North Pacific Fishery Management Council

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FINAL

ADVISORY PANEL MINUTES
North Pacific Fishery Management Council
February 2-6, 2009, Seattle Renaissance Hotel, Washington

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

Mark Cooper	Tim Evers	Matt Moir
Craig Cross	Jeff Farvour	Rex Murphy
John Crowley	Jan Jacobs	Theresa Peterson
Julianne Curry	Bob Jacobson	Ed Poulsen
Jerry Downing	Simon Kinneen	Beth Stewart
Tom Enlow	Chuck McCallum	Lori Swanson
	Mike Martin	

The AP unanimously approved the minutes from the December 2008 meeting.

C-2 Arctic FMP

The AP recommends that Council approve the EA/RIR/IRFA for the Arctic FMP, with the selection of Alternative 2 and Option 3 as the preferred alternative, and adopt the Arctic FMP. Further, the AP recommends the Council amend the Crab FMP to terminate its geographic coverage at the Bering Strait.

The AP also recommends continued outreach to Arctic communities. *Motion passed 19/0.*

C-3 Bering Sea Salmon Bycatch

The AP advises the Council that the plans presented to the AP (the Legacy Plan presented by UCB, based on a concept developed by Sugihara, and the Financial Incentive Plan presented by PCC based on a concept developed by Plesha) meet the criteria outlined in the PPA. *Motion passed 19/0.*

C-4 Amendment 80 cooperative formation

The AP recommends that the analysis be released for public review with the following changes:

1. Clarify that Alternative 5 provides an additional alternative to the existing 3 company/9 vessel threshold, not a replacement.
2. Change Alternative 6 to a sub-option under each of the alternatives, including Alternative 1. The sub-option should read "The GRS will be applied in aggregate to all cooperatives if this calculation meets or exceeds the GRS requirement."

The AP also recommends that the Council request written confirmation from NMFS Enforcement and NOAA General Counsel that the GRS can be applied in aggregate to all cooperatives as envisioned in this suboption.

Motion passed 19/0.

C-5 BSAI fixed gear parallel waters fishery

The AP recommends the following changes/additions/deletions to the alternatives and problem statement: (additions are underlined; deletions are stricken through)

Alternative 1: No Action

Alternative 2: Require any catcher processor using pot or hook-and-line gear with an FFP or an LLP to have an Amendment 67 Pacific cod endorsement and the appropriate area endorsement to participate in the BSAI Pacific cod parallel waters fishery.
Alternative 3: ~~In addition, require the above Federally permitted or licensed vessels~~ Require any catcher processors using pot or hook-and-line gear with an FFP or an LLP that fish in parallel waters to adhere to seasonal closures of the BSAI Pacific cod CP pot or CP hook-and-line sectors (as defined in Amendment 85) corresponding to the sector the vessel is operating in.

Alternative 4: ~~Suboption 2~~ In the BSAI, CP pot and CP hook-and-line vessels with a CP designation on their FFP cannot amend the CP designation, and can only surrender ~~and/~~or reactivate the FFP:

(a) Once per calendar year
(b) Once every eighteen months
~~Once every two years~~
(c) ~~Suboption 3~~ FFP cannot be surrendered during the 3 year term of the permit.

Alternative 5: Vessels with a CP designation on their FFP cannot amend the CP designation, and can only surrender or reactivate the FFP:

(a) Once per calendar year
(b) Once every eighteen months
(c) FFP cannot be surrendered during the 3 year term of the permit.

The Council may choose more than one alternative (i.e. Alternative 2, 3, 4 and/or 5 at the time of final action).

Problem Statement: Several fixed gear CPs are participating in the parallel waters fisheries that do not hold the permits, licenses, and endorsements necessary to participate in the Federal waters fisheries, and the potential exists for participation to increase. This vessel activity may be circumventing the intent of pervious decisions made by the Council regarding license limitation and endorsements, sector allocations, and catch reporting. Additionally, the increased participation in the BSAI CP hook-and-line sector in the parallel fishery undermines recent capacity reduction undertaken by the fleet. While this vessel activity could occur in numerous fisheries, it has recently occurred in the BSAI Pacific cod fishery within the CP pot and hook-and-line sectors. An increasing number of vessels without LLPs, or without Amendment 67 Pacific cod endorsements on their LLPs, have entered the BSAI Pacific cod parallel waters fishery in recent years. This vessel activity has resulted in shortened seasons, has exacerbated the race for fish, and has increased the concentration of Pacific cod harvest inside 3 miles. Long-term participants in the fishery need protection from those who have little or no recent history and have the potential to increase their participation in the fishery. The intent of the proposed action is to prevent fixed gear CPs which lack Federal permits and licenses from entering the BSAI parallel waters Pacific cod fishery. Additionally, changes to rules regarding federal fisheries permits for CP designated licenses may need to be consistent across the North Pacific fisheries to reduce the administrative burden for NMFS and prevent unforeseen permitting loopholes. This action requires prompt attention to promote stability in the fixed gear sectors that participate in the BSAI Pacific cod fishery.

Motion passed 19/0.

C-6 (a) GOA Pollock and Pcod sideboards for non-exempt AFA CVs

A motion to move the discussion paper forward for analysis failed 3/15/1. The AP took no further action on the agenda item.

C-6 (b) GOA B season sideboards for crab vessels.

The AP recommends the Council delay action on this agenda item until the Council finalizes fixed gear recency and Pacific cod sector splits in the Gulf of Alaska. *Motion passed 17/0.*

C-7 Bering Sea Crab Rationalization issues

(a) BSAI Crab Regional Delivery Relief

The AP recommends releasing the document for initial review with the following changes noted:

> *In developing the crab rationalization program, the Council included several measures to protect regional and community interests. Among those provisions, the Council developed regional designations on individual processing quota and a portion of the individual fishing quota that require the associated catch to be delivered and processed in the designated region. In the first three years of the program, all the crab IFQ was harvested and delivered. However, icing conditions in the Northern Region did create safety concerns, and delayed harvesters from entering harbors to deliver to shore-based and floating processors located in the regions, as required by the regional share designations. ~~Periodically, including at times in the first three years of the program, harbors in the Northern Region as defined in the program, are closed by the advance of the Bering Sea ice pack. These ice conditions have disrupted the crab fishery, contributing to safety risks and preventing harvesters from entering harbors to deliver to shore-based and floating processors located in the region, as required by the regional share designations.~~ In addition, other unforeseeable events, events such as an earthquake or tsunami, or man-made disaster, could prevent deliveries or limit the available processing capacity in a region necessary for compliance with the regional designations on Class A IFQ and IPQ. A well-defined exemption from regional landing and processing requirements of Class A IFQ and IPQ that includes requirements for those receiving the exemption to take efforts to avoid the need for and limit the extent of the exemption could mitigate safety risks and economic hardships that arise out of unforeseeable events that prevent compliance with those regional landing requirements. Such an exemption should also provide a mechanism for reasonable compensation ~~to communities~~ to the parties harmed by the granting of the exemption to ensure that the ~~community~~ benefits intended by the regional designations continue to be realized despite the exemption.*

Alternatives
The Council has adopted the following alternatives for analysis:
Alternative 1 – Status quo (no exemptions from regional landing requirements)
Alternative 2 – Contractually Defined Exemption

Method of defining the exemption and compensation:

The exemption shall be generally defined in regulation. To receive an exemption, however,

> **Option 1**: an IFQ holder the holder of matched IPQ, and the entity holding (or formerly holding) the right of first refusal for the IPQ, or
>
> **Option 2**: an IFQ holder the holder of matched IPQ, and an entity identified by the community benefiting from (or formerly benefiting from) the right of first refusal for the

IPQ, or in the event that the subject IPQ was never subject to a ROFR, any entity qualified to act as the regional reprensentative with respect to any IPQ in that region and fishery may act as the regional representative for the subject IPQ.

Option 3: an IFQ holder the holder of matched IPQ, and a regional entity agreed to by the communities benefiting from rights of first refusal (or formerly benefiting from rights of first refusal) in the designated region of the IFQ and IPQ,

shall have entered a contract defining conditions under which an exemption will be granted and the terms of any compensation.

Administration of the exemption

The exemption shall be administered through submission of an affidavit by the holder of the IFQ for which the exemption is applied. An affidavit attesting to the satisfaction of requisite conditions for the exemption (as agreed in the contract) shall constitute conclusive evidence of qualification for the exemption.

Definition of the exemption

Qualifying circumstance: An unavoidable circumstance that prevents the delivery or processing of crab in a region as required by regionally designated IFQ and matched IPQ will qualify for the exemption from regional landing requirements. To qualify for the exemption a circumstance must: a) be uavoidable, b) be unique to the IFQ and/or IPQ holder, c) be unforeseen or reasonably unforeseeable, and d) have actually occurred.[1]

Option: Additional specificity of the exemption and its term ~~will~~ may be included in any contract between the IFQ holder, the holder of matched IPQ and the entity representing region/community interests.

Mitigation requirements

Requirement to attempt to mitigate:

Provision ~~**Option**~~ **1**: To receive an exemption the IFQ holder and the holder of matched IPQ shall have exerted all reasonable efforts to avoid the need for the exemption, which may include attempting to arrange delivery to other processing facilities in the designated region unaffected by the unavoidable circumstance, attempting to arrange for the use of IFQ (and IPQ, if needed, and CDQ) not requiring delivery in the affected region, and delaying fishing.

Provision ~~**Option**~~ **2**: An IFQ holder will not be granted an exemption, if the IFQ holder holds any unused Class B IFQ, C share IFQ, or Class A IFQ that may be delivered outside of the affected region.

Compensation

Compensation shall be as agreed in the contract among the IFQ holder, the holder of matched IPQ, and the entity representing regional/community interests.

Contract finalization dates:

- Fishery openings
- January 1
- Open, and can be finalized at any time

Motion passed 18/0

[1] These criteria are taken from the exemption to 'cooling off' provision landing requirements that applied on a community basis to some IPQ in the first two years of the program (see 50 CFR 680.42(b)(4)(ii)).

(b) Crab Committee Report
The AP recommends the Auction alternative be deleted from further consideration. *Motion passed 15/3.*

The minority believes it is too early in the process to eliminate the auction opportunity. AP members felt discussion and analysis may be warranted to explore auction potential. Signed: Theresa Petersen, Tom Enlow, Jeff Farvour

Delete Alternative 4
The AP additionally recommends adding a discussion involving elements of fishing communities. *Motion passed 19/0*

The AP recommends eliminating the Leasing Restrictions discussion paper *Motion passed 16/3.*

Despite the difficulities getting hard numbers, AP members recognize the effects of leasing in rationalized fisheries has had profound effects on crew and warrants further exploration in a discussion paper. Signed Jeff Farvour, Theresa Petersen, and Chuck McCallum.

D-2 (b) Halibut PSC Discard Survival EFP

The AP recommends that the Council approve the EFP.

In addition, the AP strongly recommends a neutral party with a scientific background be on board for the study of the halibut PSC discard survival EFP.

Motion passed 19/0.

D-2 (d) BSAI Bottom Trawl Sweep Requirements

The AP recommends that the Council develop a revised problem statement for bottom trawl sweep modification requirements, which could include the following elements:

- Research has shown that sweep modifications can reduce gear contact with the sea floor and may not have negative effects on catch rates.
- Modifications appear to meet the Council's intent to consider practicable measures to reduce potential adverse effects of non-pelagic trawl fishing on bottom habitat.
- Wedge is reported to contain high concentrations of flatfish and low concentrations of other bycatch species.
- Re-opening of the 'wedge' was linked to implementation of sweep modifications in final action on Amendment 89.

Further, the AP recommends that the Western boundary of the wedge and the Eastern boundary of the St Matthews Habitat Conservation Area be delineated by a north/south at 171 degrees 55 minutes West.

The AP recommends that the Council move this document forward for initial review.

Motion passed 17/0

D-2 (f) AI Pacific cod processing sideboards

The AP recommends the Council take no further action on this item at this time. *Motion passed 14/4.*

The minority believes that the discussion paper on the AI Pacific cod processing sideboards should be moved forward and that the Council should initiate a formal analysis.

While we share concerns about communities that have a single processor, those are outweighed by our knowledge that a fishing community without a processor cannot survive. Adak is struggling to rebuild after more than 50 years of occupation by the US Government. Commercial fishing is a traditional way of life for Aleuts. Without a local processor the community will not survive. The Aleut Corporation has come to this council time and again seeking ways to allow this community to rebuild. Each effort has been turned away. Please at least proceed to initiate an analysis of this proposed action. Signed: Beth Stewart, Chuck McCallum, TheresaPeterson, and Jerry Downing.

D-3 Staff Tasking

The AP recommends the staff submit a proposal on whether or not legal size halibut could be retained in the area 4 pot cod fishery if the harvester had halibut IFQ's for that area. *Motion passed 18/0/1*.