

North Pacific Fishery Management Council

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APPROVED: _____

DATE: _____

FINAL MINUTES

189th Plenary Session
North Pacific Fishery Management Council
October 1-7, 2008
Sheraton Hotel
Anchorage, Alaska

The North Pacific Fishery Management Council met October 1-7, 2008 at the Sheraton Hotel in Anchorage, Alaska. The Scientific and Statistical Committee met September 29-October 1, and the Advisory Panel met September 29-October 4 at the same location. The following Council, staff, SSC and AP members attended the meetings.

Council Members

Eric Olson, Chair
Greg Balogh
Dave Benson, Vice Chair
Sam Cotten
Ed Dersham
Duncan Fields
Dave Hanson
John Henderschedt

Roy Hyder
Denby Lloyd/Dave Bedford/Stefanie Moreland
Doug Mecum
Gerry Merrigan
Bill Tweit for Jeff Koenings
RADM Brooks/LCDR Lisa Ragone
Nicole Ricci

NPFMC Staff

Gail Bendixen
Jane DiCosimo
Diana Evans
Mark Fina
Jeannie Heltzel
Nicole Kimball
Peggy Kircher

Jon McCracken
Chris Oliver
Maria Shawback
Diana Stram
Bill Wilson
Dave Witherell

Scientific and Statistical Committee

Pat Livingston, Chair
Troy Buell
Bill Clark
Robert Clark
Keith Criddle, Vice Chair
Sue Hills
Anne Hollowed
George Hunt

Gordon Kruse
Kathy Kuletz
Seth Macinko
Franz Mueter
Lew Queirolo
Farron Wallace
Doug Woodby

Advisory Panel

Joe Childers
Mark Cooper
Craig Cross
John Crowley
Julianne Curry
Jerry Downing
Tom Enlow
Tim Evers
Bob Gunderson
Jan Jacobs

Simon Kinneen
Chuck McCallum
Mike Martin
Matt Moir
John Moller
Rex Murphy
Ed Poulsen
Michelle Ridgway
Beth Stewart
Lori Swanson

Appendix I contains the public sign-in register and a tape log of Council proceedings, including those providing reports and public comment during the meeting.

A. CALL TO ORDER

Chairman Eric Olson called the meeting to order at approximately 8:05 a.m. on Wednesday, October 1, 2008.

Oath of Office. Doug Mecum, NOAA Regional Administrator, administered the oath of office to Eric Olson, re-appointed for three years, and John Henderschedt, newly appointed to a three-year term.

Election of Officers. Gerry Merrigan nominated Eric Olson as Chair and Dave Benson as Vice Chair. There being no other nominations, Mr. Olson and Mr. Henderschedt were elected by acclamation.

Agenda. The agenda was approved as published, with minor scheduling changes.

Minutes. The minutes of the June 2008 NPFMC meeting were approved as submitted.

[NOTE: Mr. Tweit participated in the entire meeting in place of Dr. Koenings.]

B. REPORTS

The Council received the following reports: Executive Director's Report (B-1); NMFS Management Report (B-2); ADF&G (B-3); USCG Report (B-4); USF&W Report (B-5); and Protected Species Report (B-6). Following are brief recaps of discussion or action taken during reports.

Executive Director's Report

Chris Oliver, Executive Director, briefed the Council on several issues, including the recent electronic monitoring workshop, observer program issues, the recent Joint Council/Board of Fish Protocol Committee meeting, and nominations for Plan Team appointments.

Mr. Oliver also advised the Council of an Advance Notice of Proposed Rulemaking (ANPR) relative to development of regulations to implement the consultation provisions of 304(d) of the National Marine Sanctuaries Act, noting that the issue is of major interest to other Councils and suggested the North Pacific Council provide comments on the proposed rule when it is published. Council members agreed that the Executive Director should draft a comment letter for Council review.

The Council also asked the Executive Director to prepare for Council review draft comments on the ANPR relative to revision of National Standard 2 guidelines and the use of 'best available science,' relating to recent MSA changes for SAFE reports, peer review, and the role of SSCs relative to peer review requirement. Although the Council has provided comments on these issues previously, members felt it important to reiterate those comments and asked the Executive Director to revive earlier Council comments on the proposed peer review process for Council review prior to the December 17 deadline for comments.

Mr. Oliver advised that the Council received a letter from Jim Balsiger, Acting Asst. Administrator for Fisheries, indicating that although the Department of Labor (DOL) has not yet responded to inquiries regarding observer compensation issues related to the Fair Labor Standard Acts, NMFS has initiated analyses that may assist the Council in addressing the cost issue without advice from the DOL. The Council received a copy of a separate letter from Dr. Balsiger concerning Level 2 certification endorsements and associated shortages of qualified observers. Council members requested that staff provide information and discussion of this issue to the extent possible in the discussion paper being prepared for Council review in December.

The Council was also advised that a presentation and discussion of the final Marine Protected Area Framework will be provided by representatives from NOAA's Protected Area Center in December. Commissioner Lloyd requested that the presentation include information on recreational fisheries and how they will be handled under MPAs.

NMFS Management Report

Sue Salveson (NMFS-AKR staff) provided an overview of FMP and regulatory amendments in process and Mary Furuness (NMFS-AKR staff) provided an update of fishery catch statistics. Ms. Salveson noted that the Region withdrew the final rule relating to the one-halibut bag limit for Southeast based on a court-ordered temporary restraining order and a preliminary injunction invalidating the one-fish bag limit and is preparing a new proposed rule to address the procedural issues in the original Final Rule that were raised by the court. Regarding the court case, John Lepore (NOAA General Counsel) advised the Council that the case is still active, with administrative records to be filed in December and arguments and summary judgment to follow sometime after that.

During her report, Ms. Salveson noted that the Office of Finance is still working on a proposed rule for the loan program for the BSAI Crab Rationalization Program to try to accommodate the Council's wish for preferential status for first-time applicants. The Council asked the Executive Director to send another letter to the Financial Services Division encouraging issuance of a proposed rule as soon as possible.

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Jessica Gharrett (NMFS RAM Division) provided a brief overview of the annual report on the BSAI Crab Rationalization Program, and Susan Auer, NOAA General Counsel, provided a report on current enforcement issues.

ADF&G Report

Herman Savikko provided an overview of State-managed fisheries of interest to the Council. Mr. Savikko also briefly reviewed several proposals that will be considered by the Board of Fisheries in upcoming meeting. The Executive Director will work with ADF&G staff to provide a comprehensive review of current relevant Board of Fisheries proposals for the Council in December. The Council asked the Executive Director to coordinate with the Board of Fisheries to determine the timing for its consideration on a proposal to establish a Prince William Sound area commercial skate fishery in order to determine when the Council would need to submit comments.

USCG Report

LCDR Lisa Ragone provided an update on 17th District Coast Guard activities through May 8, 2008, including fisheries enforcement, marine safety and rescue operations.

USFWS

Greg Balogh provided a written report covering Yukon River salmon management, spectacled eiders, seabird and marine mammal surveys, the Kittlitz's Murrelet, short-tailed albatross, and the recent listing of the polar bear as threatened. Douglas Burn (USFWS staff) provided an update on designation of sea otter critical habitat.

Protected Species Report

Bill Wilson briefed the Council on a petition to list Pacific walrus as a threatened or endangered species, progress in developing a recovery plan for the Southwest Alaska DPS of the northern sea otter, and a delay in the decision on listing the Cook Inlet beluga whale under the ESA. Kaja Brix (NMFS-AKR) briefly reviewed a May 1, 2008 letter from the Acting Administrator, NMFS Alaska Region, advising the Council that the Agency will not be able to complete the draft BiOp until 2009 because of the amount and complexity of the data involved. Council members were concerned about the delay and indicated that completing the BiOp should be of highest priority. Staff also noted that the Council's request to begin the process for de-listing the Eastern population would not be pursued until the draft BiOp is completed because of staff availability. The Council requested that a letter be sent to NMFS asking for a new BiOp an EIS schedule. The Council approved a draft letter under Staff Tasking.

In the staff report it was noted that the Southern Distinct Population (DPS) of green sturgeon has been listed as threatened under the Endangered Species Act and as a result critical habitat will have to be designated. It was noted that green sturgeon occur in coastal estuaries and coastal marine waters off Southeast Alaska. After the reports and discussion the Council requested that staff prepare a letter to NMFS supporting the elimination of Alaska waters for consideration as critical habitat for the southern green sturgeon because it appears that the species is rare in the region.

FORMAT FOR COUNCIL MEETING MINUTES FOR 'C' AND 'D' AGENDA ITEMS

Each agenda item will begin with a copy of the original "Action Memo" from the Council meeting notebook. This will provide an "historical" background leading to any discussion and/or action. This section will be set in a different typeface and size than the actual minutes. Any attachments referred to in

the Action Memo will **not** be included in the minutes, but will be part of the meeting record and available from the Council office on request. Following the Action Memo will be reports of the Scientific and Statistical Committee and Advisory Panel on the subject. Last will be a section describing Council **Discussion and Action**, if any.

C. MAJOR ISSUES/FINAL ACTION ITEMS

C-1 Halibut Management

C-1(a-b)

ACTION REQUIRED

- (a) Receive ADF&G report on 2007 charter halibut harvests.
- (b) Final Action on Areas 2C/3A Halibut Catch Sharing Plan.

BACKGROUND

2007 Charter Halibut Harvests

ADF&G staff released final estimates of 2007 charter halibut harvests on September 10, 2008 (Item C-1(a)); they were posted on the Council website. The 2007 Area 2C charter harvest was 1.918 M lb, which is 33.9 percent over the 2007 Area 2C guideline harvest level (GHL) of 1.432 M lb; the GHL was reduced to 931,000 lb in 2008 due to a reduction in halibut biomass. The 2007 Area 3A charter harvest was 4.002 M lb, which is 9.6 percent over the 2007 Area 3A GHL of 3.650 M lb; the Area 3A GHL has not been adjusted for 2008. ADF&G staff will present the 2007 report.

Catch Sharing Plan

The Council is scheduled to take final action on a proposed halibut catch sharing plan (CSP) for Area 2C and Area 3A. The No Action Alternative would maintain the current GHL program for the charter halibut fisheries in these areas. In April 2008, the Council revised some of the options under Alternative 2. Alternative 2 would implement a CSP for the two areas that would set an initial allocation to the commercial IFQ sector and the charter halibut sector (25 options under Element 1) and allow for seasonal increases in allocation by allowing charter halibut limited entry permit holders to lease commercial individual fishing quotas (IFQs) for use by anglers in the charter sector (11 features under Element 5). Three features of a catch accounting system for monitoring IFQ leases for use in the charter sector are identified under Element 6. Additional policy decisions on the regulatory cycle for implementing separate rulemaking for revising management measures to restrict the charter sectors to their allocations (Element 2), potential management measures in future rulemakings (Element 3), and potential timelines for shortening the delay in implementing future rulemakings (Element 4) would not be implemented in regulation, but would be included in the Council's CSP for Area 2C and Area 3A as guidelines for future rulemakings.

The analysis was mailed on August 29, 2008. The executive summary is under Item C-1(b)(1). A supplement that addresses the NMFS recommendation for Element 6 will be handed out at the meeting as Item C-1(b)(2). Public comments on all charter halibut agenda items are bound separately for Council review.

If approved by the Secretary of Commerce, the 2010 charter halibut season is the earliest that implementation of the CSP could occur given numerous other halibut rulemakings currently being prepared by NMFS (Item C-1(b)(3)).

The Scientific and Statistical Committee did not address Halibut Management Issues (Agenda items C-1(a-e)) at this meeting.

Report of the Advisory Panel

The AP noted that the purpose of the proposed action is to reflect the intent to prevent charter harvest from exceeding annual catch limits by relying on the best available information, the most timely and accurate catch accounting system, and the most responsive management strategy. Recommendations are as follows:

Additions are in bold, and deleted parts are shown with a strikeout.

“The purpose of the proposed action is to create a catch sharing plan that establishes: 1) a clear allocation between charter and setline sectors with sector accountability; 2) a responsive management system with proactive accountability measures to prevent annual catch limit overages; 3) a mechanism for limited transfer of quota share between sectors.”

~~The purpose of the proposed action is to (1) create a catch sharing plan that would set an initial allocation between the charter halibut and commercial longline halibut sectors, and tighten the timeline between occurrence of an overage and a management response; and (2) design a program to compensate the commercial sector for any future reallocations, above the level set at initial allocation. Along with restrictive control measures that were considered by the Council separately from these proposed actions, because the GHL has been exceeded in Area 2C and Area 3A each year since its implementation in 2004, the proposed sector allocations are intended to stop the *de facto* reallocation from the commercial sector to the charter sector. Over the past 11 years, charter halibut harvests have grown at an annualized rate of 6.8 percent in Area 2C, and 4.1 percent in Area 3A. The number of active vessels, the total number of clients, the average number of clients per trip, and the average numbers of trips per vessel, are all at their highest level in the recorded data period of 1998 through 2006. The number of clients per trip (which is one of the best measures of upward pressure on demand) has increased steadily in recent years. This increase indicates that the number of clients is rising faster than the number of trips, and likely indicates healthy demand for the services provided by the charter sector.~~

Part 1—Elements and options

Element 1: Initial allocation

The AP recommended a fixed percentage tied to abundance. Specifically,
Option 1(a) - fixed percentage based on existing GHLs for area 2c and 3A
2C 13.1% 3A 14.0%

Element 2 – Annual regulatory cycle

The AP recommended the Council clarify its intent to prevent charter harvest from exceeded annual catch limits by relying on the best available information, the most timely and accurate catch accounting system, and the most responsive management strategy.

~~The initial charter allocation would be a common harvest pool for all charter limited entry permit holders. It would not close the fishery when the charter allocation is exceeded. Instead, the Council’s intent is to implement management measures that prevent charter allocation overages. The Council will annually evaluate the efficacy of existing management measures, taking into account the projected CEY and the projected charter harvest for the following year as well as any overages from past years. The Council will rely on the best available information and most timely management system to manage the charter sector to its annual catch limit. Instead, the allocation would be linked to an annual regulatory analysis of management measures (delayed feedback loop) that take into account the~~

~~projected CEY for the following year and any overages by the charter industry in the past year(s). This system would work best if there is not a time lag between the overage year and the year of implementation of new regulations. The Council will not revisit or readjust the sector split. An allocation overage would trigger the regulatory process automatically, in contrast with current GHL management. Any underages would accrue to the benefit of the halibut biomass and would not be reallocated or paid forward.~~

Element 3 – Management toolbox

The AP recommended removing the language regarding the delayed feed back loop from this paragraph.

Tier 1 measures will be utilized by the Council to try to manage the charter common pool for a season of historic length and a two-fish daily harvest limit. Tier 2 measures will be utilized if Tier 1 measures are inadequate to constrain harvest by the charter common pool to its allocation. ~~Due to the delayed feedback loop in implementation of management measures,~~ Management measures will, in general, be more restrictive to ensure that the charter sector allocation is not exceeded. In providing predictability and stability for the charter sector, it is likely that charter fish may be left in the water.

Element 4 – Timeline

Consistent with the AP's intent that the charter allocation be managed to prevent allocation overages by relying on the best available information, the most timely and accurate catch accounting system, and the most responsive management strategy, we recommend all scenarios under this element be DELETED.

Element 5 – Supplemental, individual use of commercial IFQ

The AP recommended that the Council include all provisions in the motion.

- A. 3. No more than 400 fish may be leased per LEP
Suboption. LEPs w/endorsement for more than 6 clients may not lease more than 600 fish.
- E. 2. Unused GAF may revert back to pounds of IFQ and be subject to the underage
Provisions applicable to their underlying commercial QS.
Option a: automatically on October 1 of each year.

There was general consensus among the AP members on the following clarification:

If an IFQ holder chooses to lease to a CQE, then the same limitations apply as if they were leasing to an individual charter operator – 1500 lbs or 10% whichever is greater – the 100% has no application here. With regard to CQE leasing: any quota which a CQE holds, regardless of its origin, could be leased up to 100% to eligible residents of the CQE community. For example, a CQE may hold quota share derived from purchase, lease from another qualified CQE, or leased from an individual, and then lease out up to 100% of the quota it holds.

Element 6 – Catch accounting system

The AP recommended adding the word verified in part 1.

1. The current Statewide Harvest Survey and/or Verified logbook data would be used to determine the annual harvest.
2. A catch accounting system will need to be developed for the GAF fish landed in the charter industry.
3. As part of data collection, recommend the collection of length measurements when supplemental IFQs are leased for use and compare to the annual average length to make sure that accurate removable

poundage is accounted for and to allow length measurement information gathered to be used in the formulation of the average weight used in the conversion of IFQs to GAF.

COUNCIL DISCUSSION/ACTION

The Council received reports from Scott Miller (ADF&G staff) on charter halibut harvests, comments from Dr. Bruce Leaman and Greg Williams of the International Halibut Commission, a review of the Charter Halibut Catch Sharing Plan (Plan) from Jane DiCosimo (Council staff), Darrell Brannan (Contractor), and Jonathan King (Northern Economics), and a review of the Implementation Plan from Peggy Murphy and Jessica Gharrett (NMFS-AKR), as well as numerous public comments on the Plan.

John Lepore, NOAA General Counsel-Alaska Region, reviewed the statutes and applicable regulations the Council must consider when deliberating an allocation issue. Additionally, he noted that when considering a catch sharing plan for halibut the Council will be guided by the North Pacific Halibut Act. Mr. Lepore noted applicable portions of statutes that will apply, including the necessity of not conflicting with regulations of the IPHC, not discriminating between participants of one state or another, be reasonably calculated to promote conservation, and carried out in such a manner that no individual, corporation or other entity requires an excessive share of the halibut fishing resource.

Denby Lloyd submitted a written motion (included as Appendix IIA to these minutes). Gerry Merrigan moved a substitute motion (Appendix IIB) After discussion and some amendments to the substitute motion, both Mr. Lloyd and Mr. Merrigan withdrew their motions. Mr. Merrigan moved his original motion, unamended. The motion was seconded by.

Following is Mr. Merrigan's motion, as submitted, and amendments:

Motion to establish a halibut charter allocation and management plan based on bag limits.

The purpose of the proposed action is to create a catch sharing plan that establishes a clear allocation, with sector accountability between the charter and setline sectors in Areas 2C and 3A. The Council requests that the IPHC annually set a combined charter and setline catch limit to which the allocation percentage for each area will be applied to establish the domestic harvest targets for each sector. This action also establishes the management actions for the charter sector at identified combined charter and setline catch amounts.

The Council recognizes that management measures are imprecise therefore a small variance can be expected to occur around the allocation. The Council's expectation is that the variances will balance over time to ensure IPHC conservation and management objectives are achieved.

Element 1 -- Initial allocation and bag limits.

Area 2C

In 2C, when the combined charter and setline catch limit is less than 5 million pounds, the charter allocation will be 17.3% of the combined charter and setline catch limit. When the combined charter setline catch limit is 5 million pounds and above the allocation will be 15.1%. Management variance not to exceed 2 percentage points (plus or minus) may occur around this allocation. The Council's expectation is that the variances will balance over time to ensure IPHC conservation and management objectives are achieved.

Trigger 1: When the combined charter and setline catch limit is below 5 Mlb, the halibut charter fishery will be managed under a 1 halibut daily bag limit. The allocation between the charter and the setline sector will be 17.3% of the combined charter and commercial catch limit. The charter sector's expected catch may vary between 15.3% and 19.3%. However, if the charter harvest for an upcoming season is projected to exceed 19.3% of the combined charter and setline catch limit, then a maximum size limit will be implemented to reduce the projected harvest level to be lower than 17.3% of the combined charter and setline catch limit.

Trigger 2: When the combined charter and setline catch limit is between 5 Mlb and 9 Mlb, the halibut charter fishery shall be managed under a 1 fish daily bag limit. The charter sector's allocation would be 15.1% of the combined charter and setline catch limit. The charter sector's catch may vary between 13.1% and 17.1%. However, if the charter harvest for an upcoming season is projected to exceed 17.1% of the combined charter and setline catch limit, then a maximum size limit will be implemented to reduce the projected harvest level to 15.1% of the combined charter and setline catch limit.

Trigger 3: When the combined charter and setline catch limit is between 9 Mlb and 14 Mlb, the halibut charter fishery shall be managed under a 2 fish daily bag limit (only one of which may be longer than 32 inches). The charter sector's allocation will be 15.1% of the combined charter and setline catch limit. The charter sector's expected catch may vary between 13.1% and 17.1%. However, if the charter harvest for an upcoming season is projected to exceed 17.1% of the combined charter and setline catch limit, then the charter fishery will revert back to a 1 halibut daily bag limit.

Trigger 4: When the combined charter and setline catch limit is greater than 14 Mlb, the charter fishery will be managed under a 2 halibut daily bag limit. The charter sector's allocation will be 15.1% of the combined charter and setline catch limit. The charter sector's expected catch may range between 13.1% and 17.1%. However, if the charter harvest for an upcoming season is projected to exceed 17.1% of the combined charter and commercial catch limit, the charter fishery will revert back to a 2 halibut daily bag limit, only one of which may be longer than 32 inches.

Area 3A

In 3A, when the combined charter and setline catch limit is less than 10 million pounds, the charter allocation will be 15.4% of the combined charter and setline catch limit. When the combined charter and setline catch limit is 10 million pounds and above, the allocation will be 14.0%. Management variance not to exceed 2 percentage points (plus or minus) may occur around this allocation. The Council's expectation is that the variances will balance over time to ensure IPHC conservation and management objectives are achieved.

Trigger 1: When the combined charter and setline catch limit is below 10 Mlb, the halibut charter fishery shall be managed under a 1 halibut daily bag limit. The charter sector's allocation will be 15.4% of the combined charter and setline catch limit. The charter's sectors expected catch may vary between 13.4% and 17.4% of the combined charter and setline catch. However, if the charter harvest for an upcoming season is projected to exceed 17.4% of the combined charter and setline catch limit, then a maximum size limit will be implemented to reduce the projected charter harvest below 15.4% of the combined charter and setline catch limit.

Trigger 2: When the combined charter and setline catch limit is between 10 Mlb and 20 Mlb, the halibut charter fishery shall be managed under a 1 halibut daily bag limit. The charter sector's allocation will be between 14% of the combined charter and setline catch limit. The charter

sector's expected catch may vary between 12.0% and 16.0% of the combined charter and setline catch limit. However, if the charter harvest for an upcoming season is projected to exceed 16% of the combined charter and setline catch limit, then a maximum size limit will be implemented to reduce the projected charter harvest level to 14.0% of the combined charter and setline catch limit.

Trigger 3: When the combined charter and setline catch limit is between 20 Milb and 30 Milb, the halibut charter fishery shall be managed under a 2 halibut daily bag limit (only one of which may be longer than 32 inches. The charter sector's allocation would be 14.0% of the combined charter and setline catch limit. The charter sector's allocation will be 14.0% of the combined charter and setline catch limit. The charter sector's expected catch may vary between 12.0% and 16.0% of the combined charter and set line catch limit. However, if the charter harvest for an upcoming season is projected to exceed 16.0% of the combined charter and setline catch limit, then the charter fishery will revert back to a 1 halibut daily bag limit.

Trigger 4: When the combined charter and setline catch limit is greater than 30 Milb, the halibut charter fishery will be managed under a 2 halibut daily bag limit. The charter sector's allocation will be 14.0% of the combined charter and setline catch limit. The charter sector's expected harvest may range between 12.0% and 16.0% of the combined charter and setline catch limits. However, if the charter harvest for an upcoming season is projected to exceed 16.0% of the combined charter and setline catch limit, the charter fishery will revert back to a 2 halibut daily bag limit, only one of which may be longer 32 inches.

In Areas 2C and 3A, there is no retention of halibut by skipper and crew while paying clients are on board.

Element 2 – Annual regulatory cycle/timeline.

The Council will not revisit or readjust bag limits; such changes will be triggered by changes in combined charter and commercial catch limits established annually by the IPHC. Bag limits will be implemented by the IPHC based upon their determination of the combined charter and setline catch limits and the bag limit parameters described above.

Element 4 -- Timeline --DELETE FROM ANALYSIS

AMENDMENTS TO MOTION

Bill Tweit moved to amend the management variances in Area 2C to plus or minus 3.5 percentage points. The amendment was seconded.

Denby Lloyd moved to amend the amendment to plus or minus 5 percentage points. The motion was seconded and failed, 7 to 4, with Cotten, Dersham, Lloyd and Mecum voting in favor. Mr. Tweit's amendment motion carried without objection.

Denby Lloyd moved to amend the management variances in Area 3A to plus or minus 5 percentage points. The motion was seconded.

Bill Tweit moved to amend the amendment to plus or minus 3.5 percentages points in Area 3A. The substitute amendment carried with Merrigan objecting.

Duncan Fields moved to amend Triggers 1, 2, and 3 in Areas 2C and 3A, as follows: add at the end of the last sentence:

And if the projected charter harvest results in a catch rate (percentage of projected charter harvest divided by the combined commercial and charter catch limit for that IPHC Area) that is lower than the lowest charter harvest percentage in that trigger range, then the charter harvest shall be managed under the daily bag limit of the next higher trigger, so long as the projected charter harvest percentage of the combined commercial harvest catch limit falls within the percentage range included under that trigger.

The motion was seconded and carried without objection.

Duncan Fields moved to amend: Area 3A, Triggers 3 and 4, to 20 Mlb and 27 Mlb. The motion was seconded.

Gerry Merrigan moved to amend the amendment to 20 Mlb and 28 Mlb. The motion was seconded and failed, 8 to 3, with Henderschedt, Hyder and Merrigan voting in favor.

Mr. Fields' motion carried without objection.

Denby Lloyd moved to amend Triggers 2, 3, and 4 for both areas to insert "equal to or greater than" as follows: "When the combined charter and set line catch limit is between equal to or greater than 5 Mlb and 9 Mlb [insert appropriate figures for each trigger]. . ." The motion was seconded and carried without objection.

Sam Cotten moved to amend the second sentence in Trigger 1, Area 2C, to read as follows: "The allocation for the charter sector will be 17.3% of the combined charter and commercial catch limit." The motion was seconded and carried without objection.

Duncan Fields moved to amend the first sentence in Element 2 to read as follows: "It is not the Council's intent to revisit or readjust bag limits; such bag limit changes will be triggered by changes in combined charter and setline catch limits established annually by the IPHC." The motion was seconded and carried without objection.

The maker of the main motion was asked to clarify whether the intent would be that the Council would be restricted under the lower threshold to consider only changing the maximum size of fish, or whether the Council would be able to look at other options that would restrict harvest below the 1-fish bag limit. Mr. Merrigan replied that the intent is not to have rulemaking.

Ed Dersham moved to amend Triggers 3 and 4 in Area 2C to change the upper limit of the trigger to 12.5 Mlb. Mr. Dersham noted that this motion would make the upper limit in Area 2C proportional to that in Area 3A. The motion was seconded and failed, 7 to 4, with Dersham, Fields, Merrigan, Mecum voting in favor.

Duncan Fields moved to add Element 5 of Alternative 2, Supplemental Individual Use of Commercial IFQ, as revised by the AP, inclusive of the AP's language regarding leasing by a CQE but without the provision for an automatic reversion, and deleting suboptions (a) and (b) under Option E.2.

[AP Recommendation:]

The AP recommends that the Council include all provisions in the motion.

B. 3. No more than 400 fish may be leased per LEP

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- Suboption. LEPs w/endorsement for more than 6 clients may not lease more than 600 fish.
- F. 2. Unused GAF may revert back to pounds of IFQ and be subject to the underage Provisions applicable to their underlying commercial QS.
- Option a: automatically on October 1 of each year.**

There was general consensus among the AP members on the following clarification:

If an IFQ holder chooses to lease to a CQE, then the same limitations apply as if they were leasing to an individual charter operator – 1500 lbs or 10% whichever is greater – the 100% has no application here. With regard to CQE leasing: any quota which a CQE holds, regardless of its origin, could be leased up to 100% to eligible residents of the CQE community. For example, a CQE may hold quota share derived from purchase, lease from another qualified CQE, or leased from an individual, and then lease out up to 100% of the quota it holds.]

Mr. Field's motion to amend was seconded.

Regarding deletion of the two suboptions, Mr. Fields noted that his purpose was to give the RAM Division the flexibility to determine the most efficient way to deal with the conversions.

John Henderschedt moved to amend to reinsert the two conversion options. The motion was seconded and carried without objection.

Mr. Lepore expressed concern over a portion of the motion (A.3 of the Advisory Panel recommendation) which deals with leasing under a limited entry permit. Mr. Lepore pointed out that at this time there is no limited entry program in place. He asked if the intent of the motion would be that the GAF program go into place only if and when the moratorium is implemented.

Staff noted that they have discussed this issue and have devised language that would allow transfer of GAF to a qualified entity which would be either a holder of a sport fishery operator's license under the current program, or if the proposed moratorium is implemented, the charter license entry permit holder.

John Henderschedt moved to amend Element 5, A.3, to read: No more than 400 GAF fish may be assigned to the holder of a LEP endorsed for 6 or fewer clients, and no more than 600 fish may be leased to the holder of a LEP holder endorsed for more than 6 clients. The motion was seconded and carried without objection. It was clarified that permits of different categories cannot be stacked on one vessel.

Bill Tweit moved to amend the end date for conversions (suboption 'a' under 'E') to November 1. The motion was seconded and carried without objection.

Mr. Fields' motion on Element 5, as amended, carried 8 to 3, with Dersham, Hyder and Lloyd voting against.

Mr. Merrigan provided a record-building statement in support of the motion which covered the relevant authorities. Following are some of Mr. Merrigan's points:

- The action addresses the instability between the longline sector and the guided sector in a fully utilized resource.
- The action is for two areas where the guided sector has had the most growth and the areas where halibut is fully utilized and in great demand.

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- The action considers the effect of current charter harvest on other sectors of halibut users, including subsistence and local unguided.
- The action takes into consideration the issue of local depletion on subsistence halibut fishermen and unguided anglers.
- The action is necessary for the long-term conservation of the halibut resource and meets the obligatory domestic harvest targets of an international treaty--the Halibut Convention.

Mr. Fields also noted the conservation aspects of the action, particularly the trends in Area 2C with the decreased size of halibut, decreased CPUE, and localized depletion, all of which were mentioned during stakeholders during public comment. He stressed that he does not view this action as an issue between the commercial and charter sector, but as more an issue of concern for all sectors, including subsistence and individual anglers. For Area 3A, while the magnitude of growth is not as large as in Area 2C, it continues to grow every season and there are also concerns over local depletion.

Mr. Cotten, Mr. Lloyd, and Mr. Tweit also made supporting comments on the motion.

Mr. Dersham noted that he could not support the motion because it does not meet the test of fair and equitable.

The main motion, as amended, carried 10-1 with Dersham voting against. A copy of the final Council motion on this issue (as posted on the NPFMC website) is found in Appendix IIC to these minutes.

C-1(c)

ACTION REQUIRED

(c) Final Action on Area 3A Charter Halibut GHL measures

BACKGROUND

In October 2007 the Council revised the suite of Area 3A guideline harvest level (GHL) management measures under Alternative 2 by dropping a reverse slot limit (then Option 7). The Council may select as its preferred alternative any of the following options to begin during the 2009 charter season: (1) No more than one trip per charter vessel per day; (2) No harvest by skipper or crew and a limit on the number of lines to not exceed the number of paying clients (status quo); (3) Annual limits of four fish, five fish, or six fish per charter angler; (4) Reduced bag limits of one fish per day in May, June, July, August, September or for the entire season; (5) Requiring one of two fish in a daily bag to be larger than 45 inches or 50 inches; or (6) Requiring one of two fish in a daily bag to measure less than, or equal to, 32 inches, 34 inches, or 36 inches.

The Council scheduled final action for October 2008 to consider 2007 charter halibut harvest data. Final estimates of 2007 charter halibut harvests report that the 2007 Area 3A GHL of 3.650 M lb was exceeded by 9.6 percent (Item C-1(c)(1)). The September 10, 2008 release of 2007 charter halibut harvests did not allow sufficient time to incorporate that data into a revised analysis, the Council released a slightly revised public review draft on August 29, 2008 that incorporated only technical revisions recommended by the SSC and Council. Council staff has prepared a supplemental analysis of estimated effects of the proposed options under Alternative 2 (Item C-1(c)(2)) that incorporates 1) 2007 charter halibut harvest data and 2) the 2008 ADF&G Emergency Order for Area 3A (Item C-1(3)(2)).

The Council released the public review draft on August 29, 2008 and posted it on the Council website, but the analysis does not include the 2007 harvest data because the data necessary to

revise the analysis of the options was not provided until the week before the Council meeting. A corrected executive summary (for final 2006 charter halibut harvest) is under Item C-1(c)(4).

Report of the Advisory Panel

The AP maintains that resource conservation and sustainable management depends on preventing catch limit and GHL overages. To prevent future overages in 3A, the AP recommended implementation of options 2 and 6 (32”).

In addition, the AP recommended the revision of the analysis to reflect the conservation impacts of catch limit and GHL overages, as well as the impacts of overages on other sectors.

COUNCIL DISCUSSION/ACTION

The Council received reports from Jane DiCosimo (Council staff) and Jonathan King (Northern Economics), the Advisory Panel report, and public comments on this issue.

Denby Lloyd moved to take no action on this agenda issue. The motion was seconded by Ed Dersham.

Mr. Lloyd noted that the Council spent considerable time on the Halibut Catch Sharing plan and that the Council had previously expressed its intent to avoid having to act on management measures on an annual basis based on small changes in forecasted and recently-determined catch levels. He noted that the monitored overages in this instance are at or below ten percent and that this case is different from the case in Southeast Alaska where the overages have been consistent and currently are 100% or more of the GHL.

Mr. Dersham also pointed out that the Catch Sharing Plan approved by the Council allows for a unrestricted 2-fish limit in Area 3A when the combined catch is over 27 million pounds, depending on some other parameters, and that projections for 2009 do not warrant additional management measures.

Gerry Merrigan moved a substitute motion to approve the recommendations of the Advisory Panel. The motion was seconded and failed, 10-1, with Merrigan voting in favor.

Mr. Merrigan said that his motion was an attempt to initiate discussion to determine why the Council is electing to vary from the GHL policy that the Council discussed in 2006 to use a combination of Federal and State authority to manage sector (charter and commercial) allocations established by the GHL until superseded by the Council's long-term guided sport halibut sector plan. He noted that the GHL is currently in regulation while the Catch Sharing Plan may not be implemented for some time and the moratorium will not be in effect for 2009.

Mr. Lloyd's motion carried without objection.

During final discussion on these halibut issues the Council reaffirmed that for Area 2C, under previous Council action on the GHL, a one-fish bag limit is the status quo. John Lepore, NOAA General Counsel, affirmed that current regulations mandate a one-fish bag limit with a second fish of a certain size, however pursuant to subsequent Council action NMFS is moving forward with the one-fish regulation and no further action is required to reconfirm that action. Council members stressed that if there are any concerns or problems with implementing the regulation that NMFS should notify the Council as soon as possible.

The Council also directed the Executive Director to send a letter to the International Pacific Halibut Commission reaffirming the Council's June 2007 management decisions for Area 2C that were approved in June 2007.

C-2 BSAI Crab Issues

C-2(a) Crab Plan Team Report/Crab SAFE/OFLs

ACTION REQUIRED

Receive Crab Plan Team Report; Approve BSAI Crab SAFE; and Adopt OFLs

BACKGROUND

The Crab Plan Team met at the Alaska Fisheries Science Center in Seattle from September 16-18, 2008 to review the status of stocks and to compile the annual Stock Assessment and Fishery Evaluation (SAFE) report. The Crab SAFE report was mailed to you September 22nd. This is the first year of the new process for annual determination of Crab OFLs and the Crab Plan Team is part of the newly established review process for BSAI crab assessments. There are 10 crab stocks in the BSAI Crab FMP and all 10 must have annually established OFLs. Six of the ten stocks have OFLs established following the summer survey information availability. Two of the ten stocks (Norton Sound red king crab and AI golden king crab) have OFLs which were established following review and recommendations by the CPT and SSC in the Spring of 2008 in order to allow for the summer fisheries for these stocks. The remaining two stocks (Adak red king crab and Pribilof Islands golden king crab) have OFLs recommended based on Tier 5 formulation (average catch). The CPT compiles the introduction to the SAFE Report and provides stock assessment and OFL recommendations within it, with additional recommendations and discussions included in the CPT Report. The Crab Plan Team Report is attached as Item C-2(a)(1) and the Introduction to the SAFE Report is attached as Item C-2(a)(2).

Report of the Scientific and Statistical Committee

The SSC agreed with the Plan Team's recommendations for OFLs and provided a few specific comments in regard to individual stocks. [Please see the SSC Minutes, Appendix III to these minutes.]

Report of the Advisory Panel

The Advisory Panel recommended the Council approve the Crab SAFE and OFLs.

COUNCIL DISCUSSION/ACTION

The Council received a staff report on the Plan Team's recent meetings, the CRAB Safe, and Plan Team recommendations for Crab OFLs from Diana Stram (Council staff), recommendations from the Scientific and Statistical Committee and Advisory Panel, and oral public comments on this agenda issue.

Bill Tweit moved to approve the 2008 BSAI Crab SAFE Report and OFLs adopted by the Crab Plan Team. The motion was seconded by Denby Lloyd and carried without objection.

Mr. Tweit noted that the Crab Plan's work on the new overfishing level measures and recommendations for OFLs have been reviewed and approved by the Scientific and Statistical Committee.

Bill Tweit moved that the Council initiate a review of the Pribilof Island blue king crab rebuilding plan with a target completion date of December 2009. The motion was seconded by Dave Benson and carried without objection.

The Council noted that the Alaska Board of Fish will also need to review the plan and that the Board meets on crab issues in March. A December 2009 target date will allow the Council to review the plan and provide recommendations in advance of the Board's meeting.

C-2(b) Final Action on St. George Protection Measures

ACTION REQUIRED

Final Action on St. George community measures.

BACKGROUND

Under the crab rationalization program, processors were allocated processor quota shares (PQS) based on their respective processing histories. To protect community interests, most processing shares were required to be used in the community in which the processing history occurred during the first two years of the program (the 'cooling off period'). In addition, holders of most processor shares were required to enter agreements granting community designated entities a right of first refusal on certain transfers of those shares. The agreements also specify that the right of first refusal will lapse, if the holder of the PQS processes those shares outside of the community for a period of 3 consecutive years.

Notwithstanding these protections, exemptions from the cooling off requirement were granted in both years for St. George, as the harbor was deemed inaccessible for processing as a result of storm damage. No shares designated for processing in the City of St. George were processed in that community during the first two years of the rationalization program. In the first year of the program, the waiver of the 'cooling off; requirement was uncontested by St. George. In the second year, St. George contested NOAA Fisheries finding. That appeal was denied, based on a conclusion that the harbor was inaccessible to processing vessels because of boulders, rocks, and sand deposited in the harbor entrance and harbor by the storm during the 2007-2008 season (see Aleutian Pribilof Island Community Development Association v. Snopac Products, Inc., 2008). This action considers establishing a new 'cooling off period' for shares originally subject to the St. George processing requirement and a new right of first refusal with respect to those shares.

As noted in the analysis, Aleutian Pribilof Island Community Development Association (the holder of the right of first refusal on behalf of St. George) has reached a settlement with one of the two PQS holders subject to the St. George-based right of first refusal, settling any issue concerning the 'cooling off' period and right of first refusal with respect to that PQS holder. The dispute remains outstanding with the second PQS holder.

At its February 2008 meeting, the Council reviewed the analysis of alternatives defining a new cooling off period and extending the rights of first refusal for processor shares originating in St. George. After reviewing the analysis the Council directed staff to release that analysis for public review and action at its April 2008 meeting. At the April meeting, the Council elected to delay action on the issue until this meeting, in part, to wait to for the outcome of the appeal of the exemption. The appeal has since been denied. Yet, the parties affected by this action dispute whether the conditions in the harbor are adequate to support processing and whether current harbor conditions were affected by the storm.

The Scientific and Statistical Committee did not address this agenda issue at this meeting.

Report of the Advisory Panel

The AP recommended the Council take no action regarding this issue.

COUNCIL DISCUSSION/ACTION

The Council received a staff report from Mark Fina (Council staff), the Advisory Panel report, and one person provided oral public comment indicating that industry has been working on a solution to the issue which should be agreed to in the near future.

Denby Lloyd moved to take no action on this issue pursuant to the recommendation of the Advisory Panel and public testimony received. The motion was seconded by Doug Mecum and carried 10-0 (Dersham was out of the room).

The following Crab Issues were dropped from the agenda because of time constraints:

- **2(c) BSAI Crab Program 3-year Review Report**
- **2(d) Crab Committee Report/Crew Proposals**
- **2(e) Review of BSAI Crab 90/10 Amendment Alternatives/Analysis Outline**
- **2(f) Report on Crab EDR Metadata**

The Scientific and Statistical Committee did address these agenda issues. Please see the SSC Minutes, Appendix III to these minutes for comments. The Advisory Panel addressed item 2(c). Please see the AP Minutes, Appendix IV to these minutes for those comments.

C-2(g) Discussion Paper - BSAI Crab Regional Delivery Emergency Relief

ACTION RQUIRED

Discussion paper on BSAI Crab Regional Delivery Emergency Relief.

BACKGROUND

At its June 2008 meeting, the Council received a report of its crab advisory committee. The committee's report suggested that the Council explore options for providing an exemption from regional landing requirements, in the event that unavoidable circumstances prevent compliance with those requirements. In response to the paper and public testimony, the Council directed staff to develop a discussion paper on emergency exemption from regional delivery requirements that considers the use of civil contracts between harvesters, processors, and the designee of the affected community to define the qualification for that relief and other terms (such as any compensation for lost economic activity or revenues that might arise out of the waiver of the landing requirement). The civil contracts are intended to streamline administration of the waiver by NOAA Fisheries. In response, staff has prepared the attached discussion paper (Item C-2(g)), which explores options for establishing the exemption, including those suggested by the Council, as well as under which NOAA Fisheries would actively administer the exemption. In the event that the Council wishes to proceed with this action, it could adopt a draft purpose and need statement and alternatives that would establish the terms of and process for granting the exemption.

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

Report of the Advisory Panel

The AP recommended the Council send forward for analysis the purpose and needs statement, and the following alternatives and options:

Method of defining the exemption and compensations:

Option 2: The exemption shall be generally defined in regulation. To receive an exemption, however, an IFQ holder the holder of matched IPQ, and the entity holding (or formerly holding) the right of first refusal for the IPQ shall have entered a contract that defining conditions under which an exemption will be granted and the terms of any compensation that:

Suboption 2: defines any compensation that may be exchanged by the IFQ holder, IPQ holder, and the community entity holding (or formerly holding) the right of first refusal on the IPQ on using the exemption

Administration:

Option 2: The exemption shall be administered through submission of an affidavit by the holder of the IFQ for which the exemption is applied. An affidavit attesting to the satisfaction of requisite conditions for the exemption shall constitute conclusive evidence of qualification for the exemption.

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

Option: Additional specificity of the exemption and its term may be included in any contract between the IFQ holder, the holder of matched IPQ and the entity holding (or formerly holding) a right of first refusal on the matched IPQ.

Requirement to attempt to mitigate:

Option 1 and Option 2

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

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

Compensation:

Option 2: Compensation shall be as agreed by the holder of IFQ, the holder of matched IPQ, and the entity holding the right of first refusal on the matched IPQ.

COUNCIL DISCUSSION/ACTION

The Council received a review of the issue from Mark Fina (Council staff), the Advisory Panel report, and oral public comments on this issue.

Bill Tweit moved to send forward for analysis the purpose and needs statement, and the following alternatives and options, with modifications underlined:

Method of defining the exemption and compensations:

Option 2: The exemption shall be generally defined in regulation. To receive an exemption, however, an IFQ holder, the holder of matched IPQ, and the entity holding (or formerly holding)

the right of first refusal for the IPQ shall have entered a contract that defining conditions under which an exemption will be granted and the terms of any compensation that:

Suboption 1: may more specifically define circumstances that will qualify (or not qualify for the exemption) and/or

Suboption 2: defines any compensation that may be exchanged by the IFQ holder, IPQ holder, and the community entity holding (or formerly holding) the right of first refusal on the IPQ on using the exemption

Administration:

Option 2: The exemption shall be administered through submission of an affidavit by the holder of the IFQ for which the exemption as agreed to in civil contract is applied. An affidavit attesting to the satisfaction of requisite conditions for the exemption shall constitute conclusive evidence of qualification for the exemption.

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

Option: Additional specificity of the exemption and its term ~~may~~ will be included in any contract between the IFQ holder, the holder of matched IPQ and the entity holding (or formerly holding) a right of first refusal on the matched IPQ.

Requirement to attempt to mitigate:

Option 1 and Option 2

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

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

Compensation:

Option 2: Compensation shall be as agreed by the holder of IFQ, the holder of matched IPQ, and the entity holding the right of first refusal on the matched IPQ.

The motion was seconded by Gerry Merrigan.

Mr. Tweit noted that there is a strong preference within industry for addressing this issue through civil contracts with federal oversight but not for a federal structure that would administer emergency relief provisions other than tracking them. In the analysis the option of a federal program would be noted as an alternative considered but not considered viable.

Mr. Henderschedt mentioned that he is concerned that skippers who need to make the decision whether or not it is safe to deliver may have to consider legalities of a contract. Mr. Henderschedt would like the analysis to explore ways in which the design of a private contract can prevent abuse of the emergency declaration.

Gerry Merrigan moved to amend "Method of Defining the Exemption and Compensations, Option 2," as follows (amendment in italics):

Method of defining the exemption and compensations:

Option 2: The exemption shall be generally defined in regulation. To receive an exemption, however, an IFQ holder, the holder of matched IPQ, and the entity holding (or formerly holding) the right of first refusal [*Suboption: or to create a Northern Regional entity*] for the IPQ shall have entered a contract that defining conditions under which an exemption will be granted and the terms of any compensation that:

Suboption 1: may more specifically define circumstances that will qualify (or not qualify for the exemption) and/or

Suboption 2: defines any compensation that may be exchanged by the IFQ holder, IPQ holder, and the community entity holding (or formerly holding) [*Suboption: or to create a Northern Regional entity*]the right of first refusal on the IPQ on using the exemption

The motion was seconded and carried without objection.

Sam Cotten moved to add the words "community or its designee as a third party of the contract" as an additional suboption to follow those approved in Mr. Merrigan's motion (above). The motion was seconded by Bill Tweit and carried without objection.

The main motion, as amended, carried without objection.

C-3 GOA Sideboards

C-3(a) GOA Sideboards for BSAI Crab Vessels

ACTION REQUIRED

Final action on GOA sideboards for BSAI crab vessels

BACKGROUND

In June 2008, the Council reviewed an initial draft of GOA sideboards for BSAI crab vessels. This amendment package includes three proposed actions: 1) adjust the GOA Pacific cod sideboard exemption qualifications for non-AFA crab vessels, 2) exempt qualified non-AFA crab vessels from GOA pollock sideboards, and 3) exempt non-AFA crab vessels from GOA Pacific cod sideboard limits during the period November 1 to December 31 of each year.

At the June 2008 meeting, the Council released the analysis for public review. In addition, the Council approved the problem statement and added a new option in Action 1 that would raise the Bering Sea C. opilio catch history threshold from <500,000 lbs to <750,000 lbs to receive GOA Pacific cod exemption status for non-AFA crab vessels. The Council also clarified that the intent of Action III is to address National Standard 1 and more fully utilize Pacific cod TAC in the GOA, but not impact all other GOA Pacific cod dependent participants. To accommodate this clarification, Council asked staff to include in the analysis ways for non-AFA crab vessels to access available B season Pacific cod TAC after November 1 of each year, while at the same time protecting current GOA Pacific cod dependent participants.

At this meeting, the Council is scheduled to take final action on this agenda item. The analysis was mailed out in early September; an executive summary is attached as (Item C-3(a)(1)).

Report of the Scientific and Statistical Committee

The SSC was unable (due to time constraints) to review the initial draft analysis during the June 2008 meeting, but noted that the current analysis is much improved and has incorporated comments provided informally to the analyst. It provides an appropriate discussion of the alternatives and their impacts that are sufficient for Council decision-making. The SSC offered a suggested revision to the generic boilerplate language regarding market failures. (Please see the SSC Minutes, Appendix ??? to these minutes.)

Report of the Advisory Panel

The AP recommended the following choices for final action:

Action I: Exempted Vessel Status of GOA Pacific Cod

Option 2.4: Exempt non-AFA crab vessels from the GOA Pacific cod sideboards if the vessel's Bering Sea opilio catch history is less than 750,000 pounds over the period 1996 - 2000 and the vessel has landed more than 680 mt of GOA Pacific cod over the period 1996 - 2000. The total Bering Sea *C. opilio* catch history includes both qualified and unqualified catch history pounds from non-AFA crab vessels.

Action II: Exempted Vessel Status of GOA Pollock

Option 2.3 - 20 pollock deliveries from 1996 - 2000.

Passes 17/0/2

Action III: Proposed Exemption from B Season Pacific Cod Sideboard Limit after November 1

Alternative 1: No changes to B season Pacific cod sideboard limit

COUNCIL DISCUSSION/ACTION

[NOTE: Dave Bedford participated in all of the GOA sideboard issues in place of Denby Lloyd.]

Gerry Merrigan advised that General Counsel has determined that, based on possible conflicts of interest, he must recuse himself completely on Action I of this agenda issue, although he may provide public comment; on Action II he may participate, and on Action III he may participate in questions and debate but may not vote. The Council decided to take action on each issue separately in order for Mr. Merrigan to participate on the issues that he can.

The Council received a staff report from Jon McCracken (Council staff), reports of the Scientific and Statistical Committee and the Advisory Panel, and oral public comment on this issue.

Action I: Exempted Vessel Status of GOA Pacific Cod

Duncan Fields moved to approve Alternative 2, Option 2.2:

Alternative 2: Change the exempted status requirements

Option 2.2: Exempt non-AFA crab vessels from the GOA Pacific cod sideboards if the vessel's Bering Sea opilio catch history is less than 500,000 pounds over the period 1996 - 2000 and the vessel landed more than 2,500 mt of GOA Pacific cod over the period 1996 - 2000. The total Bering Sea *C. opilio* catch history includes both qualified and unqualified catch history pounds from non-AFA crab vessels.

The motion was seconded by Sam Cotten.

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Mr. Fields noted that this is a difficult issue because it's individual and vessel-specific and he feels it's necessary to try to balance equities relating to dependence on these fisheries. The difficulty is that participants have no regulatory venue in which they could surrender their quota share in order to have the sideboards set aside although participants have suggested that solution to the problem.

In response to a question from Mr. Tweit, Mr. Fields clarified that the exemptions only apply to those non-AFA crab vessels/LLPs that are eligible to participate in the GOA Pacific cod fishery (have appropriate LLP) and would leave in place the original GOA Pacific cod sideboard exemption for non-AFA crab vessels/LLPs, as stated in the analysis.

John Henderschedt moved a substitute motion: to approve the recommendations of the Advisory Panel:

Alternative 2, Option 2.4: Change the exempted status requirements: Exempt non-AFA crab vessels from the GOA Pacific cod sideboards if the vessel's Bering Sea opilio catch history is less than 750,000 pounds over the period 1996 - 2000 and the vessel has landed more than 680 mt of GOA Pacific cod over the period 1996 - 2000. The total Bering Sea *C. opilio* catch history includes both qualified and unqualified catch history pounds from non-AFA crab vessels.

The motion was seconded.

Mr. Henderschedt noted that the issues stated in the problem statement go beyond the one vessel identified under Option 2.2 and landings of other vessels should be taken into consideration and treated equally and fairly.

The substitute motion carried, 7 to 3, with Cotten, Fields, and Olsen voting no (Merrigan did not vote).

Action II: Exempted Status of GOA pollock

Duncan Fields moved to approve Alternative 2, Option 2.3:

Alternative 2, Option 2.3: Exemption non-AFA crab vessels from GOA pollock sideboards if the vessel's Bering Sea opilio catch history is less than 0.22% of the total from 1996 - 2000 and the vessels had: Option 2.3: 20 pollock deliveries from 1996 - 2000.

The motion was seconded by Bill Tweit and carried unanimously (including Merrigan).

Action III: Proposed Exemption from B Season Pacific Cod Sideboard Limit after November 1

Duncan Fields moved to bifurcate Action III from the amendment package and delete the last sentence of the problem statement. Additionally, include suboptions under Alternative 2, for both inshore and offshore sectors, Western and Central GOA, as follows:

Exempt non-AFA crab vessels from GOA Pacific cod sideboards after November 1st each year if:

- (a) 10-30% of the B season cod TAC remains; or**
- (b) 0-5,000 lbs of the B season cod TAC remains.**

The motion was seconded by Bill Tweit.

It was clarified that the portion of the problem statement that was deleted from the main amendment package would be used by staff to develop a draft problem statement for this analysis for Council review at a future meeting.

Mr. Benson asked that staff include the years 2003, 2004 and 2007 in Table 1-32 of the current analysis.

The Council also determined that the revised analysis for this action would be provided to the Council as a separate amendment and not delay the rulemaking package for Actions I and II.

The motion carried without objection (Merrigan voted).

For Actions I and II, Bill Tweit moved:

The Council deems proposed regulations that clearly and directly flow from the provisions of this motion to be necessary and appropriate in accordance with section 303(c), and therefore the Council authorizes the Executive Director and the Chairman to review the draft proposed regulations when provided by NMFS to ensure that the proposed regulations to be submitted to the Secretary under section 303(c) are consistent with these instructions.

The motion was seconded and carried without objection (Merrigan abstained from the vote).

C-3(b) GOA Sideboards - GOA Rockfish Fishery

ACTION REQUIRED

Final Action on BSAI Sideboard Exemption in GOA Rockfish Program

BACKGROUND

The public review draft of the analytical document to support this action, containing a Regulatory Impact Review and Initial Regulatory Flexibility Analysis, was mailed out to the Council in late August. The proposed Gulf of Alaska Groundfish FMP amendment would exempt some or all catcher processors participating in the Central GOA rockfish pilot program from the early July stand down period that prevents their participation in most directed BSAI groundfish fisheries during those dates.

In December 2007, the Council requested this analysis as one of a series of GOA sideboard adjustment actions. The BSAI stand down restriction was implemented in the rockfish pilot program in order to prevent rockfish participants from increasing their effort in BSAI fisheries. In 2008, BSAI Amendments 80 and 85 became effective, creating sector allocations for the major BSAI target fisheries (other than pollock). Consequently, the importance of the stand down period as a protection measure for participants in other BSAI fisheries has changed.

An executive summary of the analysis is attached as Item C-3(b)(1). The analysis meets the requirements for a categorical exclusion from detailed environmental review, under the requirements of the CEQ regulations and NOAA's NEPA regulations. The Council is scheduled to take final action on the amendment at this meeting.

Report of the Scientific and Statistical Committee

Initial review of this item was on the SSC agenda in June 2008, but owing to the press of other business, the SSC was unable to formally take the report. Individual comments were informally supplied to the author. The SSC noted that the Final Action draft now presented to the SSC reflects a well-designed and

informative presentation of the issues, objectives, and available alternatives. The document now provides sufficient information for Council decision-making.

The SSC noted that the document calls for clarification of Council intent (regarding integration with the CDQ program) but that this issue is now up for final action. The document should be edited to reflect that the problem statement has now been adopted by the Council. The SSC repeated earlier comments stressing that the Council should be articulating their problem statements, rather than having staff attempt to intuit Council goals and objectives. The SSC offered a suggested revision to the generic boilerplate language regarding market failures. (See SSC Minutes, Appendix III to these minutes for comments).

Report of the Advisory Panel

The AP recommended that the Council adopt Alternative 4 for final action:

Alternative 4: Amend the CGOA rockfish pilot program to remove the provision that requires certain catcher processors to stand down from participating in directed BSAI groundfish fisheries for a period in July.

COUNCIL DISCUSSION/ACTION

The Council received a review of the analysis from Diana Evans (Council staff), the SSC and AP reports, and oral public comments on this issue.

Dave Bedford moved to approve the recommendations of the Advisory Panel:

Alternative 4: Amend the CGOA rockfish pilot program to remove the provision that requires certain catcher processors to stand down from participating in directed BSAI groundfish fisheries for a period in July.

The motion was seconded.

Mr. Bedford noted that the stand-down is no longer necessary because of the rationalized nature of several fisheries and that the protections are no longer needed, and that the additional costs imposed on industry by the stand-down are not warranted. It was clarified that the stand-down will no longer apply to the CDQ fisheries as well.

Mr. Tweit noted the SSC comments and clarified that the staff will address those comments in the final amendment package.

Bill Tweit moved to amend the motion: The Council deems proposed regulations that clearly and directly flow from the provisions of this motion to be necessary and appropriate in accordance with section 303(c), and therefore the Council authorizes the Executive Director and the Chairman to review the draft proposed regulations when provided by NMFS to ensure that the proposed regulations to be submitted to the Secretary under section 303(c) are consistent with these instructions.

The amendment carried without objection. The amended main motion carried unanimously.

C-3(c) GOA Halibut PSC Sideboards for Amendment 80 Vessels

ACTION REQUIRED

Initial review of GOA halibut PSC sideboards for Amendment 80 vessels

BACKGROUND

In December 2007, the Council reviewed a discussion paper on GOA sideboard limits and initiated an analysis of an amendment package to adjust the Amendment 80 3rd season deep water species halibut PSC sideboard limit. There are two alternatives to the status quo. One alternative is to include an amount of halibut PSC in the Amendment 80 3rd season deep water species halibut PSC sideboard limit equal to the halibut PSC available to the Rockfish Pilot Program CP limited access vessels that are also Amendment 80 vessels. The other alternative is to not deduct 3rd season halibut PSC usage while targeting central GOA rockfish from Amendment 80 sideboard halibut limit by Amendment 80 vessels are Rockfish Pilot Program limited access vessels.

At this meeting, the Council is scheduled to conduct an initial review of this analysis. The analysis was mailed out in early September; an executive summary of that analysis is attached (Item C-3(c)(1)).

Report of the Scientific and Statistical Committee

The SSC's review of the analysis determined that there are several deficiencies in the document and recommended that the analysis not be released for public review at this time. Please see the SSC Minutes, Appendix III to these minutes for the SSC's comments and recommendations.

Report of the Advisory Panel

The AP recommended that the document not be released for public review and that the Council take no further action on this item.

COUNCIL DISCUSSION/ACTION

The Council received a review of the analysis from Jon McCracken (Council staff), SSC and AP reports, and oral public comments on this issue.

John Henderschedt moved that staff revise the analysis and return it for further Council review.

Revise the analysis as follows:

Revise the Problem Statement, as follows:

Amendment 80/Rockfish Pilot Program CP limited access vessels participating in GOA 3rd season deep-water fisheries utilize halibut PSC. Currently, halibut PSC usage while targeting central GOA rockfish by this group of vessels is counted toward the GOA 3rd season deep-water species halibut PSC Amendment 80 sideboard limit even though the sideboard has already been reduced to account for halibut allocation for the Rockfish Pilot Program. ~~In apportioning the Amendment 80 halibut PSC limit to the GOA 3rd season deep-water species, halibut PSC allocation by Amendment 80/Rockfish Pilot Program limited access vessels while targeting central GOA rockfish was not included in the sideboard calculation. Since the Amendment 80 halibut PSC sideboard limit for 3rd season deep-water species does not account for halibut PSC usage from Amendment 80/Rockfish Pilot Program limited access vessels, there is a potential that insufficient halibut PSC will be~~

~~available during the 3rd season, resulting in premature closure of all deep-water fisheries for all Amendment 80 vessels qualified to fish in the GOA. The premature closure of the 3rd season deep-water fisheries may result in economic losses for these vessels. Counting halibut bycatch in the CP Rockfish Pilot Program against the 3rd quarter halibut PSC sideboard results in a smaller halibut sideboard available for non-rockfish fisheries than was historically used by the Amendment 80 fleet.~~

ADD a 4th Alternative:

Alternative 4: Account for catch by CPs in the limited access sector of the Rockfish Pilot Program from the halibut which was set aside for that program and not against the 3rd quarter deep-water halibut PSC sideboard allocation for Amendment 80 vessels.

The motion was seconded by Bill Tweit.

Mr. Henderschedt noted that to date the accounting issue has not been constraining on the non-rockfish deep-water complex fishery by Amendment 80 vessels, but that may not continue to be the case and he did not believe the current situation was anticipated or the intent of the Council's previous actions for Amendment 80 vessels and the Rockfish Pilot Program. During discussion it was noted that the Rockfish Pilot Program is in the second year of a 5-year program and it may not be efficient to try to change regulations now, particularly when there has not been a problem to date. Additionally, Mr. Mecum pointed out the method of accounting was provided in the proposed and final rules and the Agency did not receive any negative comments on it.

Duncan Fields moved a substitute motion: take no further action on this proposed amendment. The motion was seconded and carried, 7-4, with Benson, Cotten, Henderschedt and Tweit voting against.

Council members voting in favor indicated that staff resources would be better spent on issues that are more pressing and may be harming industry participants. If, during the 5-year review of the program, a problem has developed as a result of accounting methods the Council can review the issue.

C-3(d) Discussion Paper - GOA Sideboards for AFA CVs

ACTION REQUIRED

Review discussion paper on GOA AFA pollock and Pacific cod sideboards.

BACKGROUND

This discussion paper reviews the potential impacts of the proposed action to revise the Gulf of Alaska Pacific cod and pollock sideboard limits for the non-exempt American Fisheries Act (AFA) catcher vessel fleet. The sector directly affected by the proposed action consists of catcher vessels that are permitted under the AFA and are not exempt from GOA groundfish catcher vessel sideboards. There are currently 111 AFA permitted catcher vessels, and 16 of these vessels are exempt from Pacific cod and pollock sideboards in the GOA. The objective of the proposed action is to reduce the potential impacts to non-AFA vessels resulting from participation by the 95 non-exempt AFA catcher vessels in directed fisheries for GOA Pacific cod and pollock.

At its December 2007 meeting, the Council identified a set of alternatives for the proposed action. The Council reviewed a draft initial EA/RIR/IRFA for the proposed action at the June 2008 meeting. At that time, the Council elected to take no further action on the analysis and directed staff to incorporate the issues raised by the Council and the Advisory Panel into a discussion paper for Council review in October 2008. The discussion paper is attached as Item C-3(d).

Specifically, the Council requested that the discussion paper address the following issues:

- (1) Background information on seasonal sideboard apportionments**
- (2) TAC and sideboard management and monitoring in the GOA**
- (3) Discrepancies between NMFS and AFA Co-op sideboard harvest data**
- (4) Provide sideboard harvest data tables for 2000 through 2008**
- (5) Impact of the trawl LLP recency action on non-exempt AFA CVs**
- (6) Net benefits to the Nation of the proposed action**
- (7) Economic dependence on the resource by non-AFA CVs, and non-exempt and exempt AFA CVs**

At this meeting, the Council's action is to review the draft problem statement and alternatives, and revise them as necessary for further analysis.

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

Report of the Advisory Panel

The AP recommended that the Council take no further action on this item.

COUNCIL DISCUSSION/ACTION

The Council received an overview of the discussion paper from Jeannie Heltzel (Council staff), the Advisory Panel Report, and oral public comments on this issue.

Duncan Fields moved to move the discussion paper forward for analysis, but to include only Alternatives 1, 2 and 3. For Alternatives 2 and 3, add a suboption: Amount recalculated under the alternative, plus up to 10% of that amount. The motion was seconded.

Doug Mecum moved to amend to revise the discussion paper and return for Council review before deciding whether to move forward for analysis. Mr. Fields' amendments would be included in the motion. The motion was seconded and carried, 7 to 4, with Benson, Henderschedt, Hyder and Tweit voting no.

Mr. Fields requested that staff determine whether the two alternatives capture the range within the problem statement. Additional information about and application within these fisheries of the AFA sideboards for those vessels that retain LLP under the most recent LLP recent package was also requested.

Mr. Henderschedt also noted that complexities and unintended consequences of inter-coop transactions should be explored in the discussion paper. Also some discussion of the realistic capacity of the fleet should sideboards be removed.

C-4 Bering Sea/Aleutian Islands Salmon Bycatch

ACTION REQUIRED

- (a) Discussion paper on Chum Salmon Bycatch alternatives
- (b) Review Pollock Intercooperative Agreement report (Bering Sea Chinook Management Measures EIS/RIR/IRFA)

BACKGROUND

- (a) Discussion paper on Chum Salmon Bycatch alternatives

At the April 2008 Council meeting, the Council took action to bifurcate the analysis of management measures for Chinook and chum salmon to evaluate them separately. The EIS/RIR/IRFA for Chinook salmon bycatch management measures was presented for initial review in June 2008 and staff are currently working on revising that analysis for the public review draft. The draft EIS/RIR/IRFA is expected to be released by NMFS for public review in early December. Final action on the Chinook salmon bycatch management measures is scheduled for April 2009.

For chum salmon bycatch management measures, the Council modified the existing suite of alternatives and scheduled further review of the alternatives and plans for analysis at this meeting. A discussion paper was mailed out on September 12th and is attached as Item C-4(a). This discussion paper summarizes the current bycatch trends by season and sector through August 2008, the current suite of alternatives, NMFS's recommendations that an EIS likely will be needed for this analysis (for the same reasons one was recommended for Chinook salmon bycatch), and information about staff availability and timing to complete the analysis.

At this meeting, the Council will review the current suite of alternatives for chum (non-Chinook) salmon bycatch in the Bering Sea pollock trawl fishery as amended in April 2008. The Council may modify the alternatives at this time and discuss an appropriate timeline for this analysis.

- (b) Review Pollock Intercooperative Agreement report (Bering Sea Chinook Salmon Bycatch Management Measures EIS/RIR/IRFA)

At the June 2008 Council meeting, the Council reviewed an initial draft EIS/RIR/IRFA to evaluate the impacts of a suite of bycatch reduction management measures for Chinook salmon in the Bering Sea pollock trawl fishery. The Council selected a preliminary preferred alternative (PPA) to be included and analyzed in the draft EIS/RIR/IRFA. The Council's June motion identifying the specific elements and options for inclusion in this PPA is attached as Item C-4(b)(1). Staff are currently working to finalize analysis of the PPA and prepare the public review draft of the EIS/RIR/IRFA. In conjunction with this, an outreach plan has been developed for providing further information to various Alaskan communities on the Council's schedule for action and the availability of the draft EIS/RIR/IRFA. A flyer containing an overview of the Council action and dates of scheduled meetings is attached as Item C-4(b)(2).

The schedule for the Chinook Salmon Bycatch Draft EIS is the following:

End of September	Council submits Draft EIS to NMFS for review.
October	Outreach meetings in Alaska (possible February Nome meeting)
December 5	Draft EIS is published for public review with a 60 day comment period
December 5, 2008 - February 3, 2009	Public comment period
February 3 - March 13, 2009	NMFS prepares Comment Analysis Report for Council
April 2009	Final action by Council

The Council's PPA includes a specified cap level of 68,392 Chinook salmon (Annual scenario 1) "if an ICA is in place that provides explicit incentive(s) for each participant to avoid salmon bycatch in all years". The hard cap in the absence of such an approved ICA (Annual scenario 2) would be 47,591 Chinook salmon. The Council requested that the pollock industry develop the specifics of an ICA that meet the requirements of the PPA, and present information about their progress to the Council at this meeting. Representatives from the pollock industry will provide these progress reports under this agenda item.

Given the schedule for the draft EIS and the fact that the Council's PPA does not include detailed requirements for elements of an ICA, no specific incentive program under the ICA will be analyzed in the draft EIS/RIR/IRFA. The analysis will include a description of the general requirements in the Council's PPA and the process for reviewing and approving the proposed ICA. However, only the impacts of the different cap levels in the PPA will be analyzed in detail in the EIS/RIR/IRFA.

The National Marine Fisheries Service has expressed some concerns over ambiguities in the Council's PPA. A letter submitted from the agency to the Council detailing the nature of these concerns is attached as Item C-4(b)(3). One of their concerns relates to the hypothetical possibility of the overall cap level of 68,392 being exceeded because of the proposed process for accruing bycatch against the backstop cap for vessels that opt out of the ICA. Further explanation of this is provided in the letter and is displayed graphically in a figure attached as Item C-4(b)(4). NMFS staff will provide an overview of the issues addressed in this letter.

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

Report of the Advisory Panel

The Advisory Panel took the report on non-Chinook salmon bycatch measures and provided a draft problem statement and alternatives for Council consideration. Please see the Advisory Panel minutes (Appendix IV to these minutes) for those recommendations.

The Advisory Panel also received reports on progress in developing an industry Intercooperative Agreement pursuant to previous Council action on non-Chinook salmon bycatch measures, but took no action.

COUNCIL DISCUSSION/ACTION

NOTE: Agenda C-4(a), Discussion paper on Chum Salmon Bycatch alternatives, was deferred to a later Council meeting because of time constraints.

C-4(b) ICAs/BSAI Chinook Salmon EIS/RIR/IRFA

The Council received reports on the current analysis and the Council's Preliminary Preferred Alternative (PPA) from Diana Stram (Council staff) and Sally Bibb (NMFS staff), an update on the Council's community outreach efforts from Nicole Kimball (Council staff), and a presentation from industry representatives regarding efforts to develop Intercooperative Agreements (ICAs), as well as comments from the Advisory Panel and oral public comments on these issues.

There was no Council action on this agenda item. Council discussion included timing on more-developed ICA proposals from industry. Mr. Olson noted that before those come back to the Council he would prefer that those proposals would be reviewed by the Bycatch Committee.

Mr. Fields noted that he would like to see some review by the Council either in December or February; Mr. Olson noted that December's agenda looks to be fairly extensive and that perhaps February would be possible if staff has time to review industry proposals.

Mr. Benson noted that he is uneasy with having the proposals reviewed only by the Bycatch Committee. He suggested that perhaps a subcommittee of the SSC could review the proposals and provide their views to the Council.

Council members also discussed the possibility of an evening session in December to review the proposals and issues. Council members agreed that the Executive Director and Chairman should take this suggestion in mind when setting the December agenda.

It was determined that the timeline would be that there would be evening sessions in December to get industry presentations, the Salmon Bycatch would meet prior to the February Council meeting, and in February there would be a full presentation from industry for components of an ICA to be reviewed by the Council, AP and SSC. Then, in April industry would present their final program for final Council action. Preferably, industry would present its final recommendations/plan in February.

C-5 Arctic Fishery Management Plan

ACTION REQUIRED

- (a) Receive report from Ecosystem Committee
- (b) Review draft Arctic FMP and EA/RIR/IRFA and take action as necessary

BACKGROUND

- (a) Receive report from Ecosystem Committee

The Council's Ecosystem Committee will meet on September 30, 2008. Their agenda is attached as Item C-5(a)(1). The Committee will be providing recommendations for the Council on the Arctic FMP, as well as receiving a report from the AI Ecosystem Team on the AI Fishery Ecosystem Plan, and receiving an update on the recent Alaska Marine Ecosystem Forum meeting. The AI Ecosystem Team report can be found under the D-3(b) agenda item; the summary from the AMEF meeting is attached as Item C-5(a)(2).

(b) Review draft Arctic FMP and EA/RIR/IRFA and take action as necessary

At its June 2007 meeting, the Council directed staff to prepare a draft Arctic Fishery Management Plan (FMP) and draft amendments to the scallop and crab FMPs (that terminate their geographic coverage at Bering Strait), and to develop an accompanying analysis that considers several options for the Arctic FMP. These options are to close the entire Arctic region to all commercial fishing, or close the entire Arctic region to commercial fishing except for the red king crab fishery that has previously occurred in the southern Chukchi Sea. In October 2007, the Council gave further direction to staff in preparing a draft Arctic FMP and analysis documents.

Development of the Arctic FMP has occurred over several meetings. A preliminary draft EA/RIR/IRFA was sent out in a Council mailing prior to the February 2008 meeting. Staff presented a progress report on the Arctic FMP in February 2008 to the Council's Ecosystem Committee and to the SSC and AP. The Council received a preliminary report on the Arctic FMP at their June 2008 meeting. Throughout this period, Council staff has conducted an outreach program to inform residents of the Alaskan Arctic and other stakeholders and interested parties of the Council's proposed action.

The draft Arctic FMP and an accompanying draft EA/RIR/IRFA were sent out in a Council mailing in mid September 2008. At this October 2008 meeting, the Council is scheduled for initial review of the draft Arctic FMP and EA/RIR/IRFA, and to approve releasing the documents for public review. The SSC and AP also will review the draft FMP and analysis.

The recommended alternatives for Council consideration as it proceeds with the Arctic FMP are as follows:

Alternative 1: No Action (Status quo). Maintain existing management authority.

Alternative 2: Adopt an Arctic FMP that closes the entire Arctic Management Area to commercial fishing. Amend the crab FMP to terminate its geographic coverage at Bering Strait.

Alternative 3: Adopt an Arctic FMP that closes the entire Arctic Management Area to commercial fishing. Amend the crab FMP to terminate its geographic coverage at Bering Strait. Alternative 3 would exempt from the Arctic FMP a red king crab fishery in the Chukchi Sea of the size and scope of the historic fishery in the geographic area where the fishery has historically occurred.

Alternative 4: Adopt an Arctic FMP that closes the entire Arctic Management Area to commercial fishing. A red king crab fishery in the Chukchi Sea of the size and scope of the historic fishery in the geographic area where the fishery has historically occurred could be prosecuted under authority of the Crab FMP. The Arctic FMP would cover the area north of Pt. Hope for crab and north of Bering Strait for groundfish and scallops.

During the course of preparing the draft FMP and analyses, NMFS staff determined that the Scallop FMP does not need to be amended to meet the purpose and need of this action. The scallop FMP management unit is limited to the Bering Sea at Bering Strait. The State manages the scallop fishery in the Bering Sea under Registration Area Q which extends to Point Hope and is described in an appendix to the Scallop FMP. This descriptive text for registration is provided as a convenience to the reader of the FMP and does not affect the specified scallop FMP management unit. The authority of the scallop FMP ends at Bering Strait, and NMFS staff have determined that no amendment to the scallop FMP is necessary for this action.

The draft Arctic FMP also contains two options for setting the conservation and management measures for fisheries as required by Section 303 of the Magnuson-Stevens Act (MSA). Either Option 1 or 2 must be chosen under Alternative 2, 3, or 4 to meet the MSA required provisions for an FMP to (1) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery and (2) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished or when overfishing is occurring.

Option 1: Specify maximum sustainable yield (MSY), status determination criteria (both maximum fishing mortality threshold (MFMT) and minimum stock size threshold (MSST)), optimum yield (OY), annual catch limits (ACL), and annual catch target (ACT) for the fisheries that the plan is intended to manage. Managed fisheries are those identified as having a non-negligible probability of developing within the foreseeable future.

Option 2: Create 4 categories of FMP species, identify species in each category, and create a process for moving species from the Ecosystem Component (EC) category to the Target Species category. Categorize all species of Arctic finfish and shellfish as EC species or Prohibited Species. EC and Prohibited Species are not considered managed fisheries under the FMP and do not require specification of reference points such as MSY, OY, and status determination criteria; therefore no reference points are provided in this option. Reference points would be developed for a species to move it into the Target Species category.

The attached table (Item C-5(b)(1)) provides the main elements of the alternatives and a second table (Item C-5(b)(2)) provides a summary of the two options for Alternatives 2, 3, and 4. Also attached is the Executive Summary of the EA/RIR/IRFA (Item C-5(b)(3)).

Note: The draft Arctic FMP has been written using language, as an example, that defers a small red king crab fishery in the eastern Chukchi Sea to State management. However, there are two other alternatives for addressing this historic crab fishery the Council could choose, other than *status quo*, which would change the language in the draft FMP. The draft FMP language presented to the Council at this meeting is for illustrative purposes, and would be changed to reflect the Council's final decision.

The Arctic Management Area: all marine waters in the Exclusive Economic Zone of the Chukchi and Beaufort Seas from 3 nautical miles offshore the coast of Alaska or its baseline to 200 nautical miles offshore, north of Bering Strait (from Cape Prince of Wales to Cape Dezhneva) and westward to the U.S./Russia Convention Line of 1867 and eastward to the U.S./Canada maritime boundary.

Report of the Scientific and Statistical Committee

The SSC offered comments and suggestions to be addressed before the documents are sent out for public review and requested that the Committee be given the opportunity to review the FMP and EA/RIR/IRFA again before releasing them for public review. Please see the SSC Minutes (Appendix III to these minutes) for the SSC's comments and recommendations for the documents.

Report of the Advisory Panel

The AP noted the outstanding efforts made by staff to develop a progressive and sophisticated analysis on Arctic Fishery Management. However, the AP recommended the Council delay sending out the document for public review until staff addresses the SSC's comments and suggested the Council review the revised document at the February 2009 meeting.

COUNCIL DISCUSSION/ACTION

[NOTE: David Bedford participated in this discussion for Denby Lloyd.]

The Council received an overview of the documents from Bill Wilson (Council staff) and Melanie Brown (NMFS staff) and a report from the Ecosystem Committee from Diana Evans (Council staff) and Stephanie Madsen (Committee Chair), as well as the SSC and AP reports and oral public comments on this issue. For a copy of the Ecosystem Committee Report, see Appendix V to these minutes.

Bill Tweit moved to send the analysis and FMP text out for public review, after addressing the comments of the SSC and Ecosystem Committee to the extent practicable, targeting the end of October 2008 for release for public review and that the FMP package, including public review comments be brought back to the Council for final action in February 2009. The motion was seconded by John Henderschedt, and carried without objection. Mr. Tweit noted that he assumed there would be further review by the SSC at the December 2008 meeting followed by an additional public review period in advance of the February meeting.

Mr. Tweit noted that while the Council acknowledges that there is a minimum of scientific information available on Arctic fish stocks, it is important to close the area to commercial fishing until information can be gathered. Additionally, there is international concern over the warming trends in the Arctic regions.

Mr. Fields expressed concern over the timing, noting that the Council needs to provide adequate time for interaction with residents of Western Alaska. He also pointed out that the Council will be meeting in Seattle when final action is scheduled which may make it difficult for some of those residents to participate. Council members noted that while the final action to implement the FMP will occur in February, decisions on further fishing regulations will take place much later, when scientific information is gathered and at that time interaction with the affected regions will be even more critical. The Council's current community outreach program will also give affected communities the opportunity to participate.

C-6 Research Priorities

ACTION REQUIRED

Adopt five year research plan priorities.

BACKGROUND

In June 2008 the Council adopted one year research priorities for 2008/2009 (Item C-6(a)), as recommended by the Scientific and Statistical Committee and Advisory Panel. Comments from the Plan Teams for groundfish, crab, and scallop were considered by the SSC in June. At this meeting, the SSC will provide recommendations for research priorities for the 5-year period 2008-2013, as required under the Magnuson-Stevens Act. Final SSC recommendations for the 5-year plan will be provided as an appendix to the SSC minutes at the meeting.

Report of Scientific and Statistical Committee

The SSC compiled a list of research priorities at the June, 2008 Council meeting for those research topics needing attention within one year and this list was provided to the North Pacific Research Board for its consideration in developing its annual request for proposals. The priority list (attached as an appendix to these minutes) includes an update of that list, but incorporated into a new format. The new format is intended to be a list of 5-year research priorities mandated by the MSA that will be updated annually. This list is intended to meet the needs of both the NPRB and the Council. The major changes incorporated

in this new format are the differentiation of critical and strategic issues, and the removal of the extensive listing of additional research priorities identified by the groundfish, crab, and scallop plan teams. Removal of the additional priorities identified by the plan teams does not diminish the importance of the many specific issues the teams have listed; rather, the list below is the SSC's determination of the most important critical and strategic issues, many of which came from plan team recommendations. See the SSC Minutes, Appendix III to these minutes, for the list of research priorities.

The Advisory Panel did not address this agenda issue.

COUNCIL DISCUSSION/ACTION

The Council received the report of the SSC and oral public comment on this issue.

Bill Tweit moved to adopt the SSC's 5-year research priorities found in Appendix A to the SSC Minutes (Appendix III to these minutes), striking the second paragraph of the introductory statements (separating priorities into two categories - critical and strategic), and revising the list so that it is not separated into critical issues and strategic issues. This would create a single list without changing any of the actual recommendations of the SSC. The motion was seconded by Gerry Merrigan.

Mr. Tweit noted that the Council is required under the MFCMA to request the SSC to develop and recommend research priorities for Council review and subsequent release for public comments before forwarding them to NOAA. Mr. Tweit felt that separating the recommendations into the two categories is difficult to sort out because the SSC has stressed that they are both equally important. He suggested that between now and the next cycle for developing research priorities that the Council discuss with the SSC what it was trying to convey by using the categories.

Duncan Field moved to amend the list by substituting the numbers with bullets to avoid any indication of priority within the categories of the list. The motion was seconded and carried without objection.

Mr. Field noted that this would make it clear that there is no prioritization within each section and avoid confusion among reviewers.

The main motion, as amended, carried without objection. The final list of research priorities approved by the Council and posted on the NPFMC website is found in Appendix VI to these minutes.

C-7 Groundfish Catch Specifications

ACTION REQUIRED

- (a) Receive Plan Team reports,**
- (b) Recommend proposed groundfish specifications for 2009/2010,**

BACKGROUND

- (a) Plan Team reports**

During their recent meetings, the BSAI and GOA Groundfish Plan Teams recommended proposed groundfish specifications for 2009 and 2010. The team recommendations are based on rollovers of the established 2009 final specifications, rather than projections for Tier 1 to 3 stocks that have been made previously. The rollover approach was adopted by the Council last year; it was

determined to be preferable to the projection model because the former is based upon stock assessments that used the best information available at the time. The report from the Joint BSAI/GOA Plan Team meeting is attached as Item C-7(a)(1). The GOA plan team meeting report is attached as Item C-7(a)(2). The report from the BSAI plan team is attached as Item C-7(a)(3). Draft assessments for BSAI Pacific cod, BSAI Rougheye rockfish, BSAI skates, and GOA Pacific cod were provided for preliminary review.

(b) Proposed Groundfish Specifications

The Council adopts proposed BSAI and GOA groundfish specifications for a two-year period each October. The Council adopts final specifications each December. Therefore, 2009 specifications that were adopted in December 2007 have been published in the *Federal Register* and will start the fishery on January 1, 2009. The proposed specifications for review at this meeting will be published in the proposed rule. Final specifications scheduled for review in December 2008 will replace those that started the 2009 fisheries, after they are published in the final rule in late February/early March 2009.

Bering Sea/Aleutian Islands. The BSAI Plan Team recommendations are under C-7(b)(1). Final BSAI groundfish specifications for 2008/2009 including: 1) Prohibited Species Catch (PSC) limits for halibut, red king crab, Tanner crab, opilio crab, and herring and their gear type and target fishery apportionments and 2) halibut discard mortality rates (DMRs) for CDQ (Community Development Quota) and non-CDQ are provided under Item C-7(b)(2). IPHC Staff recommendations for the 2009 CDQ fisheries will be provided in December 2008. In 2009, Staff will be available to assist in setting PSC amounts using last year's Table 8(a) through (e).

Gulf of Alaska. The GOA Plan Team recommendations are under C-7(b)(3). Total halibut PSC limits for all fisheries and gear types total 2,300 mt. The halibut PSC apportionments recommended based upon the 2008 apportionments are attached as C-7(b)(4).

GOA TAC Considerations for State Pacific Cod Fishery: Since 1997, the Council has reduced the GOA Pacific cod TAC to account for removals of not more than 25 percent of the Federal P. cod TAC from the State parallel fisheries. Using the area apportionments of the 2008 P. cod proposed ABC recommended by the Plan Team (for the proposed rule), the 2009 and 2010 Federal TAC for P. cod would be adjusted as listed below.

Proposed 2009 and 2010 Gulf of Alaska Pacific cod ABCs, TACs and state Guideline Harvest Levels (GHLs) (mt).

Specifications	Western	Central	Eastern	Total
ABC	25,932	37,901	2,660	66,493
State GHL	6,483	9,475	266	16,224
(State % of ABC)	25	25	10	24.4
Federal TAC	19,449	28,426	2,394	50,269

Report of the Scientific and Statistical Committee

The SSC reviewed new models presented by the groundfish plan teams and provided comments and recommendations (found in the SSC Minutes, Appendix III to these minutes). The SSC also reviewed and approved the proposed specifications for 2009-2010 that are used to establish the proposed rule. The SSC agreed with the Plan Team approach of rolling over the actual specification set for 2009 for both 2009 and 2010 for the proposed rule.

The SSC noted that the 2008 acoustic midwater trawl winter surveys of the Shumagin Islands, Chirikof and Shelikof Strait areas suggest that the increase in proposed 2009/10 specifications may not be realized in the final ABC and OFLs. The SSC requested that a report documenting the results of the annual EIT surveys be provided to the Plan Teams in September and to the SSC in October.

Report of the Advisory Panel

FINAL MINUTES
NPFMC
OCTOBER 2008

The AP recommended the Council adopt the proposed GOA specs for 2009-2010 OFLs and ABCs as noted in the action memo C-7(b)(3).

Set the 2009 and 2010 GOA proposed specifications where TAC is equal to ABC for all stocks with the following exceptions:

The P. cod TAC is reduced according to the action memo (page 2) to account for the apportionment to the State waters fishery in 2009 and 2010.

Roll over the 2008 TAC for 2009 and 2010 for:

- a. Shallow water flatfish and flathead sole in the Central and Western GOA
- b. Arrowtooth flounder for all areas
- c. Other slope rockfish in the EYAK/SEO
- d. GOA Atka mackerel
- e. GOA other species

Additionally, the AP recommended the Council adopt the proposed GOA halibut PSC apportionments, annually and seasonally, for 2009-2010 as noted in the action memo C-7(b)(4).

The AP recommended the Council adopt the BSAI OFL, ABC and TAC recommendations for 2009-2010 as included in the attached sheet.

Further, the AP recommended the Council adopt 8A, 8B and 8C – Apportionments of PSC allowances in the BSAI.

The AP recommended the Council adopt the halibut discard mortality rates as noted in table 9 of the action memo. Further, the AP recommends that the Council change the release date for halibut apportioned to the BSAI rockfish fishery to April 15.

COUNCIL DISCUSSION/ACTION

Jane DiCosimo and Diana Stram (Council staff) provided an overview of the BSAI and GOA Groundfish Plan Team meetings and recommendations. The Council has received the SSC and AP reports and oral public comment on this issue.

Gerry Merrigan moved to approve the proposed GOA specifications for 2009/10 OFLs and ABCs as noted on the hand-out labeled "GOA SSC OFL/ABC recommendations and AP TAC recommendations for 2009/10" and set the 2009/10 GOA TACs equal to ABC for all stocks with the following exceptions:

(1) P. cod TAC is reduced according to the action memo (page 2) to account for the apportionment to the State waters fishery in 2009 and 2010;

(2) Roll over the 2008 TAC for 2009 and 2010 for:

- f. Shallow water flatfish and flathead sole in the Central and Western GOA**
- g. Arrowtooth flounder for all areas**
- h. Other slope rockfish in the EYAK/SEO**
- i. GOA Atka mackerel**
- j. GOA other species**

Additionally, the Council adopts the proposed GOA halibut PSC apportionments, annually and seasonally, for 2009-2010 as noted in the action memo C-7(b)(4).

The Council also adopts the BSAI OFL, ABC and TAC recommendations for 2009/10 as shown on the hand-out labeled, "The AP Proposed BSAI OFL, ABC and TAC recommendations for 2009/10," and the Council adopts Tables 8A, 8B, and 8C, apportionment of PSC allowances in the BSAI, and the Council adopts the halibut discard mortality rates and noted in Table 9 of the Action Memo, noting that there will be new CDQ annual halibut discard mortality rates available in December. The motion was seconded by Denby Lloyd and carried unanimously. The groundfish specifications and allocations for 2009/10 are included as Appendix VII to these minutes.

Regarding the recommendation of the Advisory Panel to change the release date for halibut apportioned to the BSAI rockfish fishery to April 15, Council members determined that this would better be addressed separately from the annual spec-setting process and asked that it be put on the December agenda for discussion.

The Chairman announced that the Groundfish Plan Team appointments recommended by the SSC were approved during the Council's executive session:

Dr. Nancy Friday, Dr. Paul Spencer and Dr. Michael Dalton to the GOA Groundfish Plan Team, Dr. Dana Hanselman, and Dr. Alan Haynie to the BSAI Groundfish Plan Team, and Dr. Brian Garber-Younts to the BSAI Crab Plan Team.

D. OTHER ISSUES

D-1 Aleutian Island Sideboards

This agenda item was deferred to a future meeting because of time constraints.

D-2 Miscellaneous Groundfish Management

ACTION REQUIRED

- (a) Committee report on comprehensive data collection.**
- (b) Discussion paper on BSAI Fixed gear parallel fisheries.**
- (c) Discussion paper on BSAI bottom trawl sweep requirements.**
- (d) Receive report on P. cod area split (BS and AI) and take action as necessary.**
- (e) Discussion paper on Amendment 80 vessel replacement provisions.**

BACKGROUND

(a) Comprehensive data collection

The data collection committee is scheduled to meet on Tuesday, September 30th. The committee will report to the Council on the progress achieved at that meeting.

NOTE: This report and agenda item was removed from the agenda prior to the beginning of the beginning of the Council meeting.

(b) BSAI Fixed Gear Parallel Fisheries

At its April 2008 meeting, the Council asked that staff develop a discussion paper on potential Council actions regarding Federal permit and licensing requirements for vessels that participate in the parallel waters fisheries. Specifically, the Council requested that staff focus the discussion paper on hook-and-line and pot CPs participating in the BSAI Pacific cod parallel waters fishery. During 2008, 5 fixed gear CPs participated in the AI parallel waters Pacific cod fishery that do not have the Federal permits and LLP licenses needed to participate in the AI Federal waters fishery. This parallel waters activity may be circumventing the intent of previous decisions made by the Council regarding license limitation and endorsements, sector allocations, and catch reporting. The intent of this discussion paper is to explore potential management measures that could apply specifically to fixed gear CPs that participate in the BSAI Pacific cod parallel waters fishery, but could also be applied more broadly to other parallel waters fisheries. The discussion paper is attached as Item D-2(b).

The discussion paper examines the possible goals, objectives, elements, and options for revising the Federal permit and licensing requirements for vessels fishing in parallel waters. The paper begins with a brief description of the management issues and a review of the regulatory context. The background section is followed by a discussion of the possible purpose and need of this action. Finally, the paper describes the elements and options that the Council could consider, if it elects to advance this action for analysis. At this meeting, the Council's action is to review the draft problem statement and options, and revise them as necessary for further analysis.

(c) BSAI bottom trawl sweep requirements

At the June 2008 meeting, the Council initiated an analysis to require modified trawl sweeps in Bering Sea flatfish bottom trawl fisheries. The Council requested staff to bring forward a discussion paper in October that identified the problem statement and alternatives that were originally analyzed with respect to this action as part of the June 2007 Bering Sea Habitat Conservation action, BSAI Groundfish FMP Amendment 89. The discussion paper is attached as Item D-2(c)(1).

Although the sweep modification for flatfish trawls in the Bering Sea was included in the preferred alternative for Bering Sea Habitat Conservation, the modification was not included in Amendment 89. Action was deferred because of implementation issues with regard to the practicality and enforceability of requiring the modified sweeps on all vessels participating in the fishery. The Council received a report in June 2008 from John Gauvin and Dr Craig Rose on additional field testing and research to resolve the challenges of using the modified sweeps on vessels without net reels, clamps and other methods of attaching the discs to combination rope (two-inch diameter fabric over cable material commonly used for trawl sweeps), and spacing of the discs to achieve the habitat benefits while also achieving feasibility in terms of being able to roll the modified discs onto net reels and sweep or main wire winches.

On September 8, 2008, the Council sponsored a public workshop in Seattle to discuss implementation issues for the proposed trawl sweep modification. Mr. Gauvin and Dr Rose

presented their gear design and field testing results, and Melanie Brown, of NMFS Alaska Region, discussed the draft regulation that would implement the required modification. About 30 people attended, and discussed monitoring and enforcement issues arising from the draft regulation. A report from the workshop is attached as Item D-2(c)(2).

The Council's action at this meeting is described in Section 8 of the discussion paper. Primarily, the Council's task is to review the problem statement and alternatives, and amend them as necessary. Staff has requested particular clarification regarding the Council's intention for the reopened area, and who may be allowed to fish in the area (discussed in Section 7 of the discussion paper). Additionally, there has been some discussion in the past about what type of analysis is required to implement this action. It appears to staff that it would be simplest to create a new EA/RIR/IRFA for this action, which can tie off the information included in Amendment 89, and also include any new information as appropriate. Unless the Council disagrees with this course of action, staff will proceed accordingly.

Finally, as part of this amendment, staff would like to include a housekeeping change to the BSAI Groundfish FMP. The proposed change is not substantive, but would correct the description of the Crab and Halibut Protection Area, which was effectively superseded by the Nearshore Bristol Bay closure. Specific information on this change will be included in the Initial Review Draft of the analysis.

NOTE: This report and agenda item was deferred to a future meeting because of time constraints.

(d) Pacific cod area split

The issue of whether the BSAI P. cod stock *should* be managed separately in the Bering Sea (BS) and Aleutian Islands (AI) based on biological evidence has been of particular interest to the Council for several years. The Council, however, could select a preferred alternative to allocate Pacific cod quota between the two subareas from among four proposed allocation options under a proposed BSAI Groundfish FMP amendment *before* the TAC could be split based on P. cod biology or other policy objectives. For reference, the February 2007 discussion paper is attached as Item D-2(d)(1).

In February 2007, the Council tabled any further action on apportioning BSAI Pacific cod sector allocations between the two areas, pending additional information from the trawl latent license action and ongoing BSAI Pacific cod biological research. The trawl recency action would reduce the number of BS and AI trawl licenses by approximately 10-20 percent. Staff from the NMFS AFSC presented summaries of scientific studies related to management of Pacific cod to the SSC in February 2008. The SSC requested a comprehensive review of relevant information related to stock structure Item D-2(d)(2). The attached report (Item D-2(d)(3)) summarizes existing biological information on Pacific cod that may be useful in evaluating whether to proceed with the proposed FMP amendment.

NOTE: This report and agenda item was deferred to a future meeting because of time constraints. A motion to that effect was offered and carried, 7 to 3, with Cotten, Dersham and Fields voting no.

(e) Amendment 80 vessel replacement provisions

On September 14, 2007, the NMFS published a final rule implementing Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutians Islands Management Area. The final rule included a vessel restriction based on NMFS's interpretation of the Capacity Reduction Program (CRP), a statutory program enacted in December 2004 as part of the Consolidated Appropriations Act of 2005. The final regulations reflected NMFS's interpretation that the CRP provided not only eligibility criteria for vessel owners' participation in the sector, but

also criteria regarding which vessels could be used when fishing for species covered by Amendment 80.

On May 19, 2008, the U.S. District Court for the Western District of Washington issued a decision invalidating those Amendment 80 regulation provisions that limit the vessels used in the Amendment 80 program. In *Arctic Sole Seafoods, Inc. v. Gutierrez*, the district court found the statutory language of the CRP ambiguous as to whether replacement of qualifying vessels with non-qualifying vessels was permissible, and found the agency's interpretation of the statute to be arbitrary and capricious.

At this meeting, NMFS will present a discussion paper on how the agency will comply with the court's ruling concerning replacement vessels for the Amendment 80 program. The discussion paper is attached as Item D-2(e)(1).

Report of the Scientific and Statistical Committee

The SSC only addressed agenda item D-2(d), the BSAI Pacific cod area split. The SSC stated that, "Based on a review of the biological information and comments from the groundfish plan team, the SSC feels that there is sufficient justification for a split in Pacific cod between the BS and AI areas. The SSC recommends that a precautionary approach should be taken by specifying separate ABCs for this species. For addition and more detailed comments, see the SSC Minutes, Appendix ??? to these minutes.

Report of the Advisory Panel

(b) BSAI Fixed Gear Parallel fisheries

The AP recommended the Council proceed with analysis on the proposed problem statement and elements and options with the following additions:

- Extend Option 1 to apply to vessels that hold either LLPs *or* FFPs.
- Discuss appropriate time period for surrendering Federal permits.
- Revise Option 3 to state that IFQ permit holders would not be eligible to fish their IFQ on board any CP that fishes in the BSAI Pacific cod parallel waters fishery during a given calendar year or other time period specified by the Council.

The AP stated that while there may be some value in this action, there are much bigger issues regarding parallel fisheries that the Council should identify and devote resources to.

(c) BS Bottom trawl sweep requirements

The AP recommended that the purpose and need statement reflect that the Council intends to evaluate potential gear modification measures for non-pelagic trawl gear used to target flatfish. Research has suggested that these modifications may allow efficient harvest operations while reducing the impact of trawl sweeps on the seafloor. Further, the flatfish industry has identified an area east of St Matthews Island (now referred to as the 'wedge'), now closed as part of the Northern Bering Sea Research Area, as important to the fishery due to industry report of high concentrations of flatfish and low concentrations of other bycatch species. Therefore, the Council will consider exempting the flatfish fishery from the closure of that portion of the Northern Bering Sea Research Area, or removing that portion from the NBSRA. This action is needed to ensure fishers can efficiently harvest flatfish as flatfish stocks are likely to shift locations in the Bering Sea.

The AP noted that there may be a discrepancy on the position of the Eastern border of the St. Matthew's Habitat Conservation Area and the Western border of the 'wedge.' The AP recommends that Council direct staff to review these boundaries with regard to the Council intent at the time of final action.

The AP recommended that the Council endorse the inclusion of a housekeeping change to the FMP as part of the proposed amendment.

The AP recommended that the Council direct industry to work with NMFS Enforcement personnel to address practicable enforcement of the regulations associated with this action.

(d) P. cod area split

The AP recommended that the staff develop this issue for initial review. The AP would like this amendment to be scheduled for final action along with the BS/AI cod split for the 2010 year. Further, AP recommended that the Council establish a BSAI cod split allocation committee and charge that committee with creating allocation neutral proposals for fishing under a BSAI cod split.

(e) Amendment 80 vessel replacement

The AP recommended that the Council direct staff to develop an analysis of recommended changes to FMP text and regulatory language to address lost vessels in the Amendment 80 program.

COUNCIL DISCUSSION/ACTION

(b) BSAI Fixed Gear Parallel Fisheries Discussion Paper

The Council received a review of the discussion paper from Jeannie Heltzel (Council staff), the recommendations of the Advisory Panel, and public comment on this issue.

Gerry Merrigan moved:

Initiate a regulatory amendment analysis (EA/RIR/IRFA) for fixed gear CP vessels participating in BSAI Pacific cod parallel water fisheries:

1.) Adopt the definition of a CP (p. 6 of the discussion paper) consistent with current interpretation used by NMFS (i.e., actual use as a CP rather than potential use).

2) Adopt purpose and need statement (p. 11 of the discussion paper). Add (new):

A.) (after 'catch reporting'): "Additionally, the increased participation in the BSAI CP H&L sector in the parallel fishery undermines recent capacity reduction undertaken by that fleet."

B.) (mid-paragraph, after 'in recent years.') "This vessel activity has resulted in shortened seasons, exacerbated the race for fish, and increased concentration of Pacific cod harvest inside of 3 miles."

3.) Adopt elements and options (p. 12 of discussion paper) with the following revisions:

A.) Option 1: Require any CP pot or hook-and-line vessel with an LLP or an FFP (AP and staff suggested revision p. 13) to have an Amendment 67 Pacific cod endorsement and the appropriate area endorsement to participate in the BSAI Pacific cod parallel waters fishery.

i.) Suboption (new) Additionally require the above federally licensed vessels in parallel waters to adhere to season closures of the BSAI Pacific cod CP pot or CP hook-and-line sectors (as defined in A. 85) corresponding to the sector the vessel is operating in.

B.) Option 2. Require any CP pot and CP hook-and-line vessel with an LLP or FFP to surrender the LLP and FFP in order to participate in the BSAI Pacific cod parallel waters fishery.

ii.) Suboption: In the BSAI, CP pot and CP hook-and-line vessels with a CP designation on their FFP, can only surrender and/or reactivate the FFP:

- a.) once a calendar year,**
- b.) once every eighteen months, or**
- c.) once every two years**

(AP and staff suggested revision, p. 16)

C.) Option 3. (old Option 5). Potential actions for vessels with no Federal permits or licenses (possible complementary action by BOF).

Include in the analysis a brief discussion of the CP H&L sector participation in the Capacity Reduction Loan Program (buyback). (Note: IFQ option deleted).

The motion was seconded by Duncan Fields.

Mr. Merrigan noted that recent activities in the State Pacific cod parallel fishery may be affecting Federal fisheries and undermining the intent of other Council programs and that the issue needs to have further study.

Mr. Dersham pointed out that the discussion paper was also reviewed by the Joint Protocol Committee and it will be important to coordinate closely with the Board of Fisheries on the issue.

Dave Benson moved to amend the motion to add an additional suboption (iii) under Option 3.B., Option 2:

- iii. permanently**

The motion was seconded by Bill Tweit and carried without objection.

Duncan Fields moved to amend Option 3.C, to delete the introductory "Option 3. (old option 5)" and reword the option as follows: "Include in the analysis a brief description of potential actions for vessels with no Federal permits or licenses and possible complementary action by the Board of Fisheries."

The motion was seconded and carried without objection. The main motion, as amended, carried without objection.

D-2(c) and (d) were removed from the agenda because of time constraints.

With regard to D-2(d), Report on Pacific cod area split, a motion was offered to remove it from the current agenda and carried, 7 to 3, with Cotten, Dersham and Fields voting no.

D-2(e) Amendment 80 Vessel Replacement Provisions - Discussion Paper

The Council received a review of the discussion paper from Glenn Merrill (NMFS staff), the Advisory Panel report, and oral public comments on this issue.

John Henderschedt moved to approve the recommendations of the Advisory Panel to direct staff to develop an analysis of recommended changes to FMP text and regulatory language to address lost vessels in the Amendment 80 program. This analysis should specifically examine whether or not the vessel replacement language in the American Fisheries Act would limit the size of eligible replacement vessels per the resulting FMP amendment.

The motion was seconded by Dave Benson.

Mr. Henderschedt said that at this time he thinks the analysis should address only the issue of changing the current regulations to comply with the recent court order. The more complex issue of co-op formation should be further discussed and explored in a separate action.

Sam Cotten moved to amend to add sideboard issues and other vessel size and type considerations, as explored in the discussion paper. The motion was seconded and failed, 6 to 5, with Cotten, Fields, Lloyd, Mecum, and Olson voting yes.

The main motion carried without objection.

D-3 Staff Tasking

ACTION REQUIRED

- (a) Review tasking and committees and provide direction.**
- (b) Receive report from AI Ecosystem Team.**

BACKGROUND

- (a) Committees and Tasking.**

The list of Council committees is attached as Item D-3(a)(1). Item D-3(a)(2) is the three meeting outlook, and Item D-3(a)(3) and Item D-3(a)(4) respectively are the summary of current projects and tasking. In addition, an updated workplan for implementing the programmatic groundfish management policy is attached Item D-3(a)(5). The Council may wish to discuss tasking priorities to address these projects, as well as potential additions discussed at this meeting, given the resources necessary to complete existing priority projects.

At the June Council meeting, there was some discussion of issues associated with the staff tasking agenda item, specifically, the process, public notice, and appropriate role of this agenda item. The Council tasked its Executive Director to work with NOAA GC on this and report back in October about recommendations on what we should or should not do within this agenda item, and consider putting this guidance in the Council's Statement of Organization, Practices, and Procedures (SOPPs).

The primary purposes of the staff tasking agenda item are as follows:

- To review the list of ad hoc committees and membership on those committees, and revise as needed to add or eliminate committees, fill vacancies on committees, etc.
- To review the list of projects and analyses that have previously been tasked to staff, and reprioritize as needed.
- Set priorities and indicate preferred timelines for completion of projects or analyses tasked at the current meeting, relative to the list of previously tasked projects.
- To review the 3 meeting outlook and recommend priorities relative to timing of Council action, subject to the Executive Directors discretion relative to staff workloads.

- To review briefing papers as they relate to staff workloads or special projects, such as improving stakeholder participation, communication and outreach plans, changes to the SOPPs; etc.
- To review progress on the Council's groundfish management policy workplan to achieve the priority objectives.

The staff tasking item has also been used to:

- Initiate new analyses or discussion papers based on public input, a call for proposals, or Council initiative.
- Revise problem statements and alternatives for analyses that have been previously tasked, but that issue for analysis was not listed as an action item on the meeting agenda.
- Although this has not occurred in recent years, and was an infrequent occurrence, a member would raise a vote taken earlier in the meeting for reconsideration during staff tasking.

There was a specific concern raised in June with regards to modifying problem statements and alternatives for a previously tasked item (but one not on the current agenda) during the staff tasking agenda item. The concern was about the public notice that the Council was taking action on something not listed on the agenda, and the Council wanted to know if it was a legal requirement or was this something the Council would want to address as a policy. NOAA GC advised that Council Action as described in the Magnuson Act means more than just taking a "council vote" on staff tasking issues (i.e., initiating analyses or discussion papers, etc.), and meant when the Council was taking action on a recommendation to the Secretary, i.e., fishery management plans, fishery management plan amendments, and regulatory amendments. In other words, the Council could legally change the alternatives and problem statement for a previously tasked item, even if it was not specifically listed on the agenda. Additionally the Council also receives numerous unsolicited proposals from the public, either in writing and/or during public testimony. Occasionally the Council initiates analyses based on these proposals, which is also a legally allowable use of this agenda item.

So then the question is: Does the Council want to adopt a specific policy that either allows or disallows the modification of alternatives or problem statements during the staff tasking agenda item, or clarifies the treatment of unsolicited proposals? And if so, would this be a formal policy that would be included in the SOPPs, or just as an informal policy (which could allow changes made in extraordinary situations)?

Item D-3(a)(6) is a series of letters and information we received last week, requesting Council action (plan amendment) to close the nearshore Bristol Bay trawl area. This is a follow up from an earlier inquiry from the Qayassiq Walrus Commission.

(b) Aleutian Islands Ecosystem Team.

The Council's Aleutian Islands Ecosystem Team met September 9-10, 2008, in Seattle. The Team reviewed the AI FEP, and the FEP interactions and indicators. The most recent data on the available FEP indicators will be presented to the Council as part of the annual Ecosystem Considerations report, in December, along with the SAFE reports. The Team suggested revisions to the indicators and other parts of the document, and intends to write an addendum to the FEP that will be presented to the Council in 2009. The Team identified some intermediary research proposals, which could help to provide information necessary for the Council to monitor some of the FEP's important interactions for which no information is currently available. Additionally, the Team provided some guidance to the Ecosystem Committee and the Council about ways to continue implementation of the FEP. The Team's report is attached as Item D-3(b)(1). The Ecosystem Committee will meet on September 30 to discuss the Team's report, and minutes will be available at the Council meeting.

Neither the SSC nor the AP addressed this agenda issue.

COUNCIL DISCUSSION/ACTION

[NOTE: Stephanie Moreland participated in this discussion for Denby Lloyd.]

Executive Director Chris Oliver provided an overview of the issues described in the action memo for staff tasking, the revised 3-meeting outlook, committee list, and the current Project Summary, and Diana Evans (Council staff) provided a review of the Aleutian Islands Ecosystem Team report. The Council also received oral public comments on staff tasking issues.

Staff Tasking Purposes

Based on a previous Council discussion, the Executive Director was asked to provide a synopsis of current Council practices within the staff tasking agenda item, particularly relating to initiating analyses and/or revising problem statements or alternatives for analyses in progress but not on the current agenda. Mr. Oliver concluded, after consulting with NOAA General Counsel regarding public notice requirements, that 'Council action' refers to formal action taken by the Council to forward recommendations to the Secretary of Commerce. Adjusting portions of amendments in process or initiating new analyses does not constitute formal Council action and is therefore appropriate. It was noted that the Council does try to give as much notice as possible on issues that may be addressed during a meeting. The Council discussed whether or not the Council's current Statement of Operating Practices and Procedures should include a policy with regard to the use of the staff tasking agenda item, but did not give any further direction to the staff at this meeting. Council members indicated that it is important to retain some flexibility in dealing with issues that arise during a meeting and the custom has been to initiate a discussion paper rather than a formal analysis if there is any indication that the issue is controversial.

3-Meeting Outlook/Agenda Issues

Mr. Fields suggested moving the GOA Rockfish Pilot Program discussion paper to the December meeting, depending on staff resources. Mr. Oliver responded that scheduling the paper for December will depend on the analyst's workload. Mr. Fields asked that the discussion paper be placed on the December agenda if possible, deferring to the Executive Director and Chair to make the decision.

Duncan Fields moved that a discussion of allocation to and use of halibut PSC in the entry-level sector of the GOA Rockfish Pilot Program be included in the discussion paper on that program. The motion was seconded.

John Henderschedt moved to amend to add a discussion of possible exemption from seasonal halibut bycatch limits. The motion was seconded and carried without objection. The amended main motion carried without objection.

Mr. Hyder suggested delaying the discussion paper on Bering Sea trawl sweeps until February 2009 based on discussion with industry participants who would like to have a workshop and do some additional work on positive solutions. There was no objection to this suggestion.

Mr. Mecum noted that staff has advised that the Discussion paper on the Amendment 80/lost vessel issue will not be available for the December meeting and asked that it be placed on the February agenda. There was no objection to this suggestion.

Proposal for Skate Longline Fishery-PWS

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Dave Benson referred to an earlier discussion directing staff to send a letter to the Board of Fisheries regarding a proposal to create a skate longline fishery in Prince William Sound and suggested that a copy of the Plan Team report be attached. It was noted that in December the Council will have a report on proposals before the Board of Fish of interest to the Council and if the Council has particular recommendations for the Board they could be brought up at that time or during the joint Council/Board meeting in February. The Council agreed that a letter to the Board is not necessary at this time because the Council will have an opportunity to discuss it and other proposals in December before making recommendations to the Board, unless staff determines, through communication with Board staff, that the information on the skate longline fishery issue is needed before that time.

Marine Protection Area Nomination Process

Mr. Tweit asked for a brief review of the issue. Mr. Oliver reminded the Council of the Advance Notice of Rulemaking on the MPA nomination process and noted that staff is preparing a briefing paper for Council members for the December meeting. Regarding the National Committee, he suggested that the Council may wish to think about whether they would like to nominate someone to one of two seats that will be opening up.

Electronic Monitoring

Mr. Tweit suggested that staff determine the relevance of the results of the recent electronic monitoring workshop and associated issues to the Council's PSEIS priorities and provide a briefing to the Council at a future meeting.

Bristol Bay Trawl Closure Areas

Gerry Merrigan moved that staff prepare a discussion paper on the Qayassiq Walrus Commission's request for trawl closures in the northern Bristol Bay trawl area. The paper should provide historical information on the seasons, catch, participation, number of vessels, bycatch of crab, halibut, herring, Chinook salmon, bycatch rates if possible, and observer coverage. Additionally, discussion of potential gear conflicts with the local halibut fishery and/or offloading, and potential impacts, if any, on the walrus populations as expressed in walrus counts, or disturbance. The motion was seconded and carried without objection. No timing for presentation of the paper was indicated at this time, but it was suggested that the March/April meeting in Anchorage would be appropriate, if possible.

Mr. Merrigan also suggested that industry involved in fisheries in the area meet with local residents/fishermen to try to work on solutions to some of the issues brought up by the Walrus Commission.

ADJOURNMENT

Chairman Olson announced that the Council approved the appointment of Jerry Downing to the Advisory Panel through the end of 2008. The meeting was adjourned at approximately 5:03pm on Tuesday, October 7, 2008.

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