying QS is not present."

Issue 10: Grandfathering Vessel Use Allocations in Excess of the Cap. Whether grandfathering applications should apply to vessel use if the vessel had history such that the allocation is in excess of the cap. Would that vessel's allocation be permitted to use that whole allocation and essentially be grandfathered above the use cap? Council's intent was that use cap covered everyone, and if not they should be grandfathered. The State further clarified that it was not the Council's intent to engage in a taking, if the individual operation was over those caps, but they could go beyond that.

Issue 11: Cost Recovery Definition. Currently under MSA, the fee recovery program is 3%. Fees would be split 50/50 between harvesting and processing sectors for the program. If a total of 3%, each of those sectors would pay 1.5%. The CP sector, getting privilege on the harvesting and processing side, would pay fee for harvesting and processing. If the total amount charged to harvesting and processing sectors was 1.5% each, the fee charged to the CP sector would be 3% for privilege on harvesting and processing side. The total fee, collectively, can only add up to 3%, but in the end CP sector would pay more collectively than the harvester or processor. There's 3% collected on every delivery, including both A share crab and B share crab, so the processor is paying 50% on that caught as well.

For example: if the total value of crab is \$1M and the actual cost of managing and enforcing this program is \$2M, then the rate for that particular year would be 2%. That 2% of the ex-vessel crab by RAM or NMFS, 50% of the 2% from those who hold harvesting IFQs and the other 50% from those who hold processing IFQs, and for those that hold both – different class of quota – they would pay whatever the percentage is (in this example 2%).

Also intended that loan program and skipper shares would be handled similar to how the fee system is managed under the halibut/sablefish program – 25% would be made available.

Issue 12: Regionalization of the WAI (Adak) Red King Crab Fishery. Allocation of processing QS was mapped after processing shares in the WAI brown king crab fishery. In the BKC fishery all landings were in the south, so regionalization of those shares would be entirely south – there would be no north allocation in that fishery. The red king crab fishery, during harvest years, did have a few deliveries to the north. The fishery's not conducted very near where the deliveries were made – they were made in the north as a means to set up for the opilio fishery which followed. Intent was processors shall share allocations in the WAI RKC fishery are based on historical landings in WAI Golden KC fishery, and this fishery to be regionally designated based on the processor allocation. By default, these would all be designated south in

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minimal deliveries of RKC in the northern region. South designation is used to determine the RKC designation with BKC.

Issue 13: Rules Governing Cooperatives.

- a. Exemption from use caps – Coops would not be subjected to either individual or vessel use caps which would apply to IFQ holders that are not cooperative members.
- b. Application of ownership caps – To effectively limit ownership, the number of shares, IFQs and QS, that each coop member could bring to a cooperative would be subject to ownership caps with initial allocations grandfathered.
- c. IFQ Allocations to Cooperatives – If you're a coop member that holds QS, the allocation of IFQ would be made to the cooperative to be used in accordance with the cooperative agreement.
- d. Leasing – Leasing among cooperative members would be unlimited. For IFQ holders that are not cooperative members, leasing would be prohibited after 5 years. Intent was that it would be allowed after 5 years at which point the Council would have to make a decision whether that leasing would or not.
- e. Inter-Cooperative Transfers – Transfers between cooperatives would be undertaken by the members individually, subject to ownership caps. Requiring the inter-cooperative transfers to occur through members is necessary for the application of the ownership caps. Monitoring and enforcement of total allocations occurs at the cooperative level, similar to AFA.
- f. Four entities are required for a cooperative – Need four entities to create a coop. The AFA, for enforcing ownership caps, identifies an entity by 10% ownership. This definition is consistent with Council's intent to keep them similar to AFA.

C-1(b, c, d) Crab Management – Committee Reports, Trailing Amendments & EIS

ACTION REQUIRED

- b) Receive committee reports - arbitration, captains quota share, and data collection
- c) Initial review of trailing amendments
- d) Receive update on crab environmental impact statement (EIS) progress and Congressional action

BACKGROUND

(b) Committee Reports

The arbitration committee, the captains quota share committee, and the data collection committee will each deliver a report to the Council. The Council chair appointed three committees to develop three aspects of the crab rationalization program as trailing amendments to the June 2002 Council motion. These committees will report to the Council on their progress in developing options and recommendations for Council consideration. The report of the arbitration committee (Item C-1(b)(1)) and the report of the captains quota share committee (Item C-1(b)(2)), including the options developed by the respective committees, are attached. The report of the data collection committee will be provided to the Council at the meeting.

(c) Initial review of Trailing Amendments

The Council identified the following five trailing amendments to the preferred rationalization program for consideration at this meeting:

- 1) **Alternative protections for communities.** These include alternatives that would require community /permission for processing activity to leave a community, a first-right-of-refusal to CDQ groups and community groups on sales of IPQs, and a cap on the allocation of IPQs. The analysis examines the benefits to communities and the effects of these alternatives on both the processing and harvesting sectors.
- 2) **Mandatory binding arbitration.** A system of binding arbitration could be used to resolve failed price negotiations between harvesters and processors. Several different models are proposed for consideration, ranging from a system of fleet wide arbitration to a system in which individual IFQ holders could initiate arbitration proceedings with an IPQ holder. The analysis examines potential of the different systems to efficiently and fairly resolve price disputes in the rationalized fishery.
- 3) **Captains quota shares C shares)** Three percent of harvest shares will be allocated to captains. Several different options are proposed for determining eligibility to receive shares, governing share transfers and use, and limiting ownership of C shares. The analysis examines the different options and their effects on captains, harvesters, processors, and regions through the interactions of the C share program with other aspects of the rationalization program.
- 4) **Sideboard protections.** Sideboard options are proposed to limit the efforts of BSAI crab fishers in the Gulf of Alaska Pacific cod fisheries. In addition, the need for sideboards to protect participants in the Korean hair crab fishery is assessed.
- 5) **Data collection.** A system to collect economic data for evaluating the success of the rationalization program is proposed. The analysis examines the types of data for collection, the system for collecting those data, and protecting confidentiality. This analysis will be in the Council notebooks or delivered at the meeting.

(d) EIS Progress Report

To take final action on the preferred rationalization program, an EIS evaluating the program and alternative management of the BSAI crab fisheries must be completed. Staff of National Marine Fisheries Service (NOAA Fisheries), the Council, and the State of Alaska Department of Fish and Game are currently preparing a draft of the EIS for Council review at the December meeting. Staff will update the Council on the status of that draft. In addition to completion of the EIS, several aspects of the preferred rationalization program are not currently authorized by statute. Staff will update the Council on the status of any Congressional action concerning the rationalization program.

Scientific and Statistical Committee Report

The SSC's minutes on this issue are very lengthy and detailed and are therefore attached as Appendix II.

Advisory Panel Report

The AP's minutes on this issue are also very lengthy and detailed and can be found attached as Appendix III.

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DISCUSSION/ACTION

The Council addressed each trailing amendment individually beginning with Alternative Protections for Communities. **Stephanie Madsen moved to add a new Alternative 3 to 3.6.2, Alternative Regionalization/Community Protection, revised alternative (Option 2) under 3.6.3, Right of First Refusal, and a New Option: Cooling Off Period as follows:**

3.6.2 Alternative Regionalization/Community Protection

Alternative 3: Allow for a community organization in these communities that have at least 1% of the initial distribution of processing history of any BSAI crab fishery to be exempted from the restriction for the 150 days of sea time requirement under 1.6, Transferability and Restrictions on Ownership of QS.

Community organization would be defined as:

1. CDQ groups for CDQ communities
2. Non-profit community group (similar to CDQ group structure) for non-CDQ communities
3. Non-profit community group (similar to group structure under halibut community purchase program) for non-CDQ communities.

Ownership and management of harvest and processing shares by CDQ or community group will be subject to rules similar to CDQ regulations.

3.6.3 Right of First Refusal

Option 2: Allow local government entities for CDQ groups representing communities with at least 1% of the processing history of any BSAI crab fishery except for those communities that receive a direct allocation of any crab species, to be provided the option of first right of refusal to purchase processing quota shares which are being proposed to be transferred for processing outside the boundaries of the community of original processing history.

1. CDQ groups for CDQ communities
2. Local government entity means boroughs and cities or villages outside boroughs for non-CDQ communities.
3. Local government entity means cities or villages for non-CDQ communities.

Timeframe for responses:

1. 30 days
2. 90 days
3. 180 days

New Option: Cooling Off Period

Processing quota earned in a community may not be used outside the community for a period of 2 or 3 years after implementation of the rationalization program.

Suboption: Allow transfer of the greater of 10% of IPQ holdings or 250,000 lbs by fishery (based on 10% ownership standards, similar to AFA).

This option does not apply to PQ for the Western Aleutian Island BKC, Bairdi, and Adak Red Crab.

Further, we request the Chairman appoint a small committee of representatives for eligible communities, processors and harvesting sectors to review existing options and programs.

The motion was seconded by Kevin Duffy. **Stosh Anderson moved to amend the motion under 3.6.3, Right of First Refusal, #3 to add the following to the end of the sentence: regardless of whether or not they are in a borough.” Ms. Madsen accepted this as a friendly amendment. Hazel Nelson moved a friendly amendment to the motion under the Cooling Off Period, effectively adding a third suboption to the first sentence specifying 2 of 3 years after implementation by adding “on a permanent basis” after the words “may not be used outside that community . . .” Ms. Madsen opposed the friendly amendment because she believed it would permanently tie PQ to a community. Kevin Duffy understood Ms. Nelson’s concern but thought it better to be brought up as a separate issue, not as an amendment. Stosh Anderson offered a substitute amendment such that the Cooling Off Period included three options: 3 years, 5 years, and 8 years. The motion was seconded by Jim Balsiger. Dr. Dave Fluharty pointed out that it’s important to realize that the program could be in effect at 2004, at the earliest, and if he were a marginal processor he might consider the Council’s potential action of keeping him in that community for that long a period of time or potentially scaring him out of it until it takes affect. Ms. Madsen thought 8 years a long time and would not support the amendment. To prevent capitalization for that extent of time while simultaneously working on extensions of community protection, she would be more comfortable with 2, 3 and 5 years. Stosh Anderson withdrew the amendment, with Dr. Balsiger’s concurrence.**

Kevin Duffy then offered a substitute amendment so that the Cooling Off Period had three (3) options: 2 years, 3 years, and 5 years. The motion was seconded by Jim Balsiger and carried without objection.

Kevin Duffy amended Ms. Madsen’s motion under the suboption portion of the Cooling Off Period so that the 10% of IPQ holdings or 250,000 lbs would be a range of 100,000 lbs, 250,000 lbs, and 500,000 lbs. The motion was seconded by Stosh Anderson and carried without objection.

Kevin Duffy moved to clarify the Adak allocation as follows:

Goals of Allocation: The 10% community allocation of Golden King Crab was developed to provide the community of Adak with a sustainable allocation of crab to aid in the development of seafood harvesting and processing activities within that community. Adak is a community that has similar attributes to the communities that have already been awarded community development quotas (CDQ). It is a very small second class city with a year-round population of over 100 residents, with commercial fishing as the only source of private sector income. As a Bering Sea community, the transportation alternatives are highly constrained without road, ferry, limited air service, or barge service. While the community government is supported by modest local taxes and municipal assistance, a critical source of revenue is the revenue sharing from the Alaska commercial fisheries business tax. Adak does not qualify as a CDQ community because of the reasons described in the Council staffing document (Agenda C-1(a), October 2002, Supplemental), and the Council’s allocation to Adak is to serve a similar end.

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Criteria for Selection of Community Entity to Receive Shares:

- a. A non-profit organization will be formed under Aleut Enterprise Corporation¹ with a board of directors selected from the enterprise foundation's board.
- b. A non-profit entity representing the community of Adak, with a board of directors elected by the community (residents of Adak) in a manner similar to the CDQ Program. As a suboption, the shares given to this entity may be held in trust by the Aleut Enterprise Corporation and administered by it.

For both options a and b above, a set of use procedures, investment policies and procedures, auditing procedures, and a city or state oversight mechanism will be developed. Funds collected under the allocation will be placed in trust for 2 years until the above procedures and a plan for utilizing the funds are fully developed.

Performance Standard for Management of the Allocation to Facilitate Oversight of the Allocation and Assess Whether it Achieves the Goals: Use CDQ type management and oversight to provide assurance that the Council's goals are met. Continued receipt of the allocation will be contingent upon a) an implementation review conducted by the State of Alaska to ensure that the benefits derived from the allocation accrue to the community and achieve the goals of the fisheries development plan. The motion was seconded by Hazel Nelson.

The Council then discussed who in Adak is eligible to vote for members of the board of directors. Ms. Nelson pointed out that in Bristol Bay there are tribal influences and city government influences and that it may help to clarify that the shares given to this entity may be held in trust **in the interim** by the Aleut Enterprise Corporation. Mr. Duffy accepted that as a friendly amendment.

The Council then discussed other similarly situated communities, for example Shemya. Shemya is a closed community operated by the military. Adak was one of those similarly situated facilities. The military moved out of Adak and it was turned over to the Aleut people to try to develop it into a viable non-military community with its own economy and they are now trying to transform it into a civilian community. In part, this recognizes the transition of Adak and its seafood-related industry and its dependence upon that. After further discussion, Mr. Duffy explained that his intent included the fact that **there are no other similarly situated communities in the Western Aleutian Islands that are not already a CDQ community**. The motion as amended carried without objection.

The Council then moved on to the Binding Arbitration Committee's recommendations. **Stephanie Madsen moved to accept the AP's recommendation that the Council request NOAA-GC provide a legal opinion on anti-trust issues associated with binding arbitration using a fleet-wide single event vs. binding arbitration with individual processors. The Council further requested the Committee address the issues of uniformly applying quality standards at the time of delivery and develop options for a price smoothing function under model 5.** The motion was seconded by Hazel Nelson and carried without objection.

Stephanie Madsen then moved to accept the AP's recommendation on Captain Quota Share to expand the definition of active participation in Section 1.8.1.6 to include evidence from other verifiable sources. The motion was seconded by Dave Fluharty and carried without objection.

¹ The Aleut Enterprise Corporation is a separate corporation from the Aleut Native Corporation formed under ANSCA. The AEC is a multi-ethnic economic development foundation formed to promote economic enterprise in the community of Adak.

Kevin Duffy moved to accept the AP's recommendation on Crab Sideboards requesting staff to expand their discussion on how sideboards would be applied to each vessel, LLP transfers, and a cooperative agreement. The motion was seconded by Dave Fluharty and carried without objection. Ms. Madsen asked, based on public testimony, if staff could include in that discussion how it's done under the AFA and if there are concerns if they aren't effective under AFA.

Dennis Austin moved to direct the Crab Rationalization Data Committee and staff to continue working on mandatory data that meets the intent of the June 2002 Crab Rationalization Preferred Alternative on Voluntary Cooperatives. Complete development of the September 18, 2002 survey instrument, *BSAI Crab Rationalization Program Trailing Amendment Data Collection Program*. The purpose of this activity is to assure that the current survey meets the Council intent in the June motion, addresses the methods of allocating fixed costs across enterprises and disaggregated expenditure and purchase date is required to measure impacts to communities. Council staff is further directed to devise an approach to collect any additional data on community and social impacts and to report on the extent to which meaningful fixed cost data can be collected and used to accurately estimate change in industry profits resulting from crab rationalization. Additionally, staff is directed to evaluate whether use of fish ticket data combined with mandatory collection of crew license file identifiers at each landing may be used to produce an accurate estimate of crew days, by vessel.

Alternative 1: Complete the analysis with the section on fixed costs (e.g., Section 6.2 in the Cost Data Surveys).

Suboption 1: Utilize disaggregated expenditure and purchase data to measure impacts to communities acquired by mandatory data collection.

Suboption 2: Utilize disaggregated expenditure and purchase data to measure impacts to communities that are voluntarily provided through a program analogous to the UAF-ADF&G on-going opilio impact study.

Alternative 2: Complete the analysis without the section on fixed costs (e.g., Section 6.2 in the Cost Data Surveys).

Suboption 1: Utilize disaggregated expenditure and purchase data to measure impacts to communities acquired by mandatory data collection.

Suboption 2: Utilize disaggregated expenditure and purchase data to measure impacts to communities that are voluntarily provided through a program analogous to the UAF-ADF&G on-going opilio impact study.

Alternative 3: Complete the analysis with a subset or variant of the fixed cost data in Section 6.2 of the Cost Data Surveys.

Suboption 1: Utilize disaggregated expenditure and purchase data to measure impacts to communities acquired by mandatory data collection.

Suboption 2: Utilize disaggregated expenditure and purchase data to measure impacts to communities that are voluntarily provided through a program analogous to the UAF-ADF&G on-going opilio impact study.

Confidentiality of Industry Data

Analyze requests by industry to provide the highest level of protection for confidential information and any improvements needed to regulations *and law* with the assistance of legal counsel at the State and NMFS.

The motion was seconded by Kevin Duffy. The Council agreed that this is a very complex issue and it addresses many of the SSC's concerns. Mr. Austin clarified that his intent is to give additional direction to the Committee. **Jim Balsiger made a friendly amendment to the Confidentiality of Industry Data paragraph above**

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inserting the words: “and law” as shown in italics. Mr. Austin accepted the amendment as friendly and understood that confidentiality is extremely important. Several Council members mentioned looking at using a third-party concept. **Stephanie Madsen moved to also recommend the Committee look at using a third-party collector of data.** Lisa Lindeman said that with respect to confidentiality, NOAA-GC would work very quickly with the Attorney General’s office on these issues and asked if the Council intended them to look at confidentiality relative to the third-party similar to the Pacific States Commission? Chairman Benton responded that it would be relative. The motion was seconded by John Bundy and carried without objection.

Stosh Anderson then moved to add a new section entitled “Audit Requirements” to the main motion. Dennis Austin pointed out that mandatory v. voluntary was not an option – this is mandatory data collection. Mr. Anderson clarified that audit requirements would be required in the mandatory section and would be interested in the Committee’s discussion. The motion was seconded by Stephanie Madsen. Kevin Duffy pointed out that in no way is this Council backing off of mandatory data collection. The amendment carried without objection.

John Bundy moved to adopt the AP’s recommendation to request the Council adopt an additional sunk vessel provision for persons whose eligibility to replace their vessel was denied under PL 106-554. The sunk vessel must have been replaced with a newly constructed vessel and have been under construction by June 10, 2002 and participating in a Bering Sea crab fishery prior to October 31, 2002 for a person to receive a benefit under this provision.

For each of the fisheries for which such a vessel holds a valid endorsement, for all seasons between the sinking of the vessel and the entry of the replacement vessel to the fishery within the IRF replacement period (as extended by IRS, if applicable) allocate QS according to (50-100%) of the vessel’s average history for the qualifying years unaffected by the sinking.

Stephanie Madsen seconded the motion. **Stosh Anderson amended the motion by adding clarification that “under construction” is defined as when the keel has been laid.** Stephanie Madsen seconded the motion and it carried without objection.

Kevin Duffy moved that the Council initiate analysis to provide for a different quota share ownership cap for CDQ organizations. The range for analysis is as follows:

Area / Species	Quota Share Pool Percentages
Bristol Bay red king crab	1%, 3%, 5%
Bering Sea opilio crab	1%, 3%, 5%
Bering Sea bairdi crab	1%, 3%, 5%
Pribilof red and blue king crab	2%, 6%, 10%
St. Matthew blue king crab	2%, 6%, 10%
Eastern Aleutian Island brown king crab	10%, 20%, 30%
Western Aleutian Island red king crab	10%, 20%, 30%
Western Aleutian Island blue king crab	10%, 20%, 30%

Discussion points:

- **Council chose a 1% cap on quota share ownership. This is the lowest level considered in the crab rationalization analysis. The action reflected concern about the effects of a buyback program and a desire to limit consolidation until the affects of such a program are known.**
- **CDQ group ownership in these fisheries is relatively new, and no group has reached their planned level of participation. A 1% cap thwarts their plans without the Council specifically having addressed the**

question of what the appropriate level of participation should be for CDQ groups. The Council has previously taken steps to allow CDQ groups more flexibility than private sector stakeholders, given their community development roles.

- It's appropriate for the Council to analyze the cap level for CDQ groups to see if the affects of the preferred alternative on CDQ group participation in the crab fisheries is what the Council intended.
- This is a time critical issue. Quality investment opportunities are limited, and the longer the Council delays action, the more constrained CDQ group options are likely to be.
- The analytical load for this action should be light, with no impact on the EIS content.
- All six CDQ groups support this amendment.

The motion was seconded by Stosh Anderson. **Stosh Anderson amended the motion to add a new row to the bottom of the above table (shown in italics) to include Western Aleutian Islands blue king crab at 10%, 20% and 30%.** The motion was seconded by Hazel Nelson and carried without objection.

Ms. Madsen then amended the motion to define CDQ Group ownership percentage as 10%, 50% and 100%. The motion was seconded by Roy Hyder. Council Members had a brief discussion on these ownership percentages and if CDQ groups would be regulated by them. Mark Fina stated that there are a few different caps in the program: one for harvest shares, one for processing shares and individually and collectively decided for harvest shares and that Ms. Madsen's amendment would amount to vertical integration caps. Mark also clarified that that the amendment would include a mostly qualitative discussion in the analysis of how it could impact CDQ purchases and holdings. Focusing on different percentages and what they mean and talking about what their implications might be. Another issue that will be outlined is how ownership caps might affect the Council's overall intent with regard to CDQ groups. **Hazel Nelson asked if Mr. Duffy's motion could include a qualitative discussion about how coops are formed. Mr. Duffy accepted this as a friendly amendment and the amended motion carried without objection.**

Stosh Anderson then moved on to C-1(d), the EIS portion of Crab Rationalization, by pointing out that he believed the AP's recommended different ratios (Option 1) are all reachable in the original June motion.

Kevin Duffy moved to send out for public review the amended package developed by the Council. The motion was seconded by Stephanie Madsen and carried without objection.

The complete Council motion is attached to these minutes as Appendix IV.

C-1(e) Crab Management – Plan Team Report and PNCIAC Report

ACTION REQUIRED

- e) Crab Plan Team report and PNCIAC report

BACKGROUND

The Crab Plan Team met in Anchorage on September 19-20 to review the status of stocks and assemble the Stock Assessment and Fishery Evaluation Report (SAFE). Minutes of the meeting are attached as Item C-1(e)(1). There are positive signs of future recruitment for bairdi Tanner crab and Bristol Bay red king crab. For opilio crab, the survey indicated much fewer pre-recruit crab than expected. The Pribilof Islands blue king crab biomass was projected to be below a threshold level, so a rebuilding plan may be required. Members of the Plan Team will be on hand to summarize their findings.

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The Pacific Northwest Crab Industry Advisory Committee (PNCIAC) met in Seattle at the Alaska Fisheries Science Center on September 13 to review GHs and make recommendations to ADF&G on management of the fishery. The PNCIAC also discussed rules of procedure for future committee meetings. Chair Gary Painter will report on the recommendations of the PNCIAC.

Scientific and Statistical Committee Report

The SSC received reports from both the Crab Plan Team (CPT) and the Pacific Northwest Crab Industry Advisory Committee (PNCIAC). The Crab Plan team noted several crab stocks were stressed and there was discussion on the appropriate timeframe to use for MSST. The team also discussed the work of biological reference point estimates for seven GSAI crab stocks. Initial results of the study suggest current maximum harvest rates for snow and Tanner crab may be too high. The team believes that these study results will be useful to the examination of crab overfishing definitions. PNCIAC noted that its recommendation to consider an intermediate step between the 10% and 15% exploitation rate for mature red king crab was supported by the CPT. The Committee also noted that because of declining crab stocks, the crab industry is going through difficult economic times.

Advisory Panel Report

The Advisory Panel did not address this issue.

DISCUSSION/ACTION

The Council received reports from both the Crab Plan Team and the PNCIAC, however there was no Council action on this agenda issue.

C-2 Steller Sea Lion Management Measures

ACTION

- a) Receive update on litigation
- b) Final action on two trailing amendments
- c) Final action on Cape Sarichef closure

BACKGROUND

Litigation

In October 2001, the Council adopted a suite of fishery and area specific measures to mitigate potential impacts of pollock, cod, and mackerel fisheries. This suite of measures was deemed to avoid jeopardy and adverse modification of critical habitat for Steller sea lions in the October 19, 2001 Biological Opinion, which is being challenged in US district court (*Greenpeace, American Oceans Campaign, and Sierra Club vs. NMFS*). The plaintiffs allege that the biological opinions do not "adequately discuss or address" key factors relevant to the Endangered Species Act's jeopardy and adverse modification of critical habitat standards, and that the biological opinions' determinations that the fisheries are sufficiently protective of Steller sea lions and their critical habitat are arbitrary and capricious, unlawful, and an abuse of discretion. A court hearing with Judge Zilly is scheduled for October 30.

Trailing Amendments

In October 2001, the Council adopted alternative 4 of the draft Supplemental Environmental Impact Statement (SEIS) as its final preferred alternative to protect Steller sea lions, with only minor

modifications and clarifications. The Council also identified eight items to be analyzed in a trailing amendment, for possible implementation in the 2003 season (Item C-2(a)).

At the February meeting, the Council voted to move ahead with analysis of two trailing amendments, items #7 and #9 (the AI pollock fishery allowance, and the Board of Fisheries exemptions). All of the other items, with the exception of item # 4 (exemption for all vessels < 60') would be sent to the sea lion committee for their review and recommendations. In April, the Council requested that the sea lion committee also consider possible season date changes for the GOA pollock and cod fisheries. The sea lion committee has not yet met to discuss possible tradeoffs that may be required to implement any of these options and still avoid jeopardy and adverse modification of Steller sea lion habitat.

In June, the AP reviewed the analysis for the two trailing amendments, and recommended adoption of Alternative 1 (no action on AI pollock) and Alternative 5 (exempt pot vessels). Their minutes are as follows:

The AP recommends Alternative 1 - no action. The analysis states "Alternative 1 would not jeopardize the continued existence of the SSL or adversely modify critical habitat." The AP believes that if there are concerns with the status of the pollock stocks, those should be dealt with under the annual TAC setting process, as has been done in the past. *Motion passed 13/1*. Additionally, the AP recommends the Council adopt Alternative 5, Exempt pot fishing vessels from sea lion closures from 0-3 nm around Canton Island and Cape Barnabas. *Motion passed 14/0*

At this meeting, the Council will make a final review of the analysis (executive summary attached as Item C-2(b)). The analysis examined five alternatives. Alternatives 1 to 3 are mutually exclusive and Alternatives 4 and 5 are mutually exclusive. However any of Alternatives 1 to 3 may be chosen in combination with either Alternative 4 or 5.

Aleutian Islands pollock

Alternative 1: Allow an AI pollock fishery with split season outside of critical habitat, with 40% of the TAC from January 20-June 10, and 60% of the TAC from June 10-November 1.

Alternative 2: Closure of the AI to pollock fishing.

Alternative 3: Allow an AI pollock fishery with a single season outside of critical habitat.

Caton Island-Cape Barnabas Pacific cod pot

Alternative 4: No exemption for vessels using pot gear.

Alternative 5: Exempt pot fishing vessels from sea lion closures from 0-3 nm around Caton Island and Cape Barnabas.

Cape Sarichef closure

NMFS has prepared an analysis of a regulatory amendment to close approximately 130 square miles of waters north of Unimak Pass to groundfish fishing during the last two weeks of March during the years 2003-2006 (executive summary attached as Item C-2(c)). The reason for this action is that NMFS Alaska Fishery Science Center is planning to conduct an experiment to test for measurable localized depletion of Pacific cod due to bottom trawling. Copies of the analysis were distributed in early September. Final action at this meeting is necessary to complete rulemaking in time for the experiment to be conducted this coming spring. Alternatives examined in the analysis are as follows.

Alternative 1: Status quo/no action.

Alternative 2: Close the treatment area to all trawling between March 15 and March 30.

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Alternative 3: Close the treatment area to all trawling, longlining, and fishing with pots between March 15 and March 30.

NMFS staff will be on hand to discuss the experiment and the analysis of impacts.

Items for a trailing amendment:

- 1. Area 8 exemption: allow catcher vessels (of any LOA) using longline gear to fish 3-10 nm from haulouts of Reef-Lava and Bishop Point.**
- 2. Area 4 exemption: allow vessels under 60 feet LOA using fixed gear to fish in waters of the Chignik area.**
- 3. Stand down provisions between A/B and C/D seasons for pollock in the GOA**
- 4. Exemption for all longline, pot, jig gear, and trawl catcher vessels and catcher processors under 60 ft. Identify as a preliminary preferred alternative that the exemption would only apply to catcher vessels.**
- 5. Examine options for a Gulf of Alaska Pacific cod split other than the current 60/40 split.**
- 6. For the BSAI Atka mackerel fishery, analyze options to change percentage inside/outside critical habitat of 50/50 and 70/30.**
- 7. For the Aleutian Islands pollock fishery, examine three options:**
 - a) closure;**
 - b) a single season outside of critical habitat;**
 - c) a split season (40/60 % of TAC).**
- 8. In Area 9, analyze a range of caps for pot, longline and jig gear.**
- 9. (December 2001 addition). The Board of Fisheries modifications.**

Comparison of measures adopted by the Council and by the Board of Fisheries.

<u>Area</u>	<u>Council Action</u>	<u>Board Action</u>
Cape Barnabas	0-3 nm open to jig gear 0-3 nm closed to trawl & fixed gear	0-3 nm open to jig gear 0-3 nm open to pot gear
Caton Island	0-3 nm open to jig gear 0-3 nm closed to trawl & fixed gear	0-3 nm open to jig gear 0-3 nm open to pot gear
Chignik Area	Open State waters cod fishery seven days after closure of directed Federal season in Central Gulf	open state fishery on March 1

Scientific and Statistical Committee Report

The SSC received a report from John Sease with NMML (AFSC). Counts of non-pups in both the eastern and western stocks generally showed an increase in the 2002 surveys and while still in decline,

appear to be declining at a much slower rate than in previous periods. The SSC cautioned that it is too soon to conclude that the western population is recovering.

The SSC also received a report on the Cape Sarichef Closure. The report was presented by M. Elizabeth Conners (AFSC) and Ben Muse (NMFS). The SSC's minutes included review of the Experimental Design (Appendix A of the EA) and review of the EA. The SSC itemized elements of the experimental design and can be seen in their entirety in Appendix II.

Advisory Panel Report

The Advisory Panel recommended the Council adopt Alternative 4 for the Cape Sarichef closure with the closure contingent on the continuation of the experiment.

DISCUSSION/ACTION

Kevin Duffy moved to accept Alternative 2, maintaining the closure of the Aleutian Island pollock fishery for one year. Stephanie Madsen seconded the motion. Mr. Duffy's reasoning for maintaining this closure was substantiated by the following facts:

- the Aleutian Islands continue to see the Steller sea lion population decline.
- Pollock are an important component of prey diversity and forage availability when the weaned pups are feeding; the SSC, in April 2002, recommended certain modifications to the SSL trailing amendments address the Aleutian Island pollock fishery by providing a history of why the fishery was originally closed and what changed to justify its reopening.
- Uncertainties in stock structure of pollock in the Aleutian Islands makes it difficult to understand the impact of a fishery outside of 20 nautical miles.
- Cumulative effects analysis of multiple fisheries is not sufficiently analyzed (Atka mackerel, pacific cod and pollock).
- A precautionary approach for one year is called for until additional information is provided.

John Bundy was unsure of the effect of the motion and asked what would happen after one year. Mr. Duffy's response was that the Council looked to the SSC for advice and that he'd like to see some additional analysis, as requested by the SSC that would be factored into the analysis relative to the future of the pollock fishery. Mr. Duffy explained his assumption that consideration of additional information and absent Council action, the pollock fishery would open in 2004. **Dave Fluharty moved a substitute motion to adopt Alternative 1.** The motion was seconded by John Bundy. The motion failed 5-5.

Dr. Fluharty explained that many new studies have provided substantial information on what the effects would be by opening the fishery. Dr. Fluharty believed the proposed opening to be very cautious, not a wide-open measure, and if the Council took this action it would still be considered precautionary. John Bundy pointed out that the objective is to maintain Steller sea lion protection while avoiding unnecessary burdens on fisheries. Chairman Benton spoke to the substitute motion and why he couldn't support it. Back in 1998, the reason the Council closed the fishery was problems with the stocks and Steller sea lions. At that time the Council didn't have sufficient analysis to reopen the Aleutian Islands, with confidence, because the analysis didn't show cumulative effects of reopening the pollock fishery and how it would react with Steller sea lions and new fishery management measures. Because of the Council's action on Steller sea lions and other actions with other fisheries when it was closed the Council needed to look at how that fishery would change and interact with other fisheries occurring in the region. The reason the Council kept the fishery closed was because of that uncertainty and not having the full analysis in front of them. The SSC identified deficiencies in the analysis and the Council wanted to see

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more cumulative effects. Chairman Benton expressed concern for potentially sending a very confusing message to the court by reopening the fishery. The Council doesn't want to give the impression that they were acting inappropriately without sufficient information. Jim Balsiger stated for the record that the Zippy hearing is on record as being supported by the Biop produced by the Agency as part of the RPA Committee's process, and to avoid jeopardy the Council doesn't have to close the fishery to be cautionary. He supported Dave Fluharty's motion because it helps the Agency to allow the proposed rule go through and they could still accomplish the closure without interfering with the progress of the proposed rule.

Stephanie Madsen moved to amend the main motion to require the Council to take up this issue under the Staff Tasking issue to develop an analysis for 2003. The motion was seconded by Hazel Nelson and carried without objection. The amended motion carried 8-2 with Bundy and Fluharty voting against (Penney absent). The Council agreed to take up this issue under Staff Tasking as staff is already overburdened.

Hazel Nelson moved the Council adopt Alternative 5 (exempt pot fishing vessels from sea lion closures from 0-3 nautical miles around Canton Island and Cape Barnabas), of the Advisory Panel's June 2002 minutes. The motion was seconded and carried without objection.

Stephanie Madsen moved the Council adopt Alternative 4 for one-year under Cape Sarichef closure. The motion was seconded by Kevin Duffy. **Jim Balsiger then moved to amend motion such that it be contingent upon NMFS producing an analysis and meeting with the industry to satisfy their questions.** The motion was seconded by Stosh Anderson. Chairman Benton asked NOAA-GC if this would have to be adopted by emergency regulation to which Lisa Lindeman replied negatively. Ms. Madsen questioned why it didn't have to be an emergency rule. Jim Balsiger answered that NMFS needed to have it in place by late March (almost 6 months). Lisa Lindeman also replied that for an emergency rule, there's a different basis and there have to be unforeseen circumstances. Both the amendment and the amended motion carried without objection.

C-3 Alaska Groundfish Programmatic SEIS

ACTION REQUIRED

Receive Status Report and Update on Schedule

BACKGROUND

In June, the Council finalized a suite of policy alternatives and their accompanying FMP frameworks for analysis. Since then, project team members have worked on revising the work plan, securing additional funding, and getting started on the analysis.

Last November, PSEIS Project Team Leader Steve Davis prepared a modified schedule following receipt of GC's opinion that the first draft required a major overhaul to address a number of weaknesses, the most important being the structure and analysis of the alternatives. That schedule indicated that the agency would work toward having a revised draft PSEIS ready for public review by September-December 2002, and a Final PSEIS ready by September 2003. It was clear by February 2002 that we would not be able to meet these deadlines due to the delay associated with developing a new set of programmatic alternatives. With the support of the Council, considerable effort was made by the project team to construct new alternatives for analysis. The team worked closely with the Council Chairman's Steering Committee, NOAA GC, and with public stakeholder groups. Public review of strawman alternatives provided additional

suggestions of how to define the alternatives. While constructing the new restructured alternatives was truly a joint effort, the time required for this alternative development process resulted in delays in starting the analysis of those alternatives.

Now that the alternatives have been finalized, the team is beginning to describe and analyze four different policy alternatives and seven FMP scenarios. This effort will take some time. Complicating the schedule is the fact that there are a number of other ongoing analyses being conducted by the Region, Science Center, and Council staff. These include: EFH analysis, Crab Rationalization EIS, GOA Rationalization, groundfish stock assessment, preparation of the SAFE reports, resource surveys, and SSL/fisheries investigations. Also, NMFS Administrator Dr. Hogarth has committed the agency to work with the Council to determine the preferred alternative, as well as to prepare the timetable for follow-on actions to appear in the Record of Decision. This requires melding the PSEIS schedule to the Council's meetings. A revised schedule for the analysis is shown below.

REVISED SCHEDULE

- **April 2003** **overview of the revised draft PSEIS presented to Council**
- **Apr-Jun 2003** **Council will determine its preliminary preferred alternative, to be included in the revised draft PSEIS (no later than its June 2003 meeting)**
- **Sep-Dec 2003** **public review of revised draft PSEIS**
- **Jan-Mar 2004** **synthesis and review of public comments**
- **April 2004** **comment summary presented to Council**
- **June 2004** **Council finalizes its preferred alternative**
- **January 2005** **Final PSEIS released for public review**
- **May 2005** **Record of decision**

Scientific and Statistical Committee Report

The SSC did not address this agenda issue.

Advisory Panel Report

The AP did not address this agenda issue.

DISCUSSION/ACTION

The Council received a status report from Steve Davis, NMFS. There was no public testimony or further discussion of this agenda issue by the Council.

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C-4 Improved Retention and Utilization (IR/IU) for Flatfish

ACTION REQUIRED

- a) Receive report from IR/IU Technical Committee
- b) Final action on amendment package for flatfish requirements
- c) Provide direction on trailing amendments

BACKGROUND

In June the Council reviewed an analysis of potential adjustments to IR/IU requirements for flatfish, which are currently scheduled for implementation in January 2003. Potential adjustments include partial retention requirements (as opposed to 100% retention), a delay in implementation for one to three years, and exemptions from the requirements for fisheries with less than 5% bycatch of the subject flatfish species. Final action is scheduled for this meeting.

A critical part of the Council's action in June was to appoint an IR/IU Technical Committee to examine PSC bycatch cooperatives for the flatfish fleet, as a means to accomplish bycatch reductions and facilitate reductions in flatfish discards. The Committee's progress on such a management program may influence the Council's action on the primary IR/IU decision at this meeting. As such, it makes sense to receive the Committee's report at this time. That written report, along with a discussion paper from NMFS on a potential groundfish retention standard, is attached as Item C-4(a).

Following the Committee report, the Council will receive the staff report on the IR/IU amendment package. Depending on the Council's action on that amendment package, further direction to the Committee and/or staff will likely be appropriate, including approval of alternatives and options for formal analysis. The Executive Summary for that analysis is under C-4(b).

Letters received on these issues are under C-4(c).

Scientific and Statistical Committee Report

The SSC did not address this agenda issue.

Advisory Panel Report

The Advisory Panel recommended the Council adopt Alternative 3 to delay implementation of IRIU flatfish regulations for 3 years. However, if possible, superceding regulations would be implemented prior to the end of the 3-year exemption period.

The AP also recommended the Council adopt Alternative 4 exempting fisheries with less than a 5% IRIU flatfish bycatch, upon implementation of IRIU flatfish regulations and that the 5% IRIU flatfish bycatch rate retention exemption be established using a three year rolling average and that the retention exemption be reassessed annually.

The AP further recommended the Council initiate analysis on the three trailing amendments identified by the IRIU Committee, amended by the following, with the understanding that these amendments are interactive in nature and should be analyzed standing alone, and in combination. The Council should clarify that these amendments are limited to BSAI fisheries.

1. Amendment A: Establish Prohibited Species Bycatch Reduction Co-Operatives
 - a. Decision Point 8 — The AP requests the IRIU technical committee further define options for transferability - specifically, can catch history be separated from the vessel, from the LLP and can catch history be subdivided. Further we request the committee provide options for second generation entry into bycatch co-operatives in the event a limited number of co-op form, controlling all available PSC.
2. Amendment B: Create Bycatch caps (Discard Caps) for the Flatfish Fisheries
 - a. No Changes
3. Amendment C: A Minimum Groundfish Retention Standard as an Alternative to Flatfish Retention Requirements
 - a. Decision Point 5:
 1. Eliminate section 5.1: Daily
 2. Add Decision Point 6: Can the groundfish retention limits be measured across groups or pools?
 - 6.1 Groundfish retention limits can be measured across pools
 - 6.2 Groundfish retention limits cannot be measured across pools
 3. Add Decision Point 7: Does a general groundfish retention standard, that isn't species specific, supercede the current pollock and cod retention standard?
 - 7.1 For all fisheries
 - 7.2 For all non-pollock fisheries.

The AP recommended that under Amendment C the following language be included in the preamble:

“The purpose of this amendment is to encourage fishermen to avoid unwanted catch, increase utilization of fish that are taken, and, thus, reduce discards of whole fish to the extent practicable (1997 IRIU EA/RIR/IRFA). Additionally, the AP recommends the Council request NOAA General Counsel to issue an opinion regarding definition of “Bycatch Reduction” under the Magnuson Stevens Act inclusive of the concepts of bycatch reduction by rate and/or amount.

The AP further recommended the 5% flatfish IRIU discard rate exemption, should it be implemented in 3 years for Gulf of Alaska Fisheries, be re-examined as part of the Gulf of Alaska Rationalization Initiative.

DISCUSSION/ACTION

Stephanie Madsen moved the Council adopt Alternative 3, but delay implementation of IRIU flatfish regulations until June 1, 2004 with final action scheduled for April 2003 for the Bering Sea/Aleutian Islands—and GOA. However, if possible, superceding regulations would be implemented prior to the end of the 3-year exemption period.

~~Additionally, the Council would adopt Alternative 4 for the BSAI and GOA exempt fisheries with less than 5% bycatch to be adopted upon implementation of IRIU flatfish regulations and that the 5% bycatch rate retention exemption be established using a 3-year rolling average and that retention exemption be reassessed annually.~~

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~~Further, the Council initiate analysis on the 4 trailing amendments identified by the IRIU Committee, amended by the following, with the understanding that these amendments are interactive in nature and should be analyzed standing alone, and in combination. The Council should clarify that these amendments are limited to BSAI fisheries. described below. Amendments C and D would be on an expedited timeline (i.e., final Council action by April 2003) and Amendments A and B would be accomplished as soon as practicable. Amendments A through C would be limited to the BSAI fisheries. Amendment D would apply to the BSAI and GOA fisheries.~~

1. **Amendment A: Establish Prohibited Species Bycatch Reduction Co-Operatives**
 - b. **Decision Point 8 — The AP requests the IRIU technical committee further define options for transferability - specifically, can catch history be separated from the vessel, from the LLP and can catch history be subdivided. Further we request the committee provide options for second generation entry into bycatch co-operatives in the event a limited number of co-op form, controlling all available PSC.**
2. **Amendment B: Create Bycatch caps (Discard Caps) for the Flatfish Fisheries**
 - b. **No Changes**
3. **Amendment C: A Minimum Groundfish Retention Standard as an Alternative to Flatfish Retention Requirements**
 - b. **Decision Point 5:**
 1. **Eliminate section 5.1: Daily**
 2. **Add Decision Point 6: Can the groundfish retention limits be measured across groups or pools?**
 - 6.1 **Groundfish retention limits can be measured across pools**
 - 6.2 **Groundfish retention limits cannot be measured across pools**
 3. **Add Decision Point 7: Does a general groundfish retention standard, that isn't species specific, supercede the current pollock and cod retention standard?**
 - 7.1 **For all fisheries**
 - 7.2 **All fisheries excluding pollock and cod**

Under Amendment C, the following language will be included in the preamble:

“The purpose of this amendment is to encourage fishermen to avoid unwanted catch, increase utilization of fish that are taken, and, thus, reduce discards of whole fish to the extent practicable (1997 IRIU EA/RIR/IRFA).

4. **Amendment D:** *Establish a regulatory process for the routine review of flatfish bycatch in the BSAI and GOA fisheries and the exemption of fisheries with less than a 5% bycatch if IRIU flatfish from flatfish retention and utilization rules. Similarly, fisheries that exceed this standard would be included in the flatfish IRIU program. The development of this analysis will address NOAA-GC issues associated with frameworked regulatory measures and identify options to best meet the Council intent for timely accountability of fisheries with respect to flatfish bycatch.*

The motion was seconded by Stosh Anderson.

Ms. Madsen pointed out that Amendments A and B provided tools to accomplish Amendment C and that she modified the AP's recommendation from "all non-pollock fisheries" to "all fisheries excluding pollock and cod" due to the public testimony heard.

Sue Salveson was concerned that the motion sounded as if the Council was delaying full implementation for the BSAI and all other fisheries if they fall into those criteria. She didn't think the Council was in a position to say what they could do between now and January 1 to implement these regulations. Chairman Benton clarified that if the motion passed, there would be a delay of IRIU flatfish regulations until June 2004 and the Council would schedule for final action Amendment C for those regulations and put a new program in place. The second part, the 5% exemption, is confusing because in the BSAI if flatfish regulations are delayed the exemption isn't necessary. But in the GOA the 5% exemption would take affect next year.

Ms. Salveson amended Ms. Madsen's motion in three places, as outlined below, with deletions shown stricken out and additions italicized.

- **first sentence, first paragraph**
- **second paragraph, add new Amendment D**
- **third paragraph**

Stephanie Madsen seconded the amendment. **Stosh Anderson moved to amend the amendment by removing "and the GOA" from the first sentence of the first paragraph (as shown stricken out).** The motion was seconded and carried without objection.

David Fluharty said it was pretty clear in the Committee meetings that those in the industry were making a concerted effort to put this on a long-term stable track, and they understood the benefits of one not getting out in front of the other, however he could not support the timing of it. The amended motion passed 9-1 with Fluharty against (Penney absent).

The complete Council motion is attached to these minutes as Appendix V.

C-5 Essential Fish Habitat

ACTION REQUIRED

- a) **Receive EFH committee report**
- b) **Identify final alternatives for analysis**

BACKGROUND

EFH committee report

The Council appointed an EFH Committee in May 2001, to develop alternatives for EFH & HAPC designation, and alternatives to minimize adverse effects of fishing. Since the June Council meeting, the Committee has met twice to review staff reports on preliminary analysis on HAPC & EFH designation, the findings of the effects of fishing, and to develop alternatives to minimize to the extent practicable adverse impacts of fishing on habitat. Draft minutes from the August meeting are attached as Item C-5 (a)(1). Minutes from the September meeting will be distributed.

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This fall, the Committee will undertake discussions to determine HAPC designations outside of the analysis, and a means to incorporate public input to this process.

Identify final alternatives for analysis

At this meeting, the Council is scheduled to adopt a final list of alternatives for analysis. A summarized list of the EFH Committees final recommendations on the designation alternatives for EFH, HAPC, and alternatives for mitigation are attached as Item C-5 (b). The Committee requests additional guidance to discuss the process for HAPC designations outside of the analysis, and a means to incorporate public input. A preliminary draft of the Supplemental Environmental Impact Statement (SEIS) is scheduled to be ready for initial review in April 2003. The draft schedule for the SEIS is attached as Item C-5 (c).

Scientific and Statistical Committee Report

The SSC received a report from Craig Rose, AFSC, on the draft discussion paper “Models for Evaluating Fisheries Effect in Habitat”, by Jeff Fujioka and Craig Rose. The EFH model was originally introduced to the SSC in June and the authors have since then estimated parameters of the model using actual data and informed assumptions. The SSC recommends further development of the model and its inputs and encourages research to fill the obvious data gaps. The SSC encouraged utilization of all data sources in the process of designing alternatives and mitigation measures and recommended a process be developed that allows for the review of model assumptions and results.

Advisory Panel Report

The AP recommended the Council release the EFH and HAPC designations for public review and also requested they consider the following modifications to the EFH Committee’s frameworked mitigation alternatives:

- Adopt the EFH Committee’s mitigation alternatives including Alternative 4 and Alternative 9.
- Treat the gear modification portion of Alternative 4 as a suboption so that the analysis shows the relative affect of the gear-modification component vs. the area restriction component of the measures.
- Direct the EFH Committee to refine the designated open areas in Alternative 9.
- Delete Alternative 7.

The AP recommended the Council request staff to solicit public input on the frameworked EFH mitigation alternatives prior to the December Council meeting as well as requesting the SEIS include many factors such that the Council, Agency and the public can best evaluate the proposed measures. These factors, and the full AP Report on this issue, can be found in the complete AP Minutes attached as Appendix III.

DISCUSSION/ACTION

Earl Krygier moved to adopt the EFH Committee’s recommendations for designation alternatives for EFH and HAPC. The recommendations and alternatives are as follows:

Alternative 1: Status Quo

Alternative 2: Prohibit use of bottom trawls for GOA Slope rockfish, but allow conversion to fixed gear or pelagic trawl gear.

Option: Prohibit use of bottom trawls for GOA Slope rockfish except within designated "open" areas. Provide provisions for gear conversion.

Alternative 3: Prohibit the use of bottom trawl gear for all groundfish fisheries in the Bering Sea and Slope areas of the GOA, except within designated "open" areas. Open areas are based on historic catch and effort information. This alternative includes provisions for rotating open areas. In the Bering Sea, rotating open areas would be designated in Blocks 1, 2, 3, 4 and 6 as identified by the EFH Committee, with 3-year closed period for 1/3 of each block.

Option: Disks/bobbins would be required on trawl sweeps and footropes to reduce contact with bottom, effectively reducing footprint.

Alternative 4: Prohibit the use of bottom trawl gear for all groundfish fisheries in the Bering Sea and Slope areas of the GOA, except within designated "open" areas. Open areas are based on historic catch and effort information. This alternative includes provisions for rotating open areas. In the Bering Sea, rotating open areas would be designated in Blocks 1, 2, 3, 4 and 6 as identified by the EFH Committee, with 3-year closed period for 1/3 of each block. In the AI area, no bottom trawling would be allowed in areas with relatively high abundance of gorgonian corals and sponges.

Alternative 5: Establish closures to the groundfish and scallop fishing with bottom tending gear (longline, pot, dredge and trawl) within the GOA, AI and BS. These closure areas would be based on areas with relatively high abundance of gorgonian corals, sponge and *Boltenia* (sea onions), and designed to preserve relatively un-impacted benthic habitat.

- In Addition:**
- a. Consider the relative advantages to EFH of rationalization.***
 - a(1) Each mitigation alternative shall have an experimental model developed to accomplish monitoring and research. Team EFH will be tasked to identify these experimental models.**
 - b. The Council requests the NPRB to call for proposals and fund research that evaluates the recovery time and habitat recovery process within the Bering Sea rotating areas (i.e. – is three years more than sufficient for recovery?)***
 - c. The Council requests the Joint BOF/Council Committee to develop a shared process that sets up stakeholder meetings to facilitate coordinated BOF/Council evaluation of HAPC and MPA.***

The motion was seconded by Stosh Anderson.

Earl Krygier spoke to the motion and noted that both his and the AP motion eliminated Alternative 7 which was 20% no fishing closures. Mr. Krygier believed Alternative 7 was an ecosystem-based policy alternative more correctly analyzed in the programmatic rather than under habitat alternatives of EFH.

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Additionally, a 20% no fishing closure may be important to protect biodiversity and possibly as a risk averse fishery management tool, but it doesn't address the purpose and needs issues under EFH. For a bookend, Alternative 6 (new Alternative 5) is more reasonable for a precautionary approach.

The Council discussed why the alternatives were set up with fixed points instead of ranges of years in the rolling closures and the percentage amount that would be closed. Staff responded that it's much more straightforward to analyze a number or percentage to be closed instead of a range. This gives the Council staff's best estimate, but when asked to analyze a range staff would typically return with low and high end numbers from which the Council would select within that range. Ms. Madsen also questioned staff on their opinion of the problem statement to which staff replied that the purpose and needs chapter of the analysis was drafted based on Federal Register guidelines for central fish habitat as well as the terms of the settlement agreement. Staff also pointed out that every individual who read the Federal Rule would come away with a different sense of what EFH regulations are.

Stephanie Madsen moved to amend the motion to include the 10 goals recommended by the AP for inclusion in the SEIS. Those goals are as follows:

- 1. Clarification that task of EFH mitigation measures is to reduce habitat degradation that has or has the high probability of negatively impacting the productivity of FMP species.**
- 2. An assessment of the productivity of the FMP species using the SAFE documents and other available information.**
- 3. Information or evidence linking any adverse effects on the productivity of the FMP species to fishing.**
- 4. Evidence that the proposed mitigation measures will properly mitigate specific adverse impacts to FMP species.**
- 5. An assessment of the level of certainty of information used to determine adverse impacts, linkages to fishing and effectiveness of proposed measures to mitigate specific adverse affect.**
- 6. A cost benefit analysis to determine the "practicability and consequences" of adopting proposed mitigation measures. This should also include an assessment of unintended consequences such as increased bycatch and bycatch-triggered closures.**
- 7. An assessment of the costs and benefits of measures already imposed to protect he FMP species including the Bering Sea crab and Pribilof habitat closure areas, salmon, herring, walrus and Steller sea lion closures, and similar closures in the GOA including the Eastern GOA trawl closure and the Mt. Edgecumbe Pinnacles and any other closed areas that restrict impact on local habitat.**
- 8. The two million metric ton cap in the BSAI should also be factored in as an existing mitigation measure since the proposed alternatives recommend that TAC reductions should accompany area closures to further protect habitat by reducing fishing effort.**
- 9. A table that compares the proposed mitigation measures, any adverse impacts to FMP species, certainty of scientific information used to determine adverse impact, projected effectiveness and cost of measures to coastal communities and industry participants and projected unintended consequences.**
- 10. An evaluation and comparison of each alternative to the requirements of the National Standards.**

The motion was seconded by Hazel Nelson and carried without objection.

Stephanie Madsen moved to amend the motion such that Alternative 2 would become Alternative 2A, and the suboption combined with the language in Alternative 2A would become Alternative

2B. The motion was seconded by Hazel Nelson and carried without objection. **Stephanie Madsen further moved to amend the motion by adding suboptions to both Alternatives 3 and 4. The suboption would drop Block 1, but keep Blocks 2, 3, 4 and 6 as rotating open areas. The motion also changed the 3-year closed period to a 4-year closed period for 25% of each block. The motion was seconded by John Bundy and carried without objection.**

Stosh Anderson moved to add language to the main motion above as “a(1)” and underlined in the italicized paragraph entitled “In Addition”. The motion was seconded by Earl Krygier and carried without objection.

Dave Fluharty moved that the Council adopt the following EFH Problem Statement:

PROBLEM STATEMENT

The productivity of the North Pacific ecosystem is acknowledged to be among the highest in the world. The Council intends to ensure the continued sustainability of FMP species by considering additional, precautionary and reasonable management measures. Recognizing that in the North Pacific potential changes in productivity may be caused by fluctuations in natural oceanographic conditions, fisheries, and other non-fishing activities, the Council intends to take action in compliance with the requirements of the Magnuson-Stevens Act to protect the productivity of FMP species by considering additional measures to reduce adverse effects of fishing activities on habitat essential to managed species.

To accomplish this task the Council will undertake an EIS analysis to:

- 1. Identify and designate Essential Fish Habitat**
- 2. Develop designation criteria for identification of Habitat Areas of Particular Concern (HAPC), and**
- 3. Consider implementation of additional management measures to mitigate, to the extent practicable, identified adverse impacts of fishing on habitat essential to the continued productivity of FMP species. ~~The intent of these actions is to address fishery effects, using the best scientific information available, that have been identified to impact habitat in such a way that they have a high probability of adversely impacting the productivity of FMP species.~~**

The motion was seconded by Stosh Anderson. There was a short discussion with NOAA-GC focusing on compliance with the Magnuson-Stevens Act. **Stosh Anderson moved to delete the last half of #3 above as shown stricken out.** The motion was seconded by Hazel Nelson and carried without objection.

The Council discussed whether or not at the end of this process they needed to officially identify HAPC sites. Chairman Benton recalled when identifying alternatives for HAPC sites, one problem was how it was to be looked at without specific examples of how they would work. The Council identified a suite of alternatives for more specificity to review the different alternatives. They would be used in the analysis and under each alternative for HAPC where some might fit and some might not. This was intentional to show a difference. Just because it goes through analysis doesn't mean it's a HAPC site. **Dave Fluharty moved that the Council adopt the EFH Committee recommendations under a trailing amendment that would be tasked upon the Council taking final action on the main motion and taking the HAPC type analysis and site analysis and putting that on a process that starts immediately.**

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David Witherell, NPFMC staff, addressed how this would affect staffing time and the analysis by stating that when analyzing the effects of HAPC alternatives of different aspects of the environment (seabirds, social/economic conditions, etc.), it will be simple and straightforward. It wouldn't take much staff time or get too involved in utilizing examples. Descriptions of habitats, then looking at HAPC alternatives and describing how each alternative might be applied for that explicit example. Chairman Benton commented that there was obviously still some confusion whether or not that meant the Council had selected a particular place or lines on a map and designated it as a specific HAPC. The Council's intent was to have a process within that framework. Mr. Witherell stated that was how he envisioned the analysis to work. In December at final action, the Council would pick one of these HAPC alternatives. There would be enough information in the analysis at that time for them to pick one or all four HAPC examples, but there won't be information in the analysis to include any actions relative to fishery impacts on those HAPC types of areas outside of the mitigation alternatives.

Chairman Benton then clarified the Council's intent, which is to choose amongst the alternatives such that they could set up a subsequent process to select and designate certain HAPCs, and have a public process in which to do that. NOAA-GC responded that there is no requirement in the statute or final rule requiring the Council designate HAPC. It's an option of the Council; but the Council can, in this process, establish a public process where proposals are provided and they could put parameters based on what is in the final rule which talks about designating HAPC based on sites or types. The Council could, each time a proposal is brought to them, make a determination at that time.

The motion was seconded and carried without objection. The complete Council motion is attached to these minutes as Appendix VI.

C-6 GOA Groundfish Rationalization

ACTION REQUIRED

- a) Review scoping paper and scoping meeting summaries
- b) Review committee report and provide direction as necessary

BACKGROUND

Public scoping

The Council is considering management measures that are intended to rationalize the Gulf of Alaska groundfish fisheries at the request of the GOA groundfish industry. The Council has adopted a problem statement and objectives in April 2002; these are listed on page 3 of the scoping report (Item C-6(a)). The Council has not yet adopted a suite of alternatives for analysis, pending completion of the scoping process.

NMFS has been holding a series of public scoping meetings to gather information (notice of Scoping attached as Item C-6(b)). Public comment will help determine the issues of concern and the appropriate range of alternatives for the Supplemental Environmental Impact Statement (SEIS). Glenn

SCOPING MEETINGS		
Sand Point	August 17	9 AM - 12 NOON
King Cove	August 18	9 AM - 12 NOON
Kodiak	August 23	1 - 4 PM
Cordova	September 16	5 - 8 PM
Homer	September 24	2 - 5 PM
Petersburg	September 26	3 - 6 PM
Seattle	October 1	6 - 9 PM

Merrill, NMFS staff, will present the GOA groundfish rationalization scoping report and summaries of the first three scoping meetings (Item C-6(c)). NMFS is accepting written comment on this proposed action for the SEIS through November 15, 2002. A final scoping report is scheduled to be presented to the Council at its December meeting. If numerous comments are received close to the November 15 deadline, a preliminary report may be provided in December, with a final report in February 2003. The Council may wait to receive the final report before adopting the final suite of alternatives, elements, and options and initiating the formal analysis.

Committee report

The Gulf of Alaska Work Group convened its third action-oriented meeting in September. The workgroup's task is to provide recommendations on the suite of alternatives to revise management of the GOA groundfish fisheries. While the recommendations have not been finalized, the workgroup has identified initial alternatives for analysis (see below) and has narrowed its accompanying suite of elements and options. The workgroup has scheduled two additional meetings and will forward its final recommendations at the December 2002 Council meeting.

GOA WORK GROUP MEETINGS	
October 1	Seattle
October 16-17	teleconference
November 25-26	Anchorage

DRAFT ALTERNATIVES FOR GOA GROUND FISH RATIONALIZATION ANALYSIS

- ALTERNATIVE 1. No action
- ALTERNATIVE 2. Revise the License Limitation Program
- ALTERNATIVE 3. Harvester only allocation ("1-pie")
 - Option 1. Quota share program
 - Option 2. Cooperative program
- ALTERNATIVE 4. Harvester allocation with closed class of processors ("1-pie," with a closed class of processors)
 - Option 1. Quota share program
 - Option 2. Cooperative program
- ALTERNATIVE 5. Harvester and processor allocations ("2-pie")
 - Option 1. Quota share program
 - Option 2. Cooperative program

The GOA Work Group will provide the minutes from its September 19-21 meeting in Kodiak during this meeting (a brief committee meeting to review draft September minutes is scheduled for Tuesday afternoon, October 1).

Scientific and Statistical Committee Report

The SSC did not address this agenda issue.

Advisory Panel Report

The AP requested the Council endorse the letters and information request (Appendix 1-4) drafted by the GOA Working Group and further request the Working Group receive a response by November 1, 2002, if possible. The Information request (Appendix 1-4) can be found attached to these minutes as Appendix VII.

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DISCUSSION/ACTION

Kevin Duffy began the discussion by stating that he reviewed the data requests to the State of Alaska and the AP asking the State and IPHC to respond by November 1, and thought the intent of the Council is that there are spillover effects. He supported the request and acknowledged that the State wants to participate, but thinks the timeframe is short. Stephanie Madsen commented that she and the GOA Working Group are very sensitive to the fact that they were coming to this meeting with elements and options and the approach the Committee has tried to take is to structure the analysis with enough flexibility to structure the analysis by gear type, area, and species. It is a complex issue and the Council agreed the Committee had accomplished a lot of good work and looked forward to seeing the results of the scoping process.

Hazel Nelson moved to accept the AP recommendation that the Council endorse the letters and information request (Appendix 1-4) drafted by the GOA Working Group, but not by the November 1, 2002 deadline. The motion was seconded by Stephanie Madsen and carried without objection.

C-7 CDQ Program

ACTION REQUIRED

Review and comment on the State of Alaska's initial allocation recommendations for the 2003 - 2005 CDQ fisheries.

BACKGROUND

The State of Alaska is forwarding to the Council its initial recommendations for CDQ group allocation percentages for the 2003 - 2005 CDQ fisheries. Included in this 3-year allocation cycle are allocations to the CDQ groups for groundfish, prohibited species, crab, and halibut. A table showing a comparison of the 2001 - 2002 CDQ allocations and the State of Alaska's 2003 - 2005 recommendations is attached as Item C-7(1).

The Community Development Plans (CDP) developed by each group for the 2003 - 2005 allocation cycle were submitted to the State by July 1. The executive summaries of the CDPs and the State's initial allocation recommendations were mailed to you on September 11. Prior to developing the recommendations, the State conducted a public hearing on August 27, and each of the six CDQ groups were also provided a private hearing. Upon notifying the groups of the State's allocation recommendations on September 9, the State also provided an opportunity for the groups to comment and allowed additional time in the process to respond to the groups' comments in writing. These changes represent efforts to improve the administrative process for determining CDQ allocations, so that the groups may better understand the basis for the State's CDQ allocation recommendations and may respond to or rebut the State's recommendations before they are finalized.

A formal letter to the Council, which includes the State's initial allocation recommendations, the evaluation criteria in State regulations, and the scorecard utilized by the State CDQ Team, is provided as Item C-7(2). The CDQ groups' comments on the initial allocation recommendations and the allocation process, and the State's responses to those comments, are provided as Item C-7(3). The State will be available to answer questions that arise as a result of this letter or in public testimony.

This consultation with the Council is required under Federal regulations before the State may submit its recommendations to NMFS for approval and implementation. The State is required to

submit its allocation recommendations and the rationale supporting those allocations to NMFS on October 15.

Scientific and Statistical Committee and Advisory Panel Report

Neither the SSC nor the AP addressed this agenda issue.

DISCUSSION/ACTIONS

Hazel Nelson voluntarily recused herself from this issue, but not all CDQ issues. John Bundy also recused himself for the CDQ agenda issue. **Stephanie Madsen moved to approve the State's allocations for the years 2003 through 2005.** The motion was seconded by Stosh Anderson. The Council recognized some controversy regarding the evaluation criteria used by the State to determine the allocation recommendations as well as the mechanics by which appeals of the final agency decision can be made. The Council also noted concern with the ability of NMFS to enforce the regulations governing the program. The Council agreed these issues did not warrant holding up approving allocations. Dennis Austin agreed with Ms. Madsen's concern that the Council consider the two red flag issues (enforcement and an appeals process), and any further work by the Council under the Staff Tasking Issue (D-2). Stosh Anderson remarked that the State was doing a good job on how CDQ allocations are being distributed and the State's involvement has been successful. The motion carried without objection and the Council agreed to that any further discussion of this issue would be addressed under Staff Tasking.

C-8 Observer Program

ACTION REQUIRED

Review Observer Advisory Committee report and provide further direction.

BACKGROUND

The Observer Advisory Committee convened on January 18-19 in Seattle to consider the need to restructure the North Pacific Groundfish Observer Program (Observer Program), based on direction from the Council and issues stemming from NMFS, industry, observer providers, and observers. The meeting agenda is attached as Item C-8(1). The purpose of the meeting per Council direction was as follows:

**"The Council also tasked the Observer Advisory Committee (OAC) to discuss long-term changes to the Observer Program at their upcoming meeting on July 18-19. The Council would like the committee to report on whether the Council and NMFS should begin a formal scoping process to initiate an analysis to restructure the Observer Program. The Council would like the committee to include discussion of a problem statement, goals and objectives, cost equity issues across fishing sectors, and consideration of the Research Plan and other past Council efforts to restructure the program."
(Council newsletter, April 2002)**

The committee reviewed the primary issues from each stakeholder group, attempted to identify whether any of the issues overlap, and considered what type of change would best address those issues. This discussion centered around the need for an overall program design change versus incremental changes within the current framework. During the meeting, the committee reviewed the Observer Program's goals and objectives and a condensed version of a previous discussion paper: "Re-Development of Options to Fund the Domestic Groundfish Observer Program in the

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EEZ Fisheries off Alaska” (September 1998), in an effort to consider past efforts and obstacles to restructuring the Observer Program. The committee was also presented with information on observer costs by fishing sector (1999 and 2000), the percentage of total observed catch by fishing sector (1997, 2000, 2001), and potential changes to the Magnuson-Stevens Act that could influence the nature and direction of the restructuring of the Observer Program. The committee also received information on indirectly related issues such as the ongoing Digital Observer Project and observer insurance coverage. The committee’s full report is attached as Item C-8(2).

Overall, the committee supported full Federal funding of the Observer Program but agreed that a process should be undertaken to develop a program design(s) that would include a blend of Federal funding and a fee plan. In order to facilitate further progress, the committee generally supported allowing NMFS and Council staff to work on some of the preliminary information needs and receiving Council direction in October. Should the Council choose to formally initiate an analysis of the effects of a new program design, the next likely steps would be to formalize a problem statement and determine specific alternatives for analysis. The Council may want to initiate these steps by providing additional direction to the committee. December may be a more appropriate meeting to make this issue a major Council agenda item.

Lastly, because of recent changes to the representative membership of the Observer Advisory Committee, a list of current committee members is attached as Item C-8(3).

Scientific and Statistical Committee Report

The SSC did not address this agenda issue.

Advisory Panel Report

The AP recommended the Council support the work of the Observer Advisory Committee and task them with developing a problem statement and alternatives to be presented at the December meeting.

DISCUSSION/ACTION

Roy Hyder moved to adopt the AP recommendation to support the work of the Observer Advisory Committee and task them with developing a problem statement and alternatives to be presented at the February 2003 meeting. The motion was seconded and carried without objection.

C-9(a) Additional Sideboards for Winter Pacific Cod Fishery

ACTION REQUIRED

- a) Initial review of measures for BSAI winter Pacific cod amendment

BACKGROUND

In April 2001, the SSC and AP conducted an initial review of the EA/RIR/IRFA for Amendment 73 (Pacific cod sideboard provisions). Due to time constraints, the Council did not address this agenda item. The SSC recommended the document to be released for public review once additional information on trawl locations, CPUE, and a further summary of the winter Pacific cod fishery by fleet type and month has been included. The AP recommended the document not be released for public review until additional information concerning the impacts of Pacific cod sideboards to AFA and non-AFA vessels has been included in the document.

The EA/RIR/IRFA was revised to reflect the SSC's comments and some of the information requested by the AP, and is presented now for initial review. Copies of the analysis were mailed out two weeks ago. The Executive Summary is attached as Item C-9(a)(1).

The purpose of this action is to provide greater protection to non-AFA trawl catcher vessels targeting BSAI Pacific cod during the months of January and February. The concern is over impacts to the non-AFA vessels that have traditionally fished Pacific cod and may have been subject to increased competition as a result of implementation of the AFA. The potential impacts of this increased level of competition include factors such as decreased catch per unit of effort resulting in longer fishing times per trip, reductions in catch, and decreased safety.

Alternatives under consideration include:

Alternative 1: Retain current sideboards measures

Alternative 2: Limit access to the Pacific cod directed trawl fishery during January and February to cod-exempt AFA vessels and to open access vessels which have demonstrated an economic dependency upon the winter Bering Sea Pacific cod fisheries, demonstrated by average January, February deliveries of at least 500,000 lbs for 4 out of the 5 pre-AFA years of 1995-1999

Alternative 3: Allocate catch to non-AFA vessels based on Alternative 2 under two options:
option 1. a range of 2.5 to 5 million lbs (with no cap)
option 2. historical catch of TAC of Pacific cod

Alternative 4: Require co-ops to limit the fishing impact AFA vessels have on the cod grounds so as not preempted non-AFA vessels from their historical participation.

At this meeting, the Council will review the analysis and consider releasing it for public review. The Council has not formally identified a Problem Statement for this proposed action, but could consider adopting one before releasing the document for public review.

Scientific and Statistical Committee Report

The SSC did not address this agenda issue.

Advisory Panel Report

The AP requested that Alternative 2 be amended to read:

Limiting access to the directed trawl fishery for Pacific cod in January and February in Area 655430 to open access vessels which have a history of economic dependency upon the winter Bering Sea Pcod fisheries, demonstrated by average January and February deliveries of at least 250,000 lbs for 4 out of 5 pre-AFA years of 1995-1999 and to the cod exempt AFA vessels.

Additionally the AP requested the document be sent out for public review with the comments from their April 2002 Minutes. These comments are quite lengthy and can be found in their entirety as Appendix III attached to these minutes.

DISCUSSION/ACTION

Roy Hyder moved to accept the AP's recommendations in their entirety (see Appendix III, attached to these minutes). The motion was seconded by Stephanie Madsen. Chris Oliver commented on the extensive workload this would create for the analysis including rationalization of the BSAI alternative and both additional

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alternatives. He also alluded to the gaps and less than encouraging information by the SSC in previous information and thought that perhaps the motion could be bifurcated separating Alternative 2 from the remainder of the AP recommendations. Jon McCracken, NPFMC staff, speaking to the modified alternative suggested in the AP minutes, remarked that the rationalization of the cod trawl fishery would be a pretty extensive project. Chairman Benton asserted that in terms of analytical work, if the Council didn't change alternatives but simply looked at the requests, there was still a lot of work involved. Redistribution under AFA would probably be pretty significant as well as the CPUE. Chairman Benton suggested that maybe the Council could draw a line in the AP Minutes having staff complete the tasks above CPUE, while excluding everything below. Mr. McCracken agreed with Chairman Benton and commented that the data above the CPUE line could be included with the exception of discussion of latent licenses.

Hazel Nelson pointed out that in public testimony one AFA sector requested clarification of catcher vessels. Chris Oliver responded that he believed it was always assumed that was the case. Mr. Hyder agreed that was the intent of his motion.

Kevin Duffy moved to amend the motion deleting “other ‘latent’ (?) non-AFA catcher vessels” and “non-LLP endorsed trawl CV’s fishing in State waters” from both the second and third paragraphs of page 7 of the Advisory Panel Minutes, as well as deleting the remainder of the motion beginning with the CPUE paragraph also on page 7 of the Advisory Panel Minutes. The motion was seconded by Dave Fluharty. Chairman Benton asked Mr. Duffy if it was his intent the Council discuss the last sentence of the AP minutes regarding the SSC’s comment encouraging the parties to continue working toward a negotiated agreement. Mr. Duffy replied affirmatively. **Stephanie Madsen moved to amend the amendment so as not to delete from the CPUE paragraph to the end of the AP Minutes, but for staff to provide information to the extent practicable in order to keep to the timeline of the December meeting.** The motion was seconded by John Bundy and failed 7-3 with Balsiger, Duffy and Madsen voting in favor. Mr. Duffy’s amendment carried without objection.

Dave Fluharty moved to delete the problem statement portion of the AP minutes and include a revised problem statement to read as follows:

Problem Statement

The problem being addressed by this amendment is a claim by three non-AFA vessels, who have historically harvested BSAI Pacific cod during the January and February period that competition on the winter cod grounds has increased considerably ~~in the past two years~~ because of AFA. AFA-qualified trawl catcher vessels, that normally targeted pollock during this period prior to the AFA, can now transfer their share of pollock allocation to other more efficient cooperatives members and thus are free to now target winter cod. The increased competition is thought to adversely impact open access vessels through lower catch per unit of effort, reduction in catch, and increased dangers to smaller vessels from crowding on the fishing grounds. Section 211 of the AFA Requires the Council to recommend measures necessary to protect participants in other fisheries from the adverse impacts caused by the AFA or by fishery cooperatives in the directed BSAI pollock fishery.

The motion was seconded by Stosh Anderson. **Kevin Duffy made a friendly amendment to the end of the first sentence deleting the words “in the past two years”.** Dave Fluharty concurred with the friendly amendment and the motion carried without objection.

The complete Council motion is attached to these minutes as Appendix VIII.

C-9(b) Single Geographic Location Change

ACTION REQUIRED

b) Final action on single geographic location amendment.

BACKGROUND

In April 2002, staff presented for initial review the EA/RIR/IRFA for Amendment 62/62. The Council approved the document for public review with final action scheduled for June 2002. In June, the Council deferred final action on single geographic location until October 2002 meeting, while taking final action on inshore/offshore language revisions portion of the amendment package. The Executive Summary is attached as Item C-9(b)(1).

The purpose of this action is to provide greater flexibility for AFA-qualified inshore floating processors by allowing them to process targeted BSAI pollock in more than one geographic location during a single fishing year. There are two alternatives under consideration in this action item. The first alternative is to leave intact the language that restricts AFA-qualified inshore floating processors to a single geographic location during a single fishing year while processing BSAI targeted pollock. The second alternative would require AFA-qualified floating processors in the BSAI directed pollock fishery to operate in a single geographic location in state waters for the duration of each reporting week but would allow location changes between weeks. In addition, AFA inshore processors would be required to process all GOA pollock and GOA Pacific cod in the same location they processed these species in 2002.

Scientific and Statistical Committee and Advisory Panel Report

Neither the SSC nor the AP addressed this agenda issue.

DISCUSSION/ACTION

Stephanie Madsen moved to adopt Alternative 2, the AP’s recommendation from the June Meeting, with two changes: one being to limit the alternative to the Bering Sea management area, and two to limit the number of moves to four per year. Alternative 2 would therefore read as follows:

In the Bering Sea directed pollock fishery, AFA inshore floating processors would be required to operate in a single geographic location in state waters for the duration of each reporting week, but would be allowed to change locations from week to week, to a maximum of four changes per calendar year. In addition, AFA inshore processors would be required to process all GOA pollock and GOA Pacific cod in the same location at which they processed these species in 2002.

The motion was seconded by Kevin Duffy. Ms. Madsen commented that the need for a single geographical location stems from the old inshore/offshore regulations. However, she changed it to address concerns of the Aleutian Islands. Her intent was that all Steller sea lion restrictions would apply for pollock, and any pollock processed would be under the regulations of the AFA. The motion was voted on and passed unanimously.

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C-10(a, b) Halibut Management – Charterboat GHL & Discussion Paper on Subsistence Actions

ACTION REQUIRED

- a) Review implementation issues related to Charterboat Guideline Harvest Level and Individual Fishing Quota Program
- b) Review discussion paper on implementation issues RE April 2002 subsistence actions

BACKGROUND

Charterboat Guideline Harvest Level and Individual Fishing Quota Program

On September 6, 2002, NMFS informed the Council on the status of two preferred alternatives adopted by the Council to limit Pacific halibut harvests in the guided sport fishery (Item C-10(a)(1)). NMFS seeks additional clarification of its February 2000 action to implement a Guideline Harvest Level Program for Areas 2C and 3A and its April 2001 action to incorporate the guided sport sector into the current halibut Individual Fishing Quota program, prior to submittal for Secretarial review.

GHL

NOAA General Counsel has advised NMFS against using the “framework” process for triggering GHL management measures as proposed by the Council and NMFS. Counsel advised that the GHL Program could be approved only if it were changed to conform with the Administrative Procedures Act. This would require an Environmental Analysis/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for each regulatory change. While the framework process could proceed, the Council would be required to prepare an analysis of the proposed measure(s) and all other reasonable alternatives for each regulatory change. Staff previously informed the Council that the inability to predict future guided angler participation (and subsequent harvest) in the halibut fishery constrains the ability to assess the potential impacts of any of the proposed framework management measures, although they recognize the legal requirements to perform the analysis. Counsel also raised concerns regarding data collection methods to adequately monitor several of the proposed reduction measures.

The Council would need to notice the public that it will *reconsider* its February 2000 preferred alternative at a future meeting to comply with legal advice. It would need to restructure the GHL program to incorporate the preparation of all legally required analyses of proposed framework measure(s) and all other reasonable alternatives for each regulatory change. Or, as noted in the NMFS letter, the Council also may choose to notice its intent to rescind its February 2000 action at a future meeting and proceed with the proposed charter IFQ program due to the additional staff efforts needed to revise the GHL analysis, develop data collection methodology, and rulemaking.

IFQ

In the same letter, NMFS identified concerns it has related to the quality of the Sport Charter Vessel Logbook Program data as identified in a memorandum dated September 21, 2001 from the ADF&G Sportfish Division to Kevin Duffy. To further explore the concerns raised by ADFG staff, Council staff requested that ADFG attempt to determine whether the data quality issues identified in its memo affect the Council’s preferred alternative for determining individual allocations to charter vessel owners or lessees (Item C-10(a)(2)). The ADFG analysis is under Item C-10(a)(3). Note that the 2001 ADFG memo compared the logbook program with the Statewide Harvest Survey

(postal) and the current analysis examines logbook program halibut reports where they could be verified with creel and/or port sampling interviews. Allen Bingham, ADFG Sportfish Division, will present the report.

The Council is requested to provide direction to staff, prior to submission of the final draft of the halibut charter IFQ analysis to NMFS for review. Note that additional staff work on the development of computer programming changes, data collection, monitoring, and enforcement issues will be needed prior to submission of the final analysis to the Secretary. Additional time for initial allocations and appeals will also be necessary if approved by the Secretary.

Review Subsistence Implementation Issues

In April 2002, the Council unanimously adopted modifications to its original October 2000 action to address concerns identified by the State of Alaska Board of Fisheries about the potential local effects of subsistence halibut fishing on halibut and rockfish populations under Action 1 (Item C-10(b)(1)). It also responded to public testimony by Western Alaska CDQ representatives under Action 2. The preferred alternative also requested NMFS staff to work with the Halibut Subsistence Committee to develop aspects of the proposed community harvest permit program. The committee recommendations are summarized under Item C-10(b)(2).

The purpose of this discussion is to review issues pertinent to the development of regulations that would implement proposed changes to the original subsistence policy proposed by the Council. Jay Ginter, NMFS staff, will distribute a discussion paper at the meeting.

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The SSC received reports from Rob Bentz and Allen Bingham, ADF&G, and Jane DiCosimo, NPFMC staff and Glen Merrill, NMFS. The SSC is concerned with two issues related to the use of halibut charter logbook data and implementation of a Charter Halibut IFQ Program. The first is the appropriateness of using these data to establish whether or not a vessel was active in the fishery during the qualifying years (1998-99). The second is whether logbook data are representative of the distribution of catch among participating charter vessels in those years, and suitable as documentation for a catch history based initial allocation of quota shares. Finally, the suitability of the logbook data as a basis for GHL management is also in question.

The SSC reported that the analysis by ADF&G was not specifically designed to address these questions, however the analysis included observations on the frequency of inconsistent reporting of landings and lack of compliance with the logbook requirements. The SSC noted that the veracity of the logbook recorded catch records and on-site survey reports were not independently verified and thus it was inappropriate to judge the logbook records as more or less accurate than the on-site survey reports.

The SSC did not comment on the question of relative accuracy of logbook data vs. statewide harvest estimates as it did not have access to ADF&G's September 2001 comparison of harvest estimates or harvest estimates from ADF&G's statewide angler survey. The SSC did point out that regardless of the accuracy of logbooks as a measure of individual catch records, IFQ allocations could still be awarded and catch history need not be the primary basis for the initial allocation of quota shares.

Advisory Panel Report

The AP recommended NMFS and the Council continue working on both the GHL and IFQ packages, and requested NMFS clarify the legal issues associated with the GHL and other trigger/response issues used by the

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Council for management purposes. They also concurred with the SSC's recommendation to further examine the logbook data issue and provide the Council with an update at the December meeting.

DISCUSSION/ACTION

Dave Fluharty moved to adopt the AP recommendation that NMFS and the Council continue working on both the GHF and IFQ packages, and further request NMFS clarify the legal issues associated with the GHF and other trigger/response issues used by the Council for management purposes. The Council concurred with the SSC recommendation to further examine the logbook data issue and requested the SSC provide an update to the Council at the December meeting. The motion was seconded by Dennis Austin.

Stosh Anderson moved to amend the motion adding the following: With regard to framework considerations, explore efficiencies in reporting and compiling data so the time period for implementing regulations under the framework will be shortened. This would provide the ability to implement regulations in a shorter period of time rather than the full rulemaking process. The motion was seconded by Roy Hyder and carried with Kevin Duffy objecting. The amended motion carried with Kevin Duffy objecting.

Jay Ginter, NMFS, then presented a handout to the Council requesting clarification of several questions he had related to implementing the Council's preferred alternatives for deferring halibut subsistence fishing off Alaska. Some Council members were concerned that neither they nor the public had sufficient time to review the documents. Mr. Ginter clarified that relative to the regulatory schedule, the clarifications were not on a tight time schedule for the proposed rule. Chairman Benton pointed out that there were two issues at hand – one being clarification of the bulk of information in the handout and the other being developing criteria for the Community Harvest Program (CHP). The Council chose to clarify their intent and provide further guidance to the drafters of the proposed rule and hold until the December meeting discussion of the CHP.

The first issue was related to Council intent for preventing gear conflict between the three fisheries (sport, commercial and subsistence). The Council clarified its intent for excluding the Sitka LAMP area and the vessel limit for Area 2C. Mr. Ginter restated his interpretation for Area 3A as being the same. Stosh Anderson asked what the restriction would be in Area 3B and Jay answered three times the number of hooks per vessel/per trip (90 hooks) – as shown in Table 2 of his handout. Mr. Ginter also noted the 5-fish per day vessel limit inside the Sitka LAMP area during the summer. Kevin Duffy recalled reduced efficiency during the summer being a matter of perception in the LAMP area. The intent during the summer season was to provide a balance (prohibiting power hauling) because of sport fishing, subsistence, charter fishing, etc.

Mr. Ginter restated his interpretation of Council intent that the Low Island area was closing to longline gear during the summer and there was a hook limit in the Kodiak road zone (limiting removal due to heavy commercial and sport fishing). Stosh Anderson agreed the intent was to limit overfishing. Kevin Duffy offered to check State regulations for these special areas because he recalled the Council's intent was to adopt the geographical definition that the State had in its regulations. The marine waters off the Kodiak road zone have seaward boundaries for a 10-hook limit but no definition of one-mile offshore.

Stosh Anderson recalled participating in discussions with the Board of Fish on harvest restrictions of a 20-fish per person annual limit and the Board's intent not to have a 20-fish limit within the one-mile zone. He recalled the one-mile zone having more to do with catching silver salmon than halibut and the 20-fish limit in the Chiniak Bay area, but not the one-mile zone area.

Mr. Ginter asked about special provisions for treating Area 4C differently than Areas 4D and 4E. He recalled there being a cultural basis for them to retain short and legal sized halibut. Chairman Benton recalled that in Areas 4D

and 4E there were differences in communities, and cultural and subsistence patterns allowing the mix of subsistence and commercial CDQs applies only to vessels landing an entire harvest in the same area. In Area 4C it goes to cultural differences.

Mr. Ginter then asked whether ceremonial cultural permits were to be issued in all IPHC areas or only where there were special restrictions in Areas 2C and 3A. Stosh Anderson concurred that the intent was to establish ceremonial/educational permits in areas where it wouldn't be allowed at this level, but questioned the 25-fish per event limit. Dr. Balsiger recalled that the motion recommended modeling after the USF&W system. The 25-fish per event came from the USF&W model, but the question was whether it applied throughout the state or only to Areas 2C and 3A. Chairman Benton recalled one permit for ceremonial and cultural purposes and another permit for educational purposes. He also clarified that cultural permits were not applied in the Sitka LAMP area, because they were not educational but cultural and ceremonial.

Stosh Anderson briefly discussed 90 hooks in the water at one time and per vessel/per trip limitations. His interpretation was that gear could only be set once and the words "per trip" should be removed. He read it to mean that if you used 3 times the 30-hook limit, you could pick your gear and set it again, but you could not have more than 90 hooks. If you set 90 hooks and pulled them, do you then have to go back to shore? Dennis Austin believed the intent was 90 hooks per vessel, not how many times it was set. Chairman Benton commented they could make five sets or one set, but only 90 hooks per vessel.

C-10(c) Halibut Management – IFQ Program

c) IFQ Program

ACTION REQUIRED

Review request from Akutan to be included as an eligible community to purchase halibut and sablefish commercial quota share

BACKGROUND

In April 2002, the Council approved Amendment 66 to the Gulf FMP, to allow eligible communities in the Gulf of Alaska to purchase commercial halibut and sablefish catcher vessel quota share (QS) in IPHC Areas 2C, 3A, and 3B for lease to community residents. Upon approval by the Secretary of Commerce, this amendment would modify the existing IFQ Program by revising the definition of eligible "person" that may hold halibut and sablefish quota share, with restrictions as developed by the Council.

The Council's action targets small, rural, fishing-dependent coastal communities in the Gulf of Alaska that have documented participation in the halibut and sablefish fisheries. The criteria adopted to determine a community's eligibility to participate in the IFQ Program are as follows: population of fewer than 1,500 (based on 2000 U.S. census); direct saltwater access; located on the Gulf of Alaska coast without direct road access; historic participation in the halibut or sablefish fisheries; and specific designation on a list adopted by the Council. The Council's final motion only applied to community purchase of quota share in Areas 2C, 3A, and 3B, and there was no provision to include community purchase of quota share in any other regulatory area. The comprehensive Council motion on this issue and the above mentioned list of eligible communities are attached as Item C-10(c)(1).

The April 2002 Council action explicitly stated that eligible communities must meet the criteria mentioned above and be designated on the list of communities adopted by the Council. Communities not listed could apply to the Council to become eligible and would be evaluated

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using the same criteria. The Akutan Fisheries Association contacted Council staff following the Council's action on Amendment 66 and requested consideration of Akutan as an eligible Gulf community. Both letters submitted by the Akutan Fisheries Association and staff's responses to those letters are attached as Item C-10(c)(2).

It is not apparent that Akutan would qualify as a Gulf of Alaska community, given its geographic location and inclusion in the western Alaska CDQ Program. One of the criterion for eligibility in the CDQ Program is that the community must not be located on the Gulf of Alaska coast of the North Pacific Ocean. For FMP and regulatory purposes, Akutan appears to be located in BSAI statistical and reporting area 519 (see Item C-10(c)(3)). (For halibut management purposes, Akutan is located in IPHC regulatory Area 4A.) However, upon request of the Akutan Fisheries Association, this issue has been scheduled for Council consideration at this meeting. The Council may choose to make a determination at this meeting or perhaps decide to schedule this issue for consideration at a later meeting.

Scientific and Statistical Committee Report

The SSC did not address this agenda issue.

Advisory Panel Report

The AP reported two failed motions, as outlined below, with no additional comment:

The AP recommends the Council initiate modification to Amendment 66 to allow Akutan to be an eligible community to purchase commercial halibut and sablefish quota share.

The AP recommends that this issue, and those affected by it, confer with the Aleutians East Borough, State of Alaska, and APICDA. The AP is sympathetic and recognizes the uniqueness of the situation and further requests the Council schedule this report at a future time.

DISCUSSION/ACTION

The Council received a request from the City of Akutan requesting eligibility for the Gulf of Alaska halibut/sablefish purchase program. The Council discussed the fact that the City of Akutan is a qualifying CDQ community and a member of APICDA. For eligibility in the CDQ Program, a community must be located in the BSAI and not in the GOA. The criteria for the GOA community purchase program is that the community must be located in the GOA. Stephanie Madsen saw two possibilities for handling this issue: the Council could discuss how people feel about the request, or the Council move to amend Amendment 66 to include Akutan. **Dave Fluharty moved that the State of Alaska and APICDA have some discussion on the issue; specifically how to use their current status as a CDQ community to increase Akutan's participation in the halibut/sablefish fisheries, and report back to the Council in either December or February.** The motion was seconded by Dennis Austin.

The Council discussed the fact that if Akutan was looking for funding or existing IFQ, several things would have to be put together for a new proposal to the Council. The State was willing to meet with APICDA if it would benefit the community, as it appeared that Akutan came forward asking to be more involved in the halibut fishery. Stephanie Madsen was concerned that Akutan was looking for a way to get funding to allow their fishermen to get out onto the water. Stosh Anderson agreed with Ms. Madsen and with regard to the proposal, he didn't believe 250,000 lbs of fish was enough to solve the problem. Mr. Anderson believed Akutan had a legitimate concern that

needs to be addressed, but that there were simple things that could be done if they had money. The motion passed 9-1 with Anderson voting against.

D-1(a) Independent F₄₀ Review

ACTION REQUIRED

a) Receive report from independent scientific review panel.

BACKGROUND

In October, in conjunction with the actions taken to address Steller sea lion issues, the Council also approved a motion to conduct an independent review of our basic F₄₀ harvest policy relative to National Standards. The intent of this review was to determine whether changes need to be made to account for individual species needs or ecosystem needs.

A Terms of Reference for this review was developed by the SSC (attached as Item D-1(a)(1)), and a team of eight independent reviewers was assembled. The F₄₀ review panel included Dr. Terry Quinn (UAF), Dr. Grant Thompson (AFSC), Dr. Marc Mangel (University of California Santa Cruz), Dr. Tony Smith (CSIRO, Australia), Dr. Dan Goodman (Montana State University), Dr. Graeme Parks (Marine Resource Assessment Group, Florida), Dr. Victor Restrepo (ICCAT, Spain), and Dr. Kevin Stokes (New Zealand). The F₄₀ review panel met in person at the Alaska Fisheries Science Center on June 17-19, and continued their work by email.

Dr. Dan Goodman served as chairman of the panel, and he will be on hand to report their findings. The panel is in the process of editing their written report, which will be distributed after it has been finalized.

Scientific and Statistical Committee Report

The SSC simply reported that they were looking forward to reading the Scientific Review Panel's report on F₄₀ as soon as it is available.

Advisory Panel Report

The Advisory Panel did not address this issue.

DISCUSSION/ACTION

The Council received the F₄₀ report given by Dr. Dan Goodman, however no Council action was required on this agenda issue.

D-1(b) TAC-Setting Process

ACTION REQUIRED

b) Final action

BACKGROUND

In June, the Council reviewed a draft analysis of changing the annual catch specification process. The current process involves publishing proposed specifications (ABCs, TACs, PSC limits) based

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on the previous years specifications, then publication of interim specifications and final specifications based on updated stock assessments. The issue with the current process is that there may be inadequate time for the public to comment on proposed specifications prior to the start of the fishery. The revised analysis incorporates changes suggested by the Council, Advisory Panel, the Scientific and Statistical Committee, Groundfish Plan Teams, NMFS , and NOAA General Counsel. The analysis was mailed to you last week, and the executive summary is attached as (Item D-1(a)(1)). A letter from NMFS (Item D-1(a)(2)) identifies that Alternatives 2 - 4 will meet the APA requirements for rulemaking, although each has potential negative effects on groundfish management. NMFS recommends *either*:

Alternative 2: Eliminate publication of interim specifications. Issue proposed and final specifications prior to the start of the fishing year. Option of biennial harvest specification for BSAI and GOA target species on biennial survey schedule.

Alternative 3: Issue Proposed and Final Harvest Specifications based on an alternate fishing year schedule (July 1 to June 30).

Option 1: Set sablefish TAC on a January through December schedule.

and:

Option A: Abolish TAC reserves.

Option B: Update FMPs to reflect current fishing participants and harvest specifications process.

Scientific and Statistical Committee Report

The SSC reported that two major events had occurred since this issue was last considered. First, the Plan Teams implemented a new forecasting procedure for updating ABCs in September, based on stock assessment and catch projections rather than just rolling over the previous year's results. Second, the Marine Conservation Alliance (MCA) proposed two new options that are more responsive to the SSC's suggestion of an alternative more like status quo. The first option involves including more information in the interim rule document along with web-based access to new information. The second option is a 15-18 month specification process based on projections. The SSC believed both these options are noteworthy and deserve further evaluation and analysis.

Thus, the SSC agrees with NMFS that further consideration of TAC-setting should be postponed until the February 2003 meeting to allow time for these issues to be investigated.

The SSC also requested additional information in the analysis, if it can be determined. The SSC requested a comparison of the forecast errors from the old rollover procedure and the new forecasting method.

Advisory Panel Report

The AP recommended the Council delay final action on this issue and analyze the two MCA alternatives. The AP also requested NMFS provide a report of the legal review of those alternatives at the December meeting.

DISCUSSION/ACTION

Stephanie Madsen asked if the comments provided by Mr. Frulla in public testimony had been made available to the public. They had been made available, so **Ms. Madsen moved to delay final action on this agenda issue and analyze the two MCA alternatives, and have NMFS provide a report of the legal review of those alternatives at the December meeting.** The motion was seconded by John Bundy and carried without objection.

D-1(c-f) Groundfish Management

ACTION REQUIRED

- c) Review “other species” management
- d) Recommend proposed and interim specifications for BSAI groundfish
- e) Recommend proposed and interim specifications for GOA groundfish
- f) Set VIP rates for first half of 2003

BACKGROUND

(c) “Other species” management

The State of Alaska requested that the Council prohibit directed fishing on sharks and skates in the Bering Sea/Aleutian Islands and Gulf of Alaska in 1998. The Council initiated BSAI/GOA Plan Amendment 63/63 in response to the State request. During initial review of the analysis in 1999, the SSC identified that it had similar concerns regarding the remaining groups within the complex (squid, octopus, sculpins) and requested that the groundfish Plan Teams also consider related conservative management measures for them. In response, the GOA and BSAI Plan Teams jointly recommended separating the groups from the “other species” complex for the GOA and BSAI groundfish FMPs and setting specifications at the group level in 2000. The teams repeated this recommendation in 2001. The SSC and Plan Teams have not concurred in their respective management recommendations for BSAI and GOA “other species.” The SSC recommended a longer-term, more comprehensive approach to revise their management. A summary of these discussions is in Item D-1(c)(1).

On the recommendation of the SSC, an ad hoc group of members of the Scientific and Statistical Committee, groundfish plan teams, and Alaska Fisheries Science Center met in August 2002 to discuss management of “other species” and BSAI other red rockfish and other rockfish. The group recommended that criteria for separating species from aggregate complexes for all groundfish species and assemblages be developed, rather than the current ad hoc approach. The objective is to protect species that need it, and not to lump and split species aggregates just for the purpose of standardizing procedures. The recommendations of the group are summarized in Item D-1(c)(2).

In September 2002, Council staff presented a proposal, which built on the recommendations of the ad hoc group, to the Groundfish Plan Teams (Item D-1(c)(3)). The teams recommended that the Council analyze a management approach that would develop criteria to determine: 1) single species or assemblage management for all target fishery categories and 2) when sufficient data is available to move species from a new non-target category to the target category. The new analysis would address possible management strategies for management of species and complexes in the non-target category. It will also directly list species in the BSAI and GOA groundfish fishery management plans to improve reporting of the overfishing status of North Pacific groundfish¹. This proposal will affect management of CDQ and non-CDQ fisheries, and may streamline the proposed elements and options to rationalize the GOA groundfish fisheries.

¹The Joint Groundfish Plan Teams recommended that the Council send a letter to Dr. Hogarth recommending that the Leadership Council review definitions of “overfishing” and “overfished” at its December 2002 meeting.

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Staff will consult with the SSC on the draft criteria as described above in December 2002. Initial review could be scheduled for April 2003 and final action in June 2003, with an implementation target of January 2004.

(d) Proposed and Interim Specifications for BSAI Groundfish

The Bering Sea/Aleutian Islands (BSAI) and Gulf of Alaska (GOA) Groundfish Plan Teams streamlined their preliminary (September) and final (November) meeting schedules in 1998. Overfishing levels (OFL) and allowable biological catch (ABC) levels are not routinely recommended at the September meeting. That meeting is now devoted to reviewing new techniques for stock assessment models and other management issues. Accordingly, two proposed models for BSAI arrowtooth flounder and Atka mackerel, results of the eastern Bering Sea Bogoslof and shelf surveys, the draft Ecosystem Considerations chapter, and the draft Economic SAFE Report were mailed to you earlier.

Under the streamlined meeting schedule, the stock assessment chapters and author(s)' recommendations for OFLs and ABCs are presented at the November Plan Team meeting. Since 1998, the Council has "rolled over" the final specifications for the current fishing year as the proposed and interim specifications for the next fishing year. Final specifications are based on Plan Team recommendations in November each year and supercede the proposed and interim specifications sometime in February of the new fishing year.

The analysis for Plan Amendments 48/48 to revise the TAC-setting process includes an alternative to eliminate proposed and interim specifications. The "roll overs" for proposed and interim specifications may be viewed as interim actions until the preferred alternative (scheduled for final action under Agenda D-1(b)) could be implemented. NOAA General Counsel has recommended revising the current TAC-setting process partly due to public notice requirements of the Administrative Procedures Act (APA). Staff recommended that the Plan Teams consider replacing the "roll overs" with the November 2001 SAFE Report model projections of 2003 ABCs for *groundfish stocks managed at tiers 1-3* to be used as 2003 proposed and interim specifications. These projections were identified as better approximations of 2003 final specifications, thereby enhancing compliance with APA public notice requirements.

The Teams reviewed their procedure for not recommending proposed specifications in September in response to the above staff recommendation. During their joint session, the Teams agreed to use the November 2001 SAFE Report model projections for 2003 OFLs and ABCs as an interim measure until the FMPS were revised to change the specification process. Later in separate team sessions, the Teams adopted an industry suggestion to adopt the 2001 SAFE projections *except* that instead of assuming 2002 catch is equal to the ABC value, it is now set equal to an estimate of the 2002 catch (which was unknown in November 2001). This procedure results in recommendations for 2003 proposed and interim specifications that better inform the Council and public of forthcoming recommendations for final specifications, which will be based on the stock assessments in the November 2002 SAFE Reports. Using the author-recommended 2002 OFLs and ABCs as a proxy for 2002 catches result in artificially lowering the projected 2003 OFLs and ABCs, since catches are lower than the ABC in most target fisheries. The Teams recommended rolling over the 2002 OFLs and ABCs for groundfish stocks in tiers 4 - 6. The Plan Team recommendations for proposed 2003 specifications for BSAI groundfish fisheries are attached under Item D-1(d)(1). BSAI Plan Team minutes and Joint team minutes are attached under Item D-1(d)(2) and (3).

Rockfish

In December 2001, the Plan Team recommended 2002 OFLs and ABCs for northern, rougheye, and shortraker rockfishes. The SSC, AP, and Council recommended separating shortraker and rougheye rockfish species and setting BSAI area-wide ABCs and TACs. NMFS was unable to implement those recommendations because of the difficulty in identifying shortraker and rougheye rockfishes to species. NMFS placed sharpchin rockfish in the “other rockfish” category as recommended by the Council, but established separate BS and AI TACs for northern rockfishes and separate BS and AI TACs for the combined shortraker/rougheye rockfishes category.

Proposed 2003 Gulf Pacific cod ABCs, TACs, and State guideline harvest levels (mt).				
Specifications	Western	Central	Eastern	Total
ABC	22,465	31,680		57,600
BOF GHL	5,615	6,890	865	13,540
(%)	25	21.75	25	23.5
TAC	16,850	24,790	2,590	44,060

In September, the BSAI Plan Team concurred with its past recommendations to specify the above rockfish by species area-wide (BSAI combined). Staff with the NMFS Regional Office and Observer Program met in August to discuss data issues related to managing these groundfish at the species and area levels. The team concurred with NMFS staff recommendations to:

1. retain a single TAC for shortraker/rougheye for 2003;
2. implement changes in observer sampling procedures to improve species composition data on the proportion of shortraker and rougheye rockfish in longline sets;
3. monitor whether the changes in procedures result in significant improvements in the available data;
4. assess the feasibility of a system to utilize species composition data from observers to estimate the composition of the commercial catch.

Prohibited species catch limits for 2002 BSAI fisheries are listed under Item D-1(d)(4).

(e) Preliminary Specifications for GOA

The preliminary 2003 GOA specifications, as recommended by the GOA Plan Team, are attached as Item D-1(e)(1). The specifications were projected using the procedure described above. The GOA Plan Team Minutes are attached as Item D-1(e)(2).

Since 1997, the Council has reduced the GOA Pacific cod TAC to account for removals of not more than 25% of the Federal Pacific cod TAC from the state parallel fisheries. Preliminary information indicates that neither Chignik nor Cook Inlet achieved its GHL, and therefore would remain at its current allocation. Using the area apportionments of the 2003 Pacific cod ABC recommended by the Plan Team, the federal TAC for Pacific cod would be adjusted as listed in the adjacent table.

TAC Considerations for State Pacific Cod Fishery

Since 1997, the Council has reduced the GOA Pacific cod TAC to account for removals of not more than 25% of the Federal Pacific cod TAC from the state parallel fisheries. Preliminary information indicates that neither Chignik nor Cook Inlet achieved its GHL, and therefore would remain at its current allocation. Using the area apportionments of the 2003 Pacific cod ABC recommended by the Plan Team, the federal TAC for Pacific cod would be adjusted as listed in the adjacent table.

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Prohibited Species Catch Limits

The following 2002 halibut PSC apportionments were instituted for the Gulf of Alaska groundfish fisheries;

	2002 Trawl		2002 Hook and Line		
1st quarter	Jan 20 - Apr 1	550 mt (28%)	1st trimester	Jan 1 - May 17	205 mt (70%)
2nd quarter	Apr 1 - Jul 1	450 mt (22%)	2nd trimester	May 17 - Aug 31	any rollover
3rd quarter	Jul 1 - Oct 1	700 mt (35%)	3rd trimester	Aug 31 - Dec 31	85 mt (30%)
4th quarter	Oct 1 - Dec 31	300 mt (15%)	DSR	Jan 1- Dec 31	10 mt
TOTAL		2,000 mt			300 mt

2002 Trawl fishery categories

Season	Shallow Water	Deep Water	Total
Jan 20- Apr1	450 mt	100 mt	550 mt
Apr 1- Jul 1	150 mt	300 mt	450 mt
Jul 1 - Oct1	100 mt	any rollover	700 mt
Oct 1-Dec 31	no apportionment		300 mt
TOTAL			2,000 mt

(f) Vessel Incentive Program

The Vessel Incentive Program (VIP) to reduce Pacific halibut and crab bycatch rates in the BSAI and GOA trawl fisheries requires that bycatch rate standards be specified for purposes of vessel accountability under the VIP. The bycatch rates for the first half of 2003 must be specified by NMFS prior to the start of the 2003 trawl fisheries. These rates have remained unchanged since 1995. A summary table of 1998 - 2002 observer data on fishery bycatch rates and the bycatch rate standards is attached as Item D-1(f).

NMFS intends to publish bycatch rate standards for the first half of 2003 that are unchanged from 2002, since the Council recommended that bycatch rate standards remain unchanged while it considers alternative incentive programs for bycatch reduction.

Scientific and Statistical Committee Report

The SSC received presentations from Jane DiCosimo, NPFMC, and Sara Gaichas, NMFS on standardizing guidelines and procedures for aggregating or disaggregating other species into management units. The SSC requested its involvement (possibly via email) in the development of categories and placement of species into the categories. It also expects a further presentation at the December meeting.

The SSC believes the Plan Teams have made major advances in their development of a forecasting procedure for updating the September ABCs and OFLs from the most-recent SAFEs. It suggests the Plan Teams discuss what to do when preliminary data suggest the population trajectory is opposite to the projection estimate (as occurred with GOA pollock this year).

The SSC received reports on the National Standard Guidelines and Ecosystem Considerations and outlined detailed comments on several species in its report. The complete minutes of the SSC on this agenda issue can be found attached to these minutes as Appendix II.

Advisory Panel Report

The AP endorsed the SSC's recommended 2003 ABCs and recommended setting the TAC equal to ABCs with the following exceptions:

Pacific cod: W = 14,777
 C = 21,743
 E = 2,273
for a total of: 38,793 MT

For SW flatfish, flathead sole, arrowtooth flounder and other slope rockfish, the 2003 TACs are set equal to the 2002 TACs.

The AP recommended the Council set trawl halibut cap is set at 2000 metric tons, and set hook and line halibut cap at 300 metric tons. The AP further recommended the PSCs be set as apportioned in the table.

The AP recommended the 2003 BSAI TAC be set equal to the 2002 TAC, except for Northern rockfish which would be set equal to the 2003 ABC, due to concerns of decreased biomass projections. The following AP motion failed: *The AP requests the Council breakout shortraker/rougheye and northern rockfish in the Aleutian Islands by East, West and Central AI district, and EBS (as is done for POP), contingent on NMFS' ability to treat CDQ rockfish allocation once reached, as a PSC prohibited species (discard status) rather than a cap.*

The AP also recommended the Council initiate a discussion paper for review at the December meeting regarding splitting out the Rockfish TACs by area and district for the BSAI. The AP recommended the PSC's be set at the interim level (25%) as per the aggregates in Table D-1(d)(4) with the exception of rockfish, which will be set at 0.

The AP further recommended the Council draft a letter to NMFS requesting they consider redefining "overfishing" and "overfished" so that the SAFE evaluations can be used.

See the AP's complete minutes, attached as Appendix III, for their ABC, TAC and PSC recommendations for 2003.

DISCUSSION/ACTION

Jane DiCosimo, NPFMC staff, informed the Council that the Plan Teams and an ad hoc committee considered the issue of splitting and lumping species. The Plan Team developed a proposal for the best way to pursue this issue. **Stephanie Madsen moved that the Council approve the proposal for Other Species Management (attached as D-1(c)(3), and asked staff to move forward to develop options and alternatives.** The motion was seconded by Dave Fluharty. Ms. Madsen reiterated that the SSC agreed with this proposal and the motion carried without objection.

Sue Salvesson, NMFS, gave the Council a background report regarding a letter dated October 3, 2002 from Dr. Balsiger to Chairman Benton which responded to a letter from The Ocean Conservancy and Oceana National Environmental Trust about their concerns regarding management of other red rockfish in the Bering Sea and Aleutian Islands.

Jane DiCosimo informed the Council of errors in the AP report tables and handed out the corrected ABCs and TACs for shortraker/rougheye and northern rockfish in the BS and AI. **Roy Hyder moved that the Council**

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adopt the AP's recommendation, including the corrections noted by Jane DiCosimo, for the 2003 BSAI TAC to be set equal to the 2002 TAC.

The motion included the Council's initiation of a discussion paper for review at the December meeting regarding splitting out rockfish TACs by area and district for the BSAI, as well as PSCs being set at the interim level (25%) as per the aggregates in Table D-1(d)(4), with the exception of rockfish which will be set at 0. The motion also rolled the 2002 VIP rates to 2003 for the first half of the year.

Additionally the Council adopted the SSC's recommended 2003 GOA ABCs and the AP-recommended GOA TACs equal to the ABCs for the Gulf of Alaska (to account for the state water Pacific cod fishery), with the following exceptions:

Pacific cod: W = 14,777
 C = 21,743
 E = 2,273
for a total of: 38,793 MT

For shallow water flatfish, flathead sole, arrowtooth flounder and other slope rockfish, the 2003 TACs are set equal to the 2002 TACs.

For PSCs, the trawl halibut cap is set at 2000 metric tons, and hook and line halibut cap is set at 300 metric tons. The PSCs are set as apportioned in the table. The motion was seconded by Stephanie Madsen. Ms. Madsen amended the motion such that the discussion paper on splitting out rockfish TACS would include a discussion of protocols and survey techniques for the other rockfish complex. The motion was seconded by Kevin Duffy. The Council then had a lengthy discussion on what should be included in the discussion paper including industry concerns about surveys and improvements or different alternatives to performing surveys which are key to getting better information. Hazel Nelson pointed out that the CDQ industry would be affected and she would like the discussion paper to address alternatives or possible options to address these concerns. Roy Hyder advised the Council that the spirit of his motion was to follow the lead provided by the Advisory Panel, and that his intent for the discussion paper came from the discussion reflected in the AP minutes. Ms. Nelson moved that as an amendment to the motion, and it was seconded by Kevin Duffy. Dr. Balsiger clarified his understanding of the amendment was to ask that the discussion paper include management implications of subdividing rockfish by species and area, and also include recommendations. John Bundy asked if he understood correctly that the paper would address specific issues of whether or not to split out rockfish into smaller areas, the problems (or not) with doing so, and survey and management techniques. Chairman Benton remarked that this was a good summary. Ms. Madsen clarified her intent that the discussion paper address how things are done today and the pros and cons of how it is done. The amendment to the amendment carried without objection, and the amendment also carried without objection.

The amended motion carried without objection.

Kevin Duffy moved that the Council send a letter to Dr. William Hogarth endorsing a review of the definitions of "overfished" and "overfishing," which is scheduled for discussion by the NMFS Leadership Council (including Dr. Hogarth and the Region and Center Administrators) at its December 2002 meeting. The issue is that NMFS has reclassified numerous stocks from "not overfished" to "undefined" in the *Annual Report to Congress* because NMFS is using the definitions in the BSAI and GOA groundfish FMPs and not the entire specifications process as employed in the SAFE reports. The implications of this year's *Report to Congress*, as noted by the Plan Teams and SSC, is misleading to the public (and Congress) on the status of scientific knowledge of whether North Pacific stocks are below or above the maximum sustainable

stock threshold (MSST). The SSC minutes report that efforts to resolve differences between the Council and NMFS in relation to MSSTs have stalled over the last two years. The Council sent a letter to NMFS in 2000 requesting clarification of the criteria to be followed and the amount of permissible latitude that the Council may be allowed in defining “overfishing” and “overfished.” The letter also should renew the 2000 request for additional clarification related to MSSTs. The motion was seconded by Stephanie Madsen and carried without objection.

D-2 Other Business

ACTION REQUIRED

- a) Approve SSC replacement for Al Tyler
- b) Approve addition to GOA Groundfish Plan Team
- c) Receive update on North Pacific Research Board (NPRB) activities
- d) Clarify Council intent on Amendment 67 - BSAI P.cod endorsements

BACKGROUND

SSC replacement

With the retirement of Dr. Al Tyler, a vacancy exists on the SSC. Dr. Gordon Kruse, now President’s Professor of Fisheries at UAF Juneau, has applied for appointment to the SSC, and his resume’ is attached under D-2(a). If appointed, he could begin serving at the December meeting.

GOA Plan Team

D-2(b) is a letter from Dr. Doug DeMaster asking the Council to consider appointing Sarah Gaichas to the GOA Plan Team. Sarah is completing her Ph.D. in Fisheries Sciences at the University of Washington, with her dissertation focusing on ecological modeling methods and their application to Gulf of Alaska fisheries management issues. As noted in the cover letter from Doug, she would bring valuable expertise to the Plan Team in the area of stock assessment issues and ecosystem considerations.

Update on NPRB activities

Dr. Clarence Pautzke will update the Council family on activities of the NPRB, and solicit comment on research and development needs. A survey from the NPRB in this regard was recently circulated in a Council mailing. A copy of that survey is under D-2(c), along with the NPRB update.

Amendment 67 and Council intent

Item D-2(d) is a letter from attorneys for two vessels which are appealing NMFS’ initial determination relative to eligibility for Pacific cod endorsements under Amendment 67, scheduled for implementation in January 2003. This letter relates specifically to eligibility of the Bristol Leader and the Galaxy. The final rule for Amendment 67 stipulates that harvests counts towards eligibility only if made from the same vessel that was used as the basis for eligibility for the license holder’s LLP license, as opposed to allowing transferred fishing rights from another vessel. Council intent on this issue, based on the record of discussions and the final motion, is not entirely clear and could be subject to different interpretation. NMFS will provide further information to the Council on this issue, including what steps would be necessary to clarify the rules for this issue. For example, it appears that a regulatory amendment would likely be required to change the current rule, regardless of the Council’s original intent. Additional information, related to potential numbers of vessels which might qualify under alternative transfer rules, will be provided by staff at this meeting.

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Scientific and Statistical Committee Report

The SSC recommended the Council appoint Sarah Gaichas to the GOA Plan Team and Gregg Rosenkranz to the Scallop Plan Team. Dr. Clarence Pautzke, NPRB, provided the SSC with an update on NPRB activities and expressed his desire to develop a process to facilitate integration of research needs identified by the SSC into the NPRB process. The SSC agreed to address, at a future SSC meeting, the NPRB's list of research priorities.

Advisory Panel Report

The AP did not address this agenda issue.

DISCUSSION/ACTION

Stephanie Madsen moved to appoint Gordon Kruse to the SSC, Sarah Gaichas to the GOA Plan Team, and Gregg Rosenkranz to the Scallop Plan Team. The motion was seconded by Kevin Duffy and carried without objection.

The Council then moved on to Amendment 67, and Hazel Nelson voluntarily recused herself from participating in this issue. **John Bundy moved the Council request NMFS undertake a regulatory amendment to correct an inconsistency in Amendment 67 by deleting the section of the Final Rule that provides harvests within the BSAI to count toward Amendment 67 landings requirements only if those harvests were made from the vessel that was used as the basis of eligibility for the license holder's LLP license (see 50 CFR 679.4(k)(9)(iii)F).** Mr. Bundy further moved the Council specifically request NMFS count toward Amendment 67 landings requirements, BSAI Pacific cod harvests made by a vessel that was operating under LLP qualified fishing rights when it made such harvests, whether the vessel generated those fishing rights itself, or was operating under them by transfer. The motion was seconded by Dave Fluharty and carried without objection (Nelson recused).

Stephanie Madsen moved to ask Chairman Benton and the NPFMC Staff to incorporate the comments received in public testimony into the draft letter produced by Dave Fluharty to the NPRB outlining a list of priority research topics for consideration by the NPRB in its request for proposal processes. The motion was seconded by Stosh Anderson and carried without objection.

D-3 Staff Tasking

ACTION REQUIRED

Review tasking and provide direction as appropriate

BACKGROUND

Attached is the spreadsheet summarizing status of major Council initiatives, along with a three-meeting outlook (D-3(a)). An updated list of Committees and their status is also included for reference (D-3(b)). I will review for the Council the status of various projects, summarize staff time already committed, review actions taken at this meeting, and seek your direction relative to any new projects, or prioritization of existing projects.

One major potential item is the differential gear impact analysis discussed by the Council in previous meetings. D-3(c) is our first cut at trying to develop an approach to this issue that is

feasible, while still being useful to the Council. An item we will have to add to the mandated tasking list is a Pribilof Island blue king crab rebuilding plan. D-3(d) is a letter from NMFS regarding this issue.

On the list of potential new projects is Amendment 64 (BSAI P. cod allocations among fixed gear), which sunset on December 31, 2003. A new plan amendment to retain (or alter) such allocations will require Council action by June of 2003, and initial review of the analysis by April 2003. The Council also deferred action on allocations between pot catcher and catcher/processor vessels to this amendment package. Your direction on this amendment package at this meeting would be appropriate. A discussion paper, including potential alternatives and options is under D-3(e).

D-3(f) contains letters received regarding 'fish down/fish up' provisions among vessel classes, suggesting allowing fishing down in Area 2C, and fishing up from C to B class in all areas. Given that there are existing fishing amendments to the IFQ program in the hopper (awaiting staff availability or Council prioritization), I would suggest these amendments be forwarded to the Council's IFQ Implementation Committee for consideration, relative to other IFQ related proposals.

Scientific and Statistical Committee and Advisory Panel Reports

Neither the SSC nor the AP discussed this agenda issue.

DISCUSSION/ACTION

Kevin Duffy moved that the Council adopt the following Work Plan for Aleutian Islands Pollock Trawl Closure (agenda issue C-2, Steller sea lion measures).

In April 2002, the SSC recommended modifications to the Steller sea lion (SSL) trailing amendments to address certain deficiencies prior to the document going out for public review. In particular, the request was to provide a historical perspective as to why the Aleutian Islands pollock fishery was originally closed, and what has changed since that time which would warrant reopening.

The SSC, in their October 2002 meeting, cautioned that it was too soon to conclude that the western population of SSLs was recovering and that the pup counts in this area continue to decline in the 2002 SSL population survey.

The Aleutian Islands pollock fishery has been closed for the past four years. Reopening the fishery under the proposed SSL measures will result in markedly different spatial and temporal fishing patterns in the Aleutian Islands fishery. A comprehensive review of the effects of reopening the fishery needs to be done prior to authorizing the new fishery.

This review should build on the recent Environmental Assessment developed by staff, and should include a description of:

- the current SSL stock structure within the Aleutian Islands;
- a consideration of the current theory and information regarding localized fishery depletions and SSL prey densities;
- the importance of such prey densities and forage availability to weaned pumps and nursing females;
- the most current telemetry information on weaned pumps and foraging outside of critical habitat in the Aleutian Islands, and

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- **the cumulative effects on these SSL age classes resulting from multiple fisheries on SSL prey in the Aleutian Islands (Atka mackerel, Pacific cod and Pollock).**

In addition, the review should include an analysis of cumulative impacts arising from reopening the Aleutian Islands pollock fishery on bycatch of target and non-target species, forage fish or other prey of SSLs and potential impacts on other fisheries. This should include such issues as changes in fishing patterns in the other Aleutian Islands fisheries which have come about during the period of the pollock closure, any changes in spatial and temporal distribution in the pollock fishery arising from proposed SSL measures, and any impacts which might affect participants in other fisheries in the region as a result from reopening the pollock fisheries.

This report should be provided to the Council for consideration at the April 2003 meeting.

The motion was seconded by Stephanie Madsen and it carried without objection.

Hazel Nelson moved that staff initiate an analysis of Amendment 64 with Council finalizing the alternatives in December. The motion was seconded by Stephanie Madsen. Dave Fluharty brought up that an earlier Council action mentioned combining this amendment with Amendment 68 and asked Ms. Nelson if that was her intent. Ms. Nelson answered affirmatively and the motion carried without objection.

Dave Fluharty stated that he believed the Council was required to start a rebuilding plan for Pribilof Island blue king crab and moved to do so. The motion was seconded and carried without objection.

CLOSING

Dennis Austin complimented the tremendous effort by staff and expressed his appreciation. The meeting adjourned at 5:14PM on Tuesday, October 8th, 2002.