

CITY OF ADAK, ALASKA

September 28, 2015

Dan Hull, Chairman
North Pacific Fisheries Management Council
605 W. 4th Avenue. Suite 306
Anchorage, Alaska 99501-2252

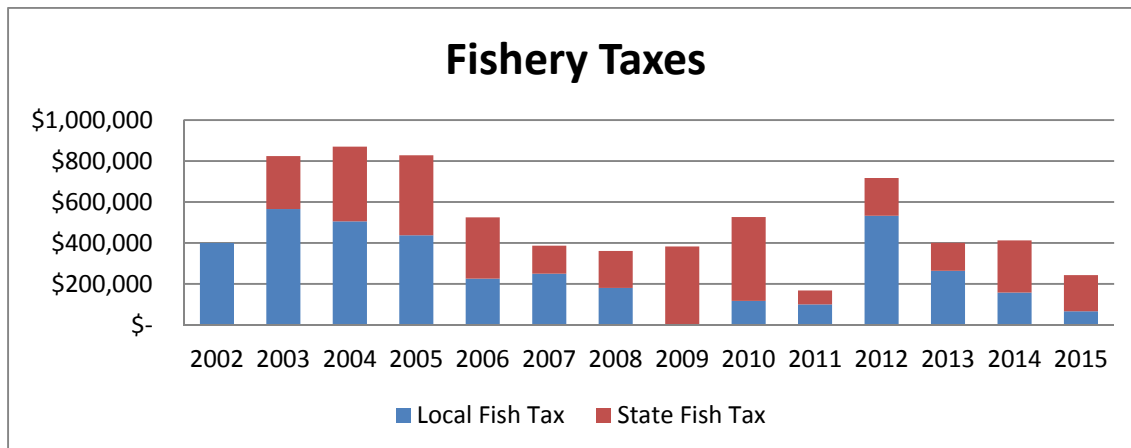
RE: C-4 AI Pacific Cod Directed Fishing Allowance and Delivery Requirement

Dear Chairman Hull:

The City of Adak, in conjunction with the Adak Community Development Corporation, is advocating for community protections for shoreside based processing in the Aleutian Island management area. We wish to focus our comments toward the economic impact of a shoreside processing plant and on the community of Adak, supporting measures and initiatives meant to provide operational stability for not only fish processing but the integral support sectors that depend on the fishing industry. Since the genesis of the municipality, commercial fisheries were identified as a major component of the economy and future viability of the community. It would be appropriate to juxtapose every significant event in the city's recent history with the shoreside processing plant.

Adak's history and dependence of the fishing industry is well known, along with the unique challenges and opportunities of our location. Comparable to the well-known issues related to Alaska and oil production, Adak's dependence and issues related to access to fisheries, resources make production a highly sensitive operation.

The following table represents the impact of raw fish taxes for the City of Adak. Over the past 14 years fisheries related taxes contributed between 16-59% of the general revenues of the municipality, averaging 37% over the same time period. As clearly identified the closure of the processing plant in 2009 significantly affected local tax revenue in that year but also the following fiscal years as the State of Alaska distributed Adak's reduced share of Shared Fisheries Business/Landing taxes. This impact was so severe that in fiscal year 2011 the municipality was near insolvency.



The only reason Adak received any local fish taxes during 2010 & 2011 was due to the City of Adak collecting a payment-in-lieu-of-tax for WAG King Crab processed out of region and the Adak Community Development Corporation working with a local fisherman to export fresh halibut from the island, taking advantage of Adak’s unique assets as a method of survival. In 2012, even though SSL protections were in effect, Icicle managed to generate significant revenue, though as we are all aware was ultimately short-lived.

We consider ourselves fortunate that we were able to make immediate investments, not only for much needed infrastructure, but also a reserve fund. As evidenced by Icicle’s departure the following year and the City’s subsequent purchase of the processing plant equipment, we have sought to bring stability insofar as much as a small municipality can bring to an industry.

The city must have a sustainable shorebased processing facility in order to remain viable. Our community relies on “fish & fuel” to generate economic activity and the truth is one does not also exist without the other. Unfortunately, and as Icicle so bluntly communicated to the City Council in 2012, access to resources is the number one issue to the processing plant being open. The community has encountered so many tribulations with this industry from rationalization, SSL protections, the BSAI cod split and of course quota cuts from the IPHC.

As a community we realize that we must work on economic diversification, however the community needs time and resources to do that. Economic diversification is a long term activity and as apparent with the State of Alaska not an easy feat to accomplish. Our local economy, consisting of locally provided services such as retail, restaurants, lodging and expediting to transportation, port development and utilities, are severally dependent on the fishing industry and the ability of the local processing plant to successfully operate. Our major utilities, especially electric, are in economic distress, yet as a regulated utility, needs the processing plant to be viable in order to justify to the Regulatory Commission of Alaska rate structures that will allow the utility to make needed upgrades.

The City is cognizant of the limitations of our shorebased facility operating within the context of a state water fishery. We have always known and needed access to the federal fishery; otherwise the plant will ultimately not be sustainable.

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We implore the Council to ensure viable communities in the Aleutian Islands, especially Adak, by giving our shorebased facilities an ability to access and recover sufficient AI cod from the federal fishery. We ask that the Council adopt an alternative and options that will allow a viable shorebased to exist in our community.

Sincerely,

A handwritten signature in blue ink, appearing to read "Layton J. Lockett", with a long horizontal flourish extending to the right.

Layton J. Lockett
City Manager

Adak Community Development Corporation

PO Box 1943 Adak, Alaska 99546
(907) 592-2335

September 26th 2015

Dan Hull, Chairman NPFMC
605 W. 4th Avenue. Suite 306
Anchorage, Alaska 99501-2252

Re: C-4 AI Pacific Cod Directed Fishing Allowance and Delivery Requirement

Dear Chairman Hull,

Adak Community Development Corporation has advocated for community protections for shorebased processing in the Aleutian Island management area since 2008.

Adak needs the kind of protections that the Council has provided to communities in the Gulf of Alaska and Bering Sea for pollock, and to GOA communities for cod. We believe that stable access to at least 5000 mt of AI cod from the federal fishery is essential for maintaining a viable community.

ACDC requests that the Council adopt Alternative 2 with the following options:

Alternative 2. Prior to **March 21** the A season trawl CV Pacific cod harvest in the Bering Sea shall be limited to an amount equal to the BSAI aggregate CV trawl sector A season allocation minus the lesser of the AI directed Pacific cod non-CDQ TAC **or 5,000* mt** (or 7000 mt). Directed fishing for AI Pacific cod is prohibited for all vessels except CVs delivering to shoreplants west of 170° longitude in the AI prior to **March 15**.

Option 1: OPPOSE (*If option 1 is adopted, the set aside should be increased to 7000 mt*).

Option 2: OPPOSE (*The restrictions on offshore harvesting and processing expire March 15 under the 2nd sentence of Alt. 2.*)

Option 3: If less than **1000 mt** of the AI Pacific cod non-CDQ TAC has been landed at the AI shoreplants by **February 28** the restriction on delivery to other processors and the restriction on the trawl CV sector allocation shall be suspended for the remainder of the year.

Option 4: If prior to **December 15**, neither the City of Adak nor the City of Atka have notified NMFS of the intent to process Pacific cod in the upcoming year, the Aleutian Islands shoreplant delivery requirement is suspended for the upcoming year. Cities can voluntarily provide notice prior to the selected date if they do not intend to process.

Option 5: OPPOSE

(If adopted, the exemption from the restrictions for processing levels up to 2,000 mt should apply in the aggregate, and only in years when the amount of the AI non-CDQ cod TAC available for directed fishing exceeds 7000 tons mt, and only if the set aside is increased by 2000 mt.)

Rationale for the preferred alternative and options:

The BS CV release date March 21st

The BS CV fleet has harvested as much as 7500 tons in a week, and harvested over 4000 tons in the last week of March in 2011 – see table 2-40. The limitation on delivery shorebased markets in the AI expires March 15 at the latest under Alt. 2. The BSAI CV trawl has the capacity to harvest any of the BSAI CV trawl allocation that remains unharvested after March 21st by the end of the month.

The AI shorebased set aside of at least 5000* tons.

**(If Option 1 is adopted the set aside should be 7000 mt. If the Katie Ann exemption is adopted, it should be increased by 2000 mt).*

5000 tons is the minimum amount Adak needs from the federal fishery for a processor to be viable. Prior to 2010 Adak received trawl CV deliveries of 3% to 6% of the BSAI cod TAC. – see page 10. 3% of the 2015 BSAI cod TAC is > 7000 tons. 3% of the 2003 to 2015 average BSAI TAC is >6300 tons. The aggregate BSAI trawl CV allocation is the appropriate denominator for measuring a ‘baseline’ for AI trawl CVs. 5000 mt is not a re-distribution away from BS CVs historical average. 27% of the BSAI CV trawl harvest has occurred in the AI (see page 69.) 27% of the 2015 A season BSAI CV trawl allocation was 9,835 mt.

The AI offshore release date of March 15th

Removing the set aside at a date earlier than March 15 would significantly erode the likelihood of attaining 5000 mt of shorebased deliveries in the AI.

Option 1 – Allowing offshore harvesting and processing of DFA amounts in excess of the set aside from the beginning of the season.

We recognize the offshore fleet has a legitimate interest in starting to harvest AI cod early in years when the DFA is significantly more than the set aside. Alt. 2 doesn’t guarantee the 5000 ton set aside to AI shorebased CVs unless AI shoreplants can take the full set aside by March 15th. At that point the fishery in the AI becomes a derby for the remainder of the set aside.

From 2003 to 2009 Adak was successful in reaching 5000 mt by March 15th, but a lot has changed since then. With the 2010 BiOp measures in place Icicle and ACC did not reach 5000 mt by March 15. In 2015 by the Feb. 28th AI closure, the “cumulative trawl CV’s harvest of Pacific cod was slightly over 700 mt from 541 and 542” (pg. 91). The AI cod biomass has declined significantly since 2009. In 2015, most of the SSL cod restrictions were lifted, but there were still significant reductions in the fishing grounds available compared to pre-2010. Kanaga Sound remained closed and the parallel fishery is closed from 175 to 178. These factors make it less likely that AI shorebased processors will take the full set aside in the 1st two weeks of March.

In years where the DFA does not significantly exceed the set aside, the only quota funding the derby after March 15th would be the balance of the set aside. If Option 1 is adopted, we believe the set aside should be increased to 7000 mt. This would at least mean that there would be a larger unharvested balance of the set aside to fund the all sector derby that will begin March 15th.

Option 2 – A 50% trigger.

A 50% March 15th trigger is moot because the set aside ends March 15th anyway. There is adequate time for all sectors to harvest the balance of the AI cod DFA after March 15. Fig. 6 shows that the whole fleet of all sectors can harvest up to 5000 mt in a single week in the AI. Forcing the AI shorebased sector into a race for fish any earlier than March 15th would result in an unmanageable derby for the balance of the set aside. The “dramatic decline in catch” after early March shown in Table 2-31 is really a function of BSAI CV cod closure dates, not a function of cod availability. The continued availability of cod in late March is further shown in table 2-6 by the 3500 to 4000 ton GHJ harvests (by a fraction of the potential federal waters fleet) that occurred in 7 to 9 days in the last half of March, resulting the full harvest of the A season GHJ in 2006-2008.

Option 3 – A 1000 ton trigger combined with a February 28th date.

The AI CV cod fishery in areas 541 and 542 has historically had very low CPUEs prior to the last week of February. Table 2-38 shows that in 4 of 8 years prior to 2010 the Adak plant had not received 1000 tons by Feb. 21st. Absent Option 1, we could support a 1000 ton trigger for Feb. 28th. If Option 1 is adopted, allowing more effort on the fishing grounds further reducing CPUE, the trigger should be 500 tons with the Feb 28th date.

Option 4 – Pre-season notice to waive the protection measures.

We support inclusion of this provision with either date.

Option 5 – The Katie Ann exemption.

This option is incompatible with Option 1. If this option is adopted, it should be limited to an aggregate amount of 2000 mt, and apply only in years when the amount of the AI non-CDQ cod TAC available for directed fishing exceeds 7000 tons and only if the total set aside is increased by 2000 mt.

The analysis makes it clear that Option 5 would negate the shorebased protections at current AI cod TACs (page 94):

“At a non-CDQ AI Pacific cod TAC of approximately 4,000 mt, there could be little or no non-CDQ AI Pacific cod TAC available for delivery to AI shoreplants since up to 2,000 mt would be reserved for an ICA, leaving only 2,000 mt for both AI shoreplants and exempt CPs, of which CPs could process the entire 2,000 mt. Short of a non-CDQ AI Pacific cod TAC of greater than 8,700 mt, there will likely be insufficient non-CDQ AI Pacific cod TAC for AI shoreplants to process even their average 2003 through 2015 of 4,732 mt.”

Notes on the Analysis

The Problem

The problem of being the only non-rationalized sector in the BSAI was brought to the attention of the Council in 2008. Reduced AI cod biomass and the setting of separate BS and AI cod TACs have only intensified the problem, as has the shift to earlier cod fishing by the BS CV trawl fleet.

Historical Share

Alt. 2 is not an allocation or a guarantee. At most it is time limited priority. A minimum 5000 ton set aside for AI CV cod deliveries does not “exceed” (or even preserve) Adak’s historic share of the BSAI aggregate cod TAC.

Adopting Alt. 2 will not reduce any Amendment 85 sector’s cod allocation. All Amendment 85 sectors receive an allocation based on the aggregate of BS&AI cod TACs. For reference purposes the evaluation of Adak’s historic share should be calculated on the same basis.

Between 2003 and 2009, Adak processed 4.3% of the total BSAI cod processed (data from table 2-32.) 4.3% of the current combined BSAI cod TACs is 10,836 mt. Even adding the years through 2014, during which Adak has been impacted by the issues identified in the problem statement, Adak’s share would be 2.8%, which is more than 7,000 mt based on current combined BS&AI cod TACs.

Redistribution between AI and BS CVs

The analysis states (page 95) *“In those occasions that the BS Pacific cod fishery is closed to directed fishing to prevent preemption of the AI Pacific cod fishery, the effect of this limitation would be a redistribution of Pacific cod from trawl CVs operating in the BS to trawl CVs operation in the AI.”*

Alt. 2 can only be characterized as a redistribution in the context of “shifting baselines”. The analysis shows (page 83) that over the last decade Adak deliveries *“often ranged from 6,000 to over 9,000 mt”*.

The set aside under Alt. 2 simply limits the ongoing “redistribution” away from CVs fishing the AI to CVs fishing the BS. The heart of the Problem Statement is that status quo has resulted in an increasing redistribution relative to the 2002 to 2009 baseline.

Displacement/Redeployment

The analysis states (page 82) *“Vessels displaced from the AI Pacific cod fishery have limited opportunities for redeployment into other BSAI or GOA groundfish fisheries.”*

While there may not be opportunities in other non-cod targets, there is no need to shift targets for vessels “displaced” from AI cod. As the analysis points out, each sector has a sector allocation of cod at the aggregate BS&AI level. CPs vessels acting as motherships also have to buy cod from CVs in the Bering Sea.

Every pound of cod harvest “foregone” by an Amendment 85 sector in the AI is available to that sector in the BS.

PSC

Trawl halibut bycatch rates in the AI are much lower than the Bering Sea. The analysis suggests *“the trawl halibut PSC limits could potentially prevent trawl CVs and CPs that historically participated in the AI Pacific cod fishery from catching their sector allocation in the BS.”* To the extent Alt. 2 results in more AI CV catch than status quo, it benefits the BS CV trawl fleet in halibut savings.

Previous Council documents have shown significantly higher bycatch rates for H&L CPs in the AI than in the BS. To the extent Alt. 2 constrains the amount of the H&L harvest being taken in the AI and shifts that effort to the BS, it represents a halibut savings.

Relative Impacts

The analysis suggests there may be a price premium to CPs for the larger AI cod. The averages of AI cod revenue for 2003 to 2014, by trawl and fixed gear CPs that retained AI cod, were 4.7% and 3.1% respectively (table 2-35.)

Because cod catch “foregone” in the AI is available to the each sector in the BS, even if the average premium for AI cod was as much as 25 to 30 percent on a pre pound basis, at most the net dollar loss is around 1% of their overall cod revenue. Further, because the AI cod TACs are much lower than they were in the previous decade, most of this “loss” is a function of TAC rather than of the action alternative.

In contrast, communities in the AI experience 100% loss of revenue for every foregone pound of AI cod, as they have no means of substituting Bering Sea cod.

Stranding Cod

The analysis discusses the possibility of “stranding” cod, if the AI shoreplants are unable to process the full amount of the set asides. We believe that the combination of Options 3 & 4 (and possibly a modified Option 1) together with the expiration of the set aside protection from offshore processing and harvesting in the AI on March 15, remove the likelihood that the any cod would be stranded.

In any case cod not harvested by trawl CVs would be available to all other sectors for the remainder of the year. Given that the CP H&L and AM-80 sectors seem to want more AI cod (and the H&L sector has indicated a preference to fish AI cod in the B season) it is unlikely that any cod would ever be stranded.

CPUE in March

The analysis references a “dramatic decline in fishing effort” in the AI during the last half of March (pg. 72 & fig. 6.) In evaluating availability of AI cod after March 15th, it is important to distinguish between “effort” and “CPUE”. Table 2-31 shows the closure dates of the CV trawl fishery. The decline in “effort” is a function of the early closures which preempt the opportunity for AI CV trawlers to fish cod in the last half of March. When fishing has been open for CV trawl in AI in the later part of March, CPUEs have been very good.

Competition

The analysis includes a discussion on the impact of the alternative on ex-vessel price to AI harvesters (page 86). While it is generally the case that more buyers mean more competition and higher prices to harvesters, there are some offsetting factors that should be considered.

Many of the non-shorebased processors that have participated in the AI cod fishery have company owned fleets. Because these processors have the ability to direct their vessels to fish at whatever price they set, it restricts the ability of independent vessels to negotiate price in a derby fishery such as AI cod. In contrast, processors operating in Adak have always had a high degree of dependence on deliveries from boats over which they have no control and for which they have no alternative source of supply, while the boats delivering to them generally have alternative markets.

Pre-season Waiver of Protections

Like the WAG regionalization exemption, the pre-season waiver of the protection measure will hinge upon the good faith of the municipalities. If they un-reasonably refuse to submit a request for suspension of the AI cod regional delivery requirement, then they should expect political consequences that could result in the loss of protection measures. This reality counter balances any "incentive" a municipality might have to withhold consent.

Conclusion

Alt. 2, with a minimum set aside of 5000 ton prior to March 15th, is the only alternative that addresses the problem statement, provides for the sustained participation of AI communities and minimizes adverse economic impacts of rationalization of other fisheries.

Thank you for considering our comments.

Sincerely,

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dave fraser
ACDC

September 29, 2015

Mr. Dan Hull
North Pacific Fishery Management Council
605 W 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Re: Agenda Item C-4, Aleutian Islands Pacific Cod Catcher Vessel Fishery and Shoreside Delivery Requirement

Dear Chairman Hull,

Groundfish Forum is comprised of six companies and 18 active vessels in the Amendment 80 sector. Groundfish Forum vessels have a long history in, and dependence on, the Aleutian Islands Pacific cod fishery. We are writing you to comment on the proposed action to allocate Aleutian Islands Pacific cod to the catcher vessel sector with a requirement to deliver to shoreside processors in the Aleutian Islands.

The action would violate several National Standards including 1, 4, and 5 in the Magnuson-Stevens Act. Further, it would harm catcher vessels, catcher processors, shoreside processors in the Bering Sea and maritime support businesses in the Aleutians while providing little or no additional benefit to the communities of Adak and Atka. It also is completely lacking in any conservation rationale and is solely an impermissible economically-driven allocation.

Violation of National Standards

The proposed action violates National Standards 1 (achieving optimum yield), 4 (prohibiting excessive shares and promoting conservation) and 5 (allocating for economic reasons only).

National Standard 1: Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield (OY) from each fishery for the U.S. fishing industry.

If access to the resource is limited to catcher vessels with a requirement to deliver to shoreside processors there is a high likelihood that much of the resource will be unharvested. The Adak plant has a sporadic processing history, due to a number of issues (e.g., fuel and transport expenses) that will not be addressed by this action. If the plant is not operating, there is no other delivery option as Atka does not currently have a cod processing facility. Options to provide notification of whether the plant will operate are impractical since 1) plant operators will have an incentive to state that they intend to operate, even if it does not happen, and 2) fishermen need sufficient time to plan their fishing year, and are unlikely to be able to respond to changes in AI regulations on short notice. The same problem holds true with the proposed dates to open the cod fishery to non-CVs later in the season; vessels will not be able to respond in time, because the AI

cod season is short and the rollover dates are after the peak of the season. AI cod that are not harvested will be stranded because of the area-specific cod allocations that prevent harvesting those fish in the Bering Sea. The analysis correctly notes (page 130) the potential for stranding fish; most of the options seem to acknowledge that Adak's shoreplant is likely to fail and are oriented towards trying to deal with the consequences once it does.

National Standard 4: *Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be: (1) Fair and equitable to all such fishermen, (2) Reasonably calculated to promote conservation, and (3) Carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.*

The proposed action would disadvantage catcher-processor and mothership operations that have historically fished for cod in the Aleutian Islands, so it fails the 'fair and equitable' requirement. Catcher vessels will be limited to fishing within delivery distance of the shoreside processor, introducing the possibility of localized depletion of the cod resource, which violates the second requirement to 'promote conservation'. Requiring shoreside deliveries to the one existing shoreside Pacific cod processor in the Aleutians results in excessive consolidation of processing privileges, which violates the third requirement of National Standard 4. Previously the Council received guidance from the Department of Commerce on proposed Aleutian Islands cod processing sideboards, which raised similar concerns.¹ The Department of Commerce also has cited particular problems when the Council mandates delivery to a particular entity (as is proposed) and when the cod TAC is divided geographically (as has been the case since 2014).²

National Standard 5: *Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that **no such measure shall have economic allocation as its sole purpose.***

The proposed action is clearly intended to provide an economic benefit to the processing facility at Adak and, if it is developed, a processing facility at Atka. An economic allocation that sidesteps the requirements of the MSA and doesn't apply National Standards dealing with allocations while excessively benefitting one or two processors does not further the purposes of the MSA. The analysis attempts to make the claim an allocation is not occurring while at the same time analyzing that benefits will flow to Adak.

What is the need?

When Adak has a functional shoreside processor it generally receives a significant portion of the Aleutian Islands cod harvest without the regionalized delivery requirements that are proposed. Table 2-32 (page 76) shows that in the most recent years of operation (2013 and 2014), Adak processed *over twice as much* cod as the offshore sector, when State Water GHLPacific cod harvests (which were intended to benefit Adak) are taken into account. Until Atka can process cod, there is no positive impact to that community from delivery requirements. Further, as a CDQ community, Atka has access to CDQ cod to support its operations. The proposed action addresses a problem that does not exist. Adak has already received allocations of golden king crab and pollock in the past, and doesn't need an additional allocation of cod.

¹ Letter from the Department of Commerce to Mr. Eric Olson dated January 28, 2009.

² Id.

In summary, the proposed action to restrict the Aleutian Islands cod fishery to catcher vessels with a mandate to deliver to shoreside processors not only harms existing stakeholders, it violates numerous national standards and provides no guarantee that these operations, if developed, will be successful. It also creates the potential for conservation issues by concentrating the harvest in the vicinity of the shoreside processor. Finally, there is no demonstrated need for this action as the Adak plant, when operating, receives the majority of the harvest in the Aleutian Islands already whenever it's open.

We recommend that the Council take no further action on this proposal.

Thank you for the opportunity to comment.

A handwritten signature in blue ink that reads "C. J. Woodley". The signature is written in a cursive style with a large, looping "y" at the end.

Chris Woodley
Executive Director



NPFMC comments - NOAA Service Account <npfmc.comments@noaa.gov>

Comment on C4 Supplemental table S1

1 message

dave fraser <dfraser@olympus.net>
To: npfmc.comments@noaa.gov

Tue, Sep 29, 2015 at 5:08 PM

The Supplemental Table S1 brings together most of the harvest data in one page, but it leaves out a key metric. In addition to measuring Adak's % of the AI processed cod, it would be helpful to measure Adak's % of BSAI processed cod.

The BSAI combined TAC is the basis of every Amendment 80 sector's allocation and it is the frame of reference for the Problem Statement.

As a proxy for the "Total BSAI cod from Federal fishery and GHL fishery" denominator I've used the BSAI ITAC + GHL in the table below.

Year	BSAI ITAC	AI ITAC	GHL	BS&AI ITAC + GHL	Total AI cod from Federal fishery and GHL fishery (mt)	Adak's % of BSAI processed cod
2003	191938			191,938	8,716	4.5%
2004	199228			199,228	9,282	4.7%
2005	190550			190,550	6,440	3.4%
2006	174067		5820	179,887	5,689	3.2%
2007	157916		5280	163,196	12,586	7.7%
2008	152453		5280	157,733	5,997	3.8%
2009	157650		5460	163,110	8,619	5.3%
2010	150721		5220	155,941	207	0.1%
2011	233073		7050	240,123	53	0.0%
2012	232180		9420	241,600	7,483	3.1%
2013	232180		9210	241,390	8,288	3.4%
2014	220557	6248	8130	234,935	6,576	2.8%
2015	214309	8414	8178	230,901	-	0.0%
2003-2009 av				177,949	8,190	4.6%
2012-2014						3.1%

9/30/2015

National Oceanic and Atmospheric Administration Mail - Comment on C4 Supplemental table S4

C4 Public Comment
October 2015

av

239,308

7,449

dave fraser
ACDC



September 29, 2015

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

RE: AI Pacific Cod Catcher Vessel Fishery & Shoreplant Delivery Requirement; Agenda C-4

Dear Chairman Hull,

Thank you for the opportunity to comment on the *AI Pacific Cod Catcher Vessel Fishery & Shoreplant Delivery Requirement* scheduled for final action. United States Seafoods, LLC, operates Amendment 80 trawl catcher processors (“A80 CPs”) and trawl catcher vessels (“trawl CVs”) active in the AI Pacific cod fishery that are impacted by this action negatively.

Adak is an important base of operations for US Seafoods and it’s where our vessels frequently start, or end, fishing trips in the Aleutian Islands (“AI”), generating consistent revenues for marine support and logistic businesses. The *Seafreeze Alaska*, operated by US Seafoods, is unique from other A80 CPs because she also takes deliveries from trawl CVs in a variety of fisheries, and did so before the Amendment 80 program’s implementation. US Seafoods operates in the AI whenever possible due to the lower halibut rates relative to other fisheries in the Bering Sea and our crews’ expertise in the area. The extreme weather and remote operational conditions can be very challenging for CPs, CVs, and shoreplants participating in the AI fisheries.

The Council should adopt Alternative 1, the No Action Alternative. The action alternative and options are beyond the Council’s authority under the Magnuson Stevens Act (“MSA”), and even if they were within the Council’s authority, are inconsistent with the National Standards, have not been fully analyzed, and are unwarranted. Anything other than the No Action Alternative would radically change access to the AI Pacific cod fishery for long time participants in the fishery, and is unnecessary.

I. The MSA does not authorize the allocation of processing privileges.

The MSA does not allow a fishery management council to allocate processing privileges. Yet this is what the effect of the proposed action would be, regardless of how the Council attempts to describe and define the action as only impacting trawl CV activities. By requiring deliveries to a shoreplant, the action would reallocate processing from vessels operating at sea to the shoreplant. There is simply no provision in the MSA that allows such a transfer to be made, and there’s even a specific prohibition:

A Council or the Secretary may not consider or establish any program to allocate or issue an individual processing quota or processor share in any fishery of the United States other than the crab fisheries of the Bering Sea and Aleutian Islands.
(Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, sec 804.)

The proposed action grants exclusive privileges to Adak with respect to the AI Pacific cod fishery. By defining a landing requirement in an area West of 170° in the AI that contains two plants (only one of which is equipped to process cod), the Council would effectively grant an exclusive privilege not authorized under the MSA. As the only shoreplant in the area designated for the shoreplant provision with a processing line capable of handling trawl CV deliveries, the Adak shoreplant would be the sole beneficiary of the landing requirement. The effect would be an exclusive allocation of processing privileges to Adak.

Any attempt to construe the limited access privilege programs (“LAPP”) provisions of the MSA as providing authority for creating processing privileges is misguided. The MSA only authorizes the creation of a “limited access privilege program *to harvest fish.*” 16 U.S.C. § 1853a(a) (emphasis added). The term “limited access privilege” means “a Federal permit, issued as part of a limited access system under section [303A] to harvest a quantity of fish,” including “an individual *fishing* quota.” *Id.* § 1802(26) (emphasis added). The program contemplated by the action alternatives simply is not allowed under the MSA.

The statutory definition of fishing is clear, and cannot reasonably be construed to include on-shore processing. Fishing is defined as:

(A) the catching, taking, or harvesting of fish; (B) the attempted catching, taking, or harvesting of fish; (C) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or (D) any operations at sea in support of, or in preparation for, any activity described in [] (A) through (C).
16 U.S.C. § 1802(16).

The scope of activities included as “fishing” or “harvest[ing] fish” thus determines what types of activities can be authorized by a limited access privilege (or quota) structure.

Likewise, nothing in the term “harvest[ing] fish” as used in Section 303A of the MSA is unclear. As that provision states on its face, Congress created a “limited access privilege program *to harvest fish,*” 16 U.S.C. § 1853a(a) (emphasis added), and not to *process* fish. This is reinforced by the definition of “limited access privilege,” which is “a Federal permit, issued as part of a limited access system under section 303A to harvest a quantity of fish,” including “an individual fishing quota.” *Id.* § 1802(26). Had Congress intended to create an individual *processor* quota, it could easily have done so, and in fact has done so in another fishery. *See* Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, § 801 (authorizing individual processor share in the crab fisheries of the Bering Sea and Aleutian Islands). No such Congressional grant of authority applies to processors operating in the AI Pacific cod fishery. The Council cannot fill in that lack of statutory authority, no matter how well intentioned its motion may be.

Further, the Council has no other source of authority for the delivery requirement they are using to create a processing allocation by this action. The analysis states that section 303a(c)(5)(B)(i) of the MSA “authorizes councils and NMFS to establish regional or port-specific landing or delivery requirements in developing limited access privilege programs . . . However,

Alternative 2 is not a LAPP at this time (page 77).” The action alternative would restrict participation in the fisheries by vessels delivering to at-sea processors, regardless of the terminology used in the analysis, and would do so without complying with the procedural and substantive requirements for creating a LAPP. It is a complete fiction that this action, if adopted, would not result in the creation of a limited access program.

II. National Standard 8 can’t be the basis for an allocation of processing or fishing privileges to AI shoreplants, and also requires there be a conservation basis.

The objectives of the action and its purported legal basis are, “to prioritize a portion of the AI Pacific cod set-aside for delivery to shoreplants in the AI management area, consistent with National Standard 8 (page 127).” Again, National Standard 8 applies to the allocation of *fishing* privileges and cannot create statutory authority for allocating *processing* privileges. Moreover, even if National Standard 8 applied here, the proposed action does not meet its requirements. National Standard 8 applies “within the context of the conservation requirements of the Magnuson Stevens Act.” 50 CFR § 600.345. The analysis doesn’t identify any conservation purpose to the action, and in reality there may even be detrimental conservation impacts to highly concentrating AI Pacific cod harvests near Adak that may lead to negative Steller sea lion impacts.

The analysis relies on synonyms (limit; set-aside; prioritize; exemptions from restrictions) to avoid describing the action as creating allocations of fishing or processing privileges. At least the Council’s agenda describes the action accurately for what it is an: “**AI Pacific cod allocation.**” Even though specific tonnage amounts, year sets, and processing sectors are identified, a fiction is maintained within the analysis that an allocation to an individual stakeholder is not happening (page 131). However, the standard for determining an allocation is not limited to individuals and is defined broadly by NMFS as “a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals.” 50 CFR § 600.325. That is exactly what the action proposes, and the discrete user group here is AI shoreplants who are getting distributed exclusive access for processing 3,000-7,000mt of AI Pacific cod for a period of time. Another discrete user group getting an allocation of harvesting privileges are the CVs who are the only vessels able to participate in the fishery.

Hypothetically, additional AI shoreplants could enter the fishery but that doesn’t negate the fact an allocation will be granted. Even if additional AI shoreplants opened for example on Attu, the shoreplant would become part of the discrete user group, or AI shoreplant sector that excludes processing vessels. The Council did not pursue a LAPP here, even though that’s identified by the analysis as what’s typically used for achieving these type of community objectives (page 77). An allocation can occur without identifying an individual, and can happen as it does with this action by restricting access to a discrete user group or sector. However, option 4 identifies the individual stakeholder that benefits from the allocation whenever a City gives NMFS notice of intent that a particular plant will be processing. Through this action, Adak and Atka will receive an allocation without having gone through the required statutory process for fishing communities to receive such privileges.

By pretending fishing privileges are not being allocated between stakeholders within the AI Pacific cod fishery, the Council avoided balancing and considering National Standards designed to make sure allocations are fair and equitable. A legitimate process is important because the:

allocation of fishery resources is one of the toughest issues facing fishery managers because of the economic value associated with access to fishery resources, the history and tradition of access to fishery resources, and the perception of winning, losing, and fairness that arises with allocation decision. (NOAA Memo NMFS-F/SPO-148, Nov 20014).

Instead of going through the usual process of explicitly allocating these fishing privileges via a LAPP, the Council is relying entirely on a National Standard 8 justification but did so out of context (page 77). The guidelines to National Standard 8 are explicit: “this standard does not constitute a basis for allocating resources to a specific fishing community nor for preferential treatment . . .” 50 CFR § 600.345. National Standard 8 does not support the proposed action.

Suspending reality for a moment, by hypothetically imagining the MSA did not apply here and the Council had authority to take this action, it should not do so for the reasons below.

III. Adak and Atka do not need protection from processing vessels.

The Council’s problem statement indicates the goal is to sustain community fishery participation in Adak and Atka by limiting processing vessels access to AI Pacific cod. Circumstances and recent history demonstrate that the action is unnecessary and will not achieve this goal. Since the communities are very different, the Council should consider their circumstances separately.

Adak’s shoreplant processed AI Pacific cod from 2001 to 2014, with the exceptions of 2011 and 2012, when the shoreplant was closed because of the absence of an operator. In the middle of last year, the Adak Cod Cooperative, the most recent operator shut down, leaving the shoreplant vacant again this year with no definite time frame for reopening to process AI Pacific cod. Numerous companies have maintained substantial stakes in Adak’s shoreplant, and in each case, departed Adak unable to succeed. Some read this succession of operators as demonstrating a need for some kind of protection to maintain the community’s stake in the AI Pacific cod fisheries. Looking at historical landings to Adak’s shoreplant suggests that maintaining its share of landings has not caused these owners to pull out. In no case did a precipitous drop in landings lead to a closure. Despite relatively stable landings of AI Pacific cod in the years preceding, the Adak shoreplant still closed occasionally.

The analysis shows that when the Adak shoreplant has been operational it gets a substantial amount of fish. In fact, the Adak shoreplant’s percentage of AI Pacific cod processing has actually increased in recent years, and it does more than processing vessels (*see* table 3-32 on page 76):

- When Adak’s shoreplant was open in 2013 and 2014 it processed 49% and 45% respectively of the Federal AI Pacific cod, compared to on average 28% from 2003-12.
- Besides Federal AI Pacific cod, Adak’s annual access to State GHF Pacific cod increased; on average 4,397mt was taken 2012-14, compared to the 2003-11 average of only 477mt.
- The amount of AI Pacific cod processed by Adak’s plant from Federal and the State GHF Fisheries in 2013 and 2014 was more than double what went to the processing vessels.

Unlike the radical shift of landings proposed by the action, status quo reflects a reasonable distribution that is both favorable to the shoreplant, recognizes the historical dependence of processing vessels on the AI Pacific cod fishery, and maintains important flexibility. The action is

unnecessary to achieve the Council’s stated purpose and imposes a cost on other participants in the fishery with no measurable benefit to the existing shoreplant or net benefit to the community.

Throughout the analysis Atka’s shoreplant AI Pacific cod processing history is often grouped together with Adak. However, Atka’s plant has never processed AI Pacific cod in excess of 5mt in a year or from trawl CVs. Grouping Adak and Atka together is misleading at best. Atka has no current or historical dependence on the fishery, but advocates always suggest plans to expand the Atka shoreplant imminently. However, it is notable that this assertion has been made throughout the 7 years the Council has been considering this action. Given the uncertainty concerning the viability of even a single shoreplant in the AI, it is untenable and unreasonable for the Council to act under the unsupported assumption that two plants would be viable, particularly if they were competing against each other.

IV. The processing allocation created by the action is effectively an excessive share.

Moreover, even if the MSA allowed the creation of processing allocations, presumably those would be subject to the statute’s prohibition on granting excessive shares to any participant in a fishery, as well as the requirement for balancing the interests of historical participants. The proposed action goes beyond any attempt to reasonably balance the interests of existing participants and the community of Adak. Instead, the action provides Adak with exclusive access to the AI Pacific cod fishery for a specific period of time during which it’s possible for the entire fishery to be prosecuted. Given that receiving all the landings in the fishery would definitely exceed any historical share of processing in the fishery, the action would create an excessive, as well as unauthorized, share in the AI Pacific cod fishery for Adak.

Depending on the sub options selected and the ITAC, all the AI Pacific cod could be forced to one shoreside processor, in particular if the ITAC was lower than recent years. Since 2014, the Pacific cod ITAC has been split between the BS and AI. The appropriate reference point for determining the excessive share of processing privileges being allocated to Adak is relative to the AI Pacific cod ITAC, which is the unique fisheries stock being distributed between stakeholders.

	AI ITAC	7,000mt option	5,000mt option	3,000mt option
2014	6,248	100%	80%	48%
2015	8,414	83%	59%	35%

National Standard 4 prohibits allocations of excessive shares of fishing privileges and requires that allocation decisions be reasonably calculated to promote conservation. Requiring AI shoreside CV trawl deliveries when there’s only one shoreplant (assuming it operates again), results in an excessive allocation of fishing privileges, regardless of whether it’s an unlawful processing allocation. The Council still has not articulated any conservation rationale for this action, despite concerns from NOAA GC over the years (page 131). Allocation actions cannot have economics as their sole purpose. NOAA GC also identified potential problems with the allocations not being fair and equitable, and creating an excessive share of processing privileges (page 131). The analysis ignored NOAA GC’s concerns, and only argues they are inapplicable because fishing privileges aren’t being allocated and that an excessive share of processing privileges is outside the scope of National Standard 4. These arguments fail to address the issue and bypass the important fact that processing privileges are allocated by the action.

V. The proposed action is very likely to lead to stranded AI Pacific cod ITAC and violates National Standard 1.

The management changes proposed here by the action alternatives are wholly at odds with the Council's broad management mandate to efficiently achieve optimum yield in its fisheries and to comply with the Executive Order 12866 which requires that regulations have a net benefit (58 FR 51735: October 4, 1993). AI Pacific cod is a dynamic fishery where flexible timing is critical to catching and processing the high volume pulses in the fishery. Constraining the fishery's prosecution through a system of dates for allowing participants to enter the fishery will lead to inefficiencies and strand ITAC, which results in less port calls and economic activity in Adak. To maintain pace with the fishery, flexible processing capacity is necessary and best achieved by involving processing vessels for the entire season, not just at the very end. The action alternatives would not achieve optimum yield or result in a net benefit and violate National Standard 1.

Despite giving the Adak shoreplant a processing allocation in the beginning of the year, based on the failure of several very experienced operators to succeed at the plant, it is very likely that the plant will not operate some years or may encounter breakdowns. In this case, historical processing vessels will need to wait for the exclusive allocation to lapse, after which they will be permitted to fully participate in the fishery. The action's exclusion of other AI stakeholders would last until sometime between late February and late March. By this time, the AI Pacific cod could already be dispersed, leading to stranded ITAC (page 72). The AI Pacific cod fishery happens quickly and at very high volumes.

In the past, AI Pacific cod harvests frequently peaked during mid March but also can come earlier. Removing the allocation on an earlier date is crucial to full harvest of the ITAC which helps maintain vital port calls to Adak. For example in 2015, US Seafoods vessels began fishing AI Pacific cod around mid February and could have started weeks before given the fact the peak was quite early. After the peak, catch rates drop substantially. Even if Adak's shoreplant is open and processing at full capacity (asserted to be 452 mt per day) its capacity may be insufficient to maintain the pace of the high volume fishery. In the likely scenario the Adak shoreplant is not operating or has difficulties, the entire AI Pacific cod ITAC could still be remaining to be prosecuted in late March, after the peak and the when AI Pacific cod have dispersed. To ensure that the ITAC is harvestable, the allocation needs to be removed early in February.

The options intended to overcome the potential for stranding ITAC are ineffective and create more complications. Options 2 and 3 fail to provide adequate opportunity for processing vessels, as the relatively high thresholds (i.e., 50 percent of the fishery) and the late dates for lifting the restrictions would leave too little time for vessels to gear up, transit to the AI, and locate fish. Option 4 is an alternative attempt to address stranded ITAC by imposing on the City of Adak and the City of Atka a requirement to notify NMFS if a plant intends to operate. As the analysis points out, there is a strong incentive for the cities to always notify NMFS of their intent to operate a processing plant, if there is any possibility that the plant will operate. Without a means of verifying operational status of the plant and a city's intent in making the communication, the provision cannot possibly meet its purpose of avoiding an overly constraining provision when processing is not likely to occur.

VI. Exempting only a single American Seafoods AFA pollock/Pacific whiting vessel, from the action conflicts with its purpose and need, while also creating an offshore allocation.

Option 5 includes an exemption for historic processors. Depending on how Option 5 is interpreted, it leads to either multiple processing vessels being allowed to access AI Pacific cod or only one, a vessel owned by American Seafoods that participates in both the Pacific whiting fishery and the AFA pollock fishery, the *Katie Ann*. If the intent is to create a unique privilege for only a single vessel, the action would improperly create an offshore allocation without complying with the statutory requirements for creating such a privilege.

Allocation decisions involve choosing a range of years, and selecting an amount, or share, of the fishery that will be distributed. Option 5 includes all those elements but has not been subject to the required analyses and processes for making such a distribution. The analysis is silent on whether Option 5 should be considered an allocation requiring National Standard 4 be applied to make sure the outcome is fair, equitable, reasonably calculated to promote conservation, and not resulting in an excessive share of fishing privileges. If only a single vessel AFA and Pacific whiting qualified processing vessel is allowed to access up to 2,000mt of AI Pacific cod there will have been a “directed distribution of fishing privileges (page 131),” requiring National Standard 4 to apply, which the option would fail to satisfy. These problems are compounded by the fact that Option 5 was included at final action, preventing full consideration by the Council as to whether such an exemption is appropriate or legal.

The analysis ignores the *Katie Ann*'s AFA pollock, Pacific whiting, and limited access fishing opportunities and incorrectly assumes a crucial dependency on the AI Pacific cod fishery. The statement, “the only other fishery the *Katie Ann* can realistically participate in is the Yellowfin sole fishery (page 90),” is factually inaccurate and a misleading exaggeration. During the 2000-2014 year set proposed as the basis for an allocation, the *Katie Ann* participated in the BS pollock, BS Pacific cod, BS yellowfin sole and Pacific whiting fisheries according to American Seafood's own website (*see* <http://americanseafoodscompany.com/vessels/katie-ann>). The vessel also processed salmon. In 2014, American Seafoods' allocation of pollock was more than 190,000 mt, of which the *Katie Ann* as a named AFA CP can participate in harvesting. For some perspective, the entire A80 coop that US Seafoods belongs only gets around 177,000 mt of groundfish. The *Katie Ann* and American Seafoods dependence on the AI Pacific cod fishery is less than other stakeholders in particular the *Seafreeze Alaska* and US Seafoods. American Seafoods shouldn't have their metric for determining what constitutes dependency adopted verbatim and be all that's analyzed. (*see*: Handout mikehydeC3Adakcod from Feb 2015 NPFMC archives). For example, the *Seafreeze Alaska* was identified in the Amendment 80 program's 5 year review as unique from other A80 CPs, because of her longstanding mothership activities, including in the AI Pacific cod fishery, where she has been a consistent participant.

The *Seafreeze Alaska* and *Katie Ann* are sisterships, and shouldn't be treated differently. The *Seafreeze Alaska* was the nation's first CP, the first domestically flagged CP to operate in Alaska, and helped start the Americanization of the North Pacific fisheries. Excluding the *Seafreeze Alaska* would ironically penalize the one processing vessel and company, US Seafoods, which went out of its way at the request of Council members to coordinate with the Adak Cod Cooperative by moderating its participation in the AI Pacific cod fishery for the 2014 season (page 58). The Council should not reward American Seafoods and the *Katie Ann*, with an allocation, exemption, or give them special treatment as part of this action.

Arbitrarily picking 12 of 14 years of processing and defining it narrowly excludes other processing vessels so American Seafoods/*Katie Ann* gets an excessive allocation despite the recent participation, dependency, and history of other processing vessels particularly the *Seafreeze Alaska*. When making an allocation decision, the Council needs to consider multiple ways to make the determination. The Council would be essentially allocating in the AI Pacific cod fishery onshore processing to Adak's plant, offshore processing to a single AFA vessel, and harvesting to the trawl CV sector all under the guise of a community protection. The Council should not adopt a de facto rationalization of the AI Pacific cod fishery for a few stakeholders without going through a LAPP that examines and applies the relevant National Standards to a complicated fishery.

National Standard 5 prohibits economic focused allocations and when practicable requires efficiency be considered in the utilization of fishery resources. If the Council wants to direct more revenues toward Adak or Atka, it should be through a LAPP, or conservation and fisheries management opportunities that foster competition between processors and harvesters while providing a net benefit to the nation. The proposed action is only designed to provide potential economic benefits to Adak via an allocation, but these benefits will be limited and may be less than the status quo. The analysis admits the action "could potentially lead to a lower price for their catch and reduce efficient utilization (page132)." NOAA GC's concern that the purpose of this action is only an economic allocation are not disputed, or alleviated by references in the analysis to additional societal benefits – that are undefined and vague.

The Council should shelve this unauthorized and unnecessary action, and adopt the No Action Alternative. Thank you for the opportunity to provide comments.



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