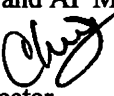


MEMORANDUM

TO: Council, SSC and AP Members  
FROM: Chris Oliver   
Executive Director  
DATE: May 29, 2012  
SUBJECT: Staff Tasking

ESTIMATED TIME 4 HOURS
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**ACTION REQUIRED**

Review tasking and committees and provide direction.

**BACKGROUND**

Committees and Tasking

The list of Council committees is attached as Item D-2(a). Item D-2(b) is the three meeting outlook and Item D-2(c) provides a summary of current projects and tasking. An updated work plan for implementing the programmatic groundfish management policy is attached as Item D-2(d). The Council may wish to discuss priorities for completing ongoing projects, as well as any new tasks assigned during the course of this meeting.

Attached are several comment letters from individuals requesting Council action to address specified issues:

- Rhonda Hubbard, regarding CV/CP LLP designation for GOA Pacific cod endorsement
- Lloyd Kompkoff, regarding subsistence halibut regulations for immediate family members
- Rex Murphy of Alaska Charter Association, regarding analysis of certain halibut CSP issues
- Ludger Dochtermann, regarding 100% observer coverage for all GOA trawl vessels for 2013

**NPFMC Committees & Workgroups**  
(Revised May 30, 2012)

**Council/Board of Fisheries Joint Protocol Committee**

Updated: 3/19/2012	<b>Council:</b> Dave Benson Ed Dersham Eric Olson	<b>Board:</b> John Jensen Mike Smith Sue Jeffrey
Staff: Jane DiCosimo		

**Council Coordination Committee**

[Designated and renamed by Magnuson Act reauthorization April 2007]

Appointed: 4/05 Updated: 7/23/09	<b>CFMC:</b> C: Carlos Farchette ED: Miguel Rolón  <b>GMFMC:</b> C: Robert Shipp ED: Steve Bortone  <b>MAFMC:</b> C: Richard Robins ED: Chris Moore  <b>NEFMC:</b> C: Rip Cunningham ED: Paul Howard	<b>NPFMC:</b> C: Eric Olson ED: Chris Oliver  <b>PFMC:</b> C: Dan Wolford ED: Don McIsaac  <b>SAFMC:</b> C: David Cupka ED: Bob Mahood  <b>WPFMC:</b> C: Manuel Deunas ED: Kitty Simonds
Staff: Chris Oliver		

**Council Executive/Finance Committee**

Updated: 8/10/07	Eric Olson (Chair) Jim Balsiger (NMFS) Dave Hanson (PSMFC) Cora Campbell (ADFG) Roy Hyder (ODFW) Bill Tweit (WDFW)
<b>Status:</b> Meet as necessary	
Staff: Chris Oliver/Dave Witherell/Gail Bendixen	

**Bering Sea Crab Advisory Committee**

Appointed 4/25/07	Sam Cotten (Chair)	Lenny Herzog
Revised 11/15/07	Jerry Bongen	Kevin Kaldestad
	Steve Branson	Frank Kelty
	Florence Colburn	John Moller
	Linda Freed	Rob Rogers
	Dave Hambleton	Simeon Swetzof
	Phil Hanson	Ernest Weiss
Staff: Mark Fina	Tim Henkel	

**NPFMC Committees & Workgroups**  
(Revised May 30, 2012)

**Bering Sea Salmon Bycatch Workgroup**

Appointed: 3/07  Staff: Diana Stram	Stephanie Madsen (Co-chair) Eric Olson (Co-chair) Becca Robbins Gisclair John Gruver Karl Haflinger	Jennifer Hooper Paul Peyton Mike Smith Vincent Webster (BOF)
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**Comprehensive Economic Data Collection Committee**

Appointed: 12/07 Updated: 2/9/09  Staff: Mark Fina	John Henderschedt (Chair) Bruce Berg Michael Catsi Dave Colpo Paula Cullenberg	Brett Reasor Glenn Reed Ed Richardson Mike Szymanski Gale Vick
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**Charter Management Implementation Committee**

Appointed: 6/11  Staff: Jane DiCosimo	Ed Dersham (Chair) Gary Ault Seth Bone Ken Dole Tim Evers	Kent Huff Stan Malcolm Andy Mezirow Richard Yamada
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**Crab Interim Action Committee**  
[Required under BSAI Crab FMP]

Jim Balsiger, NMFS Cora Campbell, ADF&G Phil Anderson, WDF
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**Ecosystem Committee**

Updated: 10/22/07  <u>Status</u> : Active  Staff: Diana Evans	Stephanie Madsen (Chair) Jim Ayers Dave Benton Doug DeMaster/Bill Karp Dave Fluharty John Iani Jon Kurland
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## NPFMC Committees & Workgroups

(Revised May 30, 2012)

### Enforcement Committee

<p>Updated: 7/03</p> <p><u>Status</u>: Active</p> <p>Staff: Jon McCracken</p>	<p>Roy Hyder (Chair)  Nicole Kimball, ADF&amp;G  Lisa Lindeman/Garland Walker, NOAA-GC  Martin Loefflad, NMFS  Sherrie Meyers/Ken Hansen, NMFS-Enforcement  Glenn Merrill, NMFS  Phillip Thorne/Anthony Kenne, USCG  Jon Streigel, AK F&amp;W Protection</p>
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### Golden King Crab Arbitration Workgroup

<p>Appointed: 1/12</p> <p>Staff: Mark Fina</p>	<p>Larry Cotter  Duncan Fields (Chair)  Mark Johanson  Joe Sullivan</p>	<p>Brett Reasor  Dick Tremaine  Greg White</p>
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### Halibut Charter Stakeholder Committee

<p>Appointed: 1/06  Updated: 3/29/10  <u>Status</u>: Idle, pending direction</p> <p>Staff: Jane DiCosimo</p>	<p>Seth Bone  Robert Candopoulos  Ricky Gease  John Goodhand  Kathy Hansen  Dave Hanson (Chair)  Dan Hull</p>	<p>Chuck McCallum  Larry McQuarrie  Scott Meyer  Rex Murphy  Peggy Parker  Charles "Chaco" Pearman  Greg Sutter</p>
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### IFQ Committee

<p>Reconstituted: 7/31/03  Updated: 2/17/12</p> <p>Staff: Jane DiCosimo</p>	<p>Bob Alverson  Rick Berns  Julianne Curry  Tim Henkel  Dan Hull (Chair)  Jeff Kauffman</p>	<p>Don Lane  Dave Little  Kris Norosz  Paul Peyton  Jeff Stephan  Phil Wyman</p>
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### Non-Target Species Committee

<p>Appointed: 7/03  Updated: 8/10/07</p> <p>Staff: Jane DiCosimo, NPFMC/  Olav Ormseth, AFSC</p>	<p>Dave Benson (Chair)  Julie Bonney  John Gauvin  Ken Goldman  Karl Haflinger  Michelle Ridgway</p>	<p>Janet Smoker  Paul Spencer  Lori Swanson  Anne Vanderhoeven  Jon Warrenchuk</p>
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**NPFMC Committees & Workgroups**  
(Revised May 30, 2012)

**Observer Advisory Committee**

Reconstituted: 1/20/11 Updated: 2/12 <u>Status:</u> Active  Staff: Chris Oliver/ Diana Evans	Bob Alverson Jerry Bongen Julie Bonney Kenny Down Dan Falvey Kathy Hansen Dan Hull (Chair) Michael Lake	Todd Loomis Paul MacGregor Brent Paine David Polushkin Joe Reh fuss Darren Stewart Ann Vanderhoeven
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**Pacific Northwest Crab Industry Advisory Committee**

Appointed: 12/10 Revised: 5/12  Staff: Diana Stram	Keith Colburn Lance Farr (Chair) Kevin Kaldestad Garry Loncon Steve Minor Gary Painter Kirk Peterson	Rob Rogers (Vice Chair) Vic Sheibert Dale Schwarzmiller Gary Stewart Tom Suryan Elizabeth Wiley Arni Thomson, Secretary (non-voting)
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**Rural Outreach Committee**

Appointed: 6/09  Staff: Steve MacLean	Eric Olson (Chair) Paula Cullenberg Duncan Field Tim Andrew Tom Okleasik Ole Olsen Pete Probasco
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**Steller Sea Lion Mitigation Committee**

Appointed: 4/12 Updated: 5/12  [formerly SSL RPA Committee; renamed February 2002]  Staff: Steve MacLean Advisor: Dan Hennen	Larry Cotter (Chair) Kenny Down Dave Fraser John Gauvin Todd Loomis Gerry Merrigan Alvin Osterback Rudy Tsukada	Jon Warrenchuk Ernie Weiss
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**DRAFT NPFMC THREE-MEETING OUTLOOK - updated 5/29/12**

June 4 - 12, 2012 Kodiak, AK	October 1-9, 2012 Anchorage, AK	December 3-11, 2012 Anchorage, AK
<p>Limit Other Gear on Jig Vessels: <i>Expanded Discussion Paper</i></p> <p>Halibut bycatch workshop report: <i>Review</i></p> <p>GOA Halibut PSC: <i>Final Action</i></p> <p>GOA comprehensive halibut bycatch amendments: <i>Disc paper</i></p> <p>BSAI halibut PSC limit: <i>Discussion paper</i></p> <p>BSAI Greenland turbot allocation: <i>Discussion paper</i></p> <p>Revise FLL GOA cod sideboards: <i>Discussion paper</i></p> <p>FLL Vessel Replacement (MLOA adjustment): <i>Initial Review</i></p> <p>BSAI Flatfish specification flexibility: <i>Discussion Paper</i></p> <p>HAPC - Skate sites: <i>Initial Review</i></p> <p>Crab Plan Team Report: <i>Set Catch Specifications for 4 stocks</i></p> <p>Pribilof BKC Rebuilding Plan: <i>Final Action</i></p> <p>5-Year Research Priorities: <i>Review and Approve</i></p> <p>PSEIS: <i>Review comments &amp; reports; action as necessary</i></p> <p>Grenadiers: <i>Discussion paper</i></p>	<p>SSL EIS scoping (T)</p> <p>SSL EIS analytical approach: SSC review</p> <p>Observer Deployment Plan: <i>OAC report; action as necessary</i></p> <p>Charter Halibut: <i>Review Methodology for 2013 limits (SSC only)</i></p> <p>Halibut CSP: <i>Final Action</i></p> <p>Definition of Fishing Guide: <i>Discussion Paper</i></p> <p>BSAI Chum Salmon Bycatch: <i>Initial Review</i></p> <p>Halibut/Sablefish IFQ Leasing prohibition: <i>NMFS Disc. paper (T)</i></p> <p>Retention of 4A halibut in BSAI sablefish pots: <i>Disc. paper (T)</i></p> <p>VMS Use and Requirements: <i>Expanded Discussion Paper</i></p> <p>BSAI Crab ROFR: <i>Initial Review (T)</i></p> <p>BSAI Crab active participation requirements: <i>Initial Review</i></p> <p>BSAI Crab Cooperative Provisions for Crew : <i>Discussion paper</i></p> <p>BSAI Crab Binding Arbitration - GKC: <i>Workgroup report</i></p> <p>Binding Arbitration Issues (lengthy season, publishing decisions, IPQ Initiation): <i>Discussion Paper</i></p> <p>AFA Vessel Replacement GOA Sideboards: <i>Initial Review</i></p> <p>FLL Vessel Replacement (MLOA adjustment): <i>Final Action</i></p> <p>Groundfish Catch Specifications: <i>Adopt proposed specifications</i></p> <p>HAPC - Skate sites: <i>Final Action (T)</i></p> <p>BSAI Crab SAFE: <i>Final OFL/ABC specifications for 6 stocks</i></p> <p>BSAI Tanner Crab rebuilding plan: <i>Revise Alternatives</i></p> <p>BS Habitat Conservation Area Boundary: <i>Review</i></p> <p>Northern Bering Sea Research: <i>Discussion paper</i></p> <p>Research/EFP Catch: <i>Discussion paper (T)</i></p> <p>GOA pollock EFP: <i>Review (T)</i></p>	<p>AI Risk Assessment: <i>Report (T)</i></p> <p>Charter Halibut: <i>Recommendations for 2013</i></p> <p>GOA Chinook Bycatch All Trawl Fisheries: <i>Initial Review</i></p> <p>H/S IFQ Disc papers (GOA sablefish pots, unharvested halibut, sablefish A-share caps) (T)</p> <p>BSAI Crab ROFR: <i>Final Action (T)</i></p> <p>BSAI Crab active participation requirements: <i>Final Action</i></p> <p>BBRKC spawning area/fishery effects: <i>Updated Discussion paper</i></p> <p>AFA Vessel Replacement GOA Sideboards: <i>Final Action</i></p> <p>Groundfish Catch Specifications: <i>Adopt Final specifications</i></p> <p>BSAI Tanner Crab rebuilding plan: <i>Initial Review (T)</i></p>
<b>ITEMS BELOW FOR FUTURE MEETINGS</b>		
<p>Crab PSC numbers to weight: Discussion paper</p> <p>Crab bycatch limits in BSAI groundfish fisheries: Disc paper</p> <p>BS Canyons: Updated AFSC report; Fishing activities and management discussion paper</p> <p>MPA Nominations: Discuss and consider nominations</p>		

AI - Aleutian Islands  
AFA - American Fisheries Act  
BiOp - Biological Opinion  
BSAI - Bering Sea and Aleutian Islands  
BKC - Blue King Crab  
BOF - Board of Fisheries  
CQE - Community Quota Entity  
CDQ - Community Development Quota  
EDR - Economic Data Reporting  
EFP - Exempted Fishing Permit  
EIS - Environmental Impact Statement  
EFH - Essential Fish Habitat  
FLL - Freezer longliners  
GOA - Gulf of Alaska

GKC - Golden King Crab  
GHL - Guideline Harvest Level  
HAPC - Habitat Areas of Particular Concern  
IFQ - Individual Fishing Quota  
IBQ - Individual Bycatch Quota  
MPA - Marine Protected Area  
PSEIS - Programmatic Supplemental Impact Statement  
PSC - Prohibited Species Catch  
RKC - Red King Crab  
ROFR - Right of First Refusal  
SSC - Scientific and Statistical Committee  
SAFE - Stock Assessment and Fishery Evaluation  
SSL - Steller Sea Lion  
TAC - Total Allowable Catch

**Future Meeting Dates and Locations**  
June 4-12, 2012 - Best Western, Kodiak  
October 1-9, 2012 - Hilton Hotel, Anchorage  
December 3-11, 2012 - Anchorage  
February 4-12, 2013, Portland  
April 1-9, 2013, Anchorage  
June 3-11, 2013, Juneau  
September 30-Oct 8, 2013 Anchorage  
December 9-17, 2013, Anchorage

(T) Tentatively scheduled

# NPFMC/NMFS Action

AGENDA D-2(c)  
JUNE 2012

Updated 5/29/12

Action	Status	Staffing	2012					2013				
			June	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
<b>Blue = Post Council Action, Rulemaking</b>												
BSAI crab C-shares	Preparation of rulemaking package	NMFS 80% Council 20%	See NMFS Management Report									
Litigation workload	Ongoing	NMFS 90% Council 10%	See NMFS Management Report									
Am 80 vessel replacement	Proposed and Final Rule	NMFS 90% Council 10%	See NMFS Management Report									
12 month 20% halibut sablefish QS	Proposed and Final Rule	NMFS 100% Council 0%	See NMFS Management Report									
Tanner crab bycatch in the GOA	Preparation of rulemaking package	NMFS 90% Council 10%	See NMFS Management Report									
BSAI Arrowtooth Flounder MRAs	Preparation of rulemaking package	NMFS 90% Council 10%	See NMFS Management Report									
Observer Program restructuring	Preparation of Final Rule	NMFS 90% Council 10%	See NMFS Management Report									
BSAI Crab Emerg relief	Preparation of rulemaking package	NMFS 90% Council 10%	See NMFS Management Report									
CQE changes: communities, Use caps, 3A D class, 4B	Preparation of rulemaking package	NMFS 90% Council 10%	See NMFS Management Report									
Salmon FMP Revisions	Preparation of rulemaking package	NMFS 90% Council 10%	See NMFS Management Report									
Halibut/sablefish Hired Skipper	Preparation of rulemaking package	NMFS 90% Council 10%	See NMFS Management Report									
BSAI Crab IFQ/IPQ application	Preparation of rulemaking package	NMFS 90% Council 10%	See NMFS Management Report									
Chinook salmon bycatch in GOA pollock fishery	Preparation of Final Rule	NMFS 90% Council 10%	See NMFS Management Report									
BSAI Crab EDR	Proposed and Final Rule	NMFS 90% Council 10%	See NMFS Management Report									
GOA Flatfish Trawl Sweeps	Preparation of rulemaking package	NMFS 90% Council 10%	See NMFS Management Report									









# Groundfish Workplan

Priority actions revised in February 2007, status updated to current

General Priority (in no particular order)	Specific priority actions	Related to management objective:	Status (updated 5-29-12)	2012		
				Jun	Oct	Dec
Prevent Overfishing	a. continue to develop management strategies that ensure sustainable yields of target species and minimize impacts on populations of incidentally-caught species	5	Aggregate ABC/OFL for GOA 'other species' in Apr 08 BSAI skates TAC breakout in Oct 2009 remaining other species mgmt addressed under ACLs; final action in Apr 10			
	b. evaluate effectiveness of setting ABC levels using Tier 5 and 6 approaches, for rockfish and other species	4	AFSC responding to CIE reviews as part of harvest specifications process			
	c. continue to develop a systematic approach to lumping and splitting that takes into account both biological and management considerations	5	report from non-target species committee in Dec 09			
Preserve Food Web	a. encourage and participate in development of key ecosystem indicators	10	ecosystem SAFE presented annually; GOA indicator synthesis for 2012; EBS and AI indicator syntheses begun in 2010, 2011			■
	b. Reconcile procedures to account for uncertainty and ecosystem considerations in establishing harvest limits, for rockfish and other species	11	report from non-target species committee in Dec 09 AFSC discussion paper Jun 2011, considered during harvest specifications			■
	c. develop pilot Fishery Ecosystem Plan for the AI	13	FEP brochure published Dec 07 AI ecosystem assessment for Dec 2011			■
Manage Incidental Catch and Reduce Bycatch and Waste	a. explore incentive-based bycatch reduction programs in GOA and BSAI fisheries	15	partially addressed in BSAI salmon bycatch EIS, Tanner crab Kodiak closures (C action Oct 2010); GOA pollock / Chinook final action Jun 2011 Discussion paper on GOA bycatch tools Jun 2012 Final action on GOA halibut PSC reductions Jun 2012 GOA Chinook non-pollock PSC limits - init rev Dec 12 BS chum initial review Oct 2012	■	■	■
	b. explore mortality rate-based approaches to setting PSC limits in GOA and BSAI fisheries	20	partially addressed in BSAI salmon bycatch EIS analysis of BSAI crab bycatch limits in 2012	■	■	■
	c. consider new management strategies to reduce incidental rockfish bycatch and discards	17	partially addressed in rockfish program	■	■	■
	d. develop statistically rigorous approaches to estimating bycatch in line with national initiatives	14, 19	National Bycatch Report revised in 2011	■	■	■
	e. encourage research programs to evaluate population estimates for non-target species	16	Part of research priorities, adopted in June 2007	■	■	■
	f. develop incentive-based and appropriate biomass-based trigger limits and area closures for BSAI salmon bycatch reduction, as information becomes available	14, 15, 20	bycatch limit for Chinook adopted Apr 09; initial review chum bycatch analysis in Oct 2012	■	■	■

# Groundfish Workplan

Priority actions revised in February 2007, status updated to current

General Priority (in no particular order)	Specific priority actions	Related to management objective:	Status (updated 5-29-12)	2012		
				Jun	Oct	Dec
g.	assess impact of management measures on regulatory discards and consider measures to reduce where practicable	17	partially addressed by arrowtooth MRA analyses (Council action: GOA - Oct 07, BSAI - Oct 10)			

# Groundfish Workplan

Priority actions revised in February 2007, status updated to current

General Priority (in no particular order)	Specific priority actions	Related to management objective:	Status (updated 5-29-12)	2012		
				Jun	Oct	Dec
Reduce and Avoid Impacts to Seabirds and Marine Mammals	a. continue to participate in development of mitigation measures to protect SSL through the MSA process including participation in the FMP-level consultation under the ESA	23	RPA from final NMFS Biological Opinion implemented by Secretarial action for Jan 2011 SSL EIS initiated			
	b. recommend to NOAA Fisheries and participate in reconsideration of SSL critical habitat	23				
	c. monitor fur seal status and management issues, and convene committee as appropriate	24, 25				
	d. adaptively manage seabird avoidance measures program	22	Council action, seabird avoidance measures in 4E in Jun 08			
Reduce and Avoid Impacts to Habitat	a. evaluate effectiveness of existing closures	26	part of Bristol Bay red king crab paper Dec 2012			
	b. consider Bering Sea EFH mitigation measures	27	Council action on measures in June 07 BS flatfish trawl sweep mods required in Oct 09 EFH 5-year review/omnibus amds approved Apr 2011 discussion on Bristol Bay red king crab Dec 2012 Northern BS Research Plan white paper Oct 2012			
	c. consider call for HAPC proposals on 3-year cycle	27	HAPC cycle changed to 5 years, adopted Apr 2011 HAPC skate nurseries initial review Jun 2012			
	d. request NMFS to develop and implement a research design on the effects of trawling in previously untrawled areas	27	Part of research priorities, adopted in June 2007 Also part of NBSRA research plan development			
Promote Equitable and Efficient Use of Fishery Resources	a. explore eliminating latent licenses in BSAI and GOA	32	Council action on trawl LLP recency in Apr 08 GOA fixed gear latent licenses in Apr 09			
	b. consider sector allocations in GOA fisheries	32, 34	Final action GOA rockfish sector allocations Dec 09 Reauthorization of GOA rockfish program, Jun 2010 part of comprehensive GOA bycatch paper - discuss Jun 12			
Increase Alaska Native and Community Consultation	a. Develop a protocol or strategy for improving the Alaska Native and community consultation process	37	protocol presented in Jun 08 annual review of protocol			
	b. Develop a method for systematic documentation of Alaska Native and community participation in the development of management actions	37	outreach plan for chum salmon in Feb-Mar 2011 periodic Outreach Committee meetings			
Improve Data Quality, Monitoring and Enforcement	a. expand or modify observer coverage and sampling methods based on scientific data and compliance needs	38, 39	improvements Apr 08, restructuring approved Oct 10 update on restructuring Jun 2012, review deployment plan Oct 2012 continuing work with electronic monitoring			
	b. explore development programs for economic data collection that aggregate data	40	final action, salmon bycatch data collection Dec 09 partially addressed in BSAI Amd 80			
	c. modify VMS to incorporate new technology and system providers	41	Council action, VMS exemption for dinglebar Jun 08 discussion paper on comprehensive VMS Oct 2012			

ATTN: Diane  
Evans  
Pg 8  
FA# (907) 271-2817



RE: STAFF  
TASKING  
Item 02  
5-22-12

North Pacific Fisheries Management Council  
605 West 4th, Suite 306  
Anchorage, Alaska 99501-2252

April 16, 2012

**RE: Request for Clarification of Intent by Council for LLP license currently in question for GOA Pacific Cod Sector Split**

Attn: Chris Oliver, Executive Director & Staff  
Eric Olsen, Chairman and Council Members

Jim Hubbard did not receive a pacific cod endorsement for Western Gulf or Central Gulf on his LLP as a catcher vessel in spite of meeting the catch thresholds for Longline vessels <60MLOA. We have since appealed agency's decision based on the fact that although Jim had a CP designation on his LLP, he also functioned as a catcher vessel in some fisheries during certain seasons. Because Jim catches and freezes other groundfish products, he was not willing to change his CP designation on the LLP to strictly a catcher vessel since he was able to operate as such under the CP designation regardless. Per CFR 679.2;

Catcher/processor vessel designation means, for purposed of the license limitation program, a license designation that authorizes the license holder: (1) Designated on a groundfish license to deploy a vessel to conduct directed fishing for license limitation groundfish and process license limitation groundfish on that vessel or to conduct only directed fishing for license limitation groundfish.

During the qualifying years that defined this allocative program, Jim did not meet the 50 mt landing threshold for a CP. However he had landed enough pacific cod as a direct fishing vessel to meet the  $\geq 10$  mt threshold to qualify for a longline catcher vessel p.cod endorsement on his LLP in certain areas. Although Jim's LLP designation was a CP, we expect Council overlooked those <60' CP vessels who made landings that met the catcher vessel threshold. This should have allowed them to qualify for a catcher vessel endorsement on the newly issued LLP.

Possible oversight by council & staff is understandable since 1). There are no non-trawl <60' CP's aligned with the Freezer Longline Coalition or part of any Coop agreements, which were well represented in this allocation plan 2). Council may have not realized the hybrid of activity that certain smaller CP's have historically involved themselves in. 3). Jim Hubbard maintains the only Freezer Longliner in the fleet that is <60 MLOA, and is one of only two vessels who did not meet the 50 mt threshold for CP's<sup>1</sup>. 4). It is unlikely that there is record of testimony alerting council of such activities since we did not testify out of presumption that it be fair and equitable for C/P licensees to be credited

<sup>1</sup> See e-mail response from Agency Computer Specialist, Mukhya Khalsa

P.O. Box 3302 • Seward, Alaska 99664

Office (907) 224-5584 • Fax (907) 224-5572 • kruzof@ak.net

their landings towards an endorsement whether they were operating as a catcher processor or a catcher vessel at the time of landing.

In support or comparison of my appeal, a relevant consideration of Council was done on the action of BSAI and GOA Trawl LLP Recency (BSAI FMP amendment 92/GOA FMP Amendment 82) on April 7, 2008.

Per review of the Council motion, please note this excerpt and the highlighted footnote;

*Alternative 3. Remove the subarea (BS, AI, WG, and/or CG) endorsements on trawl LLPs unless the license meets a minimum landing threshold in the specified subarea (see Component 1).*

*Component 1 (Landings thresholds in the specified area):*

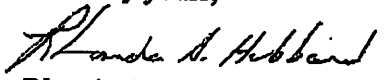
*Note that the landings thresholds under Alternative 3 include landings in the parallel and Federal groundfish fisheries. Catcher processor licenses are credited with their landings whether they were operating as a catcher processor or a catcher vessel at the time of landing.*

Similar to this action, I would like to ask Staff or council to clarify the following;

- 1). Was their intent to recognize, or not, the same landing thresholds for the GOA Pacific Cod Sector Split as they did previously in the BSAI and GOA Trawl LLP Recency action. If not, why, and can it be rectified?
- 2). Could there have been an error of focus on LLP designations in spite of the operational categories noted on a designee's Federal Fisheries Permit?
- 3). Was their oversight of how CP designations were defined for LLP's and how that corresponded with actual operational activities of certain vessels?

Knowing the current amount of work and issues before staff and council, and that this issue appears unique to us, your time on this matter comes with great appreciation and humbleness. I look forward to your reply with hopes that it recognizes our right and reason of appeal.

Sincerely yours,

  
Rhonda A. Hubbard  
For James Hubbard,  
As Designated Representative  
And Power of Attorney

- Attachments: 1). Answer to appeal from NMFS Appeals Office  
2). Appellants counter response to answer  
3). E-mail response from Mukhya Khalsa, Agency specialist

CC: Steve Hinckle,  
National Appeals Office, Alaska Region

**Kruzof**

**From:** "Mukhya Khalsa" <mukhya.khalsa@noaa.gov>  
**Date:** Friday, April 13, 2012 2:50 PM  
**To:** "Kruzof" <kruzof@ak.net>  
**Subject:** Re: LLP # LLG 1721

The LLP Non-trawl Recency data is organized by license rather than vessel, so all the adding up of pounds was done by license. The amount of tons that is required for a Catcher license is dependent on the Maximum Length Overall on the license. If we considered the ones that are over 60 feet, than there needs to be 50+ tons of catch and I think that is not worth looking at. That leaves 2 catcher/processor licenses that had 10+ tons but less than 50 tons of catch. One was 1721 as you know.

For confidentiality reasons, I can't tell you the other one.

I hope this helps you.

Mukhya  
Computer Specialist  
NOAA Fisheries/ISD Applications Group

On Fri, Apr 6, 2012 at 5:03 PM, Kruzof <kruzof@ak.net> wrote:

Thanks Mukhya, Well this list makes me even more curious, and am wondering why a few made the list. Do you have a ph# I can call you direct to discuss this next week? RH

**From:** Mukhya Khalsa  
**Sent:** Friday, April 06, 2012 12:52 PM  
**To:** Kruzof  
**Subject:** Re: LLP # LLG 1721

This is all of them without a gear filtered. Just let me know if you need more done.

On Fri, Apr 6, 2012 at 10:34 AM, Kruzof <kruzof@ak.net> wrote:

Hi Mukhya, Thank you for your efforts here. I believe what you have noted is adequate and breaking the list down to include only non-trawl gear should work also.

As for the data on vessels, receiving whatever is normally available or what you have noted below would be great.

Thanks again,

Sincerely yours,

Rhonda

**From:** Mukhya Khalsa  
**Sent:** Thursday, April 05, 2012 3:24 PM  
**To:** kruzof@ak.net  
**Subject:** Re: LLP # LLG 1721

Jessie thought it would be easier if we communicated directly.

I have a list of 27 vessels that fall into this category:





National Appeals Office, Alaska Region  
P.O. Box 21668  
Room 420  
709 W. 9<sup>th</sup> Street  
Juneau, Ak 99801

March 19, 2011

Fax: (907) 586-9361

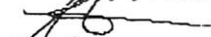
Re: Appeal to Decision No. 11-0080

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In response to the appeals decision on this case, I further appeal the order per Chief Administrative Judge Eileen Jones based on the following matters:

- 1). The original LLP that was issued to Jim Hubbard between 1992 and 1995 could not be changed in spite of varied fishing activity that occurred legally thereafter as both a Catcher/Processor and Catcher Vessel.
- 2). Although the LLP noted a CP designation it was never illegal to function also as only a Catcher Vessel which had occurred during the qualifying years for a Pacific Cod endorsement. This in turn allowed claimant to meet harvest thresholds as a catcher vessel, qualifying him for a Catcher Vessel Pacific Cod endorsement.
- 3). Jim Hubbard's Federal Fisheries Permit, a prerequisite for any federal fishing activity, always maintained notation of his varied fishing operation.
- 4). It is unreasonable to determine that the new LLP regulations intended to isolate vessels into specific categories when varied operations were previously allowed and acceptable. Such inconsistencies pose litigious burden and should demand clarification in our favor.
- 5). NOAA's preliminary determination to deny Jim Hubbard a Pacific Cod endorsement on April 27<sup>th</sup>, 2011, did not account for his activity as a Catcher Vessel in spite of such information being easily accessible and available by the agency. While it is incumbent on the fisher to provide all harvest activity, it should be equally incumbent on regulators to bring forth the information provided them without further burden when new license plans are implemented.

Sincerely yours,

  
Rhonda A. Hubbard  
Designated Representative.  
For James T. Hubbard

P.O. Box 3302 • Seward, Alaska 99664

Office (907) 224-5584 • Fax (907) 224-5572 • kruzof@ak.net



NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
NATIONAL MARINE FISHERIES SERVICE  
NATIONAL APPEALS OFFICE

In re Application of	)	Appeal No. 11-0080
JAMES T. HUBBARD	)	ORDER DENYING MOTION for
Appellant	)	RECONSIDERATION

On March 7, 2012, the undersigned issued the Decision in this appeal. On March 19, 2012, Appellant timely filed a Motion for Reconsideration (Motion).

A motion for reconsideration is not a new layer of appeal, or an opportunity to present arguments or evidence that was available prior to the date the record closed. A motion for reconsideration must state material issues of law or fact the appellant believes were misunderstood or overlooked in the decision. In support of a motion for reconsideration, an appellant must include arguments, or points and authorities in support thereof.<sup>1</sup>

As described in the original Decision, Appellant's claim for an endorsement was late:

The regulations governing the LLP [License Limitation Program] require applicants to respond to the Notice within a thirty-day window.<sup>2</sup> On April 27, 2011, RAM sent Appellant his Notice for filing a claim. In the Notice, RAM informed Appellant he could submit evidence by May 27, 2011. Appellant concedes his office personnel did receive the Notice timely. Thus, Appellant was on notice that he had received the Notice. Moreover, the applicable regulations do not provide an exception or equitable authority for NAO to waive the LLP regulations. In pertinent part the regulations provide: "Additional information or evidence received after the 30-day evidentiary period specified in the letter [Notice]...will not be considered...."<sup>3</sup> I conclude Appellant's claim was not filed in a timely manner and RAM correctly followed its regulations and properly denied Appellant's claim for an endorsement.<sup>4</sup>

In his Motion, Appellant does not argue how I erred in concluding that his claim was late and on that basis upholding the Initial Administrative Determination (IAD).

Rather, in the Motion, Appellant raises five arguments. First, Appellant claims his permit could not be changed to Catcher/Processor and Catcher Vessel. Second,

<sup>1</sup> <http://www.nmfs.noaa.gov/mb/appeals/mb7.htm>

<sup>2</sup> 50 C.F.R. §300.67(h)(1); 75 Fed. Reg. 1595 (January 12, 2010).

<sup>3</sup> 50 C.F.R. § 679.4(k)(10)(v)(2)(E).

<sup>4</sup> Decision dated March 7, 2012, page 4.

during the qualifying years, Appellant's business legally functioned as a Catcher Vessel, even though his permit was designated as Catcher/Processor. Third, Appellant's permit had a notation indicating his varied fishing operation. Fourth, the new LLP regulations are unreasonable because they force vessels into specific categories. Fifth, NOAA did not consider evidence that Appellant functioned as a Catcher Vessel.

I decline to entertain the five arguments on the merits. As stated, Appellant's claim was not timely.

In reaching my conclusion, I understand Appellant would like the agency to consider his landings as a Catcher Vessel, that his business may have functioned as a Catcher Vessel, and that he feels he could not change the designation on his permit. However, the new LLP regulations direct the agency to look at a permit holder's eligibility for an endorsement based on the vessel-designation on a business's permit. I cannot deviate from the rules the agency has promulgated. Accordingly, Appellant's Motion does not show the Decision included an error of law or fact.

The new effective date of the Decision is June 8, 2012. NAO's Decision is the final action of the agency unless the Regional Administrator revises, reverses, or modifies the Decision.



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Eileen G. Jones  
Chief Administrative Judge

Date Issued: May 9, 2012

Name: Lloyd Kompkoff

Organization: N/A

Address: 1710 Minerva Way, Anchorage, AK 99515

Phone: 907-242-3739

Fax:

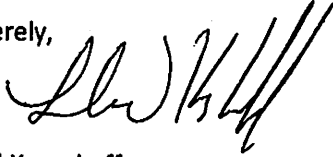
E-mail: lloyd.kompkoff@@chenegafuture.com

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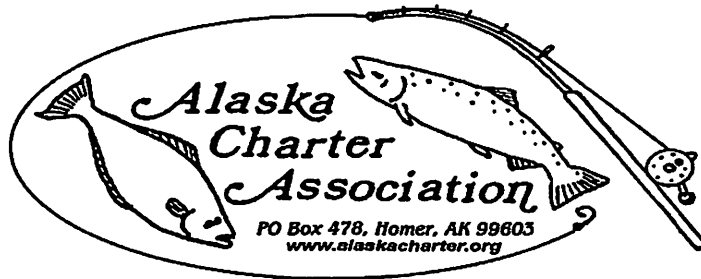
1. **What Regulation do you wish to Change?** 50 CFR 300.65(h) Limitations on subsistence fishing. provides that "Subsistence fishing for halibut may be conducted only by persons who qualify for such fishing pursuant to paragraph (g) of this section and who hold a valid subsistence halibut registration certificate in that person's name issued by NMFS pursuant to paragraph (i) of this section, provided that such fishing is consistent with the following limitations"
  - a. While you may have others on board the vessel with you, if those persons are not eligible for a Subsistence Halibut Registration, they cannot participate in any manner in subsistence fishing. "Fishing" is defined as:
  - b. Fishing means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area.
  - c. So, things like baiting hooks, deploying subsistence fishing gear, retrieving gear, gaffing halibut are all activities that can reasonably be expected to result in the taking or catching of fish.
2. **How should the new regulation read?** (Add new section to the current regulation 50 CFR 300.65(h).
  - d. Exception to rule (a.) while a SHARC holder is actively harvesting Subsistence Halibut in an approved area they may utilize immediate family (Wife, Sons, or Daughters) to do any fishing (b.) and (c.) as long as a current SHARC holder is on board the vessel.
3. **Why should this regulation change be made?** Subsistence harvesting/gathering is a family event and/or one person may not be able to tend his/her gear (while deploying) out of the vessel, this alone is a huge safety factor.
4. **What impact will this change have on fish populations?** None
5. **How will this change affect subsistence uses?** Elderly subsistence users will be able to participate in the Subsistence Halibut harvest. Handicap subsistence users will be able to participate in the Subsistence Halibut harvest. May eliminate the need for future proxy fishing. Will reduce the safety factor of the user.

6. How will this change affect other uses, such as sport/recreational and commercial? The change will not affect any of the other uses.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lloyd Kompkoff', written in a cursive style.

Lloyd Kompkoff



*"To Preserve and Protect the Rights and Resources of Alaska's Sport Fishermen"*

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

Re: Agenda Item D-2, Staff Tasking, Halibut CSP

May 29, 2012

Dear Chairman Olson,

The Alaska Charter Association (ACA) is a statewide organization representing over 150 charter and associated businesses. Its mission is to preserve and protect the fishing rights and resources necessary for the Alaska charter fleet to best serve the recreational fishery.

The ACA thanks the North Council for its April motion on the halibut catch sharing plan (CSP). The April motion goes a long way toward resolving a number of problems that were identified in comments on the proposed rule. However, issues remain with guided recreational allocation alternatives, sector accountability, the proposed committee based approach to harvest management, guided angler fish (GAF), and skipper and crew retention of halibut. In bringing these issues to the North Council's attention now rather than in October, the ACA hopes that all are carefully analyzed prior to final action.

#### **Allocation**

The April discussion of the CSP allocation included new allocation options for Areas 2C and 3A as well as allocation adjustments resulting from the transition to logbook based harvest accounting. Sector accountability was also added for analysis. It is important that each of these issues is considered individually, as each has allocative implications that must be fully understood before implementation.

The April motion proposes to adopt the charter logbooks as the primary harvest data collection method, and includes an allocation adjustment factor of 15.4% for Area 3A and 5.6% in Area 2C. The ACA agrees with these adjustments but notes that all allocation alternatives under consideration should be adjusted accordingly. *The motion was unclear, but the ACA assumes that the logbook adjustments would apply to Options 1 and 2 on page two of the motion as well as all other alternatives.*

Options 1 and 2 from the April motion establish a new allocation alternative that adds 3.5% of the combined catch limits to the guided recreational allocation.

Figure 1 compares a logbook adjusted GHL with the logbook adjusted Option 1 for Area 2C.

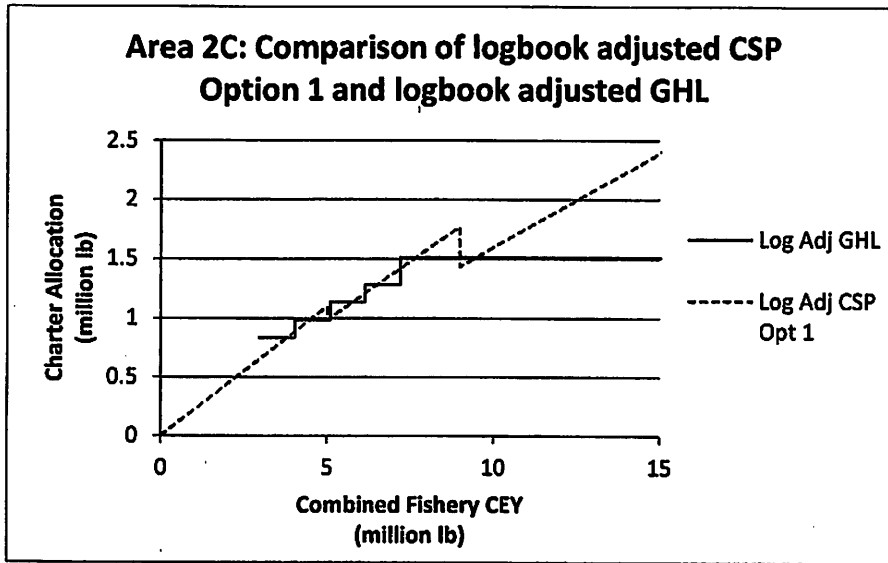


Figure 1

Figure 2 compares a logbook adjusted GHL with the logbook adjusted CSP Option 2 for Area 3A.

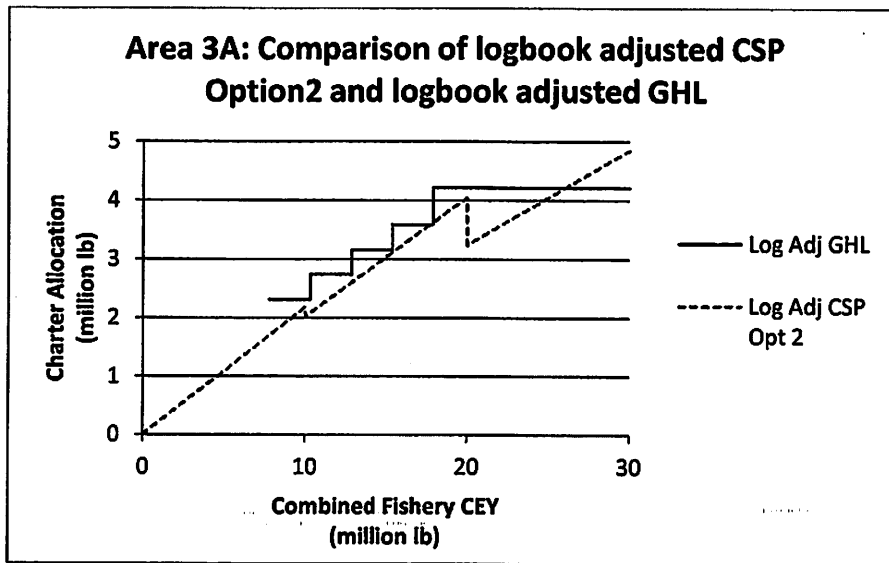


Figure 2



Reviewing Figures 1 and 2, it is clear that while the newly suggested alternative for Area 2C is more closely aligned with the GHL, the new alternative for Area 3A remains well below the GHL at all but the highest abundance levels. In fact, at combined catch limits of about 20 million pounds in Area 3A, the guided allocation under option 2 is close to one million pounds less than the GHL. The ACA reminds the North Council that under the CSP, a one million pound decrease in guided allocation represents a one million pound reallocation to the commercial fishery.

### Allocation Jinks

Commenting on the CSP proposed rule, the ACA and others noted the "jinks" in the 2C and 3A preferred alternatives. The jinks are plainly visible in Figures 1 and 2. *In each area, crossing a jink with increasing abundance results in a decrease in guided recreational allocation.* Options 1 and 2 from the April motion add a second jink to each allocation alternative. Crossing the first jink in Area 2C results in a 10.6% decrease in allocation; crossing the second jink with increasing combined catch limits results in a 332 thousand pound, 18.8% decrease in allocation. Crossing the first jink in Area 3A results in a 7.4% decrease in allocation; crossing the second jink results in an 807 thousand pound, 20.0% decrease in allocation<sup>1</sup>. *Combined catch limits would have to increase to over 25 million pounds before the Area 3A guided allocation once again exceeded the Area 3A guided allocation at a CCL of just under 20 million pounds.* The ACA strongly suggests that the allocation jinks are counterintuitive if a goal of the CSP is to establish a guided allocation that floats up and down with abundance.

### Suggested Allocation Alternatives

It is a simple exercise to develop guided recreational allocations that float with abundance without jinks while much more closely matching the status quo GHL allocations. Figures 3 and 4 depict the ACA's suggested adjustments to the Area 2C and 3A allocations to accomplish this goal. Included in these graphs are representations of the logbook adjusted 50:50 fixed:floating allocation alternatives from the original analysis. It is worth noting that in each area the logbook adjusted 50:50 allocation alternatives are above both the logbook adjusted GHL and the ACA proposed alternative, meaning the ACA alternatives are well within the logbook adjusted range of alternatives originally chosen for analysis.

### Area 2C Suggested Alternative

Combined Catch Limits (CCL) < 3.5 m pounds: 23.8% of CCL  
3.5 m pounds >= CCL < 7.95 m pounds: 297.6k + 15.3% of CCL  
CCL >= 7.95 m pounds: 717k pounds + 10.0% of CCL

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<sup>1</sup> All calculations made assuming Options 1 and 2 have logbook adjustment applied.

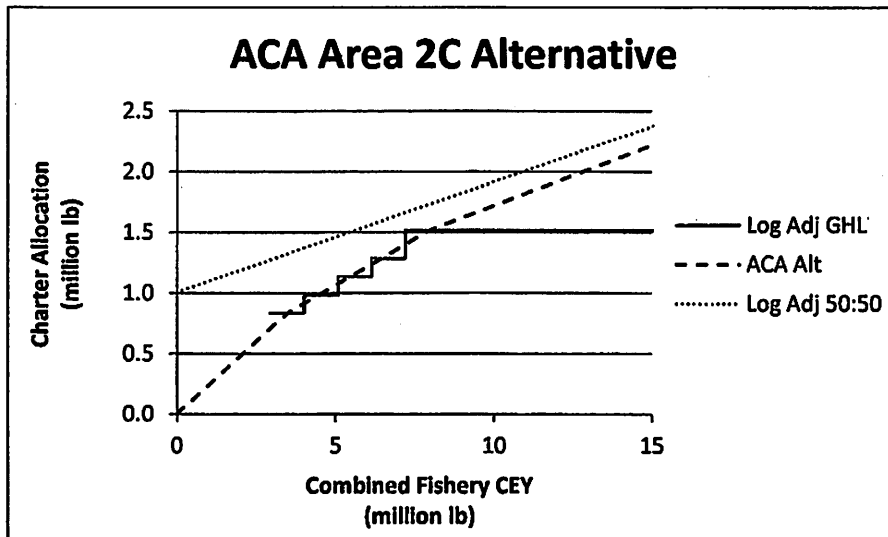


Figure 3

#### Area 3A Suggested Alternative

Combined Catch Limits (CCL) < 9.053 m pounds: 25.6% of CCL  
 9.053 m pounds >= CCL < 19.783 m pounds: 708k + 17.8% of CCL  
 CCL >= 19.783 m pounds: 2.334 m pounds + 8.9% of CCL

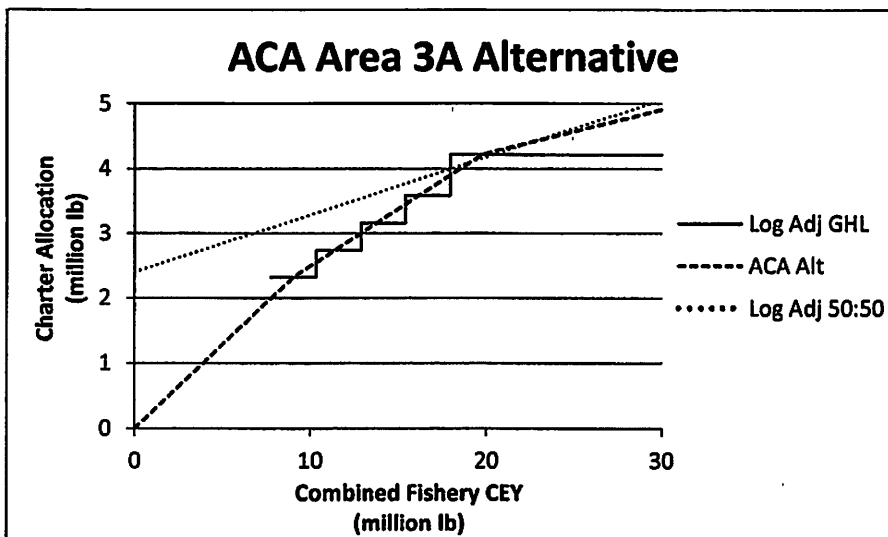


Figure 4

*The ACA asks the Council to add the suggested alternatives to the analysis.*

## Sector Accountability

While the ACA agrees with the IPHC and North Council philosophy that each sector should be accountable for all of its removals, we make the following observations:

1. Accurate estimates of wastage and/or bycatch are necessary to implement sector accountability. ***If the estimated wastage for either sector is incorrect, the change to sector accountability will result in unanticipated allocation shifts.*** Wastage estimates could be inaccurate due to incorrect released fish mortality estimates. The last scientific study of released fish mortality for Pacific halibut was done in 1958 and 1960 and was conducted to estimate tagging mortality<sup>2</sup>. The study was conducted using J hooks and the sample size was greatly reduced due to elevated water temperatures that killed a number of fish in the study. Using a total of 120 fish, the study estimated a mortality of 3.8% resulting from capture and tagging. Wastage estimates are also based on the number of released fish; in the absence of actual observations of released fish, it is likely that these estimates are incorrect. Likewise, with less than 100% observer coverage in the non-directed fisheries, bycatch estimates could be inaccurate.
2. The IPHC recently began deducting over 26 inch, under 32 inch (O26/U32) bycatch and wastage from the total CEY in its catch limits setting process. Bycatch represents a substantial portion of these removals; if the guided recreational and commercial sectors are going to be held accountable for their wastage, then they should not be penalized by the removal of O26/U32 trawl bycatch from the O32 total CEY. ***If sector accountability is the goal, then it must apply to all sectors, and non-directed removals should not come at the expense of directed fishery catch limits.***

The ACA suggests that a scientific study of released halibut mortality using modern gear is long overdue, and cautions that prior to adopting full sector accountability, it would be wise for the both IPHC and the North Council to carefully analyze the economic and allocative consequences of doing so using incomplete or inaccurate data.

## Committee process

The ACA is encouraged that the North Council has dispensed with the CSP matrix in favor of a committee-based approach<sup>3</sup>. However, the ACA remains concerned that the approach utilized in setting harvest restrictions in Area 2C in 2012 largely left the public out of the decision making process. The ACA feels that the provisions for public participation and judicial review mandated by the Administrative Procedures Act (APA) are very important components in the Council rulemaking process. The ACA reminds the Council that the comments of over 4000 citizens directly resulted in the Council's

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<sup>2</sup> IPHC Scientific Report No. 52, Viability of tagged Pacific halibut. Gordon J. Peltonen. 25 p. (published 1969)  
<http://www.iphc.int/publications/scirep/Report0052.pdf>

<sup>3</sup> This approach is referred to as the "2012 Model" in the April motion, available at:  
<http://www.fakr.noaa.gov/npfmc/PDFdocuments/halibut/CSPmotion412.pdf>

reconsideration of its 2008 CSP motion. *The ACA suggests that a public comment period should be included in the committee-based approach and notes that ample time exists after the IPHC annual meeting to implement harvest restrictions using an expedited rulemaking process similar to the process used in 2007 for Area 2C.*

The ACA also suggests that in adopting a committee-based approach, the process should be formalized to include SSC review of committee recommendations and to assure a well-balanced committee membership consisting of recreational anglers as well as charter operators. In addition, committee membership terms should be specified.

### **Guided Angler Fish (GAF)**

The ACA observes that GAF are problematic for a number of reasons:

- GAF do not constitute a permanent Quota Share (QS) transfer mechanism, but rather a one-time resale of commercial IFQ to a member of the public.
- GAF is proposed as a transfer mechanism that is supposed to help provide stability and predictability to the charter sector in times of low abundance. However, since no one will know in advance how much IFQ will be available to lease each year and at what price, it will be impossible to market trips a season in advance.
- If widely utilized, GAF would result in greater absentee ownership of QS. In developing the halibut QS program, the Council went to great lengths to prevent absentee ownership. By approving GAF, the Council would now allow holders of 1500 pounds of IFQ to lease it all without ever having to fish it.
- GAF add another layer of enforcement responsibilities and costs to understaffed and underfunded enforcement departments.
- GAF implementation and enforcement will result in higher fees assessed to QS holders.
- GAF favors large, well-financed charter operations over smaller "mom and pop" operations.
- GAF favors wealthy charter clients over guided anglers with more limited budgets.
- If widely utilized, smaller blocks of QS are likely to be tied up as GAF, reducing the number of entry level opportunities for commercial fishermen.
- If widely accepted by the charter fleet, competition between hundreds of charter operators for GAF would drive the price of GAF up, in turn increasing the price of commercial QS, making entry level opportunities for commercial fishermen even more expensive than they are presently.
- At current abundance levels, there is not enough GAF available in Area 2C to make it a viable option for most charter operators.
- GAF means "Guided Angler Fish". GAF would be sold by QS holders and Charter Halibut Permit (CHP) holders and purchased by CHP holders and guided anglers. *A GAF will be sold to guided anglers not as an opportunity to catch a fish, but rather as the opportunity to land and keep a fish that has already been hooked and brought to boat side. Payment for a GAF will not be*

***made if the fish is not landed.*** The sale of sport caught fish is in direct conflict with state, federal and international<sup>4</sup> fishing regulations.

- Proposed limitations on GAF purchases by CHP holders discriminate without reason between holders of single CHPS with more than 6 endorsements and those with 6 or fewer endorsements.

Public testimony at the April North Council meeting was overwhelmingly against GAF and in favor of a pool based compensated allocation shift mechanism, where a holding entity would purchase commercial QS on the open market and use the QS to transparently supplement the baseline guided recreational allocation in each area. The ACA believes that a well-designed, pool-based allocation transfer mechanism would eliminate most of the problems that have been identified with GAF while also implementing charter sector accountability. NPFMC legal counsel has indicated there are few if any legal obstacles to the formation of a holding entity such as that envisioned by the CATCH project. ***The ACA asks the North Council to defer implementation of the GAF provisions of the CSP and initiate a comparative analysis of the pool-based and GAF approaches with an emphasis on the thorough analysis of the economic consequences of each approach.***

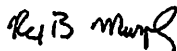
#### **Skipper and Crew Retention of Halibut**

The proposed rule for the CSP contains an outright ban on halibut harvest by skipper and crew. Under the CSP, the only time a charter vessel guide or crew member can harvest a halibut is on a non-charter trip. This is very expensive, since it implies a non-revenue day, fuel expenses commensurate with a normal charter trip and unnecessary wear and tear on the boat. The Council's analysis did not consider anything other than an outright ban on skipper and crew harvest when other options exist.

***The ACA asks the North Council to analyze annual limits for charter skippers and crew as an alternative to an outright ban on harvest.***

In closing, the ACA thanks the Council for revisiting the halibut CSP and looks forward to working with you to resolve the outstanding issues.

Respectfully,



Rex Murphy

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<sup>4</sup> IPHC Pacific Halibut Fishery Regulations 2012, <http://www.iphc.int/publications/regs/2012ipohcregs.pdf>, page 19

North Pacific Fishery Management Council  
209<sup>th</sup> Plenary Session — June 6-12, 2012 — Kodiak, AK

**GOA GROUND FISH TRAWL SUBSECTOR OBSERVER PROPOSAL**

**Submitted Repeatedly for 6 Years  
on the Official Record of NPFMC/NOAA Fisheries**

**D-2 — Staff Tasking Problem Statement & Dochtermann Proposal**

Name of Proposer: Ludger W. Dochtermann

Date: (orig. June 1, 2005) June 4, 2012

**Address:**

P.O. Box 714

Kodiak, Alaska 99615

**Telephone:**

(907) 486-5450

**Applying:** NS#1 issues of 'rebuilding', optimum yield, preventing overfishing; NS#2 –best science & providing most current, comprehensive information; NS#3 'close coordinated management'; NS#7 minimize costs (damaged stocks, wasted fuel etc.) NS#8 sustained community participation & NS#9 minimize bycatch & mortality on non-targeted species. For multi-species management to maximize net national benefits from Kodiak area fisheries.

**Brief Statement of Proposal:**

Full (100%) Observer Coverage on All GOA Trawl Vessels for the Year 2013, and once in every 3 years, thereafter. By "Year 2013," I mean "year-1 deployment" – i.e., before any further Rationalization or Catch Share regulations are promulgated. So, inherent in this proposal is a halt to further action until the best (adequate) scientific data is made available.

**Objectives of Proposal (What is the problem?):**

To accurately evaluate the trawl fishery subsector's entire catch performance regarding the bycatch of non-targeted species and the on-board management conduct of the fishery's prosecution. There is a serious need to have years of full knowledge regarding bycatch for several reasons, not the least of which is for comparison with other years of reduced coverage where the Nation relies upon self-reporting during non-observer hauls.

**Need & Justification for Council Action (Why can't the problem be resolved through other channels?):**

Due to the nature of the extraordinary value of bycatch – often exceeding the value of targeted species, and due to the nature of massive discards when incidents of 'bad hauls' occur, NOAA Fisheries and the Council need a more accurate base, or first-data-year statistics. Absent the presence of constant recording cameras and other means of improved data collection — and given the need for human confirmation of such 'remote sensing' were it to occur — the 2013 fishery would be a first start in accurate measurement.

Human behavior in the interests of overwhelming economic rewards, absent effective comparison data and enforcement, commands that NOAA base its decisions on more accurate data, and confirm that behavior is not incorrectly reported when observer coverage is not at 100% levels. The Council and NOAA are also aware of the uselessness of GOA bycatch data. The OMB needs to review Compliance with the Data Quality Act in the self-reporting system.

The recent submittal of pictures of tanner crab bycatch in the Kodiak groundfishery at the June 2009 session clearly demonstrates the need for 100% observer coverage, full time for 1 base year. The

pictures from Tholepin/blogspot simply reinforce this message. While some have historically considered Bering Sea crab pod encounters to be rare, true or not, around Kodiak trawlers do fish shallow bays and other grounds that increase the likelihood of pod encounters or are simply dragging through crab abundantly concentrated on the ocean floor.

**Foreseeable Impacts of Proposal (Who wins, who loses?):**

The program would arguably be costly and operationally inconvenient to many vessels, however government could cover much of the costs in return for the knowledge gained. For the cost of not having full and complete knowledge – at least once every 3 years, and at least “once” (in 2012) – before creating any further arbitrary resource allocation (property rights shifting) regulations (such as “rationalization schemes”) may be a grave loss to society and regional economies as heavy-impact, intense methods of fishing – i.e. hard-on-bottom trawling – proceed unabated and unwatched.

The question of “who loses” has been answered — crab and halibut fishermen — unless a 100% observer program for 1 base year is put in place. Considering that Kodiak was once the “king crab capital of the world” and its restoration is severely harmed by trawl subsector bycatch incidents, the Council needs this base year to analyze such comparable losses.

The question of “who wins and who loses?” is also moot under the logic that the Public resource is an invaluable asset of the Nation, and no one loses when we all know “What are the true conditions of the prosecution of such fisheries?” Everyone wins when regulations are based on the best data, and when they follow the National Standards in the Magnuson-Stevens and Sustainable Fishery Acts, in their spirit and intent – esp. when the regulatory process proceeds on science, not politics and greed.

**Are there Alternative Solutions? If so, what are they and why do you consider your proposal the best way of solving the problem?:**

There is another means of keeping an eye on the prosecution of the fishery, but the cost of having numerous Coast Guard vessels on site, around the clock, along with ‘random-boarding’ (fair) observer coverage would be much higher than instituting a full-coverage year-stratification program that operates only once every 3 years.

Also, the Council could ban bottom trawling in state waters around Kodiak altogether.

**Supportive Data and Other Information (What data are available and where can they be found?):**

This is a complex matter, as NOAA has not had adequate budgets for better research. But the conduct of the trawl fishery and the witnessing of its highly destructive prosecution are well known among NOAA, Alaskan communities and fishing crews. The Council and NOAA have greater insight on data collection and statistical need, and that could all come out during the rapid discussion of this proposal were the Council to specifically to request NOAA goes forward with 100% observer coverage in 2013 (or 2014 – year-1 deployment).

I ask you to please take this into discussion in Groundfish issues, and to make your motion one for prioritization of a 100% observer coverage in Year-1 deployment, specifically in the GOA trawl sector.

**Signature:**

Ludger W. Dochtermann, F/V North Point, F/V Stormbird – Kodiak, AK



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Staff Tasking  
June 11, 2012  
submitted by:  
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At-sea Processor  
Associate  
FACSIMILE  
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May 4, 2012

Glenn Merrill  
Assistant Regional Administrator  
Sustainable Fisheries Division  
Alaska Region NMFS  
ATTN: Ellen Sebastian  
709 West 9th Street, Room 420A  
Juneau, AK 99801

Dear Mr. Merrill:

On behalf of the Groundfish Forum, we offer the following comments regarding the proposed rule that would implement Amendment 97 to the Fishery Management Plan ("FMP") for Groundfish of the Bering Sea and Aleutian Islands ("BSAI") Management Area. 77 Fed. Reg. 20339 (Apr. 4, 2012) ("Proposed Rule"). The Groundfish Forum is a trade association that represents five trawl companies owning sixteen vessels that fish for groundfish pursuant to Amendment 80 of the FMP as part of the non-American Fisheries Act ("non-AFA") catcher-processor sector. These trawl companies operate Amendment 80 vessels that potentially could be replaced under the provisions of Amendment 97.

#### Executive Summary

In general, the Groundfish Forum strongly supports Amendment 97 as recommended by the North Pacific Fishery Management Council ("NPFMC" or "Council") and asks for its expedited implementation. We oppose, however, the Proposed Rule's preamble ("Preamble") that purports to allow the replacement of Amendment 80 vessels with American Fisheries Act ("AFA") vessels. The Council never voted to recommend this. In fact, it never considered it. Under the Magnuson-Stevens Fishery Conservation and Management Act ("MSA"), the National Marine Fisheries Service ("NMFS") has no authority to add such language to the Preamble, which is not a "clarifying" or "technical" change but instead an attempt to modify the substance of the amendment passed by the Council. The Preamble also directly contradicts the *Regulatory Impact Review/Environmental Assessment/Initial Regulatory Flexibility Analysis* ("EA") that was before the Council at its June 2010 meeting and had definitively removed from



Glenn Merrill  
May 4, 2012  
Page Two

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consideration the eligibility of AFA vessels as replacement vessels. Congress specifically set apart the AFA and non-AFA sectors upon their creation. Congress, the Council, and industry subsequently have taken care to maintain this distinction in law and in practice. No one intended Amendment 97 to upset the mutual exclusivity of AFA and non-AFA sectors or unravel the existing management system. Allowing AFA vessels to enter the Amendment 80 fishery directly contravenes the intentional separation of these sectors, NMFS' own EA determination, and thwarts the intent of Amendment 97. For these reasons, as further explained below, the language in the Preamble authorizing AFA vessels to replace Amendment 80 vessels is untenable and must be struck from the final rule.

Additionally, the Groundfish Forum seeks clarification that, regardless of whether the Amendment 80 vessel is rebuilt or replaced, Amendment 97 allows the new vessel to be built up to 295 feet in length overall ("LOA").

**AFA vessels may not replace Amendment 80 vessels.**

The Council never recommended or considered replacing Amendment 80 vessels with AFA vessels.

In 2008, the Council initiated Amendment 97 to correct deficiencies in the FMP regarding lost vessels in the Amendment 80 program.<sup>1</sup> In preparation for the Council's final decision on Amendment 97, NMFS prepared an EA to guide the Council's June 2010 meeting. In its EA, NMFS responded to inquiries regarding characteristic limitations of a replacement vessel by stating,

*this interpretation has changed*

Because the [*Capacity Reduction Program* or] CRP makes a clear distinction between the AFA and non-AFA trawl catcher/processor subsectors, an AFA catcher/processor as defined by the CRP would be ineligible to fish as a non-AFA trawl catcher/processor and could not replace an Amendment 80 vessel.

EA, 16.) By its declarations in the EA, NMFS removed from consideration the eligibility of AFA vessels as replacement Amendment 80 vessels.

<sup>1</sup> Amendment 97 intended to address a May 19, 2008, ruling of the U.S. District Court of the Western District of Washington that invalidated existing regulations because they did not allow the replacement of Amendment 80 vessels. *Arctic Sole Seafoods v. Gutierrez*, 622 F.Supp.2d 1050, 1062 (W.D. Wash. 2008). The Court did not address what type of vessel may replace an Amendment 80 vessel. It only instructed NMFS to permit the owners to replace or rebuild their vessels. *Id.* at 1061.

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NMFS tries to get around its reversal of position by insisting it is clarifying a perceived gap in the Council's recommendation. The Council, however, never visited the issue of whether AFA vessels could replace Amendment 80 vessels, relying on the interpretations provided by NMFS that such vessels were "ineligible" to be replacements. Indeed, a review of the minutes kept during the Council's and its Advisory Panel's meetings throughout the relevant period (*i.e.*, October 2008 through June 2010) reveal that such an alternative was never discussed. More to the point, the Council's June recommendations to NMFS do not mention AFA vessels. In light of the above facts, there is good reason that, as NMFS states in the Preamble, "[t]he Council's motion for Amendment 97 does not recommend that NMFS prohibit or otherwise establish regulations to limit the use of AFA vessels as Amendment 80 replacement vessels." 77 Fed. Reg. 20344. The reason is simply that NMFS told the Council that it did not have such an option and consequently the Council never considered the issue. NMFS, therefore, cannot interpret the Council's silence as an oversight, and ignore previous public statements on the issue, as either prohibiting or allowing the use of an AFA vessel as a replacement vessel.

NMFS' decision to unilaterally change its public position and discuss an option in the Preamble that the Council never considered is beyond its authority under the MSA. Under the MSA, NMFS has a limited role in the promulgation of fishery management plans and plan amendments. The Secretary of Commerce, acting through NMFS, has the authority only to "approve, disapprove, or partially approve a plan or amendment" after evaluating it for consistency with the plan and applicable law. 16 U.S.C. § 1854(a)(3), (b). If NMFS approves the Council's recommendation, the only changes it may make are "such technical changes as may be necessary for clarity." *Id.* § 1854(b)(1)(A). Even if NMFS disapproves a Council recommendation, its only recourse under the MSA is to notify the Council in writing and recommend how the Council can make the plan or amendment consistent with the law. *Id.* § 1854(b)(1)(B). The determination of whether AFA vessels may replace Amendment 80 vessels, therefore, remains in the province of the Council, not NMFS. Here, the Council manifestly did not act to allow AFA vessels as replacements.<sup>2</sup>

Furthermore, language that appears only in the Preamble cannot have any regulatory effect. Any attempt by NMFS to create a rule outside of the rulemaking process as contemplated by the MSA and the Administrative Procedure Act ("APA") is invalid. The APA provides that agency action is unlawful if it is found to be, among other things, "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A) & (C). Courts are not

<sup>2</sup> NMFS only may approve what the Council affirmatively does – NMFS may not unilaterally fill in any perceived gaps or make substantive changes to the Council's recommendation. *Legacy Fishing Co. v. Gutierrez*, 2007 WL 861143 \* 5 (D.D.C., 2007) ("NMFS lacks authority to add requirements to a council recommendation and implement them by fiat via regulation").

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satisfied when provisions purported to have regulatory effect appear only in parts of rules or regulations — such as the Preamble — promulgated by NMFS. *Oceana v. Locke*, 2011 WL 6357795, at \*13 (D.D.C., 2011) (refusing to give regulatory effect to provisions that are found only in the preamble). *See also Oceana v. Evans*, 2005 WL 555416, at \*40 (D.D.C. 2005) (rejecting argument that provision of FMP may be created by Secretary acting alone outside Amendment process). NMFS' attempt to add to the Council's recommendation violates the MSA and the APA, and cannot modify the Council's action to suddenly make AFA vessels legitimate replacement vessels for Amendment 80 vessels.

The AFA and non-AFA sectors are required by law to remain separate, distinct sectors.

Rarely is Congress as prescriptive as it was in creating the mutually exclusive AFA and non-AFA sectors. As you are well aware, in 1998 the AFA created a monopoly in fishing rights to pollock assigned to specific vessels that met a past participation test in that industry. AFA, § 208(e). Because of the competitive advantage the AFA subsector gained due to their pollock monopoly, Congress sought to limit their impact on other fisheries by dictating that Councils

shall recommend for approval by the Secretary such conservation and management measures as it determines necessary to protect other fisheries under its jurisdiction and the participants in those fisheries, including processors, from adverse impacts caused by [the AFA] or fishery cooperatives in the directed pollock fishery.

AFA, § 211(a). Congress also built in protections in the AFA against unfair competitive advantages for the AFA vessels by imposing "sideboards," which are limits on how much fish of non-pollock species AFA vessels are allowed to catch. AFA, § 211(b)(2) & (c).

? The Amendment 80 fishery does not belong to the AFA fishery, but instead is part of the "non-AFA trawl catcher processor subsector" as defined in the Consolidated Appropriations Act of 2005 (Pub. L. 108-447; December 8, 2004), referred to as the *Capacity Reduction Program* ("CRP"). An owner's ability to participate in a non-AFA fishery depends on that owner not owning an AFA vessel. Specifically, the CRP defines the non-AFA trawl catcher processor subsector to mean

the owner of each trawl catcher processor –

- (A) that is not an AFA trawl catcher processor;
- (B) to whom a valid LLP license that is endorsed for Bering Sea or Aleutian Islands trawl catcher processor fishing activity has been issued; and
- (C) that the Secretary determines has harvested with trawl gear and processed not less than a total of 150 metric tons of non-pollock

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groundfish during the period January 1, 1997 through December, 31, 2002.

CRP, § 219(a)(7). Since the CRP's passage, the two sectors have not been permitted to intermingle vessels. As recognized by the U.S. Ninth Circuit Court of Appeals, "trawl catcher processors were divided between AFA trawl catcher processors (part of the fleet granted pollock fishing rights under the AFA) and non-AFA trawl catcher processors (those who had no pollock fishing rights)." *Fishermen Finest v. Locke*, 593 F.3d 886, 889 (9th Cir 2010). The language NMFS inserted in the Preamble, therefore, is contrary to existing law and should be struck from the final rule.

Until this proposal, NMFS has approved only regulations that are consistent with the AFA and CRP, maintaining the distinction between the fisheries. Current regulations define an "Amendment 80 vessel" as one that either is designated in Table 31 or "Any vessel that is not listed as an AFA catcher/processor under sections 208(e)(1) through (20) of the AFA and has been used to harvest with trawl gear and process not less than 150 mt of Atka mackerel, flathead sole, Pacific cod, Pacific ocean perch, rock sole, turbot, or yellowfin sole in the aggregate in the BSAI during January 1, 1997 through December 31, 2001." 50 CFR § 679.2. Moreover, Amendment 80 quota share ("QS") may not be transferred to a vessel that does not meet sector participation or replacement requirements. The FMP provides that only a person who is qualified under the definition of a "non-AFA trawl catcher/processor sector" as defined in Section 219(a)(7) of the CRP may apply for and receive QS. FMP § 3.7.5.4.1. The CRP requires that vessels remain in their respective sectors and do not blend to increase capacity in either fishery.

The intentional separation by Congress of the AFA and non-AFA sectors is the paradigm through which the entire issue in the Preamble must be viewed. In a January 30, 2012 letter to NMFS, Joseph M. Sullivan on behalf of Glacier Fish Company LLC argued that if NMFS defended its position in the EA and excluded AFA vessels as suitable replacement vessels, it "would lead to the absurd result that the only vessels that could serve as replacement vessels are those that meet all of the CRP's initial qualification criteria." Letter from Joseph M. Sullivan, Esq. to Dr. James W. Balsiger, Alaska Regional Administrator, NMFS (Jan. 30, 2012) (emphasis in original). Such an absurdity, however, does not exist. First and foremost, Congress expressly authorized the replacement of Amendment 80 vessels.<sup>3</sup>

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<sup>3</sup> "Notwithstanding any other provision of law, the Secretary of Commerce may promulgate regulations that allow for the replacement or rebuilding of a vessel qualified under subsections (a)(7) and (g)(1)(A) of section 219 of the Department of Commerce and Related Agencies Appropriations Act, 2005 (Public Law 108-447; 188 Stat. 886-891)." *Shark and Fishery Conservation Act*, § 303 (Pub. L. 111-348 (Jan. 4, 2011)).

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As evidence that Congress considers AFA and non-AFA sectors mutually exclusive, Congress took it upon itself to enact two separate replacement provisions – one for AFA vessels and one for Amendment 80 vessels. In doing so, Congress addressed each sector separately on how replacement was to occur in a respective sector. For AFA vessels, Congress spelled out the requirements for an AFA replacement vessel in the statute. *See* AFA, § 208(g)(1-6). Recognizing that Amendment 97 was underway, Congress took a different approach with non-AFA vessels. Congress authorized the Secretary of Commerce (acting through NMFS and the Council) to promulgate regulations that allow for the replacement of non-AFA vessels. In addressing each sector separately, Congress reiterates that it treats AFA and non-AFA vessels distinctly because they are in fact separate and must remain that way.

Furthermore, contrary to Mr. Sullivan's interpretation, Amendment 97's requirements for being an Amendment 80 originally qualifying vessel and a replacement vessel are not mirror images of each other. Nor were they intended to be. Certain CRP requirements do not apply to replacement vessels (e.g., history of 150 metric tons of non-pollock groundfish between 1997 and 2002). Similarly, the Proposed Rule requires vessels to be classified and loadlined, such requirements that do not apply to originally qualifying vessels. The overall design of the directed pollock and non-pollock groundfish fisheries is a seminal consideration to the issue at hand. As evidenced by Congress' repeated handling of the AFA and non-AFA as separate sectors, intermingling of vessels between AFA and non-AFA sectors cannot be allowed. The EA's original conclusion, not Mr. Sullivan's well-after-the-fact interpretation, maintains this important distinction without interfering with the ability of an owner to replace his or her vessel.

**Using the same vessel in both AFA and Amendment 80 fisheries is unlawful.**

The Preamble's approach is untenable because AFA vessels cannot satisfy NMFS' conditions to participate in both fisheries simultaneously. NMFS already correctly recognizes that, pursuant to section 602 of the Coast Guard Authorization Act of 2010 (Pub. L. 111-281, Title VI, Sec. 602), replaced AFA vessels are not eligible for a fishery endorsement in any fishery other than an AFA fishery and are prohibited from fishing other Federal fisheries, including Amendment 80 fisheries. If a vessel leaves the AFA fishery to solely operate in the Amendment 80 sector and then is replaced in the AFA fishery, all attached fishing privileges are extinguished. However, a single vessel, as a practical matter, also cannot participate in both fisheries under "stacked" permits. As NMFS correctly states, "Any vessel eligible to participate in both fisheries would be required to meet the statutory and regulatory requirements for both fisheries, possibly impacting that vessel's ability to participate in either fishery." 77 Fed. Reg. at 20344. The AFA and non-AFA sectors operate under separate, distinct rules and requirements. When compared, it is obvious that a vessel cannot simultaneously satisfy conflicting

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- AFA § 211 sideboards;
- Amendment 80 quota share and target species;
- Gulf of Alaska sideboards;
- PSC limits; and
- Amendment 85 Pacific cod allocations between non-AFA and AFA subsectors.

These conflicts create a practical and legal problem that is solved by maintaining the separation of the fleets.

More to the point, Amendment 97 should not create a platform for revisiting these issues. The intent of Amendment 97 solely was to remedy a deficiency in the FMP and allow Amendment 80 owners to replace their vessel(s). The Groundfish Forum, in addition to the entire Amendment 80 sector, strongly supported the Amendment. No one envisioned that Amendment 97 would be used as a vehicle for opening the Amendment 80 subsector to AFA vessels. By proposing that AFA vessels may operate in the non-AFA Amendment 80 sector, NMFS inadvertently has opened the door to already resolved issues, namely distinct sector qualifications, allocations, sideboards, harvest limits, and operating restrictions. NMFS' unilateral change marks a reversal in existing policy that the two sectors are separate and must remain that way. Neither Congress, the Court, or the Council intended such an unraveling when they allowed Amendment 80 vessels to be replaced. We now ask that NMFS expressly provide in the Final Rule, in keeping with its original EA decision, Congressional intent, and previous policy, that AFA vessels may not replace Amendment 80 vessels.

**Rebuilt vessels may be built up to a length of 295 feet LOA.**


As a separate point, the Groundfish Forum also wishes to clarify that if an owner wishes to rebuild its current vessel, instead of replacing it, that it may rebuild up to 295 feet LOA. The decision to replace a vessel with a new one or to rebuild an existing vessel requires a major investment and demands extensive time, capital, and resources. The Groundfish Forum interprets the regulations as written in the Proposed Rule to allow an owner to rebuild its vessel up to 295 feet LOA, even if the original length of the vessel has a shorter LOA. We further interpret the rules as allowing an owner to replace an existing vessel having an LOA shorter than 295 feet with a vessel that is longer, up to 295 feet LOA. We believe this interpretation is in line with the Council's recommendation and the regulations as published by NMFS. We ask only that NMFS clarify in the final rule that our understanding in fact is correct.

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**Conclusion**

In conclusion, we again stress the importance of ensuring that the final rule and accompanying preamble reflect the Council's recommendation to allow Amendment 80 vessels to be replaced or rebuilt. While we strongly support the rule and regulatory text as it appears in the Proposed Rule, the Preamble's discussion of allowing AFA vessels to operate in the Amendment 80 sector as replacement Amendment 80 vessels is untenable. The Council never considered this nuance because NMFS itself rendered the issue moot in its Amendment 97 EA. NMFS' attempt to unilaterally modify the Council's action and allow a scenario not contemplated by the Council violates both the MSA and the APA. Furthermore, it is contrary to the statutory underpinnings to the creation of either sector. As explained in detail above, even if NMFS were asked to allow a vessel to engage in both fisheries, that vessel could not lawfully do so. We respectfully ask NMFS to expeditiously approve Amendment 97 while heeding its duty to prevent AFA vessels from replacing Amendment 80 vessels and ensure that the passage of Amendment 97 does not come at the expense of the careful attention taken by Congress and the Council in maintaining the separation of the AFA and non-AFA sectors. We also ask that NMFS clarify in its final rule that rebuilt vessels may be built up to 295 feet LOA. Please contact us with any questions or concerns.

Sincerely,



Andrew Minkiewicz  
Michele G. Hallowell

On behalf of the Groundfish Forum

# PUBLIC TESTIMONY SIGN-UP SHEET

Agenda Item: D-2 STAFF TASKING

	NAME (PLEASE PRINT)	TESTIFYING ON BEHALF OF:
1	Chuck McCallum & Herman Squartsoll	GOACB & Ouzinkie
2	TERRY HAINES	FISH HEADS
3	LORI SWANSON	GROUND FISH FORUM
4	Kenny Down	Freezer Longline Coalition
5	Stephanie Madson	APA
6	Stephen Taufen	Groundswell Fisheries Movement
7	Jackie Dragon	Greenpeace
8	SHAWN DOENTERMANN	Crewmen's Association
9	Glenn Reas	PSPA
10	Mike Szymanski	Fishermen's Finest Inc.
11	Todd Loomis	Ocean Peace Inc.
12	Mateo Paz-Soldan	City of St. Paul
13	Lu Dochtermann	F/V North Point
14	Julie Bonny	AGDB
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NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person "to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.