

**Gulf of Alaska Pacific Cod Jig Fishery – Management Update and Reverse Parallel Fishery
North Pacific Fishery Management Council and Alaska Board of Fisheries
March 2012**

I. Introduction

Council staff have coordinated with the State, NMFS, and NOAA General Counsel to update this management report with new Federal and State Pacific cod regulations, catch data as is available at the time of document release, to clarify the legal authority and management issues described within, and to describe the conditions under which a reverse parallel fishery could provide additional harvest opportunities. A reverse parallel fishery could provide harvest opportunities in Federal waters for jig vessels under conditions where GHL is available but the Federal TAC has been taken.

The Pacific cod (*Gadus macrocephalus*) fisheries in the Gulf of Alaska (GOA) are currently prosecuted under three distinct management structures: the Federal fisheries, State of Alaska (State) fisheries, and the state-waters parallel fisheries. Pacific cod fisheries in waters 3 to 200 nm offshore are managed federally through the National Marine Fisheries Service (NMFS) under the *Fishery Management Plan for Groundfish of the Gulf of Alaska* (FMP), adopted by the North Pacific Fishery Management Council (Council). Federal regulations specify the amount of annual total allowable catch (TAC) assigned to jig vessels. Sixty percent of the Federal TAC is allocated to the A season that opens on January 1. Forty percent of the Federal TAC is allocated to the B season and is available beginning June 10.

The State fisheries for Pacific cod in State waters 0 to 3 nm offshore are managed by the Alaska Department of Fish and Game (ADF&G), under Board of Fisheries (Board) management plans. The State manages its own exclusive allocation of Pacific cod under guideline harvest level (GHL) regulations. The State also opens its waters to allow jig fishermen to catch Pacific cod allocated to the Federal TAC – the parallel fishery. The Federal TAC fishery and State parallel fishery are opened and closed concurrently. The State does not allow concurrent opening of a parallel fishery and a State GHL fishery within State waters. Historically, there has not been concurrent fishing under a State GHL fishery occurring in State waters and a Federal TAC fishery occurring in Federal waters at the same time. State GHL fisheries are typically open when the Federal and parallel fisheries are closed (see Figure 1, page 6).

A. Summary

As one of the most valuable fish species in the GOA, Pacific cod is the primary species targeted by vessels using pot and hook and line (i.e., longline) gear, and is an important species for vessels using trawl gear. Smaller amounts of Pacific cod are harvested by vessels using jig gear. The jig fishery, though relatively small, is a key fishery in the GOA, providing entry-level opportunity into area fisheries and contributes to a diversified fishing portfolio for combination fishing vessels throughout GOA coastal Alaskan communities. The Council has also exempted jig gear from the License Limitation Program (LLP) licensing requirements in the Western and Central GOA (Amendment 86, effective April 21, 2011) to potentially increase opportunities for jig vessels.

There have been many developments in management of the GOA Pacific cod fisheries since the Council passed its motion on the Amendment 83 sector split in December 2009. The timeline below highlights events over the last three years concerning development of the Federal rule on the sector split (effective January 1, 2012) and management of the GOA Pacific jig fisheries.

Recent actions taken by the Board and the implementation of Amendment 83 jig season dates (described in Section II.C.) provide the jig fleet the ability to harvest Pacific cod concurrently in State and Federal waters. Specifically, jig vessels can harvest in the parallel fishery concurrent with the Federal fishery.

Table 1. The Federal and State regulatory process for the GOA Pacific cod jig fisheries

April 2009	Council action to exempt jig vessels from LLP license requirement (Amendment 86)
December 2009	Final Council action on Amendment 83, GOA Pacific cod sector split; Joint Protocol Committee meeting on Federal actions in GOA Pacific cod fishery
December 2010	Council review of discussion paper on management of the GOA Pacific cod jig fishery
April 2011	Council receives Initial Review/Final Action analysis to revise GPA Pacific cod jig fishery management; Council postpones taking action to allow for recommendations from and actions by the Board of Fisheries on management of the State waters jig fisheries
May 2011	NMFS releases early draft rule implementing the sector split in response to questions raised by ADF&G (see Attachment E)
July 2011	NMFS' draft rule published July 26, 2011 (76 FR 44700)
September 2011	Public comment period closes September 9; draft rule receives Secretarial approval
October 2011	Board holds regulatory meeting on GHL and parallel Pacific cod fisheries in the Prince William Sound, Cook Inlet, Chignik, Kodiak, and South Alaska Peninsula areas
December 2011	Council reviews staff report on GOA Pacific cod jig fishery management
December 2011	Final rule implementing Amendment 83 published December 1, 2011 (76 FR 74670)
January 1, 2012	Implementation of GOA Pacific cod sector allocations by area and gear type for 2012
March 2012	Joint Protocol Committee meeting presentation and update
March 2012	Council will review the management report, a discussion paper on limiting other gear on board jig vessels, and a discussion paper on changing the GOA Pacific cod A season opening dates

II. Council, NMFS, and Board Actions

A. Sector splits under Amendment 83 – jig allocations

At its December 2009 meeting, the Council established sector allocations in the Western and Central management areas. In its final action, the Council also supported increasing entry-level fishing opportunities for the jig sector, recognizing that fishery as the primary tool for the Council to provide true entry-level fishing opportunity in the GOA. Through Pacific cod sector splits, the Council intended to enhance stability in the GOA fisheries, to reduce competition among the gear type and area sectors, and to preserve the historic distribution of catch among sectors. The jig sector, however, received an initial allocation *higher* than its historic catch: **1.5% of the Western and 1% of the Central TAC**. In addition, the jig allocation will increase by 1% if 90% of the TAC in an area is harvested in any given year; i.e., the jig sector will “step-up” by 1%, to be capped at 6%. The jig allocation will decrease, however, by 1% in the following year if at least 90% of the previous allocation is not harvested within *two consecutive years*; i.e., the jig allocation will “step-down” by 1%, but will not fall below the initial allocation of 1.5% and 1% to the Western and Central areas, respectively.

As mentioned before, the Council apportioned 60 % of the Federal TAC to the A season and 40% to the B season. The Council recommended changing the B season opening date for jig gear to June 10 or after the State GHL jig fishery closed, in order to provide a year-round Pacific cod fishery for jig vessels. The A season would open on January 1 and close when the TAC was reached or on March 15, whichever occurred first. (This March 15 date certain is now moot as it was not adopted in the final rule implementing sector splits, which is explained in Sections II.C. through II.F.

B. The reverse parallel fishery concept

The Council’s final action on sector allocations outlined options for revising management of the GOA Pacific cod jig fisheries, requiring coordination between the Council and the Board, and tasked staff with developing a discussion paper. At the December 2010 meeting, the Council reviewed this paper and initiated an analysis of alternative management measures intended to ensure full access by the jig fleet to GOA Pacific Cod Jig Management, March 2012

harvest both State (GHL) and Federal (TAC) jig allocations, i.e., a so-called “reverse parallel fishery” that would open Federal waters to jig gear concurrent with the State GHL fishery. Any harvest that occurred either in State or Federal waters would be deducted from the State GHL allocation after the Federal/parallel TAC was exhausted.

In its motion, the Council recognized that a number of factors may contribute to limiting jig harvests in both state- and federally-managed fisheries. Typically the pot GHL is fully harvested but jig harvests have been very low in some years and un-harvested jig GHL may be rolled over to the pot GHL fishery later in the year, typically after the Federal B season closes. However, in some years, the Federal B season has remained open to vessels using fixed gear from September 1 until December 31, and the B season TAC was not fully harvested. During those years, State managers did not have the opportunity to re-open the State waters season in the fall and roll over unused jig GHL to the pot GHL fishery. Further, the timing of the A and B seasons may have limited the participation of jig vessels in the Federal/parallel fisheries.

At the April 2011 Council meeting, the Council considered a proposal to open Federal waters to directed fishing for Pacific cod with jig gear concurrent with the State GHL fishery. The Council selected Alternative 2, which proposed implementing a reverse parallel fishery, as its preliminary preferred alternative (PPA). Under the reverse parallel fishery, operators using jig gear would have an enhanced opportunity for year-round access to Federal waters. Catches in Federal waters would accrue to the State GHL, which is specified as a percentage of the GOA Pacific cod ABC (currently maxed out at 25%). Under the status quo at that time, jig operators would have had access to Federal waters only during the Federal/parallel fisheries A and B seasons, thus timing of the jig fishery could still be a factor limiting jig catches. The Council postponed further action until a time not sooner than the December 2011 Council meeting in order to provide an opportunity for the Board to comment and take action during its Pacific cod regulatory meeting in October

The Council also added an option to Alternative 2 limiting vessels participating in the Federal jig fishery from having any other gear type onboard and requested that staff include a comparison of State and Federal management regulations in any future analysis (see Tables 2 and 3). This is the subject of a separate discussion paper and will be considered with or without a reverse parallel fishery.

C. NMFS’ Amendment 83 draft rule

In its final action on the sector split in December 2009, the Council recommended the Federal jig sector allocation be divided between an A and B season. The A season would open January 1 and close when the A season allocation was reached or on March 15, whichever occurred first.¹ The B season jig fishery would open June 10 or after the State GHL season closes, whichever occurs later. The Council recommended the March 15 closure date, in part, after reviewing the historic Western and Central GOA Federal A season closure dates. The Council’s recommendations, however, did not account for the different regulatory triggers that open the five State waters GHL fishery in each of the State management areas.

The Council contemplated reciprocal regulatory action by the Board to synchronize the State and Federal seasons. The Board, however, had yet to recommend similar action to establish a seamless jig fishery season. NMFS chose not implement the March 15 deadline in its draft rule and instead proposed that the fishery close when the TAC is harvested or on June 10, whichever occurs first, with the intent to provide a seamless Federal jig fishery while providing the Board the flexibility necessary to open and close the GHL and parallel fisheries in each State management area. Harvest from the Federal and parallel fisheries would be deducted from the TAC, and harvest from the state GHL fishery would be deducted from the GHL.

¹ Again, the March 15 date certain was not adopted in the final rule implementing the Amendment 83 sector splits.

Moreover, the language of the Council's April 2011 motion was not sufficiently clear in regards to opening the Federal B season, mentioning only one GHL season closure as the trigger for opening the B season. There are, however, different GHL closure dates for each of the State management areas depending on the harvest rate and overall GHL available to jig gear. In some areas the GHL season is not closed and GHL is left un-harvested annually, such as in the Chignik management area. To implement the Council's motion, NMFS would need to rely on State closure of a GHL fishery to begin the B season fishery. Due to the ambiguous definition of "a GHL fishery," NMFS could not precisely determine which closure of which GHL fishery would be used to establish the opening date of the Federal B season fishery. This lack of specificity was particularly problematic in the Central GOA, which has four State-managed GHL fisheries: Prince William Sound, Cook Inlet, Kodiak, and Chignik. The Council did not specify if one, two, three, or all four State GHL fisheries would need to be closed by the State before the Federal B season jig fishery could open.

Due to this lack of specificity, NMFS proposed to retain the current jig B season opening date of June 10 in its draft rule, under which the Federal B season jig allocation would remain open from June 10 until the jig TAC is reached, or December 31, whichever occurs first. NMFS released an early version of its draft rule on regulations to implement the sector split on May 3, 2011 in response to questions raised by ADF&G on Amendment 83, which was also available for review by the Board on August 28, 2011. The comment period for the draft rule closed on September 9, 2011, and the Secretary of Commerce approved the final rule in late September 2011.

Table 2. Federal Regulations for Pacific Cod in the GOA (updated as of January 1, 2012)

Source: NPFMC and NMFS

Pacific cod fisheries of the Exclusive Economic Zone, Gulf of Alaska			
	Western	Central	Eastern
NMFS Area(s)	610	620, 630	640, 649, 650, 659
State Area(s)	South Alaska Peninsula (M) Chignik (L)	Kodiak (K) Chignik (L) Cook Inlet (H)	Prince William Sound (E)
Management Plan	<i>Fishery Management Plan for Groundfish of the Gulf of Alaska</i> 50 CFR parts 600, 679-80		
Legal Gear See §679.2	All: trawl, pot, jig, and hook-and-line (i.e., longline) (Subject to limitations, §679.24)		
A Season, 60% TAC §679.23(d)(3)	January 1 – June 10 for hook-and-line, pot, and jig gear January 20 – June 10 for trawl gear		N/A – annual, all gears
B Season,^a 40% TAC §679.23(d)(3)	June 10 – December 31 for jig gear ^b September 1 – November 1 for trawl gear September 1 – December 31 for hook-and-line and pot gear		N/A – annual, all gears
Annual TAC by Gear/Operation Type §679.20(a)(12) or by Processing Type §679.20(a)(6)(ii)			
Inshore / Offshore	N/A		Inshore: 90% Offshore: 10%
Jig (off the top)	1.5% (1% step up possible, to 6% cap) ^c	1% (1% step up possible, to 6% cap) ^c	Annual TAC for all gears is approx. 3% of GOA total
Hook-and-line	CP: 19.8% CV: 1.4%	CP: 5.1% CV < 50 ft.: 14.6% CV ≥ 50 ft.: 6.7%	
Pot Gear	CV/CP: 38%	CV/CP: 27.8%	
Trawl Gear	CP: 2.4% CV: 38.4%	CP: 4.2% CV: 41.6%	
Pacific halibut PSC limits §679.21(d)	Ensures groundfish fisheries do not exceed a maximum mortality of Pacific halibut.		
Federal Fisheries Permit (FFP) §679.4(b)	All vessels targeting groundfish in Federal waters are required to have an FFP (see §679.4(b)(1)). Participants targeting Pacific cod are required to have a Pacific cod endorsement, (see §679.4(b)(5)(vi)) and meet observer requirements (see §679.50(a)). All harvesting vessels with an FFP endorsed with a hook and line, pot, or trawl Pacific cod endorsement are required to have an operational vessel monitoring system (VMS) as described at §679.28(f)(6). Jig vessels are not required to use a VMS.		
LLP Requirement §679.4(k)	Participants in the groundfish fishery must have an LLP, which limits entry into the fishery. Jig vessels using up to a maximum of five jig machines, one line per jig machine, and a maximum of 30 hooks per line are exempt from the LLP requirements (see §679.4(k)(2)(iii)).		
Rollovers	Priority to CVs first, then to the combined CV and CP pot sector, and finally to all other CP sectors (see §679.20(a)(12)(ii)(B)), to be determined at the end of the B season.		
Sideboard limits	Apply to CVs qualifying under the AFA, crab vessels with QS, Amendment 80 vessels, and trawl CVs in the Rockfish program.		

^a Any A Season overage or incidental catch between June 10 and September 1 counts towards the B Season TAC.

^b Implementation of Amendment 83 changes the start date for the B season for jig gear from June 1 to June 10.

^c May increase by 1% if 90% of the allocation is harvested in a given year; will decrease by 1% in the following year if at least 90% of the previous allocation is not harvested in two consecutive years, but will not drop below the initial allocation.

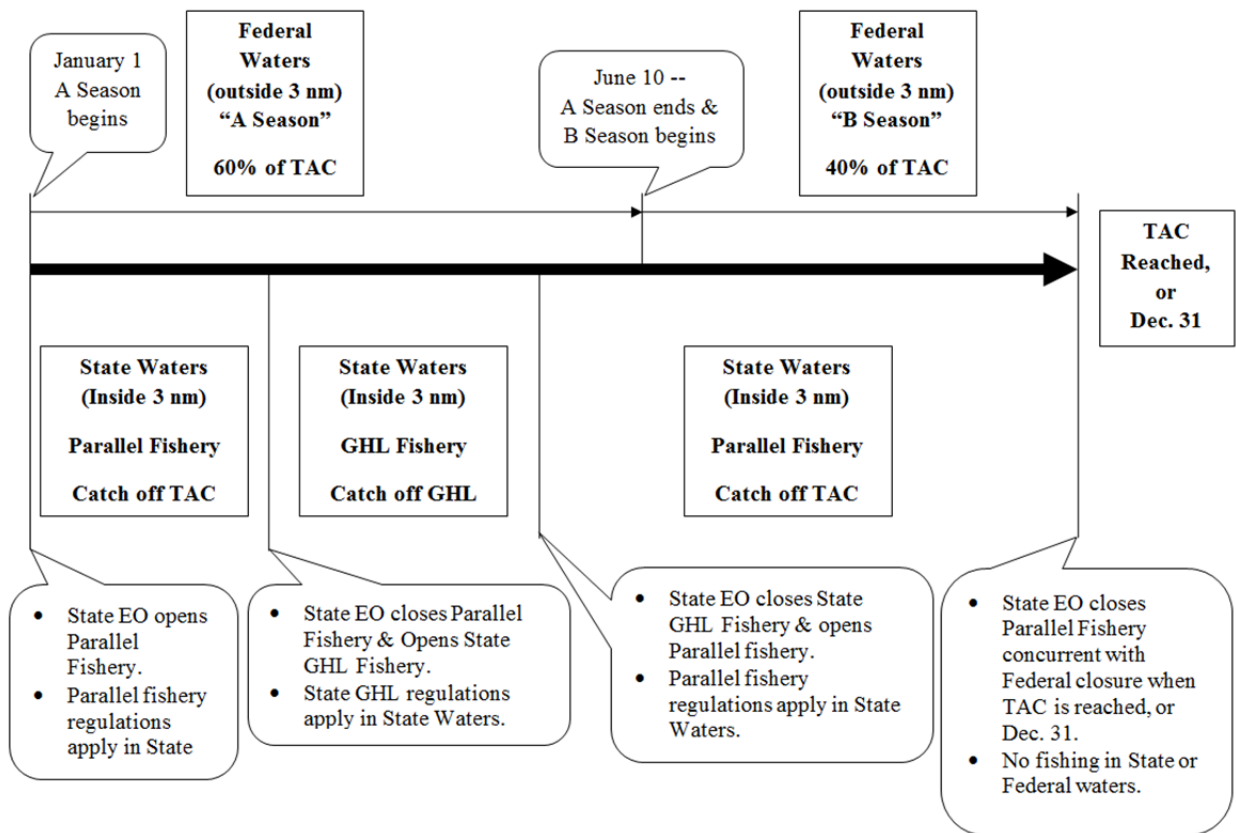
D. Council and Board coordination

At its December 2009 meeting, the Council met jointly with the Board on management issues of mutual interest, which included GOA Pacific cod Federal actions. The Council recommended that Council staff attend future Board meetings to convey the Council’s concerns on proposed increases to the GHL for Pacific cod in State waters.

At its October 2011 meeting in Dutch Harbor, the Council recognized that NMFS’ proposed rule on the sector split provided the Board maximum flexibility management of the State GHL and parallel fisheries. The Council requested that the Board, at its October meeting, consider options to provide jig fishing opportunities concurrently in State and Federal waters, as proposed under the draft Amendment 83 sector split rule, when regulations allow and where the Board and State managers find it practical to implement. The Council further recommended that the Board focus on State water considerations relative to the Amendment 83 sector splits, and that any longer-term solutions should be a separate discussion at future Joint Protocol Committee meetings.

Figure 1. Schematic of Federal and State Pacific Cod Fishery Management

Source: NMFS



E. Board regulatory meeting on Pacific cod

At the Board’s October 2011 meeting in Anchorage, Council Member Ed Dersham gave a presentation to the Board on the Council’s actions regarding the GOA Pacific cod jig fishery and, along with Council and NMFS staff, tracked Board deliberations throughout the meeting. The Board took public comment on a myriad of issues relating to GOA Pacific cod, such as: options for opening and closing the State parallel and GHL fisheries; allocations between gear types; and stand-down time periods for switching gear types.

The Board recommended regulations for each State-waters Pacific cod management area that were generally consistent with Council recommendations and synchronized, to the extent practicable, GHL season opening and closing dates with the Federal jig seasons proposed under the draft rule implementing Amendment 83. The State management areas are: Prince William Sound (Area E), Cook Inlet (H), Kodiak (K), Chignik (L), and the South Alaska Peninsula (M). The Board chose not to recommend that the Council and NMFS implement a March 15 closure date for the Federal A season. Specifically, the Board recommended that ADF&G establish the authority for State managers to open a concurrent season in Kodiak and the South Alaska Peninsula based on an in-season assessment of effort, harvest rate, and remaining GHL quota. In the Chignik management area, the Board recommended that the State GHL seasons open on a date certain to ensure the opportunity for jig vessels to fully harvest the annual GHL. In Cook Inlet and Prince William Sound, the Board recommended that the State GHL seasons open after the Federal A season jig allocation is achieved. See Table 3 for the updated State regulations on Pacific cod.

In addition, the Board reviewed alternative management measures for consideration at an upcoming Joint Protocol Committee meeting, including the reverse parallel fishery concept and recommendations it received to consider possible increases in the State GHL fisheries. The Board will next take up management of Pacific cod for the 2012/2013 cycle on October 11 to 14, 2012, in Anchorage.

Table 3. State of Alaska, ADF&G GOA Pacific cod regulations (updated as of March 1, 2012)

Source: ADF&G

State Area	Prince William Sound (E)			Cook Inlet (H)		Kodiak (K)		Chignik (L)		South Alaska Peninsula (M)	
NMFS Area	630/640			630		620/630		610/620		610	
Board Management Plan	5 AAC 28.081, 5 AAC 28.267			5 AAC 28.081, 5 AAC 28.367		5 AAC 28.081, 5 AAC 28.467		5 AAC 28.081, 5 AAC 28.537		5 AAC 28.081, 5 AAC 28.577	
Opening Date	24 hours after Federal CGOA pot A-season	24 hours after Federal CGOA jig A-season	7 days after Federal CGOA <50' HAL A-season or concurrent with Halibut opening, whichever is later	24 hours after Federal CGOA pot A-season	24 hours after Federal CGOA jig A-season	7 days after Federal CGOA pot A-season	48 hours after Federal CGOA jig A-season*	7 days after Federal CGOA pot A-season or March 7, whichever is later	March 15	7 days after WGOA pot A-season or March 7, whichever is later.	48 hours after Federal WGOA jig A-season**
Legal Gear	Pot	Jig/Hand troll	Longline	Pot	Jig/Hand troll	Pot	Jig/Hand troll	Pot	Jig/Hand troll	Pot	Jig/Hand troll
	5 AAC 28.050 5 AAC 28.230			5 AAC 28.050 5 AAC 28.330		5 AAC 28.050 5 AAC 28.430		5 AAC 28.050 5 AAC 28.530		5 AAC 28.050 5 AAC 28.570	
Gear Limits	60 pots, buoy tags required	5 lines, 30 hooks/line Limits may be removed after Oct. 30	No longlines after May 1	60 pots, buoy tags required	5 lines, 30 hooks/line Limits may be removed after Oct. 30	60 pots, buoy tags required	5 lines, 30 hooks/line Limits may be removed after Sept. 1	60 pots, buoy tags required	5 lines, 30 hooks/line Limits may be removed after Oct. 30	60 pots, buoy tags required	5 lines, 30 hooks/line
Allocations	60% before Oct. 1	None	None	85%	15%	50%	50%	90%	10% (step up to 25% possible)	Capped at 85%	None
Allocation to ≤58 ft. vessels	None			None		None		100%		100%	
Allocation to >58 ft. vessels	None			Capped at 25% prior to Sept. 1		Capped at 25% prior to Sept. 1		0%, although may be allowed to register after Oct. 30		0%, although may be allowed to register after Oct. 30	

Registration	Exclusive, may be lifted after Oct. 30	Exclusive, may be lifted after Oct. 30	Exclusive, may be lifted after Oct. 30	Superexclusive	Exclusive, may be lifted after Oct. 30
	5 AAC 28.020, 5 AAC 28.206	5 AAC 28.020, 5 AAC 28.306	5 AAC 28.020, 5 AAC 28.406	5 AAC 28.020, 5 AAC 28.506	5 AAC 28.020, 5 AAC 28.556
Rollover	Oct. 1	Sept. 1	Sept. 1	Aug. 15	Oct. 31
Delivery requirement	24 hours after close	24 hours after close	48 hours after close	48 hours after close	48 hours after close
	5 AAC 28.271	5 AAC 28.371	5 AAC 28.471	5 AAC 28.541	5 AAC 28.581
Bycatch and Retention requirements	Unless otherwise specified, 20 % of the total round weight of Pacific cod aboard the vessel. All pollock must be retained if the directed pollock season is open. All rockfish must be retained. Rockfish in excess of 5% round weight of Pacific cod must be reported as bycatch overage on fish ticket. Lingcod may be retained after July 1 (with size restrictions).	Unless otherwise specified, 20 % of the total round weight of Pacific cod aboard the vessel. All pollock must be retained if the directed pollock season is open. All rockfish must be retained. Rockfish in excess of 5% round weight of Pacific cod must be reported as bycatch overage on fish ticket. Lingcod may be retained after July 1 (with size restrictions).	Lingcod: 5% of Pacific cod catch by weight, after July 1 only (with size restrictions). Skates and Octopus: 20% of Pacific cod catch by weight. Black rockfish: 5% unless registered for the directed fishery or otherwise specified. All other species follow NMFS bycatch percentages.	All species not actively managed by the state follow NMFS bycatch percentages. Unless otherwise specified, bycatch limit for any species of groundfish is 20% by weight of Pacific cod.	All species not actively managed by the state follow NMFS bycatch percentages. Unless otherwise specified, bycatch limit for any species of groundfish is 20% by weight of Pacific cod. Black and dark rockfish: 5% unless registered for the directed fishery.
	5 AAC 28.070 5 AAC 28.075 5 AAC 28.210 5 AAC 28.270	5 AAC 28.070 5 AAC 28.075 5 AAC 28.310 5 AAC 28.370	5 AAC 28.070 5 AAC 28.07 5 AAC 28.410 5 AAC 28.470 5 AAC 28.472	5 AAC 28.070 5 AAC 28.075 5 AAC 28.510 5 AAC 28.540	5 AAC 28.070 5 AAC 28.075 5 AAC 28.560

* If the Central GOA Federal/parallel A-season jig sector harvest allocation has not been achieved by March 15, the parallel (0 to 3 nm) jig gear sector A-season may close and the Kodiak Area state-waters season for jig gear may open on March 15 or later, depending on ADF&G's ability to provide for orderly fisheries based on inseason assessment of effort, harvest rate or remaining quota.

** If the Western GOA Federal/parallel A-season jig sector harvest allocation has not been achieved by March 15, the parallel (0 to 3 nm) jig gear sector A-season may close and the South Alaska Peninsula Area state-waters season for jig gear may open on March 15 or later, depending on ADF&G's ability to provide for orderly fisheries based on inseason assessment of effort, harvest rate, or remaining quota.

F. Final Amendment 83, sector split rule

Because the Board chose not to recommend a March 15 closure date for the Federal A season jig fishery and synchronized State GHF season opening and closing dates with the A and B seasons proposed under NMFS draft rule, no changes were necessary to the rule implementing Amendment 83 and GOA Pacific cod sector splits. NMFS published the final rule on December 1, 2011 (76 FR 74670), and separate sector allocations were effective January 1, 2012.² Again, the jig sector received an initial allocation higher than its historical catch: 1.5% of the TAC in the Western GOA and 1% of the TAC in the Central GOA. The jig allocation will increase by 1% if 90% of the TAC is harvested in any given year (capped at 6%) and will decrease by 1% if 90% of the previous allocation is not harvested within *two consecutive years* (not to drop below initial allocations).

G. December 2011 Council meeting

At its December 2011 meeting, the Council received a management report from staff that summarized developments in the Amendment 83 rulemaking process and legal and management issues arising out of implementing a reverse parallel fishery for the jig sector. The question and answer exchange between the State and NOAA General Counsel on legal questions and concerns regarding implementation of a reverse parallel fishery was first made public within the management report (Attachment C), though the internal conversation took place in July, 2011. The Council expressed its desire for additional detail on the legal implications of a reverse parallel fishery for consideration at the future Joint Protocol Committee meeting.

H. March Joint Protocol Committee meeting and March/April Council meeting

The Joint Protocol Committee Meeting met on March 19, 2012, in Anchorage. The Joint Protocol Committee contains members of both the Council and the Board, to coordinate between both regulatory bodies. Among other issues of mutual interest, the Committee received staff presentations and briefing materials on three Council discussion papers concerning the management of GOA Pacific cod: 1) this updated management report on the reverse parallel fishery discussion; 2) revising the Federal A season opening date(s); and 3) prohibiting other gear onboard vessels jigging for cod. Because Amendment 83 has only recently been implemented, it is unclear whether the conditions that a reverse parallel fishery would address (e.g., no Federal TAC but adequate State GHF) will occur.

Any Board recommendations not incorporated in NMFS' final Amendment 83 rule will need to occur through the Joint Protocol Committee as a subsequent action that will include the Council's public process, and notice and comment rulemaking. Any subsequent Council and Federal action would not likely be implemented until the 2014 fishing season. The Council will consider these issues at its March/April 2012 meeting and would benefit from any recommendations or discussions of the Joint Protocol Committee.

III. Recent Catch Data

A. Federal TAC fishery – 2012/2013 seasons

The final 2012/2013 harvest specifications were published in the Federal Register on March 14 (77 FR 15194). Overall, the 2012 Pacific cod allocations by area is similar to the allocations in 2011. The Central GOA received 44,363 mt in 2012 compared to 40,362 in 2011. The Western GOA received 21,024 mt in 2012 compared to 22,785 mt in 2011. In addition, all crab vessel sideboard fisheries are closed in the Western and Central GOA. The revised 2012 and 2013 TAC harvest specifications are

² The final rule may be found at: <http://alaskafisheries.noaa.gov/frules/76fr74670.pdf>

provided below in the following Tables:

Table 4. Final 2012 Seasonal Apportionments and allocation of Pacific Cod TAC for the Western, Central and Eastern areas (as of March 14, 2012)

Regulatory area and sector	Annual allocation (mt)	A Season		B Season	
		Sector percentage of annual non-jig TAC	Seasonal allowances (mt)	Sector percentage of annual non-jig TAC	Seasonal allowances (mt)
Western GOA					
Jig (1.5% of TAC)	315	N/A	189	N/A	126
Hook-and-line CV	290	0.70	145	0.70	145
Hook-and-line C/P	4,100	10.90	2,257	8.90	1,843
Trawl CV	7,952	27.70	5,736	10.70	2,216
Trawl C/P	497	0.90	186	1.50	311
All Pot CV and Pot C/P	7,869	19.80	4,100	18.20	3,769
Total	21,024	60.00	12,614	40.00	8,410
Central GOA					
Jig (1.0% of TAC)	427	N/A	256	N/A	171
Hook-and-line <50 CV	6,174	9.32	3,938	5.29	2,235
Hook-and-line ≥50 CV	2,835	5.61	2,372	1.10	464
Hook-and-line C/P	2,158	4.11	1,736	1.00	422
Trawl CV	17,581	21.14	8,936	20.45	8,645
Trawl C/P	1,775	2.00	847	2.19	928
All Pot CV and Pot C/P	11,755	17.83	7,538	9.97	4,217
Total	42,705	60.00	25,623	40.00	17,082
Eastern GOA		Inshore (90% of Annual TAC)		Offshore (10% of Annual TAC)	
	1,971	1,774	197

Table 5. Final 2013 Seasonal Apportionments and allocation of Pacific Cod TAC for the Western, Central and Eastern areas (as of March 14, 2012)

Regulatory area and sector	Annual allocation (mt)	A Season		B Season	
		Sector percentage of annual non-jig TAC	Seasonal allowances (mt)	Sector percentage of annual non-jig TAC	Seasonal allowances (mt)
Western GOA					
Jig (1.5% of TAC)	328	N/A	197	N/A	131
Hook-and-line CV	301	0.70	151	0.70	151
Hook-and-line C/P	4,259	10.90	2,345	8.90	1,915
Trawl CV	8,261	27.70	5,959	10.70	2,302
Trawl C/P	516	0.90	194	1.50	323
All Pot CV and Pot C/P	8,175	19.80	4,259	18.20	3,915
Total	21,840	60.00	13,104	40.00	8,736
Central GOA					
Jig (1.0% of TAC)	444	N/A	266	N/A	177
Hook-and-line <50 CV	6,413	9.32	4,091	5.29	2,322
Hook-and-line ≥50 CV	2,946	5.61	2,464	1.10	482
Hook-and-line C/P	2,242	4.11	1,804	1.00	438
Trawl CV	18,263	21.14	9,282	20.45	8,981
Trawl C/P	1,844	2.00	880	2.19	964
All Pot CV and Pot C/P	12,212	17.83	7,831	9.97	4,381
Total	44,363	60.00	26,618	40.00	17,745
Eastern GOA		Inshore (90% of Annual TAC)		Offshore (10% of Annual TAC)	
	2,047	1,842	205

Note that the final 2013 seasonal apportionments do NOT reflect the anticipated 1% step-up for the Western and Central areas. Assuming the same overall TAC amounts for Pacific cod as in 2012 (21,840 mt for the Western GOA and 44,363 mt for the Central), with a 1% step-up the Western GOA will receive 2.5% of the

overall TAC for Pacific cod, or approximately 546 mt (1.2 million lbs.); the Central GOA will receive 2% of the TAC, or approximately 888 mt (2 millions lbs.). As of March 10, NMFS recorded fisheries closed to prevent the sector from exceeding its TAC and made the following closure projections for the different sectors:³

Table 6. Central GOA Pacific cod sectors (current through March 10, 2012)

Jig	Closed March 6, through June 10 (SFD Info Bulletin 12-25).
Hook-and-line CP	Closed February 23, through September 1 (SFD Info Bulletin 12-20).
Hook-and-line CV < 50 ft.	Closed March 4 (SFD Info Bulletin 12-24)
Hook-and-line CV ≥ 50 ft.	14 CVs have reported 1,754 mt. Setting aside 100 mt for incidental catch and at the current weekly rate of 285 mt per week, the remaining 513 mt is expected to be reached in 12 days (~March 22). Catch rates increased to 285 mt for the week of March 10 compared to 131 mt for the week of March 3.
Pot CV/CP	Closed February 10 (SFD Info Bulletin 12-11)
Trawl CV	42 CVs have reported 4,423 mt. Setting aside 1,800 mt for incidental catch, 2,713 mt remains. Catch rates increased to 1,371 mt for the week of March 10 compared to 1,090 mt for the week of March 3. The fleet is targeting B season pollock starting March 10, 2012.

Table 7. Western GOA Pacific cod sectors (current through March 10, 2012)

Jig	13 vessels have reported 68 mt and 121 mt remains. Catch rates are 17 mt for the week of March 10 compared to 15 mt for the week of March 3. NMFS expects the catch rates to decrease for the week of March 24 with the closure of the parallel waters fishery by the State. No closure date is projected for the federal fishery at this time.
Hook-and-line CP	5 vessels have reported 1,640. Setting aside 55 mt for incidental catch, 563 mt remains. Catch rates have decreased and at the current rate a closure is not projected.
Hook-and-line CV	Setting aside 15 mt for incidental catch, 61 mt remains in the directed fishing allowance.
Pot CV/CP	Closed February 6, 2012 (SFD Info Bulletin 12-10)
Trawl CP	Closed February 14 (SFD Info Bulletin 12-14)
Trawl CV	Closed February 22 (SFD Info Bulletin 12-18)

B. State of Alaska GHF Fisheries – 2012 season

The State of Alaska Pacific cod GHF jig fishery has five subareas that open per regulation or hinge on the Federal/parallel fishery closure date. See Table 3 for the details of the updated State Pacific cod fisheries regulations (as of March 1, 2010).

Prince William Sound (E)

The total Prince William Sound GHF allocation is 1.45 million pounds. The jig fishery opened on March 7, 2012, coinciding with the closure of the Federal/parallel fishery on March 6, 2012. The jig fishery will close when the allocation is reached or when the Federal B season opens on June 10, whichever occurs first. In addition, the fishery opened to pot gear on February 11, 2012. The longline fishery will open on March 17, 2012, concurrent with the IFQ halibut season opening date, and will close when 85% of the GHF is reached (1.23 million pounds). The Federal/parallel longline fishery closed on March 4, 2012 to vessels less than 50 ft LOA.

³ NMFS fishery summary as of March 15, 2012, current through March 10:
<http://www.fakr.noaa.gov/sustainablefisheries/reports/outlook.txt>

Cook Inlet (H)

The jig fishery opened on March 7, 2012, with an allocation of 700,000 pounds (15% of the area GHL). The parallel fishery closed on March 6, 2012, which coincided with the closure of the Federal Central GOA fishery. The jig fishery will close when the allocation is reached or when the Federal B season opens on June 10, whichever occurs first. In addition, the Pacific cod fishery opened to pot gear on February 11, 2012, with an allocation of 4.0 million pounds (85% of the area GHL), coinciding with the closure of the Federal/parallel fishery. The Cook Inlet fishery closed to pot vessels greater than 58 ft. LOA on March 2, which are restricted to 25% of the total area GHL (approximately 1.2 million pounds). Any remaining GHL after September 1, 2012 will be available to all gears with no vessel size restrictions.

Kodiak (K)

The Kodiak jig fishery opened on March 8, 2012 with an allocation of 7.845 million pounds. In addition, the Kodiak pot fishery opened at noon on February 17, 2012, coinciding with the closure of the Central A season pot gear sector. The pot fishery closed on March 1, 2012. The preliminary estimate is that 7.41 million pounds was harvested. Vessels longer than 58 ft. LOA were capped at 25% of the area GHL. By regulation, if the Central GOA Federal/parallel A-season jig sector harvest allocation has not been achieved by March 15, the parallel (0–3 nm) jig gear sector A-season may close and the Kodiak Area state-waters season for jig gear may open on March 15 or later, depending on ADF&G's ability to provide for orderly fisheries based on inseason assessment of effort, harvest rate, or remaining quota.

Chignik (L)

The jig gear fishery opens March 15, 2012, with an allocation of 1.1 million pounds (10% of the area GHL), coinciding with the Federal/parallel fishery closure on March 14, 2012. Vessels are limited to 58 ft. LOA. In addition, the State GHL fishery opened to pot gear on Wednesday, March 7, 2012 with an allocation of 9.88 million pounds (90% of the area GHL).

South Alaska Peninsula (M)

The jig fishery is expected to open March 19, 2012, with an allocation of 2.32 million pounds (15% of the area GHL), 48 hours after the Federal/parallel fishery is expected to close on March 17, 2012. In addition, the South Alaska Peninsula pot fishery opened on Wednesday, March 7, 2012 with an allocation of 13.13 million pounds (85% of the area GHL). The Federal/parallel fishery closed to pot gear on February 10. All vessels participating in the South Alaska Peninsula Pacific cod GHL fishery may not exceed 58 ft. LOA.

IV. Discussion

A. Benefits of a reverse parallel fishery

The reverse parallel concept initially appears to primarily be of benefit to jig fishermen in the A season, in instances where federal TAC closures occur prior to mid-March, thereby allowing access to federal waters during the favorable fishing period from mid-March to late May. The Central GOA/Kodiak area appears to be the area where such a fishery construct may likely be most beneficial. To attempt to project the likely Federal A season duration—and thereby determine whether and to what extent the reverse parallel construct would accomplish the Council's intended goals—staff have examined catch data from State and Federal sources. Data examined included weekly catch rates in the State GHL fisheries from 2006 to 2011, weekly catch rates in the Federal/parallel fisheries from 2006-2011, overall catch rates from all sources from 2006-2011, and limited catch data (through February) for the current 2012 Federal/parallel fisheries. Ideally one would compare potential catch rates with projected TAC levels (e.g., in 2013 and

2014) to assess the likely duration of the Federal A season, and the potential for that season to extend beyond mid-March and thus overlap with the likely State GHL fishery, providing fishermen the opportunity to access Federal waters during the GHL fishery.

B. Analysis – uncertainty in projections

Such catch rate projections as described above are highly dependent upon the catch rates used (i.e., the Federal/parallel fisheries catch rates versus the Federal/parallel and GHL catch rates), the weeks or months that are utilized, and the weeks or months to which the average catch rates are applied, in order to make the Federal/parallel season-duration projections. Prior to 2012, there were no sector allocations and the Federal cod A season closures were based on the overall Pacific cod A season catch. State GHL seasons were opened in response to these overall closures, and were not predicated upon catch by the jig sector specifically. For example, the State GHL fisheries in the Kodiak and South Alaska Peninsula State GHL subareas have been fully taken prior to the start of the federal B season (June 10) since 2009, with the majority of effort and catch occurring March through May. The opening of the Kodiak area GHL fishery has been in early February over the past three years. The opening dates for the South Alaska Peninsula area have become earlier over time, from late March in 2008, to mid-March in 2009, to early March in 2010, and finally to late February in 2011. Overall, total jig catch has predominately been from state-waters fisheries, though it is uncertain to what extent that may change under the newly-implemented separate Amendment 83 sector allocations.

To underscore the uncertainty in calculating any Federal A season-duration projections at this time, simply using the average weekly catch rates in the Federal and parallel fisheries—irrespective of the number of unique vessels participating—during the A season by fishermen using jig gear in the two most recent years (2010 and 2011), it is projected that the 2013 A season Federal fishery could last through the entire fishing year in both the Western and Central GOA, based on current projected TAC levels (which assume the 1% step-up for 2013) and presuming no concurrent State GHL fishery.

On the other hand, if average weekly A season catch rates are used that include all jig fisheries—State GHL fisheries as well as Federal/parallel fisheries—and those rates are applied beginning January 1, 2013, the fishery could be projected to close in mid-February. Finally, looking at only the overall catch rates for the first two months of 2012, the fishery could be projected to last all year long in 2013.

All of the scenarios above are highly unlikely and are not realistic projections due to the following uncertainly factors:

1. The projections look only at the two most recent years (and only the first two months of 2012);
2. There is high variability regarding the number of vessels participating in the jig fishery between years;
3. There is high variability in participation between months within each year;
4. There is variability across years in the timing (opening) of the GHL fishery;
5. The Federal A season closures in 2010 and 2011 (and in all prior years) were based on overall cod catch before the sector allocations were in place; and
6. There is a high degree of uncertainty with regard to jig sector participation under the newly implemented Amendment 83 sector allocations (and the relative size of the GHL allocations to the federal jig fishery allocations).

C. Qualitative description

For the above reasons, it is useful to attempt a more qualitative, practical assessment of the likely duration of the Federal A season under Amendment 83 allocations. Under Amendment 83, the Federal jig TAC

allocations will increase by 1% each year (a step-up to the 6% cap) in the Central and Western GOA areas if 90% of the TAC is taken in a given year. Based on the 2012 experience thus far (jig TAC was reached in the Kodiak area on March 6 and is projected to be reached by late April in the South Alaska Peninsula), this 1% step-up is expected for the 2013 fishing year, which would result in a projected 2013 TAC of approximately 546 mt (1.2 million pounds) for the Western GOA and approximately 888 mt (2 million pounds) for the Central. These catch amounts reflect an overall 16% increase in the TAC over 2011 with the addition of the 1% step-up. While catch rates typically increase significantly during March and April, it appears likely that the additional quota in 2013 (e.g., double the amount of the 2012 Federal jig TAC in the Central) will result in an extended season for many subareas, and for the Kodiak area, beyond March 6, likely into the month of April, and possibly even further.

Assuming the required 90% prosecution of the sector allocation is again reached in 2013, an additional 1% step up would occur for the 2014 fishing season (i.e., a 33% increase over 2013 for the Central GOA), further increasing the likelihood of an extended Federal season, though if substantial additional jig fishing effort occurs prior to the opening of the State GHL fishery, then the additional duration of an extended Federal A season for jig gear will be reduced. It seems likely, however, that jig fishermen will indeed have access to fish outside 0 to 3 nm throughout much of the period of high fishing productivity and favorable weather (mid-March through May), without the necessity of a reverse parallel regulatory change. As the federal jig allocation ramps up, it increases the likelihood of a dual fishery even in the absence of a reverse parallel regulatory structure because fishermen would have access to fish on both sides of the 3 nm State/Federal boundary line.

Under the status quo, without a reverse parallel fishery but under the Amendment 83 sector allocations, the State will have the option to open its GHL fishery in mid-March and have catch accrue to the State GHL quota rather than to the Federal/parallel TAC quota, in order to ensure that the full GHL is taken and fish are not stranded (or rolled over to other gear types, such as pot). Because interest in the GHL fishery is reduced during the summer months, due to disaggregation of cod and other fishing opportunities such as salmon and halibut, it may be likely that the State would choose to open the GHL fishery in mid-March and allow concurrent fishing opportunities.

D. Legal questions and management concerns

If a reverse parallel fishery is created, there are a number of legal concerns that will need to be overcome. The most significant of these are most recently described in the attached letter from the Council to NOAA General Counsel (Attachment A), the recent response from NOAA General Council (Attachment D, received March 16, 2012 and referencing a 2008 letter regarding removal of the jig fishery from the FMP), and in a question and answer discussion between the State and NOAA General Counsel (Attachment C). A significant concern is the possibility of unregulated fishing if NMFS is unable to require vessels fishing in the reverse parallel fishery to register with the State, subject to State jurisdiction. Under this scenario, vessels would fish for Pacific cod using jig gear exclusively in Federal waters off of the State GHL. Of particular concern are CPs jigging, of which there may be as many as four. Though these vessels would still be subject to Federal regulations, State regulations are more restrictive. This situation could result in jig vessels (including CPs) fishing in Federal waters inconsistent with the intent of the reverse parallel concept, rapidly harvesting quota credited against the State GHL account. Based on recent correspondence from NOAA General Counsel (see Attachment D), it appears that we do not have the authority to require vessels to register with the State.

E. Summary

It is anticipated that the jig sector will be able to harvest the full Federal TAC allocation for Pacific cod this year and the next. This full prosecution will result in a greater percent allocation of the Federal TAC each

year to the jig fishery through the “stair-step” provisions established under the Amendment 83 GOA Pacific cod sector split. As the percentage of the Federal TAC allocated to the jig fishery increases, one could assume that not all of the increased TAC will be caught prior to the opening dates for the State GHL fisheries, which generally the State anticipates will be in mid-March. The assumption that not all of the Federal TAC will be taken by mid-March is based on likely harvest rates by jig vessels during the first few months of the year (during the Federal A season fishery). That could result in the State making one of two choices concerning the opening date of the State GHL fishery:

- (1) The State GHL fishery could open later in the year once the Federal TAC is fully taken; or
- (2) On a date certain (e.g., March 15), the State could close the parallel fishery and open the State waters to the State GHL fishery though not all of the Federal TAC has been taken; in other words, the catch of Pacific cod inside State waters would no longer come off of the Federal TAC.

Under the second scenario, there would be concurrent jigging and catch in State waters would be deducted from the State GHL allocation. Jig catch in Federal waters would be deducted from the remaining amount of Federal TAC. This concurrent fishing would provide harvest opportunities for jig fishermen inside and outside of State waters at the same time. The potential for concurrent fishing would likely be limited to a short period of time from mid-March through April, possibly through May, which are the optimal months for jig access to quota in either State or Federal waters.

If the State would like to ensure that jig vessels have an opportunity to harvest catch in State and Federal waters at the same time, then the State could choose to structure the opening of the State GHL fisheries to ensure that the GHL fisheries open prior to the Federal A season TAC being taken, in order to enable concurrent fishing. Given the likely trends in jig harvests, the increasing allocation to the jig fleet, and the currently available tools for the State to allow concurrent fishing by scheduling the opening of the State GHL fishery, it is not clear that there is currently any need to establish a reverse parallel fishery.

Until there is more experience under the current Amendment 83 sector split management structure and the potential step-ups of TAC allocations, it is difficult to assess whether and to what extent the reverse parallel structure would be relevant or beneficial, and for what period of time. Given the management difficulties and legal hurdles, it may be prudent to gauge the full prosecution of the 2012 and 2012 Pacific cod jig fisheries to better inform a Council and Board decision on whether to implement a reverse parallel fishery.

V. Preparers and Persons Consulted

NPFMC:	Chris Oliver, Sarah Melton
ADF&G:	Karla Bush, Nicole Kimball
NMFS:	Glenn Merrill, Seanbob Kelly, Josh Keaton

VI. Attachments

- A. NPFMC letter to NOAA General Counsel, December 2011
- B. NOAA General Counsel letter, 2008
- C. NOAA General Counsel responses to legal questions from the State of Alaska, July 2011
- D. Updated NOAA General Counsel responses to legal questions from NPFMC, March 2012
- E. ADF&G comments on the draft rule on the Federal sector split, September 2011

North Pacific Fishery Management Council

Eric A. Olson, Chairman
Chris Oliver, Executive Director



605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Telephone (907) 271-2809

Fax (907) 271-2817

Visit our website: <http://www.alaskafisheries.noaa.gov/npfmc>

December 27, 2011

Ms. Lisa Lindeman
NOAA General Counsel
P.O. Box 21668
Juneau, AK 99802-1668

Dear Ms. Lindeman:

I am writing to request further assistance from your office regarding the 'reverse parallel' fishery concept being contemplated by the Council and the Board of Fisheries, for management of the Gulf of Alaska (GOA) Pacific cod jig fishery. Our Joint Protocol Committee will be meeting on March 19 to further discuss this concept, and the Council will subsequently consider the viability of this management approach at its April 2012 meeting in Anchorage. An analysis of the 'reverse parallel' fishery was originally developed in early 2011, but was put on hold pending the January 2012 implementation of Federal GOA Pacific cod sector allocations (Amendment 83), and Board of Fisheries action in late 2011 to coordinate State management of Pacific cod in 2012. The 'reverse parallel' concept could, in essence, provide additional jig harvest opportunities in Federal waters where State GHJ allocation is available but the Federal TAC has been exhausted. I have attached a brief discussion paper on this issue, recently presented to the Council, for your reference and to provide some additional context.

While the 'reverse parallel' fishery concept has the potential to maximize jig fishery opportunities, it also presents an array of management and legal complexities which must be reconciled in order to be viable. Over the past several months we have worked with staff from GC and Sustainable Fisheries to explore these issues, including examination of a set of key legal questions. Preliminary answers to these questions were posed in the context of Amendment 83, which did not contemplate the 'reverse parallel' concept (and are included in the attached discussion paper); however, we would like to pose a subset of these questions once again, not in the context of Amendment 83 but in the context of a potential new and separate amendment package specific to the 'reverse parallel' concept. The key questions are:

- (1) *Does the MSA authorize Federal regulations which would require jig vessels fishing in the EEZ, but fishing off of the State GHJ, to register with the State, thereby submitting themselves to State jurisdiction? And, if not, could a gear limit (for example, 5 machines/one line per machine/30 hooks per line (from the Amendment 86 fixed gear recency action)), be added to the Federal regulations that open the Federal parallel fishery to jig gear in order to reduce the potential impact of unregistered fishing activity?*
- (2) *Is it possible to open and close the EEZ to jig gear by State management area boundaries (noting that the central GOA contains all or a portion of four State management areas, which could open/close at different times)?*
- (3) *Could the EEZ be opened to jig gear during the State GHJ season through an in-season action rather than through Federal regulations? Specifically, could NMFS close the EEZ to all jig vessels except for those delivering for processing in a State GHJ fishery?*

I understand that these are not simple questions, and recognize that there are also numerous management concerns that may impede progress on the 'reverse parallel' concept. However, we need some resolution of these key legal questions in order to determine whether this concept is even legally viable, and in order to have a productive discussion at our March 19, 2012 Joint Protocol Committee meeting. I appreciate any assistance you can provide on these questions. If you have any questions regarding this request, please contact me or Sarah Melton who is our staff lead on this project.

Respectfully,

A handwritten signature in blue ink that reads "Chris Oliver". The signature is written in a cursive, flowing style.

Chris Oliver
Executive Director

CC: Mr. Tom Meyers, NOAA GC
Mr. Glenn Merrill, NMFS SF
Mr. Seanbob Kelly, NMFS SF
Ms. Karla Bush, ADF&G

B. NOAA General Counsel letter, 2008

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

Dear Chairman Olson:

At its December 2007 meeting, the North Pacific Fishery Management Council requested that we provide guidance on legal considerations associated with State of Alaska (State) management of the Pacific cod jig gear fishery in Federal waters of the Gulf of Alaska (GOA). While a more specific proposal is required to fully assess legal, management, and policy considerations, we offer the following perspectives.

First, we assume the option under Council consideration would retain Pacific cod harvested by jig gear under management of the Council's Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). Given the widespread distribution of Pacific cod in the GOA, the importance of this resource to numerous Federal water fishery sectors, and Federal oversight of Steller sea lion protection measures associated with Pacific cod as a prey species, we do not believe legal justification exists to remove the jig gear fishery from the FMP. Thus, any State management in Federal waters would occur under delegated authority established in the FMP and not by removing the Pacific cod jig gear fishery and associated harvest from the FMP, as has been done for several rockfish species distributed primarily in State waters.

Second, any management authority delegated to the State under the FMP must be consistent with provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Section 306(a)(3)(B) of the MSA allows for state management of a fishery in Federal waters provided such management is consistent with the FMP authorizing such delegation, the MSA, and other applicable law. The specific statute language is enclosed.

As with the existing delegated authority for management of crab in the Bering Sea/Aleutians and demersal shelf rockfish in the Southeast Outside District of the GOA, the State would need to identify management measures it believes would be necessary to manage the Federal water jig gear fishery and demonstrate consistency of those measures with the MSA. This constraint likely would prohibit the State's use of some management measures in Federal waters that it currently employs to manage State water fisheries, such as vessel size restrictions, exclusive registration areas, or other measures that would limit

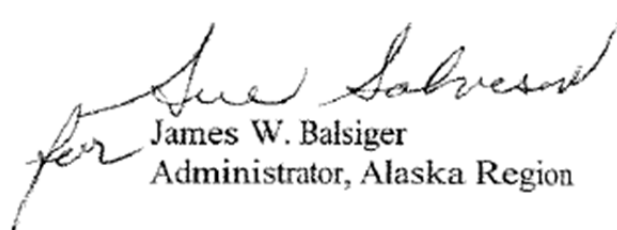
classes of vessels from participation in the Pacific cod jig gear fishery. Further, jig gear fishing for rockfish or other groundfish species could still occur under the FMP which creates complexity with respect to State management of incidental catch of Pacific cod by jig gear under a sector specific allocation.

Other management measures, such as exempting some or all jig gear vessels from Federal license limitation program requirements and the specification of a total allowable catch allocation to the jig gear sector must be developed by the Council and implemented by amendment to the FMP. Even under delegated management, Federal requirements necessary for the management and conservation of Federal water fisheries would continue to apply to jig gear vessels, such as the need for a Federal Fishing Permit and compliance with any relevant Steller sea lion protection measures such as season restrictions. Depending on the range of management measures delegated to the State, the FMP also may need to provide for Federal oversight of State management actions to ensure the fishery is managed consistent with the FMP, the MSA, and other applicable Federal law.

Finally, given the above considerations, the Council and the State of Alaska may wish to consider an alternative that would allow for Federal management of the jig gear fishery in State and Federal waters under a single TAC allocation which could remove the need for a separate State managed guideline harvest level for jig gear. An option to exempt some or all jig gear vessels from LLP requirements could be considered. We note that an increased harvest of Pacific cod in a new open access jig gear fishery could create additional management challenges under either Federal or State management authority that would need to be assessed in the analysis.

We would be pleased to offer additional guidance and perspective as the Council continues to refine its analysis of alternatives for management of Pacific cod sector allocations.

Sincerely,


James W. Balsiger
Administrator, Alaska Region

Enclosure

Magnuson-Stevens Fishery Conservation and Management Act

SEC. 306. STATE JURISDICTION 16 U.S.C. 1856

(3) A State may regulate a fishing vessel outside the boundaries of the State in the following circumstances:

(A) The fishing vessel is registered under the law of that State, and (i) there is no fishery management plan or other applicable Federal fishing regulations for the fishery in which the vessel is operating; or (ii) the State's laws and regulations are consistent with the fishery management plan and applicable Federal fishing regulations for the fishery in which the vessel is operating.

(B) The fishery management plan for the fishery in which the fishing vessel is operating delegates management of the fishery to a State and the State's laws and regulations are consistent with such fishery management plan. If at any time the Secretary determines that a State law or regulation applicable to a fishing vessel under this circumstance is not consistent with the fishery management plan, the Secretary shall promptly notify the State and the appropriate Council of such determination and provide an opportunity for the State to correct any inconsistencies identified in the notification. If, after notice and opportunity for corrective action, the State does not correct the inconsistencies identified by the Secretary, the authority granted to the State under this subparagraph shall not apply until the Secretary and the appropriate Council find that the State has corrected the inconsistencies. For a fishery for which there was a fishery management plan in place on August 1, 1996 that did not delegate management of the fishery to a State as of that date, the authority provided by this subparagraph applies only if the Council approves the delegation of management of the fishery to the State by a three-quarters majority vote of the voting members of the Council.

(C) The fishing vessel is not registered under the law of the State of Alaska and is operating in a fishery in the exclusive economic zone off Alaska for which there was no fishery management plan in place on August 1, 1996, and the Secretary and the North Pacific Council find that there is a legitimate interest of the State of Alaska in the conservation and management of such fishery. The authority provided under this subparagraph shall terminate when a fishery management plan under this Act is approved and implemented for such fishery.

C. NOAA General Counsel responses to legal questions from the State of Alaska, July 2011

In the preamble to the proposed rule implementing Amendment 83, NMFS acknowledged the burden that concurrent Federal and State Pacific cod jig seasons could have on State fishery managers. Below are answers NMFS provided to ADF&G regarding questions it raised on the implementation of a reverse parallel GOA Pacific cod jig fishery:

1. *State of Alaska Question: Is it possible to require jig vessels participating in the EEZ during the State season (Federal parallel) to register with the State?*

NMFS Response: A State registration requirement for jig vessels fishing in the EEZ was not contemplated by the North Pacific Fishery Management Council (Council) and is outside the scope of the Council motion. If the Council were to consider imposing a State registration requirement, several issues would need to be resolved. One important question is whether the Magnuson-Stevens Fishery Conservation and Management Act authorizes Federal regulations requiring vessels fishing in the EEZ to register with a State, thereby submitting themselves to State jurisdiction. A related issue is the extent to which State registration imposes requirements under State law that are outside NMFS' authority to impose under the Magnuson-Stevens Act. Furthermore, it is unclear whether this approach would constitute an impermissible delegation of NMFS' authority to the State. NMFS and NOAA General Counsel would examine these issues as the Council developed its action.

- 1b. State of Alaska Question: If not, then could a gear limit of 5 machines/one line per machine be added to the Federal regulations that open the Federal parallel fishery to jig in order to reduce the potential impact of unregistered fishing activity?*

NMFS Response: Gear limitations are often used to accomplish legitimate conservation and management objectives. However, a limit on the number of jig machines and lines per machine was not contemplated by the Council and is outside of the scope of the alternatives analyzed in the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for Amendment 83. The Council could, if it chooses, address jig gear limits in a subsequent amendment. If the Council adopted gear limits in the jig fishery, it is unlikely those regulations could be implemented

2. *State of Alaska Question: The State may, and occasionally does, open and close a GHL fishery with less notice than NMFS would require to open or close, Federal waters. State managers may also decide to open or close a season on weekends or holidays, which the Federal system cannot accommodate. Could NMFS open and close Federal waters to the Federal parallel season based on input from State managers that they estimate the GHL season could close within the next several days rather than based on an actual closure notice?*

NMFS Response: NMFS regularly closes Federal fisheries based on its own inseason harvest projections. Given sufficient coordination with State managers and access to State data upon which closures are projected, NMFS should be able to project jig fishery closure dates in the same manner. However, once NMFS makes a decision to close a fishery, the closure notice must be published in the *Federal Register* in order to constructively notify the affected public of the closure. This process requires that NMFS file closure notices with the *Federal Register* one business day prior to the effective date of the closure. Preparing, filing, and publishing a closure notice can take several days depending on the time of week that the closure occurs. Once a closure notice has been filed, NMFS can rescind or modify a closure by subsequent notice in the *Federal Register*.

It is possible for NMFS to close or open a fishery on a weekend or a holiday; however, the notice has to be filed with the *Federal Register* prior to the weekend or holiday to be effective. For example, a closure/opening date on a Saturday, Sunday, or holiday on Monday, the Regional Administrator's decision on the effective date has to be sent to NMFS headquarters by the close of business (EST) that Thursday for Friday publication. For an action on Monday (not a holiday) the *Federal Register* notice needs to be sent to NMFS headquarters by close of business Friday for a Monday publication. If a holiday is on a Thursday, the notice needs to be sent to NMFS headquarters by close of business Tuesday.

3. *State of Alaska Question: Is it possible to open and close the EEZ to jig gear by State management area boundaries? (The Central GOA contains all or a portion of 4 State management areas, which could open/close at different times).*

NMFS Response: Given adequate justification, there is nothing to prevent the Council from adopting new jig fishery management areas in the EEZ adjacent to State waters. However, this action was not analyzed in Amendment 83 and is not a logical outgrowth of the Council's recommendations for Amendment 83. Establishment of new jig fishery management areas would require Federal rulemaking. Subsequently, any change to those Federal boundaries (e.g., modification in response to a change to State management area boundaries) would require a subsequent Federal rulemaking. Should the Council recommend complementary Federal regulatory areas for the jig fishery, it is unlikely NMFS could publish implementing regulations prior to 2014, at the earliest.

4. *State of Alaska Question: Is it possible to allow State bycatch limits and retention requirements to apply to jig vessels fishing in Federal waters during the State GHL season?*

NMFS Response: The Federal process for modifying maximum retainable amounts (MRAs) of groundfish and prohibited species catch (PSC) limits differs from the State's process. Following the State's issuance of an MRA or PSC limit, the Council would have to recommend changes to Federal PSC limits or MRAs measures through a subsequent action. Federal MRAs and PSC limits are established by regulation, and changing those measures would require Federal rulemaking. Establishing unique Federal MRAs or PSC limits for one gear type and for one season is not typical. If the Council elected to pursue this course, it would need to build a rationale for adopting bycatch and retention requirements that are less conservative than currently established for federally managed species in the Western and Central GOA. Moreover, it is doubtful that NMFS could successfully and timely respond to State changes to its bycatch limits and retention requirements. A previous attempt to coordinate State and Federal inseason management actions resulted in failure and ultimately the repeal of the *Fishery Management Plan for the Commercial Tanner Crab Fishery Off the Coast of Alaska* (52 FR 17577; May 11, 1987). Acknowledging the difficulty of timely implementing Federal measures in coordination with State management actions, NMFS repealed the FMP. Thus, under its existing authority and rulemaking process, it is unlikely NMFS could implement State bycatch and retention requirements.

5. *State of Alaska Question: Could the EEZ be opened to jig fishing during the State season through an inseason action rather than through regulation? Specifically, could NMFS close the EEZ to all jig vessels except those delivering for processing in a State GHL fishery?*

NMFS Response: These measures were not contemplated by the Council and are outside of the scope of the alternatives analyzed in the EA/RIR/IRFA prepared for Amendment 83. The Council could, if it chooses,

consider a subsequent amendment to address inseason management of the jig fishery. The Council would have to consider the conservation and management basis for a Federal regulation prohibiting fishing with jig gear except from vessels delivering catch for processing in a State GHL fishery.

D. Updated NOAA General Counsel responses to legal questions from NPFMC, March 2012 (see also NOAA GC letter from 2008, Attachment B)

March 16, 2012

Mr. Chris Oliver
Executive Director
North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

Dear Chris,

This responds to your letter of December 27, 2011, requesting assistance from NOAA General Counsel, Alaska Section, regarding the authorities of the North Pacific Fishery Management Council (Council) and the Secretary of Commerce (Secretary) to implement a “reverse parallel fishery” concept for managing the Gulf of Alaska (GOA) Pacific cod jig gear fishery. From your letter and attachments, we interpret the concept as the reverse of the commonly used “parallel groundfish fishery” term, which is a fishery that occurs in State of Alaska (State) waters, is open at the same time as the federal groundfish fisheries in federal waters, and groundfish catch is deducted from the federal total allowable catch. Our understanding of the “reverse parallel fishery” concept in the context of the Pacific cod jig gear fishery is that NOAA Fisheries would open and close federal waters for the jig gear fishery when the Pacific cod fishery for jig gear is open in the State of Alaska and any harvest in either federal or state waters is deducted from the state’s Guideline Harvest Level allocation.

The enclosed letter to the Council dated January 23, 2008, from Dr. James Balsiger, Regional Administrator, NOAA Fisheries, describes legal, management and policy considerations regarding State of Alaska management of the Pacific cod jig gear fishery in federal waters of the GOA. The letter was developed in consultation with this office. While the letter was prepared in response to issues raised in the context of a different proposal, it accurately describes the legal issues associated with a reverse parallel fishery concept.

The question you raise is whether the Council and the Secretary could approve a fishery management plan provision that *requires* a vessel owner who has no contacts with the State of Alaska to submit his vessel to state jurisdiction in order to fish in the Exclusive Economic Zone (EEZ).

Based on the skeletal description of the reverse parallel fishery concept, our initial response is that such a provision is not authorized under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Federal fishery management responsibilities for fisheries seaward of Alaska are exercised in the first instance by the Council as it develops fishery management plans (FMPs) to guide the Secretary in the promulgation of

regulations. Management of fishery resources within State boundaries was left generally to the State.

Section 306(a)(3) of the MSA authorizes the State to regulate a fishing vessel outside the boundaries of the State if the vessel is registered with the State and there is no FMP or other applicable federal fishing regulations for the fishery in which the vessel is operating; or the State's laws and regulations are consistent with the FMP or other applicable federal fishing regulations for the fishery in which the vessel is operating. Vessel registration with the State is an initial condition for the State to exercise its authority outside its boundaries. This condition does not authorize the Council to require a vessel owner to register with the State.

An FMP provision requiring a vessel owner with no contacts with the State to register with the State in order to fish in the EEZ would submit the vessel owner and his operation to the State's jurisdiction, which includes *all* the state's police power, including taxation, service of process, workplace regulation -- not just fishery management authority. How would such other obligations and requirements relate to conservation and management of fisheries in the EEZ? For what conservation and management purpose would the Council require residents of different states fishing in the EEZ, who have no other contact with the State, to submit to the jurisdiction of the State?

The issue you raise differs from the requirement in the Alaska salmon FMP that in order to fish for salmon in the EEZ, a vessel owner needs either a permit issued by the State of Alaska *or* a permit issued by NMFS. Under that FMP, a vessel owner fishing in the EEZ would submit to the State's jurisdiction only if that vessel owner *chose* to obtain the State's permit. If he has a permit from NMFS, the vessel owner does not need to submit the vessel to the State of Alaska's jurisdiction.

Sincerely,



Lisa L. Lindeman
Chief, Alaska Section

Enc.

cc: Jonathan Pollard
Dr. James Balsiger
Glenn Merrill

E. ADF&G comments on the draft rule on the Federal sector split, September 2011

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME
OFFICE OF THE COMMISSIONER

SEAN PARNELL, GOVERNOR

*P.O. BOX 115526
JUNEAU, AK 99811-5526
PHONE: (907) 465-4100
FAX: (907) 465-2332*

September 8, 2011

Mr. Glenn Merrill
Assistant Regional Administrator
Sustainable Fisheries Division, Alaska Region, NMFS
P.O. Box 21668
Juneau, AK 99802

Attention: Ellen Sebastian

Subject: RIN 0648 – AY53 – Proposed rule to implement Amendment 83 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA)

Dear Mr. Merrill:

The Alaska Department of Fish and Game submits these comments in response to the National Marine Fisheries Service's (NMFS) request for public comment on the July 26, 2011 proposed rule to implement Amendment 83 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. We support the implementation of sector allocations in the Western and Central GOA. However, we have a few comments regarding the proposed rule and some concerns with the coordination of our state-water Pacific cod fisheries.

We request a correction be made in the third column, second paragraph on pg. 44709 of the proposed rule where allocations to the jig sector are described. The last sentence in that paragraph misstates the Council's final motion on component 5 whereby *the Federal B season would open on June 10 or after the State GHL season closes, or whichever happens first*. The Council's motion specified *whichever happens later*.

The proposed rule reiterates the need for ongoing coordination of state and federal Pacific cod fisheries and specifically cites the October 2011 Board of Fisheries (BOF) meeting as part of the coordination process. The proposed rule does not include a March 15 closure date for the federal A season jig fishery. By not implementing this date in the proposed rule, the federal jig fishery may remain open until the federal total allowable catch (TAC) is achieved, which may result in concurrent state-waters guideline harvest level (GHL) and federal TAC jig fisheries. Concurrent seasons would occur if the BOF selects a date certain opening for the state-waters GHL fishery and the fishery opens while federal TAC fishery is ongoing. Alternatively, the BOF could implement a triggered opening of the state-waters jig fishery at the conclusion of the federal season. This scenario would afford the jig fleet maximum access to both the parallel fishery and federal waters along with the sector step-up provisions while possibly stranding state-waters jig quota, an outcome not favored by the Council or the federal non-jig sectors.

The BOF retains the flexibility to open and close the state-waters GHL and parallel Pacific cod fisheries with or without a fixed federal A season closure date for the jig fishery. If there is no fixed closure date in federal waters, management and enforcement issues may arise where concurrent state-waters and federal

Pacific cod seasons occur. Currently, a majority of the jig effort in the GOA occurs in the Kodiak Management Area. During the 2011 Kodiak state-waters Pacific cod jig season, 140 jig vessels harvested up to 225 mt of Pacific cod per day. The burden of increased coordination and outreach efforts would fall to our Kodiak management staff to ensure an accurate accounting of landings during concurrent seasons. We have not yet identified the additional resources necessary for these efforts.

Unfortunately, the BOF will not deliberate on proposals to coordinate state-waters Pacific cod fisheries until after the proposed rule public comment period has ended. We appreciate that NMFS could revise the final rule to establish a March 15 closure date for the federal A season jig fishery if the BOF takes action to establish that closure date in the parallel fishery and advises federal waters be closed to avoid the potential for concurrent seasons. The BOF will conclude deliberations on October 10, 2011 and it is our assumption that if a March 15 closure date for federal waters is recommended, it would be forwarded to NMFS for incorporation into the final rule.

Our final comments concern the jig fishery stair-step provisions and access to the federal jig sector. The proposed rule does not specify how the stair-step provisions will work in the Western GOA where the initial allocation is 1.5%. It is assumed that step-ups would proceed in 1% increments until 5.5% is achieved and the last step-up would be 0.5% to the maximum 6%. If this is the case, then it is unclear if step-downs would then occur in the reverse (6%, 5.5%, 4.5%...1.5%) or if they would also occur in 1% increments (6%, 5%, 4%...1.5%).

Finally, there is some concern regarding who will have access to the federal jig sector. The action is intended to expand entry-level opportunities in the GOA through provisions to increase harvest by the jig sector. Amendment 86 exempted jig vessels that do not exceed gear limits from the limited license permit (LLP) requirement in federal waters. Would federally-permitted vessels that qualified for a non-jig Pacific cod LLP in the Central and Western GOA be able to participate in the LLP-exempt jig sector after fishing for their sector has closed?

The proposed rule states that operators who hold an LLP license and a federal fishing permit (FFP) be required to have the appropriate gear, area, and species endorsements on the LLP license and FFP in order to participate in the Western or Central GOA Pacific cod parallel waters fisheries. This recommendation was made by the Council to prevent federally-permitted vessels from entering the parallel fishery and eroding the catches of historical participants. In addition, federally-permitted vessel operators are required to adhere to federal seasonal closures and sector allocation closures while targeting Pacific cod in parallel waters. The same reasoning should apply to protect the jig sector allocation whereby vessels that have an LLP for Pacific cod in the Central or Western GOA with trawl, hook-and-line, or pot gear are prohibited from entering the jig sector to preserve the entry-level opportunities for entry-level vessels.

If you have questions regarding these comments or information for distribution to BOF members in advance of their October Pacific cod meeting, please contact Stefanie Moreland at stefanie.moreland@alaska.gov or Karla Bush at karla.bush@alaska.gov. We understand NMFS staff is attending the BOF meeting to present and address questions on the proposed rule and process to finalize federal regulations for the 2012 season. Thank you for making yourselves available.

Respectfully,



Cora Campbell
Commissioner