

Appendix 1: Public Comments

The following public comments were received for the Notice of Intent to prepare an Environmental Impact Statement for the Gulf of Alaska groundfish trawl fishery bycatch management program.

1. E. Weiss, Aleutians East Borough
2. J. Bonney, Alaska Groundfish Data Bank
3. S. Carroll, Alaska Marine Conservation Council
4. T. Keegan
5. M. Pinto
6. D. Maynes
7. G. Kirk
8. L. Wilbur
9. T. Evers
10. K. Dutton
11. J. Mulcare
12. G. Myrick
13. L. Rhodes
14. L. Bassett
15. T. Berg
16. C. Wheaton
17. K. Riley
18. S. Glaholt
19. T. Harrington
20. A. Tennant
21. K. Zafren
22. J. Miller
23. D. Black
24. C. Bingham
25. B. Uher-Koch
26. J. Sonin
27. J. Chesnut
28. S. Morse
29. B. Ashley
30. B. Connor
31. C. Johnson
32. C. Woodley, Groundfish Forum
33. City of Kodiak and Kodiak Island Borough
34. C. Whiteley
35. D. Smith
36. D. Ashley
37. S. Jud, Environmental Defense Fund
38. H. Berns, Icicle Seafoods
39. J. Chandler
40. J. Public
41. J. Cook
42. J. Plesha, Trident Seafoods
43. J. Stoll
44. K. Cochran

45. K. Leslie
46. K. Cochran
47. L. Woodard
48. M. Chandler
49. M. Alferi
50. H. Mann, Midwater Trawlers Cooperative
51. J. Warrenchuk, Oceana
52. M. Okoniewski, Pacific Seafood
53. P. Olson, The Boat Company
54. R. Kreuger, Alaska Whitefish Trawlers Association
55. R. Puratich
56. S. Brooks
57. S. Mallison
58. S. Iankov
59. S. Kram
60. T. Kishimoto, International Seafoods
61. T. Evich
62. W. Fejes, Polar Seafoods

Docket ID: NOAA-NMFS-2014-0150

August 28, 2015

Thank you for the opportunity to provide comments as part of the scoping process for the EIS related to a Gulf of Alaska groundfish fisheries bycatch management program.

The Aleutians East Borough (AEB) encompasses the six communities of Akutan, Cold Bay, False Pass, King Cove, Nelson Lagoon and Sand Point, along the Alaska Peninsula and on the Aleutian and Shumagin Islands, nestled between the Bering Sea and the Gulf of Alaska (GOA). According to AEB Municipal Code, the AEB Natural Resources Department is responsible for the study and monitoring of fish and wildlife, and to provide assistance to fishery managers. The Department is also tasked with maximizing benefits to Borough residents from the use of these natural resources.

The Aleutians East Borough fishing communities of Sand Point, False Pass and King Cove are unique single processor towns. A fishing vessel with local captain and crew will feed up to 15 mouths in the community. All of our local businesses are dependent on continued fishing opportunities.

The AEB Natural Resources Department supports an effort by the North Pacific Fishery Management Council (NPFMC) to formulate a trawl bycatch management plan for the GOA fisheries and communities. However the Resources Department does not support any new catch share program that would permanently allocate shares to individuals. Catch share programs that use a vessel's historical landings to convert them into "shares" that can be bought and sold like a commodity, can eliminate jobs and devastate fishing communities.

In April 2010, Aleutians East Borough Mayor Stanley Mack wrote to the House Natural Resources Committee, Oceans Subcommittee, "Based on the experience of the Aleutians East Borough, we believe the implementation of a Catch Shares system, which privatizes publicly owned fisheries resources, is destructive to local fishermen and communities. We also believe the record shows that implementing Catch Shares does not necessarily protect fisheries resources, and that there are other existing management tools to accomplish this which are less destructive to communities and fishermen".

In January 2013 the Aleutians East Borough Assembly stated nine goals for fishery management programs, in AEB Resolution 13-16:

1. Provide effective controls of prohibited species catch and provide for balanced and sustainable fisheries and quality seafood products.
2. Maintain or increase target fishery landings and revenues to the Borough and AEB communities.
3. Maintain or increase employment opportunities for vessel crews, processing workers and support industries.
4. Provide increased opportunities for value-added processing.
5. Maintain entry level opportunities for fishermen.
6. Maintain opportunities for processors to enter the fishery.
7. Minimize adverse economic impacts of consolidation of the harvesting or processing sectors.
8. Encourage local participation on harvesting vessels and use of fishing privileges.
9. Maintain the economic strength and vitality of AEB communities.

The AEB Natural Resources Department urges the NPFMC to continue to advance the GOA Trawl Bycatch Management proposal **only as it meets these goals.**

The AEB Natural Resources Department supports a program that includes a cooperative management structure. We believe cooperative management does not necessitate quota ownership. Instead, quota for the directed fishery could be allocated annually, and be associated with some amount of prohibited species catch (PSC) allowed. Through the cooperative, PSC could be utilized more efficiently, and encourage best fishing practices.

The current status quo system, License Limitation Program (LLP) with the sector split between gear groups and vessel designations, is working for Western GOA fishermen and communities, and should be maintained. In recent years our local trawl fishermen have fished under a voluntary agreement for a cooperative plan to limit bycatch of Chinook salmon, a potential template for future trawl bycatch management. We believe the LLP program combined with a cooperative management structure would be the most appropriate regime for GOA trawl bycatch management.

If a catch share plan like the one currently proposed in the October 2014 motion by the NPFMC is to be implemented, the AEB Natural Resources Department supports inclusion of a community fishing association (CFA) as described in Alternative 3 of the motion. The AEB has received a NFWF grant to work with stakeholders in the GOA to put a CFA in place according to NPFMC and MSA requirements.

Bycatch can be unpredictable and hard caps on PSC can be constraining, for example NMFS had to close the GOA non-pollock non-rockfish 2015 season gulf-wide for trawl catcher vessels on May 3rd of this year due to the fleet exceeding the annual 2700 Chinook salmon bycatch cap. We believe that extrapolated bycatch data onto unobserved vessels was part of the reason the cap was exceeded. Although the 58-ft limit trawl fleet in the AEB communities of Sand Point and King Cove rarely participate in this fishery later in the year, we understand the importance of this late season fishery to the community of Kodiak, and the AEB joined the request by the community of Kodiak to the NPFMC in June 2015 for an emergency regulation to allow additional chinook PSC to prosecute the fishery.

We understand that placing observers in fisheries is important for better data that results in improved fisheries management. The AEB fully supports immediate implementation & utilization of electronic monitoring in place of human observers on all fishing vessels. When human observers must be used, they should be allowed to embark/disembark to tender vessels in the fishery.

In August 2015 the AEB received a report entitled Western Gulf of Alaska Trawl Bycatch Management Social Impact Assessment written and researched by Dr. Katherine Reedy. The AEB contracted with Dr. Reedy in June 2014 to conduct an analysis of the foreseeable impacts of the proposed GOA trawl bycatch management program on AEB communities and local fishermen. The study is an accurate portrayal of the small vessel trawl fleet that fish for pollock and Pacific Cod, home-ported in Sand Point and King Cove, and of fishery management actions impacting our region. We have shared the report with NPFMC staff and have publicly posted the document at <http://www.aebfish.org/wgoatbmpsia.pdf>. Key Findings from the study can be found listed on pages 9 & 10 of the document. Our hope is that this Social Impact Assessment will help inform the critical decisions the Council will need to make about GOA trawl bycatch management.

The communities that rely on this fish resource must not be forgotten as this program moves forward.

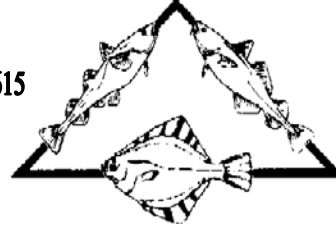
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August 28, 2015

Glenn Merrill

Assistant Regional Administrator for Sustainable Fisheries NMFS, Alaska Region

NOAA-NMFS-2014-0150

Re: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for any Gulf of Alaska (GOA) trawl bycatch management program

Alaska Groundfish Data Bank (AGDB) is a member organization that includes the majority of the shorebased processors located in Kodiak and trawl catcher vessels home ported in Kodiak that participate in the Gulf of Alaska trawl fisheries.

We have been advocating for GOA trawl rationalization since 2001. Except for the shoreside cod fishery in the Bering Sea, most of which operate under AFA pollock cooperative rules, the Gulf of Alaska trawl fisheries are the only trawl fisheries remaining in Alaska and on the West Coast which have not been rationalized.

AGDB members support an analysis of ALTERNATIVE 2 as outlined in the Council's October 2014 motion for the EIS:

- It is a reasonable alternative, has undergone extensive scoping already and meets the Council's Purpose and Need Statement in that it would:
 - Create a new management structure which allocates allowable harvest to individual, cooperatives, or other entities, which will mitigate the impacts of a derby-style race for fish.
 - Improve stock conservation by creating vessel-level and/or cooperative-level incentives to eliminate wasteful fishing practices, provide mechanisms to control and reduce bycatch, and create accountability measures when utilizing PSC, target, and secondary species.
 - Reduce the incentive to fish during unsafe conditions and improve operational efficiencies.
 - Increase the flexibility and economic efficiency of the GOA groundfish trawl fisheries and support the continued direct and indirect participation of the coastal communities that are dependent upon those fisheries.
 - Authorize fair and equitable access privileges that take into consideration the value of assets and investments in the fishery and dependency on the fishery for harvesters, processors, and communities.
 - Improve the ability of the groundfish trawl industry to achieve Optimum Yield (OY)
- We support analyzing Alternative two with the following modifications (rationale is detailed later in the letter):
 - Analyze the allocations of secondary species to consider total catch as well as retained catch.
 - Analyze the effects of increasing the pollock trip limit from 136 mt to 159 mt.
 - Analyze the effects of changing the trawl cod directed fishery season to Jan 20 – June 10 and June 10 – Nov 1 with no change to the A and B seasonal allocations.
 - Analyze the feasibility and effects of requiring 100% retention for the inshore sector of trawl-caught pollock and cod from Jan 20 – Nov 1 and increasing the MRA's for pollock and cod in other targets for the period Nov 1 – Dec. 31 to reduce regulatory discards.
 - Analyze the effects of increasing the Chinook PSC cap from 32,500 to 40,000 fish.
 - Compare and contrast community protection mechanisms within alternative 2 versus alternative 3.
 - Analyze how best to resolve the parallel fishery with a new management structure.

Historical Background of GOA Rationalization: Congress has recognized the importance of rationalization for the Gulf of Alaska groundfish fisheries since 2000. As part of the Consolidated Appropriations Act of 2001 (Public Law 106-554 <http://www.gpo.gov/fdsys/pkg/PLAW-106publ554/html/PLAW-106publ554.htm>), Congress directed the North Pacific Fishery Management Council to examine fisheries under its jurisdiction to determine whether rationalization is needed—

“The North Pacific Fishery Management Council shall examine the fisheries under its jurisdiction, particularly the Gulf of Alaska groundfish and Bering Sea crab fisheries, to determine whether rationalization is needed. In particular, the North Pacific Council shall analyze individual fishing quotas, processor quotas, cooperatives, and quotas held by communities. The analysis should include an economic analysis of the impact of all options on communities and processors as well as the fishing fleets. The North Pacific Council shall present its analysis to the appropriations and authorizing committees of the Senate and House of Representatives in a timely manner.”

To date, the Council has not fully satisfied this congressional mandate (the crab fisheries were rationalized in 2005; the Central Gulf trawl rockfish fishery was rationalized in 2007 as a precursor to rationalizing the GOA groundfish fisheries). Changes in administrations for the State of Alaska have led to multiple starts and stops for this initiative within the Council process. Under the Murkowski Administration, consideration of a Gulf rationalization plan moved forward smoothly starting in 2001. Council progress was halted abruptly in 2006 when the Palin Administration took over. Under the Parnell Administration, the Council started to consider and scope cooperative style management of pollock in 2010; in 2012, the Council re-energized and focused their attention on Gulf trawl rationalization as a potential solution to bycatch management with a particular emphasis on halibut and Chinook salmon Prohibited Species Catch (PSC) within the trawl fisheries (termed “Gulf Trawl Bycatch Management” or GTBM program). However, with the change to Governor elect Walker in 2014, the Administration and the newly appointed Alaska Department of Fish & Game Commissioner Sam Cotten (in December 2014) opted to delay further consideration of Gulf Trawl Bycatch Management within the Council process until at least October 2015. The Commissioner on behalf of the Administration suggested that they wanted to review the cooperative catch share program as outlined in the October 2014 Council motion to determine if and how the Council and the State of Alaska might want to move forward with Gulf Trawl bycatch management.

Need for bycatch management “tools”: Since 2011, the Council has adopted a number of actions to reduce prohibited species catch (PSC) in the Gulf of Alaska trawl fisheries including the implementation of Chinook salmon PSC limits in the GOA pollock and non-pollock fisheries and reducing halibut PSC caps:

1. Amendment 93 (effective August 2012) to the GOA FMP imposed a hard cap of 25,000 Chinook in the Gulf pollock fishery (6,684 Chinook limit in Area 610 Western Gulf; a separate cap of 18,316 Chinook for the Areas 620/630 in the Central Gulf);
2. Amendment 95 reduced the GOA trawl halibut PSC by 15 percent, phased in over a three year period (2014 to 2016)
3. Amendment 97 (effective Jan 2015) imposed a hard cap of 7,500 Chinook in the GOA non-pollock trawl groundfish fisheries, further broken down into three sub-limits:
 - a. Central Gulf of Alaska Rockfish program catcher vessel (CV) sector: 1,200 Chinook.
 - b. Central and Western GOA non-pollock, non-rockfish fisheries (CV sector): 2,700 Chinook
 - c. Central and Western GOA non-pollock fisheries, catch processor (CP) sector: 3,600 Chinook

The groundfish trawl fisheries in the Gulf of Alaska are still operating under the arcane “race-for-fish” or limited access fishery structure and do not have the management structure or the tools to fully adapt to these new PSC caps and reductions, especially with an expanding groundfish fleet (new entrants). This was evident by the May 3, 2015 closure of the catcher vessel non-pollock, non-rockfish program trawl fisheries when the fishery exceeded its 2,700 Chinook salmon cap.

Scoping Process: Because of the new GOA PSC management measures, the Council has publically recognized since at least December 2010 that there is a need to develop a new management structure whereby fishery participants are held

accountable and are able to work cooperatively to modify fishing practices to adapt to these new or reduced PSC limits. Relevant council documents from the beginning of this recent scoping process include:

1. December 2010 motion Chinook PSC GOA pollock fisheries: *“The Council also requests staff to provide the following...a discussion of potential benefits, with respect to available bycatch measures and salmon savings, of a cooperative management structure for the GOA pollock fisheries. The discussion should assume a cooperative program for the Central and Western GOA directed pollock catcher vessels. Licenses qualifying for the program would annually form cooperatives that would receive allocations based on the catch histories of members.”*
2. February 2011 discussion paper in response to Dec 2010 Council motion: Bycatch control cooperatives for Gulf of Alaska Chinook Salmon Bycatch. Discusses a *“system of cooperatives that would be intended to reduce Chinook salmon prohibited species catch (PSC). Specifically, cooperative formation, cooperative size, the need to create fishing opportunities for nonmembers of cooperatives, cooperative reporting requirements and continual entry into the cooperatives/fishery due to the amount of latent license.”*
3. April 2011 Council motion on GOA Halibut PSC stated: *“In anticipation of a future discussion, the Council requested that staff prepare a white paper that surveys allocation of prohibited species catch in all fisheries management programs that allocate individual or cooperative catch programs in US, Canada, or other countries.”*
4. September/October 2011 discussion paper in response to April 2011 Council motion – Individual Bycatch Allowances in other fisheries.

The Council focused their process in earnest in June of 2012 when they passed the following motion:

The Council will schedule a specific agenda item, preferably for the October meeting, that begins the process of developing a program to provide tools for effective management of PSC, incentives for the minimization of bycatch, and vessel level accountability for the Central Gulf of Alaska trawl groundfish fishery. The Council should develop a purpose and need statement with goals and objectives for a new fishery management system at that time.

To date, the council has adopted a purpose and need statement and Council staff has prepared five different GBTM discussion papers:

1. October 2012: adopted a Purpose and Need statement, identifying goals and objectives for an action that provides flexible and effectual PSC management tools
2. Feb 2013. Options for catch share program; modified Purpose and Need statement to include WGOA
3. June 2013. State Waters management issues; benefits and detriments of limited duration quota allocations, including non-monetary auctions; potential community protection measures.
4. October 2013. A review of current literature on the effects of catch share programs; summary of the eight proposals that stakeholders presented to the Council in June; discussion of the relationship between State and Federal fisheries that occur in adjacent waters; discussion of early considerations and the Council’s role in the development of a Community Fishing Association
5. April 2014. Discusses program structure defined in Council October 2013 motion; information on bycatch reduction results from other trawl catch share programs in the North Pacific and other regions.
6. October 2014. Review the expanded program structure defined at the April meeting; discuss how the fishery would operate under the proposed design; 2) discuss how well it may meet the Council’s stated objectives; and 3) identify which decision points are necessary to transform the program structure into alternatives for analysis.

A parallel complementary process was started by CGOA trawl industry stakeholders (harvesters and processors) as requested by the State of Alaska and several Council members. The industry workgroup began meeting in February 2012 to start formulating their vision of a purpose and need statement and possible frameworks to provide the necessary tools to meet the Council bycatch management objectives and also create fair and equitable access to the GOA trawl groundfish fisheries that take into account the value of assets and investments in the fishery and dependency of harvesters, processors and communities for consideration by the Council. The participating groups

included: Alaska Groundfish Data Bank (AGDB), Alaska Whitefish Trawlers Association (ATWA), Pacific Seafood Processors Association (PSPA), Groundfish Forum (GFF), United Catcher Boats (UCB) and Mid-Water Trawlers Cooperative (MTC). Extensive discussion and collaboration over multiple meetings resulted in several industry comment letters that were provided to the Council for their GOA Trawl Bycatch Management agenda item. All these documents were reviewed, revised and finally approved over numerous meetings by the diverse members of these large industry groups which in combination represent virtually all Central GOA trawl industry participants, many of which also participate in WGOA trawl fisheries:

1. October 2012 Purpose and Need statement
2. June 2013 GOA Catch Share Program Proposal
3. April 2014 Comment letter C-2
4. October 2014 Comment letter C-7

At the April 2013 meeting, the Council requested that the public bring management alternatives (program proposals) to their June 2013 meeting. The Council scoping call resulted in eight different alternatives. Council staff reviewed and examined these proposals to determine whether the stakeholders proposed structure would meet the Council's purpose and need statement for the action:

1. Americans for Equal Access: IBQ's.
2. Alaska Marine Conservation Council/GOACC: CFA's
3. Industry proposal (AGDB, AWTA, GFF, PSPA, MTC): Cooperative catch shares with target and PSC allocations
4. Groundfish Forum (GFF): Western Gulf directed rockfish species (Northern, dusky, and Pacific Ocean perch) be included in the trawl catcher/processor allocation.
5. Pacific Seafoods: include harvest shares to processors and quota to the "community sector" in any program considered
6. Peninsula Fishermen's Coalition: WGOA IFQ's for both cod and pollock by over/under 60 ft. vessel length
7. United Catcher Boats: WGOA co-op proposal for vessels greater than 60 ft.
8. Christopher Riley and Joseph Plesha (Trident Seafoods): cooperatives for pollock and cod, each linked to a processing facility; harvesters, processors and communities all allocated QS. PSC avoidance incentives.

Through Council analysis and public input, the 2014 October motion was formulated (the most recent motion as of August 2015). Though the alternative with voluntary harvester cooperatives with harvester/processor linkages with both target and PSC species allocations has not been fully analyzed up to this point, it has already been through several years of scoping within the Council process.

According to NMFS's NOI to prepare an EIS for the GOA trawl bycatch management program (NOAA-NMFS-2014-0150), the process initiates a supplemental scoping process. A principal objective of the scoping and public involvement process is to identify a range of reasonable management measures. Because of the extensive scoping that has already occurred for the October 2014 motion (alternative 2 - as outlined in the federal register notice) our members believe that this alternative should be included in the EIS for analysis – **it is a reasonable alternative and will meet the Council's purpose and need statement for the action.**

For the record, we would note that the GOA groundfish fisheries have gone through a similar scoping process before. During the first attempt at rationalization for the GOA groundfish fisheries under the Murkowski administration the following public processes occurred:

EIS scoping

- May 29, 2002: NMFS published the NOI and requested written and in person public comments. The Public Scoping Report Supplemental Environmental Impact Statement (SEIS) Gulf of Alaska Rationalization was presented to the Council in December 2002 by NMFS AK Region staff.

- Eight public meetings were held in late 2002 (Anchorage, Cordova, Homer, King Cove, Kodiak, Petersburg, Sand Point, Seattle) to solicit feedback from the public on the need for action, scope, range of alternatives, and issues that should be addressed in GOA Rationalization SEIS.

From page 4 of the 2002 scoping report: *During the public hearings, and in the draft public scoping documents, NMFS and Council staff reviewed some of the potential alternatives that have been suggested, including: rights-based management programs such as individual fishing quotas (IFQs); cooperatives similar to those established under the AFA; “two-pie” management with linked IFQ and individual processor quota shares (IPQs), and mechanisms that might regionalize the catch of groundfish species...Cooperative management was the most frequently supported of the rationalization alternatives. Most public commenters supported this alternative because it was generally perceived that this alternative would provide the greatest flexibility to address management needs and avoid potentially limiting allocations of small blocks of QS to individual vessels. In particular, this issue and support for cooperatives was presented by C/P representatives in Petersburg and Seattle. Participants in Kodiak supported this approach partially based on experiences under the American Fisheries Act (AFA).*

Council Processes

Numerous GOA Rationalization Committees and the NP Council spent much time and effort scoping the different GOA rationalization management program options and different alternative frameworks throughout this earlier process, which lasted roughly from 1999 until it was permanently taken off the table by former Governor Palin in December 2006. All the trawl alternatives from this rationalization effort involved Cooperatives with target species allocations: the same result as occurred during the present scoping process from 2010 to 2014. Trawl stakeholders, from 1996 to 2006 or 2010 to 2014, have supported cooperatives with both PSC and target species allocations. This again underscores that alternative 2, as outlined in the EIS notice, **is a reasonable alternative and should be analyzed in the EIS for a new management program for trawl groundfish fisheries in the Gulf of Alaska.**

Support for Alternative 2 (October 2014 motion):

The main objectives for the new management program are to provide tools for the effective management and reduction of PSC and bycatch (NS9), promote increased utilization of both target and secondary species harvested in the GOA (NS1) and recognize that GOA harvesters, processors and communities all have a stake in the groundfish trawl fisheries (NS4 & 8). To meet these objectives there are three critical elements: (1) what to allocate, (2) how to allocate and (3) fishery harvesting design. The council and the CGOA trawl stakeholder group spent a considerable amount of time and energy resolving these questions.

What to allocate?

The goal is to prevent a “race for fish” now and into the foreseeable future. Harvesters and processors need the ability to plan and execute fisheries in a cooperative manner. Groundfish trawl vessels need the ability to fish more slowly, strategically, and cooperatively, both amongst the vessels themselves and with their shore-based processors to meet the objective of reducing bycatch, both PSC and other bycatch and meet OY. Both the Council and the industry stakeholder group spent a considerable amount of time discussing this topic. After much deliberation five target species – Pollock, Pacific cod, Pacific Ocean Perch, northern rockfish and dusky rockfish – across the GOA are suggested for possible allocation. All five of these species typically close when the TAC is reached, not due to PSC caps. The conclusion through the scoping process was that if these species were not allocated then the fleet would continue to race versus fish more slowly and strategically to avoid PSC. While both the Council and the industry stakeholders did consider allocating flatfish species, because these species have never closed due to TAC but instead due to PSC restrictions, it was determined that the appropriate control for these fisheries would be PSC allocations only. The unallocated flatfish species within the proposed management plan would be a means of incentivizing expanded harvests of these underutilized flatfishes by better utilizing PSC. As noted in the industry comment letter (October 2014), revisiting whether these flatfish species should be allocated at the 5 year review of the new program would be appropriate if harvests approach available ABCs and the fishery incentives change from clean fishing to racing for the available flatfish quotas.

Just to be clear, the objective to reduce bycatch is more expansive than just PSCs. Bycatch as defined by the MSA National Standard 9 guidelines is defined as fish that are discarded. In many cases, bycatch occurs because of regulations that require fisherman to discard their incidental catches. In the trawl fisheries, regulatory discards occur for Prohibited Species Catches (PSC) such as crab, halibut and salmon that can only be retained by certain gear types which is definitely one of the focuses of this action.

To slow the rate of harvest of some other species, Maximum Retainable Allowances (MRAs) only allow retention of an amount of a species determined as a percentage of the target species catch. Vessels that exceed the MRA must also discard this excess catch. These rules are used to implement stock management policies. To reduce bycatch on non-PSC species, efforts should be made to minimize the use of management measures that result in regulatory discards. Alternative two of the present Council motion can be used to investigate tradeoffs for relieving MRA regulations for secondary species as well as changes in other fishery regulations that force discards. AGDB members support the options for secondary species allocations and management contained in alternative 2. However, we believe the means of allocating secondary species should be expanded to consider total catch as well as retained catch. Secondary species that are managed by MRAs can change management status over the calendar year from bycatch status to PSC status so retained catch may not be a good metric for the needs of the different sectors; therefore, the analysis should look at the allocation mechanism both ways.

There are several regulations that require discards of non PSC species in the present trawl fishery environment. These are detailed in the industry letter submitted to the Council October of 2014: Seasonal Pollock structure, Seasonal Pacific cod structure, prohibition of targeting Pacific cod and pollock from Nov 1 to Dec 31 and pollock trip limits. The present Council motion addresses the pollock fishery structure but does not address changes to the Pacific cod fishery structure. The proposed changes in alternative 2 for the pollock fishery structure are having two seasons (Jan 20 – June 10 and June 10 to Nov 1) and revising the seasonal allocations to 60% for the “A” season and 40% for the “B” season. AGDB members support adding an option that would modify the Pacific cod fishery seasons to Jan 20-June 10 and June 10-Nov 1 for the trawl sector – this would remove the prohibition of directed fishing from June 10 to Sept 1 and relieve the fleet from MRAs for cod in other target fisheries during that time period. Since there appears to be some resistance to changing the directed fishing closure date of Nov 1 to Dec 31 due to SSL protections, we support a different approach; consider increasing the MRA for both pollock and cod in other target fisheries for this time period. We also support adding an option that would modify the present pollock trip limit from 136 mt to 159 mt.

The inshore sector’s goal is to keep as much as we can of what we catch so relief from many of the current regulations that require discards (bycatch) is needed to allow us to meet this goal of reducing wastage. For several of the flatfish targets there can be a large amount of cod and/or pollock caught within a haul, depending on the time of year and fishing location. While allowing the industry to keep what we catch will reduce bycatch, it should be noted that neither the pollock nor the cod quotas would be exceeded since once the sector’s allocation for the species is reached the sector would be required to stop fishing. Creating this type of management regime requires that both cod and pollock be allocated to the co-ops. The analysis should examine how best to reduce discards of pollock and Pacific cod within the inshore trawl fisheries with the design of a new fishery structure.

The present motion allocates PSC to participants and also considers reductions of the present PSC caps. 0- 25% reduction for the pollock Chinook caps and 0-15% reduction of the PSC halibut caps are under consideration. We believe that the analysis should consider increasing the Chinook cap for two reasons: 1) the recent closure of the non-pollock non-rockfish program fisheries because the fishery exceeded the 2,700 cap and 2) the new Chinook stock of origin data that suggests that the 97% of the Chinook bycatch are from areas with high hatchery production of Chinook salmon and not Alaska wild stocks of concern. We believe the analysis should consider increasing the overall Chinook cap from 32,500 fish to 40,000, which is the ESA limit.

How to allocate?

Allocations for a new management plan are designed to capture historical participation in the fishery and investment of the participants in those fisheries: communities, processors and harvesters. We support the proposed allocations to the cooperatives for allocated species and the method for allocation of halibut PSC and Chinook salmon PSC as outlined in alternative 2.

We also support the federally regulated processor associated-cooperative structure as proposed in alternative 2 where individual harvesting licensees choose to form an initial (2 years) association with a processor based on historical landings; those licenses that qualify for the program but wish to opt out of the co-op structure may participate in a limited access fishery. After those two years, a QS holder can change co-ops according to the terms set forth in the Processor Contract: if a harvester wants to leave that cooperative and join another cooperative or the limited access sector, they could do so if they meet the requirements of the contract.

We also believe that the processor associated-cooperatives will keep landings within historical dependent communities especially when coupled with either regionalization or a port landing requirement. These mechanisms go a long way in capturing historical participation in the trawl groundfish fisheries by communities.

Fishery design – Why cooperatives?

We believe that a cooperative program is necessary and appropriate for the conservation and management of the fishery and will provide industry with the tools, accountability and management structure necessary to better manage and control bycatch, achieve OY, and provide greater economic stability and opportunity for harvesters, processors, and communities. The increased flexibility offered by the cooperative system will allow the fleets to respond more rapidly and appropriately to the prevailing fishing conditions. Co-op structures build cooperation amongst harvesters and processors since the entire industry works together towards common goals. But cooperatives must be federally regulated.

AGDB and its members strongly support the voluntary inshore cooperative structure as described in the Council's October 2014 motion:

- Voluntary Co-op structure where qualified licenses have a choice to join a co-op in association with their historical processor or stay in the status quo fishery.
- The ability of a qualified license to be in one co-op in each region (WGOA and WYAK/CGOA).
- The Annual cooperative formation process, contracting and filing requirements
- The Annual reporting requirements & oversight by Council

Our members' experiences with co-ops structures show that these systems work. Co-op contracts can be design to meet Council's objectives for bycatch management, harvests strategies to meet OY and contracting obligations to mitigate social concerns. Fishery-based bycatch measures raise the entire fleet's bycatch performance versus a competitive structure that pits participants against one another. Co-op contracts allow the industry to self-enforce the bycatch avoidance plan (set fishery performance standards) versus the much more cumbersome and inflexible regulatory approach with input controls such as trip limits, area closures, etc. Co-op management is not true ownership like an IFQ system since allocations only occur if an LLP joins a cooperative. Allocations for the co-op are managed by all co-op members versus a straight IFQ system where one individual makes single minded decisions. Cooperative management structures are much more cost effective since industry manages the fishery with oversight by NMFS versus NMFS managing the day to day harvesting of individual vessels via an IFQ program.

These three design components – what to allocate, how to allocate and the fishery harvest design are the critical elements to meet program objectives and create the needed stability for the trawl industry when considering a new fishery management structure. However, Alternative 2 takes the next step by addressing concerns expressed by the general public with regards to balancing industry efficiencies with future industry diversity and entry into the groundfish trawl industry.

What mechanisms for community stability?

Elements in the present motion that provide community stability and protection include: processor associated-cooperatives coupled with regionalization or a port landing requirement, Consolidation limits for ownership, vessel use caps, active participation criteria, processor processing caps, and cooperative contract signed by the community that the processor is located in.

AGDB supports ownership caps with a grandfather provision but the range needs to be large enough to consider persons who own multiple LLPs/vessels. We would prefer no harvesting caps on individual vessels. However, this is most likely unrealistic, due to community concerns regarding the potential of excessive fleet consolidation such as occurred in the Crab Rationalization program which had no vessel use caps if that vessel joined a co-op (virtually all the vessels did join a co-op). Flexibility needs to be incorporated into the vessel use caps so the industry can expand and contract based on actual fishery quotas and the economics of the fishery. Caps need to allow for larger harvests by those vessels that can best avoid bycatch, incorporate liberal enough caps that acknowledge the different vessel size classes, harvesting capacities, and individual vessel's fishing plans across the fleet. Industry believes the range of caps within the Council motion is appropriate for now. Vessel use caps have been constraining for certain vessels in the Rockfish Program and for both Dusky and Northern Rockfish and the inshore co-ops have been unable to harvest all the quota. The appropriately equipped vessels that can catch these species have hit the vessel's harvesting cap resulting in stranded inshore quotas. In retrospect, no harvest caps should have been applied to these two harder-to-catch species underscoring that this is a critical decision point and needs to be thoroughly analyzed in the EIS so the right balance between NS1 (OY) and NS8 (community stability) can be struck.

Processor caps for each target species should be set at the appropriate level with a grandfather provision and be "facility-based" not entity-based. We support analyzing the active participation criteria contained in the motion to determine if the described elements meet the intended goal and whether the required active participation criteria can be enforced.

Proposals to include community approval of cooperative contracts could have the unintended consequence that no cooperatives form. Community politics should not be inserted into what are fundamentally business decisions about the daily operation of private companies and individual fishing operations. In devising GOA community protections, the Council should be very explicit in regards to its objectives with the measures it develops. We do not understand the objective for community sign off on cooperative contracts and what the Council's objective is for this element.

We do believe that community concerns and stability can be addressed through the proper design of the cooperative program as described in alternative 2.

One additional issue - State and federal fishery coordination across the three mile boundary: Alternative 2 anticipates that a share of the pollock harvest will be taken from state waters (i.e., inside 3 nautical miles of shore) which requires coordination with the State of Alaska since the State manages all waters inside 3 nautical miles. Currently, trawl fisheries in state waters are managed by the state under a 'parallel' system, in which the state generally applies the same overall management measures imposed on the federal fishery to the adjacent state waters fishery. Both federal and state waters open at the same time and close concurrently when the total allowable catch (TAC) for the sector is taken (all vessels stop fishing at the same time). All harvest comes off of the federal TAC. This system will not work if the Council adopts some type of cooperative catch share plan (alternative 2 or 3). The EIS analysis needs to clearly demonstrate how best to meet the primary objectives of the new program - to reduce trawl bycatch by allowing vessels to fish more slowly, strategically, and cooperatively; to achieve optimum yield in the groundfish fisheries; and to promote community stability. How can state waters fishing be structured so federal participants can continue to have access to the state zone from 0 to three miles without creating a race for fish for pollock harvests inside three miles?

Approaches we do not support:

Individual or Cooperative Bycatch Quotas (IBQ's):

The Council spent a considerable amount of time scoping an IBQ system where individual or cooperative bycatch quotas were awarded without accompanying target species quota.

A discussion paper on IBQ's was presented to the council in October 2011 (Agenda item C-2(c)). The paper details PSC allocations for catch share programs that also allocate target species (Amendment 80 BSAI fisheries, Rockfish Program, West coast groundfish trawl fisheries, British Columbia Multispecies Trawl Fisheries) with only one example

of IBQ without target species allocations: incidental take of dolphins in the Eastern Pacific tuna fisheries (it should be noted here that these tuna fisheries do not have any target species harvest limits):

“In 1992, as a part of efforts to reduce dolphin mortality in the Eastern Pacific tuna fisheries, fleetwide limits on dolphin mortality were apportioned among vessels, with each receiving an equal share of the total limit. Each vessel fished subject to its individual non-transferable dolphin mortality limit, which required the vessel to suspend fishing for the season once it reached that limit”

The author of the 2011 IBQ discussion paper also notes (page 4): *“The paper [1993 Council], however, suggested that without IFQ for target species, the most valuable fisheries might still be prosecuted as a race for fish. This race could result in the use of most of the individual PSC allocations being used in those more valuable target fisheries, leaving a substantial share of other fisheries unharvested. In addition, any fisheries that are not constrained by the allocated PSC would be unaffected by the program. Despite these shortcomings, management of the PSC allocations would require 100 percent observer coverage, effectively imposing the cost of a fully rationalized fishery on the participants, while not providing the benefits that are derived from target species allocations.”*

From the Council October 2014 GTBM discussion paper, page 4: *The Council intends for the program to contribute to the stability of volume and timing of landings to allow better planning by processors. The allocation of PSC would create an individual incentive for each participant to obtain the greatest possible value from the use of available PSC. When allowable catch of target species is not a limiting factor on the fishery, PSC quotas may allow participants to respond to constraining PSC limits by managing their own usage. Without PSC limits, an individual vessel’s PSC affects everyone fishing under that PSC limit. However, if target species catch limits are a constraint, PSC quotas alone (without target species allocations or other program elements that could slow the fishery) are unlikely to result in a slower or more coordinated fishing behavior. When target species are limiting – i.e., when total allowable catch (TAC) is fully harvested in a typical year – a participant with PSC quota will face a choice when determining his or her investment in PSC avoidance. The participant must decide whether more rapidly harvesting the target species (using relatively more PSC quota in the process) would sufficiently increase the participant’s share of the available target catch to justify forgoing future fishing in the event that PSC limits close the fishery early. Target allocations would allow vessels to privately determine when to fish within a season or year in order to achieve the greatest return from available PSC. Secure target species allocations would allow a quota share holder to decide when and where to fish based on a variety of factors without the risk of other participants depleting the availability of the target species in the interim. Those factors include: target species catch rates, availability of marketable incidental species, PSC rates, market conditions, and weather, among others.*

We do not support individual or cooperative bycatch quotas without accompanying target species quota share because it:

1. Would not stop the race for fish in fully prosecuted fisheries (i.e. pollock and cod)
2. Would not foster fleet cooperation since race for target species still exists (affects fleet coordination of hot spot reporting, fleet willingness to share technology improvements such as excluders, electronics, fishing gear)
3. Creates “good” and “bad” bycatch coops with membership discrimination: fisherman adept at bycatch avoidance would likely exclude “bad” bycatch users from their coop.
4. Changes the incentives from fleet improvements for bycatch performance to individual vessel improvements
5. No ability to reduce discards of target species catches since they are not allocated

Alternative 3 – Off the top allocations to Community Fishery Associations (CFA) or an Adaptive Management Program (AMP).

Our largest concern about alternative 3 for either the CFA or AMP is the off the top reallocation of the trawl groundfish fishery to other entities; the extra cost that this allocation will impose on historical stakeholders. During public scoping there has been little to no support from trawl industry stakeholders for this alternative. Assuming that alternative 3 is included in the EIS, the analysis should compare and contrast community protection mechanisms within alternate 2 or alternative 3. Is there additional benefit offered via a CFA or AMP versus alternative 2 (the cooperative program)? Is it just a cost with little to no discernable benefit? A CFA would still have to allocate quota (the right to fish) and could be susceptible to local community politics. It appears to us that a CFA is just adding an unnecessary third party (allocative, administrative and managing) that will increase costs and make the program more

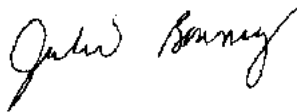
complicated. We are skeptical of proposals that simply transfer quota from one group to another unless there is a clear community interest that cannot be addressed in another way.

Adaptive Management Quota (AMQ) sounds good in that it's promoted as protection for the very broad, undefined category of "unintended consequences". If this will allay some of catch share fears expressed by other groups and individuals, then a small set aside may be appropriate as long as the objectives for the AMQ are clearly defined. If it becomes clear that this set aside is not needed to meet the stated objectives, then there needs to be a simple mechanism to reallocate this quota annually to the co-ops so it can be harvested. At some point the AMQ should sunset if it is determined that it is unnecessary. Many of the concerns raised by the general public regarding catch share programs are for high valued IFQ fisheries not low valued groundfish harvested through cooperatives. Many of the ills suggested as a result of a catch share program – destroying communities, putting participants out of business, creating excessive consolidation – are either happening now or could happen within the present fishery structure. The records of current trawl catch share programs in the North Pacific (BSAI pollock cooperatives, the Amendment 80 cooperative fishery, CGOA rockfish cooperative program – all with target species coop allocations) have shown the benefits and successes of cooperative management where harvesters and processors work together through a co-op structure to better utilize target species catch, control and minimize bycatch, reduce regulatory discards (improve retention, reduce waste), contain the costs of operations and management, and meet other conservation and community goals.

Keep in mind that whereas we strongly believe that this program, if designed correctly, will ultimately be beneficial to harvesters, processors, and communities and will be a huge improvement over the status quo, it is going to incur additional costs on the industry. These costs include 100% observer coverage, Catch Monitoring Control Plans for processors, annual NMFS Cost Recovery (up to 3% of the ex-vessel value) and Co-op Management Fees. Another added cost would be a potential State water pollock fishery. Should a portion of the pollock ABC be allocated to an open access seine, jig, and/or trawl fishery in the AK Peninsula, Kodiak, Cook Inlet and/or Southeast management areas, historical trawl participants could lose access to a portion of the pollock resource so vital to their fisheries portfolio. These extra costs will be significant and may be excessive especially if an additional off the top allocation is given to a CFA or AMQ. Given the low-value of most trawl species (on the order of 5-35 cents per pound), owners will be weighing the cost-benefits of staying in the fishery. Should the costs of staying in the fishery prove too high, we could see increased economic consolidation and stranded fish where everyone loses. Consolidation caps by regulation do not prevent economic consolidation. The program needs to be well designed to create efficiencies and increase fish value and not give the economics of the fishery away through reallocation or poor fishery design; it won't be worth it.

Given the high amount of attention this potential action has generated, we agree a more detailed and robust EIS would be more suitable than the normal EA. The members support alternative two for analysis with the suggested changes outlined in this letter. **Alternative 2 should be included in the EIS for analysis.** Thank you for the opportunity to make comments and we look forward to working with the Council and the Agency to design an effective, well-designed cooperative management program for the Gulf of Alaska trawlers, processors and communities.

Sincerely,



Julie Bonney
Executive Director
Alaska Groundfish Data Bank



August 28, 2015

Via Federal eRulemaking Portal (www.regulations.gov)
NOAA-NMFS-2014-0150

Glenn Merrill
Assistant Regional Administrator
Sustainable Fisheries Division, Alaska Region, NMFS
Attn: Ellen Sebastian
P.O. Box 21668 Juneau, AK 99802-1668

Re: NOAA-NMFS-2014-0150, Gulf of Alaska Trawl Bycatch Management Program EIS

Dear Mr. Merrill:

This letter provides the public comments of the Alaska Marine Conservation Council ("AMCC") in response to the National Marine Fisheries Service's ("NMFS") notice of intent ("NOI") to prepare an environmental impact statement ("EIS") on a new management program for trawl groundfish fisheries in the Gulf of Alaska ("GOA"). AMCC is a non-profit organization committed to the long-term ecological health and social and economic well-being of GOA communities. Our members include fishermen, subsistence harvesters, marine scientists, small business owners, and families. We applaud NMFS' willingness to implement measures to reduce bycatch in the GOA and we appreciate the Agency's consideration of these comments.

I. Objectives of the Proposed Action

The North Pacific Fishery Management Council ("Council") initiated the GOA trawl bycatch management program specifically to reduce bycatch in the GOA trawl fisheries. While providing the fleet with the "tools" necessary to reduce bycatch is an essential component of the program, the intent of the program is not merely to provide the fleet with the tools necessary to adapt to the current bycatch limits; rather, it is to reduce bycatch further. As such, any analysis of the bycatch management program must consider additional reductions to bycatch.

The need to reduce bycatch in the GOA remains critical. GOA Chinook salmon returns remain at depressed levels, despite significant sacrifices made by directed commercial, sport, and personal use fishermen. Halibut stocks have likewise declined, causing a sharp reduction in commercial and charter catch limits. In the last ten years, the commercial halibut harvest in the GOA (Areas 2C, 3A and 3B) has declined by 73% and strict bag limits have been imposed on the charter sector. The commercial Tanner crab fishery in the Kodiak Island district was closed in 2014 due to low crab abundance. Although fishermen in these fisheries collectively recognize the need to accept cuts during periods of low abundance, the responsibility of rebuilding these important stocks must fall on all users. And, while we commend the Council for setting salmon and halibut bycatch limits for the GOA trawl fisheries, these limits are far less than the reductions borne by participants directed fisheries. The bycatch management program must include meaningful bycatch reductions that will ensure that Chinook salmon, halibut, and Tanner crab—species that are an

essential to Alaska's economy and culture—have the chance to rebuild. As NMFS moves forward with its analysis, therefore, it must consider specific bycatch reduction measures as a core component of the proposed action.

II. Range of Alternatives and Impacts Considered

Nearly twenty years of direct experience with catch share programs in Alaska has demonstrated that catch share programs will change the composition of the fishing fleet, alter the relationship of historical fishing communities to that fleet, and cause adverse impacts to historical fishing communities and fishermen. These impacts include, among others, absentee ownership, loss of locally-based vessels, rapid vessel consolidation, consolidation of quota ownership, lower crew pay and fewer crew jobs, out-migration of fisheries based wealth, and declining access opportunities. Given the foreseeability of these impacts, any analysis of a catch share program must consider the degree to which coastal communities and individuals will be adversely affected by these impacts. NMFS must not only consider the immediate and near-term impacts of any new management program, but must also consider the foreseeable impacts on future generations of fishermen and fishing-dependent communities. Finally, NMFS should consider these impacts in the context of its responsibility under National Standard 8 of the Magnuson-Stevens Fisheries Conservation and Management Act ("MSA"), which requires that management measures provide for the sustained participation of communities and the minimization of adverse impacts on communities. *See* 16 U.S.C. § 1851(a)(8).

It is important to note that bycatch management does not necessitate a "traditional" catch share program, nor does bycatch management preclude community protections. In that context, NMFS should consider whether a Community Fishing Association ("CFA"), as defined in section 303A(c)(3) of the MSA, can mitigate some of the negative impacts associated with traditional catch share programs. Among other things, NMFS should: consider the degree to which CFAs strengthen the relationship of captain, vessel, vessel owner, and crew to the community; address transitional entrance into the trawl fisheries; provide opportunity for future generations; and encourage equitable crew compensation. In its analysis of foreseeable impacts, NMFS should consider the benefits that CFAs provide by directly anchoring fishing quota to fishing communities, and it should explicitly address whether ensuring community access to the fishery into the future is a primary goal of the bycatch management program.

The EIS should also analyze how community protections will be provided for during allocation of quota. For example, NMFS and the Council crafted the Community Quota Entity ("CQE") program in the Halibut/Sablefish IFQ fishery to provide for community access to the resource and to reverse some of the negative community impacts experienced as part of rationalization of the fishery. However, NMFS and the Council did not provide the CQEs with an initial allocation of quota, instead requiring communities to independently secure funding to purchase quota. Consequently, only two CQEs have acquired quota, and that amount is insufficient to mitigate many of the adverse community impacts associated with rationalization. While the structure of the trawl bycatch management program is significantly different than the Halibut/Sablefish IFQ program, the dynamics of leasing, consolidation, inactive participation, and wealth migration are the same. The EIS should therefore consider whether and to what extent providing an initial allocation to a CFA is critical to the success of the CFA and the broader goals of the bycatch management program.¹


¹ For example, the Council Goals and Objectives related to the program include authorizing fair and equitable access privileges that take into consideration the value of assets and investments in the fishery and dependency on the fishery harvesters,

NMFS should also analyze the need for flexibility in the bycatch management program. Although we know many of the impacts associated with catch share programs, some impacts are difficult to predict. Because CFAs provide communities with the ability to manage quota and respond without the time constraints of the Council and NMFS rulemaking process, CFAs will have the ability to adaptively respond to unexpected programmatic community impacts. This ability to adapt and address impacts as they arise is critical—experience from other catch share programs shows that once quota is allocated it is very difficult if not impossible for the Council to address these impacts (see, for example, Rights of First Refusal in the crab program). CFAs can provide an accessible and flexible way to address community concerns. Anchoring a portion of quota in the community ensures that the community—and community residents—retain access to some portion of the fishery over the long-term. The community can use this quota to maintain a local fleet, provide opportunities for transition and entry into the fishery (for example, by serving as a stepping stone for residents to transition into quota ownership), and ensure access to the resource for future generations. CFAs also provides a mechanism for maintaining equitable crew compensation and maintaining local crew hire. Because the community owns the quota in a CFA, they have the ability to set rules on how that quota is used, much as an individual quota owner does.

In addition to a CFAs, NMFS should consider other mechanisms for community protections including active participation requirements, requiring a community sign-on on co-op contracts and meaningful consolidation limits. More specifically, NMFS should analyze options for requiring active participation to acquire quota, as well as the need for ongoing active participation (with the exception of community entities such as CQEs and CFAs). In addition, NMFS should consider the benefits of reserving some portion of quota share for active crew and skippers-for-hire. The EIS should also analyze whether community sign-ons on co-op contracts, as well as meaningful consolidation limits, will advance the Council's of ensuring community protections.

Thank you for your consideration of our comments on this very important matter.

Sincerely,



Shannon Carroll
Fisheries Policy Director
Alaska Marine Conservation Council

processors, and communities; promoting community stability and minimizing adverse economic impacts by limiting consolidation, providing employment and entry opportunities, and increasing the economic viability of the groundfish harvesters, processors, and support industries; and, minimizing adverse impacts on sectors and areas not included in the program.

Dear Mr. Merrill:

Thank you for the opportunity to submit scoping comments on the proposed bycatch management program in the Gulf of Alaska (“GOA”). As an Alaskan that cares about the health of our fisheries and is adversely affected by declines in Chinook salmon and halibut populations in the GOA, I recognize the importance of bycatch reduction in the GOA trawl groundfish fisheries.

The North Pacific Fishery Management Council (“Council”) initiated the proposed GOA bycatch management program specifically to reduce bycatch. Bycatch in the GOA has a significant impact on the communities of Alaska that depend on Chinook salmon and halibut fisheries. For example, over the past decade, commercial halibut catch limits in the GOA have been reduced 73%, and halibut charter bag limits have been reduced in Southeast and Southcentral Alaska. Similarly, Chinook salmon returns throughout Alaska have been poor, resulting in economic and social disruption to the individuals, businesses, and communities that are dependent on the fishery. The negative impacts of bycatch have not been distributed evenly: the Council has not reduced trawl bycatch by nearly the same level as the directed salmon and halibut fisheries have been affected. To rebuild stocks everyone must do their part to support conservation.

Moving forward, the Council’s bycatch management program must achieve additional bycatch reductions beyond existing levels. Importantly, catch share programs, such as those being considered in the range of alternatives, do not guarantee bycatch reduction; rather, bycatch reduction must be included as key part of the program design. Thus, in order to meaningfully evaluate both the potential impacts of the bycatch management program, and a reasonable range of alternatives, bycatch reductions beyond the status quo must represent the core component of the proposed action.

The time is now to take meaningful action to reduce bycatch in the Gulf of Alaska.

Thank you again for the opportunity to comment on this important issue.

Sincerely,

Thomas Keegan

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Sincerely,

Mercedes Pinto

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Sincerely,

Doug Maynes

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Sincerely,

George Kirk

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Sincerely,

Lynn Wilbur

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Sincerely,

Timothy Evers

Dear Mr. Merrill:

Thank you for the opportunity to submit scoping comments on the proposed bycatch management program in the Gulf of Alaska (“GOA”). As an Alaskan that cares about the health of our fisheries and is adversely affected by declines in Chinook salmon and halibut populations in the GOA, I recognize the importance of bycatch reduction in the GOA trawl groundfish fisheries. I have lived and worked in marine environments over seas and know first hand how wasteful and devastating high percentages of (often valuable) bycatch can be to the local communities, the fish species themselves and the environment they live in.

The North Pacific Fishery Management Council (“Council”) initiated the proposed GOA bycatch management program specifically to reduce bycatch. Bycatch in the GOA has a significant impact on the communities of Alaska that depend on Chinook salmon and halibut fisheries. For example, over the past decade, commercial halibut catch limits in the GOA have been reduced 73%, and halibut charter bag limits have been reduced in Southeast and Southcentral Alaska. Similarly, Chinook salmon returns throughout Alaska have been poor, resulting in economic and social disruption to the individuals, businesses, and communities that are dependent on the fishery. The negative impacts of bycatch have not been distributed evenly: the Council has not reduced trawl bycatch by nearly the same level as the directed salmon and halibut fisheries have been affected. To rebuild stocks everyone must do their part to support conservation.

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Sincerely,

KM Dutton

Dear Mr. Merrill:

Thank you for the opportunity to submit scoping comments on the proposed bycatch management program in the Gulf of Alaska (“GOA”). As an Alaskan that cares about the health of our fisheries and is adversely affected by declines in Chinook salmon and halibut populations in the GOA, I recognize the importance of bycatch reduction in the GOA trawl groundfish fisheries.

The North Pacific Fishery Management Council (“Council”) initiated the proposed GOA bycatch management program specifically to reduce bycatch. Bycatch in the GOA has a significant impact on the communities of Alaska that depend on Chinook salmon and halibut fisheries. For example, over the past decade, commercial halibut catch limits in the GOA have been reduced 73%, and halibut charter bag limits have been reduced in Southeast and Southcentral Alaska. Similarly, Chinook salmon returns throughout Alaska have been poor, resulting in economic and social disruption to the individuals, businesses, and communities that are dependent on the fishery. The negative impacts of bycatch have not been distributed evenly: the Council has not reduced trawl bycatch by nearly the same level as the directed salmon and halibut fisheries have been affected. To rebuild stocks everyone must do their part to support conservation.

Moving forward, the Council’s bycatch management program must achieve additional bycatch reductions beyond existing levels. Importantly, catch share programs, such as those being considered in the range of alternatives, do not guarantee bycatch reduction; rather, bycatch reduction must be included as key part of the program design. Thus, in order to meaningfully evaluate both the potential impacts of the bycatch management program, and a reasonable range of alternatives, bycatch reductions beyond the status quo must represent the core component of the proposed action.

The time is now to take meaningful action to reduce bycatch in the Gulf of Alaska.

Thank you again for the opportunity to comment on this important issue.

Sincerely,

James Mulcare

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Gary Myrick

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Sincerely,

Linda Rhodes

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Sincerely,

Linda Bassett

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I am writing this to urge you to take drastic measures to limit the amount of halibut by-catch by the trawl fleet. I am a 40 year Alaska resident and am very disappointed in the mis-management of many of our fisheries here in this beautiful State. But none is more glaring than how the halibut bio mass has been decimated. The halibut long-liners have already paid the price for the destruction that has been caused by the indiscriminate destruction caused by the super trawlers. The sport charter fleet has been cut in half due to this shortage of halibut. Alaska residents and also non-residents who fish on charter vessels have also been heavily restricted due to this critical shortage. Many user groups have suffered substantial cutbacks, except for the group of Trawlers who are the ones who are mainly responsible for this situation in the first place.

Do what is obvious and what is right – cut back at least 50% on the amount of by-catch that is allowed by the trawl fleet immediately, right now, this year. It is very hard to understand any rational reason why this has not already happened. The Trawl Fleet harvests at random, our most prized Alaska fish, both King Salmon and Halibut, for the gain of a very, very chosen privileged few.

Allowing this to continue makes no sense whatsoever.

Please do what is right.

Thank you again for the opportunity to comment on this important issue.

Sincerely,

Tim Berg

720 K-Beach Road

Soldotna, Ak. 99669

Dear Mr. Merrill:

Thank you for the opportunity to submit scoping comments on the proposed bycatch management program in the Gulf of Alaska (“GOA”). As an Alaskan that cares about the health of our fisheries and is adversely affected by declines in Chinook salmon and halibut populations in the GOA, I recognize the importance of bycatch reduction in the GOA trawl groundfish fisheries.

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Chris Wheaton

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Kelly Riley

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Stephen Glaholt

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Sincerely,

Tyler Harrington

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Allie Tennant

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Sincerely,

Julie Miller

Dear Mr. Merrill:

Thank you for the opportunity to submit scoping comments on the proposed bycatch management program in the Gulf of Alaska (“GOA”). As a former, long-time Alaskan resident that cares about the health of our Yukon/Kuskokwim fisheries, I am convinced that bycatch is adversely and significantly contributing to the drastic decline in these fisheries, particularly to the chinook salmon runs. I have seen with my own eyes the waste of chinook salmon bycatch at a cannery in Dutch Harbor.

It is well past time for significant bycatch reductions in the GOA trawl groundfish fisheries. To me, this is a debate over the claimed rights of big commercial fishing fleets versus the constitutionally guaranteed rights of native Alaskan subsistence fishermen and the rights of international treaty rights of Canadians to chinook salmon that run the Yukon. Our commercial fishing fleets have had their way virtually unchecked. Now is the time to reel them in, just like they reel in those devastating trawls.

The North Pacific Fishery Management Council (“Council”) initiated the proposed GOA bycatch management program specifically to reduce bycatch. Bycatch in the GOA has a significant impact on the communities of Alaska that depend on Chinook salmon and halibut fisheries. In addition to adversely affecting salmon fisheries, over the past decade, commercial halibut catch limits in the GOA have been reduced 73%, and halibut charter bag limits have been reduced in Southeast and Southcentral Alaska.

Chinook salmon returns throughout Alaska, not just the Yukon and Kuskokwim Rivers, have been poor, resulting in economic and social disruption to the individuals, businesses, and communities that are dependent on the fishery.

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Moving forward, the Council’s bycatch management program must achieve bycatch reductions impressively beyond existing levels. Importantly, catch share programs, such as those being considered in the range of alternatives, do not guarantee bycatch reduction; rather, bycatch reduction must be included as key part of the program design. Bycatch reductions well beyond the status quo must represent the core component of the proposed action.

It is past time to take meaningful action to reduce bycatch in the Gulf of Alaska. Please provide the backbone to stand up to the big commercial trawlers. Bring our salmon back to the Yukon and Kuskokwim Rivers. Thank you again for the opportunity to comment on this important issue.

Sincerely,

David Black

Dear Mr. Merrill:

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Sincerely,

Charles Bingham

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Brian Uher-Koch

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John Sonin

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Sincerely,

Joanna Chesnut

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Sincerely,

Stephen Morse

Bert Ashley
F/V Gold Rush
PO Box 425
Kodiak AK 99615
Bert_ashley@goldrushfisheries.com

**To: Glenn Merrill, Assistant Regional Administrator for Sustainable Fisheries NMFS, Alaska Region
NOAA–NMFS–2014–0150**

Re: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for any Gulf of Alaska (GOA) trawl bycatch management program NOAA–NMFS–2014–0150, by any of the following methods:

I own and operate the Kodiak-based trawler F/V Gold Rush and have participated in the Gulf trawl groundfish fisheries since 1989. These fisheries represent about three-quarters of my annual commercial fisheries catch so I am very dependent on these Gulf trawl fisheries.

Every year I am asked to catch less bycatch and become a better steward of the fishery and its habitat so we can have a strong, sustainable fishery into the future. Yet we still do not have the tools to perform better – we cannot continue with these voluntary catch agreements indefinitely. With an ever-increasing and diversifying fleet, these agreements will become more and more fragile and uncertain. The present fishery environment (race for fish) does not work. The Council has put many restrictions on us such as new Chinook salmon limits and reduced halibut PSC caps. The closure of the non-pollock non-rockfish program fisheries on May 3rd of this year had a major impact on our fleet this year.

Our fleet needs the appropriate regulated fishery management structure to stop the race for fish so we can focus our efforts on reducing and controlling bycatch (both PSC and regulatory discards).

I have extensive and positive experiences with cooperative fishery management in both the BSAI AFA pollock and Central Gulf Rockfish Program. The cooperative style management works for bycatch management, strategic fishing and increased efficiency and safety. Examples include salmon bycatch reduction in AFA co-ops, halibut bycatch in the Rockfish Program, and few discards in these fisheries with the 100% retention requirements of co-op target species. The structures also allow for improved utilization of the co-op species. The certainty of these fisheries is also improved allowing for us to draft and improve on our business plans.

I support the present Council motion (alternative 2) for analysis in the EIS that was developed within the Council process starting in 2010. Alternative 2 is a cooperative program that allocates cod and pollock and halibut and Chinook salmon PSC to harvesters. Harvesters may voluntarily join co-ops in association with shorebased processors.

I particularly support allocation of pollock and cod to eligible trawl catcher vessel LLP's based on historical participation as well as Chinook and Halibut PSC as outlined in the October 2014 Council motion Alternative 2. I also very much support changing the present GOA pollock seasons to Jan 20 – June 10/June 10 – Nov 1 (as in the BSAI) and changing the pollock trip limit from 136 mt to 159 mt if pollock is allocated to the coops as a target species. I do not support individual or co-op bycatch quotas (IBQ's) which would not stop the race for fish in those fisheries that are fully prosecuted.

I do not support any reduction in Chinook or Halibut PSC limits at this time. We need to test any new management program prior to any additional cap reductions.

Alternative 3 allocates a portion of the groundfish quota to Community Fishing Association or an Adaptive management Program. I would like to see a comparison of how the community is protected via CFA versus the community protection elements in Alternative 2. A Right of First of Offer (ROFO) of quota share for sale and/or lease would also be worth analyzing as a means of entry into the fishery.

Sincerely,

Bert Ashley

Comment by Bill Connor

Chairman Hull
Council Members

My name is Bill Connor.

I am an owner of a 58 foot trawl vessel that trawls both WG and CG of Alaska, and has since 1992. The trawl fisheries provide 42% of our annual gross stock. It supports 4 working crew members and their family's, who have wives and children that depended on this income for food and shelter. It keeps the doors of my business open.

The present form of the fishery does not work. The new Chinook limits and lower halibut PSC caps will impact our survivability. We need new tools to survive.

Closing the fishery on May 3rd of this year caused grave uncertainty within me, my business, and the jobs of the crew. It caused uncertainty in our ability to provide food, cover mortgage payments and monthly bills.

We also need new tools to stop the race for fish. With the tools to stop the race for fish we can reduce bycatch and PSC discards. We have all seen the success that the Halibut and Sablefish IFQ fishery has had with eliminating the race for fish.

I support most of alternative 2 and urge the council to support it also.

As for qualifying years, the council needs to use the most recent available data to stay in concert with their previous ruling on eligibility for recency ruling on the elimination of LLPs in the pot, trawl and long line ruling.

I support the qualifying years 2003 to 2014.

I strongly support gear conversion.

I strongly oppose CFAs in any form.

CFAs will only create un-needed bureaucracy.

I am from Petersburg, Alaska, and I have been participating as a trawler in WG and CG for 23 years. How will a CFA help my community? What chance would I have of leasing quota from a WG or CG community? What provisions will you provide me for a fair chance at CFA quota lease?

How will CFA employees be paid? What is their salary cap? What is their bonus caps? What if there is left over funds from CFA management expenses, where does this go? Haven't we had enough czars the last 6 years?

WG has averaged 21000 tons of p-cod from 2011 to 2014 and of that, roughly 8000 tons is annually trawl sector quota.

At .27 cents a pound average that = 4.8 million dollars. Divide that by the 23 WG trawl vessels = 209,000.00 average income, and that's if they catch the quota, which has not happened for years.

Then from that gross---before a crewman or boat gets paid there is a 4% state and borough tax = 8,000.00, a new cost recovery tax of 3% = 6,000.00, plus a new 100% observer coverage fee (projected at 666.00 a day) for 30 days, which would be 20,000.00. Typical fuel used for the season = 31,000.00 which leaves 144,000.00.

So after 2 to 3 months of hard dangerous work, a crewman makes 10% or 14,400.00, and the vessel makes 86,400.00, not deducting insurance or maintenance, AND we want to take 5 to 15% more for a CFA? WHY?

CFAs will force consolidation of jobs and vessels.

It will not provide for new entrants, it will eliminate existing participants simply because this is not a low cost fishery.

Lease fees were not even provided in the above expense figures.

WILL THE CFAs ALSO WANT QUOTA FROM THE POT SECTOR?

If the average gross for WG trawl sector is 4.8 million dollars and 10% is the figure the CFA gets, and they lease the quota amount for half the dock price, that is only 240,000.00 dollars to them. That money gets eaten up in administration fees, offices, salary's etc...which leaves nothing for the community.

CFAs only create a new bureaucracy and another tax on small business.

I would ask who on the council would want to give up 10% of their take home pay!

Vote no on CFAs.

Thank you for your time.
Bill Connor, F/V Cape Reliant

Comment by Chandler Johnson

My name is Chandler Johnson and I run a Kodiak-based, family owned trawler. I have been running the boat for 24 years and have a good idea of what problems our fishery faces. We fish both the Bering Sea, and Gulf of Alaska, so I see the difference in fishing under a rationalized fishery versus a non-rationalized one. The race for fish in the Gulf of Alaska is very wasteful. The industry is under-fire to reduce bycatch, but it is next to impossible under a race for fish. The last few years, the fleet has agreed to split the quota during pollock seasons, which allows us to control bycatch better. However, one boat not signing up for our catch share agreements can cancel the whole thing, and send us back to the race for fish. Also, as we voluntarily agree to these "catch shares", more and more vessels want in on it, further dividing the pot. We are forced to include them, or go back to the race for fish, and higher bycatch. When we race for fish, then the fleet targets on the most valuable, or most profitable fish first (usually pollock and cod). Then seasons for those species close. The fleet moves on to target other species, but cod fish and pollock are still caught in numbers that are greater than Maximum Retainable Allowances, and are discarded. This is terribly wasteful! With rationalization, we would be able to keep what we caught. If we wanted to pursue flatfish, then we would make sure we had enough pollock and cod fish quota to cover our bycatch. We could keep it all! Rationalization also gives us flexibility in what we do with our boats. Currently, there are a number of trawlers tendering salmon as it is a very big salmon year. However, the trawlers need to have their tendering contracts up by August 25th, as that is when pollock season opens. The cannery would prefer to wait until the salmon gets slow before buying pollock. If one plant decides to buy pollock, then the others will be forced to do so since they are competing for pollock market share, or lose out on their portion of the pie. In order to do this, they need to quit buying salmon. This essentially shuts the salmon fishery down. I support alternative 2 for a trawl bycatch management program.. This alternative is a co-op fishery structure similar to AFA which in my experience works really well. It is a history based program with both target and PSC allocations that takes into account historical dependency of harvesters, processors and communities. Please give us the means to control bycatch. I also support changing the pollock seasons to: January 20th - June 10th, June 10th - November 1st. This allows much greater flexibility, and allows us to keep the canneries in fish when they need fish. Thank you, Chandler Johnson

August 27, 2015

Mr. Glenn Merrill
Assistant Regional Administrator
Sustainable Fisheries Division, Alaska region NMFS
Re: NOAA-NMFS-2014-0150, Notice of Intent to prepare an EIS for any Gulf of Alaska trawl bycatch management program

Dear Mr. Merrill,

I am writing on behalf of Groundfish Forum to provide comments on the proposed Environmental Impact Statement (EIS) for Gulf of Alaska (GOA) bycatch management. Groundfish Forum is a consortium of 5 companies that operate trawl catcher-processors in the Amendment 80 sector of the Bering Sea/Aleutian Islands (BSAI) as well as in Gulf of Alaska trawl fisheries. Our companies have a long history of participation in, and dependence on, Gulf of Alaska fisheries.

Our comments are based in large part on our experience with Amendment 80, which was implemented in 2008 to, among other things, control bycatch and discards in non-pollock trawl fisheries. That program has been extremely successful, and can serve as a reference when determining what actions are appropriate in the GOA.

One of the reasons Amendment 80 has worked so well is that it allocates both prohibited species and target species, and allows vessels to form cooperatives to manage their allocations. This comprehensive design allows vessels to work together and has shown to reduce bycatch and increase utilization of the resource. A program that allocates just bycatch (IBQs) will result in a race for target species if the fishery is high value or TAC-limited, and continuing the race for fish will compromise the bycatch reduction goals.

The importance of history in the fishery and dependence on the resource cannot be overstated. Many of our member vessels were pioneers in Gulf of Alaska fisheries before shoreside markets developed. They have made significant investments in the fishery, and several spend a significant part of the year in the Gulf. Those most dependent on the Gulf of Alaska received lower Amendment 80 (BSAI) allocations because of time spent in the GOA. Our sector's ability to participate in GOA fisheries at the current level must be preserved.

We look forward to working with you and with the North Pacific Fishery Management Council to craft a fair and effective bycatch management program in the GOA.

Sincerely,

Chris Woodley
Executive Director



Kodiak Island Borough
710 Mill Bay Road, Rm. 101
Kodiak, AK 99615
907.486.9310



City of Kodiak
710 Mill Bay Road, Rm. 216
Kodiak, AK 99615
907.486.8636

August 28, 2015

Glenn Merrill
Assistant Regional Administrator, Sustainable Fisheries Division
Alaska Region NMFS
Attn: Ellen Sebastian

Re: NOAA—NMFS—2014—0150
Comments submitted electronically

Gulf of Alaska Trawl Bycatch Management

Representing the communities of the Kodiak region with direct involvement in the groundfish fisheries of the Gulf of Alaska, the City of Kodiak and Kodiak Island Borough have been active participants in the Gulf Trawl Bycatch Management (GTBM) development process. We have provided the North Pacific Fishery Management Council (NPFMC) with the views of our community as a whole.

The Kodiak Fisheries Work Group (KFWG) has discussed the GTBM action at monthly public meetings since 2012, understanding that the outcome of this Council action will have profound effects on our community as well as on harvesters and processors. Kodiak municipal leaders consider the community to be the necessary "third leg of the stool." The welfare of all three of these sectors will continue to be our focus as the Council moves forward.

Through resolutions (attached), the City and Borough identified ten community goals, which continue to guide the community in discussing the proposed management program. First on this list is to provide effective controls of prohibited species catch and other bycatch, while providing for balanced and sustainable fisheries and healthy harvesting and processing sectors.

The community of Kodiak has recently experienced the negative effects of a fishery closure as a result of bycatch exceeding Prohibited Species Catch (PSC) hard caps placed on a traditional, non-rationalized fishery. Processors and their employees, fishermen and their crews, multiple Kodiak families, support businesses, and the community's tax revenues all suffered substantial losses as a result of the current lack of bycatch management tools.

We continue to strongly support the Council's initiative to reduce bycatch, and have encouraged Council progress in advancing a cooperative management program as a tool in this effort.

While we recognize that harvesting groundfish through cooperatives is a powerful method for controlling bycatch, the community has not yet arrived at positions about all the aspects of allocating harvest, or catch shares, to individuals and/or other entities. As well as considering the effects of a catch share program on harvesters and processors, the community is seeking to understand and analyze the overall social and economic impacts of catch shares, allocation schemes, and other important aspects of cooperative management.

The City and Borough's KFWG is sponsoring a community roundtable discussion in September on the key aspects of catch shares and cooperatives. In addition, the City and Borough are currently considering proposals in response to an RFP to provide information that should help in analyzing the economic effects on the community of key aspects of fishery management programs. This study should provide a baseline profile of the community's direct involvement in the fishing and processing industries; information on the support business sectors; contributions to the industry through municipal infrastructure; and estimates of the economic effect of seafood and support industries on the community economy.

In short, the community is focused on understanding what an eventual management program should include to ensure the continued economic and social health of the community as a whole.

It is clear the Kodiak community is in the midst of considering the essential elements of a new groundfish management system. Likewise, the Council may be closer to the middle of this process than the end. The current alternatives provide a range of choices for allocation and use of harvest privileges. The community supports retaining the current Alternative 2 and 3 for further analysis. However, while the current GTBM motion and alternatives before the Council are the focus of this EIS scoping exercise, we are aware that the alternatives in the current motion may be changed or added to by subsequent Council decisions. As the State of Alaska asked for a ten-month delay in GTBM discussions in order to review the issues, we recognize that the resumption of this action in October may see a change in direction.

Specific comments on the current alternatives:

The following points are based on the most recent comment letter from the City and Borough to the Council, in October 2014, modified to reflect action taken at the October Council meeting. They refer to components of the current alternatives, as well as to additional aspects of a management program that could address community concerns, based on the ten goals and subsequent discussions.

1. Consolidation: Quota consolidation limits (quota control caps and vessel use caps) and processing caps for processors.

Consolidation of licenses on fewer trawl vessels does not affect the total amount of harvest or the associated landing taxes/processing revenues and processing employment opportunities (assuming historic community delivery patterns are maintained), but it can impact the number of available crew jobs, shares paid to crew, and the amount of demand for shore-based support services.

The community recognizes avoiding all consolidation could reduce the management efficiencies that are the heart of a cooperative structure, and supports further analysis of a range of consolidation limits for both harvesters and processors.

In addition, the community supports further analysis of grandfathering in quota control and processing levels in excess of the caps, including analysis of the concept of specifying a time period after which quota control in excess of the cap must be divested (sunset provision).

The community also recognizes the importance of further analyzing vessel use caps that are applicable within cooperatives.

2. Regionalization: Regionalization of quota based on historical delivery patterns.

Regionalization applies to target species only and is a measure to preserve historical delivery levels to shore-side processors in each management area. As the regional landing requirement would specify landings only as Central Gulf (CG) or Western Gulf (WG), the motion also contains an option that would require target species CG quota historically landed in the port of Kodiak to continue to be landed in the port of Kodiak.

The intent of regionalization (and port of landing requirement) is to maintain processing levels and the associated employment opportunities at or near historical levels. At this time, the community supports further analysis of both the regional and the port delivery requirements.

3. Fishery participation criteria: Participation criteria thresholds that define eligibility for the purchase of trawl licenses and/or history/quota.

Currently persons (the definition of which includes individuals, corporate entities and government and community entities) must be able to document a fishing vessel to hold and purchase an LLP, and to purchase and hold quota. There is support for further analysis of participation criteria for the applicable fisheries, including the ability for communities to hold quota in the program.

4. Community participation in cooperative: An option where the community in which the processor is located would also be required to sign the cooperative contract, potentially allowing the community to support cooperative practices that meet community goals and objectives.

There are two levels at which the community can play an active role in the contract development process – the regulatory level and the cooperative management level. At the first level, the community believes that the cooperative contracts should embody the goals of the community, which should be built into the contract requirements by regulation.

Regarding the cooperative management level, the community supports further analysis of the concept of community participation and approval at the inter-cooperative level.

In addition, the community supports cooperatives providing quarterly performance reports to the community.

5. Ability to sever target quota from a license: The ability to sever target species history from a license and transfer it to another license.

This element would allow for a smaller piece of target species history to be severed from a trawl license (as opposed to purchasing the entire license), and used on a latent trawl license,

allowing for new entry at lower cost. The community supports this concept for further analysis, including the concept of providing for a maximum amount of history that could be severed from each license.

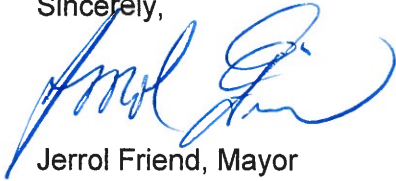
6. CFAs: An alternative to provide for formation and operation of Community Fishing Associations, as described in the Magnuson Stevens Act.

The community supports further analysis of the CFA alternative. We would like to see a side-by-side analysis of the proposed management program's potential attainment of the Council's goals and objectives both with a CFA, and without a CFA.

7. Additional comments on proposed management design:

The community recognizes the potential difficulties in opening a limited access fishery with a small amount of quota, and supports continued analysis on this aspect of the proposed program.

Sincerely,



Jerrol Friend, Mayor
Kodiak Island Borough



Pat Branson, Mayor
City of Kodiak

**CITY OF KODIAK
RESOLUTION NUMBER 2012–31**

**A JOINT RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK AND
THE KODIAK ISLAND BOROUGH ASSEMBLY SUPPORTING COMMENTS TO THE
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL ON PENDING ACTIONS
REGARDING COMPREHENSIVE MANAGEMENT OF PROHIBITED SPECIES
CATCH BY THE TRAWL FISHERY IN THE CENTRAL GULF OF ALASKA**

WHEREAS, the North Pacific Fishery Management Council is considering the need for and beginning development of a comprehensive program to manage prohibited species catch by the trawl fleet of the central Gulf of Alaska; and

WHEREAS, any such comprehensive management program for fisheries in the central Gulf of Alaska will have major and direct effects on the economy and well-being of residents of the Kodiak region; and

WHEREAS, National Standards of the Magnuson-Stevens Fishery Conservation and Management Act require that federal fishery management decisions take into account the importance of fishery resources to fishing communities, in order to provide for the sustained participation of such communities and minimize adverse economic impacts on such communities; and

WHEREAS, the City of Kodiak and the Kodiak Island Borough represent the communities of the Kodiak region, rather than individual user groups or fishing interests; and

WHEREAS, the City of Kodiak and the Kodiak Island Borough have begun a program to participate directly in public processes for fishery policy decision-making as outlined in Resolution No. 2012–30 of the City of Kodiak.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Kodiak and the Assembly of the Kodiak Island Borough that these bodies support the Kodiak Fisheries Workgroup’s proposed overarching purpose for consideration of fishery management issues of interest and concern to the Kodiak region as follows:

Overarching Purpose:

1. Maintain healthy, sustainable resources in the central (and western) Gulf of Alaska.
2. Promote a sustainable, vigorous economy in the Kodiak region with healthy and competitive harvesting and processing sectors and support industries.
3. Maintain quality of life and social well-being in Kodiak.

BE IT FURTHER RESOLVED by the Council of the City of Kodiak and the Assembly of the Kodiak Island Borough that these bodies support the Kodiak Fisheries Workgroup's proposed goals for management programs as follows:

Goals for Management Programs:

1. Provide effective controls of prohibited species catch and other bycatch to provide for balanced and sustainable fisheries and healthy harvesting and processing sectors.
2. Maintain or increase target fishery landings and revenues to Kodiak.
3. Maintain or increase employment opportunities for vessel crews, processing workers, and support industries.
4. Provide increased opportunities for value-added processing.
5. Maintain opportunities for fishermen to enter the fishery.
6. Maintain opportunities for processors to enter the fishery.
7. Minimize adverse economic impacts of consolidation of the harvesting or processing sectors.
8. Maximize active participation by owners of harvesting vessels and fishing privileges.
9. Maintain the economic strength and vitality of Kodiak's working waterfront.
10. Establish methods to measure success and impacts of all programs, including collection and analysis of baseline and after-action data.



CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

Adopted: September 27, 2012

Introduced by: Borough Assembly
Requested by: Kodiak Fisheries Workgroup
Drafted by: Borough Clerk
Introduced on: 09/20/2012
Adopted on: 09/20/2012

**KODIAK ISLAND BOROUGH
RESOLUTION NO. FY2013-10**

**A JOINT RESOLUTION OF THE KODIAK ISLAND BOROUGH ASSEMBLY AND THE
CITY OF KODIAK COUNCIL SUPPORTING COMMENTS TO THE NORTH PACIFIC
FISHERY MANAGEMENT COUNCIL ON PENDING ACTIONS REGARDING
COMPREHENSIVE MANAGEMENT OF PROHIBITED SPECIES CATCH (PSC) BY THE
TRAWL FISHERY IN THE CENTRAL GULF OF ALASKA**

WHEREAS, the North Pacific Fishery Management Council is considering the need for and beginning development of a comprehensive program to manage prohibited species catch by the trawl fleet of the central Gulf of Alaska; and

WHEREAS, any such comprehensive management program for fisheries in the central Gulf of Alaska will have major and direct effects on the economy and well-being of residents of the Kodiak region; and

WHEREAS, National Standards of the Magnuson-Stevens Fishery Conservation and Management Act require that federal fishery management decisions take into account the importance of fishery resources to fishing communities, in order to provide for the sustained participation of such communities and minimize adverse economic impacts on such communities; and

WHEREAS, the Kodiak Island Borough and the City of Kodiak represent the communities of the Kodiak region, rather than individual user groups or fishing interests; and

WHEREAS, the Kodiak Island Borough and the City of Kodiak have begun a program to participate directly in public processes for fishery policy decision-making as outlined in Resolution No. FY2013-09 of the Kodiak Island Borough

NOW, THEREFORE BE IT JOINTLY RESOLVED BY THE KODIAK ISLAND BOROUGH ASSEMBLY AND THE CITY OF KODIAK COUNCIL that these bodies support the Kodiak Fisheries Workgroup's proposed overarching purpose for consideration of fishery management issues of interest and concern to the Kodiak region as follows:

Overarching Purpose:

1. Maintain healthy, sustainable resources in the central (and western) Gulf of Alaska.
2. Promote a sustainable, vigorous economy in the Kodiak region with healthy and competitive harvesting and processing sectors and support industries.
3. Maintain quality of life and social well-being in Kodiak.

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NOW, THEREFORE BE IT FURTHER JOINTLY RESOLVED BY THE KODIAK ISLAND BOROUGH ASSEMBLY AND THE CITY OF KODIAK COUNCIL that these bodies support the Kodiak Fisheries Workgroup's proposed goals for management programs as follows:

Goals for Management Programs:

1. Provide effective controls of prohibited species catch and other bycatch to provide for balanced and sustainable fisheries and healthy harvesting and processing sectors.
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3. Maintain or increase employment opportunities for vessel crews, processing workers, and support industries.
4. Provide increased opportunities for value-added processing.
5. Maintain opportunities for fishermen to enter the fishery.
6. Maintain opportunities for processors to enter the fishery.
7. Minimize adverse economic impacts of consolidation of the harvesting or processing sectors.
8. Maximize active participation by owners of harvesting vessels and fishing privileges.
9. Maintain the economic strength and vitality of Kodiak's working waterfront.
10. Establish methods to measure success and impacts of all programs, including collection and analysis of baseline and after-action data.


**ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH
THIS TWENTIETH DAY OF SEPTEMBER, 2012**

ATTEST:



Nova M. Javier, MMC, Borough Clerk

KODIAK ISLAND BOROUGH



Jerome M. Selby, Borough Mayor

Comment by Cory Whiteley

I am not in favor of a derby-style system, as it currently stands. A harvest privilege system, as proposed by Alt. 1 and 2 seems to be capable of alleviating some of the fisheries' current issues. Though, I am concerned about the process and effect of allocation on ownership and participation. Stated in the Registrar: "...the Council and NMFS have determined that allocating exclusive harvest privileges of target and bycatch species creates a structure for fishery participants to efficiently manage harvesting and processing activities that can result in reduced bycatch and improved utilization of groundfish fisheries (page 2, middle column)." I do not contest that Alt.1 or 2 could promote fishermen choices of "fishing in a slower and more efficient fashion, using modified gear with a lower harvest rate but which reduces bycatch, coordinating with other vessel operators to avoid areas of high bycatch, and processing fish in ways that yield increased value but which are possible (page 2, middle column)," all of which will most likely benefit the fisheries. I would argue, that such a system may not benefit Alaska and Alaska communities in the most preferred way. Alaska's fisheries have a long standing history of non-resident ownership. I would like any EIS to consider the likely development of ownership and participation in a system of harvest privilege. To be clear; the inefficiencies sought by a harvest privilege (slower fishing, lower harvest rate, modifying gear) has the potential of creating high barriers of entry for fishermen whom may not be able to afford such choices. For instance, if a smaller scale fishermen incurs costs greater than the potential revenue of his/her quota before reaching his/her quota (in an effort to fish, effectively, less efficiently), then he or she may not be able to afford fishing in the future. This would result in the transference of ownership to one more likely to withstand such uncertainty and adversity. Other fishery systems like this have seen the consolidation of opportunity (quota) into the hands of fishermen who are more apt to withstand one, two, three, etc. years of high costs. And in the case of Alaska, this type of consolidation has typically lead to greater ownership and participation of non-residents and less ownership by Alaskans. Whether or not the proposed Alt. 1/2 cooperatives can protect against this event is debatable, and a point of consideration I would like to see included.

Dave Smith
F/V Lisa Melinda
Newport, OR

Glenn Merrill
Sustainable Fisheries Division
National Marine Fisheries Service
PO Box 21668
Juneau, AK 99802

August 27, 2015

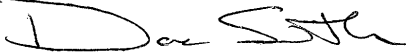
Dear Mr. Merrill

Please accept these comments on behalf of the f/v Lisa Melinda in response to your request for feedback on the "notice of intent" to draft an EIS for the trawl bycatch program for groundfish fisheries in the Gulf of Alaska. As the owner and part-time operator of the f/v Lisa Melinda, my business is directly impacted by any decision made to rationalize these fisheries as we have a long history of participation in the region. To that end I recommend that Alternative 2 (as described in the proposed rule) move forward in the analysis for further consideration.

I have been involved in a number of different rationalized programs in Alaska and on the west coast. Rationalization provides the tools necessary to achieve optimum yield in target fisheries while reducing bycatch without having to race your colleagues. If prohibited species catch is ratcheted down (which it has already been and will, in all likelihood, continue to be) then a race for fish will ensue. Racing for fish results in economic and conservation losses, not gains. Providing fishermen with the tools they need to successfully reduce bycatch while still being able to fully harvest and deliver their target species is critical to success for this region. The recent closure in the GOA due to a salmon hard cap attainment is a prime example of why rationalization is needed.

Some suggest a simple IBQ to solve the problem. This will not work and only exacerbates the race for fish. In order to create a win-win for the resource and stakeholders then a rationalization program described in Alternative 2 is the way to go. The Council was on the precipice of moving forward with Alternative 2 in October 2014 when the carpet was suddenly pulled out from under everyone as the new Alaska Fish and Game Commissioner requested that the Council take a hiatus from the process. Alternative 2 was developed by multiple stakeholders representing various viewpoints (harvesters, processors, communities, conservation, and decision-makers) and over several meetings. It strikes the balance between conservation and economics and most importantly, if structured properly, will end the race for fish and bring stability back to the region. Please analyze Alternative 2 in the EIS process - it must be included if a reasonable range is to be examined.

Thank you for your consideration.



Dave Smith
Owner - F/V Lisa Melinda

*Don Ashley,
F/V Gold Rush Fisheries LLC
PO Box 425
Kodiak, Alaska 99615*

Mr. Glenn Merrill,
Asst. Reg'l Administrator,
Sustainable Fisheries Division,
National Marine Fisheries Service
PO Box 21668
Juneau, AK 99802

August 28, 2015

RE: EIS for Gulf of Alaska Trawl By-catch Management Program.

I partner with my brother in the F/V Gold Rush, a Kodiak based AFA Exempt trawler, operating in the Bering Sea and the Gulf of Alaska.

We fish for Pollock, Cod and Rockfish and are dependent on Gulf of Alaska groundfish fisheries to maintain a viable fishing business.

We have significant positive experience with cooperative management structures in the BSAI AFA Pollock fishery and the CGOA Rockfish fishery, where we have successfully managed our by-catch, created efficiencies, enhanced safety at sea and maximized yield of target species.

I strongly advocate for the Council Motion Alternative 2 to be analyzed in the EIS with cooperative management structures.

I also strongly advocate for a streamlined and expedient forward movement of the trawl by-catch management program through the Council process. I believe failure to do so will have serious negative impacts on our fleet, our processing partners, our community and our fishery resource.

Thank you for attention to this most serious matter.

Respectfully,

Don Ashley,
F/V Gold Rush Fisheries LLC



August 28, 2016

Glenn Merrill
Assistant Regional Administrator, SFD
Alaska Region NMFS
P.O. Box 21668
Juneau, AK 99802-1668

Re: Notice of Intent to prepare an Environmental Impact Statement for a proposed Gulf of Alaska trawl bycatch management program

Dear Mr. Merrill,

On behalf of our 1,000,000 members and supporters, we are submitting comments on the proposed action to create a new management program for trawl groundfish fisheries in the Gulf of Alaska (GOA). We believe it is vitally important to end the “race for fish” derby-style fishery that currently occurs in GOA trawl fisheries, and provide fishermen with the tools to effectively reduce prohibited species catch (PSC) and other bycatch. Based on our experience in many regions of the United States and in countries around the world, we believe that the best way to do that is by coupling exclusive harvest privileges (i.e. cooperatives, individual fishing quotas (IFQs), territorial use rights for fishing (TURFs) and other catch share type management systems) with strong accountability. We believe the current range of alternatives includes options that would achieve the goal of effectively reducing bycatch while fostering profitable trawl fisheries that continue to provide economic benefits to fishermen, processors, and fishing communities.

Race-for-fish-style fisheries like the trawl fisheries in the GOA fail to provide the conditions in which fishermen are able to effectively act to avoid bycatch. For example, fishermen who voluntarily avoid fishing in certain areas or certain times, or employ excluder devices or similar selective gear modifications, are at a disadvantage and effectively subsidize those who seek to maximize landings despite bycatch. And, as additional permit holders enter the active fishery, which appears to be the case in GOA trawl fisheries in recent years, a race for fish can actually exacerbate the problem with more vessels racing to harvest as much groundfish as possible before the PSC is fully utilized. In fact, earlier this year, we saw the attainment of the PSC for chinook salmon forcing the closure of a portion of the non-rockfish program catcher-vessel

sector, which, without emergency action, would have resulted in significant and avoidable loss of revenue for the industry and fishery dependent communities.

In contrast, carefully designed exclusive harvest privilege programs create strong incentives for fishermen to avoid bycatch. Those strong incentives typically lead to a variety of selectivity improvements including:

- Geographic selectivity
- Temporal selectivity
- Gear modifications
- Better communication about areas to avoid because of high bycatch (this is particularly true in co-op systems where participants seek to optimize value for the co-op)

Furthermore, there are often ancillary benefits to this kind of more flexible management system including the potential to extend the season providing opportunities to extract additional value from the resource, and safety improvements stemming from the fact that fishermen have more options regarding when to fish without having to worry about losing access to the resource.

We laud the alternative development that stakeholders, the North Pacific Fishery Management Council (NPFMC), the Agency and State have done to date, and we believe that a strong foundation has been laid for a program that facilitates bycatch reduction, and creates opportunities for additional revenue to be generated in the fishery. We offer a few specific comments below.

- Given the number of species involved in GOA trawl fisheries, a co-op system may prove more able to utilize target species quota than might be the case under individual allocation. Specifically, with quota for many species divided amongst many permit-holders, it is possible that under an individual allocation some quota might be stranded reducing overall fishery value. For that reason, the co-op structure envisioned in the alternatives seems like a wise choice. And, as mentioned above, a co-op system can also bring a structure to bycatch management and avoidance which has proven extremely effective in many fisheries.
- Consolidation limits, area and port specific landing requirements, community fishing associations (CFAs), and an adaptive management program (AMP) are all important tools to consider when seeking to maintain fishery revenue and community stability in fishery dependent communities. Regarding CFAs, we recommend consideration of the amount of quota to allocate to CFAs, how that quota will move from the CFA to a co-op to actually be fished, and what purposes the CFA should seek to achieve. For example, in

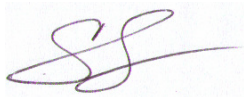
addition to anchoring quota in a community, CFAs have also been established for the purposes of facilitating new entrants (e.g. skippers working to move into ownership positions), educating consumers about seafood resources, and linking harvesters with markets. Regarding the AMP, we recommend considering a formulaic approach whereby use of the quota would be triggered by specific occurrences in the fishery. The other possible approach, in which a group of people or an elected board would allocate quota based on program goals, is likely to result in significant administrative burden, delay in quota use on the water, and might need oversight to ensure that quota is being allocated fairly.

- While not present in the current range of alternatives, we understand that Individual Bycatch Quota (IBQ) has been discussed as one potential way to solve bycatch challenges in the Gulf. In our view, without addressing the underlying race for fish, IBQ alone is unlikely to create the right incentives nor provide fishermen with the tools to reduce bycatch. Despite individual bycatch allocations, fishermen will still be compelled to participate in the race for fish for target species and will be unwilling to take actions to reduce bycatch where those actions might reduce overall groundfish catch. Allocating target and bycatch species would end the race for fish and make the program much more likely to be effective. Likewise, IBQ programs are unlikely to capture the ancillary benefits often seen under exclusive harvest privilege programs like cooperatives, IFQs and TURFs. These benefits can include increased economic profitability of the fishery, improved safety and working conditions, and ability for effective management of overfished species. Furthermore, the performance of IBQ programs is unknown and untested.

In conclusion, it's clear that the current range of alternatives contains viable options for a new management system that will create incentives to encourage fishermen to avoid bycatch, while fostering GOA trawl fisheries that continue to provide economic benefits to fishermen, processors, and fishing communities.

Thank you for the opportunity to comment on this important issue. We look forward to providing additional comments as the process unfolds.

Sincerely,



Shems Jud



August 27, 2015

Glenn Merrill
Assistant Regional Administrator for Sustainable Fisheries NMFS, Alaska Region
NOAA-NMFS-2014-0150

RE: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for any Gulf of Alaska (GOA) Trawl Bycatch Management Program

Icicle Seafoods, Inc. is the owner of five vessels with historical participation in the GOA groundfish trawl fisheries. As participants in these open access fisheries, we recognize the need for tools to help the industry manage bycatch. At the same time, a well-designed management structure can facilitate the improved safety of our fishermen and women, increase efficiencies at vessels and plants, and improve utilization of the resource by harvesters and processors.

For these reasons, we support the continued analysis of Alternative 2, with the following additional elements:

1. Analyze the ramifications of eliminating Pollock trip limits under a new management program.

Trip limits are a management tool used to slow the pace of an open access fishery. In a rationalized fishery, there should be no need for trip limits. Elimination of trip limits would improve the safety of harvesters and reduce their overall carbon footprint by reducing the number of trips needed to fully execute the fishery.

2. Analyze the effects of changing the trawl cod directed fishery season to Jan 20 – June 10 and June 10 – Nov 1, with no change to the A and B seasonal allocations.

Providing a longer horizon to allow for the harvest of trawl cod would allow operators to choose when to deploy for directed cod trips. This could coincide with periods of higher aggregations of cod and commensurately lower rates of bycatch. Additionally, this could reduce gear conflicts between the trawl sector and pot and HAL sectors, as the trawl sector could fish their allocations throughout the year.

3. Analyze the effects of port of landing requirements on vessel safety and bycatch reduction goals.

Port-of-landing requirements and regionalization of landings have been used in other rationalized fisheries with mixed results. Instituting a port-of-landing requirement for the GOA trawl fisheries runs counter to the goals of making these fisheries safer, reducing bycatch, and optimizing yield. Fish do not abide by borders, and an abundance of groundfish may be found far from traditional landing ports. Fish may relocate from year to year or after a number of years depending on water temperatures and a host of other environmental factors. Harvesting patterns may change over time due to other regulations that might then be in effect, e.g. Stellar Sea Lion restrictions.

ICICLE SEAFOODS, INC.

4019–21st Avenue West • Seattle, WA 98199

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Requiring deliveries to be taken to certain ports may increase a vessel operator's risk, whether due to longer run times from the fishing grounds to port, or to inclement weather between the fishing grounds and the required port of delivery. Safety concerns related to regional delivery landing requirements have been well documented in the BSAI Crab Rationalization Program, resulting in amendments to the program to allow exemptions from regional delivery requirements. Longer run times to required ports also results in unnecessary fuel consumption.

Currently underutilized fishing areas may have lower bycatch rates but cannot be effectively harvested under a race for fish program. The analysis should focus on how to best reduce bycatch, and harvesters should be given greater, not less, flexibility to minimize bycatch.

4. Analyze the effects of port of landing requirements and regionalization for fisheries that are not currently or historically fully utilized.

Port-of-landing requirements may provide a windfall to communities in the event of a groundfish fishery that has not been fully utilized in the past. For example, the 610 and 640 Pollock fisheries have historically been underutilized, along with many CGOA flatfish fisheries. If these were fully tied to a particular community or set of communities, the additional harvest occurring under a rationalized program would not appropriately fall within the umbrella of community protection.

We appreciate the work that NMFS and the Council are doing on this important issue, and believe that a well-constructed EIS is required. We support the continued analysis of Alternative 2 with the additional elements described above. Thank you for the opportunity to comment.

Regards,



Hunter Berns
Icicle Seafoods, Inc.
Fishing Vessel Operations Manager

Glenn Merrill
Assistant Regional Administrator for Sustainable Fisheries NMFS, Alaska Region
NOAA-NMFS-2014-0150

Re: Notice of Intent to prepare an EIS for any GOA trawl bycatch management program

My name is Jason Chandler, I am an owner/operator of the F/V Topaz, a family owned trawler that has fished in the Gulf of Alaska for over 30 years. I am writing to support the advancement of alternative 2 in the council motion on GOA trawl bycatch management dated 10/12/14. It is imperative that this option continue to be analyzed.

My family and many members of the trawl fleet have been asking for and working towards a new management structure in the GOA since 2001, with a major and collaborative effort in the last 4 years. With the introduction of the motion in October 2014, we felt that a rational, cooperative management program would finally be put in place to help the GOA trawl fleet reduce bycatch and live within the hard caps recently applied to our fisheries. These hopes were dashed when, in December 2014, the new Alaska state administration decided to sideline the program for 10 months while they examined other possible alternatives.

The trawl fisheries in the GOA are one of the last in Alaska or US west coast to operate under a derby style "race for fish". This style of management is wasteful and unsustainable. It offers little incentive or opportunity to reduce bycatch and creates many regulatory discards. We desperately need a management plan that allocates quota of target and PSC, to end this race. I have seen what can be accomplished under allocative cooperative management through my participation in the GOA rockfish program and Bering Sea AFA pollock fishery. Given the time to operate safely and thoughtfully we, the trawl fleet, can make great strides in reducing PSC bycatch and all but eliminate discards of target species. To accomplish this, we must end the race. This means allocating not only PSC, but also target species. Only when fishermen have security in their quota, can they slow the pace and do the best job possible in reducing bycatch as well as environmental impact.

I believe that this alternative also does a good job of protecting the communities that have historically been involved in the GOA groundfish fisheries. Through vessel use and ownership caps, they are protected from excessive consolidation of the fishing fleet. This will help to maintain the traditional number of fishing jobs available to local residents. It also includes regionalization of target quota, as well as a port of landing requirement for the community of Kodiak, my home town. I feel it is very important to protect Kodiak, as it has been the major recipient of central gulf trawl deliveries. I do not think that a CFA is necessary to accomplish this. A CFA, in my mind, will only add another unnecessary level of bureaucracy, putting more strain on fishermen and overly complicating an already complicated fishery.

I urge you to keep this motion alive in the EIS. Cooperative style fishery management has been proven to work, with many examples. The Gulf of Alaska trawl groundfish fisheries need reform now. No more band aids or restrictions, give fishermen the incentive and ability to do our best.

Thank you,

Jason Chandler

Glenn Merrill
Assistant Regional Administrator for Sustainable Fisheries NMFS, Alaska Region
NOAA-NMFS-2014-0150

Re: Notice of Intent to prepare an EIS for any GOA trawl bycatch management program

My name is Jason Chandler, I am an owner/operator of the F/V Topaz, a family owned trawler that has fished in the Gulf of Alaska for over 30 years. I am writing to support the advancement of alternative 2 in the council motion on GOA trawl bycatch management dated 10/12/14. It is imperative that this option continue to be analyzed.

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Thank you,

Jason Chandler

Comment by Jean Publi

CUT ALL QUOTAS BY 50%. NO TRAWLING SHOULD B ALLOWED AT ANY SITE. TRAWLING DESROYS THE BOTTOM FOR 50 OR MORE YEARS. THIS COUNTRY CANNOT AFFORD THAT KIND OF ENVIRONMENTAL DESTRUCTION. UNLESS RESTRAINED THE COMMERCIAL FISH PROFITEERS WILL DESTROY ALASKA SOON. THEY NEED RESTRAINT ON WHAT THEY TAKE. NOAA SEEMS TO INSTEAD BE IN THEIR BACK POCKET.

Attn: Glenn Merrill, Assistant Regional Administrator for Sustainable Fisheries NMFS, Alaska
Region NOAA - NMFS - 2014 - 0150

Re: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for a Gulf of
Alaska (GOA) trawl bycatch management program.

Dear Mr. Merrill,

My name is Jody Cook. I am 55 years old and have been involved in the Gulf of Alaska cod and
pollock trawl fisheries for over 30 years. I own and operate the 58' combination pot and trawl
vessel Cape Reliant. The vessel is home ported in Petersburg, Alaska. Most of the recent
trawling that we have done has been based out of Sand Point, Alaska. I am a member of the
Alaska Groundfish Data Bank, trawlers association, out of Central Gulf and Kodiak, and also a
member of the Peninsula Fishermans Coalition, a trawlers association representing most of the
local Western Gulf trawlers.

I am writing to give my support for Alternative 2 of the current Council motion from October 2014
regarding a Trawl bycatch management program, to be considered for analysis in the related
EIS that was developed thru the council process.

In regards to the GOA trawl fisheries, I believe that there has been extensive effort by the
council, by the state of Alaska, by all stakeholders and even by many uninvolved parties,.. to
develop some sort of program that will take into account the measures and standards set forth
by the Magnuson Stevens Act. I have been involved with the council process for some years
now and have been impressed by the pains that were taken to make sure that every voice was
heard. The October motion was drafted through a long process of testimony, economic studies,
discussion paper drafts, more testimony and more discussion papers and research. There were
proposals from Western Gulf fishers, from conservation groups, from Central Gulf fishers, from
processors, from other gear groups, and from communities, and others. I believe it is past time
to take the next step.

The council has moved forward and finalized action on reduced caps for halibut and salmon
bycatch, for the trawl fleet. The council has also moved forward and finalized action on
increased observer coverage for the trawl fleet.

I feel that with the current move toward more observer coverage and the financial burden it will
impose upon the industry, that it is imperative that the trawl fleet be given the tools to develop
their fishery in the most efficient manner possible. I feel that with the current reduced caps and
the current "race for fish" status of the fishery, that the fleet will see similar shutdowns like the
2015 closure for cod from salmon bycatch. I strongly urge the Council to follow up and move
forward on Alternative 2 of the October 2014 motion.

It has been proposed that 100% observer coverage be fast tracked for the Gulf trawl fleet. This
proposal came by the same source that proposed delaying progress on the October motion. I
appeal to the council to take into consideration the financial hardship this will impose upon a
relatively small boat operation that most of the Sand Point and King Cove trawlers are. At least
22 of the fishing vessels are 58' vessels. In 2013 the Cape Reliant burned \$30,350 worth of
fuel, between January 6, when we left Petersburg, to February 16, when the A season ended
for cod, in Western Gulf. We burn more fuel fishing for Pollock. In 2015, I believe there was
7004 tons of cod harvested by the trawl fleet in Western Alaska. There was about 22 vessels
fishing. That is an average of 636,727 lbs per boat. At .26/lb that is \$165,549 gross stock,

before fuel or any expenses. Fuel is the biggest operating cost, but maintaining equipment for trawling is very expensive. In the race for fish it is very important to have the latest electronics, the latest developments in nets, the latest doors. There are expenses with VMS requirements and upgrades. Each vessel needs at least two bottom trawls and two midwater trawls. A relatively basic Marport electronic net and door monitoring system cost the Cape Reliant \$30,000, 4 years ago. There needs to be a bottom mapping system that is a complex network of gps, depth sounder and computer program. There needs to be a communication system to log observer trips, (a new expense that will probably lead to needing the latest developments for internet connections.)

I mention these details, just to point out that there is already a large expense load and a not so large gross stock. The looming expense of full observer coverage is a scary prospect. I hope that some sort of alternative that may involve electronic monitoring may help to some degree. Also, Alternative 2, proposes cooperatives that would end the "race for fish". This would change many things for the better. Fishers could choose to fish later when the cod are schooled for spawning. The yield per effort would be greater and would lead to significant fuel savings. At the same time, bycatch is generally much less when the cod are schooled for spawning.

In Western Gulf there has been no success at harvesting cod with a trawl in the B season. The cod are dispersed and on grounds that are impossible to trawl. In 2015 this leaves over 2500 tons of cod stranded from the trawl fleet. Alternative 2 of the October motion addresses this issue by proposing that this portion of the trawl quota could be fished with pots.

In regards to Alternative 3, Community Fishing Associations: I do not support this alternative at all. I believe that the key to a healthy fishing community is a healthy fishing fleet. If there is any allocation of catch shares, I believe that the fisherman that have been the most involved with effort and investment in developing the trawl fishery should be the ones that are enabled to continue under any new program. Alternative 2 proposes measures that will protect community interests. As I have mentioned, to maintain and operate a trawl vessel is a complex and expensive process. It has taken many years to get to the point where we are with the Cape Reliant. There just isn't any "extra" money floating around in the Western Gulf that could support some experiment of administration.

A Co-operative fishing program, similar to that which is proposed in Alternative 2 has been successfully administered in Kodiak, for Central Gulf fishermen. It has been voluntary and has been successful at controlling bycatch. There was an attempt to have a co-operative stand down from fishing, in Western Gulf, to avoid a high salmon bycatch, in January of this year. It was not completely successful, as there was not 100% compliance. This resulted in a proposal to the council to have a regulation adopted to change the Western Gulf start date to a later date. It was contested by Central Gulf fishermen and some Western gulf fishermen and did not get far in the process. Alternative 2 would lay the foundation for a comprehensive plan that has been successfully administered in Kodiak and in Bering Sea fisheries and on the Washington/Oregon coast. It is a program that has already been practiced and proven. There is still flexibility given in a number of options in most of the proposed measures.

I believe that Alternative 2 would finally bring the Gulf of Alaska trawl fisheries up to date with many of the other developed fisheries. I believe that measures to protect communities, to reduce bycatch and discards exist in this part of the motion. I believe that the end of a "race for fish" will mean safer conditions. I believe it would mean less time for trawls to be on bottom, as fishers could choose to wait until the cod are the most concentrated, to target them. I believe

that it could increase market conditions as processors could work with fishermen to avoid fish backing up at the plant and compromising quality. I believe that measures to require historical delivery to be made to the same community will protect communities. That vessel caps will limit consolidation.

Thanks for your consideration, ..

Sincerely,

Jody Cook



TRIDENT SEAFOODS CORPORATION

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Export Sales: (206) 783-3818 • Fax: (206) 782-7195

August 28, 2015

Glenn Merrill
Assistant Regional Administrator
Sustainable Fisheries Division
Alaska Region NMFS
PO Box 21668
Juneau, AK 99802-1668

Attn: Ellen Sebastian

Dear Mr. Merrill:

I am submitting documents in response to the NOAA's request for written comments regarding the preparation of the Environmental Impact Statement on a new management program for the trawl groundfish fisheries in the Gulf of Alaska. The proposed action would potentially allocate allowable harvest to individuals, cooperatives, and other entities that participate in the GOA trawl groundfish fisheries. Most of the documents I am submitting have been previously been submitted to the North Pacific Fishery Management Council.

The first document is entitled "Considerations for Rationalizing the Trawl Groundfish Fisheries in the Central Gulf of Alaska". The paper notes that owners of non-malleable capital invested in the open access groundfish fisheries will have the value of their investments expropriated when the fishery is rationalized and transferred to the recipients of the initial allocation of harvesting rights. The paper specifically notes that on-shore processors have the greatest amount of non-malleable capital in these fisheries and therefore should participate in the initial allocation.

The second document is a cover letter dated September 22, 2014, to a legal opinion I wrote and submitted to the North Pacific Council.

The third document is that legal opinion. The opinion describes in detail how the Magnuson-Stevens Act authorizes regulation of on shore activities if such action is necessary and appropriate for the conservation and management of a fishery and specifically why the Magnuson-Stevens Act would authorize cooperatives with "linkage" between vessels and those vessels' historical on-shore processor.

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The fourth document is a transcript of NOAA counsel's oral presentation to the North Pacific Council in which the agency claims the Magnuson-Stevens Act does not authorize such linkage between vessels and on-shore processing facilities because there is no authority to regulate activities on-shore for conservation and management purposes.

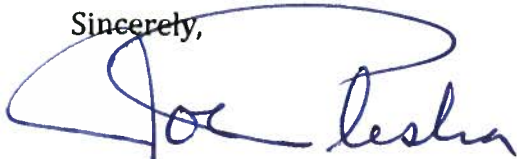
NOAA has been less than candid on this issue. In essence, NOAA's position is as follows: (1) NOAA has previously stated that the Magnuson-Stevens Act does not authorize regulation of on-shore activities. (2) The Magnuson-Stevens Act has not been amended to specifically address this issue. (3) Therefore, NOAA is not changing its position. That is hardly a careful legal analysis.

The issue of whether the Magnuson-Stevens Act authorizes regulation of activities on-shore, and therefore linkage between vessels and on-shore processing plants, is of some importance. One of the alternatives for including on-shore processors in the rationalization of the trawl groundfish fisheries is through linking vessels to their historical on-shore processor.

A true legal analysis would show that NOAA routinely regulates on-shore activities under the Magnuson-Stevens Act when it is necessary and appropriate for the conservation and management of the fisheries. The attached legal opinion cites numerous instances where on-shore activities, including on-shore processors, have been regulated under the Magnuson-Stevens Act. When these regulations have been challenged, NOAA cites its authority under the Magnuson-Stevens Act to regulate these on-shore activities because it is necessary and appropriate for the conservation and management of the fisheries. In the instances when the issue has been litigated, NOAA's authority to regulate on-shore activities under the Magnuson-Stevens Act for conservation and management purposes has always been upheld.

I appreciate your consideration of these comments.

Sincerely,



Joseph T. Plesha
Trident Seafoods Corporation

Considerations for Rationalizing the Trawl Groundfish Fisheries in the Central Gulf of Alaska

By Christopher C. Riley and Joseph T. Plesha

June 8, 2013

I. Introduction

This paper is focused on the trawl groundfish fisheries in the Central Gulf of Alaska. It discusses issues that are essential to rationalizing these fisheries while achieving three specific goals. Those specific goals are:

- Protect investments in the fishery made by both owners of processing plants and harvesting vessels, but do not create a windfall for either sector.
- Incentivize the avoidance of Prohibited Species Catch (PSC), in particular, the bycatch of Chinook salmon and halibut.
- Promote economic growth in Kodiak, while protecting community stability and the social values associated with both a healthy fishing industry and a working waterfront.

At its October 2012 meeting, the North Pacific Fishery Management Council adopted a “Purpose and Need” statement indicating its intention to consider rationalization of the trawl groundfish fisheries in the Central Gulf of Alaska.¹ The Council’s motion expressly defined the action’s purpose as the creation of a new management structure “which allocates allowable harvest to individuals, cooperatives, or other entities, which will eliminate the derby-style race for fish.” The trawl fleets’ lack of tools in a derby fishery to avoid bycatch was the primary concern expressed by many Council members. The Council’s motion also mentioned the goals of improving stock conservation, eliminating

¹ Council Motion — GOA Trawl PSC Tools, Oct. 9, 2012. The Council’s motion was amended at its February meeting to focus on incentives to avoid bycatch. The amended motion still notes that: “The purpose of the proposed action is to create a new management structure which allocates allowable harvest to individuals, cooperatives, or other entities, which will mitigate the impacts of a derby-style race for fish. It is expected to improve stock conservation by creating vessel-level and/or cooperative-level incentives to eliminate wasteful fishing practices, provide mechanisms to control and reduce bycatch, and create accountability measures when utilizing PSC, target, and secondary species. It will also have the added benefit of reducing the incentive to fish during unsafe conditions and improving operational efficiencies.”

wasteful fishing practices, creating accountability measures, and improving safety at sea. The focus of the Council's motion, however, is to incentivize bycatch avoidance.

It is widely understood that open access fisheries underperform rationalized fisheries in every relevant criterion by which performance can be measured. These include: conservation of the resource, efficient bycatch avoidance, safety at sea, gross value of products produced from the resource, and the cost of harvesting and processing the resource. Open access fisheries systematically destroy the ability of society to collect net benefits from the fisheries.

This dissipation of benefits in open access fisheries occurs because uncontrolled entry into the fishery results in overcapitalization. A simple example of overcapitalization is as follows: Imagine a fishery that is fished at the maximum sustainable yield, and produces a million dollars worth of fish per year with the services of five boats, at a total cost per boat of one hundred thousand dollars per year per boat. This results in a private and societal profit of five hundred thousand dollars per year. In this case each boat is earning one hundred thousand dollars of revenue above its total cost which includes a return on invested capital. These excess profits (rent) induce entry into the fishery despite the fact that the new capital investments do not add anything to the total catch. Entry continues until all the rent is dissipated. This occurs when the fishery contains ten boats for a total cost that exactly equals the value of the catch. If the price of fish doubled this would attract ten additional boats. The open access fishery thus squanders whatever societal benefits a fishery is otherwise biologically and technically capable of providing. If the cost of managing the fishery is not totally borne by the industry, then any fishery managed under open access becomes a net cost to society.

The purpose of this paper is to draw upon the experience gained over the past twenty-five years to highlight how the Central Gulf of Alaska trawl fisheries can be rationalized such that these fisheries can become a net benefit to society as a whole, while achieving the goals outlined in the first paragraph of this introduction.

II. Background

1. *Does it matter who receives allocations in rationalization programs?*

The benefits attributed to rationalized fisheries occur regardless of whom receives allocations of the privilege to utilize the fish. Furthermore, rationalized fisheries will be used by the same participants regardless of who receives allocations of quota. These propositions stem from the famous "Coase Theorem."² From the standpoint of efficient

² Coase, Ronald, *The Problem of Social Cost*, Journal of Law and Economics (University of Chicago Press) 3 (October 1960):1-44. Before Coase, economists of all political persuasions had accepted the idea that if, say, a cattle rancher's cows destroy his neighboring farmer's crops, the government should stop the rancher from letting his cattle roam free. Otherwise, believed economists, the cattle would continue to destroy crops because the rancher would have no incentive to stop them. Coase used a picturesque example to explain why that belief was incorrect. To summarize, imagine a cattle rancher who lives next to a grain farmer, and occasionally the cattle of the rancher invade the grain fields and damage the grain of the farmer. Does it make

utilization of the resource, it is unimportant who receives allocations of quota. When a vessel owner or processor claims to need an allocation of quota to remain in business, that claim is incorrect. Whether or not a plant owner or vessel owner ultimately receives allocations of quota does not determine whether it remains in the fishery. No matter whether initial allocations are granted exclusively to the owners of harvesting vessels, the owners of processing plants, fishermen (i.e., “crew”), processor workers, or taxi cab drivers in Anchorage, Alaska, the rationalized fisheries will be utilized by the most efficient industry participants. The less efficient entities will leave the fishery after rationalization, even if they receive allocations of quota.

As an example, the Bering Sea crab harvesting fleet shrunk from approximately 240 vessels pre-rationalization to sixty or so after rationalization, despite most all vessel owners’ sincere intentions to remain in the fisheries after they were rationalized. As another example, the pollock Community Development Quota (CDQ) program allocates ten percent of the Bering Sea pollock Total Allowable Catch (TAC) to villages in Western Alaska. When the CDQ program was initially implemented in 1991, the CDQ communities had no involvement in the pollock industry whatsoever. The pollock resource was already being completely, but inefficiently, utilized by the existing industry. The pollock quota allocated to CDQ communities was simply leased by those communities to companies already involved in the pollock fishery. It was very similar to an auction, as the CDQ communities generally leased their pollock quotas to the highest bidder. Because the fishery was rationalized—albeit into the hands of entities that were complete outsiders to the fishery—the harvesting and processing of CDQ pollock was as efficient as if the a pollock company itself owned the quota.

This point cannot be overemphasized: From the standpoint of both the utilization of the resource and economic efficiency, it does not matter who receives allocations of quota.

any difference in the number of cattle maintained and the amount of grain grown, whether the cattle rancher is responsible for the damage to the grain or the grain farmer responsible? Coase answered “no” and asked what would happen if both the grain farm and the cattle ranch are owned by the same person? That single owner should combine the two operations to achieve the largest profit. If adding another head of cattle raises cattle profits by \$100 but lowers grain profits by \$120, he will not add that head of cattle. Similarly, he will decide on building a fence only if the savings over the years fully compensate for the cost of the fence. But separate owners of the grain farm and the cattle ranch can achieve exactly this same best solution by contract, and they will be led to do so because then they will then have a larger pie to divide. The example concludes with the proposition that the *assignment of legal liability for the grain damage will determine who pays whom, but it will not affect the best way to conduct grain farming or cattle ranching.*

Coase’s insight was stunning. It meant that the case for government intervention was far weaker than economists had previously thought. The Coase Theorem has important implications for regulatory policy in general. It gave rise to the field called “law and economics” and resulted in Ronald Coase receiving the Nobel Prize in 1991.

2. *Why not auction the privilege to utilize fishery resources?*

If allocations of the privilege to utilize fish are unimportant in determining who within the industry utilizes those fish, why not just auction the privilege to the highest bidder? At first blush, there appear to be good reasons to do so. Our nation's fishery resources belong to the general public.³ It would be very simple to allocate all the benefits of rationalized fisheries to the general public through an auction of quota. The federal treasury can certainly use the revenue. If auctioned by the federal government, the fisheries will be utilized just as efficiently as if the privileges were instead allocated directly to industry participants.

Looked at another way, if a large unexploited stock of cod were suddenly discovered off a remote U.S.-owned island in the Pacific ocean, for example, and fishery managers wanted to rationalize it prior to the resource being exploited, the federal government would likely auction the privileges to this undeveloped resource rather than allocate the privileges to utilize the fishery to processing plant owners or fishing vessel owners based in Alaska, Washington State or Oregon.

The typical progression of fisheries, however, is that we tend to wait until a fishery is overcapitalized through the uncontrolled entry process inherent in an open access fishery before attempting to rationalize the fishery. The fact that we tend to wait until a fishery is overcapitalized complicates the initial allocation process enormously.

3. *The reason to include fishing vessel owners and processing plant owners in rationalized fisheries.*

In a fully capitalized, open-access fishery, where the harvest is controlled by a single quota (TAC) that the participants race to exploit, the investments in fishing vessels and processing plants that are specific to the fishery being rationalized (and that are also relatively durable and non-malleable) will be lost as a result of rationalization. This lost investment value reappears in the value of the quota. Wealth is unavoidably transferred from the fixed capital of processing plants and fishing vessels to the holders of quota.⁴ In other words, after an open access fishery is rationalized, fishing vessels and processing plants subject to rationalization have little value, potentially even negative value, especially in Alaska where these assets may have no other productive uses.

³ The United States claims sovereign rights over all fish within the United States Exclusive Economic Zone. 16 U.S.C §1853a.

⁴ Plesha, Joseph T., and Riley, Christopher C., *The Allocation of Individual Transferable Quotas to Investors in the Seafood Industry of the North Pacific* (Jan. 1992). (Attachment One.) See also, Matulich, S.C., Mittelhammer, and Reberte, *Toward a More Complete Model of Individual Transferrable Fishing Quotas: Implications of Incorporating the Processing Sector*, *Journal of Environmental Economics and Management* 31,1 (1996): 112-28.

When such fisheries are rationalized, owners of fishing vessels and processing plants can suffer enormous financial losses. The amount of the loss depends upon three factors: (1) The extent the fishery is overcapitalized; (2) the durability (or how long it lasts with routine maintenance) of the physical capital in harvesting and processing; and (3) the degree to which the capital is non-malleable (or has no alternative uses of near or equal financial benefit to the owner).

4. *How do these post-rationalization losses to the value of vessels and plants occur?*

The mechanism at work that causes investors in fishing and processing capacity to lose the value of their capital investments is that, by definition, the overcapitalized fishery has much more capital, and hence daily harvesting and processing capacity, than is necessary to prosecute the fishery once it is rationalized. A quota holder would not need to own a boat or a processing plant in order to participate in a fishery. When a quota holder decides to participate in the fishery, he or she could simply hold a reverse auction⁵ among fishing vessel owners. The vessel owners would bid down to the point where the winning boat just covered its variable costs. The quota holders would then proceed to secure processing services with the same result. The winning bid for processing services would cover only the variable costs⁶ of production.

As long as the price under discussion between vessel and plant owners allows for any return above variable costs, processing and vessel owning companies have an incentive to make a more competitive offer until they cover only their variable costs of operation and make no return on their capital investments.

This is a difficult concept for many to appreciate. Why would any rational businessman invest tens or hundreds of millions of dollars into an industry and later allow others to make use of that investment for free? When an overcapitalized, open access fishery is rationalized there is far more harvesting and processing capital than is necessary. Instead of the fishery lasting, for example, one month in an open access race, under rationalization it can be efficiently utilized in six months; meaning there is six times more existing harvesting and processing capacity than necessary. Not all of this physical capital can remain busy during the newly lengthened six-month fishery, but its owners will all have an incentive to keep the physical capital operating throughout this period. If this millions of dollars of excess physical capital earns one penny above the variable costs of its operation, its owner is better off than under the alternative of earning nothing. Thus starved for production through their facilities, vessel and plant owners bid for product until the price reaches a level at which they no longer can cover their variable cost.

⁵ In a reverse auction, the sellers compete to obtain business from the buyer and prices will typically decrease as the sellers undercut each other.

⁶ Variable costs are those expenses that increase with production. For processors, variable costs would include expenses such as direct processing labor, packaging, and increased utility charges. For vessel owners, variable costs would include things like fuel.

The holders of quota thereby will effectively own not only the fish in the fishery, but also the usufructuary⁷ rights to all the non-malleable physical capital used to harvest and process those fish. This situation, where the quota holders enjoy free-of-charge use of physical capital, continues until the capital stock wears out to the point where only the appropriate amount remains.

Immediately upon beginning operations under a rationalized fishery, therefore, owners of fishery-related capital will see the return on their investment fall to zero. This cannot be avoided and is, in fact, *absolutely necessary* in order to decapitalize an overcapitalized industry. The owners of this physical capital cannot expect to realize any return on their investment until the excess capital stock leaves the industry to the point where it is at the optimal level for the rationalized fishery.

In industrial fisheries such as the groundfish fisheries off Alaska, the financial losses described above are suffered by *owners* of fishing vessels and processing plants. Virtually every vessel and plant owner is a corporation; an entity invented by lawyers with the purpose of accumulating and investing capital for the financial benefit of its shareholders.⁸ These corporations are not “fishermen.” The corporate owners of fishing vessels and processing plants do not themselves fish or process. These corporations are not crew aboard fishing vessels or workers in processing plants. They do not own Commercial Fisheries Entry Commission’s licenses. These corporations are the owners of the physical capital involved in harvesting and processing fish.

The allocation of quota to vessel and plant owners in industrial, fully capitalized open access fisheries is essential to compensate those owners for the losses they unavoidably suffer in the value of their vessels and plants as a result of rationalization.

Some vessel owners may lament the fact that processing plant owners seek to be part of rationalized fisheries, but the rationale for including processing plant owners in the allocation of quota is also the *only* rationale for including vessel owners in the allocation of quota. If a corporation that owns a fishing vessel does not suffer losses in the value of its boat as a result of rationalization, there is no rational basis upon which it can be allocated quota.

5. *Allocations to fishermen and processors.*

In industrial fisheries the question of whether those who work as fishermen or processors should also receive allocations is, from an economic perspective, the same as whether investors in vessels and processing plants should receive allocations. Do those who work in plants or on boats have “human capital” that is devalued by rationalization?

⁷ A usufructuary right is the right of enjoyment, enabling a holder of the right to derive profit from property which is owned by another person.

⁸ Micklethwait, John and Wooldridge, Adrian, *The Company: A Short History of a Revolutionary Idea* (New York, Modern Library, 2003).

Human capital is a specialized skill that is unique to a specific profession earning the individual far more than that person could make in another available occupation. An example of those with substantial human capital would be major league baseball players. Felix Hernandez, a gifted pitcher for the Seattle Mariners, would certainly not be receiving a salary of *\$25 million a year* if the rules of Major League Baseball had been somehow changed so that all batters hit off of a tee, like a six-year old's "tee ball" game.

Those individuals who work in processing plants are paid at levels that would not indicate they have human capital that is devalued should their existing job disappear through rationalization. It is not as clear with those who work aboard fishing vessels. Fishermen, especially skippers, may have specialized skills that earn them more than the next best alternative. Such skills might include: safely operating and maintaining a boat, staying awake long hours, locating schools of fish, or managing a crew. It is not clear how difficult these skills are to find, but they are not particularly unique. Most of these skills would be required of fishermen after rationalization and these skills are indeed transferable to other occupations. On the surface it does not appear fishermen have obvious human capital that would be devalued by rationalization. Rationalization will result in consolidation of the fishing fleet, however, it is not clear that the total weeks worked in fishing and processing by the labor force will decrease at all. The peak number of people working will certainly decrease but the average time worked per worker will increase. Despite this, we believe that it might be worthwhile for the Council to consider whether fishermen have human capital that should also receive compensation for the impacts that rationalization will have for them.

6. *Allocations to the community of Kodiak*

The community of Kodiak has seven plants that process trawl-caught groundfish. In addition, some of the trawl groundfish harvesting fleet is based in Kodiak and therefore uses support services located in Kodiak and hires crew from Kodiak.

The community of Kodiak has made non-malleable, durable capital investments in the existing race-for-fish that characterizes the open access trawl groundfish fisheries. These investments might include things such as excess electricity generation and increased water capacity for the peak processing periods.

Basically, the rationalization of the trawl groundfish fisheries in the Central Gulf of Alaska will cause the harvesting season to lengthen substantially and result in consolidation of the harvesting and processing sectors that participate in these fisheries.

Kodiak will be impacted in various ways by rationalization. Some impacts will undoubtedly be positive. If, for example, rationalization allows for groundfish to be processed throughout the year instead of during intensive peak periods, resident process workers will be able to work for longer periods and the use of non-resident labor should sharply decrease. But non-malleable capital investments made to handle the peak production seasons will become worthless and if there is significant consolidation, there could be fewer jobs for residents in vessel crewing and support service sectors.

III. Central Gulf of Alaska Trawl Groundfish Fisheries

1. *The Central Gulf of Alaska trawl groundfish resources.*

The Gulf of Alaska trawl fisheries are characterized by relatively small TACs for the primary species and extreme overcapitalization in the utilization of those species. The level of overcapitalization in the harvesting and processing sectors is on par with the halibut and Bering Sea crab fisheries prior to rationalization.

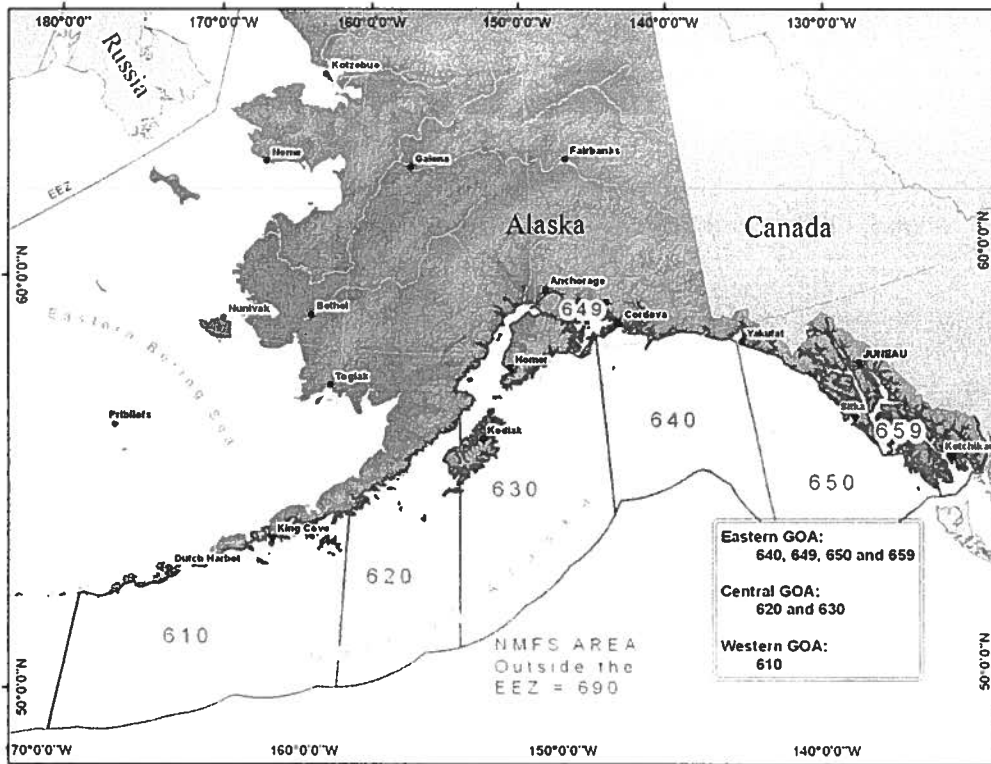


Figure 1. Federal Management Fishery Areas in the Gulf of Alaska

a. Pollock

The largest trawl fishery in the Central Gulf is pollock. Kodiak processes virtually all of the area 630 trawl pollock harvest and historically processes ninety-five percent or more of the area 620 harvest. On average, the annual harvest has been just over 45,000 MT. (See fig. 2, below.)

Pollock TAC in the GOA			
	610	620	630
2008	17,602	19,181	13,640
2009	15,249	14,098	11,058
2010	26,256	28,095	19,118
2011	27,031	37,365	20,235
2012	30,270	45,808	26,348
5-year Ave.=	23,282	28,909	18,080
Delivered to Kodiak =	0	27,464	18,080
Ave. Del. to Kodiak =			45,544

Figure 2. Average Pollock Harvest Delivered to Kodiak

Directed fishing for pollock is divided into four quarters with twenty-five percent of the total Gulf-wide pollock TAC allocated to each of the four “seasons”:

- “A” season begins January 20th, until the quota is taken;
- “B” begins on March 10th;
- “C” season begins August 25th; and
- “D” season on October 1st.

Pollock trawl fishing in the Gulf of Alaska is closed after November 1st. Allocations to management areas 610, 620 and 630 are based on the seasonal biomass distribution as estimated by groundfish surveys.

The pollock fishery is short and intensive. There is a voluntary catch share program that effectively lengthens the season somewhat.⁹ Without such a voluntary system, however,

⁹ Federal and state antitrust laws apply to the fishing industry, including fishing vessel owners. Agreements between vessel owners to limit production or allocate harvest market shares are *per se* violations of the Sherman Act. (*United States v. Topco Associates, Inc.*, 405 U.S. 596 [1972].) *Per se* violations of antitrust laws are illegal even if such activities are otherwise reasonable, well intended, or even encouraged by government regulators. It is a violation of the Sherman Act, therefore, for private parties to allocate harvests among individual vessels, regardless of whether the National Marine Fisheries Service supports such behavior and would otherwise not open the fishery for fear that the TAC will be exceeded.

A formal agreement between each vessel owner is not necessary to show an antitrust violation. A conspiracy among competitors can be proven even if there is no formal agreement, but merely a tacit understanding.

each of the four pollock harvest seasons in the Central Gulf fishery last only a few days. Taken as a whole, the “A,” “B,” “C” and “D” pollock seasons would remain open a month or less, but for the voluntary catch share program.

Kodiak was the first Alaska community to process pollock harvested in the Gulf of Alaska through the Alaska Fisheries Development Foundation’s surimi project in 1984. At that time, the pollock fishery lasted year-round and pollock was efficiently utilized in all but post-spawn periods during portions of April and May.¹⁰ Because the Central Gulf pollock fishery is currently utilized in a month or less and it can be efficiently utilized for approximately eight months (from January 20th through October 31st, when the fishery is closed by regulation, and except for the post-spawn periods of April and May), there is about eight times more harvesting and processing capacity in the open access fishery than would be necessary if the Central Gulf of Alaska fishery were rationalized. The level of overcapitalization in the Central Gulf of Alaska pollock fishery appears greater than that of the Bering Sea crab fisheries prior to rationalization of the crab fisheries in 2005.

b. Pacific Cod

The Pacific cod fishery is another large and valuable trawl groundfish fishery. The five-year historical average cod TAC harvested in the Central¹¹ Gulf of Alaska is about 36,000 MT. (See fig. 3, below.)

The Supreme Court has held “[w]here the circumstances are such as to warrant a jury in finding that the conspirators had a unity of purpose or a common design and understanding, or a meeting of minds in an unlawful arrangement, the conclusion that a conspiracy is established is justified.” (American Tobacco Co. v. U.S., 328 U.S. 781, 810 [1946].)

The Fishermen’s Collective Marketing Act (FCMA) [15 U.S.C. § 522] provides a limited exemption to the antitrust laws. The FCMA allows fishing vessel owners, who are members of an eligible association, to allocating harvesting market shares among members of the association. This FCMA exemption, however, is strictly limited to members of the association. (United States v. Borden Co., 308 U.S. 188 [1939]. See also, the settlement in United States v. All Coast Fishermen’s Marketing Association, Fed. Reg. Vol. 47, No. 146 at 32814, where the defendant FCMA cooperative engaged with non-members in the negotiation of fish prices. The government specifically alleged “non-members attended meetings of the defendant at which the price per pound of seafood to be offered processors [the ex-vessel price] was discussed.” Further, “during periods when the members were refusing to fish because the defendant was not able to obtain an agreement with processors on ex-vessel prices, employees of the defendant secured agreements from non-members not to fish until the defendant had reached an agreement on ex-vessel prices with the processors.”)

Not every trawl vessel owner eligible to fish in the Gulf of Alaska is a member of an FCMA coop. Those who are not members of FCMA cooperatives cannot participate in voluntary catch share programs without violating the antitrust laws. Members of FCMA cooperatives can be prosecuted for encouraging non-members to participate.

¹⁰ Co-author of this paper, Chris Riley, was responsible for implementing the AFDF shorebased pollock project in 1984. Mr. Riley noted that they voluntarily stopped processing pollock in Kodiak during portions of April and May because of the post-spawn condition of the fish. Otherwise, the pollock fishery in the Central Gulf of Alaska was a year-round fishery.

¹¹ The Central Gulf of Alaska includes areas 630 and 620.

Pacific Cod TAC in GOA		
	Western	Central
2008	25,932	37,901
2009	16,175	23,641
2010	20,764	36,782
2011	22,785	40,362
2012	21,024	42,705
5-year Ave.=	21,336	36,278

Figure 3. Average CGOA Pacific Cod Harvest

The Gulf of Alaska cod resource is currently allocated among the various harvesting sectors. The trawl catcher vessel sector’s allocation is 41.6 percent of the non-jig TAC. The average Central Gulf Pacific cod allocated to the trawl catcher vessel fleet is therefore around 15,000 MT.¹²

The trawl cod fishery has two seasons, the “A” season beginning on January 20th and the “B” season beginning on September 1st. Historically cod were fished in the summer, so the period when cod are available to the trawl fishery is much greater than the current harvest period. Depending on the catch per unit of effort, the cod fishery is actively fished for approximately a couple of weeks each season to a month or more. Often trawl catcher vessels will switch between harvesting pollock and cod in the Central Gulf of Alaska. There is certainly far more harvesting and processing capacity in the open access cod fishery than would be necessary if the fishery were rationalized. The level of overcapitalization in the trawl cod fisheries is likely similar to pollock, but the level of overcapitalization is difficult to estimate precisely because there are times when the fishery is open and cod are difficult to find.

c. The flatfish fisheries

The potentially largest trawl fishery in the Central Gulf of Alaska is the flatfish complex, especially Arrowtooth flounder. (See fig. 4, below.)

¹² 41.6% of 36,278 is 15,091 metric tons.

Deepwater Flatfish in the CGOA

Year	ABC	TAC	Harvest
2008	6,721	6,721	543
2009	6,927	6,927	428
2010	2,865	2,865	490
2011	2,919	2,919	246
2012	2,308	2,308	246
5 Year Ave:	4,348	4,348	391
Harvest as Percent of ABC & TAC			8.98%

Shallow-water Flatfish in the CGOA

Year	ABC	TAC	Harvest
2008	29,873	13,000	8,135
2009	29,873	13,000	8,195
2010	29,999	13,000	5,333
2011	29,999	13,000	3,819
2012	22,910	18,000	3,322
5 Year Ave:	28,531	14,000	5,761
Harvest as Percent of ABC			20.19%

Rex Sole in the CGOA

Year	ABC	TAC	Harvest
2008	6,713	6,713	2,517
2009	6,630	6,630	4,162
2010	6,403	6,403	3,284
2011	6,293	6,294	2,721
2012	6,412	6,412	1,972
5 Year Ave:	6,490	6,490	2,931
Harvest as Percent of ABC & TAC			45.16%

Arrowtooth flounder in the CGOA

Year	ABC	TAC	Harvest
2008	167,936	30,000	25,928
2009	164,251	30,000	22,813
2010	146,407	30,000	20,532
2011	144,559	30,000	27,787
2012	143,162	75,000	18,213
5 Year Ave:	153,263	39,000	23,055
Harvest as Percent of ABC			15.04%

Figure 4. Flatfish harvests in the Central Gulf of Alaska.

Trawl fishing on these fisheries opens on January 20th and continues throughout the year (even after November 1st). They are limited by the quarterly release of halibut Prohibited Species Allocation (PSA), however.

2. *The Central Gulf of Alaska trawl groundfish industry.*

There are seven shorebased groundfish processors in Kodiak that are consistently supplied by about thirty-eight trawl vessels. The Alaska Groundfish Data Bank listed the plants and the trawl fleet that typically delivers to those plants (as of March 2012) as follows:

Trident Seafoods

1. Alaska Beauty
2. Cape Kiwanda
3. Excalibur II
4. Hazel Lorraine
5. Lisa Melinda
6. Lone Star
7. Marcy J
8. Michelle Renee
9. Miss Sarah
10. Pacific Ram

Westward Seafoods

11. Collier Bros
12. Elizabeth F
13. Gold Rush
14. Hickory Wind
15. Mar Pacifico
16. Progress
17. Vanguard
18. Walter N

International Seafoods of Alaska

19. Chellissa
20. Dawn
21. Laura
22. Marathon
23. Mar Del Norte

North Pacific Seafoods

24. Alaskan
25. Anthem
26. Caravelle
27. Dusk
28. Sea Mac
29. Topaz

Ocean Beauty Seafoods

30. Bay Islander
31. Icy Mist
32. New Life
33. Pac Star

Global Seafoods

34. Leslie Lee
35. Pacific Storm
36. Windjammer

Pacific Seafoods

37. Grumpy J
38. Stella

3. *The estimated value of vessels and plants in the Central Gulf of Alaska trawl groundfish industry.*

It is important to emphasize that this paper is only making gross estimates of the value of the assets in harvesting and processing Central Gulf of Alaska groundfish. It is difficult to

find data on asset values, particularly the value of processing plants. The paper presents these estimates to give an appropriate ballpark of the asset values that the Council might consider. It is anticipated that the *actual* values will be analyzed in greater detail as the issue progresses through the Council process.

The value of a typical Gulf of Alaska trawl vessel depends upon the earnings the vessel makes in the Gulf fisheries. Estimating the value of vessels is complicated by the fact that many Central Gulf of Alaska trawl vessels participate in other fisheries in other regions. Also, the value of those vessels with pollock allocations from the American Fisheries Act is dependent upon how much Bering Sea pollock quota is associated with the vessel. In the mid-1990s, prior to the time when serious discussion of groundfish rationalization in the Gulf of Alaska began, the price of Gulf-style trawlers appears to have been a modest half million dollars or less. (See Attachment Two.)

Another way to estimate a vessel's value is with a recent vessel survey. A vessel survey is typically undertaken by the owner, but surveys at least provide documentation of the surveyor's estimate of the value of the physical vessel itself. We have had the opportunity to examine a number of Central Gulf trawl vessels with recent surveys. The higher quality Gulf trawl vessels typically have a survey value of right around \$1,500,000. (See Attachment Three.) The only way to accurately determine a vessel's value, however, is to know the profits that vessel earns in the existing Gulf groundfish fisheries. Even the vessel survey does not show the profits currently produced from the Gulf. The survey, therefore, is an imperfect estimate.

Assuming that the "average" Central Gulf of Alaska vessel has a value of \$1,500,000, the large bulk of the trawl groundfish harvested in the Central Gulf is taken by thirty-five to thirty-eight vessels, depending upon the year,¹³ therefore the total value of the Central Gulf of Alaska trawl fleet can be estimated to be something in the range of \$52.5 to \$57 million.

Estimating the value of the shorebased processors in Kodiak is also difficult. It is complicated by the fact that many of the plants also process salmon. Salmon, however, is a small component of the major groundfish plant's financial viability and it is possible to isolate the revenue stream generated by groundfish. But there are no survey values to examine for the processing plants, and the earnings from each plant are confidential, so providing documentation of the basis of any estimate is problematic.

Trident does have information on its operations in Kodiak, however. Understanding that this estimate lacks any authentication, working with Trident's current accounting department and its now retired former Chief Financial Officer, we estimated that the value of groundfish processing plants in Kodiak was in the neighborhood of \$72 million.

4. *The estimated value of groundfish quota after rationalization.*

¹³ Personal discussion with Julie Bonney by co-author Joe Plesha.

It is again important to note that the assumed value of groundfish quota in the Central Gulf given in this paper are only estimates. Reasonable people can debate what the value of quota in these fisheries will be after rationalization.

Catcher vessel pollock quota in the Bering Sea for the inshore industry is currently selling for approximately \$1,950 per metric ton. That price, however, includes only the vessel owners' rents earned in the pollock fishery under the American Fisheries Act. It is less clear what the processor's rents might be. Mothership catcher vessel quota in the Bering Sea reportedly sells for about \$2,150 per metric ton. Mothership catcher vessels have nearly an unencumbered IFQ in the pollock fishery, so that might approximate the value of both the harvesting and processing rents earned in the fishery. Shorebased processors should be able to extract slightly greater value from the resource because of greater space for product diversity and recovery. Therefore, to estimate the value of utilization quota for pollock in the Central Gulf of Alaska, a figure of \$2,200 per metric ton seems reasonable.

Pacific cod quota value is estimated based on the authors' understanding of the value of quota in the freezer-longline sector. Freezer-longline cod quota is valued at something like \$5,000 per metric ton. There is a premium paid for longline cod over trawl-caught cod and frozen at sea cod compared to cod processed on shore. That is offset by the flexibility that shorebased plants have in greater recovery of cod byproducts and higher valued-added primary products, such as fillets and even cod for fresh fish markets. A reasonable estimate of the value of cod quota in the Central Gulf of Alaska trawl fishery would be \$5,000 per metric ton.

Given that the five year average pollock TAC delivered to Kodiak from the Central Gulf of Alaska is just a bit over 45,500 metric tons, and assuming that pollock quota would be worth about \$2,200 per metric ton, a reasonable estimate of the total value of Central Gulf pollock quota would be just over \$100,000,000.¹⁴

The trawl apportionment of the Central Gulf Pacific cod TAC averages about 15,000 metric tons, so assuming trawl-caught cod quota would be worth \$5,000 per metric ton, the total value of the Central Gulf cod quota would be \$75,000,000. Combined, the pollock and cod might be worth about \$175,000,000.

IV. Rationalization Considerations

The components listed below are designed to achieve the goals listed in the introduction: (1) Protect existing investments in the fisheries without creating a windfall; (2) Incentivizing bycatch avoidance of PSC; and, (3) Promoting the economy of Kodiak.

¹⁴ 45,500 multiplied by \$2,200 equals \$100,100,000.

1. *Compensation to vessel and plant owners for the losses to the value of specialized capital caused by rationalization.*

There are only two rationales for allocating quota to private entities. The first is in exchange for the socially desirable development work that is both costly and inherently non-proprietary. The pollock and cod fisheries in the Central Gulf began in the mid-nineteen eighties. The business entities involved in the development are much the same as those operating today. We do not believe that it is possible to credibly measure the relative contribution of current participants to the development process. We therefore do not believe it is appropriate to allocate any of the cod or pollock quota on the basis of the positive externalities associated with fishery development.

The second, and in fact the only rationale for allocating quota to private entities in the Central Gulf cod and pollock fisheries is the fact that the value of those investments is expropriated from its current owners and added to the value of the quota that is established by the implementation of rationalization. This seizure is similar to a Fifth Amendment "taking," but made worse by the fact that typically it is not the general public who receives the expropriated property—as in the case of a Fifth Amendment taking—but instead other private entities who receive allocations of quota to utilize the fish.

Owners of processing plants and fishing vessels in the industrial, capital-intensive fisheries like the Central Gulf of Alaska groundfish fisheries are examples of investors who will suffer large devaluation of their investments through rationalization, depending only upon the durability, malleability and level of overcapitalization in the rationalized fisheries.

The estimates given above regarding the existing value of investments made by owners of processing plants and harvesting vessels, and the value of potential quota, is too speculative to provide a precise "range" of what that allocation to compensate each sector of investors might be. But it appears that forty percent or less of the pollock and cod quota, allocated to both the owners of harvesting vessels and processing plants, may adequately compensate each sector.

To avoid expropriation of wealth, the analysis of any rationalization proposal should carefully examine the value of the current harvesting and processing investments in the groundfish fisheries being rationalized, and estimate the value of the quota that will be created. Allocations of quota that are of a substantially greater value than the amount vessel and plant owners' investments suffer as a result of allocation creates a windfall for the owners of those assets.

a. Malleability of capital investments

As mentioned above, the level of overcapitalization in the Central Gulf of Alaska is very large. Arguably there is close to eight times more harvesting and processing capacity than necessary in a rationalized fishery. Both the vessels and plants are extremely durable. With routine maintenance, the physical capital used in harvesting and processing groundfish can last nearly indefinitely. There is an issue, however, concerning the malleability of the capital used in harvesting and processing groundfish in the Central Gulf.

There are alternative uses for some of this physical capital and this should be taken into account in the allocation process.

Many of the groundfish shorebased processors in Kodiak also process salmon. We have not examined in this paper the degree to which the capital used in processing groundfish is also used for processing salmon. Our understanding, however, is that the degree groundfish processing equipment is used for salmon is small, both in terms of the relative volume of salmon compared to groundfish and the relative financial importance of salmon compared to groundfish. This is something that should be examined in greater detail, however, in the analysis of any potential rationalization program.

Trawl vessels fishing in the Central Gulf of Alaska appear to be relatively malleable, in that many operate in other fisheries. If you look at the thirty trawl vessels that have fished in the Central Gulf for at least each of the past five years—the vessels that would likely receive the lion's share of any allocation—these thirty vessels have already received an estimated quota value of over \$125,000,000 in other fisheries. (See Attachment Four.) In other words, these vessels have, on average, already received over four million dollars in quota per vessel.

An argument can be made that many of these vessel owners have already been fully compensated for the devaluation in the value of their vessels caused by rationalization. If, for example, a car was totaled in an accident its owner subsequently received the full value of the car from insurance proceeds, but if the totaled car later caught fire and was further damaged, its owner would find great difficulty in collecting a second payment for the damage caused by the fire. The second payment for the fire damage to the car would result in an obvious windfall to the car's owner. It might appear to be a windfall for a vessel owner who has already received quota from other fisheries of a value as great, or greater than, the value of its vessel, to now receive additional quota under a rationalization program.

The other side of that argument is that the Magnuson-Stevens Act requires consideration of investments in, and dependence upon, the fishery.¹⁵ If some Central Gulf trawl vessels were to receive no allocations of quota because of the quota value they had already received in other fisheries, these corporations would be uncompensated for the impacts of rationalization on their investments in the Gulf of Alaska trawl groundfish fisheries. Thus, it could be said, that their investments in, and dependence upon, those Gulf fisheries are being ignored.

b. Allocations through cooperatives or directly to both vessel and plant owners?
Fishing in cooperatives will be essential for bycatch avoidance programs because the government cannot reward industry participants on a timely basis for the avoidance of bycatch. (See Memorandum from Lisa Lindeman to the NPFMC, Feb. 24, 1995, Attachment Five.)

¹⁵ Magnuson-Stevens Act §303A(5).

There is a debate however, whether (for allocation purposes), if it is best to allocate quota directly to both vessel and plant owners, or whether it is preferable to allocate quota to cooperatives in which vessels are somehow linked to an affiliated processor. From an economic perspective, the issue is whether cooperatives with vessel and plant linkage can effectively allocate the appropriate rents between vessel and plant owners so that each sector is compensated for the impacts of rationalization as efficiently as direct allocations of quota to each sector.

There are three basic cooperative structures with linkage between vessels and processing plants which attempt to maintain economic balance between the two sector of investors—vessel and plant owners—after rationalization. These three structures are: cooperatives with permanent linkage, such as the Rockfish Pilot Program; cooperatives where vessels can move after a period of time in open access, such as the American Fisheries Act; and a new concept where a vessel owner must “leave behind” with the processor some of the quota assigned to the vessel if the vessel moves to a new cooperative. Each such cooperative structure complicates the issue of assuring both vessel and plant owners are fully compensated for the impacts that rationalization will have on the value of their investments.

A cooperative like that of the Rockfish Pilot Program, with permanent linkage, creates the problem of bilateral monopolies. A bilaterally monopoly arises when a monopolistic seller¹⁶ deals exclusively with a monopsonistic buyer. Bilateral monopolies are very rare because the price, and thus the sharing of rents, under a bilaterally monopoly, is indeterminate. A seller will not sell for less than its variable costs of production and a buyer will not purchase at a price below its variable costs of production. Within that limitation, however, there is no way to determine what the price will be. In a bilateral monopoly the price that is established must be determined outside of the traditional method of supply and demand.

As Nobel-prize winning economist George Stigler noted, in a bilaterally monopoly price will be determined by such things as *“skill in negotiation; public opinion; coin flipping; a wise marriage. The difficulty in naming interesting examples of bilateral monopoly arises because it is such an unstable form of organization; only the trading between a monopsonist employer and an all inclusive labor organization is likely to survive as an example.”*¹⁷

Because of the bilateral monopoly problem, cooperatives with permanent linkage do not necessarily compensate the impact of rationalization for either vessel or plant owners. The value either sector will receive under such a program is unpredictable.

¹⁶ But for the fact they are established by government action, the creation of an individual fishing quota system that awards an exclusive “privilege” to utilize a specific percentage of the available harvest of a fishery is a clear violation of antitrust laws. Even under the antitrust exemption created by the Fishermen’s Collective Bargaining Act (FCMA) of 1936, members of a FCMA cooperative would be in violation of antitrust laws if they attempted to exclude non-members from a particular fishery.

¹⁷ George Stigler, *The Theory of Price*, 4th Edition, (Macmillan, 1987) p. 215.

Cooperatives that allow for a vessel owner to leave after first spending a period of time in open access create additional problems. There are a relatively small number of trawl vessels in the Central Gulf groundfish fisheries. Vessels that want to move to a new processor-affiliated cooperative could easily form a separate cooperative under the Fishermen's Collective Marketing Act (FCMA) of 1936 while in open access and retain their historical quota and thereby not have any additional costs for being in open access. It would allow a vessel to move from processor to processor without costs.

Even if a vessel were to be required to be in open access for a period of time without participating in a FCMA cooperative, the cost of doing so is quite low. After all, vessels currently have no option but to fish in open access and continue to do so.

If the cost of moving to a new cooperative is equal to the division of rent that is intended between vessels and plants, the cooperative with linkage would seem to achieve its purpose of compensating both sectors at a specific value. For example, if the intention was an equal division of the rents of a fishery between vessels and plants, and the cost of a vessel moving to a different cooperative was half of the value of the existing fishery, then it could be assumed that the rents from the fishery would be equally shared between plants and vessels.

Developing rules which control the movement of vessels between coops that are so precise so as to cause a specific division of rents between vessels and plants is impossible. Even if it were possible, the value of a fishery changes over time, so the costs of changing cooperatives relative to the value of a fishery would always be in flux. In short, it would not be possible to develop a cooperative structure with linkage that accurately divided the value of the fishery between vessels and plants without requiring a vessel that was moving cooperatives to "leave behind" with the processor a specific percentage of the quota associated with that vessel. If, for example, it was intended that vessels and plants share rents equally from the fishery, a cooperative structure that left behind fifty percent of the quota with the processor associated with a vessel (after that harvester switched cooperatives) would achieve this goal. It must be said, however, such a "leave behind" program is essentially the same as allocating quota directly and equally to both harvesters and processors.

2. *Compensation to the community of Kodiak caused by rationalization.*

a. Allocations directly to the community

Substantial capital investments in support of the existing derby fishery have been made by both the public and private sectors in Kodiak. These investments, in a process identical to that which causes devaluation of harvesting and processing physical capital, will lose value as a result of rationalization. No measurement has been made in the value of such affected investments. This is not an excuse to treat these losses as if they did not exist. Kodiak should be compensated. We believe the best way to do this is through a direct allocation of quota to the community.

b. Impacts caused by consolidation

The potential for consolidation in the Central Gulf pollock and cod fisheries is extreme. There must be caps placed on vessel and plant consolidation or the fishery could constrict to a handful of vessels and one or two processors.

Within those caps there will be consolidation, however. Even with expansion of the flatfish fisheries, the community of Kodiak will be impacted in ways difficult to precisely predict. The Council might consider a program which gives to Kodiak ten percent of the quota that is utilized by entities (vessels or plants) that were not initial recipients of that quota. If, for example, a vessel received an allocation of quota but sold that quota to another entity, ten percent of that quota would be given to Kodiak in a one-time transfer. If the initial quota recipient leased its quota for a year, the community of Kodiak would get ten percent of that leased quota for a year.

The impact of such a program would be to dampen consolidation as a buyer would pay for 100 percent of the quota but receive only ninety percent. In addition, it would compensate for costs the community would face as a result of consolidation.

3. *Reduction of bycatch*

a. Chinook salmon

Chinook salmon bycatch in the Central Gulf is a serious problem. Approximately 13,000 Chinook are taken annually. Because bycatch rates of chinook are about three times higher in the pollock than in the cod fishery, and because these fisheries are prosecuted by essentially the same participants, we recommend that the bycatch reduction program targets only the pollock fishery. The program we recommend would be based upon the 2009 FIP proposal for the Bering Sea.¹⁸ This program would differ from the FIP in that it would use pollock quota, rather than an annual financial commitment from the industry.

We suggest that an amount of pollock TAC that is sufficient to reduce chinook bycatch in the cod and pollock fisheries by fifty percent, be allocated on an annual basis to pollock quota holders on the basis of their relative success at avoiding chinook. On the basis of data from an eight year program where one catcher-processor was incentivized to avoid chinook, *relative* to the rest of the fleet, we estimate that this could be accomplished with a Chinook Avoidance Quota (CAQ) of between ten percent and twenty percent of the pollock TAC. (See Attachment Six). This will impose significant costs on the industry. The reasonable assumption of a linear avoidance opportunity marginal cost function indicates that annual avoidance costs would be one half of the annual rental value of the CAQ. At the \$100,000,000 estimate of the total value of the pollock quota, and an eight percent discount rate, we would expect that a ten percent CAQ would result in annual chinook avoidance expenditures of four hundred thousand dollars. Because half of the value of the CAQ will be

¹⁸ *Analysis of an Incentive-Based Chinook Salmon Bycatch Avoidance Proposal for the Bering Sea Pollock Fishery*, Kochin, Levis A., Riley, Christopher C., Kujundzic, Ana, Plesha, Joseph T., (2009). <http://www.fakr.noaa.gov/npfmc/PDFdocuments/bycatch/SalmonAvoidProposal209.pdf>

expended in Chinook avoidance, only half of the total amount of CAQ would be relevant in any calculation of compensatory allocations to the owners of fishing vessels.

b. Halibut

The anticipated issuance of a TBA that would occur in the rationalization process will reduce the bycatch rate of halibut and pollock fisheries.

4. *Flatfish.*

The flatfish fishery is not yet fully developed in that the harvests total a small fraction of the ABC. This fishery is constrained by halibut bycatch, not TAC. The rationale given in the case of the cod and pollock fisheries (lost in the value of capital), cannot be used to justify a transfer of quota to private entities. A fishery that is not more than about twenty percent developed is not, by definition, overcapitalized. The capital losses that are compensated under reactive rationalization cannot exist without overcapitalization.

There is no principle of economics or law that says that we must wait for a fishery to be overcapitalized before we can consider rationalization. Our convention of allowing fisheries to become overcapitalized prior to rationalization has cost society billions of dollars. We suggest that the council act to rationalize this fishery proactively by allocating quota to the entities that developed this fishery. The rationale for this allocation is the first one mentioned above. This is in exchange for the positive externalities generated in the development process. The development of the flatfish fishery consists of coming up with ways to catch this species while greatly reducing halibut bycatch rates. This will involve considerable investments in gear and experimental operational techniques. We propose that history would begin in the first year after council action on rationalization and end either the year before the first year the TAC is fully harvested in the individual species group, or 2020, whichever comes first. In a proactive rationalization, the distribution of quota should be specified in the final council action. We propose that forty percent of the utilization quota be allocated to both the harvesting and process sectors. The remaining twenty percent would be allocated to CAQ as chinook bycatch rates in the flatfish industry must be significantly reduced. The rationale for including processors as well as harvesters is that bycatch reduction is costly and a proactive rationalization of the fishery would cause a reduction in the ex-vessel price of fish, as a supply of flatfish would remain static. A processing sector that was competing for quota as well as ex-vessel fish would pay more, and would therefore share in the very real costs of developing the techniques and gear that will allow the industry to reduce bycatch rates and utilize this resource to its potential.

The Allocation of Individual Transferable Quotas to Investors in the Seafood Industry of the North Pacific

By Joseph T. Plesha & Christopher C. Riley

A. IMPACT OF PRIVATIZATION OF FISHERY RESOURCES ON INVESTORS IN THE INDUSTRY

1. Investments Made in the Open Access Fishery

During the 1980's the domestic seafood industry was strongly encouraged to invest in the groundfish fisheries of the North Pacific. Promotion of "Americanization" was accomplished through the Magnuson Act's preferential fishery allocation to the domestic industry, the "fish and chips" policy of fishery allocations to foreign nations, Federal government guaranteed loans and tax deferrals, and State of Alaska raw fish tax rebates. With this impetus, investments were made in an open access fishery management regime and the major groundfish species became fully utilized by the domestic seafood industry. The North Pacific Fishery Management Council is now considering privatizing the fishery resources off Alaska with implementation of an Individual Transferable Quota ("ITQ") system.

There are two basic types of investments made in the primary production of seafood; investments in harvesting capacity and investments in processing capacity.¹ To follow is a hypothetical example to help demonstrate some of the impacts an ITQ system will have on the existing investors in the open access fishery.

The first chart is a basic industry profile showing the hypothetical operating characteristics of each sector and the characteristics of the fishery they prosecute.

¹ Fish are highly perishable before being processed into a primary product. Investors in fishing vessels and primary processing capacity have made those investments based on the requirement that fish be handled quickly, i.e. these investors have invested in the "race to fish" caused by the open access fishery management regime. Investors in secondary processing of seafood, on the other hand, have not made their investments based upon the "race to fish" caused by open access. Secondary processors have not overcapitalized as a result of the existing management regime and will not be adversely impacted, therefore, by the privatization of fishery resources. Being that secondary processors are consumers of processed seafood, their investments may benefit if the utilization of fishery resources is increased through privatization.

Basic Production Profile

1.	<i>Fishing Vessels</i>	
	Vessel Cost	\$5,000,000
	Annual Capital Cost	\$500,000
	Annual Depreciation	\$500,000
	Variable Cost (\$/mt)	100
	Catch Rate (mt/day)	68.5
2.	<i>Processing Plants</i>	
	Plant Cost	\$50,000,000
	Annual Capital Cost	\$5,000,000
	Annual Depreciation	\$5,000,000
	Variable Cost (\$/round mt)	\$100 (Excluding fish cost)
	Processing Rate (mt/round weight)	685
	Product value (\$/round weight equivalent mt)	\$400
3.	<i>Annual Harvest (mt)</i>	1,000,000

The fishing and processing operations shown above would reach an open access equilibrium in a 1,000,000 mt a year fishery with 100 fishing vessels delivering to 10 processing plants in a 146 day per year fishing season. The following table shows the operating characteristics of that open access fishery in an equilibrium condition.

Open Access Equilibrium Condition

1.	<i>Fishing Vessels — 100</i>	
	Income	
	1,000,000 mt harvest @ \$200/mt	\$200,000,000
	Costs	
	Variable Costs	\$100,000,000
	Capital Cost	\$50,000,000
	Depreciation	<u>\$50,000,000</u>
	Total Cost	\$200,000,000
	Net Revenue	\$0
2.	<i>Processing Plants — 10</i>	
	Income	
	1,000,000 mt harvest @ \$400/mt (round weight equivalent)	\$400,000,000
	Costs	
	Fish Cost	\$200,000,000
	Variable Processing Cost	\$100,000,000
	Capital Costs	\$50,000,000
	Depreciation	<u>\$50,000,000</u>
	Total Cost	\$400,000,000
	Net Revenue	\$0

2. *Benefits of Privatizing Fishery Resources*

Under open access equilibrium, shown above, both sectors are covering all costs, yet neither sector is earning economic rent from the resource. (Note: Individual operators may, of course, be receiving quasi-rents because of their fishing skills, plant locations or marketing skills, etc..) From the viewpoint of society as a whole, the fishery may be utilized just as effectively by 40 vessels delivering to 4 processing plants, 365 days of the year. This would result in the elimination of 60% of the capital and depreciation costs, for an annual savings (over the open access equilibrium) of \$120,000,000. The 1,000,000 metric ton fishery would generate, then, \$120 per metric ton of economic rent.

Private Property Equilibrium Condition

1.	<i>Fishing Vessels — 40</i>	
	Income	
	1,000,000 mt harvest @ \$140/mt	\$140,000,000
	Costs	
	Variable Costs	\$100,000,000
	Capital Cost	\$20,000,000
	Depreciation	<u>\$20,000,000</u>
	Total Cost	\$140,000,000
	Net Revenue	\$0
2.	<i>Processing Plants — 4</i>	
	Income	Income
	1,000,000 mt harvest @ \$400/mt (round weight equivalent)	\$400,000,000
	Costs	
	Fishing Rights	\$120,000,000
	Fish Cost	\$140,000,000
	Variable Processing Cost	\$100,000,000
	Capital Costs	\$20,000,000
	Depreciation	<u>\$20,000,000</u>
	Total Cost	\$400,000,000
	Net Revenue	\$0
3	<i>Quota Holder Income</i>	\$120,000,00

A comparison between open access equilibrium and private property equilibrium conditions show the benefit that is expected from fishery privatization. In an open access fishery, society receives \$400,000,000 worth of fishery products in exchange for \$400,000,000 worth of resources. In a private property fishery, society receives \$400,000,000 worth of fishery products in exchange for \$280,000,000 worth of resources. In the example above, all of the societal benefits are captured by the ITQ quota holders. (In reality, the government would impose a tax on at least a portion of those rents.)

3. *Impacts of Privatization on Existing Investments.*

The potential benefits of privatized fisheries have been frequently studied. There has been little serious examination, however, of the economic impacts on existing investments in the industry during the transition between open access and privatized fisheries. In a heavily overcapitalized fishery that is capital intensive, and where that capital is both relatively durable and specific to the fishery involved, the owners of that capital should expect significant losses during the transition between the open access and privatized fishery equilibrium conditions.

In this hypothetical example, I have assumed that the quota holders neither harvest nor process fish, but instead contract for these services separately. (The results would be the same, however, no matter which group held quota.) I also assume that there are no alternative uses for either the fishing vessels or the processing plants. While this may be very nearly true for pollock processing plants, fishing vessels may have some alternative uses, such that their opportunity cost more closely approaches the actual earnings they receive from fishing pollock.

A holder of quota would have to contract with a fishing vessel owner to have that quota harvested. Under open access equilibrium 100 boats delivered to 10 plants 1,000,000 mt of fish in a 146 day season. This would mean that immediately after the fishery is privatized, the fleet would be capable of harvesting at 2.5 times the rate necessary to harvest the quota. Under the initial privatization of the fishery, there would be two and one half boats competing for one fishing position. The fishing fleet would likely bid the price down from the average costs (\$200/mt) to something very close to the variable cost (\$100/mt).

The same is true for processing services. The oversupply of processing plants will cause this group to bid up the price of delivered fish to the point where it equals the value of the finished product minus the variable processing costs (\$400 - \$100 = \$300/mt). The quota holder is therefore able to generate \$200 in net revenue from each metric ton of fish, or approximately \$80 per metric ton more than the quota holder will be able to generate when the fishery reaches the private property equilibrium state.

This \$80 per metric ton is a transfer from the owners of the capital investments in the vessels and plants to the quota holders. In effect, immediately after the ITQ system is in place, the owners of quota receive, along with the fishing rights and the corresponding economic rent from the fishery, the right to use other people's property for free!

Open Access to Private Property Transition Period Disequilibrium

<i>1. Fishing Vessels — 100 (Initially)</i>		
Income		
	1,000,000 mt harvest @ \$100/mt	\$100,000,000
Costs		
	Variable Costs	\$100,000,000
	Capital Cost	\$50,000,000
	Depreciation	<u>\$50,000,000</u>
Total Cost		\$200,000,000
Net Revenue		(\$100,000,000)
<i>2. Processing Plants — 10 (Initially)</i>		
Income		
	1,000,000 mt harvest @ \$400/mt (round weight equivalent)	\$400,000,000
Costs		
	Fish Cost @ \$100/mt	\$100,000,000
	Fishing Rights @ \$200/mt	\$200,000,000
	Variable Processing Cost	\$100,000,000
	Capital Costs	\$50,000,000
	Depreciation	<u>\$50,000,000</u>
Total Cost		\$500,000,000
Net Revenue		(\$100,000,000)
<i>3. Quota Holder Income</i>		\$200,000,000

Investors in processing plants and fishing vessels will suffer enormous losses during the transition between open access and private property fisheries. These losses reflect the fact that they can no longer expect to receive any return on that portion of capital in excess of the amount "appropriate" for the fishery in question. They also cannot expect to receive any return on that portion of capital that is appropriate until such time as all the "excess" capital has either left the fishery for other employment or simply becomes worn out.

I have tried to quantify the loss that may be suffered by investors of capital in our hypothetical example. The loss to investors as a result of the change from an open access to a privatized fishery is estimated by taking the initial (open access) investment value, the portion of the capital that is appropriate for a privatized fishery and the point in time when the owners of the capital can expect to begin to receive a return on the "appropriate" portion of capital.

In the hypothetical example, the total value of investments under open access is assumed to be \$1,000,000,000, and the portion of the capital that is appropriate to prosecute the resource in a private property fishery was assumed to be 40%. In order to estimate the time period after which investors can expect to begin to receive a return on the appropriate portion of capital, I assume that none of the capital leaves the fishery for other employment and that 10% of the original

capital is consumed each year. In that 60% of the capital is in "excess" of the appropriate amount needed to efficiently utilize the resource, the transition period from an open access equilibrium to a private property equilibrium is six years (if you assume 10% of the capital wearing out each year).

At a ten percent discount rate the \$1,000,000,000 initial capital that vessel and plant owners invested in the open access fishery will have a net present value of only \$225,789,972 when the fishery is privatized.²

B. NEED FOR ALLOCATIONS OF ITQ TO BOTH SECTORS OF THE INDUSTRY.

1. *Rationale for Allocations to Investments Made in the Seafood Industry*

The only reason for giving allocations of ITQ to participants in the seafood industry at all (as opposed to the general public) is as a reward for prior investments of capital in the open access fishery, or as compensation for the decreased value that capital investments will suffer when the fishery is privatized. With either rationale, however, there is no basis for awarding allocations of ITQ to investments in the harvesting sector and not the processing sector.³

In the above hypothetical example, investors of capital in an open access fishery lose over 75% of the value of their investments. Under the current proposals being examined by the North Pacific Council, investors in fishing vessels are compensated for this enormous loss by the receipt of ITQs. There is no reason why investors in processing capacity should not also be compensated for the loss in value of their investments.

2. *Legal Considerations*

The Magnuson Act states that in establishing a system for limiting access to the fishery the council and the Secretary must take into account the "present participation in the fishery" (16 USC §1853(b)(6)(A)). It is clear that this provision would require that the impact of any ITQ allocation on the processing sector also be considered before initial allocations are made. Congress would otherwise have stated that establishment of a limited access system need only consider participation by "fishing vessels" in the fishery, or some other more narrowly drawn requirement.

The Secretary of Commerce cannot be arbitrary and capricious in the awarding of ITQs. There is no rationale for allocating ITQs to investors in fishing capacity and not processing capacity. The one reason that has been expressed for allocating ITQs to only fishing vessel owners is that, under an open access system, the fish become "privatized" when they are first harvested. Therefore, the argument goes, ITQs should be initially allocated to the fishing vessel. This

² NPV after privatization = \$1,000,000,000 x 40% x [1/(1+10%)⁶] = \$225,789,972.

³ Even an auction of the resource to the highest bidder would not compensate those who have invested capital in an open access fishery only to have the value of that investment greatly decreased through privatization.

argument is nonsense. Nothing further need be said than that the fishing vessel (or its owner) does not own the fish when they are harvested—the fishery permit holder owns the fish. Even in the case of factory trawlers, who process their own catch, technically the permit holder transfers ownership of the harvested fish to the vessel for processing. The permit holder typically has no ownership interest in the vessel, but instead is an employee of the owners of the vessel. Further, the initial distribution of ITQs allocate the economic rent from the fishery resources, not just fish. There is no argument which rationally would allow allocations of rent to one segment of capital investment in the industry, but exclude another sector of capital investment in the industry. It would be just as rational to give the allocation of ITQs to owners of red painted vessels only, instead of the owners of vessels painted any other color.

It has also been said that allocations of ITQ have been made only to fishing vessel owners because of political expediency or, more appropriately stated, because of some social benefits. There may arguably be social benefits from lifestyle fisheries where the vessel owner is the master of the vessel and there is a community infrastructure built around the skipper/owner returning home to his family after each fishing trip. But the groundfish fisheries of the North Pacific are different. The vast majority of the investments in groundfish fishing vessels (whether it be a factory trawler or inshore harvester) have been made by individuals who do not work on the vessels. Most of the capital that was invested in these fishing vessels was for the purpose of securing a potential return and was not invested as a means of assuring employment or a specific fishing lifestyle.

There is also a Fifth Amendment "taking" issue if the allocation of ITQs is given only to the owners of fishing vessels. It may seem odd to allege a taking when the government is creating private property from a common property resource; however, taking may result from non-acquisitive regulations. The State and Federal governments strongly encouraged investment in the processing sector, even to the extent of guaranteeing loans to build processing facilities. Clearly the economic impact of ITQs being allocated only to owners of fishing assets will be devastating to the value of processing plants in Alaska. Not only would the value of capital investments be diminished under an ITQ system, but a portion of the economic rent from that capital is appropriated by the recipients of the fishing quotas. There is not a wide variety of the public benefitted by the adoption of an ITQ system and, in fact, the beneficiaries are easily identified as the quota holders. The public good is not served in any apparent reason by giving the economic value of the resource to one sector while excluding another.

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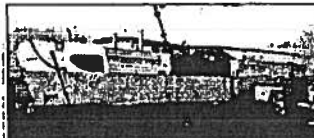
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BUNKER "BARBE" 11' 180'x40'x12'. Certified and just out of drydock! 10,722 bbls. fuel oil, 3335 bbls. clean diesel, (3) 10" Kenny Gear Pumps on 6-71 Detroit. Newly painted bottom, topsides, piping, everything! All valves rebuilt, PV valves rebuilt. New plating and framing installed. Market value \$350,000. Reduced to \$245,000

40' x 90' Flexfloat Barge

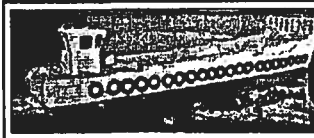
Heavy duty S-50 series. Newly painted & ready to ship. (5) 10x40, (3) 10x20, (4) 10x20 racks. All refurbished & like new. Reduced from \$175,000 to only \$95,000 for quick sale.



162'x25' Chinese Langkai Factor. U.S. Marshall Seizure. 6 cylinder diesel Hanshin, 185 KW Yanmar, 165 KW Kubota. Needs cosmetic work and conversion but priced to sell! Only \$22,000



32' x 110' Deck barge w/building. All steel in perfect condition! Complete interior and exterior sandblasted to white metal and epoxy coated approx. 4 yrs ago! Inside white and like new! (Navy spent over \$200,000!) 3 available and priced to sell quickly. Only \$79,900 net!



66' LCM-6 Landing Craft. Refurbished w/new steel work. Twin 6-71's. Lots of extras! Reduced from 79,500 to only \$49,500!

101'x28'x13' 1300 HP Ocean Tug "Marine Discoverer" Extensive \$150,000 refit in 93! 6T hyd cranes, 2nd winch added. 35,000 gal fuel, 2500 gal water. Too many upgrades to mention! Turkey, ready to sail! Possible low available with sale. Quick Sale! Reduced from \$320,000 to \$220,000!



- 36' LCM-6 Pushboat Conversion. Hull only. With rubber. (Eng's available) ONLY \$ 2,500 FIRM
- 40' FJG PL BOAT HULL ONLY (POWER AVAILABLE) \$ 2,500
- 40' Ex-Navy Utility Boat. 6-71 Detroit, Turkey \$ 12,500
- Refurbished Double Drum HT Winch. 4-71 Detroit 25000 SLP was \$25K ONLY \$ 17,500

WESTCOAST MARINE

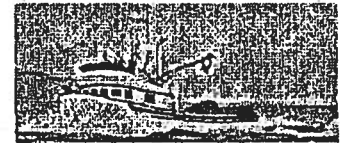
PO Box 6170
Chula Vista, CA 91909

619-423-8379



92' trawler. 800 hp. Turn key. Cond. New survey. Too many extras to list. Ak drag. Serious buyers. PRICE REDUCED TO \$195,000. (360)289-2050.

01-01-1996 BS JAYQ48-1



42' LeClerq 1979 fiberglass seiner, light colored interior, 6,000 hrs on GM871, excellent condition, roll chaulks, vang, stabliss, sea 222, 2 VHF, 2 CB, plotter, 2 depth, 36 Furuno, holds 45,000 lbs. \$139,000 or trade. (360)375-6035.

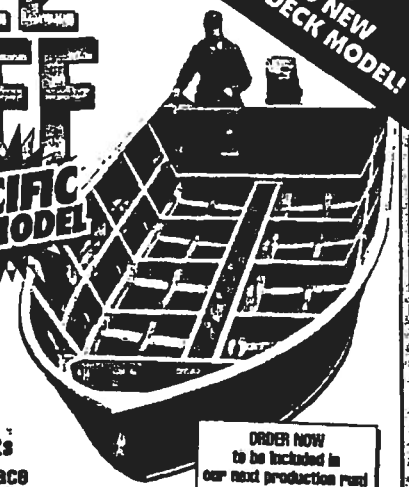
01-01-1996 BS JFX022-1

20'-22' SKIFF

NOW AVAILABLE
IN A BRAND NEW
SELF-BAILING DECK MODEL!

- 7'6" beam
- All welded
- Inside tie rail
- 8' wide bottom
- 32" side height
- Tow pocket in bow
- Full height slopwell
- Binned compartments
- BIG 2 1/4" dia. gunwale
- Flotation compartments
- Interior non-skid surface
- .180 / 3/16" aluminum throughout

PACIFIC DS MODEL



ORDER NOW
to be included in
our next production run!

22' \$5,995 • 20' \$5,695

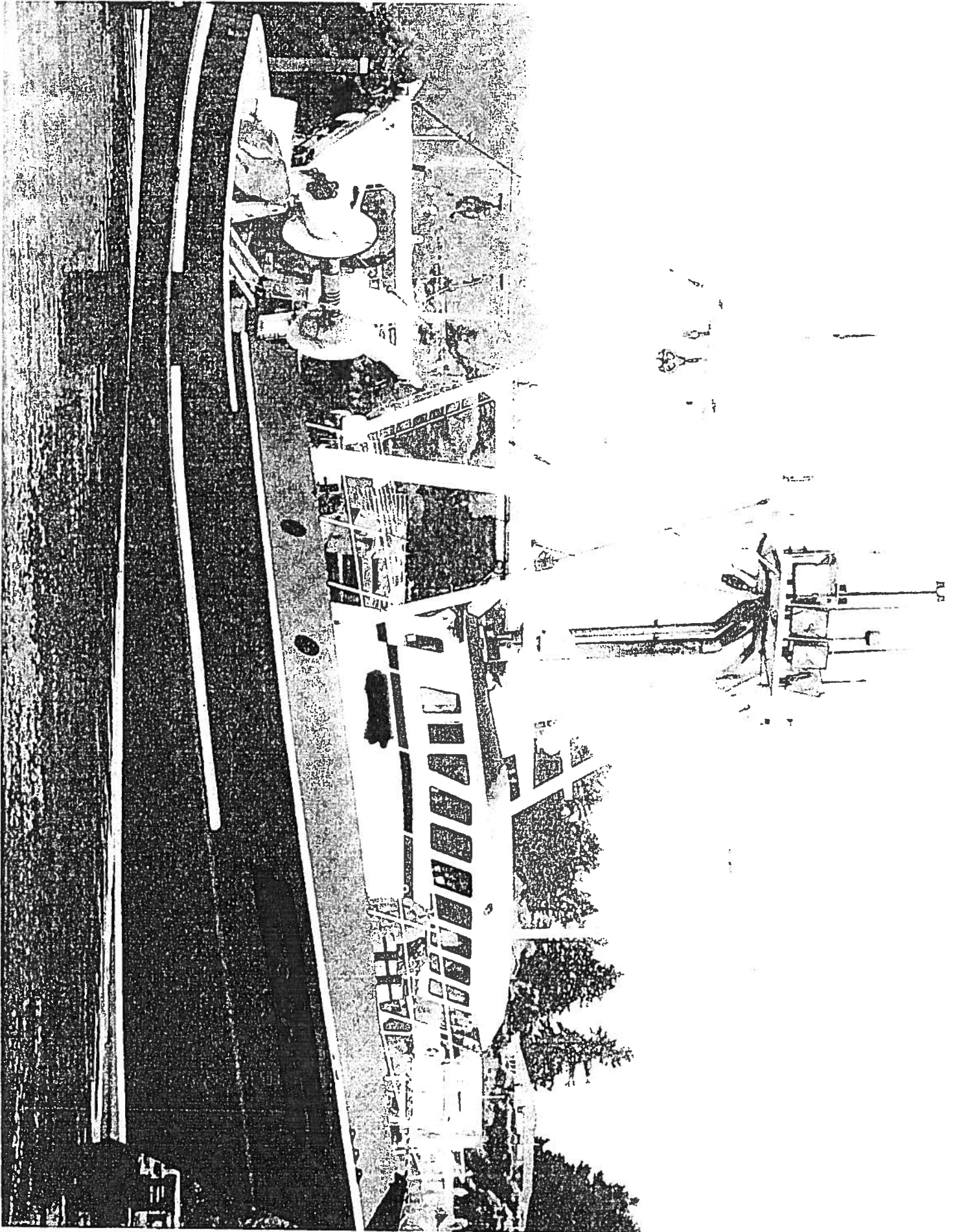
Steering Console Complete with Steering: add \$385 • Self-Bailing Deck: add \$1,800

QUALITY
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SKIFFS!



PACIFIC SKIFFS, INC

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PAGE 1 of 5
2423 N Street
Eureka, California 95501

CAPTAIN B.T. BESSELLIEU

REPORT OF SURVEY

Phone: (707) 442-4927

Date of inspection: August 26, 2008

Vessel [redacted] Construction steel
 Home Port [redacted] Official No. [redacted] Tonnage, Gross 192 Net 131
 Owner [redacted] Address [redacted]
 HULL TYPE oil screw/raked stem/square stern SERVICE crab/shrimp/mid-water/bottom fishing
 Dimensions: Length 94.1' Beam 27.0' Depth 13.2' Mast/Boom steel kingpost
 Year Built 1987 at Bayou La Batre, Alabama Builder Johnson Shipyd mast/tri-stepped boom
 Last Drydocked Aug. 2008
 Description 104' LOA- after 2004 fire boat converted to a Whale Back design all welded steel hull with a single hard chine and full keel commercial fishing troller/trawler. Equipped with a 60 hp "Bow Thruster" tube mounted through fore/foot stem. The propeller is fitted with a "Kort Nozzle". Has a raised foredeck to back approximately one half length of boat. Has 31 1/2" high double rung handrails both sides from stem to aft corner upper deck. Port-side has a five feet high by twelve feet long shelter deck equipped with 31 1/2" high double rung handrails. Boat is equipped with 11"x 21" freeing ports commencing from aft house to stern. The forward fish hold has a 6" high steel coaming and a 88"x 92" opening with a fitted steel bolt down cover. Second fish hold further aft has same measurements with both having a Baier 17"x 26" deckplate built into centerline existing covers. There are twelve 17 1/2" dia. Baier flush deckplates each side fish holds and one center-line aft. One 26" dia. Baier deckplate portside aft leading into lazaret.
 Planking 5/16" steel Frames 1/2"x3"x4" steel angle Spaced 18" centers average
 Deck 5/16" steel Beams 1/2"x3"x4" steel angle Spaced 18" centers average
 Cabins and how ventilated aluminum dutch doors each side pilothouse facing aft-several 13" dia. four dog portholes about house-steel W'D aft maindeck house portside
 Cabins/Pilot House: Location: FWD X Aft Amidships Material 3/16" steel
 Deck House Layout one main deckhouse with enclosed pilothouse above-no flying bridge-central passageway with galley aft across-one single berth stateroom portside amidship-four berth stateroom stbd. side amidship-forecastle area cabin-stbd. side toilet/shower-
 Galley Kenmore Classic electric grill/two burners oven stove-Kenmore upright 20 cu. ft. ref/freezer-large formica counter with nenerous builtin drawers/ cabinets etc.-large table with padded bench seats
 No. berths in Forecastle 1 No. Berths in MAIN DECK House 5 Marine Toilet toilet/shower basin
 FIRE EXTINGUISHERS: 5 lb Halon and 5 lb ABC pilothouse-10 lb ABC forecastle-10 lb ABC galley-10 lb ABC engine room-10 lb ABC in passageway-15 lb ABC engine room-20 lb CO2 and Fireboy automatic release/manual engine room
 ENGINE ROOMS & PROPULSION MACHINERY: Main Engines Cummins V12-KTAL138 H.P. 1200
 Manufactured by: Cummins Engine Co. Fuel diesel Last Overhauled 2005
 Age of Engine 10+ yrs Engine Cooling System keel coolers Engine Alarm yes
 Engine Foundation 1/2" steel frame Fuel Consumption Per Hour est. 60 gals
 Fuel Capacity 39,000 gals No. Tanks 4 Location two wings/ two stern Material steel
 Fuel Lines through deck fitting vented to atmosp Shut Off Valves at tanks/ manifold Fuel Lines steel to flex
 Fresh Water Tanks one forepeak Capacity 4281 gal Bilge Alarm yes Fire Alarm atomic extinguishing
 PUMPS: Manual Bilge Pumps - No. - Size - Electric Bilge Pumps - No. 4 Size see engine room
 Power Bilge/Wash Down Pumps - No. - Size see engine room
 Auxiliary two John Deere 6 cyl TC diesel-one Cummins 6B drives Lima 40 KW gen.
 Tail Shaft 6" SS Propellers: four black/bronze-72" Kaplan (Kort Nozzle) Speed in Miles 12 K
 ELECTRICAL SYSTEM: 12/24/110/220V-three 8V/4D-four 12V/8D batteries all stowed in acid proof trays well above bilge Overload Protection circuit breakers with dial master shut off's
 Wiring Type plastic marine insulated in conduit Exhaust Stack & Stove Pipe Clear of wood work? insulation wrapped-all auxiliary's piped out main exhaust
all circuits equipped with breaker panels

PAGE 2

ELECTRONICS & SPECIAL EQUIPMENT:

Auto Pilot: Two-Simrad's AP50's Fathometer: Furuno 1200 Video Sounder
 Lorar: Furuno LC 90 Direction Finder: Two-Furuno GPS GP 30
 Radio: Two-Furuno 1408 SSB Gurdies: none
 Radar: Furuno 2117/96 mile range Power Block: yes/hyd.-not onboard time of
 C.B. Radio: Ranger 1510 MK 3 Refrigeration: survey Chill Sea Water
 Anchor Gear/Deck Machinery hyd. anchor winch-1,000 lb. anchor-20 fm. 1"chain-100 fms.
1"wire-steel anchor fairlead/roller stem

Person Representing vessel during survey: [redacted]
 Engine running during survey no Engine Hours 10,600
 Vessels cruising range relative to fuel capacity estimated 26 days
 Were recommendations explained to owner/representative? none required
 Vessels running lights - comply with USCG Regulations? yes
 Time limit for compliance with recommendations none required
 Was owner/representative given copy of recommendations? none required
 Fire fighting equipment comply with N.F.P.A. 302 standards? yes
 No. Crew [redacted] Requested by owner
 Surveyed afloat at [redacted]
 Waters navigated Pacific Coast/Alaska out 250 miles Operator's Experience [redacted]
 Estimated Replacement Value \$ 2,200,000/2,400,000 Estimated Present Market Value \$ 1,450,000/1,550,000

Remarks, Defects or Recommendations are listed on attached sheet if required.

ADDITIONAL ELECTRONICS

- 1-Second Radar-Furuno 2117/96 mile range
- 2-Motorola Cellular Telephone
- 3-VHF radio-Ross DSC 500 transceiver
- 4-VHF radio-ICOM IC 228H "
- 5-VHF radio-ICOM IC 229H "
- 6-Two-RDI Bridge Watch
- 7-Furuno 1100 Video Sounder
- 8-Two Furuno Simrad FS 20 Net Sounders
- 9-Two-Sonars-one CH 250 and CH 37
- 10-Two-Dell Computers drives LC wind Plot Simrad Olex
- 11-Furuno Weather Fax 208
- 12-Mitsubishi Tag Satellite Phone

PILOTHOUSE LAYOUT: formica console across forward with center section running aft 44"-entire counter console has electronics mounted atop with storage cabinets beneath-padded captain swivel chair each side-8"dia. Ritchie dome liquid compass-20"dia. wood spoked steering wheel-Morse shift/speed controls-Simrad lever steering-Bow Thruster lever control portside console-large console across aft with cabinets beneath-overhead chart desk starboard side and chart storage bin overhead portside-Morse speed/shift controls portside-access to galley centerline aft-entire area finished in white formica and composition covering deck

FISH HOLDS: both rigged for Chill Sea Water-also both holds fully insulated covered with fibreglas-steel stanchions and aluminum bin boards-both have screened sumps

STEERING: double ram hydraulic steering with backup electric

HEATING: several wall heaters throughout deckhouse made by Dayton

ELECTRICAL PANELS: all are either General Electric/AB or Cutler Hammer

EXTERIOR WORK LIGHTS: four 1,000W Quartz mounted gantry with two facing aft and two facing forward
 three 1,500W Sodium Vapor mounted booms facing deck
 four 1,500W Sodium Vapor mounted crosstree facing forward
 two 1,500W Sodium Vapor mounted crosstree facing aft

PAGE 4

- k. 15hp AC hydraulic steering unit
 - l. hot water heater
 - m. 1½ hp air compressor - hand and power tools
 - n. pilothouse has one bunk
 - o. lazaret has foam insulation with side and bottom fiberglassed
 - p. access to forecabin is through raised aluminum WTD
 - q. day tank alarms and Video Monitor System
-

COMMENTS

This examination has been made without making removals or opening up to expose parts ordinarily concealed, or testing for tightness and is subject to any conditions which would have been revealed, if such procedures had been accomplished further, no determination of stability characteristics or inherent structural integrity has been made, and no opinion is expressed with respect thereto. General maintenance and upkeep is considered well above average. Survey was made without prejudice and for the benefit of whom it may concern.

RECOMMENDATIONS
none at this time

SAFETY EQUIPMENT: Elliot 6 man canister liferaft mounted atop house clear of rigging- (next repack date Nov. 2008)- Kodon EPIRB 406 mounted atop house-(battery expires Nov. 2008)-(hydrostatic release expires Nov. 2008)- hand held locate/alert flares all expire 2011- five Imperial exposure suits all have lights and reflector tape-four 24" dia. liferings with two having 90 foot line attached-ample First Aid Kit and manual- four lifejackets-Todd Whaley has a CPR/FIRST AID/ SAFETY Certificate

SPECIAL NOTE: reported that the boat will be going on drydock in [REDACTED].
A diver recently checked the bottom and found all zincs over 80% good.

*SIMRAD E-S-60 COST W/INSTALLATION 70,000.00
AUG OF 2010
ALL DECK EQUIPMENT SETTING ON 3/4 PLATE
LAST 20 FT OF BULLWORKS 1/2 PLATE IN STERN*

PAGE 3

MAINDECK HOUSE LAYOUT: central passageway-galley forward across with cooking center starboard side-seating/large table portside-directly aft seating is a berth stateroom-well aft is a alcove into access ladder into engine room and afterdgcck-Kenmore 23 cu. ft. chest freezer setting in alcove-starboard side amidship is a four berth stateroom-well aft is a wood door leading into toilet/shower/wash basin- all rooms off passageway have wood doors-area finished in white formica-deck composition covering- en-tire deckhouse is said to have from 2 to 4" foam insulation-stowed in toilet area is a Westinghouse Washer/Dryer stacked

AFTERDECK DECK LAYOUT: from even aft corner house house to stern the solid steel bulwarks is 38"high with partway across stern is a 8 foot wide stern ramp-two independant hydraulic net reels mounted over stern ramp-12"x12" tri-steelstanchions and a 12"x 12" boxed steel gantry across top with one 18"dia. steel block shackled each wing of gantry so as to suspend the steel drag doors-a third hydraulic net reel mounted centerline maindeck-one hydraulic drag winch mounted atop upper deck each side with each containing 1200fms of 7/8"wire-four hydraulic lift winches mounted upper deck- two 25,000lb Pullmaster and two 12,000 Pulmaster-Hydro Star Piston motors-Spinbord motor-6"high wood deck gradings and 22"high wood checkers set in steel stanchions welded to deck evenly spaced- steel outriggers

ENGINE ROOM:

- a. Twin Disc 540/5:1 hydraulic reduction gear main engine
- b. cooling water tank with a Murphy low level water alarm
- c. Lewco 12V Constavolt and a Lewco 24V Constavolt
- d. two 6"dia. centrifugal bilge pumps driven by a Baldor 15hp electric motors-connected to Thermomatic Marine Refrigeration Chill Sea Water Thermal-Tec unit with a 95hp Compressor and Teco 3 phrase 60hp electric motor this unit chills sea water 28 degrees F (2 degrees C) or brine to 0 degrees F (18 degrees C)-high flow rate and rapid heat transfer Chills Sea Water quickly-there are three 12"dia. by 8 feet long pipes mounted aft engine room across bulkhead plus additional piping
- e. two Flomax 1 3/4"bilg pumps driven by two Baldor electric motors
- f. one 2" centrifugal pump driven by a Baldor 3hp motor
- g. one 3" Flomax pump driven by a 7 1/2hp motor
- h. Con Tech Power System panel 208 volts
- i. Twin Disc Power Take Off forward engine drives three 60 Gal each Vickers pumps
- j. one steel hydraulic reserve tank 754 gals
- k. one steel lube oil reserve tank 260 gals
- l. Grunfos fresh water pump
- m. 1 1/2"x2" condenser pump with spare
- n. engine room vented doors
- o. Racor fuel filter system

AUXILIARY'S:

- John Deere 5.9 drives 90 KW 3 phrase 120/208 generator
- John Deere 6.8 drives 112Kw 3 phrase 120/208 generator
- Cummins 6B drives 60Kw 3 phrase 120/208 generator

MISCELLANEOUS:

- a. 25hp electric motor drives third winch
- b. 60hp AC powered Carrier refrigeration compressor
- c. boat has a "STABILITY REPORT" by Bruce Colver dated 2004
- d. Wesfalia fuel/water Separator mounted portside engine room
- e. all auxiliary's are equipped with cooling water tanks and Murphy low level water alarms
- f. boat equipped with a 100 gal holding tank
- g. equipped with alarms on all four water tight compartments
- h. two each 6hp air compressor's-vice and drill press
- i. AC gas welding equipment
- j. 25hp outboard engine and inflatable boat

Vessel Name	Vessel Owner	AFA IFQ Shorebased (MT)	AFA IFQ Shorebased Value	AFA IFQ Mothership (MT)	AFA IFQ Mothership Value	Bering Sea R. King Crab Pounds	Bering Sea R. King Crab Value (Lbs)	Bering Sea Snow Crab (Lbs)	Bering Sea Snow Crab Value	Rockfish IFQ Shorebased (Lbs)	Rockfish IFQ Shorebased Value	Rockfish IFQ Shorebased (MT)	Whiting IFQ Shorebased Value	Whiting IFQ Shorebased (MT)	Whiting IFQ Mothership (MT)	Whiting IFQ Mothership Value	Non-Whiting Groundfish (Lbs)	Non-Whiting Groundfish IFQ Value	Total Quota Value
1 Bay Islander	92 Bay Islander Fisheries, Inc.	0	\$0	0	\$0	0	\$0	0	\$0	321,371	\$428,350	2,080	\$1,930,158	198	\$198,566	320,660	\$566,952	\$3,123,025	
2 Cape Kiwanda	91 B&N Fisheries, Inc.	1,239	\$2,353,872	0	\$0	0	\$0	0	\$0	923,168	\$1,233,351	0	0	0	0	0	0	\$1,587,222	
3 Caravelle	102 Golden West Fisheries, Inc.	0	\$0	0	\$0	0	\$0	0	\$0	1,011,365	\$1,351,181	0	0	0	0	0	0	\$1,351,181	
4 Chelissa	116 Chelissa Fisheries, LLC	0	\$0	0	\$0	0	\$0	0	\$0	334,555	\$448,964	1,190	\$1,114,898	0	0	418,522	\$702,725	\$2,264,577	
5 Collier Brothers	108 James Schones	642	\$1,219,701	0	\$0	0	\$0	0	\$0	792,233	\$1,058,422	1,032	\$967,008	0	0	259,083	\$404,921	\$3,690,052	
6 Dawn	103 Burch Brothers Fishing, LLC	0	\$0	0	\$0	0	\$0	0	\$0	699,767	\$924,887	0	0	0	0	0	0	\$924,887	
7 Dusk	103 Burch Brothers Fishing, LLC	0	\$0	0	\$0	0	\$0	0	\$0	1,088,852	\$1,454,704	0	0	0	0	0	0	\$1,454,704	
8 Elizabeth F	108 Elizabeth F, Inc.	1,684	\$3,200,261	0	\$0	18,014	\$705,518	0	\$0	1,038,001	\$1,386,767	0	0	0	0	0	0	\$5,292,547	
9 Escalibur II	92 Escalibur II, LLC	2,922	\$5,551,840	0	\$0	0	\$0	0	\$0	1,067,019	\$1,425,534	0	0	0	0	0	0	\$6,977,375	
10 Gold Rush	112 F/V Gold Rush Fisheries LLC	2,222	\$4,221,493	0	\$0	0	\$0	0	\$0	1,278,803	\$1,708,478	0	0	0	0	0	0	\$5,929,971	
11 Hazel Lorraine	107 Trident Seafoods Corp	2,098	\$3,985,792	0	\$0	0	\$0	0	\$0	592,753	\$791,917	0	0	0	0	0	0	\$4,777,709	
12 Hickory Wind	109 Evening Star, Inc.	1,500	\$2,849,867	0	\$0	0	\$0	0	\$0	1,174,146	\$1,568,657	0	0	0	0	0	0	\$4,418,524	
13 Laura	112 Laura Fisheries Joint Venture	0	\$0	0	\$0	0	\$0	0	\$0	1,682,432	\$2,247,725	0	0	0	0	0	0	\$2,247,725	
14 Leslie Lee	108 Leslie Lee, Inc.	0	\$0	0	\$0	0	\$0	0	\$0	771,035	\$1,030,101	47	\$43,721	1,614	\$1,600,939	884,038	\$1,238,438	\$3,911,198	
15 Usa Melinda	97 Usa Melinda Fisheries, Inc.	1,158	\$2,199,286	0	\$0	0	\$0	0	\$0	0	0	2,413	\$2,261,281	1,775	\$1,760,526	272,299	\$407,188	\$6,028,282	
16 Mar Del Norte	103 Mar Del Norte, Inc.	0	\$0	0	\$0	0	\$0	0	\$0	985,559	\$1,316,704	0	0	0	0	0	0	\$1,316,704	
17 Mar Pacific	115 Mar Pacific, Inc.	0	\$0	0	\$0	0	\$0	0	\$0	1,472,621	\$1,987,418	0	0	0	0	0	0	\$1,987,418	
18 Marathon	92 Marathon Fisheries, Inc.	0	\$0	0	\$0	0	\$0	0	\$0	1,343,298	\$1,794,843	522	\$489,290	1,924	\$1,908,437	254,149	\$397,680	\$4,590,061	
19 Marcy J	116 Marcy J, Inc.	971	\$1,845,427	0	\$0	13,913	\$544,903	98,654	\$1,066,704	1,327,135	\$1,773,049	0	0	0	0	0	0	\$5,230,083	
20 Michelle Renee	114 Black Sea Fisheries, Inc.	0	\$0	0	\$0	0	\$0	0	\$0	2,932,496	\$3,944,527	0	0	0	0	0	0	\$3,944,527	
21 Miss Sarah	124 Todd Whalley	0	\$0	0	\$0	0	\$0	0	\$0	0	0	2,523	\$2,363,511	-408	\$404,808	279,744	\$839,232	\$3,607,551	
22 New Life	82 New Life Fisheries, Inc.	0	\$0	0	\$0	0	\$0	0	\$0	729,273	\$974,307	699	\$655,173	59	\$58,775	283,099	\$504,062	\$2,192,318	
23 Pacific Ram	92 Trident Seafoods Corp.	1,098	\$2,086,740	0	\$0	0	\$0	0	\$0	112,224	\$149,831	2,082	\$1,950,732	474	\$469,811	241,132	\$366,198	\$5,023,412	
24 Peggy Jo	119 B&N Fisheries Company	1,789	\$3,406,510	0	\$0	0	\$0	0	\$0	2,402,994	\$3,210,394	0	0	0	0	0	0	\$6,616,904	
25 Progress	124 Progress Fishing LLC et al	5,464	\$10,381,040	0	\$0	0	\$0	0	\$0	651,370	\$870,229	0	0	0	0	0	0	\$11,251,268	
26 Sea Mac	96 Sea Mac Seafoods LLC	0	\$0	0	\$0	0	\$0	0	\$0	334,555	\$448,964	0	0	0	0	0	0	\$448,964	
27 Stella	72 Loughberg Fisheries, Inc.	0	\$0	0	\$0	0	\$0	0	\$0	1,003,659	\$1,340,887	0	0	0	0	0	0	\$1,340,887	
28 Topaz	96 Chandler Fisheries, Inc.	361	\$688,286	0	\$0	0	\$0	0	\$0	1,611,893	\$2,153,218	0	0	0	0	0	0	\$2,839,504	
29 Vanguard	113 Futura Fisheries, Inc.	305	\$579,897	5,778	\$12,422,700	0	\$0	0	\$0	988,217	\$1,320,255	0	0	0	0	0	0	\$14,322,952	
30 Walter N	114 Elizabeth F, Inc.	1,782	\$3,347,151	0	\$0	0	\$0	0	\$0	770,322	\$1,029,149	0	0	0	0	0	0	\$4,376,300	
Total																			\$125,615,831
Ave. Length = 104																			\$4,187,194



UNITED STATES DEPARTMENT OF COMMERCE
 National Oceanic & Atmospheric Administration
 Office of General Counsel
 P.O. Box - 21109
 Juneau, Alaska 99802-1109
 Telephone (907) 586-7414

DATE: February 24, 1995

MEMORANDUM FOR: North Pacific Fishery Management Council

FROM: Lisa L. Lindeman
 Alaska Regional Counsel

SUBJECT: Due Process and the Harvest Priority Proposal

This responds to the North Pacific Fishery Management Council's request for a legal review of the due process aspects of the Harvest Priority Proposal (HPP) currently under consideration.

Under the HPP, the total allowable catch (TAC) in certain fisheries would be initially allocated between an open access TAC and a TAC that could be harvested only by vessels participating in a limited entry program. The HPP would set maximum acceptable bycatch rates for the open entry fisheries. The eligibility criteria for participation in the limited entry program would be a vessel's bycatch performance in the previous open entry fishery. A vessel failing to meet the bycatch standards would be excluded from the follow-up "reward" fishery either in the same or following year. Specifically, you have asked whether a vessel receiving an adverse initial determination, and whose owner administratively appeals that determination, can be excluded from a "reward" fishery prior to completion of an administrative hearing.

Summary

It is clear that a vessel that fails to meet bycatch standards cannot be excluded from any subsequent "reward" fishery until the vessel owner has first been given the right to an administrative hearing. As cases involving bycatch standards inevitably involve complex factual determinations, the hearings that will be required will just as inevitably be adversarial in which the appellants will have the right to dispute the government's case through presentation of their own evidence and arguments, and the right to confront and cross-examine adverse witnesses. The period of time



between the date of violation and final agency action can be best estimated by reference to the agency's experience under the existing Vessel Incentive Program (VIP). The most optimistic estimate that can be made is that the process will take approximately two to three years; in some cases, longer.

Discussion

Procedural Due Process

"Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." Mathews v. Eldridge, 424 U.S. 319, 332 (1976). See also, Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 538 n. 3 (1985); Cassim v. Bowen, 824 F.2d 791, 796 (9th Cir. 1987). Licenses to pursue one's livelihood are clearly a "property" interest within the meaning of due process. See e.g., Barry v. Barchi, 443 U.S. 55, 64 (1979); Chalkboard, Inc. v. Brandt, 902 F.2d 1375, 1380 (9th Cir. 1989); Atlantic Richfield v. U.S., 774 F.2d 1193, 1202-1203 n. 39 (DC Cir. 1985). Although the legislative act of creating such a right is a matter of legislative grace, once created, it becomes a "property" interest protected by procedural due process. Cleveland Bd. of Educ. v. Loudermill, supra at 538; Hornsby v. Allen, 326 F.2d 605, 608 (5th Cir. 1964). The fact that the statutory right thus created can be termed a "privilege" is irrelevant. Goldberg v. Kelly, 397 U.S. 254, 262 (1970); Hornsby v. Allen, supra at 609. The protections of procedural due process are not only applicable to existing licenses (Chalkboard, Inc. v. Brandt, supra; Atlantic Richfield v. U.S., supra), but to the adjudication of initial eligibility for such licenses as well. Hornsby v. Allen, supra at 610.

The courts are unequivocal about the right to a hearing of some sort prior to adverse government action affecting a "property right" (such as the ability to pursue one's occupation). Cleveland Bd. of Educ. v. Loudermill, supra at 542; Mathews v. Eldridge, supra at 333; Goldberg v. Kelly, supra at 267; Goldsmith v. U.S. Bd. of Tax Appeals, 270 U.S. 117, 123 (1926); Lipke v. Lederer, 259 U.S. 557, 562 (1922); Chalkboard, Inc. v. Brandt, supra at 1380; Cassim v. Bowen, supra at 797; Hornsby v. Allen, supra at 608. The absolute right to a hearing is in no way dependent upon a showing of probable success. Cleveland Bd. of Educ. v. Loudermill, supra at 544.

Procedural due process is a flexible concept (Mathews v. Eldridge, supra at 334; Goldberg v. Kelly, supra at 262-263), and has been described as follows:

An essential principle of due process is that a deprivation of life, liberty, or property 'be preceded by notice and opportunity for hearing appropriate to the nature of the case.'

Chalkboard, Inc. v. Brandt, supra at 1380. See also, Cleveland Bd. of Educ. v. Loudermill, supra at 546; Cassim v. Bowen, supra at 797. The only issue, therefore, is the sort of pre-deprivation hearing that will be deemed appropriate in any given situation. At a minimum, procedural due process requires a pre-deprivation procedure that involves notice of the evidence that forms the basis of the government's case against the individual and an opportunity for that individual to respond in a meaningful way to that evidence (e.g., in person or by written submission). Cleveland Bd. of Educ. v. Loudermill, supra at 546; Goldberg v. Kelly, supra at 268 n. 15. In some circumstances, depending upon the nature of the inquiry at hand, the right to respond to the evidence will include a right to refute the government's evidence by oral presentation of the appellant's own arguments and evidence and to confront and cross-examine adverse witnesses at a pre-deprivation adversarial hearing. Goldberg v. Kelly, supra at 267-268.

The Supreme Court has developed a three-part test to determine the nature of the pre-deprivation hearing that will be deemed appropriate in any given situation.

[O]ur prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. Eldridge, supra at 334-335. See also, Cleveland Bd. of Educ. v. Loudermill, supra at 542-543; Chalkboard, Inc. v. Brandt, supra at 1380; Cassim v. Bowen, supra at 797.

The private interest discussed in most of the cases cited above involved the individual appellant's interest in a continuing source of income during the pendency of the appeal.

"[T]he significance of the private interest in retaining employment cannot be gainsaid. We have frequently recognized the severity of depriving a person of the means of livelihood.

Cleveland Bd. of Educ. v. Loudermill, *supra* at 543. See also, Mathews v. Eldridge, *supra* at 341; Chalkboard, Inc. v. Brandt, *supra* at 1381. In only one case, that of welfare recipients, was this sort of private interest deemed to be so compelling as to require a full pre-deprivation adversarial hearing. Goldberg v. Kelly, *supra*. For our purposes, however, it is important to note that in each of the cases that allowed something less than a pre-deprivation adversarial hearing, the agency had the ability to fully compensate any appellant who was ultimately successful - usually through back payments. Thus, the private interest involved was never the risk of a potential loss of benefits altogether, but merely that of going without such benefits during the pendency of the appeal. In the HPP, loss of participation in the "reward" fishery cannot be recouped at some later date should an appeal of the agency's initial determination prove successful. Compensation cannot be made for the lost fishing opportunities in a fishery from which a vessel has been wrongfully excluded. It seems likely, therefore, that the private interest involved under the HPP will require a pre-deprivation adversarial hearing.

The second element of the Mathews test, that of the risk of erroneous deprivation, is of great concern under the HPP. This risk is clearly to be measured in the context of the nature of the evidence under consideration by the agency. Mathews v. Eldridge, *supra* at 345. It has been analyzed as whether the agency can establish probable cause under the procedures in use. Barry v. Barchi, *supra* at 66; Bell v. Burson, 402 U.S. 535, 540 (1971). In cases in which the courts have upheld agency procedures that provided something less than a pre-deprivation adversarial hearing, there has either been no factual dispute at all (Codd v. Velger, 429 U.S. 624, 627 (1977); Atlantic Richfield Co. v. U.S., *supra* at 1203), or the "factual issue to be determined was susceptible of reasonably precise measurement by external standards" (Chalkboard, Inc. v. Brandt, *supra* at 1381) such as the findings of medical experts. Barry v. Barchi, *supra* at 65; Cassim v. Bowen, *supra* at 798 n. 3. Where factual disputes are not susceptible to reasonably precise measurement by external standards, especially where the factual disputes involve "issues of witness credibility and veracity," the risk of erroneous deprivation of constitutionally protected property interests is deemed too high and a pre-

deprivation adversarial hearing is required. Chalkboard, Inc. v. Brandt, supra at 1381. Given the fact that the HPP is based upon factual determinations made by at-sea observers, the accuracy and competence of which will inevitably be the central issue in any appeal of adverse determinations, it seems very likely that the courts will require an adversarial hearing prior to exclusion from any "reward" fishery.

Finally, it is doubtful that the government's interest in avoiding the fiscal and administrative burdens involved in providing appellants under the HPP with adversarial hearings prior to their exclusion from any subsequent "reward" fishery will outweigh either the private interests of the appellants or the risk of erroneous deprivation of those interests, as discussed above. This is especially true in light of the fact that under the existing VIP, this is precisely what the agency is now providing.

Penal Aspects of the HPP

Under the VIP, owners/operators of offending vessels have been subject to substantial civil penalties pursuant to section 308 of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1858. Under the HPP, vessels failing to meet the bycatch standards would be excluded from participating in the follow-up "reward" fishery, either in the same or following year. Much has been made of the supposed difference between the HPP and VIP; that is, that unlike the VIP, the HPP is not "penal" because it does not seek to penalize those who do not meet the bycatch standards, but rather, seeks to "reward" those who do. From a due process/Administrative Procedure Act (APA) perspective, this is a distinction without a difference. The due process/APA rights to a prior hearing at issue in such a program are not the rights of those who get to participate in the "reward" fishery, but are, rather, the rights of those who are excluded from the fishery. For those excluded, the follow-up fishery is not a "reward:" it is a "sanction." Their exclusion from it based upon an agency determination that they have not met the bycatch standards applicable in a previous fishery is

¹ The APA definition of "sanction" provides in pertinent part that a "'sanction' includes the whole or part of an agency--... (F) requirement, revocation, or suspension of a license; or (G) taking other compulsory or restrictive action." 5 U.S.C. 551(10).

just as "penal"² as the imposition of civil penalties for the same transgressions under the VIP.

A clear understanding that the "reward" fishery provisions of the HPP are in fact "penal" and constitute a "sanction" leads to certain inevitable results under due process, the APA, and the Magnuson Act (and its implementing regulations).

Procedural Due Process As Applied

There is a further constitutional problem with excluding appellants from participation in a "reward" fishery under the HPP prior to opportunity for an adversarial hearing. Even when the courts uphold an agency procedure providing something less than a full pre-deprivation adversarial hearing as facially valid, that same procedure can be violative of procedural due process as applied to the individual facts of the case if the agency does not provide a prompt post-deprivation hearing.

The Due Process Clause requires provision of a hearing 'at a meaningful time.' At some point, a delay in the post-termination hearing would become a constitutional violation.

Cleveland Bd. of Educ. v. Loudermill, supra at 547.

The general rule is that the less the predeprivation process, the greater must be the post-deprivation process.

Cassim v. Bowen, supra at 798.

In situations where imposition of a "penalty" is involved, the issue of a prompt post-deprivation hearing can be of particular importance. The leading case in this area is Barry v. Barchi, supra, which stands for the proposition that if the post-deprivation hearing does not occur before the appellant suffers a "penalty" in its entirety, the procedure is violative of due process. In Barry, even though the State held its post-deprivation hearings fairly promptly, because the penalty imposed (suspension of horse trainer for 15 days) was so short,

...it is as likely as not that Barchi and others

² It has been asked how the HPP differs from the appeals process for the halibut and sablefish ITQ program. The answer is that the latter is not "penal."

subject to relatively brief suspensions would have no opportunity to put the State to its proof until they have suffered the full penalty imposed.

Barry v. Barchi, *supra* at 66. See also, Lipke v. Lederer, *supra* at 561-62. Given the agency's experience under the existing VIP, it will almost certainly prove impossible to provide appellants a post-deprivation hearing within a year of the violation (*i.e.*, prior to completion of the follow-up "reward" fishery). Thus, even in the unlikely event that the practice of excluding offending vessels from a "reward" fishery held the same or next year survives facial due process examination, it probably will be held violative of due process as applied.

Administrative Procedure Act

Because the "reward" fishery exclusion provision of the HPP will almost certainly be viewed as a "sanction" of an existing fishing license, provisions of the APA also will require an administrative hearing prior to such exclusion.

Section 9(b) of the APA, provides in pertinent part:

...Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given --

- (1) notice by the agency in writing of the facts or conduct which may warrant the action; and
- (2) opportunity to demonstrate or achieve compliance with all lawful requirements.

5 U.S.C. 558(c) (emphasis added). It seems clear that a fishing permit issued pursuant to the Magnuson Act is a "license," and that its suspension or revocation under the HPP with regard to the "reward" fishery is both an act of "licensing" by the agency and a "sanction" within the meaning³ of the APA. See definitions at 5 U.S.C. 551(8), (9), and (10). The courts have interpreted the

³ 5 U.S.C. 551(8) provides that a "'license' includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other

definition of license included in the APA very broadly. Pan-Atlantic Steamship Corp. v. ATL Coast Line, 353 U.S. 436, 438-439 (1957); Air North America v. DOT, 937 F.2d 1427, 1437 (9th Cir. 1991); Atlantic Richfield Co. v. U.S., supra at 1200. The courts also have construed the prior hearing exceptions very narrowly, and have confined their application to "...unusual, emergency, situations." Air North America v. DOT, supra at 1437, n. 8. In considering the provisions discussed, above, one court has stated:

A paraphrase of the provision taken as a whole might read 'before an agency can institute proceedings to withdraw, revoke, etc., an existing license, it must provide the licensee with notice in writing of the offending conduct and a hearing at which the licensee can refute the charges.'

Bankers Life & Cas. Co. v. Callaway, 530 F.2d 625, 635 (5th Cir. 1976), reh. den. 536 F.2d 1387, cert. den. 429 U.S. 1073.

Magnuson Act/Regulations

Finally, the Magnuson Act, and the agency's existing procedural regulations, also will require that an administrative hearing be provided prior to exclusion from any "reward" fishery held pursuant to the HPP.

Under the provisions of the Magnuson Act, those who commit acts prohibited by the Act or its implementing regulations (see 16 U.S.C. 1857) can be subjected to any of four sanctions: 1) civil penalties pursuant to section 308 (16 U.S.C. 1858); 2) permit sanctions, also under section 308; 3) criminal prosecutions pursuant to section 309 (16 U.S.C. 1859); and 4) civil forfeitures pursuant to section 310 (16 U.S.C. 1860). These are the only sanctions expressly provided by the language of the Act.

The Supreme Court has held that "...penal statutes are to be construed strictly"... and that one 'is not to be subjected to a

form of permission."

5 U.S.C. 551(9) provides that "'licensing' includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license." (Emphasis added).

See note 1, supra, for definition of "sanction."

penalty unless the words of the statute plainly impose it'" [citations omitted]. I.R.S. v. Acker, 361 U.S. 87, 91 (1959). See also, Key Bank of Washington v. Concepcion, 847 F. Supp. 844, 848 (W.D. Wash 1994); section 9(a) of the APA, 5 U.S.C. 558(b).

Applying this rule of statutory construction to an analysis of the sanction proposed in the HPP, it seems clear that unless the exclusion of a vessel from the "reward" fishery can be termed a permit sanction, any attempt to enact the HPP pursuant to the Magnuson Act will be ultra vires and thus illegal.

Assuming, therefore, that the sanction proposed in the HPP is in fact in the nature of a permit sanction, existing agency regulations very clearly lay out the procedural requirements that must be met before such a sanction can be made effective. See 15 CFR 904, Subpart D. The individual against whom a permit sanction is sought has a right to a hearing before an Administrative Law Judge (ALJ). 15 CFR 904.304(a). Although upon application to the ALJ, the agency may seek to have the permit sanction effective on an interim basis during the pendency of the litigation, the standards to be met for such an action are very stringent and are not likely to be met in the context of the HPP. 15 CFR 904.322.⁴

Thus, one cannot assume that the agency will be able to exclude an individual vessel from any subsequent fishery until the offense has been investigated by the National Marine Fisheries Service (NMFS) Enforcement Division, then prosecuted by NOAA General Counsel. Such prosecution will not be final, and the permit sanction thus not effective, until "final agency action;" that is (assuming that the agency's determination is appealed), until the ALJ has rendered his decision.⁵ Under present staffing levels, the most optimistic

⁴ In order to have such a request for interim effect granted by the ALJ, the Agency must make a showing that there is probable cause to believe that the offense has in fact occurred, and that the offense was "willful" or that making the permit sanction effective immediately (before final agency action) is required in the interest of public health, welfare, or safety. Id. To my knowledge, such an agency request has never been granted by the ALJ.

⁵ It must be noted that the decision of the ALJ is subject to a discretionary appeal to the Administrator of NOAA, which would further delay the effective date of any permit sanction imposed by the ALJ. 15 CFR 904.273. In addition, such a "final agency decision" would be subject to an appeal to the United States District Court. Whether the court also would stay the effect of the agency's decision to exclude the appellant from any "reward"

estimate would be that an offending vessel could be excluded from a subsequent "reward" fishery no earlier than approximately two to three years from the date of violation.⁶

cc: Jay S. Johnson
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fishery held during the pendency of the District Court appeal is within the discretion of the court.

⁶ The experience under the VIP program has been even more protracted. The program is slightly more than three years old. To date, 4 prosecutions have been brought, one has settled, the other three have gone to hearing and are still pending before the ALJs. In short, only one prosecution has resulted in "final agency action."

Levis A Kochin, Chris Riley

Dr. James Wilen

Dr. Wilen

We received your analysis of the Chinook bycatch incentive plans. The primary purpose of this letter is to answer some of the questions raised in that document. The central issue is the following:

"The extent to which incentives bycatch can actually be reduced by behavioral and technological means." (Wilen p.2).

We have a quantitative estimate of the effect of the Financial Incentive Plan (FIP) derived from the experience of one vessel in the Catcher-Processor (CP) fleet which made a systematic effort to avoid Chinook bycatch. We also would like to bring you up to date with the changes made since the November draft you reviewed. We are taking this opportunity to better explain some of the aspects of the FIP that may have not changed since the November draft, but were inadequately described in the November paper. We comment as well on document "Financial Incentive Plan" (At Sea Processors, March 13, 2009) which was released after the date of your analysis.

We hope to communicate with you further on this matter. Our contact numbers are at the end of the letter. We appreciate the difficulty of your assignment, due to the very short time available. Your market-oriented perspective on fishery management comes as no surprise to us but we are gratified that it has not blown away in this year's zeitgeist.

This letter also provides an opportunity to comment on the decision of the Department of Agricultural and Resource Economics at the University of California, Davis to admit our co-author Ana, and to give her financial support. Ana became involved in this process only a couple of days after the conception of the central idea. Initially it was thought that Ana's contribution would be limited to statistical analysis and modeling. Although Ana had absolutely no qualifying experience beyond her studies at the University of Washington when the project began, within weeks she was a 100% contributing partner who materially influenced the design of the plan and in all phases of the analysis. Congratulations.

The FIP was designed to present all the pollock harvesters with the same marginal incentive to avoid salmon. This maximizes the number of salmon avoided at any given cost or minimizes the cost of any given reduction in bycatch.

Similarly, we have left Transferable Bycatch Allocations (TBA) perfectly tradable. Note that the FIP was designed to make the incentive to avoid Chinook bycatch highest in the years of lowest Chinook abundance which reflects the higher biological value of each Chinook when Chinook abundance is low.

Comments on the Efficacy of Incentives

Can Chinook Bycatch Incentives be Effective?

Our first comment will hopefully shed some light on a fundamental question that is central to any incentive-based attempt to reduce Chinook bycatch in the pollock fishery, which include FIP and SSIP, and any modifications that may be made to these programs.

You state (correctly in our view) that "*A significant unknown is the extent to which bycatch can actually be reduced by behavioral or technological means*". (Wilen p.3).

This is a serious issue. If bycatch is a "*rare and random event*", any program of bycatch incentives would be no more effective than jailing TV weathermen as a disincentive for inclement weather. We provided no quantification of expected reductions in bycatch in the November paper because at that time we had no evidence regarding the slope of the marginal cost of avoidance curve. We have since uncovered evidence that allows for an estimate of the cost of avoiding Chinook. This is derived from the activities of a single vessel in the factory trawler fleet.

A total of seventeen catcher processor vessels participated in the pollock fishery during the years 2000-2007. These vessels are all of similar size, produce the same finished products, use the same type of fishing and electronic gear, and operate on the same grounds. Fourteen of these ships participated in all years. We constructed a table that included only those fourteen vessels along with their harvests of pollock and Chinook. This allowed us to express the history in units of relative bycatch (Vessel BCR / Mean BCR).

Table I. Relative Bycatch Rates in the Catcher Processor Fleet, 2000 – 2007.

Year	2000	2001	2002	2003	2004	2005	2006	2007	Vessel Mean	St. Error of Vessel
BCR (n / 100 mt)	0.7	3.4	1.7	2.9	2.1	2.7	3.2	6.3		
Vessel										
Highland Light	0.62	0.52	0.45	0.84	0.59	0.39	0.47	0.53	0.55	0.049
Arctic Fjord	0.37	2.34	1.31	1.16	1.42	0.91	0.81	0.97	1.16	0.204
Arctic Storm	0.31	0.59	1.00	0.65	1.13	0.79	0.99	1.28	0.84	0.113
American Triumph	1.94	0.45	0.31	1.02	1.64	1.68	1.18	1.10	1.17	0.205
Northern Eagle	1.08	0.60	0.87	0.95	0.61	0.95	1.22	0.92	0.90	0.074
Northern Hawk	1.30	0.75	0.59	1.10	1.38	1.50	0.71	0.87	1.03	0.121
Northern Jaeger	1.27	0.64	0.51	0.92	0.54	0.81	1.29	0.87	0.86	0.106
Ocean Rover	0.40	0.41	1.01	0.63	0.77	0.74	0.70	0.72	0.67	0.070
Alaska Ocean	1.52	0.57	2.37	0.95	0.93	0.38	0.54	0.84	1.01	0.230
Northern Glacier	2.45	0.58	0.62	1.17	0.93	1.04	1.03	1.59	1.18	0.214
Pacific Glacier	1.62	0.54	0.86	1.01	0.85	0.72	0.84	0.94	0.92	0.112
Starbound	0.40	1.38	1.25	0.96	0.85	1.18	1.40	1.25	1.08	0.119
Island Enterprise	0.62	2.22	0.90	1.66	1.54	1.53	2.10	1.17	1.47	0.196
Kodiak Enterprise	0.59	2.29	2.13	1.29	0.75	1.28	0.95	1.40	1.34	0.216
								Mean	1.01	0.145
								St.dev.	0.25	

Overall Standard Deviation 0.48

A = Standard Deviation of Vessel means 0.25

B = Overall Standard Deviation with CLT adj (n = 8) 0.17

Ratio A/B 1.45

In the years 2000 – 2007, the vessel Highland Light had the lowest relative Chinook bycatch rate (BCR). In a personal conversation (March 19, 2009) with Michael Coleman, the General Manager of the Highland Light, Mr. Coleman said that the corporation made Chinook bycatch minimization a primary operational objective in all

years. The principle techniques used to reduce bycatch were choosing clean fishing grounds, moving away from areas where bycatch was high, and avoiding October fishing. The Highland Light's eight year average relative BCR was 55% of the 14 vessel CP fleet average. This is 2.6 (Central Limit Theorem) standard deviations below the fleet mean. This vessel had relative BCR below the fleet average in all eight years. This implies that there is a 1/256 chance that the Highland Light's performance resulted from luck, leaving a 255/256 chance that the vessel's superior performance was a result of a successfully executed operational plan.

Mr. Coleman kept no accounting records regarding the vessel's avoidance costs, but said that he was sure that those have never exceeded \$100,000 in any given year. If the Highland Light had fished at a BCR equal to that of the fourteen vessel fleet in all of these eight years, it would have bycaught an additional 2,925 Chinook. This, along with Mr. Coleman's estimate of avoidance, allows a conclusion that the average cost of avoiding Chinook was less than or equal to \$273.50 / Chinook. Assuming that the marginal cost of avoidance is linear and that \$100,000 was spent, we estimated the average marginal cost of avoidance faced by the Highland Light at \$547 per Chinook. The vessel's actual reduction in the relative BCR was 45%. We are aware of plenty of reasons for the reduction in BCR could be expected to be greater if the fleet as a whole was provided with a simple fixed \$547 per Chinook incentive and some reasons for supposing that it would be less.

In 2004, the Highland Light had a BCR which was 41% below the 14 vessel mean BCR. As a result, the Highland Light caught 268 Chinook fewer than if it had had a BCR equal to the average catcher processor. Assuming that the Highland Light spent \$100,000 to avoid salmon, each salmon avoided cost on average \$373. If the marginal cost was twice the average cost, then the marginal cost of each avoided salmon was \$746. There was no FIP in 2004, but the desires of the Highland Light's management made it expend significant resources to avoid salmon. If there had been a FIP in 2004 with \$22 ante per ton of pollock (\$0.01 / lb of pollock), the marginal incentive provided by the FIP for a catcher processor to avoid Chinook would have been \$858. A \$746 marginal incentive to avoid Chinook salmon could have been provided by an ante of \$19 per ton of pollock.

The experience of the Highland Light indicates that an ante of \$0.01 per pound of pollock would reduce Chinook bycatch substantially, perhaps by about half, so long as fishing companies are profit maximizing enterprises.

Over what Range of Bycatch can Incentives be Effective?

There has been some discussion during this process of the existence of a bycatch boundary, below which Chinook encounters are entirely random events. It has been asserted that the FIP, when applied to a fleet that is operating below this boundary, is reduced to a system of forced gambling, with no impact whatsoever on actual bycatch. *"When salmon abundance on the grounds is at very low levels, incentive based programs to avoid salmon bycatch can become little more than programs which assess a per-salmon fee for random salmon bycatch."* (Chinook PPA Inter-Coop Agreement, p.A13).

A variety of "solutions" have been proposed for this problem which include canceling the FIP and returning antes when bycatch falls below a certain level. These solutions are not part of any currently active proposal, however the assertion the FIP does nothing at very low abundance levels is serious enough that we believe that the data should be examined for supporting evidence.

“When salmon abundance is less than two salmon per 100 tons of pollock, it becomes doubtful that current technologies and methods available to discover and avoid salmon concentrations continue to work well. This places a practical limit on the ability of the pollock industry to avoid salmon when their abundance is very low.” (Chinook PPA Inter-Coop Agreement, p.A13).

Looking at Table 1 above, we notice that the Highland Light managed to have a low relative BCR both when average BCRs were high and when they were low. In fact, in 2000, 2002, and 2004 when the average BCR was lowest, ranging from 0.7 to 2.1, the relative BCR of the Highland Light was almost exactly the same as in the other five years when BCRs were higher, ranging from 2.7 to 6.3. In fact, there is a smidgen of evidence for deterioration in the ability of a vessel to avoid bycatch in years of low Chinook abundance. The relative BCR of the Highland Light in the three low bycatch years was 0.55442. In the high bycatch years the relative BCR of the Highland Light was 0.55264. The ratio of the relative BCR between the two sets of years is 99.7%. This is strong evidence that using historical data on the location and timing of bycatch vessels can avoid large percentages of Chinook bycatch even in years of low Chinook abundance.

The Role of the TBA in the FIP

The FIP was conceived of and designed specifically to provide an incentive that would act in concert with a TBA. The FIP is a complement to, not a supplement or substitute for, the TBA. We assume the existence of a TBA that allocates to the vessel level, and that these allocations are fully transferable between vessels, sectors and seasons without restrictions of any kind. We did not include a section describing the benefits of TBA in our paper because it was our impression as early as last May that both the industry and the regulatory community were in near-consensus that this was the efficient way to limit the maximum bycatch in years when bycatch is relatively high. It was evident even before the statistical analysis provided in the November draft that the TBA would not provide significant incentives for the avoidance of Chinook bycatch in years of low abundance. It was our impression that the Council, biologists, and those interested in Chinook conservation were looking for a program that would provide significant incentives when salmon abundance and hence bycatch was low.

In our scheme, the TBA provides the great majority of the incentive when bycatch is high. The FIP provides the incentive when bycatch is low. (See Kochin et.al., pp.15-20, Appendix pp. 59-78).

In common usage the term TBA has come to include a wide variety of Hard-Cap systems. As it is used by us, it means Fully Transferable and Allocated to the vessel level. Efficiency requires equalization of marginal costs. Impediments to transfer and central control impede marginal cost equalization and so are enemies of efficiency.

The PPA required a comparative analysis of:

1. A 47,591 Chinook hard cap (which we assumed would be a TBA) against
2. A 68,392 Chinook hard cap (which we again assumed to be a TBA) along with an incentive program.

The first step in that analysis was a quantitative comparison of the incentives provided by the 68,392 cap versus the 47,591 cap across the range of bycatch rates that could be anticipated. We approached this from the demand side, by modeling expectations as to the probability that TBA would have *any* value at the end of the fishing period along with the probable value of TBA *if* it had any value at all. This value was set at the lease value of the amount of pollock that would most likely be harvested as a result of purchasing the right to bycatch one additional Chinook

when the hard cap was limiting the pollock harvest. We chose the demand side approach over the supply side approach because we had access to pollock quota lease prices. The conclusions are presented graphically in the November draft on pp. 15-20. The model is described in Appendices C-F.

Not surprisingly, this analysis shows that the incentives induced by the TBA declined significantly with declining bycatch rates. Figure 3 on page 16 in the November draft shows that there is very little difference in the predicted incentive at bycatch rates below 20% of the mean BCR experienced over the last 8 years, as even a cap of 32,482 Chinook induces a marginal value approaching zero in this range.

We believe that figure 3 accurately depicts the marginal values induced by TBA. This is not to say that it accurately depicts the ability of the TBA to discourage bycatch at Chinook abundance levels significantly below the maximum bycatch level that is possible under the hard cap. We contend that the ability of the TBA is much weaker than marginal values depicted here alone indicate. We will show later that the marginal costs of avoidance are rising hyperbolically as the marginal value of avoided fish declines in response to decreasing abundance under TBA alone.

We believe that the lesson to be drawn from figure 3 is that a TBA, by itself, even without taking into account the increased avoidance costs at low abundance levels that we claim, cannot discourage the bycatch of Chinook when their abundance is at run-threateningly low levels, without imposing enormous pollock stranding losses on the industry in years of normal Chinook abundance. Conversely, a TBA that does not impose significant stranding losses on the industry in years of normal Chinook abundance cannot, by itself, protect the Chinook resource during times of maximum vulnerability.

The Marginal Value of Bycatch Avoidance over Different Bycatch Conditions under the FIP

"As a result, the FIP prize structure generates a marginal value of bycatch avoidance that is constant (once the ante structure is determined) over all different bycatch conditions. Thus there is always a consistent inducement to avoid bycatch under both high and low abundance conditions with FIP." [Emphasis added]. (Wilén, p.16).

We respectfully disagree. It is our contention that the marginal value of an avoided salmon is a function of the inverse of the prevailing bycatch rate and therefore rises hyperbolically as the bycatch of a fleet operating under the FIP approaches zero. We believe that it is this characteristic that makes the FIP an effective complement to a TBA.

The average value of an uncaught fish (UCF)¹ is the total ante divided by the number of UCF. The ante is independent of the bycatch rate as it is based on pollock quota. Holding pollock quota constant, the average value

¹ The number of uncaught fish is determined by the difference between the mean fleet bycatch rate (MBCR) and the reference bycatch rate (RBCR) (the BCR formerly established by Dirty Harry). This undercatch rate (UCR), when multiplied by the pollock harvest, yields the number of uncaught fish. The number of UCF can be calculated as follows:

$$UCF = CF \times (RBCR / MBCR) - I$$

is entirely dependent upon how many (or few) uncaught fish there are. The ratio of UCF to bycatch is relatively constant across the range of bycatch experienced, so the average cost is a function of the inverse of the bycatch rate, causing the average cost to double along with each halving of the bycatch rate, thereby tracing a hyperbolic curve that approaches infinity as BCR approaches zero.

The marginal value of an UCF is equal to its average value for participants holding small shares of the total UCF. For participants holding large shares of the total UCF, marginal values of UCF are lower than average values. A discussion of the effects of market share of UCF is done just the way we would say it in Section V, pp.A7 - A10 of Chinook PPA Inter-Coop Agreement. A mean-bycatch based reference would be ideal for a fishery where no one firm had any market share. Unfortunately, in the CP sector there are only 5 firms, and one of those firms holds nearly 50% of the pollock quota. That large firm would have 50% control of the reference point and so would face marginal incentives very different from other firms even if the market share adjustment discussed in the Chinook Inter-Coop Agreement is implemented. The use of the average as a base for the reference BCR provides an incentive for gaming for a firm with significant pollock market share. Because of this, we elected to use another measure of central tendency - the median vessel bycatch rate at the end of the season - as the basis for the reference point. The reference BCR is set equal to 2.5 times the vessel median BCR. The disadvantage of this is that the median BCR is not a perfect proxy for the mean BCR. The ratio median / mean of relative bycatch rates in the years 2000-2007 is 0.88, with a standard deviation of 0.12. We believe this is sufficiently stable for the purposes at hand.

On the basis of the above, we believe that the number of uncaught Chinook is a nearly constant multiple of the number of bycaught Chinook. The marginal value of avoidance is essentially equal to the average value of avoidance once the market share adjustments are implemented. So the marginal value of avoidance increases hyperbolically with reductions in bycatch. If bycatch is reduced by incentives, that will result in an increase in the marginal value of avoidance incentives provided by the FIP and a fall in the marginal value of avoidance incentives provided by the TBA.

The Marginal Cost of Bycatch Avoidance over Different Bycatch Conditions under the FIP

"When salmon abundance is low, there is the simultaneous coincidence of low encounter rates with high vulnerability for Salmon populations. Low encounter rates make it easier to avoid salmon, but those that are caught may have a higher impact on population viability." (Wilén, p.6).

We contend that the marginal cost of avoidance rises as a function of the inverse of the bycatch rate, which is to say, like the marginal incentive under the FIP, the cost of avoiding a salmon rises hyperbolically along with decreasing salmon abundance.

For example, when $RBCR = MBCR$, $UCF = 0$ as there are as many negative uncaught fish as caught fish when $RBCR = 2 \times MBCR$, $UCF = CF$. If the reference point could be set as a multiple of the MBCR, the marginal value of an UCF could be predicted perfectly by the bycatch rate, the pollock harvest, and the total ante. Under such an arrangement, the marginal value would obviously increase hyperbolically as bycatch approaches zero.

All Chinook avoidance methods can be classified into three categories:

1. *Changing where fishing occurs*

In the November paper, we showed that the cost per avoided fish of moving a vessel between different grounds to avoid Chinook rises as abundance falls. Examples 1-5 in the November paper (pp. 20, 24) illustrate the relationship between the marginal cost of avoiding Chinook, bycatch rate, and choice of fishing location.

2. *Changing when fishing occurs*

The decision on when to fish has a large impact on bycatch. The "B" season fishery occurs from June through October. June bycatch rates are consistently less than 10% of October bycatch rates. Because of physiological changes that occur on an annual cycle, pollock are more valuable in October. Pollock contain more roe, more oil, and more muscle per metric ton of catch in October than in June. From factory production reports from Trident's Akutan plant, the value of these increases is \$132/mt. If during June, a vessel can earn more than \$132/mt from incentives related to salmon avoidance it will be inclined to shift fishing effort from October to June.

If the bycatch rate in October is 80 Chinook/100 mt of Pollock (as in 2007, see Figure 2, p.9 of the November paper) and the bycatch rate in June is 8 Chinook/100 mt of pollock, then the differential is 72 Chinook/100 mt of Pollock. The cost of avoiding 72 Chinook using this method is \$13,200. The cost of avoiding one Chinook is \$183.

If the bycatch rate in October is 10 Chinook per 100 mt of Pollock (as in 2003) and the bycatch rate in June is 1 Chinook per 100 mt, the differential is 9 Chinook / 100 mt. The cost of avoiding 9 Chinook using this method is 100 mt x 132 \$/mt = \$13,200. The cost of avoiding one Chinook is \$1,466.

In the examples above, Chinook bycatch fell by a factor of eight. The cost per avoided Chinook rose by a factor of eight.

3. *Changing fishing techniques*

The capital costs associated with a salmon excluder are about \$10,000, trivial compared to the magnitude of incentives being discussed here. The salmon excluder is really a fish excluder that is more effective in excluding salmon than pollock. The vast majority of the costs are operational and associated with reduced pollock harvest per unit of time. This results from pollock escaping through the tunnels or flaps along with the salmon, as well as reduced pollock capture rate during periods when the towing speed is reduced to allow the salmon the opportunity to escape. The costs of this lost pollock harvest are the fuel, vessel and gear wear etc., that are needed to replace the lost pollock harvest. The loss of pollock-harvest effectiveness is unrelated to the number of Chinook that are in the net. The hourly operating costs are constant with respect to bycatch rate; the hourly salmon avoided are directly proportional to the generally prevalent bycatch conditions. The cost of avoiding a salmon doubles when the encounter rate is cut in half so the cost of avoiding a Chinook with an excluder is inversely proportional to the bycatch rate that is prevalent at the time, and so will follow the hyperbolic path described above. See Examples 8-1, pp. 26-28 of the November paper.

A quantitative estimate of the effect of the FIP:

"The FIP pins down prices with certainty (and hence the magnitude of the incentives that will be created)—but bycatch quantities are hard to predict." (Wilens, p.15).

In our November paper we made no effort to provide a quantitative estimate of the magnitude of the effect of the incentives provided by the FIP. In order to provide such a quantitative estimate we would have to have had either the results of a prior incentive program or systematically compiled data on the cost of avoidance. We had neither. Recently, we received information on a large scale bycatch reduction "experiment" provided by the Highland Light operating from 2000 to 2007. The Highland Light management emphasized Chinook bycatch avoidance. They informed us that they spent a substantial sum, but not more than \$100,000 per year, avoiding Chinook bycatch. The Highland Light had a BCR of 52% of the BCR of the other vessels in the CP fleet which operated in all eight years. These two bits of data enable us to estimate the average cost of avoiding Chinook bycatch. Our estimates of bycatch reduction are based on the activities of one vessel. However, this is a very large scale experiment done over a long period of time:

- Eight years of fishing (2000-2007), 16 fishing seasons
- 222,475 tons of pollock harvested
- Over 2,500 tows
- 3,548 Chinook bycaught
- 3,275 Chinook avoided that would have been caught at the BCR of the rest of the CP fleet
- Below average BCR in all eight years
- 48% reduction in bycatch over eight years
- Greater than 99% confidence that the Highland Light's expected annual BCR was below that of the other vessels

In order to estimate the average cost of salmon avoided in 2004, we subtracted the Highland Light's BCR in 2004 from the BCR of the other vessels in 2004 and multiplied that by the Highland Light's Pollock catch in 2004. This gave us the number of Chinook avoided by the Highland Light in 2004 (namely 271). Dividing \$100,000 by 271 gives us the average cost per Chinook avoided in 2004 (namely \$370).

This average cost differs sharply by year. In 2000, when bycatch was the lowest, our estimate of the average cost of avoiding a Chinook is more than three times as high as in 2004 when the bycatch was somewhat lower than average. In 2007, when bycatch was the highest, our estimate of the average cost of avoiding a Chinook is more than two times as low as in 2004 when the bycatch was somewhat lower than average.

If the marginal cost increases linearly with the percentage of bycatch avoided then the marginal cost of avoidance will equal twice the average cost of avoidance. Using this assumption, the marginal cost of the Highland Light in avoiding Chinook in 2004 was \$740. Our estimate of the marginal value to avoiding salmon under the FIP program given the bycatch in 2004 was \$910. However with incentives provided bycatch would have been considerably lower and therefore the marginal value provided by the FIP would have been considerably higher. Such increases in the marginal value would have taken us too far out of the observed range of the marginal cost. So we will use an estimate which is 23% higher than the observed avoidance of the Highland Light.

Our point estimate is that in 2004 the Highland Light avoided 271 Chinook salmon which is 45% of the Chinook it would have been expected to catch if its BCR was equal to the BCR of the CP fleet. However, this estimate is subject to sampling error. As we showed in Table 1, the uncertainty about the average relative BCR estimate is 0.049. Therefore, the uncertainty about the number of Chinook avoided is also 0.049 times the average BCR. There is a 95% chance that the expected percentage of bycatch avoided by the Highland Light was higher than 35% and lower than 55%. So there is a 5% chance that the expected number of Chinook avoided by the Highland Light in 2004 was lower than 210 or higher than 329. Since the FIP, under the conservative conversion assumption made

earlier, would have led to 23% more avoidance of Chinook than was achieved by the Highland Light, the expected number of Chinook avoided by a vessel with the quota of the Highland Light is 333. There is a 95% chance that the FIP would have induced the avoidance of at least 258 Chinook by a vessel with the quota of the Highland Light. Since the total CP sector had a pollock quota 22.6 times as large as the Highland Light's quota, the number of Chinook avoided by the sector would have been at least 5,830.

In Table 2, we show the effects of incentives provided by the FIP on Chinook bycatch. These estimates of bycatch reduction are conservative because we have not included any increase in incentives provided by industry bycatch reduction and have used a low estimate of the percentage bycatch reduction achieved by the Highland Light. No allowance is made for any incentives provided by TBA.

Table 2. Estimate of Chinook Saved Under the FIP for the CP Fleet, 2000 – 2007.

Year	Pollock Harvest (1000 mt)	Chinook Bycatch Actual	Chinook Bycatch High Estimate	Chinook Saved Low Estimate	Percent Reduction
2000	491	3,093	1,790	1,303	42%
2001	604	18,127*	10,488	7,639	42%
2002	644	10,867	6,288	4,579	42%
2003	694	18,472	10,688	7,784	42%
2004	677	13,781	7,951	5,830	42%
2005	678	15,764	9,121	6,643	42%
2006	680	18,857	10,911	7,946	42%
2007	630	35,091	20,304	14,787	42%
Total		115,925	77,541	56,511	
Avg.					42%

*Chinook bycatch in excess of CP share of 47,591 Chinook

The CP and CDQ share of TBA is 34.3%. For the CP and CDQ sectors this gives a hard cap of 16,326 Chinook with a 47,591 overall hard cap. Only in 2007 would the FIP alone have failed to keep Chinook bycatch below 16,326 even under these very conservative estimates of the effects of the FIP. With an overall hard cap of 68,392 Chinook, the CP and CDQ sectors share of TBA is 23,458. The FIP alone would have sufficed to keep Chinook bycatch below the hard cap. However, the shadow of the hard cap would probably provide substantial additional incentives to avoid bycatch in a year with a natural bycatch rate equal to that in 2007.

We conclude that at a minimum, the FIP will reduce Chinook bycatch across the entire range of abundance seen in the years 2000-2007 by 42%.

Short Comments

Wilens, p.7. *"The FIP most closely resembles what economists have called 'tournaments'."*

Under the revised FIP with the revision in reference point, the market share adjustment, and the penalty for being above the reference point, all participants face essentially equal marginal values for avoiding Chinook.

Wilens, p.16. *"The FIP prize structure generates a marginal value of bycatch avoidance that is constant."*

As discussed above, the FIP generates much greater incentives at low levels of Chinook abundance.

Wilens, p.17. *"Both programs will (ultimately) bring bycatch down to 47,000 on average."*

55,828 was the average bycatch in the past eight years without any incentives in place. Our high estimate for the average bycatch in the CP sector is 9,692 Chinook. For the whole Bering Sea pollock, Fishery our high bycatch estimate is 28,256 Chinook assuming that the FIP is applied to and has equal effects on all sectors.

Additional Research Needs

1. Using existing data to gather information on the relationship between Chinook abundance and Chinook bycatch rates.
2. Finding which additional data if collected could significantly improve estimates of the biological, subsistence, recreational, and commercial fishing value of Chinook salmon over time and over bycatch location.
3. With estimates of abundance apart from bycatch rates the effectiveness of incentive programs could be tracked.

Offer of Further Discussion

We would be happy to discuss this letter with you further individually or preferably in a conference call. Our contact numbers are:

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September 22, 2014

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

Dear Chris:

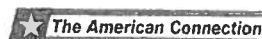
At the North Pacific Fishery Management Council's April meeting, counsel for NOAA questioned whether the Magnuson-Stevens Act authorized the Council's proposed Gulf Trawl Bycatch Management structure. The issue is whether the proposal linkage between harvesting vessels and processing plants is authorized under the MSA. In response to that question I have drafted the attached memo.

The memo describes in detail the NOAA legal opinions on this issue. NOAA expressly acknowledges that the interests of on-shore processors can be protected within the term "conservation and management." NOAA has questioned whether the MSA provides the authority to regulate activities on-shore, however, including implementation of delivery requirements on harvesters to protect on-shore processors' interests.

The memo mentions three separate ways in which the Council's proposed Gulf Trawl Bycatch measure can be authorized. NOAA's 1989 Roe Stripping Opinion noted that the Council could prohibit the harvesting of pollock that would later be used for roe stripping on-shore (even though the opinion stated there is no authority to prohibit on-shore processors from stripping roe.) Presumably, then, the Council could prohibit the harvest of groundfish that were delivered to a processor with whom the vessel did not have a cooperative contract. The memo also notes that section 303(a)(9) of the MSA requires possible mitigation measures for "fishing communities" (defined to include on-shore processors) which are affected by a plan. These required mitigation measures would authorize linkage between vessels and processors.

The memo's focus is the so-called "Basket Clause" found at section 303(b)(14) of the Act. The Basket Clause authorizes the councils and Secretary to "*prescribe such other measures, requirements, conditions, and restrictions as are determined necessary and appropriate for the conservation and management of the fishery.*" The

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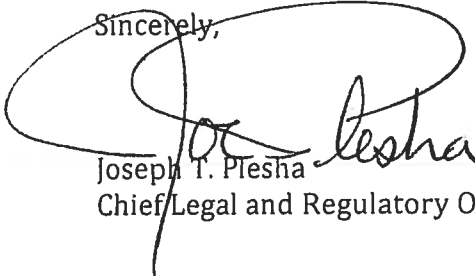


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memo describes a number of regulations promulgated under the MSA regulating on-shore activities, including many that specifically regulate on-shore processing. When challenged, NOAA has consistently cited the authority provided in Basket Clause to regulate activities on-shore, including the regulation of on-shore processors in the North Pacific, and courts have unanimously upheld these regulations under the Basket Clause.

In summary, the memo describes how the Basket Clause of the MSA provides clear authority to regulate on-shore processing given a legitimate conservation and management purpose.

Sincerely,



Joseph T. Plesha
Chief Legal and Regulatory Officer

MEMO

SEPTEMBER 4, 2014

TO: FILE

FROM: JOE PLESHA

RE: AUTHORITY TO REGULATE ON-SHORE ACTIVITIES UNDER THE
MAGNUSON-STEVENSON ACT

I. Introduction.

The North Pacific Fishery Management Council is considering trawl bycatch management measures in the Gulf of Alaska. The management measures under consideration include rationalization of the trawl sector through an inshore cooperative structure that has "linkage" between vessels and the plants to which those vessels historically delivered.

Under the Council's proposal, this linkage comes in three forms: (1) Vessels cannot join a cooperative unless they have a contractual agreement with the on-shore processor to whom they delivered a majority of their catch during a historical period of time; (2) there is a prohibition against the vessel leaving its original cooperative during an initial two-year period; and (3) cooperative agreement must contain clear provisions for how a harvester and processor may dissolve their contract after the cooling off period off period of two years.

At the Council's April 2014 meeting, NOAA regional counsel questioned whether the Magnuson-Stevens Act authorized adoption of plans with this type of linkage between harvesters and processors.

Section 303 of the Magnuson-Stevens Act outlines the provisions that the councils and the Secretary may use to manage a fishery. There are required provisions listed in section 303(a) and discretionary provisions that are listed in section 303(b). The list of discretionary management measures includes the so-called "Basket Clause"¹ now found at section 303(b)(14) of the Act, which authorizes the councils and Secretary to "*prescribe such other measures, requirements, conditions, and restrictions as are determined necessary and appropriate for the conservation and management of the fishery.*"

¹ The citation for this provision has at times been in the Magnuson-Stevens Act at §303(b)(8), §303(b)(10), and is now is found at §303(b)(14). To avoid confusion, hereafter this memo refers to the provision as the "Basket Clause" without reference to a specific section of the Act.

This memo discusses the legal issue of whether fishery management plans that include cooperatives with linkage between harvesting vessels and shore-based processing plants can be authorized under the Basket Clause in section 303(b) of the Magnuson-Stevens Act.

II. Background.

The issue of whether the Magnuson-Stevens Act authorizes regulation of on-shore activities has a long history. To answer the question of whether the Basket Clause in section 303(b) of the Magnuson-Stevens Act authorizes cooperatives with linkage between vessels and on-shore processors, it is important to understand that history in detail.

1. 1978 NOAA General Counsel's Legal Opinion No. 61.

In the early days of the implementation of the Magnuson-Stevens Act, NOAA's office of General Counsel issued a number of formal legal opinions discussing the operation of the Act. In 1978, the NOAA General Counsel's office wrote a legal opinion on the issue of whether processors interests can be considered as part of "conservation and management" of the fisheries under the Act. ("Opinion No. 61").²

The issue arose because in 1977 the Secretary of Commerce received applications for permits to operate foreign-flag vessels to process and transport fish harvested by U.S. fishermen. In June of that year, the National Marine Fisheries Service published an Advance Notice of Proposed Rulemaking and in July through August, held eighteen public hearings on the issue. In February of 1978 a proposed interim policy was published in the Federal Register for review and comment. The proposed policy stated that permit applications for foreign processing ships would be granted only if the U.S. harvesting capacity for the proposed species to be processed exceeded the domestic processing capacity for that species. Comments received by NMFS questioned whether the Magnuson-Stevens Act gave the Secretary authority to regulate foreign processing ships except for reasons concerning "conservation and management."

The matter addressed in Opinion No. 61 was whether the Secretary had the authority under the Magnuson-Stevens Act to deny the application of foreign processing ships because domestic on-shore processors (there was no domestic at-sea processing at that time) had the capacity and intent to process the same resource.

² General Counsel Opinion No. 61 (1978).

Opinion No. 61 noted that the Secretary could deny the permits to foreign vessels if the proposed foreign at-sea processing operation did not meet the requirements of the Act. One of those requirements was “any other condition and restriction related to fishery *conservation and management* the Secretary prescribes as necessary and appropriate.”³ It is under this provision of the Magnuson-Stevens Act that Opinion No. 61 addresses the issue of whether the economic interests of on-shore processors lie within the definition of “conservation and management” and are therefore protectable.

Opinion No. 61 recites the Act’s definition of “conservation and management” and then claims that the term does not appear to take into account the interests of on-shore processors. “The failure of this definition to refer to fish processors suggests that the effect which approving a permit application may have on domestic fish processors is not relevant to whether the decision is consistent with the ‘conservation and management’ of the fishery concerned.”⁴

After determining that the definition of “conservation and management” does not appear to address the on-shore processors, Opinion No. 61 rhetorically asks whether “one might argue, through references to several other definitions in the [Magnuson-Stevens Act], *that the interests of on-shore processors are among the interests to be protected by ‘conservation and management’ considerations.*”⁵

Opinion No. 61 goes on to state that the term “conservation and management” refers to “fishery resources” which is defined as “any *fishery*, any stock of fish, any species of fish, and any habitat of fish.”⁶ “Fishery” is defined as “one-or more stocks of fish... and any *fishing* for such stocks.”⁷ Thus, *if* the term “fishing” is defined to include on-shore processing, *then* on-shore processors interests might be protected under the definition of “conservation and management.”

Opinion No. 61 expresses the view that the definition of “fishing” under the Magnuson-Stevens Act does not include on-shore processing and thus, “[i]t follows from the foregoing discussion of the phrase “conservation and management” and the definition of this term in section 3(2) that the Secretary is not required under [the Magnuson-Stevens Act] to protect domestic processors in granting or denying the applications in question.”⁸

³ Magnuson-Stevens Act §204(b)(7)(D). Now found at §204(b)(7)(F).

⁴ Opinion No. 61, p. 6.

⁵ *Id.*

⁶ Magnuson-Stevens Act §3(9). Now found at §3(15).

⁷ Magnuson-Stevens Act §3(7). Now found at §3(13).

⁸ Opinion No. 61, p. 7.

The ultimate holding of Opinion No. 61, is that on-shore processors interests are not among those interests that can be taken into consideration under the Magnuson-Stevens Act's definition of "conservation and management" and therefore protection of domestic on-shore processors was not justification for the Secretary to deny a permit application to operate foreign processing vessels.

2. The 1978 "Processor Preference Amendment."

Opinion No. 61 resulted in foreign factory ships having the right to purchase fish harvested by U. S. vessels from the United States Exclusive Economic Zone, even if domestic on-shore processors wanted to utilize those same resources. Within a few months of Opinion No. 61's publication, Congress passed an amendment to the Magnuson-Stevens Act giving preference to U.S. processors.⁹

As the final version of the legislation was enacted by the House, a discussion occurred regarding the intent of the legislation. The Chairman of the House of Representatives Merchant Marine and Fisheries Committee, Congressman John Murphy, described the legislation's intent:

Mr. Speaker, since the 18th of last month (June of 1978) the staffs of the House Committee on Merchant Marine and Fisheries and the Senate Committee on Commerce, Science and Transportation have been working toward resolving the differences between the two versions of this provision. ...

Briefly explained, the compromise language makes it clear that it is the intent of Congress to encourage the development by the U.S. fishing industry, in particular by U.S. fishermen and U.S. fish processors, of the currently underutilized fisheries off the United States. ... In addition, the compromise language would give a preference to U.S. fish processors of U.S harvested fish and it would authorize the Secretary to allow U.S. fishermen to transfer at sea to foreign fishing vessels only the excess of such fish that the Secretary has determined that would not be utilized by U.S. fish processors.¹⁰

Chairman Murphy also discussed the issue of the definition of "fishing."

⁹ The amendment provides that if U.S. processors have the capacity and intent to utilize fishery resources, they have first preference to those resources. P.L. 95-354 (1978).

¹⁰ Statement of Congressman John Murphy, 124 Cong. Rec. H8266, Aug. 10, 1978.

In the course of our discussions of the bill, some question was raised about whether the definition of “fishing” under section 3 of the [Magnuson-Stevens Act] includes “processing.” ... In the end, we decided to leave the [Magnuson-Stevens Act’s] definitions unchanged on this point while, at the same time, making clear the Act was intended to benefit the entire fishing industry. ... [I]t is the understanding of the House that “fishing” in section 3 of the [Magnuson-Stevens Act] does include “processing” and that, for that reason, the proposed clarification is unnecessary.¹¹

Congressman Murphy’s floor statement regarding the importance of “processing” being included within the definition of “fishing” is a statement of Congressional intent and should guide interpretation of this provision in the Magnuson-Stevens Act. Whether the definition of “fishing” includes “processing”, however, soon became irrelevant to whether on-shore processors interests could be considered under the term “conservation and management.”

3. 1979 NOAA General Counsel’s Legal Opinion No. 80.

In 1979 NOAA General Council reviewed the issue of whether the Magnuson-Stevens Act authorizes the Secretary to implement Fishery Management Plan recommendations designed to promote interests beyond protection of the resource, such as public health and safety (“Opinion No. 80”). The examples of the promotion of interest beyond protection of fish stocks are numerous. The Mid-Atlantic Council closed areas over ocean dumpsites for mackerel, squid and butterfish to avoid the harvest of contaminated or poor-quality fish. The Gulf of Mexico Council prohibited fishing for shrimp in crab grounds to avoid gear conflict and the resulting potential for violence between fishermen. The New England Council developed a no discard rule to prevent the waste of protein. The Pacific Council allowed fishing on anchovies only when the yield of oil is highest and the catch therefore most valuable. The North Pacific Council allowed fishing for Tanner crab only well after molting season to avoid poor-quality meat and processors rejecting dead crabs.

Opinion No. 80 held that interests of public health and safety could be included in the definition of “conservation and management.” The opinion noted that “[t]he expansive scope of sections 2 [Findings, purposes, and policies], 3(18) [definition of “optimum yield”], and 301 [National Standards] and their legislative history suggest that section 2(3) [definition of “conservation and management”] should be read broadly to achieve the greatest overall benefit to the nation.”¹²

¹¹ Statement of Congressman John Murphy, 124 Cong. Rec. H8266, Aug. 10, 1978.

¹² Opinion No. 80, p. 6.

The opinion concluded by saying that because protection of health and safety are valid conservation and management issues, the only remaining issue is whether the proposed regulation to protect health and safety is “necessary and appropriate.” The Opinion ended by saying, “[a] case-by-case analysis and consultation with other agency [sic]¹³ should establish whether the proposed public-health regulation is ‘necessary and appropriate’ for the conservation and management of the fishery.”¹⁴

In holding that the interests to be considered by “conservation and management” measures included concerns beyond fish stocks, Opinion No. 80 overturned Opinion No. 61’s holding that “conservation and management” did not include the interests of on-shore processors. Opinion No. 80, however, included one short paragraph that said all “necessary and appropriate” measures were limited to activities at sea. That paragraph stated:

Section 303(a)(1) limits conservation and management measures in an FMP to measures which are “applicable to foreign fishing and fishing by vessels of the United States”. This limitation applies to *all* conservation and management measures, because section 303(b) merely lists the provisions which may be selected under section 303(a)(1) as “necessary and appropriate.” Thus an FMP may contain only those conservation and management measures which pertain to fishing or to fishing vessels.¹⁵

This paragraph in Opinion No. 80 argues that, regardless of the conservation and management purpose, “necessary and appropriate” measures may only regulate operations at sea because all of section 303 is limited to measures that pertain to fishing or fishing vessels. Opinion No. 80 stands for the proposition that on-shore processors interest can be considered in the conservation and management of the fishery, but all “necessary and appropriate” measures to deal with on-shore processors’ interest are limited to activities at sea.

4. 1988 NOAA General Counsel Memo Regarding Limited Entry.

In the late 1980s, both the Pacific and North Pacific councils began considering fishery rationalization programs. In 1987 the North Pacific Council established the Future of Groundfish Committee (“FOG Committee”). The FOG Committee began discussing rationalization of all of the groundfish fisheries off Alaska and seriously

¹³ So in original.

¹⁴ Opinion No. 80, p. 9.

¹⁵ *Id.*, p. 4.

considered the inclusion of processors in rationalization, perhaps for the first time.¹⁶

The General Counsel for NOAA Fisheries provided a memo on the authority of the Magnuson-Stevens Act to implement various rationalization measures in response to questions from the Alaska and Northwest regions.¹⁷ Below is the response given to the question of whether the Act authorized rationalizing processors:

Question: Could an IFQ system be applied to processors, including floating processors at sea, floating shoreside processors, or shore-based processing plants?

Answer: Possibly. Assuming the Councils could establish a rational connection to the conservation and management of fish within the EEZ, I believe, in theory, they could regulate access to the fishery indirectly by *regulating the right to process fish*. Obviously, the Councils cannot regulate fishing in state waters in this manner, but the Magnuson Act does not explicitly preclude them from regulating processors that receive fish from the EEZ.

On the east coast, the Secretary will soon be asked to approve a five-Council plan that will allocate billfish exclusively to recreational users by prohibiting the sale of billfish taken from the Atlantic stock. Most likely, approval of this plan would result in regulation of processors and dealers as well as fishermen because trade in billfish from the Pacific would be permitted. Arguably, a restriction on authorized buyers of EEZ fish may not even constitute a system for limited access since anyone could participate in the fishery if they had a purchase contract.

The Councils should proceed with caution, however, to break this new ground. Dick Gutting¹⁸, speaking for the National Fisheries Institute, has stated that the Councils and the Secretary may only regulate fishing, not trade in fishery products, and we expect litigation over the billfish plan.

¹⁶ The Future of Groundfish Committee final report to the North Pacific Council suggested alternatives for trawl groundfish rationalization that included allocating harvesting quota to both vessel owners (specifically excluding crew) and processors. FOG Committee Report to the Council, p. 13 and 19, (June 1988).

¹⁷ Memo from Jay S. Johnson, General Counsel for NOAA Fisheries to Doug Ancona, General Counsel Northwest Region and Jon Pollard, General Counsel Alaska Region, Mar. 1, 1988.

¹⁸ Richard "Dick" Gutting, then a vice president of the National Fisheries Institute, was formerly in the NOAA General Counsel's office and Mr. Gutting was the lead author of Opinion No. 61.

There are some practical-legal problems in using a processor-based limited access system due to the proximity of Canada and the positions the U.S. has taken with respect to that nation's restrictive fish export laws. While it is possible that the Magnuson Act could be used to limit the rights of U.S. firms to purchase EEZ fish, it probably could not be used so as to restrict Canadian firms without violating the free trade principles of this Administration. As a result, a processor-based limited access system would not work if fishermen used the opportunity to sell fish to Canada to evade the market controls.

This memo expressed the National Marine Fisheries Service General Counsel's opinion that on-shore processors could be regulated, even limited, as part of conservation and management measures that were necessary and appropriate to protect the interests of the on-shore processing sector. At that time authority under the Magnuson-Stevens Act to regulate on-shore activities seemed resolved.

5. 1989 Memo on the Authority to Prohibit Pollock Roe Stripping.

In early 1989 factory trawler¹⁹ vessels fishing for pollock in both the Gulf of Alaska and Bering Sea engaged in pollock roe stripping, removing the roe from female pollock while discarding male pollock and the flesh from female pollock.²⁰ The legal issue before the Council was whether regulatory measures could be implemented prohibiting roe stripping.

NOAA General Counsel's office offered its opinion on whether the Council and Secretary can take measures to prevent wasteful practices by domestic processors (Roe Stripping Opinion).²¹

The Roe Stripping Opinion noted that:

Not since 1978 has the definition of "conservation and management" stood in the way of Secretarial action under the Magnuson-Stevens Act. In fact, the definition was broadly construed in General Counsel Opinion No. 80 (1979), which addressed public health and safety measures, to allow any purpose that can be inferred from the Act as the basis of an FMP provision. Strict application of a narrow

¹⁹ Now referred to as "catcher/processor" vessels.

²⁰ See, Fleet dumps thousands of tons of fish, Anch. Daily News, Mar. 24, 1989, p.1.

²¹ Memo from Margaret H. Frailey, Assistant General Counsel for Fisheries, to the North Pacific Fishery Management Council, Dec. 1, 1989.

interpretation of the term would eliminate probably half the FMP measures currently in place. ...

We believe a strict reading of the definition of “conservation and management” is inconsistent with the Act’s many expressions of permissible economic and social goals. Optimum yield cannot be achieved if FMPs can only address the restoration or maintenance of stocks of fish. Many purposes of the Act cannot be fulfilled if the Councils and the Secretary are so limited.²²

The 1989 Roe Stripping Opinion specifically *rejected* Opinion No. 61’s conclusion that on-shore processors’ interests were not included within the definition of “conservation and management.”

This [“conservation and management”] is one of the provisions that was narrowly interpreted in General Counsel Opinion No. 61 (1978), which concluded that the Act did not authorize the Secretary to deny applications for joint-venture permits on the basis that U.S. processors could process the fish. This ruling resulted in the processor-preference amendment, P.L. 95-354. *The implication of Opinion No. 61, that “conservation and management” does not encompass consideration of the economic interests of on-shore processors, is inconsistent with Opinion 80 and subsequent practice of the agency.*²³

The Roe Stripping Opinion therefore concluded that the Magnuson-Stevens Act definition of “conservation of management” included the potential to limit wasteful practices by processors.

The next issue addressed by the Roe Stripping Opinion was what measures could be used to implement the conservation and management concern of wasteful discards by processors? Like Opinion No. 80, the Roe Stripping Opinion²⁴ cited section 303 as being limited to “only conservation and management measures ‘applicable to foreign fishing and fishing by vessels of the United States.’”²⁵ Although roe stripping

²² Roe Stripping Opinion, p. 7.

²³ *Id.*, p. 6. The fact that on-shore processors interests can be considered in conservation and management measures is now beyond dispute. Specifically regarding fishery rationalization, Pub. L. 109-479 (2006) amended the Magnuson-Stevens Act to require allocations include consideration of “employment in the harvesting and *processing* sectors”, “*investments* in, and *dependence* upon, the fishery”, and “the current and historical and historical participation of *fishing communities*” (which is defined to specifically include processors). Magnuson-Stevens Act §303A(c)(5)(A).

²⁴ The same NOAA lawyer authored both the Roe Stripping Opinion and Opinion No. 80.

²⁵ Roe Stripping Opinion, p. 12.

could be prohibited, it could only be prohibited on at-sea processing operations and not by processors located on-shore.²⁶

6. Status of NOAA's Opinion of the Authority to Regulate On-Shore Activities After the 1989 Roe Stripping Opinion.

There have been at least six additional written opinions by NOAA lawyers since the Roe Stripping Opinion discussing whether on-shore activities can be regulated under section 303 of the Act.²⁷ The formal view of NOAA on this issue has not changed since the Roe Stripping Opinion in 1989.

The opinion of NOAA regarding the ability of the councils and Secretary to regulate activities on-shore can be summarized as follows:

- * Given an appropriate administrative record justifying the action, the councils and Secretary can protect the interest of on-shore processors as part of "conservation and management" of the fishery. The North Pacific Council, for example, would recommend allocations of pollock and cod between the inshore and offshore processing sectors to protect Alaska shore-based processors in 1991.
- * *Necessary and appropriate* management measures to implement conservation and management of the fisheries are limited to activities at sea because section 303(a)(1) of the Magnuson-Stevens Act "limits conservation

²⁶ During the Roe Stripping debate at the North Pacific Fishery Management Council meetings, NOAA's Alaska regional counsel proposed a ban on harvesting fish that would later be used in roe stripping on-shore. Some members of the North Pacific Council were uncomfortable with restricting fishing for purposes of roe stripping because the vessel delivering the pollock to an on-shore processor would be responsible for a practice over which it had no control. The Roe Stripping Opinion claimed, however, that this type of plan would be authorized under the Act. (See, Roe Stripping Opinion, p. 11.)

An analogy to this proposal for purposes of harvester-processor linkage would be that no fish could be harvested (regulating an activity at sea) which was not delivered to a processor with whom the vessel had a cooperative contact as specified in the regulations.

²⁷ The six written opinions are: (1) Memo from Lisa L. Lindeman, NOAA General Counsel – Alaska Region, to the North Pacific Fishery Management Council, Sept. 20, 1993, (1993 Processor Privileges Opinion); (2) Memo from Lisa L. Lindeman, Alaska Regional Counsel to Stephanie Madsen, Chair, North Pacific Fishery Management Council, Feb 3, 2005; (3) Letter from Eileen M. Cooney, NW Regional Counsel to Donald K. Hansen, Chairman, Pacific Fishery Management Council, June 10, 2005; (4) Letter from Eileen M. Cooney, NW Regional Counsel to Donald K. Hansen, Chairman, Pacific Fishery Management Council, Oct. 30, 2007; (5) Memo from Lisa L. Lindeman, Regional Council NOAA General Counsel, Alaska Region, to the North Pacific Fishery Management Council, Sept. 30, 2009; and, (6) Memo from Lisa Lindeman, Chief, Alaska Section to Glenn Merrill, Assistant Regional Administrator for Sustainable Fisheries, NOAA Fisheries, Alaska Region, Dec. 16, 2011 (2011 On-Shore Processing Privileges Opinion).

and management measures in an FMP to measures which are ‘applicable to foreign fishing and fishing by vessels of the United States.’”²⁸

III. Analysis of Authority to Regulate On-Shore Processing Under the Magnuson-Stevens Act.

1. NOAA’s Rationale for Limiting “Necessary and Appropriate” Management Measures to At-Sea Activities.

The rationale NOAA has given why management measures outlined in the Basket Clause of section 303(b) are limited exclusively to activities at sea was articulated by one paragraph in Opinion No. 80.²⁹ That paragraph reads as follows:

Section 303(a)(1) limits conservation and management measures in an FMP to measures which are “applicable to foreign fishing and fishing by vessels of the United States”. This limitation applies to *all* conservation and management measures, because section 303(b) merely lists the provisions which may be selected under section 303(a)(1) as “necessary and appropriate.” Thus an FMP may contain only those conservation and management measures which pertain to fishing or to fishing vessels.³⁰

Section 303(a)(1) of the Magnuson-Stevens Act reads as follows:

303(a) Required Provisions.—

Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

(1) contain the conservation and management measures, applicable to foreign *fishing* and *fishing by vessels of the United States*, which are—

(A) *necessary and appropriate* for the conservation and

²⁸ Opinion No. 80, p. 4.

²⁹ Only two other NOAA opinions have even touched upon the reason that the Basket Clause of section 303(b) is limited to at sea activities. The 1993 Processing Privileges Opinion focuses on the definition of “fishing” noting that the Magnuson-Stevens Act’s definition of “fishing” did not include on-shore processing and therefore the Councils do not have the authority to create and allocate on-shore processing privileges. Regarding the Basket Clause of section 303(b), the 1993 Processing Privileges Opinion stated that, “there is nothing within [the Basket Clause] to expand the definition of fishing.” The 2011 On-Shore Processing Privileges Opinion again notes that the definition of “fishing” under the Act does not include on-shore processing. The opinion summarily states that section 303 of the Magnuson-Stevens Act “consistently refers throughout to the Agency’s authority as focused on ‘fishing’ which is most reasonably read as referring to multiple different activities at sea, but not on-shore.”

³⁰ Opinion No. 80, p 4.

management of the fishery;
(B) *described in this subsection or subsection (b), or both*; and
(C) consistent with the national standards, the other provisions of
this Act, and any other applicable law;

Section 303(a)(1) states that a required provision in a fishery management plan shall contain conservation and management measures, applicable to fishing by vessels of the United States, which are "*necessary and appropriate for the conservation and management of the fishery*," and "*described in this subsection or subsection (b), or both*."³¹

Section 303(a)(1) is arguably limited to management measures applicable to foreign fishing and fishing by vessels of the United States. But nowhere else in section 303 is the same limitation expressed. Just because section 303(a)(1) is limited to measures that occur at sea does not limit other sections of 303 to that requirement.

For section 303(a)(1) to restrict all of section 303 to at sea activities, no provision "described in subsection (a) or subsection 303(b), or both" can include management of activities on-shore. Opinion No. 80's position restricting all "necessary and appropriate" measures to fishing and fishing vessels only makes sense if every provision of section 303(a) and (b) is limited to management measures that regulate only at sea activities. The argument that every section 303(a) and (b) is limited to management of activities that occur at sea is not possible. Provisions of the Magnuson-Stevens Act have been amended so that section 303 specifically includes management measures relating to on-shore processors. Currently section 303 provides:

Any fishery management plan with respect to any fishery —

- * Must assess and specify the capacity and extent to which *United States fish processors*, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States.³²
- * Must specify the pertinent data which shall be submitted to the Secretary with respect to *...fish processing* in the fishery, including... the estimated processing capacity of, and the actual *processing* capacity utilized by, *United States fish processors*.³³
- * Must include a fishery impact statement for the plan or amendment which shall assess, specify and analyze the likely effects ...of the conservation and

³¹ Magnuson-Stevens Act §303(a)(1)(B).

³² Magnuson-Stevens Act §303(a)(4)(C).

³³ Magnuson-Stevens Act §303(a)(5).

management measures on, and possible mitigation measures for *participants* in the fisheries and *fishing communities*³⁴ affected by the plan or amendment.³⁵

- * May require *fish processors* who first receive fish that are subject to the plan to submit data which are necessary for the conservation and management of the fishery.³⁶
- * May require a permit to be obtained from, and fees to be paid to, the Secretary with respect to any *United States fish processor* who first receives fish that are subject to the plan.³⁷

Opinion No. 80's argument that the management measures in section 303 of the Act are all restricted to "fishing by vessels of the United States," just because section 303(a)(1) is arguably so limited, is patently wrong. Other provisions in section 303(a) and section 303(b) expressly authorize regulation of on-shore activities and specifically on-shore processing.

2. Agency Practice of Regulating On-Shore Activities Under the Magnuson-Stevens Act.

Regional fishery management councils, including the North Pacific Council, and the Secretary have frequently used the broad discretion provided in the Basket Clause in section 303(b) — *other measures, requirements, or condition and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery* — to regulate activities on-shore and on-shore processors.

The Roe Stripping Opinion contains a footnote acknowledging that regulation of on-shore processors has "long been *accepted* under the Magnuson Act as a *necessary concomitant* of the regulation of harvesting activities."³⁸ This is an acknowledgement by NOAA that the Magnuson-Stevens Act *does* provide authority to regulate on-shore activities. When regulation of an on-shore activity is

³⁴ Processors are "participants" in the fisheries, and the definition of "fishing community" specifically includes "United States fish processors." Magnuson-Stevens Act §3(17). This section 303(a) alone provides authority for linkage between vessels and onshore processing plants as a method to mitigate the negative impacts of rationalization to on-shore processors.

³⁵ Magnuson-Stevens Act §303(a)(9).

³⁶ Magnuson-Stevens Act §303(b)(7).

³⁷ Magnuson-Stevens Act §303(b)(1)(C).

³⁸ Roe Stripping Opinion, p. 12.

challenged, however, the defense given by the agency is *not* that the activity is a “necessary concomitant” to harvesting activities, but instead the defense is that the regulation is “necessary and appropriate” to conservation and management of a fishery and thereby authorized under the Basket Clause of section 303(b) in the Magnuson-Stevens Act. The phrase “necessary concomitant” is not found in the Magnuson-Stevens Act, any federal register notice supporting the Act’s authority to regulate on-shore activities, or any cases interpreting the Magnuson-Stevens Act’s authority to regulate on-shore activities. The authority for the councils and Secretary to regulate on-shore processors is always found under the Basket Clause in section 303(b) of the Magnuson-Stevens Act and not because the regulation is a “necessary concomitant” to harvesting activities.

If *some* on-shore activities can be regulated under the Basket Clause, then *all* on-shore activities can be regulated under the Basket Clause as long as there is a legitimate conservation and management purpose. There is no distinction in the Magnuson-Stevens Act for activities that are a “necessary concomitant” to harvesting. The issue is whether the conservation and management rationale is legitimate. Opinion No. 80 was correct when it noted that “[a] case-by-case analysis and consultation with other agency should establish whether the proposed public-health regulation is ‘necessary and appropriate’ for the conservation and management of the fishery.”³⁹

To follow is just a small sample of regulation of on-shore activities promulgated under the Magnuson-Stevens Act:

a. The North Pacific Observer Program. Amendment 18 to the Gulf of Alaska FMP⁴⁰ and Amendment 13 to the Bering Sea Aleutian Islands FMP⁴¹ amended groundfish plans off Alaska to establish mandatory observer coverage for both fishing vessels and on-shore processing plants. The observer program imposed significant costs and regulatory burdens to shore-based processors as they were required to hire and pay for observers certified by NOAA.

Comments were submitted to the Secretary opposed to the plans, arguing that observers at shore-plants were redundant to observers on fishing vessels, the costs imposed exceeded the benefits and mandatory observer coverage was not authorized by the Magnuson-Stevens Act. Nowhere in section 303, or elsewhere in the Magnuson-Stevens Act, was there express authority for management measures to require fishing vessels, or on-shore plants, to hire observers. The Secretary, however, had no difficulty approving the plan amendments, specifically citing the conservation and management purpose of reliable information and the authority of

³⁹ Opinion No. 80, p. 9.

⁴⁰ 54 Fed. Reg. 50386, Dec. 6, 1989.

⁴¹ 55 Fed. Reg. 4839, Feb. 12, 1990.

the Basket Clause in section 303(b) to “prescribe measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.”⁴²

b. The Multi-Region Billfish plan. The five region Billfish Fishery Management Plan was approved in September of 1988.⁴³ The plan eliminated the existing commercial fishery for Atlantic billfish. It prohibited the sale of any Atlantic billfish — even legally harvested billfish — *anywhere* in the United States, it prohibited the importation of Atlantic billfish, and the plan required that any billfish outside of Pacific coast states have documentation showing it was taken from the Pacific Ocean.

The Billfish plan was extremely controversial and 413 comments were submitted to the Secretary on the draft plan. Both the Office of Management and Budget and the Small Business Administration recommended disapproval of the plan. The Small Business Administration noted that the Regulatory Impact Review document accompanying the plan “shows significant societal losses for the no sale provision.” The scope of the Secretary’s authority to implement the plan was among the issues raised by the plan’s opponents.

Despite the controversial nature of the plan, and the fact it regulated activities on-shore, the agency rather summarily found that the Secretary had authority to approve and implement the plan. “NOAA believes that the provisions of the rule contribute to conservation of the resource, are necessary to the effectiveness of the FMP, and are within the authority of the Magnuson Act.”⁴⁴

c. Haddock Bycatch in the Atlantic Herring Fishery. On-shore processors of Atlantic herring must separate out and retain all haddock offloaded from a vessel. The haddock may not be sold, purchased, traded, bartered, or transferred, and must be retained, after having been separated from the herring, for at least twelve

⁴² 54 Fed. Reg. 50391 (1989). Mandatory observer coverage for on-shore processors in the North Pacific was specifically implemented under the authority of the Basket Clause in section 303(b) of the Magnuson-Stevens Act. Later, Pub. L. 101-627 amended section 303(b) to provide that management measures may “require that observers be carried on board a vessel of the United States engaged in fishing...” [Now found at section 303(b)(8) of the Magnuson-Stevens Act]. There is no similar provision in section 303(b) of the Magnuson-Stevens Act to authorize observers to be hired to work in on-shore processing plants. Pub. L. 101-627 also contained the North Pacific Research Plan that authorized placing observers at processing plants in Alaska. This legislation was not signed into law until November 28, 1990, however, well after publication of the regulations mandated observers at shore-based processing plants, and regulations implementing observer coverage under the North Pacific Research Plan were not promulgated until April of 1994.

⁴³ 53 Fed. Reg. 37765 (1988).

⁴⁴ 53 Fed. Reg. 37767 (1988).

hours.⁴⁵

d. **On-shore Processor Privileges.** A surprisingly large number of fishery management plans give on-shore processors the right to sell fish when others cannot. Thus, the Gulf of Mexico Council's prohibition against the sale of reef fish during a fishery closure does not apply to fish landed ashore, held in cold storage and sold by a processor.⁴⁶ The prohibition against the sale of Royal red shrimp during a closure does not apply to shrimp landed ashore and sold by a processor.⁴⁷ The prohibition in the South Atlantic against sale of wreckfish during a closed season does not apply to fish landed ashore prior to the closure and held in cold storage by a processor.⁴⁸ The prohibition against the possession and sale of shark during a closed season does not apply to a processor with a valid permit that off-loaded and purchased the fish prior to the closure.⁴⁹ There are many other similar regulations granting processors an exclusive privilege to sell fish during periods of time when non-processors cannot.

In summary, it is NOAA's well-established practice to regulate on-shore processing when it is considered "necessary and appropriate" to help achieve conservation and management of the fisheries. The agency has repeatedly relied on the Basket Clause in section 303(b) to regulate shore-based processors.

3. Judicial Review of Magnuson-Stevens Act Regulation of On-Shore Activities.

There have been three published judicial challenges to fishery management measures that regulate on-shore activities. In every reported case, those necessary and appropriate regulations have been upheld under the authority of the "Basket Clause" of section 303(b) in the Magnuson-Stevens Act. The three cases challenging regulation of on-shore activities are summarized below:

a. Stinson Canning Co. v. Robert Mosbacher.⁵⁰

In October of 1987 the Stinson Canning Company challenged regulations which prohibited the *importation* or *possession* of otherwise legally harvested, but

⁴⁵ 50 CFR §648.15(d).

⁴⁶ 50 CFR §622.39(b)(1).

⁴⁷ 50 CFR §622.57(a)(1).

⁴⁸ 50 CFR § 622.183(b)(2).

⁴⁹ 50 CFR §635.28(b)(5).

⁵⁰ Stinson Canning Co., Inc. v. Robert A. Mosbacher, et al, No. C 87-0328 B (Dist. of Maine, Feb, 5, 1990).

undersized (by U.S. standards), groundfish. These are fish that were harvested legally by Canadian fishing vessels in Canadian waters, but importing, or possessing, those fish in the United States was illegal under this regulation.

This “no importation or possession” rule clearly regulates on-shore activities and the Stinson Canning was concerned that this rule would hurt its ability to purchase fish at reasonable prices. The rule even regulates foreign commerce such that the Canadian government commented in opposition to the plan. The plaintiff in this case specifically alleged that the Secretary had exceeded his statutory authority under the Magnuson-Stevens Act by approving the rule.

The Secretary defended the rule as necessary and appropriate for the conservation and management of the fishery as it aided enforcement efforts because “officers will not have the burden of proving where undersized groundfish were taken.”⁵¹

Specifically citing and quoting the Basket Clause of section 303(b), the court held that the Magnuson-Stevens Act authorized promulgation of the rule. The fact that the activity was on-shore did not stop the court from holding that the Basket Clause of the section 303(b) authorized the plan. The court stated:

Here, as noted above, there has been a broad delegation of authority to the Secretary and regional councils to take whatever measures are “necessary and appropriate for the conservation and management of the fishery”.⁵²

b. National Fisheries Institute, Inc. v. Robert Mosbacher.⁵³

As mentioned in the 1988 NMFS General Counsel’s memo regarding Limited Entry, the National Fisheries Institute (NFI) challenged the five-council plan which set aside billfish exclusively for recreational users. One of the specific provisions challenged was the prohibition against the purchase, barter, trade or sale in any state of an otherwise legally harvested billfish (the “no sale” provision).

The NFI also challenged the provision that billfish possessed by a seafood processor will be presumed to have been harvested from the Atlantic Ocean unless it is accompanied by documentation that it was harvested from the Pacific Ocean (the “paper trail” provision). “When combined with the no sale provision discussed previously, the paper trail provision forces seafood dealers and processors, in most

⁵¹ Stinson, p. 10.

⁵² Stinson, p. 9.

⁵³ National Fisheries Institute, Inc. et al, v. Robert A. Mosbacher and Coastal Conservation Assoc., No. C 88-3103 (Dist. Of Col. Mar.12, 1990).

instances, to either forego selling any billfish whatsoever or document that each billfish they possess was harvested from somewhere other than its management unit in the Atlantic Ocean.”⁵⁴

The NFI argued that nowhere in the Magnuson Act or its legislative history did Congress indicate that the Secretary can regulate the sale of legally-caught fish.

Again, this prohibition regulated on-shore activities, even activities occurring in States beyond those represented by the five management councils. The court easily upheld the “no sale” and “paper trail” provisions: With regard to the No Sale provision the court noted: “The Magnuson Act vests broad authority in the Secretary to promulgate such regulations as are necessary to carry out the conservation and management measures of an approved FMP.” Merely because Congress chose to also specify certain actions as unlawful per se in section 1957(1)(B)-(I) does not mean that it intended those prohibitions to be the boundaries of the Secretary’s broad rulemaking authority.”⁵⁵

Ultimately, the conservation and management rationale allowed regulations to take action the Secretary thought necessary and appropriate, despite the fact they regulated on-shore activities. “Both provisions are designed to avoid a problematic scenario: in their absence a commercial market for Atlantic billfish may develop and anybody selling a billfish could baldly assert that it was harvested from the Atlantic Ocean beyond the EEZ, or, in the alternative, from the Pacific Ocean.”⁵⁶

c. *Byrne v. Lovgren*.⁵⁷

Saving the best for last, *Byrne v. Lovgren* is a fishery enforcement case worthy of telling in some detail. On an early spring morning in 1983, Mr. Gösta (“Swede”) Lovgren was working on the dock of his fish processing plant when agents of the National Marine Fisheries Service arrived and asked permission to climb onto a platform at his dock to inspect fish that recently had been landed. It was a routine inspection. There was no suspected violation. Using rather colorful and forceful language, however, Mr. Lovgren denied the agents’ request.

Mr. Lovgren later admitted that he tends to be “volatile” and he was upset at the time, but he should have known that it is never wise to shout obscenities at enforcement officers. For refusing to allow the inspection and forcefully resisting

⁵⁴ NFI, p. 15.

⁵⁵ NFI, p. 14.

⁵⁶ NFI, p. 17.

⁵⁷ John Byrne v. Gösta (“Swede”) Lovgren, 787 F.2d 857 (3rd Cir. 1986).

the inspection, the temperamental Mr. Lovgren was charged with violating two regulations issued pursuant to the Magnuson-Stevens Act. The Administrative Law Judge found him guilty on both counts. Lovgren's petition to the Administrator of NOAA for review of his case was denied, and he filed a suit challenging the violations in U.S. District Court for the District of New Jersey. The district court upheld the civil penalties. Mr. Lovgren next appealed the district court's decision to the Third Circuit of United States Court of Appeals. By now Mr. Lovgren's legal fees far exceeded the government's proposed fine of \$5,000.⁵⁸

The issue before the court was whether the warrantless search was legally authorized. The Magnuson-Stevens Act specifically authorizes searches of fishing vessels without a warrant.⁵⁹ There is no similar provision in the Act for inspections on-shore. The Secretary promulgated regulations under the Magnuson-Stevens Act extending the authority for warrantless searches to various on-shore facilities, including buildings and docks, "where groundfish may be found" in the Mid-Atlantic region.⁶⁰ Lovgren challenged the authority of the Secretary to establish this regulation.

The court had no difficulty upholding the regulation, even though it authorized warrantless searches on-shore! Noting that the conservation and management purpose of the regulation was to "monitor compliance with the plan" the court specifically cited the Basket Clause of section 303(b) in ruling the regulations were authorized. "A plan may 'prescribe' all 'measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.'"⁶¹

The fact that activities on-shore were being regulated under the Magnuson-Stevens Act, and the fact that these regulations allowed warrantless searches of buildings, did not deter the court because of the legitimate conservation and management purpose served by the regulation.

If inspecting officials were able only to observe fish remaining on board a vessel, the agency's efforts to gather accurate information would be substantially frustrated. Those wishing to evade inspection would be aware that once the fish have reached the dock, they are safe from inspection unless the official has previously obtained a search

⁵⁸ The government asked for a fine of \$5,000, but Mr. Lovgren so impressed the Administrative Law Judge that he fined Mr. Lovgren \$50,000, of which all but \$10,000 was suspended upon the condition Mr. Lovgren's cooperate with the government during the pendency of any appeal.

⁵⁹ Magnuson-Stevens Act §311(b)(1)(A)(ii).

⁶⁰ Lovgren, p. 863.

⁶¹ Lovgren, p. 863.

warrant, a difficult task where the fishermen keep to no prearranged schedule.⁶²

Gösta Lovgren is currently living in Lavallette, New Jersey, and publishing a blog entitled "Swede's Dock." (See Figure One, below.) For those wondering if Mr. Lovgren has mellowed over the years, he can be contacted at his email address: NMFS_Bites_Big_Time@SwedesDock.com.⁶³



Figure One. From "Swede" Lovgren's Blog.

⁶² Byrne v. Lovgren, p. 864.

⁶³ Mr. Lovgren's email address can be accessed at the bottom of the left hand column of Swede's Dock blog by selecting the "Write Me" icon.

IV. Conclusion

If the Magnuson-Stevens Act provides authority to regulate on-shore activities, then the Act provides authority to include “linkage” between vessels and shore-based processing plants. Since 1979 NOAA has acknowledged that interests beyond simple protection of the resource are incorporated within the term “conservation and management” as defined under the Magnuson-Stevens Act. NOAA specifically stated that the economic interests of on-shore processors can be considered as part of “conservation and management” in its 1989 Roe Stripping Opinion. Given a legitimate conservation and management rationale to regulate on-shore activities, the only remaining issue NOAA has raised concerning “linkage” between harvesters and processors is whether “necessary and appropriate” measures under the Basket Clause of section 303(b) of the Act allow regulation of on-shore activities.

The rationale given by NOAA for limiting the Basket Clause to authorizing regulation only of activities at sea — that all of section 303 [Contents of Fishery Management Plans] is limited to at sea activities — is not valid. Regulating processing by on-shore facilities is specifically referenced throughout various sub-sections of section 303.

Furthermore, on-shore activities, including on-shore processing, have been frequently regulated under the Basket Clause of section 303(b) in the Magnuson-Stevens Act. Given a legitimate conservation and management purpose, it has been NOAA’s longstanding practice to regulate on-shore processors under the Basket Clause. NOAA cannot logically claim the Basket Clause authorizes regulations that require shore-based processors to hire observers but not regulations that require “linkage” between harvesters and on-shore processors. Courts reviewing the issue have unanimously upheld regulation of on-shore activities under the Basket Clause in section 303(b).

There are ample conservation and management reasons that linkage between harvesters and on-shore processors may be appropriate if the trawl groundfish fisheries are rationalized in the Gulf of Alaska. Those conservation and management interests include the economic considerations of both on-shore processors and trawl vessels delivering to on-shore plants; preserving historical fishing practices; protecting those dependent upon the fishery; protect employment in the processing sector; protect investments in the fisheries; and protecting the current and historical participation of fishing communities, among other reasons. Given these legitimate conservation and management rationales, it is irrelevant that the “necessary and appropriate measures” happen to regulate on-shore activities by linking harvesting vessels to processing plants because the Magnuson-Stevens Act authorizes regulation of on-shore activities under the Basket Clause of section 303(b).

Sam Cunningham: So from that point I want to shift to the discussion of how these coops form. And again, the proposal that we looked at describes the assignment of harvesters to a cooperative in which a processor is a member and that assignment for the initial two years of the program would be based on criteria, observable behavior from the past. So a distinction between just having processors in a coop but in addition to that membership in the coop, which processor it is, which harvester it is, is based on a set of criteria. And this is something that since the Council gave us this motion in April we've been discussing with our counsel and with general counsel and they have had an opportunity provide us some initial input on that so we've spoken to general counsel and they feel comfortable addressing that here. So if that's alright, I'll look to them to speak to it.

Chairman Dan Hull: Ms. Smoker.

Ms. Lauren Smoker: Thank you Mr. Chairman. Thank you Sam. So as Sam noted, in April the Council's motion included provision 7(d), which he just explained. And then at the time I believe I was here and said that that was a provision that we kind of wanted to take some time to take a look at because it raised a few questions in my mind. And over the summer we did that as an agency, as an office through NOAA General Counsel and our findings were that this provision that the Council's currently considering is substantively identical to the requirement for inshore coop formation that was included in the Central Gulf of Alaska Rockfish Pilot Program. In the Pilot Program each harvester was able to join a single coop that was associated with the processor to which the harvester delivered the most pounds of rockfish during the statutorily designated processor participation period. The terms of cooperative association between harvesters and the processor were not regulated. Such terms were subject to private negotiations between the members of the coop. However, because the coop agreement was required, required the approval of the associated processor, the Council generally expected that the agreement would include obligations for the harvesters to deliver certain catches to the processor.

At that time the Agency determined that the Pilot Program coop formation requirement was an allocation of on-shore processing privileges because the requirement of the establishment a fixed linkage between those harvesters and the specific shore-based processor to which they made historical deliveries. However, specific legislation included in the consolidated appropriations of 2004 authorized the Council and NMFS to make such allocations of processing privileges.¹ As the Council is aware this legislation expired at the end of 2011.

¹ NOAA's statement is incorrect on this point. The Rockfish Pilot Program legislation did *not* authorize "linkage" between harvesters and a specific processor. Section 802 of the Consolidated Appropriations Act of 2004 contained only a short paragraph directing the Secretary, in consultation with the Council, to establish a "pilot program that recognizes the historic participation of fishing vessels... and fish

NOAA longstanding position has been that with the exception of the crab rationalization program, the Magnuson-Stevens Act does not authorize the Agency to allocate onshore processing privileges which include provisions that establish fixed linkages between harvesters and a specific shore-based processor. This position was most recently reiterated in 2011 with the rulemaking for Amendment 88 to the Gulf FMP which implemented the Central Gulf of Alaska Rockfish Program that replaced the Pilot Program. It was also reiterated and defended in the Agency's — or articulated in the Agency's defense of Amendment 88 before the district court for the Western District of Washington.

Since that time no new legislation, either amending the MSA or creating a special authority which provides the councils or NMFS the authority to allocate onshore processing privileges, has been enacted. So, given this, our office determined that the provision the Council's currently considering would allocate onshore processing privileges and is not authorized under the current language of the Magnuson Act. Absent legislation authorizing this allocation — this type of allocation — processing privileges — the Agency would not be able to approve this provision if the Council would submit it for Secretarial review. But we're not at that point yet. So given this determination the Council can still continue to include this provision in its suite of alternatives if the Council thinks it is an approach that addresses the Council's operating goals and objectives for the Gulf of Alaska bycatch management program.²

That's my talking points so far and I'll stop and discuss it if you would like.

processors for pacific ocean perch, northern rockfish, and pelagic shelf rockfish harvested in the Central Gulf of Alaska." NOAA used comments made by the legislation's sponsor in a floor statement as "authority" of this linkage. Senator Stevens noted in his floor statement, "the historic participation of fish processors under this pilot program should be considered pursuant to the cooperative model under the American Fisheries Act, *or any other manner the North Pacific Council determines is appropriate.*" (Congressional Record Online, Jan. 22, 2004, p. S152.) Senator Stevens would have included specific authority within the statutory language of the Rockfish Pilot Program if he believed the Magnuson-Stevens Act did not contain authority for linkage. If Senator Stevens' recommendation to the Council in his statement is deemed new statutory authorization, then "any other manner the North Pacific Council determines is appropriate" provides authority for management measures limited only by the Commerce Clause of the United States Constitution.

² In summary, NOAA's position is as follows: We have claimed that the Magnuson-Stevens Act does not authorize regulating on-shore activities since at least 2009. The Magnuson-Stevens Act has not been amended to specifically address this issue. Therefore, NOAA is not going to change its opinion, regardless of whether the agency's original position was wrong.

Chairman Hull: Thank you Counselor. I have Mr. Henderschedt.

John Henderschedt: Thank you Mr. Chairman. Lauren, does the Agency still believe that onshore processors interests can be considered in our decision making as part of conservation and management of the resource? In other words, so you've referred specifically to processing privileges but more generally speaking the Council can consider processors in terms of conservation and management.

Ms. Smoker: Mr. Chairman. Mr. Henderschedt, section 303(A) which is the Limited Access Privileges Program section, and the section that the Council will be operating under for implementing this program does talk about consideration of fishing communities, processing sector, so yes you consider the processing sector. But that section does not talk about individual processors. This provision is processing privileges which is something separate than considering processing sector as a whole.

Mr. Henderschedt: Lauren, then when it comes to criteria for necessary and appropriate management measures, are those things limited to at-sea fishing activities?

[Pause]

Chairman Hull: Counselor.

Ms. Smoker: Thank you Mr. Chairman. I think that Mr. Henderschedt is making some of the points that have been made by ... [pause] well, Mr. Plesha. We had a conversation with Mr. Plesha this summer and he provided me, and also provided the Council, with his memorandum arguing his position as to why he thinks the Magnuson-Stevens Act provides the Council and the Agency with the authority to do these kinds of fixed linkages, these processor privileges. And while I certainly appreciate the memo the Agency, my office NOAA General Council at various levels within our office in Alaska talking with other offices around the country considered Mr. Plesha's memo and we also looked at the other provisions and we felt that our legal position and the proposal that the Council's looking at is not authorized under the Magnuson-Act.³

Chairman Hull: I have Mr. Fields and then Mr. Tweit

³ Mr. Henderschedt's question — are all "necessary and appropriate" management measures limited to at-sea activities? — is not addressed, nor even discussed, in this response. Perhaps Mr. Henderschedt's question was sidestepped because it is clear that "necessary and appropriate" management measures under the Magnuson-Stevens Act have included on-shore activities and thus NOAA's entire rationale (that all "necessary and appropriate" measures are limited to activities at sea) for claiming the Magnuson-Stevens Act does not authorize "linkage" between on-shore plants and harvesting vessels is invalid.

Duncan Fields: Thank you Mr. Chairman. Lauren, I appreciate the memo and the clarity of the memo, but I was confused at the end about if you've made a determination about the current provision in our proposed action, that you could not approve it without authority, that you would send it back to the Council, in terms of NOAA GC's review, why then did you say but you can go ahead and keep it in the package? I didn't understand that.

Ms. Smoker: Thank you Mr. Chairman. Thank you Mr. Fields. So as the Council has heard many times, probably from the person sitting in this chair, but also from different NEPA discussions, and also from an Administrative Procedures Act position, the Council is to consider reasonable alternatives. Under NEPA, for example, a reasonable alternative is something that fits within the scope, the purpose and need of the action. And NEPA case law talks about the fact that agencies can consider alternatives that might meet the purpose and need but at the particular point in time that they are being examined are not authorized. Are not necessarily legally viable.

The Council has done this before. At the time the Council considered the crab rationalization program that was under a direction of Congress and Congress articulated the types of measures that Congress wanted the Council to consider. But when the Council took action for the program that ended up being the crab rationalization program, we did not have authority in any law at that point for processor quota share, the binding arbitration system. There were a few other things that came along with that Congress did give us, did amend the Magnuson Act actually needed to provide us with that authority. So that's why I say that this time if the Council thinks that this approach meets some of the goals and objectives it can certainly consider to consider it. I would advocate that I think given the determination that I am providing the Council now it behooves the Council to think of some other alternatives as well if you'd like to keep this. And I think the Council has identified it in its preliminary structure as a way to achieve some of its goals and objectives that you have articulated so, I, at this point in time we're not advocating that you remove it. It's your choice.

Chairman Hull: Okay. Mr. Tweit.

Bill Tweit: Thanks Mr. Chair. I have a follow-up to both Mr. Henderschedt's and Mr. Field's questions. Ms. Smoker, back to your answer to Mr. Henderschedt. I guess what continues to puzzle me — and yes I have looked at the full scope of things that have been provided in writing on this — but NOAA has defended plans that allowed warrantless searches on-shore. NOAA has defended the prohibition against the possession of billfish onshore. And NOAA has even granted shore-based processors the ability to sell fish where non-processors are unable to. Again, onshore. All under the necessary and appropriate [clause]. And even here we've got the requirement from onshore processors that they have to have observers; they have to hire observers. We require the shore-based processors to collect the groundfish

observer fees. And all those things seem to have held, so why are those okay but this one may not be? I still don't understand where that distinction lies.

[Pause]

Chairman Hull: Counselor.

Ms. Smoker: Thank you Mr. Chairman. I'll turn the Council to previous legal advice that we have provided, that was provided at the time all of those measures you have referenced, Mr. Tweit, were also in place. Some of those measures were taken under specific authority of the Magnuson Act; requiring permitting, record keeping and reporting.⁴ Some of them were not specifically identified in the Magnuson Act. One of the measures that has been brought to our attention is a measure called the "basket clause". That is a provision in the Magnuson Act, discretionary section for FMPs. And since the original memo on the scope of the Magnuson Act in terms of processing privileges was written back in 1993, the Council, excuse me, the Agency and our office was aware of that "basket clause." That provision has been around for a long time. And we opined at the time that you can't interpret the basket clause in a way that would completely consume the rest of the Magnuson Act. You can't say, well alright, here's Congress' construct for the Magnuson Act, but its provided this provision that allows us to implement some things that Congress might not have been able to articulate, so that means we can pretty much do whatever we want. That interpretation we considered but decided that that could not be how you interpret that provision. So, for affecting the fishery management scheme the Agency has, at times, implemented actions that fulfill the monitoring, enforcement aspects of that fishery management regime.⁵

⁴ NOAA's response is incorrect on this point. Although there is specific authority under the Magnuson-Stevens Act to collect data from on-shore processors, there was *no* specific authority in the Magnuson-Stevens Act to regulate the on-shore activities cited by Mr. Tweit. All of the management measures referred to by Mr. Tweit were implemented under the section 303(b)(14) of the Act, the so-called "Basket Clause."

⁵ Again the response does not answer Mr. Tweit's question: "How can NOAA justify all the regulations of on-shore activities under the Magnuson-Act's Basket Clause if it claims that the Magnuson-Stevens Act's Basket Clause does not authorize the regulation of on-shore activities?" The last sentence of NOAA's response does perhaps imply that the Magnuson-Stevens Act authorizes regulation of on-shore activities if the conservation and management purpose is monitoring or fishery enforcement. The Magnuson-Stevens Act, however, makes no such distinction. Given *any* valid "conservation and management" purpose, section 303(b)(14) authorizes "such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate" for the conservation and management of the fishery." Furthermore, the Agency has also used the Basket Clause of section 303(b)(14) of the Magnuson-Stevens Act to implement

Mr. Tweit: My follow-up to Mr. Fields' question is, I guess, you think, let me suggest a hypothetical scenario leading out Mr. Fields question and your answer. So as we move forward through our analysis we determine that the kind of processor linkage we are looking at right now is the only tool out of all the tools we've looked at, that meets the problem and needs statement that we've outlined. So at the end of the day as part of our final motion, we incorporate that tool. We create a supporting record for it. The Secretary reviews and approves the plan. The plan is implemented. Again, all hypothetical scenario. And then its challenged in court. In particular relevant to that linkage. I understand I am laying out a hypothetical here. Do you think if it got to that point — and obviously your job is to defend it — do you think you'd be upheld in court.

[Pause]

Chairman Hull: Counselor.

Ms. Smoker: Thank you Mr. Chairman. I... that is a whoppin' hypothetical.
[Laughter]

Mr. Tweit: I'm good at that.

Ms. Smoker: Yeah. I think one time my husband was before the Advisory Panel and thought something they were doing was psychedelic. So I didn't use that term.

Mr. Tweit: I wore my conservative tie, though. I have a psychedelic one I could wear that.

Ms. Smoker: Yeah. So I think that I actually, it its impossible for me to respond directly to your question. But the one comment I will make is that the Department of Justice does defend us in court when we are litigated. And it would be, at that time, it would be, we'd have to see if we had a case to defend. And we would work with the Department of Justice with that. The Agency as well as the Department of Justice.

Mr. Tweit: I understand but the point of my hypothetical in a way was at least what I have seen, and I am sure I have not seen the whole body of discussion about this, but it certainly looks like the basket case, which I still don't fully understand, but

regulations protecting purely economic interests of on-shore processors, such as allowing shore-based processors to sell species of fish during closed seasons when non-processors are prohibited from selling those same fish. So to the degree NOAA's response tries to imply that the Basket Clause can be used to regulate on-shore activities for some "conservation and management" purposes, but not for others, the response does not conform to the Magnuson-Stevens Act (which does not contain such distinction) nor Agency practice.

that has been upheld pretty regularly, pretty consistently, in the courts, the use of the basket case clause, [Laughter] and so I guess that is what I am really pushing on. Yeah, I know. Speaking as one Council member who may be a basket case.

[Pause]

Chairman Hull: Counselor do you wish to respond? I guess I will let this go on a little bit but we're I think you, you're, the purpose of providing us with the information was to indicate that you would suggest that the Council consider other alternatives. And I don't know which way the Council wants to go. I understand the direction of the questioning. But I am just not sure where it ends and we get back to the presentations. Counselor.

Ms. Smoker: Thank you Mr. Chairman and I appreciate your comments. I'll just make maybe two quick points. In a slight response, maybe not a direct response to Mr. Tweit. I'll let him decide that, but I will reiterate that we, that the Amendment 88 litigation was challenging the decision to not include the type of processor linkage that we had had in the Pilot Program and Department of Justice defended us in that position that we felt it was not authorized under the Magnuson Act.

And I'll just conclude maybe to sum up points that I made is that while we are, I am here to tell you that our position is that at this time given the current language of the Magnuson Act the provision is not authorized. That you certainly can continue to consider it. We are not asking you at this time to remove it. But that it also, not only for this reason, but also for other reasons, it would behoove the Council to consider additional or other alternatives. At your choice.

Chairman Hull: Okay. Thank you Counselor. Mr. Fields.

Mr. Fields: Thank you Mr. Chairman. Lauren, just for clarity nothing in your opinion calls into question or challenges the coop structure as we currently have in our rockfish program? In other words its not about the coops, its about the linkage. Is that correct?

Ms. Smoker: Mr. Chairman, that is correct. As the Council probably remembers the coop provision in the current rockfish had harvesters associating with a processor but there was no requirement that it be the processor to whom they had historically delivered a particular amount of catch during a certain time. Or that there be future deliveries to that processor. We made this quite specific saying that the program is not requiring future deliveries to the processor.

Mr. Fields: And related that the provision that your rockfish quota can only be accessed through a quota, or through a coop, that's not being called into question either. Is that correct?

Ms. Smoker: That's correct.

Mr. Fields: Thank you.

Chairman Hull: Okay, so thank you.

August 19, 2015

Mr. Glenn Merrill
Assistant Regional Administrator
Sustainable Fisheries Division
NOAA Fisheries Alaska Region
Juneau, Alaska

Re: Notice of Intent to Prepare Environmental Impact Statement for the Trawl Groundfish Fisheries in the Gulf of Alaska

Dear Mr. Merrill,

I am writing to provide comment on the scope of Alternatives for the Environmental Impact Statement for the proposed fisheries management program for bycatch in the Gulf of Alaska (GOA) trawl groundfish fisheries as outlined in the Notice of Intent (NOI) posted in the Federal Register (NOAA-NMFS-2014-0150).

The NOI outlines two substantive Alternatives for the EIS; in both cases these options lead to the creation of a catch share system for bycatch in the groundfish fisheries in the GOA. Moving towards a market-based approach may solve the bycatch problem by creating individual- or cooperative-level accountability. However, it will also likely change the composition of the fishing fleet in the process. Indeed, the history of catch share programs in the US is one of fleet consolidation. The size and geographic distribution of fishing fleets have been reduced in most (if not all) federal fisheries that are managed under these systems, including those in the Northeast, Mid-Atlantic, Gulf of Mexico, West Coast, and Alaska. The point of flagging this pattern is not to question the appropriateness of a catch share program in this situation. Rather, I intend to encourage the Council to be explicit about the objective(s) of the proposed bycatch program and develop Alternatives to match these goals. As written in the NOI, the expressed purpose of the proposed action is to “improve stock conservation by imposing accountability measures for utilizing target, incidental, and prohibited species catch, creating incentives to eliminate wasteful fishing practices, providing mechanisms for participants to control and reduce bycatch in the trawl groundfish fisheries, and to improve safety of life at sea and operational efficiencies.” If the Council does not also intend for the bycatch program to reduce the size of the fleet and/or shift the geographic distribution of the industry, then each Alternative should be explicit in outlining the mechanisms that will be put in place to maintain the existing composition of the fleet and anchor fishing quota in communities. Alternative 3 does this with the establishment of Section 303A(c)(3) Community Fishing Associations, but Alternative 2 is overly vague in this respect [“a number of elements that are intended to provide for fishery dependent community stability”] and could be refined further.

Being explicit about these provisions will help to ensure that they are not treated as secondary considerations or trailing amendments. This should be viewed as a real concern because there are several cases in other regions where this dynamic has played out. In the Northeast Multispecies Sector Program, for example, the New England Council is embroiled in a highly polemic debate about fleet diversity and allocation limits because a cap was not created in 2010 when the program was established. Frustration has also been voiced in the Pacific Trawl Rationalization Program where efforts to create Community Fishing Associations and reallocation set-aside quota after the initial program was established have continued to be put off into the future. These suggest that if safeguards are not established at the outset they will be more difficult to create in the future.

Thank you,

Joshua S. Stoll
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Orono, Maine
joshua.stoll@maine.edu

Glenn Merrill

Assistant Regional Administrator for Sustainable Fisheries NMFS, Alaska Region
NOAA-NMFS-2014-0150

Re: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for
any Gulf of Alaska (GOA) trawl bycatch management program

My name is Keith Cochran and I skipper the F/V Bay Islander in Kodiak. I am relatively young in this business, but I do believe I have seen enough to know that we operate in a broken system regarding GOA groundfish management. I grew up fishing with my father in Kodiak, and hope that we can soon see change to sustainable management that will ensure a healthy fishery for my kids someday.

The present fishery environment simply does not work. A great example is the closure of the groundfish fishery this past spring. The Bay Islander alone supports seven families who were all greatly impacted when we had to tie up our boat and quit fishing.

Effective bycatch reduction in a trawl fishery requires effort from all parties involved. This includes fisherman, processors, and governing bodies including NMFS, NOAA, and the NPFMC.

I can tell you that the trawl fisherman of Kodiak have been earnestly seeking ways to improve bycatch reduction, this being done through gear modification, excluder research, voluntary catch share agreements, better fleet communication, among other things. All of this does help to some extent to avoid bycatch, but without the help from the council, in the form of proper management tools, we will continue to fail without doubt.

I write all this to say that I am in support of Alternative 2 for consideration in the EIS. I believe a co-op management system is the best possible way to manage a fishery as it benefits all stakeholders, not just one particular group. I have seen much success with co-op management in both the GOA rockfish program and the West Coast Whiting fishery, of which I have participated in both. These programs have greatly reduced bycatch, reduced at-sea discards, and increased the value of the fish.

Two other issues I believe need to be addressed in the EIS are, GOA Pollock trip limits, and the GOA Chinook PSC cap.

I would like to see the Pollock trip limit increased somewhere between 50,000lbs and 100,000lbs. I believe the Kodiak fleet has outgrown the current trip limit and the increase would help improve operating efficiencies without negating the benefits of a limit. I also believe this small increase would decrease at-sea discards as more boats holding capacities would comply with regulation.

The Chinook PSC cap in the GOA also needs to be seriously considered. I suggest increasing the hard cap would have no adverse affect on stock levels while allowing trawlers to prosecute groundfish quotas effectively.

Again, I ask that you would consider alternative 2 within the EIS while also identifying the impacts of increasing GOA Pollock trip limits and the Chinook PSC cap.

Thank you for your consideration,

Keith Cochran
F/V Bay Islander
keith@bayislander.net

Kent Leslie
F/V Excalibur II
PO Box 69
Kodiak, AK 99615

August 28, 2015

Glenn Merrill
Sustainable Fisheries Division
Alaska Region NMFS
PO Box 21668
Juneau, AK 99802

Re: NOAA-NMFS-2014-0150

Dear Mr. Merrill,

Thank you for accepting my comments regarding the Environmental Impact Statement for a management program for Gulf of Alaska trawl groundfish fisheries.

I am the owner and operator of the Excalibur II, a trawler that has fished in the Gulf of Alaska and Bering Sea for over 30 years. We spend the bulk of each year delivering pollock, cod, rockfish, and flatfish to processors in Kodiak.

The groundfish fisheries in the GOA have been held together the last few years by very tenuous threads. Allowable bycatch levels are becoming ever more restrictive and have only been achieved by voluntary cooperative plans from the fleet. These plans can be jettisoned by any one individual vessel. This arrangement has also encouraged more vessels to join and receive a share of the fishery, even though it may not have been a significant portion of their annual catch in the past. Finally, this year, our best efforts were not able to prevent a closure of the non-pollock, non-rockfish fisheries after hitting our limit of Chinook salmon. Emergency measures from the Council were required just to give us an opportunity to target cod and flatfish this fall.

This is a sad excuse for managing a fishery, particularly when very successful alternatives are currently in use in Alaska and the West Coast. I fish AFA pollock in the Bering Sea and GOA rockfish, both of which allow the fleet to maximize target species and truly minimize bycatch. Alternative 2 in the Council's proposed management plan would extend those opportunities to the Gulf of Alaska. Besides improving the utilization of our resources in the Gulf, it would protect local communities by imposing limits on consolidation, and requiring delivery of fish to historical ports of landing. This would preserve the diverse fleet that targets groundfish and the processors and services that support them.

Other alternatives that would allocate bycatch to individual boats, but not the target species, will not stop the race for fish that is creating the instability in the fishery now. Likewise, I feel that a Community Fisheries Association would just be an additional level of bureaucracy that could do nothing to improve the protection of communities beyond what would be provided by the aforementioned limits on consolidation and port of landing.

I strongly support Alternative 2 as a template for a rational management program, and encourage its continued analysis and development going forward.

Thank you for your consideration.

Kent Leslie

Mr. Glenn Merrill
National Marine Fisheries Service
PO Box 21668
Juneau, AK 99802

August 28, 2015

RE: Proposed Rule on the Intent to Prepare an Environmental Impact Statement for the Gulf of Alaska Bycatch Management Plan

Dear Mr. Merrill,

My name is Kurt Cochran and I own and operate three trawl catcher vessels in the Gulf of Alaska: the F/V Marathon, F/V Bay Islander, and the F/V New Life. I participate in pollock, cod and other groundfish fisheries and have been delivering fish into Kodiak for over 22 years. I am also serving my second term representing the state of Oregon on the North Pacific Fishery Management Council's (NPFMC) Advisory Panel. These comments are submitted as a response to the Proposed Rule seeking input on NMFS' intent to develop an EIS for the GOA trawl bycatch management program.

In recent years the NPFMC has recommended and NMFS has implemented strict reductions in salmon and halibut prohibited species catch (PSC) without implementing the tools necessary for the fleet to successfully prosecute their target fisheries while avoiding PSC. Implementing the reductions without the associated tools have made the trawl industry unstable. The instability and uncertainty of the trawl fisheries makes it difficult for catcher vessel businesses to sustain operations, pay the bills, maintain vessels, keep good crew members, and keep a steady stream of product supplying the plants and their workforce. The recent closure of the non-pollock, non-rockfish groundfish trawl fishery is a great example of the dire consequences of implementing PSC reductions without providing the fleet with the flexibility and tools that they need to operate under those reductions. Millions of dollars would have been lost to the community of Kodiak without the emergency action taken by NMFS to reopen this important fishery. As it was the fishery was closed for 3.5 months and the harvesters, processors and community of Kodiak all experienced economic loss.

I would like the NPFMC and NMFS to consider their responsibility to not just reduce bycatch (which I believe is very important) but also to achieve optimum yield for target fisheries and the sound management of *all* federal fisheries in the Gulf of Alaska. They can do this by introducing some stability back into the trawl groundfish fisheries in that area. This stability is critical for the day-to-day operations and over the long-term. I believe that the Council was well on its way to advancing Alternative 2 following the October 2014 meeting. Alternative 2 was developed over a several-year multi-stakeholder process and many others and I were dismayed when it appeared Alternative 2 was to be abandoned when the new state administration took leadership earlier this year.

I have been fishing since I was a kid. I come from a multi-generational fishing family. My dad fished, my son is currently a skipper on one of my boats. I have been involved with all different types of management programs from before the Magnuson Act was first passed (when the states were managers and the fisheries were wide open) to open access, limited

entry, cooperatives and individual transferable quota fisheries. In the case of the groundfish fisheries in the GOA, Alternative 2 is the best approach in my mind and based on my vast experience. There are some key elements from Alternative 2 that will make a bycatch reduction program a success. Without these key elements, the program is all stick but no carrot. In other words, it is akin to implementing additional PSC cuts but not providing flexibility or tools to be successful in target fisheries at the same time that bycatch is reduced.

The cooperative component of Alternative 2 is crucial. Cooperative management is expensive for fishermen compared to a straight IFQ program. Cooperative management is also less efficient at getting fish out of the water than an IFQ program; in spite of this and the costs of participating it is the successful way forward. Because a cooperative is managed by a group of fishermen versus one individual who controls quota, the cooperative can collectively alter fishing strategies and behavior and slow down (or virtually eliminate) the race for fish. It's a win-win for the resource and the fishermen.

Another meaningful piece of Alternative 2 is the allocation of target species. Allocating the key species will stabilize the fishery and help improve the raw fish value, which will help offset the costs of the program. In the Gulf I suggest the following should be allocated in the following order:

- Halibut based on all groundfish landed
- Salmon based on pollock and non-pollock landings
- Rex sole based on historical landings
- Black cod based on historical landings
- Pacific cod based on historical landings
- Pollock based on historical landings

A straight Individual Bycatch Quota (IBQ) fishery that does not allocate these species does not solve the problem. It is all stick and no carrot. The race for fish still exists. The value for the raw fish is still low. The costs for participation are still higher (monitoring costs alone increase). The closures and their devastating economic consequences to Alaskan communities will still occur even under an IBQ cooperative system. By allocating all of these species you reintroduce stability into the trawl groundfish sector. Businesses can make solid fishing plans and the community can prosper. This is a win-win for the resource, the fishermen and the communities that depend on fish coming across the dock.

I strongly advocate that Alternative 2 as developed by the NPFMC at the October 2014 meeting is contained in the analysis that moves forward.

Thank you for your consideration.

Sincerely



Kurt Cochran

Comment by Lee L. Woodard II

My name is Lee Laurence Woodard II. I am an individual heavily invested in trawling in the G.O.A. My history as a harvester spans back to the winter of 1980. I have purposely and with diligent effort worked in the harvesting sector in these waters for 35 years now. The proposed action and the options within the proposed action will effectively bankrupt my vessel the "Pacific Storm". I built this vessel with a purchased and valid LLP in hand before one minute of work began. This LLP was in no way limited, restricted, or within any action at that time to be restricted in the near future. It survived the "Recency Reduction Action" completed in August of 2008. I invested nearly 3 million dollars connected to this LLP and the vessel it resides with. Now This council and some very pointed effort wish to use 2012 as a final time frame for acceptance of history or dependence on the trawl fishery. This has effectively set a course for disaster for my future. Any LLP that is/was valid and intact after August 2008 and invested and utilized before the action to rationalize the trawl fisheries in the GOA is completed by this council should in no way sustain damage either physically or financially. This time period is roughly from August 2008 until final action occurs. I implore those persons who are aware of this issue and have the structured obligation and ability to mitigate damage to affected LLP holders to include a provision or provisions to allow these LLP holders actively dependent on harvesting in the trawl sector of the GOA to survive intact and without damage. Lives, jobs, families and years of dependence harvesting are at stake.



This is Lee L. Woodard II again. I felt it necessary to suggest a few potential solutions to the problem as the control date of 12/31/2012 causes for the few LLPs involved. One fair approach would be to provide an exemption for these effected LLPs to use similar options of "sweet years" beyond 12/31/2012. Another possible solution might be to use 1 year of 1 if said LLP holder has one complete year of operation prior to 12/31/2012. The attempt here is to hold the LLP intact as it is completely reliant upon it's use for income. So, being completely dependent on my vessels right to fish, I ask you consider one of my suggestions, or utilize another that protects without harm these few LLPs, Lee.

Page Count:

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Submitter Info

Comment:

Glen Merrill, Assistant Regional Administrator for Sustainable Fisheries, NMFS, Alaska Region NOAA-NMFS-2014-0150 RE: Notice of intent to prepare an EIS for GOA trawl bycatch management I am Mark Chandler, owner of the F/V Topaz, a family owned and operated trawler that has been participating in GOA groundfish for 33 years. We and our crew of 5 and their families are completely dependent on the Gulf of Alaska trawl groundfish fishery for our livelihood. The economic success of our fishery and to a large extent the community of Kodiak is increasingly driven by effective bycatch management. Unfortunately, the current management structure precludes the needed effective bycatch controls. The NPFMC Alternative 2, cooperative fishery management, would provide the tools we need as an industry to manage our fishery for economic success and biological sustainability. I support Alternative 2, a cooperative management structure with allocations to coops based on vessel landing histories. This includes directed fishery allocations for pollack and cod and PSC allocations for the flatfish fishery. This type of management improves the safety of the fishery, incentivizes operators to fish cleanly, and creates a successful business environment for vessels and for the community as a whole. I have experience with cooperative management as my vessel has operated in an AFA pollack coop and in the GOA cooperative rockfish program, as well as the voluntary cooperative pollack fisheries in the GOA. The Alternative 2 proposal provides good community protection with processor associated coops including a regionalization or port landing requirement. Also consolidation limits on ownership, vessel use and processing help to maintain community stability. Alternative 3, allocations to Community Fishing Associations or an Adaptive Management program would add unneeded complexity and burdens to the fishery with no clear benefit. A carefully crafted cooperative management structure will provide adequate community protection and will also undoubtedly come with additional costs to industry in any case. One shortcoming of the current Alternative 2 is that while the suites of qualifying years do a good job of capturing the participation of vessel in recent years; I would like to see a more inclusive range for vessels that have participated for many years. This would apply only for vessels that are still in the fishery and participated before the years in the current proposal which only goes back to 2003. Many of the current vessels pioneered this fishery in the early 1980's and remain in the fishery. The early years were difficult with little reward; but they did establish an industry that is now a mainstay for the community of Kodiak. GOA rationalization has been bounced around in the North Pacific Fishery Management Council since the mid 1990's with 2 separate programs getting well developed before being sidetracked. The economics of the fishery as well as the biological concerns continue to get more complex and difficult to successfully manage. The NPFMC Alternative 2 with some fine tuning needs to move forward in an expeditious manner. Sincerely Mark Chandler 240 Rhododendron Dr. Florence, OR 97439  

Comment by Mike Alfieri

I am the owner and full time operator of a 58' trawler that fishes for Pollock and Cod in the Central and Western Gulf of Alaska. I began trawling with my vessel in 1993. My vessel also seines for Salmon but trawling has always been responsible for the majority of my income throughout the years.

I've been involved in the Council process since 2001 trying to implement some sort of rationalized fishery in the Gulf of Alaska. We were close to final action in 2006. Then there was a new governor elected in Alaska and that administration was not in favor of a rationalized Gulf. So with a new governor and new Council appointments the Gulf Rationalization process was stopped. Then in 2008, a new Alaska governor and new Council appointments and a new Gulf Rationalization package is again proposed at the NPFMC. The package is moving along fine through the Council process and, here we go again. A new governor is elected in 2014, new council appointments and the first order of business is to table the Gulf Rationalization package until October 2015 and the rumor mill has it that the package will be stopped at the October meeting. So the Gulf of Alaska trawl fishery doesn't seem to be about the best way to manage and harvest the resource, it's about the political climate at the time.

I've witnessed firsthand the benefits of rationalized fisheries. Let's face it the Bering Sea would not have a chance to catch their Pollock quota, with the current Chinook and Chum restrictions, if it were not for AFA. Also the West Coast Hake fishery has flourished since the implementation of a rationalized fishery. I was at the NPFMC meeting in Nome in 2011 when the Council passed the motion creating the Chinook cap in the Gulf Pollock trawl fishery. While creating the 25000 fish Chinook cap the council also PROMISED to provide the fleet with the tools needed to prosecute the Pollock fishery. To me meaning the Gulf Rationalization package already moving through the Council process. Now, without the necessary tools, and the implementation of a Chinook cap in the non Pollock fisheries, the entire Gulf of Alaska was closed to bottom trawling in May of this year. It was only recently opened with an emergency order allocating 1600 more Chinook. So it's obvious to me status quo, or Alternative 1 in the Council motion will not work.

When I listen to arguments against Rationalization I hear a lot about consolidation, like in the Bering Sea crab fleet. First off I don't believe there will be a lot of consolidation because the majority of the trawl fleet, especially in the Western Gulf is locally owned and/or operated. But after the recent events I don't know what would be better, a little consolidation or no trawling at all. Maybe all the processors and crew that would usually have been busy processing and catching trawl caught bottom fish the past 3 months would have a better answer to that question.

I am totally in favor of moving forward with the Gulf Rationalization package and strongly support Alternative 2. I could go through and point out which Options in the Alternative I am in favor of, but it's too early for that, as the EIS and further Council Staff studies will be produced.

I do believe that trawl fishing in the Gulf, under the present race for fish, will become prohibitive for the local small boat owner to compete. At the present time there are major fish processing companies purchasing trawl vessels that fish primarily in the Gulf of Alaska. Under the present scenario, racing for fish with the by catch limits for Halibut being reduced and the current Chinook caps. Those company owned boats will eventually be the majority of the vessels trawling for fish in the Gulf because they will be the only ones able to afford to fish there. Mainly because they can do other fisheries with the vessels that I can't do. Like fish in the Bering Sea or Whiting off the West Coast. Under the present scenario of Chinook caps and the closure of the non Pollock fisheries I, and other small boat owner operators, are currently looking for other opportunities for our vessels. To me it seems like the small boat owner operator is being phased out of the Gulf and our only salvation is to implement Rationalization in the Gulf.

If you would have asked me 5 years ago I would have favored getting rid of all Rationalized fisheries but with the current climate of bycatch caps and reducing those caps Rationalization is the only way the Pollock and Cod trawl fisheries can be successfully prosecuted in the Gulf of Alaska.



Mr. Glenn Merrill, Assistant Administrator
Sustainable Fisheries Division
National Marine Fisheries Service
PO Box 21668
Juneau, AK 98802

RE: Notice of intent to prepare an EIS for the Gulf of Alaska Trawl Bycatch Management Program

August 28, 2015

Dear Mr. Merrill:

Thank you for the opportunity to provide comments on behalf of the Midwater Trawlers Cooperative (MTC) regarding the National Marine Fisheries Service's (NMFS) "notice of intent" to publish an environmental impact statement (EIS) for pending action in the Gulf of Alaska trawl groundfish fisheries.

MTC represents twenty-three midwater trawl catcher vessels that participate in groundfish fisheries in the Gulf of Alaska, Bering Sea and off the west coast. MTC member vessels have a long history of participation in fisheries in the Gulf of Alaska and are directly impacted by the decisions made regarding the management of these fisheries. To that end, MTC and its members have participated fully in the Council process to design a cooperative approach to rationalized management of the Gulf of Alaska groundfish fisheries.

MTC strongly supports the inclusion of Alternative 2 in the EIS analysis. The National Environmental Policy Act (NEPA) requires that the Councils and NMFS review and analyze a reasonable range of alternatives when contemplating a management action such as this. Alternative 2 was developed over several public council meetings with significant input from participants, communities and fisheries managers. The Council process is a transparent stakeholder-driven process that encourages public involvement from all impacted sectors.

Until October 2014 the NPFMC was diligent in its responsibility and obligation to move forward with a bycatch management strategy for the Gulf of Alaska. Unfortunately that forward momentum was halted abruptly when the administration in the state of Alaska changed and a hiatus in the program development subsequently requested. During the hiatus a damaging closure to the non-rockfish, non-pollock groundfish fishery occurred in the Gulf of Alaska as the result of the attainment of a Chinook salmon hard-cap. This 3 ½ month closure resulted in dire economic impacts to harvesters, processors, and the community of Kodiak. This closure could have been avoided if the proper tools were previously provided to the fleet to avoid and reduce bycatch while still successfully achieving the harvest of target

species. This closure demonstrates just how important it is to have a well-structured rationalized management program in place. Alternative 2, which incorporates a cooperative approach to management coupled with allocations of target and bycatch species provides the necessary tools to meet the bycatch reduction goals of the Council and state of Alaska while still providing the opportunities to achieve optimum yield of target species as required by the Magnuson Stevens Act. It is a win-win approach for the resource, participants and communities.

Rumors run rampant in fisheries – both throughout management and on the dock. At present, participants are fearful that the state of Alaska will return to the Council in October recommending that the previously designed, broadly supported and mostly scoped Alternative 2 should be replaced by a simple Individual Bycatch Quota (IBQ) program. An IBQ program will do nothing to eliminate the race for fish and it provides zero tools to the fleet to achieve OY while reducing bycatch. In other IBQ fisheries participants' horde the IBQ and instead of successful facilitation of fisheries, target species are stranded in the water. Costs increase with an IBQ fishery – for monitoring, purchasing IBQ, even cooperative management costs the industry. Without the other incentives and tools that come with a fully rationalized fishery, the IBQ program meets less than half the goals of the Council, and poorly at that.

A lot of great work has been done developing the foundation of Alternative 2 by the North Pacific Council, the Council staff, NMFS, Alaska Department of Fish and Game staff and countless stakeholders representing harvesters, processors, communities and conservation groups. Of all the management measures considered to-date, Alternative 2 has the best chance of providing a successful management program for the Gulf of Alaska. Eliminating Alternative 2 from analysis is counter to the desires of the majority of stakeholders, but more importantly it erodes the confidence that the public and stakeholders have in the Council process.

MTC strongly advocates that Alternative 2 with the cooperative management structure and allocation of target and bycatch species be included in the range of alternatives for analysis. NEPA requires a reasonable range and the stakeholders and public have spent considerable time developing this option. It is the smartest and most appropriate approach to reduce bycatch to the extent practicable and still meet the MSA requirements to achieve optimum yield in target fisheries.

Thank you for your consideration.

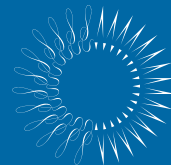


Heather Mann

Midwater Trawlers Cooperative

DESIGN MATTERS

Making Catch Shares Work



THE
PEW
ENVIRONMENT GROUP



DESIGN MATTERS

Making Catch Shares Work

Contents

Executive Summary	2
Design Matters: Making Catch Shares Work	4
What Is a Catch Share?	5
The Magnuson-Stevens Act	7
No Single Solution	9
Unintended Consequences	10
Mixed Results	11
Case Studies of Catch Shares	
Bering Sea and Aleutian Islands Crab Rationalization	12
Alaska Halibut and Sablefish	14
Gulf of Mexico Red Snapper	15
Georges Bank Atlantic Cod Sector	16
Conclusions	17
Elements of Successful Catch Share Programs	17
Endnotes	19

Executive Summary

Catch shares are fishery management programs that allocate fishing privileges in the form of a specific portion of the total annual catch quota. These programs range from individual transferable quotas to community-based management systems such as sectors. While catch shares take many forms, in general they allocate the quota to allow fishing entities—individuals, communities, cooperatives, etc.—exclusive access to a portion of the quota, but require that fishing cease once that entity’s share of the quota is met.

Science-based annual catch limits are essential if catch shares are to be effective and if requirements to end overfishing and rebuild depleted fish populations are to be met. These limits ensure that the amount of fish taken each year remains at levels that allow fish populations to reproduce and maintain an adequate biomass to support maximum sustainable catch. After science-based catch limits have been determined, the quota can be allocated to participants in the fishery. This allocation must be done with careful consideration of the socioeconomic changes that may result.

The critical decisions about how a catch share program is designed and implemented, and who receives an allocation, must be given careful analysis. A properly designed program must include:

- **science-based annual catch limits** that include all fish killed as a result of fishing (target fish landed and non-target fish—or bycatch—discarded at sea)
- **adequate monitoring** of the target fish catch and bycatch
- **identification of explicit conservation, social and economic goals** that the program intends to achieve and metrics for measuring attainment of those goals
- **permits issued for no more than 10 years** and regular review and evaluation of program performance with opportunities to modify and improve the program, as required by section 303A of the Magnuson-Stevens Fishery Conservation and Management Act

- **adequate enforcement**, including validation of catch and discard reporting and, to the extent possible, real-time management with the authority to close the fishery as soon as the quota is reached
- **fair and equitable allocation** through a transparent and open process, including mechanisms to accommodate recreational anglers, working fishermen and coastal communities; ownership caps so that one entity does not hold an excessive share of the quota; and opportunities for new fishermen.

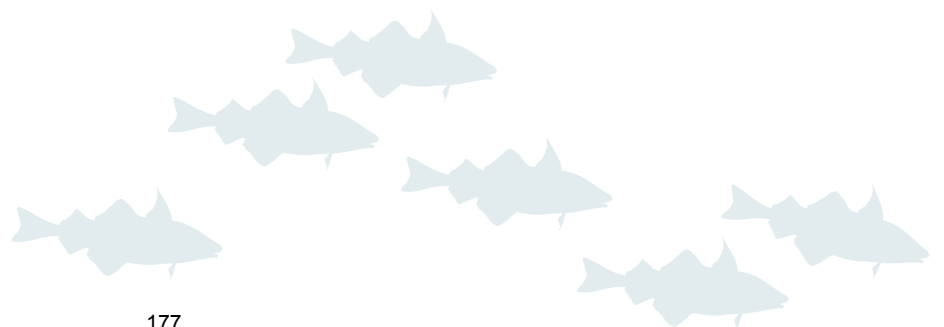
Ocean fish are public resources. Catch shares, therefore, grant privileges to only a portion of the total catch and do not convey exclusive property rights to the resource. These programs can improve fisheries performance, management and ecosystem health, but only if properly designed and monitored. Correctly applied, catch shares are viable management options along with other measures such as adjusting the length of the fishing season, refining areas that are opened or closed to fishing, restricting gear to protect fish habitat and limiting catch size. Catch shares are not, however, a panacea. They should be part of a comprehensive approach that strengthens conservation and supports communities by providing access for recreational anglers and diverse fleets and crew, qualities regarded by many as the heart and soul of a working waterfront.

Science-based catch limits that don't result in overfishing are critical to ensuring long-term sustainability; properly designed catch shares are a way to allocate those limits.

Design Matters: Making Catch Shares Work

Catch shares have been widely lauded for their economic and ecological benefits. Indeed, recent studies in the journals *Science and Nature* describe catch share programs as a solution to fishery collapse, and some conservation groups have proposed that each sector of U.S. fisheries be required to consider catch shares or explain why the management system being used instead is superior. Like other management tools—such as limits on fishing seasons, gear restrictions, area closures and size requirements—catch shares can be a viable tool if correctly designed and applied. However, there are significant questions regarding the actual impact of these programs (as opposed to other management tools) on the ecological health of the fisheries in which they have been implemented, as well as on their economic impacts—the latter of which is the specific focus of this paper.

The current discussion on catch shares too often focuses on the economic benefits that have accrued to the fishermen and fishing communities that are able to participate in these programs, without adequate consideration given to the economic downsides of these programs for those who have been left out. This paper does not seek to provide a detailed, thorough analysis of catch share programs. Rather, its purpose is to highlight some of the economic downsides of these programs, while simultaneously acknowledging their benefits, in order to provide a broader context for discussion. We believe that catch shares, like many management tools, are not a cure-all for the various problems facing fisheries in the United States and elsewhere in the world. To be effective, they need to be implemented as part of a comprehensive approach that includes measures aimed at reducing the scope and severity of negative fishing impacts on the marine environment, while also taking into account the economic needs of fishermen and fishing communities. What follows is a discussion of catch shares: examining problems created by this tool and indicating possible ways to minimize those problems through effective program design.



What Is a Catch Share?

Catch share is an umbrella term that includes a number of fisheries management strategies. Catch share programs allocate fishing privileges as a share of allowable catch to individuals, cooperatives, communities or groups of fishermen.¹ Figure 1 represents the hierarchy of programs. They are incentive-based tools that bestow privileges to access a public resource (not a property right) and that are thought to enhance fishermen’s flexibility and efficiency by allowing them to choose how and when to catch their portion of the quota.² Studies of catch shares have found that they can improve economic and environmental health and eliminate the “race to fish,” thus enhancing safety and minimizing bycatch and other ecosystem impacts.³

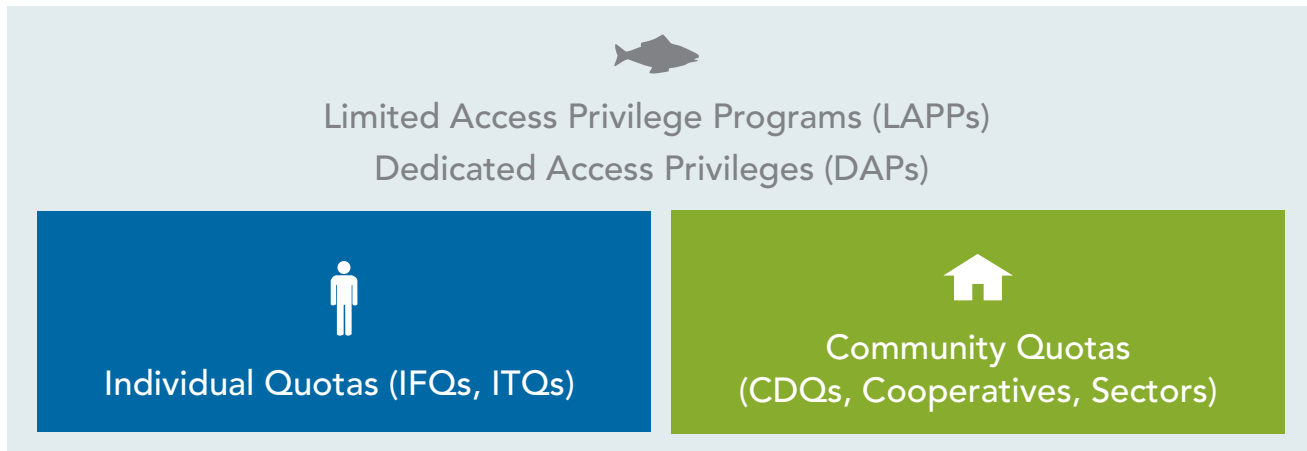
In theory, fishing privileges and exclusive access to a portion of the catch give fishermen an incentive for economic efficiency and prudent stewardship of the resource. Economic theory also suggests, however, that for market forces to work effectively, the privileges need to be permanent, secure, restricted and transferable.⁴ Since fishermen have little control over fish populations, exclusivity is reduced and the “tragedy of the commons” problem occurs—that is, all fishermen suffer when individual fishermen maximally use public resources for their personal benefit.

Granting permanent rights to a public resource runs counter to the public trust doctrine that holds that certain lands and their natural resources belong to the public and that, although the government is the legitimate administrator of those lands, resources must be managed for the public good rather than for the exclusive benefit of private individuals.⁵ Additionally, the Magnuson-Stevens Fishery Conservation and Management Act (MSA) states that quota shares are not property rights, but privileges to fish.

The MSA further defines catch shares as Limited Access Privilege Programs (LAPPs). While catch shares are often equated only with individual transferable quotas (ITQs) or individual fishing quotas (IFQs), the system also includes other quota share arrangements, among them community development quotas (CDQs), sector allocation, and community and regional fishing associations. Typically, various forms of catch shares have been used in commercial fisheries, where participants are readily identifiable. However, there is increasing interest in employing catch share programs in recreational fisheries, which face significant challenges, including the absence of real-time data, insufficient monitoring and untested methods of assigning quotas to individual anglers.

FIGURE 1

Some Types of Catch Shares



Individual Fishing Quotas (IFQs) are allocated to eligible fishermen, allowing them a specific portion of the total allowable catch (TAC). The MSA defines IFQs as a federal permit to catch a certain quantity of fish (a percentage of TAC); the permit is held for the exclusive use by a person; thus, it is distinct from a community development quota.⁶

Individual Transferable Quotas (ITQs) can be bought, sold or transferred to other fishermen.⁷ While ITQs are sometimes construed as a property right, U.S. law states that there is no creation of right, title or interest and that the quota can be revoked, limited or modified at any time without compensation.⁸

Limited Access Privilege Programs (LAPPs) are defined by the MSA as a federal permit held for exclusive use by an individual to catch a portion of the total quota. IFQs are a form of LAPP, but LAPPs include more than IFQs. LAPPs allow flexibility for allocating the total quota, whereas IFQs are always a percentage of the total quota.⁹

Community Development Quotas (CDQs) allocate portions of the annual TAC to coalitions of villages with limited economic opportunities (e.g., rural coastal communities in western Alaska).¹⁰

Sector Allocation gives a portion of a quota, in accordance with an approved plan, to a self-selecting group of fishermen bound by a contractual agreement. The participants allocate the quota to those in the sector. These allocations are a form of harvesting cooperative, but the MSA does not consider them to be LAPPs because allocations are granted to the whole sector rather than to individuals.

Recently, community-based fisheries management (CBFM) has attracted considerable interest; the U.S. Government Accountability Office (GAO) found that "the easiest and most direct way to help protect communities under an IFQ program is to allow the communities themselves to hold quota."¹¹ CBFM encompasses programs such as CDQs, cooperatives and sectors. In CBFM programs, communities play a large role in managing their fisheries and protecting the resource. These programs have been established in Alaska, Maine, Massachusetts, Nova Scotia and Mexico.

Each type of catch share program has its strengths and weaknesses, and the diversity of U.S. fisheries and fishing communities necessitates a variety of approaches. Because each fishery is unique, catch share programs must be tailored to its needs and challenges and the communities that depend on it.

The Magnuson-Stevens Act

The MSA¹² describes catch share programs such as IFQs as limited access privilege programs (LAPPs), while the U.S. Commission on Ocean Policy describes them as dedicated access privileges (DAPs) to emphasize that they are not a property right (Box 1).

The MSA details discretionary provisions that could be included in fishery management plans, including the establishment of a LAPP. The law stipulates that in developing such management programs, regional fishery management councils shall consider historical and present-day fishing in the fishery, the communities and economies that would be affected, and the “fair and equitable distribution of access privileges.”¹³ In addition, under the MSA, a LAPP must include regular monitoring and review, a system for enforcement and monitoring, and a mechanism to prevent

an entity from acquiring an excessive share. More importantly, the MSA requires that a permit issued under a LAPP cannot exceed 10 years but that it will be “renewed before the end of that period, unless it has been revoked, limited, or modified.”¹⁴ In addition, the MSA requires that catch share holders pay the costs of the program’s implementation.¹⁵

BOX 1

The U.S. Commission on Ocean Policy

The U.S. Commission on Ocean Policy supported use of the term dedicated access privilege to underscore that shares of a quota grant access for fishing, but not a right to the fish. The Commission’s Recommendation 19-15 proposed that the National Marine Fisheries Service be responsible for issuing national guidelines for such programs, and it outlined several key features:¹⁶

- specifying goals (biological, social and economic)
- providing for periodic review
- limiting the duration of quota shares
- establishing user fees to fund the program and support ecosystem-based management
- allowing for public participation by and consultation with all stakeholders.

15 Active Catch Share Programs in U.S.



 Individual Fishing Quotas/Individual Transferable Quotas

 Community Development Quotas/Sectors

In addition, several more catch shares are in active development, including the West Coast Groundfish Trawl Individual Quotas and 17 sectors proposed in New England under an amendment to the Northeast Multispecies Fishery Management Plan.¹⁷

No Single Solution

Catch shares are not a cure-all for fisheries management problems and should not be considered an end unto themselves; rather, they should be evaluated as one of a number of possible tools that councils can employ when developing management plans.

Catch shares function as an allocation tool to achieve management objectives for fisheries and to obtain a continuing optimum yield of fish catch. To prevent overfishing, fishing must remain within science-based annual limits through improved accountability and enhanced monitoring.

Catch share systems can be effective and lead to substantial benefits from economic efficiency and capacity reductions. However, it is unrealistic to assume a catch share program will guarantee desired change and provide a single, simple remedy. Overfishing and other fisheries problems require a package of measures, including catch shares (where appropriate), gear and effort controls, and spatial management.¹⁸ In addition, poorly designed catch share programs may encourage compensatory behavior such as increased discarding and misreporting or underreporting of catch. They can also induce fishermen to upgrade their vessels and gear when the number of vessels in the fishery falls, thus increasing fishing effort.

In addition, catch share programs may not be appropriate for some fisheries and may lead to unintended consequences. Among these fisheries are:

- recreational fisheries where managers lack real-time data or the ability to effectively manage an allocation of quota (for-hire and charter segments may be an exception)
- fisheries where the size of the population fluctuates widely (resulting in significant variations in the value of quota shares)
- fisheries with poor or unreliable catch data
- fisheries that lack monitoring, enforcement or a hard TAC.¹⁹

In addition to these fisheries, there may be others where such programs may be ineffective. For example, the slow growth and late maturity of a species can create an economic incentive for fishermen to catch and sell fish now rather than conserve them because the economic payback for conservation is so far in the future, thus minimizing the economic-efficiency gains sought through catch shares. To counter such negative incentives, positive ones must be established—for example, the management of orange roughy requires a program that offsets incentives to catch and sell fish now and instead focuses on conserving the population for the future.²⁰ Catch shares are also of limited use in British Columbia, where five species of salmon spawn in more than 1,500 streams. Therefore, these wide fluctuations in salmon population size and distribution make it impractical to implement IFQs.²¹

Additionally, the performance of catch shares depends upon when and where quotas are used. Catch shares may not be fully effective for fish populations found in various locations at different densities and times. Under these conditions, fishermen will target highly abundant fish populations and compete for the higher-valued species.²²

Catch shares are not a panacea for all fisheries management problems and should not be an exclusive goal; rather, they are one of a number of possible management tools regional fisheries management councils can employ.

Unintended Consequences

Catch shares, as well as other types of fisheries management programs, can unintentionally create incentives for unsustainable fishing practices, such as: high grading—discarding low-market-value fish in favor of those with higher value to maximize quota returns; underreporting catch; overfishing non-quota species in multispecies fisheries; and poaching.²³

Further empirical research is necessary to determine whether catch share programs can address and manage broader ecosystem concerns, such as the unintentional catching of non-target species, habitat destruction and changes to the food web.

Catch share programs may also cause adverse social and economic consequences, including consolidation (concentration of quota in just a few large operations), loss of jobs, reduced income, unemployment and displacement of small-scale fishermen.²⁴ Consolidation was apparent in the Mid-Atlantic Surf Clam/Ocean Quahog fishery when the fleet shrank from 128 vessels to 59 in just two years. By 1995, the largest quota holders were outside investors (a bank and an accounting firm).²⁵ In contrast, the Alaskan halibut/sablefish fishery IFQ program was designed to minimize socioeconomic impacts by capping the quota share that a single fisherman or entity could have, prohibiting absentee ownership and creating categories of quota based on vessel size with rules against transferring quota to another category. Because they are data-intensive, catch share programs may also result in increased administrative costs (to train staff, hire observers, enforce quotas and collect data for accurate stock assessments) as well as in prohibitive costs for fishermen trying to enter the fishery as lease and quota prices escalate.²⁶ Once established, such programs may be difficult to adjust as conditions or management change because of vested interests in the fishery and potential difficulty in modifying or revoking shares.

Socioeconomic inequities that catch shares create or magnify are a critical concern. These inequities may arise from initial allocation of quota shares or from the ability of some quota holders to acquire more shares and dominate a fishery.²⁷ For instance, in the IFQ programs implemented in various British Columbia fisheries, reducing the number of available licenses through buybacks and policy reform also reduced the size of the fishing fleet and led to escalating license and quota prices.²⁸ As a result, the costs of licenses and quotas are now prohibitively high. Rural, small-scale and aboriginal fishermen can no longer afford to participate in the fisheries; consequently, the number of rural licenses has dropped roughly 45 percent.²⁹ A GAO report underscored this point, concluding that IFQ programs have “raised concerns about the fairness of initial quota allocations, the increased costs for fishermen to gain entry, and the loss of employment and revenues in communities that have historically depended on fishing.”³⁰

Single-factor solutions are not always sufficient: overfishing and other fisheries problems require a package of measures, including catch shares (where appropriate), gear and effort controls, and spatial management.

Mixed Results

The use of a catch share program does not necessarily result in consistent, positive changes in the size and health of a population. For example, IFQs have been widely used in a variety of fisheries and illustrate a range of effects.

An analysis of 20 fish populations managed under IFQs in many countries found that 12 populations improved after IFQ implementation, while eight continued to decline.³¹ Although IFQs played a role in helping some fisheries reduce capacity, end the race to fish and improve compliance with quotas, it is unclear to what extent these changes were due to IFQs or the larger management plan of which IFQs were a part. In some fisheries, improvements were more likely the result of hard TAC limits than an IFQ system. This was demonstrated by declines in populations in fisheries where limits were set too high or compliance was lacking even with an IFQ system in place.³² Moreover, some IFQ fisheries may require additional, complementary measures for effective management, such as seasonal or area closures and gear restrictions to protect juvenile fish.³³

In addition, management of multispecies fisheries can be challenging because both target and non-target fish are generally caught together, causing the quota of one species to constrain the catch of relatively healthy species. However, if all species caught together are included in a properly designed and monitored catch share system with appropriately set catch limits for all, the number of discards (low-value, non-target species thrown back) can decrease. For instance, in British Columbia's groundfish trawl fishery, an IFQ system and at-sea observer coverage have successfully discouraged discarding and led to matching catches for individual species to their quotas in this multispecies fishery. This is due to the fishermen's ability to adjust their fishing practices and target species to match changes in catch limits. These fishermen avoided roughey,

shortraker and yelloweye rockfish when limits were reduced for these species. The system, which includes annual catch limits for individual species, dockside monitoring, mortality limits (instead of landing limits) and accounting for catch in subsequent years (i.e., carry-forward of up to 37.5 percent for overruns and underruns), has resulted in fewer discards (a 51 percent decrease after IFQ introduction) than in similar U.S. fisheries.³⁴

In some fisheries, improvements are more likely to result from hard total allowable catch limits than because of an ITQ system. This was demonstrated by declines in fish populations for fisheries where limits were set too high or compliance was lacking even when an ITQ system was in place.

Bering Sea and Aleutian Islands Crab Rationalization

In 2005, to improve conservation efficacy and address social and economic concerns, the Bering Sea and Aleutian Islands crab fishery was restructured and downsized through IFQs and individual processing quotas (IPQs).

The IPQ program was intended to achieve equity between the harvesting and processing sectors by assigning processor quota shares to processors based on the amount of fish that each had processed over a period of time.³⁵ In an IPQ program, fishermen with IFQs in the fishery may sell fish only to processors with processor quotas in the fishery. In the Bering Sea and Aleutian Islands crab fishery IPQ program, 90 percent of the market is limited to processors with quotas.³⁶ The North Pacific Fishery Management Council (NPFMC) struggled with instituting the crab rationalization plan—to match fishing capacity to the amount of crab that could sustainably be caught each year—in large part because of controversy over establishing processor quotas. The program did not take effect until Congress mandated it when the MSA was amended through the Consolidated Appropriations Act of 2004.

IPQs like the one established in the Alaska crab fishery are highly controversial due to their potential for discouraging competition in the marketplace. The U.S. Department of Justice advised the National Oceanic and Atmospheric Administration to oppose IPQs on the grounds that they would inhibit efficient use of resources and thwart beneficial competition, leading to distortions in the market by giving companies excessive control over price and product.³⁷ As a result, language in the MSA requires IPQs to comply with antitrust laws. Also, in the face of much criticism of the crab rationalization plan, the NPFMC decided to require the collection of extensive socioeconomic data and to review progress at 18 months, three years and five years.³⁸

Consolidation became a significant issue in the crab rationalization system because only a few companies stood to gain from the redistribution of capital. In the Bristol Bay red king crab fishery, the number of boats fell from 251 in 2004 to 89 in 2005-6 after IFQ implementation; likewise in the Bering Sea snow crab fishery, the number of boats dropped from 189 in 2004 to 80 in 2005-6.³⁹ These declines resulted in an estimated loss of 1,200 jobs from 2004 to 2006.⁴⁰ Other estimates of the economic impact were seen in small Alaskan fishing communities such as King Cove, where there was a 75 percent reduction in income for local businesses,⁴¹ and in Kodiak, where Bristol Bay red king crab fishermen's earnings declined between \$1 million and \$1.6 million following rationalization.⁴² For those left in the Bristol Bay king crab and the Bering Sea snow crab fisheries, however, fleet-wide crew member pay increased from an average of \$24,314 in 2004 to an average of \$53,585 in 2007.⁴³ Remaining vessel owners in the Bristol Bay red king crab fishery saw their average harvest increase from 56,000 pounds per vessel in 2004 to 185,000 pounds in 2005-6, and the average value of their catch increase from \$262,000 in 2004 to \$792,000 in 2005-6.⁴⁴

In addition, processor shares have been highly consolidated, leaving only a few corporations in control of the industry and raising antitrust concerns. Trident Seafoods, for example, was allocated 23.3 percent of the red king crab quota and 25.8 percent of the snow crab quota.⁴⁵ High-grading also became a problem in the fishery. An estimated 677,000 legal male crabs were discarded in the first year of rationalization, compared to the six years prior to rationalization, when the highest estimate for total discarded

legal males was 80,000 crabs in the 2002 season.⁴⁶ In response, the Alaska Department of Fish and Game adjusted the quota down for the 2006-7 season to account for the high number of discards, and the crab industry agreed to implement measures to remove the incentive to high-grade. Discarding of legal males has not occurred on a similar scale since the initial season.⁴⁷

Absentee ownership is also a problem, and some quota holders lease their shares at rates substantially higher than the actual value. Managers therefore are considering alternatives to require that shares be held by active participants in the fishery.



Alaskan Halibut and Sablefish

In the late 1980s, the open access Alaskan halibut and sablefish fisheries were prime examples of a race to fish, and overcapitalization led to seasons as short as a day and fishing in hazardous weather.

By 1991, despite no overfishing, the effects of a drastically short season prompted the North Pacific Fishery Management Council to take steps to rationalize the fisheries and in 1995, after many years of debate, an IFQ program was implemented. Under this program, quota holders can sell their fishing privileges as long as there is no excessive consolidation or change in the character of the fishing fleet. If an overage occurs, up to 10 percent will be reduced from the subsequent year's quota and additional overage is subject to a penalty.⁴⁸

The initial allocation of quota was defined by several objectives, including preserving the character of the fishing fleets, discouraging corporate ownership and rewarding longtime and active participants.⁴⁹ As such, quotas were given only to vessel owners or fishermen leasing vessels, with a portion of the quota going to local communities under a CDQ program. To preserve the character of the fleet, vessel classes were created within each fishery (three in sablefish and four in halibut). Initially, quota holders were restricted to their initial vessel class to maintain the quota distribution among vessel classes. Flexibility was later introduced by allowing unused large-vessel quotas to be reallocated to smaller vessels in the fishery.⁵⁰

The Alaskan halibut and sablefish IFQ program is considered successful in many respects: increased economic efficiency, decreased operating costs, higher prices at the dock, decreases in lost gear and higher values for quota shares.⁵¹ There have also been improvements in vessel safety (measured by a decrease in the number of search-and-rescue operations), longer seasons, and greater availability and quality of fish for consumers.

In addition, the fishery resource continues to be sustainably managed.

Along with these improvements, however, are downsides: lost jobs, high cost of entry into the fishery, consolidation of quota holdings and increased administration costs (in 2005, administration and enforcement of these IFQ programs cost the federal government \$1.3 million and \$2.4 million, respectively).⁵² Small coastal communities in western Alaska were especially affected by the program, and a CDQ was implemented through Community Quota Entities (whose small-boat, community-based fishermen with limited financial opportunity struggle to raise sufficient capital to enter the quota fisheries) to address these concerns. More recently, fishermen can lease their quota share in every halibut/sablefish area except southeastern Alaska. This has changed the character of the fishing fleet because about half the quota for each species is leased to and caught by hired skippers rather than owner-operators.⁵³ Leasing drives up the price of quota shares and pushes out those with limited capital and other resources. Absentee ownership and high entry costs threaten one of the program's goals of protecting small-scale, community-based fishermen.



Gulf of Mexico Red Snapper

A commercial IFQ program for the red snapper fishery was implemented in the Gulf of Mexico in January 2007. This population is categorized as overfished and subject to overfishing because fishing levels remain too high.

Due to tightened regulations and lowered quotas—required for ending overfishing and rebuilding this depleted population—the commercial red snapper fishery became highly overcapitalized; the number and fishing capacity of the vessels in the fishery exceeded the amount of allowable quota. In the late 1990s, the quota was divided into two separate seasons open for only the first 15 days of the month. To further constrain catch, these seasons were reduced in 1999 to the first 10 days of the month. This small window resulted in derby fishing with a rush to fit as many trips in and catch as many fish as possible in the available time. This in turn led to instability in the supply of fresh red snapper to markets, high levels of bycatch and unsafe conditions for fishermen, all of which lowered prices.

A red snapper IFQ program, developed as Amendment 26 to the Reef Fish Fishery Management Plan,⁵⁴ was implemented to reduce overcapacity in the fishery and discourage derby fishing.⁵⁵ The overall intent of the program is to help end overfishing and rebuild the red snapper population. Specific anticipated benefits include:

- increased market stability
- replacing fishing seasons with year-round fishing
- increased flexibility to modify fishing operations
- cost-effective and enforceable management of the fishery
- improved safety at sea
- optimized social, economic and biological benefits from the fishery.

Also, the program is intended to provide direct and indirect biological benefits to red snapper and other marine resources by reducing bycatch and discard mortality and eliminating quota overages.

Since implementation, after a further reduction of the quota in 2008, the price paid to fishermen has increased 17 percent, while average landings, number of trips and days at sea have declined. Coupled with the reduction in minimum size, the ratio of landed to discarded fish has improved threefold to fourfold, reducing overall mortality by lowering the amount of discarded fish. Between 1996 and 2003, the red snapper fleet concentrated its fishing effort in an average of just 77 days to catch its quota. In the past two years, however, that same effort has been spread across an entire year. The IFQ program also provides a better system of accounting for fishing activity. In the past two years, annual landings have been just shy of the allowed commercial quota—a sharp improvement over the previous 17 years, when the quota was exceeded nine times.

The IFQ program has resulted in fewer entities in the commercial red snapper fishery.⁵⁶ Before the program was implemented, there were 764 permitted participants in the Gulf commercial red snapper fishery. After implementation, 546 entities qualified for quota shares; now, after two years of operation, the number of individuals holding IFQs has dropped to 466, a 14.6 percent reduction since the start of the program and a 39 percent reduction from pre-IFQ levels. In addition to the consolidation that followed the IFQ program's implementation, other issues have arisen. For example, catch reports have mislabeled species and underreported landings. Bycatch also remains a problem, particularly of other reef fish encountered as the red snapper population expands and returns to its historical range.

Georges Bank Atlantic Cod Sectors

The Cape Cod Commercial Hook Fishermen's Association (CCCHFA) has developed a form of community-based fisheries management that fosters a highly adaptive means of local decision-making, self-monitoring and enforcement known as sectors.

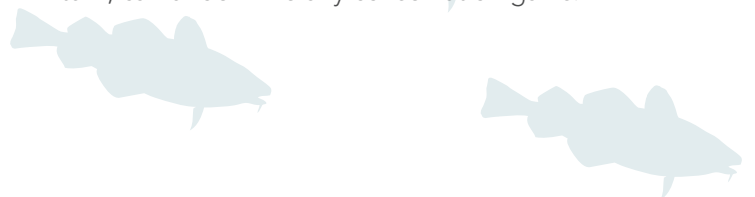
A sector is a community of fishermen who voluntarily work together to manage an annual allocation of fish. In exchange for operating under higher standards of monitoring and reporting, sector fishermen are given more flexibility in how they fish and are offered exemptions from various federal regulations. Sector members agree to stop fishing once their allocation (enforceable TAC) has been met.

In 2004, CCCHFA worked with local codfish hook-and-line fishermen to develop the Georges Bank Cod Hook Sector. By operating under their own annual enforceable TAC of Georges Bank cod, hook sector members are exempt from limits on daily trips and the number of hooks they can use. Furthermore, the fishermen of this sector are allowed to determine how to divide this allocation among members. The hook sector operates by allocating monthly quota targets of 8.33 percent of the sector's total annual quota.⁵⁷ Quota that is not landed in a particular month is rolled over to a subsequent month, and all cod fishing stops when the annual quota is reached. The agreement among these fishermen is codified in federal regulations and in the form of a binding annual contract. To prevent excessive consolidation and unfair market control, the hook sector cannot be allocated more than 20 percent of the overall Georges Bank cod TAC. One problem remains, however: fishermen are still bound by regulations for days-at-sea and trip limits for all other groundfish they catch.⁵⁸

A second sector was developed by CCCHFA in 2006—the Georges Bank Cod Fixed Gear Sector. This allowed local gillnet fishermen the opportunity to join. Support for the sector

concept has spread throughout New England, and Amendment 16 to the Groundfish Fishery Management Plan would authorize an additional 17 sectors to be implemented in 2010. Sector members would receive additional benefits, including allocations of nearly all groundfish species, transferability of quotas among sectors and additional regulatory exemptions. The 20 percent cap on sector ownership would be eliminated, and yearly overages would be deducted from subsequent years. A minimum of 30 percent observer coverage would be required, as would weekly catch reports. Fishing still would have to stop when a sector caught its allocation.

The main benefit to fishermen is that they can run their businesses more profitably and efficiently by spending less time on the water and by fishing when market prices are high. However, the costs involved in producing environmental assessments, operations plans and increased monitoring must be borne by the fishermen. These costs are shared by all sector participants and can reach \$80,000 to \$100,000 a year for the sector.⁵⁹ One of the biggest concerns to sector members is that while they operate under an enforceable TAC and must stop fishing when they meet their quota, the rest of the fishery that is not part of a sector operates under an effort-control system. Therefore, non-sector members will fish with only a target TAC and will not be required to immediately stop when that is reached. That, in turn, can undermine any conservation gains.



Conclusion

If properly designed, catch share programs can lead to substantial gains in fisheries by reducing capacity, increasing economic efficiency and ensuring sustainable catches. Poorly designed programs, however, may induce unintended behavior such as increased discarding, underreporting catch, misreporting catch or overfishing of non-quota species.

While traditionally employed in commercial fisheries, catch share programs are gaining advocates for use in some recreational fisheries. The application of catch shares needs careful design and review, and ultimately may not be feasible in many recreational fisheries as they currently are managed. A key challenge is the lack of real-time monitoring of recreational catch, which allows managers to take action before quotas are exceeded. Certain segments of recreational fisheries, such as the for-hire industry or charter boats, may be more willing to explore a catch share program because of existing licensing and reporting requirements, which would serve as the basis for such a program.

Lessons can be learned from the many IFQ programs implemented to date. In the red king crab fishery of the Bering Sea and Aleutian Islands, consolidation and reduction in the fleet led to a loss of jobs, and quotas for processors restricted the market. Elsewhere in the North Pacific, the Alaskan halibut and sablefish fishery included clear objectives that guided the design of the program, including the establishment of vessel classes to preserve the character of the initial fishing fleet. The halibut and sablefish IFQ program succeeded in ending derby fishing and extending the season, improving fishermen's safety and enhancing product quality. However, recent developments, including the trend for quota holders to hire captains to catch their portion, are driving up leasing costs and

making it difficult for rural residents to enter or stay in the fishery. In the Gulf of Mexico, the red snapper IFQ program has shown initial benefits, increasing the length of the season and the price paid to fishermen, and reducing overcapacity in the fishery. And in New England, sectors appear to be a promising alternative to the historical status quo. While there have been beneficial outcomes across the country in the fisheries that employ catch share programs, important issues remain to be addressed in many of them.

Elements of Successful Catch Share Programs

Catch share programs must include effective and explicit policies that address overfishing, bycatch and habitat protection. They should also contain regulations to protect the health and resilience of the marine ecosystems that sustain productive fisheries. Finally, catch shares should also accommodate recreational anglers and diverse community-based fleets and crew that are the heart and soul of a working waterfront.

For example, fishing businesses and communities could be harmed by the consolidation of quotas or by allocation schemes that favor just a few participants. Consequently, catch shares should be viewed as an allocation tool to be employed only in certain fisheries after being carefully designed to address potential social and economic consequences.

When properly designed and implemented, catch share programs can lead to better-managed fisheries. They should be implemented, however, only if science-based annual catch limits are properly set to ensure that fish populations are not subject to overfishing and that depleted populations are rebuilt.

All fishery management systems, including catch share programs, require an infrastructure for monitoring and accountability measures to ensure that limits are not exceeded. They entail high upfront costs to adequately handle the influx of information and data. Additionally, a well-planned program must include reliable monitoring and enforcement as well as the ability to report verifiable trip and catch information in real time.

These management imperatives, combined with the experiences of established catch share programs, underscore the importance of a carefully designed program to meet both conservation and socially responsible objectives. Positive trends in fisheries are the result not merely of catch share programs, but also of a combination of measures—an enforceable TAC and restrictions on fishing season and gear. Catch shares should be viewed as an allocation tool that is appropriate only with the right combination of other management measures in a comprehensive approach to fisheries management. As a critical step in this approach, fisheries managers should focus on setting science-based annual catch limits that end overfishing and rebuild depleted populations, as well as defining equitable social objectives for fishery management.

More specifically, catch share programs must follow the design principles outlined below if they are to succeed:

- **science-based annual catch limits** that include all fish killed by fishing (target fish landed and non-target fish—or bycatch—discarded at sea)
- **adequate monitoring** of the target fish catch and the incidental catch of non-target species
- **identification of explicit conservation, social and economic goals** and objectives and metrics for measuring progress
- **permits issued for no more than 10 years** and a regular evaluation of program performance, with an opportunity to modify and improve it as required by section 303A of the Magnuson-Stevens Act
- **adequate enforcement**, including validated catch and discard reporting and, to the extent possible, real-time management that has the power to close the fishery as soon as the quota is reached
- **fair and equitable quota allocation** that is conducted through a transparent and open process, including mechanisms to provide access opportunities to recreational anglers, working fishermen and coastal communities; ownership caps so that one entity does not hold an excessive amount of quota; and opportunities for new fishermen to enter the fishery.

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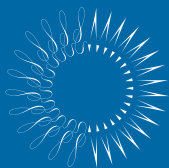
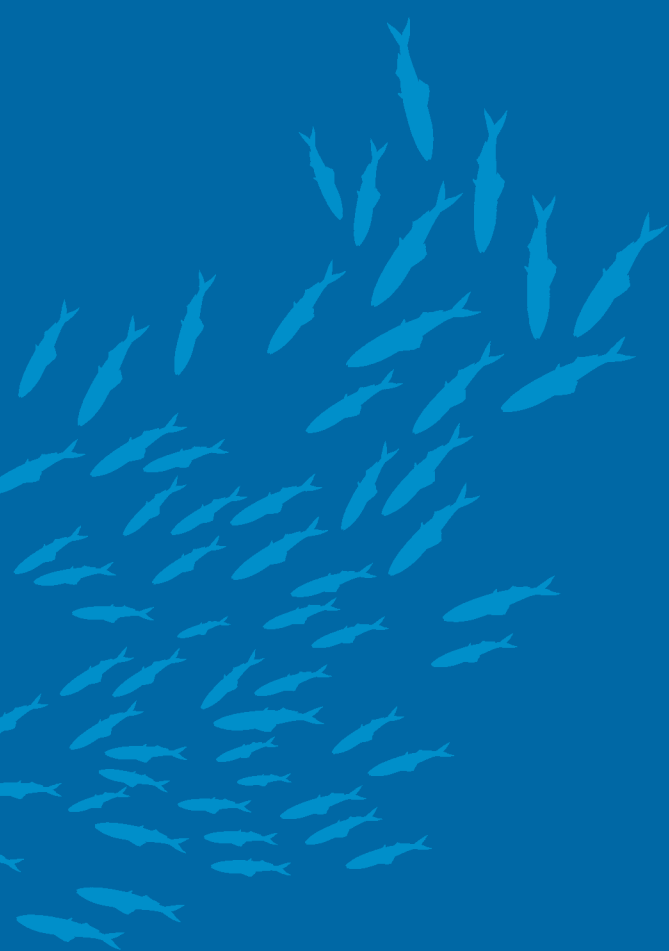
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August 28, 2015

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RE: NOAA-NMFS-2014-0150, Gulf of Alaska Trawl Management EIS

Dear Mr. Merrill:

We appreciate your continued commitment to reduce bycatch in the groundfish fisheries in the Gulf of Alaska and commend the National Marine Fisheries Service and the North Pacific Fishery Management Council (NPFMC) for taking some steps to cap and reduce Pacific halibut and Chinook salmon bycatch in the Gulf of Alaska trawl fisheries. While this reactionary approach to management has been necessary to respond quickly to severe bycatch concerns, there is a clear need for comprehensive, proactive management that will reduce bycatch, protect habitat, increase the ecological sustainability of the fisheries, and provide stability to coastal communities.

A new program should be focused on progress towards ecosystem-based fishery management and ecologically sustainable fisheries (which includes reducing bycatch), and it should not simply allocate harvest privileges or divide up current or historic trawl bycatch among participants. As part of developing this program, NMFS and the NPFMC should consider, at a minimum:

- Requirements to reduce bycatch, including bycatch of prohibited species;
- Clear annual catch limits, overfishing limits, and bycatch caps for all marine life;
- 100% observer coverage and estimation of the catch and bycatch of all species, including benthic invertebrates;
- Incentives for one-way transfer of quota to lower impact gears;
- A timeline to achieve zero discards of edible fish;
- Protection of important ecological areas and sensitive habitats;
- Mitigation of any cumulative impacts on areas supporting remaining open-access fisheries, including fisheries in Alaska state waters;
- Cost recovery to pay for monitoring, research, and management of the fishery;
- An expiration date for any exclusive fishing privileges granted, with option to renew contingent on meeting program goals and individual performance measures;
- Adaptive management that involves review and evaluation of program performance with opportunities to modify and improve the program; and

We note that the two 'strawman' Alternatives described in the Federal Register Notice¹ are focused on improving operational efficiency of the trawl fleet and stability to fish processors and communities. Those goals are important and laudable, but they are not sufficient. The issues outlined above should be

¹ <http://www.regulations.gov/#!documentDetail;D=NOAA-NMFS-2014-0150-0001>

GOA Trawl EIS Scoping
August 28, 2015
Page 2 of 2

considered as you develop a reasonable range of alternatives that will move us forward toward healthy ocean ecosystems and ecologically sustainable fisheries.

We will continue to work with you to find ways to protect the health, productivity, and biodiversity of the North Pacific marine ecosystem while maintaining fishing opportunities and vibrant coastal communities.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jon Warrenchuk', with a stylized, cursive script.

Jon Warrenchuk
Senior Scientist and Campaign Manager
Oceana



Pacific Seafood Group

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Processing

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Resurrection Bay, Seward AK
Island Seafood, Kodiak AK
Sea Level Seafoods, Wrangell AK
Pacific Canada, Masset B.C.
Salmolux, Federal Way WA
Starfish, Mukilteo WA
Washington Crab, Westport WA
Pacific Cold Storage, Woodland WA
Bandon Pacific Seafood, Charleston OR
Pacific Smoking, Clackamas OR
Pacific Coast Seafoods, Garibaldi OR
Pacific Shrimp, Newport OR
Live Seafood, Portland OR
Pacific Choice Seafood, Eureka CA

Aquaculture

Pacific Aquaculture, Neselem WA
Pacific Oyster, Bay City OR
Pacific Oyster, Coos Bay OR

Distribution

Pacific Seafood of WA, Mukilteo WA
Pacific Seafood of WA, Spokane WA
Pacific Seafood of OR, Clackamas OR
Pacific Fish & Oyster, Portland OR
Pacific Fresh Seafood, Sacramento CA
Pacific Seafood LA, Wilmington CA
Pacific Seafood UT, Salt Lake City UT
Pacific Seafood LV, Las Vegas NV
East Coast Seafood, Phoenix AZ
Seacliff Seafoods, San Antonio TX
Jake's Famous Crawfish & Seafoods, Clackamas OR

Transportation

Pacific Group Transport



08/28/2015

Glenn Merrill

Assistant Regional Administrator for Sustainable Fisheries NMFS, Alaska Region
NOAA–NMFS–2014–0150

Re: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for any Gulf of Alaska (GOA) trawl bycatch management program:

Thank you for an opportunity to comment on the NOI to prepare an EIS for any GOA trawl bycatch management program. Pacific Seafood is seafood company that offers a diverse number of seafood items to its customers. Our customer base is both domestic and international and our production includes wild caught and aquaculture products that are produced in the US, Canada, and internationally.

The core of our business is wild caught seafood from the United States. Alaska has become much more important in our sales and marketing strategy in the last decade.

As our business has expanded and we have matured we are now more focused on policy issues including sustainability, healthy ecosystems, bycatch and best management practices that protect our ocean resources for the future of our nation and the future of our business.

Pacific Seafood is a member of the Alaska Groundfish Data Bank (AGDB). We very much support AGDB's comments and outlined ideas as it relates to a trawl bycatch management program.

Several points in the AGDB comments we would highlight and offer a slightly different characterization: In our view it will be extremely difficult to manage bycatch when there is still a "race" for the target species. If there is quota system for *bycatch only* we believe the race for the target species may actually intensify resulting in a "collateral damage" effect to the bycatch we intend to protect.

The best tools a fishery and management system can provide to effectively avoid bycatch are tools that allow for temporal, spatial, and collective decision making at the harvester level. In our opinion this involves collective and personal ability to control harvest timing, and the geographical harvest grounds, coupled with a Cooperative harvest system that employs personal and collective accountability to avoid bycatch and areas known to be prime habitat of bycatch. This simply will not occur when fishermen are in a race for the target species and the clock is ticking until closure.

We believe a fair and equitable, "rights based" Coop management structure, that protects the harvesters, the processors, and the community interests and their investments, while conserving our natural resources and habitat for the future offers the best opportunity for bycatch reduction and a robust trawl fishery in the GOA.

Again we support the comments and ideas put forward by ADGB. We believe the time has come to move forward on this important issue.



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Sincerely,
Mike Okoniewski

*Alaska Operations Manager/Fisheries Management & Policy Advisor
Pacific Seafood*

Pacific Seafood



C.c. Dan Occhipinti
*General Counsel & Director of Government Affairs
Pacific Seafood*

Processing

- Pacific Alaska Shellfish, Nikiski AK
- Resurrection Bay, Seward AK
- Island Seafood, Kodiak AK
- Sea Level Seafoods, Wrangell AK
- Pacific Canada, Masset B.C.
- Salmolux, Federal Way WA
- Starfish, Mukilteo WA
- Washington Crab, Westport WA
- Pacific Cold Storage, Woodland WA
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- Pacific Fish & Oyster, Portland OR
- Pacific Fresh Seafood, Sacramento CA
- Pacific Seafood LA, Wilmington CA
- Pacific Seafood UT, Salt Lake City UT
- Pacific Seafood LV, Las Vegas NV
- East Coast Seafood, Phoenix AZ
- SeaCliff Seafoods, San Antonio TX
- Jake's Famous Crawfish & Seafoods, Clackamas OR

Transportation

- Pacific Group Transport



Wild & Natural – Fresh, Healthy & Sustainable

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August 28, 2015

Glenn Merrill, Assistant Regional Administrator
Sustainable Fisheries Division, Alaska Region, NMFS
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Juneau, AK 99802-1668
Attn: Ellen Sebastian
Fax: (907) 586-7557

Re: NOAA-NMFS-2014-0150

Dear Mr. Merrill:

Thank you for the opportunity to comment on the proposal to implement a new management program for Gulf of Alaska (GOA) groundfish fisheries. I submit the following comments on behalf of The Boat Company (TBC). TBC is a tax exempt, charitable, education foundation with a long history of operating in southeast Alaska. TBC conducts multi-day conservation and wilderness tours in southeast Alaska aboard its two larger vessels, the 145' M/V Liseron and the 157' M/V Mist Cove. TBC's clients fish for halibut and Chinook salmon populations affected by trawl bycatch in the Gulf of Alaska (GOA). Additionally, TBC's charitable programs support southeast Alaska communities that depend on access to Chinook salmon and halibut for commercial and guided sport fishing, unguided sport fishing and subsistence.

The Notice of Intent (NOI) includes the worthy goals and objectives of reducing and avoiding the waste of Chinook and halibut taken as prohibited species catch (PSC). Alaska's fishery resources, including those taken as PSC, are a public trust resource and a new management regime will have consequences for every port along the Alaska coast and adjacent fisheries. Bycatch control measures will affect coastal community residents for decades and the adequacy of control measures to a large extent will determine whether conservation, recreation, targeted commercial and subsistence interests will continue to have adequate access to public marine resources affected by bycatch in the federal groundfish fisheries.

As explained in the following comments, TBC urges NMFS to prepare a DEIS that fully considers the broader interests of non-trawl users of fishery resources, including recreational, commercial, subsistence and conservation interests in bycatch reduction. The need to minimize adverse impacts on sectors and areas not included in the program is a significant issue and should be an explicit and driving component of the purpose and need for a new management regime for GOA groundfish fisheries. It is not appropriate to proceed with a program to privatize public fishery resources, even on a temporary basis, unless it includes significant and meaningful conservation benefits, including significant PSC limit reductions, effective incentives for gear conversion and spatial and temporal measures to address halibut PSC in the flatfish trawl fisheries and Chinook PSC in the pollock trawl fisheries.

Introduction: The range of alternatives needs to include a broader range of PSC limit reductions

The NOI requested comments to assist in determining the appropriate range of management alternatives for the EIS. [80 Fed. Reg. 40988]. The NOI's description of Alternative 2 mentions "PSC species to be allocated" but does not address how PSC will actually be reduced. TBC submits that the DEIS needs to include alternatives that provide for significant PSC limit reductions in order to reflect significant resource uncertainties and to address the ongoing inequity caused by placing the conservation burden primarily on directed fishery user groups. A reasonable range of alternatives should include options well beyond those approved in the Council's October 2014 motion, which proposes to reduce halibut PSC by 10% (1,364 mt), 15% (1,288 mt), or even not at all (maintaining the 1,515 mt limit implemented by Amendment 95), and reduce the Chinook salmon PSC limit of 25,000 by 25% (18,750), or possibly not even at all. [40 C.F.R. § 1501.14].

The existing halibut and Chinook PSC limits reflect outdated programmatic analyses that preceded the recent population declines, and assumed that PSC species were either stable, or that groundfish fishery impacts to them were insignificant. [NMFS. 2004 at 2-54, 4.7-164, 4.9-163, 4.9-171 (Groundfish PSEIS); NMFS. 2007 at 7-5 – 7-15, 12-29 (Harvest Specifications EIS)]. The changed condition of the halibut and Chinook stocks warrants the development of a more precautionary approach. For example, the Amendment 95 EA identified significant environmental changes and resource depletion, as well as significant uncertainties regarding the impacts of PSC on the halibut resource related to the high level of juvenile halibut mortality in the trawl fisheries and depressed halibut growth rate. [NMFS 2012 at 25, 80 – 81 (Amendment 95 EA/RIR/IRFA)]. Similarly, data showed significant declines in Chinook productivity, abundance and harvest throughout the state that first became evident in 2007 and eventually became a federal fisheries disaster in 2012.¹ TBC believes that NMFS needs to respond to declines in PSC species with a more highly precautionary approach via PSC limit reductions of 50% which could later be modified as additional scientific information becomes available. [NMFS. 2004 at 2-57, 4.8-158].

SIGNIFICANT ISSUES

The DEIS needs to consider equity among fishery resource users as a significant issue²

One of the main components of the GOA bycatch management program will involve allocating halibut and Chinook PSC. TBC requests that you consider equity among halibut resource users as an alternative driving, significant issue in the DEIS . Over the past decade, the combined catch limit for directed commercial fisheries in the GOA (Areas 2C, 3A and 3B) declined from 46.7 million pounds in 2006 to 17 million pounds in 2015 – a reduction of roughly 64%. The 2014 guided sport halibut allocation under the Pacific halibut Catch Sharing Plan (CSP) was less than half of the 3A Guideline Harvest Level in 2011. Area 2C guided sport allocations have also dropped by nearly 50% since 2007. While the resource finally may have stabilized at near historically low harvest levels, the low abundance

¹ ADF & G Chinook Research Team. 2013. Chinook salmon stock assessment and research plan. ADF & G Special Pub. No. 13-01: Anchorage, Alaska.

² Data sources for this section are Tables 2.6A-G in the 2015 IPHC Annual Meeting Briefing Book and NMFS Final Rules implementing the Pacific halibut Catch Sharing Plan for Areas 2C & 3A.

trend is likely to continue in the near future.³ Yet during this period of substantial declines in abundance and directed fishery harvests, NMFS has reduced the halibut PSC limits for the GOA groundfish fisheries by a mere 15%. [78 Fed. Reg. at 53419-20].⁴

In 2013, NMFS and the Council addressed a similar scenario – the problem of a fixed limit for a declining resource - in the Pacific halibut Catch Sharing Plan for Guided Sport and Commercial Fisheries in Areas 2C and 3A. The commercial halibut fisheries experienced larger poundage and proportional reductions relative to the charter fishery as the Total Constant Exploitable Yield (TCEY) declined because the commercial quota declined along with halibut abundance, but charter fishery allocations were not directly tied to fishery abundance. [78 Fed. Reg. 75844-75845]. NMFS noted that as the resource declined, the commercial share of the TCEY declined by more than 15% in Areas 2C and 3A, while the charter sector increased its share by 1.6% in Area 2C and 3.1% in Area 3A. [*Id.* at 73583]. According to NMFS, that allocation system caused negative economic impacts to the commercial sector from reduced catch limits. [*Id.*].

Halibut PSC limits in the GOA also have no direct relationship to fishery abundance, causing an adverse economic impact to directed fisheries. Indeed, halibut PSC has a much more significant impact on resource availability to other halibut users – both proportionally and in terms of overall volume. From 2006 – 2010, the Area 3A and 3B TCEY began to decrease slightly per year, but averaged over 40 million pounds. The all-gear PSC limit was 3.8 million pounds - always less than 10% of the TCEY during that time period. But beginning in 2011, the TCEY began to decline substantially, dropping nearly in half to 21.3 million pounds by 2013. The amount of the TCEY allocated to the PSC limit nearly doubled over a three year period – to 17.8%. In 2014, the TCEY declined yet again, to 15.9 million pounds. The 3.5 million pound PSC limit in 2014 under the staggered “reduction” implemented by Amendment 95 was the highest allocation of the resource yet to the groundfish fisheries - 22% of the TCEY.

TBC believes that the additional and maximum 15% halibut PSC limit reduction in Council’s October 2014 motion is inadequate to address the inequity between resource users. Unless there is an unanticipated sudden recovery of the resource, the Council’s motion will give more fish to PSC users, causing further economic harm to commercial and guided sport halibut fisheries. TBC thus requests the DEIS consider adverse impacts to Alaska’s halibut fishermen under the bycatch management program as a significant issue and recognize that alternatives currently under consideration are not adequate to reduce those impacts.

 **The DEIS needs to provide a full economic analysis of impacts to directed fisheries and halibut dependent communities**

The DEIS needs to comprehensively evaluate the adverse economic impacts of PSC to communities that depend on the halibut resource for commercial and recreational fishing. Sitka and Homer, for example, each have substantial numbers of IFQ holders and charter halibut permittees. Alternatives that fail to adequately limit trawl PSC, particularly over the long-term, may impede the recovery of fishery resources and add to existing economic losses in the commercial sector and perpetuate or exacerbate the current restrictive daily bag and size limits imposed on the charter sector. The DEIS should provide information on how

³ Stewart, I. J. & S. Martell. 2015. Assessment of the Pacific halibut stock at the end of 2014. Pp. 121-140

⁴ Fisheries of the Exclusive Economic Zone Off Alaska; Amendment 95 to the Fishery Management Plan for Groundfish, 78 Fed. Reg. 53419 at 53420. (August 29, 2013).

different charter management measures and IFQ quota reductions have affected GOA communities that share substantial dependence on the halibut resource. In particular, the DEIS needs to update and improve previous methodologies for measuring impacts to directed fishery users. The Amendment 95 EA, for example, underestimated economic impacts to directed commercial fisheries by using outdated pricing information and by excluding the long-term value of reduced juvenile halibut mortality from its quantitative analysis.⁵

There is also a critical need to utilize and/or develop a methodology that provides a reasonable evaluation of economic impacts to recreational fisheries.⁶ The 2013 analysis for the Halibut Catch Share Plan indicated that NMFS lacked updated information on charter sector costs, consumer demand and angler willingness to pay, thus limiting your ability to assess the economic impacts of shifts in utilization of the halibut resource.⁷ The Amendment 95 EA used an average daily client cost metric that underestimated economic impacts in part because it utilized outdated and minimum client day values - the average value of a charter caught halibut was approximately \$136 per fish – an absurdly low estimate.

But at the same time, NMFS and the NPFMC have contracted repeatedly with Northern Economics to develop models that provide worst case economic scenarios for the groundfish fisheries. In other words, the inability to fully evaluate directed fishery losses is a problem of priority rather than impossibility. The DEIS should consider and utilize multi-use fisheries models that are available.⁸ The guided saltwater sport fisheries make critical economic contributions to coastal communities throughout the Gulf of Alaska through direct spending on charter fishing trips and through additional visitor expenditures.⁹ Several studies have explored the relationship between bag limits, angler decisions and economic outputs and determined that a bag limit reduction of one halibut resulted in an angler expenditure reduction of \$13.5 million.¹⁰ These foregone revenues have a real impact in coastal communities that are dependent on economic activity associated with recreational saltwater angling. A more regionalized model therefore needs to be developed to analyze local effects. [*Id.*]. NEPA requires NMFS to make this effort to develop the information needed to assess adverse economic impacts to guided sport fisheries. [40 C.F.R. § 1502.22].

⁵ Specifically, the Amendment 95 EA used wholesale values from 2003 – 2010 to quantitatively measure impacts even though those wholesale values similar to or lower than the ex-vessel value at the time of the analysis (depending on the port of delivery).

⁶ See Plummer, M.L., W. Morrison and E. Steiner. 2012. Allocation of fishery harvests under the Magnuson-Stevens Fishery Conservation and Management Act: Principles and practice at 8. U.S. Dept. of Commer., NOAA Tech. Memo. NMFS-NWFSC-115, 84 pp.

⁷ NPFMC. 2013. Regulatory Amendment for a Pacific Halibut Catch Sharing Plan for the Charter Sector and Commercial Setline Sector in International Pacific Halibut Commission Regulatory Area 2C and Area 3A, Draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis. Anchorage, AK: June 2013.

⁸ See, e.g. Criddle, K. et al. 2002. Property Rights and the Management of Multiple-Use Fisheries Working Paper 2002-04. Utah State University Economics Research Institute Study Papers, Paper 36.

⁹ See Fay, G. et al. 2007. Testing a Methodology for Estimating the Economic Significance of Saltwater Charter Fishing in Southeast Alaska at 8. Institute of Social and Economic Research, University of Alaska Anchorage: May 2007 (finding that the gross saltwater charter fishing revenue in southeast Alaska in 2005 was \$73.5 million – or equal to the wholesale value generated by the GOA trawl catcher fleet in 2009 (Amendment 95 EA at 179)); Criddle, K. et al. 2003. Participation Decisions, Angler Welfare and the Regional Impact of Sportfishing. Marine Resource Economics, Vol. 188, pp. 291-312 (finding that visitors spent an additional \$16 million in the Cook Inlet area beyond the client day costs of halibut and salmon sport fishing trips).

¹⁰ *Id.*; Lew, D.K. & C. K. Seong. 2010. The economic impact of saltwater sport fishing harvest restrictions in Alaska: an empirical analysis of non-resident anglers. In: N. Am. Journal of Fisheries Management 30: pp. 538-551.

 **The DEIS needs to address halibut PSC in the Flatfish Fisheries**

TBC requests that NMFS consider halibut PSC in the trawl flatfish fisheries as a significant issue for in-depth analysis in the DEIS. [40 C.F.R. §§ 1501.7(a); 1508.25]. Over the past six years, all GOA trawl fisheries have accounted for between 75% and 87% of the total GOA halibut PSC and the flatfish fisheries have taken more than half of the trawl PSC each of these years.¹¹ In 2011 and 2014 the arrowtooth flounder fishery alone took over a million pounds of halibut – more than half of the total GOA trawl halibut PSC:

TABLE: Halibut PSC in GOA Flatfish Fisheries (thousands of pounds, net weight)¹²

	Arrowtooth Flounder	Flathead Sole	Rex Sole	Shallow Water Flats	Total GOA Flatfish Fisheries
2009	286	44	267	788	1,385
2010	674	203	403	714	1,994
2011	1,225	99	182	401	1,907
2012	591	123	78	258	1,050
2013	478	47	246	228	999
2014	1,145	4	91	259	1,499

Notably, the 2010 and 2011 combined ex-vessel value of the halibut taken as PSC (3.9 million pounds) in the trawl flatfish fisheries would have been generated \$21.5 million had those fish been harvested in the IFQ fisheries and delivered to GOA processors.¹³ In contrast, the total ex-vessel value of the flatfish fisheries in 2010 and 2011 was \$14.5 million – roughly 2/3 of the value of the halibut wasted as PSC.¹⁴ TBC believes that the DEIS needs to consider more narrowly tailored management measures such as area closures as authorized by the GOA FMP to reduce PSC in these fisheries. Finally, the cost-benefit analysis in the DEIS needs to clearly address the value of halibut taken in these fisheries in way that allows for meaningful consideration of the trade-offs between alternatives. [40 C.F.R. § 1502.24].

¹¹ Williams, G. 2015. Incidental catch and mortality of Pacific Halibut. Int. Pac. Halibut Comm. Report and Research Activities 2014. Pp. 313-336; Williams, G. 2015. Incidental catch and mortality of Pacific Halibut. Int. Pac. Halibut Comm. Report and Research Activities 2014. Pp. 313-336; Williams, G. 2014. Incidental catch and mortality of Pacific Halibut. Int. Pac. Halibut Comm. Report and Research Activities 2013. Pp. 289-310.; Williams, G. 2013. Incidental catch and mortality of Pacific Halibut. Int. Pac. Halibut Comm. Report and Research Activities 2012. Pp. 315-336; Williams, G. 2012. Incidental catch and mortality of Pacific Halibut. Int. Pac. Halibut Comm. Report and Research Activities 2011. Pp. 381-396; Williams, G. 2011. Incidental catch and mortality of Pacific Halibut. Int. Pac. Halibut Comm. Report and Research Activities 2010. Pp. 281-298; Williams, G. 2010. Incidental catch and mortality of Pacific Halibut. Int. Pac. Halibut Comm. Report and Research Activities 2009. Pp. 389-404.

¹² Data Source: *see id.*

¹³ Fissel, B. et al. 2014. Stock Assessment and Fishery Evaluation Report for the Groundfish Fisheries of the Gulf of Alaska and Bering Sea/Aleutian Islands Area; Economic Status of the Groundfish Fisheries of Alaska 2013. Seattle, WA: November 2014. Table H54A (halibut ex-vessel prices used to calculate value of PSC). (November 2014 Council Draft).

¹⁴ *Id.* at Table 19.

Gear Conversion and Spatial Management Alternatives

The NOI states that the EIS will consider “alternative ways ... to manage bycatch species.” [80 Fed. Reg. at 40990]. TBC supports the Council’s October 2014 decision to allow using pot gear to fish trawl Pacific cod quota and requests that the DEIS provide a comprehensive analysis of ways to further incentivize gear conversion in order to create conservation benefits across the Gulf of Alaska and beyond through a shift to gear types with lower bycatch levels and mortality rates and greatly reduced habitat impacts. The 2004 PSEIS provided for a broad range of practicable management tools to encourage the use of more selective harvesting methods, such as closing areas to trawl gear. [See, e.g. NMFS 2004 at 2-54 - 2-60].

Incentivizing PSC reduction through gear conversion should be a critical component of the bycatch management program. The halibut PSC rate in the Bering Sea Aleutian Islands (BSAI) trawl cod fisheries has generally been double the rate in the BSAI longline fisheries.¹⁵ Also, the longline fisheries consistently generate twice as much economic value relative to their take of halibut PSC. [*Id.* at 29, Table 15]. The cod pot fishery has a “very low” bycatch rate which is “generally at least an order of magnitude lower than any of the other sectors.” [*Id.* at 25]. As a result, the pot fishery generates “extremely high” economic value per unit of halibut take relative to other gear types. [*Id.* at 26]. Notably, the GOA halibut PSC rate in the trawl cod fisheries is considerably higher than the BSAI PSC rate. [Fissel, B. et al. 2013, Tables 14, 15].

The DEIS should include a section reviewing the effectiveness of catch share programs in terms of realizing ecological and socio-economic benefits

TBC requests that the DEIS review the relationship between catch share programs for target species and broader conservation benefits. In the past few years, more than 30 published articles have addressed the socio-economic and environmental effects of catch share programs in a way that would help to inform the analysis in the DEIS.¹⁶ Target species catch share programs are not bycatch reduction measures by themselves but rather primarily aim towards improving the economics of target fishery harvests.¹⁷ Catch share proponents characterize privatization as an incentive for resource stewardship.¹⁸ But this incentive does not necessarily extend to the larger ecosystem; it addresses fishery practices in order to maintain consistent and predictable harvests.¹⁹ If PSC allocations are not reduced relative to the status quo, the program may achieve more economic utilization of

¹⁵ Northern Economics. 2014. A quantitative examination of halibut mortality in BSAI Groundfish fisheries. P. 24, Table 14.

¹⁶ See, e.g. http://www.seaweb.org/science/MSRnewsletters/MSR_FA_FisheriesManagement_4-2013.php

¹⁷ See e.g. Hannesson, R. Norway’s Experience with ITQs. *Marine Policy* 38: 45-53, 2013; Rieser, A., Watling, L. and Guinotte, J. Trawl fisheries, catch shares and the protection of benthic marine ecosystems: Has ownership generated incentives for seafloor stewardship? *Marine Policy* 40: 75-83, 2013; Emery, T.J., Green, B.S., Gardner, C. and Tisdell, J. Are input controls required in individual transferable quota fisheries to address ecosystem based fisheries management objectives? *Marine Policy* 36(1): 122-131, 2012; Nowlis, J. and Van Benthem, A.A. Do property rights lead to sustainable catch increases? *Marine Resource Economics* 27(1): 89-105 (2012).

¹⁸ Nowlis, J. and Van Benthem, A.A. 2012.

¹⁹ Rieser, A., Watling, L., and Guinotte, J. Trawl fisheries, catch shares and the protection of benthic marine ecosystems: Has ownership generated incentives for seafloor stewardship? *Marine Policy* 40: 75-83, 2013.

PSC species and even reduce PSC rates yet fail to achieve any meaningful reduction in the amount of PSC mortality.

The relationship between privatization and conservation is frequently assumed, but the scientific literature does not document a clear relationship, warranting caution “before broad generalizations about ITQs and resource outcomes are made.”²⁰ Two recent reviews of catch share system trends indicated that a more plausible hypothesis is that other components of the new programs – particularly improved catch monitoring and reporting – are the key to achieving conservation benefits.²¹ Also, management measures that regulate fisheries in terms of the timing and location of bycatch are more important than economic efficiency measures.²²

The amount of additional management control needed to achieve ecosystem objectives in catch share fisheries can vary by fishery, and non-selective fishing methods require more intensive spatial and temporal management because of habitat effects and non-target species interactions.²³ According to a 2012 review of catch share systems and ecosystem effects, “[i]ndustrial scale fishing methods and oversized and heavy fishing gear can result in high levels of mortality to pelagic marine life caught in or encountering the fishing gear, as well as extensive damage to the seafloor environment” and “[m]arket based instruments such as catch share arrangements are not designed to address these ecological costs.”²⁴ Thus, “[e]cological losses ... are not diminished unless additional regulations are imposed upon the owners of the fishing quotas.”²⁵

In other words, the DEIS should address the uncertainty surrounding the ability of catch share programs by themselves in achieving ecological objectives, and evaluate the role of other management components in ensuring that the bycatch management program is also a bycatch reduction program. TBC believes that an allocation of PSC species as proposed in the action alternatives may have some merit relative to the status quo, but only if those allocations reflect a meaningful reduction in PSC limits and are accompanied by additional management measures.

Sincerely,

Paul Olson

²⁰ Carothers, C., and Chambers, C. Fisheries privatization and the remaking of fishery systems. *Environment and Society* 3: 39-59, 2012 (explaining that catch share proponents overlook how the conservation goal is created by limits on overall harvests, which exist independently of ITQs, which simply divide up the overall harvest among individuals, and thus, where there is a conservation benefit, it results from the presence of a total quota than the division of that quota into shares).

²¹ Essington, T.C., Melnychuk, M.C., Branch, T.A., Heppell, S.S., Jensen, O.P. Link, J.S., Martel, S.J.D., Parma, A.M., Pope, J.G., and Smith, A.D.M. Catch shares, fisheries and ecological stewardship: a comparative analysis of resource responses to a rights-based policy instrument. *Conservation Letters* 5(3): 186-195 (2012); Nowlis, J. et al. 2012.

²² Emery, T.J. et al. 2012.

²³ *Id.*

²⁴ Rieser, A. et al 2012.

²⁵ *Id.*



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8/26/2015

Glenn Merrill

Assistant Regional Administrator for Sustainable Fisheries NMFS, Alaska Region
NOAA–NMFS–2014–0150

Re: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for any Gulf of Alaska (GOA) trawl bycatch management program

AWTA supports Alternative 2 from the October 12th, 2014 North Pacific Fisheries Management Council's GOA Trawl Bycatch Motion.

If additional elements and options are considered for inclusion in the Gulf of Alaska Trawl Bycatch package, Alternative 2 in the existing council motion must remain as the analysis is developed

AWTA members feel that the following measures are especially important:

Cooperative Style Management Program - We have experience with the Central Gulf of Alaska Rockfish fishery and the Bering Sea AFA Pollock fishery which are cooperative style programs both of which have proven to be very successful.

Allocation of Primary and Secondary species - It is very important to stop the race-for-fish in the GOA. This will allow time for the fisheries to be prosecuted more thoughtfully and carefully. Allocating target (Pollock and Pacific Cod) and some secondary species in a CO-OP style management program will accomplish this goal.

Allocation of PSC – Allocation of Halibut and Chinook salmon PSC pro-rate based on groundfish harvests will insure individual accountability and reduce the likelihood that poor PSC performance by one vessel will adversely impact other vessels with good PSC performance.

- Halibut There should be no additional Halibut PSC reduction. The trawl fleet is already subject to Halibut PSC reductions from a previous NPFMC action. Pollock quotas are at historical highs now and the fleet spends the majority of its effort catching them. As the abundance of Pollock cycles back down in the future Pacific Cod and flatfish target fisheries will increase and having adequate Halibut PSC available is necessary
- Chinook salmon - The analysis should look at allocating additional Chinook salmon PSC to the trawl fisheries in the GOA and consider the ESA limit of

40,000 Chinook as the upper bounds instead of the current 32,500 Chinook. Genetic analysis is showing that bycaught Chinook salmon in the GOA are coming from hatcheries and Alaskan river systems of concern are not being impacted. Hatcheries continue to release hundreds of millions of Chinook every year and more, small hatchery fish are being seen on the fishing grounds. Environmental conditions are resulting in increased survival rates and presently we are already seeing increasing returns of Chinook to Alaskan river systems.

Allocation to historic, dependent stakeholders – Access privileges should be granted to harvesters that demonstrate long term involvement and dependence on the GOA trawl fisheries.

AWTA members **do not** support Community Fishing Associations (CFA). We are concerned by the additional regulatory burden and inevitable costs associated with having another government regulatory authority involved in fisheries management.

The Alaska Whitefish Trawlers Association (AWTA) is located in Kodiak, Alaska, and has been in existence for over 40 years. A not-for-profit industry trade association, AWTA represents 22 trawl vessels that are independent family-owned businesses. AWTA members harvest pollock, cod and other groundfish in the Gulf of Alaska, as well as the Bering Sea and off the West Coast. AWTA vessels contribute to the economies in the state of Alaska as well as Washington and Oregon and fishery management issues that occur within the North Pacific Fishery Management Council (NPFMC) directly affect AWTA businesses.

The trawl groundfish industry in the Gulf of Alaska has been fully engaged in the Council process and has been asking for a new fisheries management structure for over 14 years. In 2001 congress directed the North Pacific Fishery Management Council to examine fisheries under its jurisdiction to determine whether rationalization is needed—

“The North Pacific Fishery Management Council shall examine the fisheries under its jurisdiction, particularly the Gulf of Alaska groundfish and Bering Sea crab fisheries, to determine whether rationalization is needed. In particular, the North Pacific Council shall analyze individual fishing quotas, processor quotas, cooperatives, and quotas held by communities. The analysis should include an economic analysis of the impact of all options on communities and processors as well as the fishing fleets. The North Pacific Council shall present its analysis to the appropriations and authorizing committees of the Senate and House of Representatives in a timely manner.”

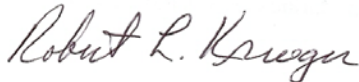
The Council did create a new management program for the Bering Sea Crab fishery but has not complied with the congressional direction for the Gulf of Alaska. The groundfish trawl fisheries in the Gulf of Alaska remain one of the last major fisheries in Alaska that is still operates under an antiquated management style. The needs for a comprehensive new management program have time and time again been side-tracked due to political maneuvering rather than concern for the GOA groundfish resources and the stakeholders that are dependent on them. Good progress

on a new management program was being made until Sarah Palin was elected governor in 2006 when her administration stopped further work on this program. After a number of years progress was again being made until recently Bill Walker was elected governor and again the administration has sought to stop moving forward on a new management program. These decisions were made without regard to the impacts on the resource and dependent stakeholders. It is critically important that the new trawl bycatch management program in the Gulf of Alaska stop being subjected to the political whims that result from changes in administration and actually move forward for development and implementation.

It is assumed that the trawl sector in the Gulf of Alaska can continue to operate successfully under the current management structure but the industry is being set up to fail. The recent May 3 closure of the non-Pollock, non-Rockfish fisheries due to the Chinook salmon hard cap being exceeded is a dramatic example of what the industry will likely see in the future.

This rationalization plan was promised to participants as a way to provide the necessary tools and incentives to harvest healthy target species while significantly reducing bycatch of salmon and halibut by ending the race for fish. The fleet is in the untenable situation of meeting the burden of reduced bycatch allowances and facing the increased costs of avoiding that bycatch without any of the tools that can help us achieve that goal and keep expenses in check. As requirements to significantly reduce bycatch in other areas continue to be implemented, particularly in the Bering Sea, we will see increased and unsustainable fishing pressure occur in the unprotected Gulf of Alaska which only exacerbates the underlying race for fish and its associated problems.

Sincerely,

A handwritten signature in cursive script that reads "Robert L. Krueger".

Robert L. Krueger, Executive Director
Alaska Whitefish Trawlers Association

August 27, 2015

Glenn Merrill
Assistant Regional Administrator for Sustainable Fisheries
NMFS Alaska Region

Re: NOAA-NMFS-2014-0150

Dear Mr. Merrill,

With my brother, I own and operate a trawler based in Sand Point. Over the last 25 years, cod and pollock have contributed to over half of our annual income.

The current "race for fish" structure is not compatible with the by-catch limits which are in place for salmon and halibut. Co-ops are the tool that is needed to reduce by-catch. That is the primary reason I support catch share plan, alternate 2. Also, this plan is history based, which will reward investments of time, money, and effort.

Linking catch history to specific processors will support local communities. I strongly oppose Alternative 3, community shares. I can imagine nothing more destabilizing to the industry than having a quota controlled by communities.

Sincerely,

Robert Puratich
FV Marauder

Page Count: 0

Submitter Info

Comment:

Dear Mr. Merrill Thank you for the opportunity to submit scoping comments on the proposed bycatch management program in the Gulf of Alaska ("GOA"). As an Alaskan that cares about the health of our fisheries and is adversely affected by declines in Chinook salmon and halibut populations in the GOA, I recognize the importance of bycatch reduction in the GOA trawl groundfish fisheries. The North Pacific Fishery Management Council ("Council") initiated the proposed GOA bycatch management program specifically to reduce bycatch. Bycatch in the GOA has a significant impact on the communities of Alaska that depend on Chinook salmon and halibut fisheries. For example, over the past decade, commercial halibut catch limits in the GOA have been reduced 73%, and halibut charter bag limits have been reduced in Southeast and Southcentral Alaska. Similarly, Chinook salmon returns throughout Alaska have been poor, resulting in economic and social disruption to the individuals, businesses, and communities that are dependent on the fishery. The negative impacts of bycatch have not been distributed evenly: the Council has not reduced trawl bycatch by nearly the same level as the directed salmon and halibut fisheries have been affected. To rebuild stocks everyone must do their part to support conservation. Moving forward, the Council's bycatch management program must achieve additional bycatch reductions beyond existing levels. Importantly, catch share programs, such as those being considered in the range of alternatives, do not guarantee bycatch reduction; rather, bycatch reduction must be included as key part of the program design. Thus, in order to meaningfully evaluate both the potential impacts of the bycatch management program, and a reasonable range of alternatives, bycatch reductions beyond the status quo must represent the core component of the proposed action. The time is now to take meaningful action to reduce bycatch in the Gulf of Alaska. Thank you again for the opportunity to comment on this important issue. Sincerely,
Sarah Brooks

First Name: Sarah

Middle Name:

Last Name: Brooks

Mailing Address:

Mailing Address 2:

City:

Country: United States

State or Province:

ZIP/Postal Code:

Email Address:

Comment by Stephen Mallison

My name is Stephen Mallinson and I am writing to you in regards to the rationalization of the Gulf of Alaska trawl fisheries. I have been a trawl skipper for several decades. I started fishing here in Kodiak, Alaska in 1979 and have fished from San Francisco to ST. Paul. Over the years I've seen all sorts of attempts to manage fish stocks and none of them have been successful, they try surveys, observers, raise and lower quotas the list goes on. The truth is that no one can really predict with 100% accuracy what is going on in our oceans. All I know is what goes on around me, the longer I fish the more I realize the ocean is a complex place that continues to change. I see people comment on trawling but they have limited knowledge of the reality, i.e. we are destroying the oceans eco system, yet i return year after year to the same grounds and i am still catching fish. No fishery is perfect yet some would have you believe otherwise. The issues of by-catch has been front and center in our fishery, we have attempted to work together to reduce this problem but is it really a problem or the politics of fishing. Rather than by -catch why is it not My-catch, I caught them why shouldn't i be allowed to keep and sell them. Someone long ago decided that trawling for halibut or salmon shouldn't be allowed, why? Fish share the ocean and don't live in segregated areas, i don't target these fish but I do catch them, with the use of modified gear these incidents are being reduced but they will never be 100% effective. Help me to mitigate these occurrences by giving me the tools to accomplish this end. My career in fishing is coming to an end soon but not for the young men and women that follow like my son and son in-law. Don't be swayed by the other user groups that have their own agendas, everyone has bycatch. Please follow the other areas of the USA that have rationalized fisheries and don't be swayed by the politics of governors, senators, and council members that only speak to get themselves reelected. I therefore support Alternative 2 for the EIS at this time as it seems to support my efforts over the span of my career. Thank you Stephen Mallinson

To: Glenn Merrill Assistant Regional Administrator for Sustainable Fisheries NMFS, Alaska Region
NOAA-NMFS-2014-0150 Re: Notice of Intent to prepare an EIS for any GOA trawl bycatch
management program

My name is Stoian Iankov. I am writing this letter on behalf my wife and our son Stefan Iankov who lives in Kodiak and is the captain and part owner of the vessel Michelle Renee. In addition to the captain we employ 3 to 4 crewmen. The vessel is based in Kodiak, AK. and is dependent on the GOA trawl fisheries. Pollock, P Cod, Rock fish and Sole fish. Throughout the years we have seen the change of management in the Bering Sea fisheries, Rock Fish in the GOA and recently off the West Coast (Washington, Oregon & California) to Catch Shares. Allocating the target species and bycatch. These programs have been great SUCCESS STORIES for everyone to see. Our vessel is involved in the GOA rock fish Catch Share program. Right away we experienced a reduction in halibut bycatch and the fishery also answers the concerns in the National Standard Guidelines. I do not know of any other way to manage a trawl fishery then through a CO-OP. The GOA trawl fisheries are under tremendous scrutiny from NPFMC. Reducing bycatch without a CO-OP style Catch Share program constrains our ability to produce and deliver fish to the communities that we so much want to protect. Like we saw this last spring, with the closure of the non-pollock, non-rockfish fisheries due to a very low Chinook salmon cap. We also have reduced halibut PSC cap. The impact of this action we will not know until the Pollock TACs start going down and the GOA dependent vessels have to rely on P Cod and Sole fish to make up for revenue. We support Alternative 2 from October 12th. 2014 Council's GOA Trawl Bycatch Motion. By allocating target species, some secondary and PSC species in a CO-OP style management, all concerns from the Communities will be addressed. We will see Sustainable Fisheries and Healthy Communities. We DO NOT support CFAs. Another bureaucracy will only add to the cost of doing business. IBQ will not solve anything. The race for fish will still remain. Lets model the GOA trawl fisheries on a proven program and save the GOA dependent vessels. In addition , there is a mandate from Congress. "Congress has recognized the importance of rationalization for the Gulf of Alaska ground fish fisheries. As part of the Consolidated Appropriations Act of 2001 (Public Law 106-554)" "The North Pacific Fishery Management Council shall examine the fisheries under its jurisdiction, particularly the Gulf of Alaska ground fish and Bering Sea crab fisheries, to determine whether rationalization is needed. In particular, the North Pacific Council shall analyze individual fishing quotas, processor quotas, cooperatives, and quotas held by communities. The analysis should include an economic analysis of the impact of all options on communities and processors as well as the fishing fleets. The North Pacific Council shall present its analysis to the appropriations and authorizing committees of the Senate and House of Representatives in a timely manner." Sincerely Stoian Iankov

August 14, 2015

Mr. Glenn Merrill
Assistant Regional Administrator
Sustainable Fisheries Division, Alaska Region, NMFS
P.O. Box 21668,
Juneau, AK 99802-1668.

Attn: Ellen Sebastian

Subject: Comment on Draft “Fisheries of the Exclusive Economic Zone off Alaska; Groundfish Fisheries in the Gulf of Alaska (NOAA–NMFS–2014–0150, billing code: 3510–22–P)”

Dear Sir or Madam,

Thank you for your time and consideration of our comments on the management program for trawl groundfish fisheries in the Gulf of Alaska (GOA). We, the authors of this letter, are five marine (social and natural) scientists currently working for different American research institutions. This letter, however, is written from our personal perspectives, as individuals and seafood consumers interested in the value and protection of the groundfish fishery. The goal of the National Marine Fisheries Service (NMFS) and the North Pacific Fishery Management Council (hereafter “The Council”) in developing a new management plan for GOA Groundfish is to enhance the status of the marine ecosystem and the economic development of the region. With the wish of contributing to this relevant goal, and given our knowledge about the functioning of social-ecological systems like fisheries, we find ourselves obligated to transfer to you our thoughts about the proposed plan.

Despite the groundfish fishery is currently considered well-managed and sustainable (North Pacific Fishery Management Council 2015), the bycatch rates are outrageously high and they

must be reduced (National Standard 9 in Magnuson-Stevens Fishery Conservation and Management Act). Bycatch directly impacts on the ecosystem status and the economy of the fishing communities, as well as it creates conflicts between fleets because it includes the target species of other fisheries in the area, such as halibut or Chinook salmon. Additionally, bycatch makes the fishery inefficient since the trawlers often fish the prohibited species catch (PSC) before achieving the total allowable catch (TAC). Consequently the fishery is closed despite the groundfish stock being underexploited.

In order to address the bycatch problem, the proposed rule, for which comments were solicited, includes three alternatives. 1) No action; 2) Allocate exclusive harvest privileges to participants who join a cooperative; 3) Allocate exclusive harvest privileges to participants who join a cooperative and either a Community Fishing Association or an Adaptive Management Program.

We strongly support either Alternative 2 or 3 over Alternative 1, since there is evidence that the implementation of catch share programs leads to reduced by-catch rate and interannual variability in landings and exploitation rate, making fisheries more predictable (Essington 2010). However, we are unable to select between Alternatives 2 and 3 because key information to understand what option is more practicable and fair is missing from the bill. In this regard, the rights and responsibilities of the members of a community fishing association or a cooperative, the economic cost to join them, as well as the responsibilities of the fishermen participating in an adaptive management program, must be well explained so that stakeholders, the public, NMFS and the Council can analyze the pros and cons of both alternatives.

Additionally, we want to emphasize the Environmental Impact Statement (EIS) should assess not only the impact of the new management program on the biophysical system, but also on the fishing communities. Although it is not specified in this proposal, a Social Impact Assessment should be undertaken as part of the EIS process required under the National Environmental Policy Act (NEPA; 42 U.S.C. § 4321) in order to understand how these alternatives would impact the social system (as required by law under the Magnuson-Stevens Fishery Conservation and Management Act [sec.303]). In addition, climate change and other external factors can influence the outcomes of these alternatives, so they should be addressed in the EIS as well.

Opposition to Alternative 1

We oppose Alternative 1 because it supports a derby fishery, a fishery of brief duration where fishermen race to catch as much fish as they can before the fishery closes. Derby fisheries have been used globally, but in recent years, many fisheries have been converting from derby fisheries to an allocated quota, such as an Individual Fishing Quota (IFQ) system (National Research Council 1999). While derby fisheries allow many fishermen to simultaneously participate, they can create problems based on the common property nature of the fishery resource, such as when a given resource is accessible to multiple users, the result is a free-for-all competition for the greatest share of the resource to the detriment of themselves, the resource, and society as a whole (Ciriacy-Wantrup). Because an allocated quota system promotes safer working conditions for fishermen, is preferred by fishermen, and reduces bycatch we support Alternative 2 or 3, which eliminates the derby fishery. We oppose Alternative 1, the status quo.

Derby fisheries promote more dangerous working conditions for fisherman, as there is reward for working in risky and adverse conditions, promoted by the “race to fish” (Deweese 1998). Switching to an allocated quota system, either Alternative 2 or 3, would secure each vessel’s share of the groundfish and eliminate the need to work in adverse, dangerous conditions. Furthermore, allocated quota systems are supported by fishermen. An extensive survey conducted of GOA fisherman concluded that the perceived positive impacts of eliminating derby fishery include: improved safety, improved price, market stability, improved management, consumer benefits, environmental benefits, longer fishing season, and professionalization and stability of the fishing fleet (Carothers 2013). Another study, Anderson et al (2014), conducted a novel, quasi-continuous time experimental environment to explore the effort timing behavior of harvesters managed under common pool (derby) and individual fishing quotas. After experiencing both management systems, subjects choose to be in a group with Individual Fishing Quotas (IFQs) by a 3:1 margin.

A positive environmental outcome of moving away from a derby fishery is reduced bycatch, as fishermen can afford time to strategically fish different areas. The current GOA Groundfish management program aims to improve management of all species caught in the GOA trawl groundfish, even if the total allowable catch limit for that species has not been harvested. Catching legal limits of any bycatch would close down the groundfish

fishery. Already this year an Emergency Rule has been instituted to keep the groundfish fishery open in the face of Chinook salmon bycatch limits being reached earlier than expected. Reducing bycatch by switching to an allocated quota system would be positive for both the environment and the fisherman by promoting longer fishing seasons of the target species.

Key considerations for the EIS

Climate change is and will continue to be a huge challenge for managing natural resources. There is clear evidence that the GOA is experiencing, and will continue to see, changes in ocean temperature and pH that can lead to changes in primary and secondary productivity, with ramifications to target stocks, their essential habitats and ecosystems in which they play an important role (Pinsky et al, 2013, Peterson et al 2015, Mathis et al 2015). Because of this, a precautionary approach to management of fisheries is increasingly important for target and bycatch species, the ecosystems they are a part of and socio-economic considerations.

The long-term sustainability of the GOA Groundfish management plan is dependent upon incorporating climate change contingencies and continuing to build the social and ecological framework for adaptive and dynamic management of these resources (*e.g.* Maxwell et al, 2015). We would like to stress the need for creative, forward thinking, inexpensive, and targeted monitoring methods that will allow the fishery to adapt to environmental changes such as species' range shifts, shifts in species' preferred depths, and changes to community composition, including important species interactions that can influence availability of commercial species, (Pinsky et al, 2013). As the GOA Groundfish fishery is comprised of 141 species (NPFMC 2015), this is particularly important. The currently proposed management plan includes monitoring efforts to specifically ensure that bycatch regulations are met (Goal 10, Section 2.6, Table 13); however, some of these same tools (Observers, Vessel Monitoring Systems, electronic logbooks, and video monitoring) can be and should be used to collect information to develop the tools to adaptively manage the GOA Groundfish fishery. Real-time information sharing from these methods can be employed to directly reduce bycatch and adaptively manage. We would like to see these methods directly addressed in the EIS. We feel that spatially explicit (in three dimensions) fisheries-based monitoring of both physical and biological components is crucial to

reducing bycatch and discards, adapting to changing environmental conditions, and to the continued labeling of this fishery as sustainable (Driscoll, 2014; seafoodwatch.org). Finally, we note that the review process (a five year review, Discussion Paper, Section 10, pp 131), and a continued structure for review and adaptation is key to the continued sustainability of this fishery.

Addressing the Human Environment

We are unable to choose between Alternatives 2 and 3 until a better understanding of the fishing communities' perceptions and potential participation in both a community fishing association and adaptive management plan is reached. Furthermore, it is unclear what the criteria are for establishing an adaptive management plan; this should be explicit when considering management alternatives. We would like to provide the following considerations: (1) Collection of fishing profiles to update current ones (Himes-Cornell, 2011); (2) using profiles to understand perceptions of proposed rule and participation within cooperatives, CFAs, or adaptive management plans; (3) and how these alternatives will lead to changes in participation and impact people.

In order to achieve the Council's operating goals and objectives in addressing the human environment (Discussion Paper, section 1.4, page 6) it is required that a Social Impact Assessment (SIA) be conducted to understand how best to allocate quota and ensure "fair and equitable access privileges" (Goal 4, page 7), "limit consolidation and provide entry opportunities" (Goal 6, page 7), and "promote active participation by owners of harvest vessels and fishing privileges" (Goal 14, page 7) (North Pacific Fishery Management Council, 2014).

Port profiles used to inform SIA have already been completed in Alaska in addition to 136 community short-form profiles (Sepez, J., et al. 2005). To ensure the validity of these data it is important to have social scientists from the Alaska Fisheries Science Center (AFSC) undertake an additional study to document current social trends and changes over time (Abbott-Jamieson and Clay 2010). There are numerous studies conducted by social scientists that indicate the importance of assessing vulnerability of human populations to specific management actions (e.g., Pollnac et al. 2006; Clay and Olson 2008; Johnson, T. et al. 2014). Information regarding current and/or potential participation in cooperatives, community fishing associations, or adaptive

management plans for the GOA Groundfish trawl fishery can be derived from these port profiles and additional social impact analysis. We recognize that sociocultural analysis is equally intensive and costly as stock assessments or economic analyses (Pollnac et al. 2006), which will require substantial investment from NMFS. However, to ensure sustainability of this fishery a thorough assessment is needed.

Many important considerations of impacts on the human environment have been addressed as priorities by the North Pacific Council, one key priority of the Council on the human environment is to support the continued participation of coastal communities that are dependent on the fisheries, which is mandated by National Standard 8 in the MSA (16 U.S.C. §1851(2)(8)). It is imperative that there are mechanisms for new participants to enter the fishery. One of the more recent issues in coastal fisheries, especially along the west coast of North America, is the aging of the fleet, which some social scientists at NOAA are currently addressing (Pollnac et al. 2006; Russell et al. 2014). This issue has been attributed to catch share programs like IFQ management programs becoming too costly to enter the fishery. Alternatives 2 and 3 *may* be potential solutions to address this critical issue, but to evaluate this, we think the EIS should include information about the mechanisms that will address allocation and new participant entry.

We agree with the GOA FMP that data collection via observer coverage is a priority to contribute to data availability and understanding of bycatch distribution. However, it is unclear how observer expenses will be covered. Will the expenses be covered by NMFS, through cooperatives, or by individuals (vessels or otherwise)? How will the GOA fishermen be impacted by different alternatives? This is an issue that needs to be addressed prior to choosing a management alternative and moving forward with implementation of a new FMP that requires 100-200% observer coverage. If industry ceases to cover observer expenses, there are other options that could be considered, such as the use of a NOAA intern program, trained volunteer efforts, and/or the continued and expanded use of electronic reporting and vessel monitoring systems.

Thank you again for the opportunity to comment on this issue. We hope you find our comments helpful to improve the proposed EIS and address the sustainability of this new management program.

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August 28, 2015

Glenn Merrill, Assistant Regional Administrator for Sustainable Fisheries NMFS, Alaska Region
NOAA–NMFS–2014–0150

Re: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for any Gulf of Alaska (GOA) trawl bycatch management program

I am Ted Kishimoto, president of International Seafoods of Alaska, Inc., which operates a full service fish processing plant in Kodiak, Alaska with approximately 350 employees.

Approximately 50% of the whole round fish we purchase come from our trawl fleet. It cannot be overstated that we rely on the GOA trawl Groundfish fisheries. We believe that the present fishery environment does not work. The Council has put restrictions on the trawl industry – new Chinook salmon limits and reduced halibut PSC caps. There is so much uncertainty in the fishery my company is concerned about our business staying profitable. In fact the company posted a net loss in the month of May 2015 because we just did not have enough fish in plant due to the non-pollock non-rockfish program fishery closure on May 3rd when the Chinook cap was reached. This affected our employee's income and Kodiak Island Borough's tax revenues.

We have positive experiences with cooperative fishery management (rockfish, AFA pollock, etc.). The cooperative management works for bycatch management (salmon bycatch in AFA, halibut bycatch in Rockfish, and little discards in these fisheries) and improving utilization of groundfish fisheries. The cooperative fishery management enables us to make our production plan and marketing easier as we can see how much fish will be harvested and processed and available for the market place.

We support the present Council motion (alternative 2) for analysis in the EIS that was developed within the Council process. Alternative 2 is a cooperative program that allocates cod and pollock and halibut and Chinook salmon PSC to harvesters. We do not support Alternative 3 because the extra cost will be impose on historical stakeholders.

Sincerely,

Ted Kishimoto
President
International Seafoods of Alaska, Inc.

August 26, 2015

Glenn Merrill
Assistant Regional Administrator, Sustainable Fisheries Division
Alaska Region NMFS
P.O. Box 21668
Juneau, AK 99802-1668

Docket ID: NOAA-NMFS-2014-0150

Dear Mr. Merrill,

I am writing in response to the request by NOAA to comment on the proposed management change for the G.O.A. ground fish. I own and operate a boat based in Sand Point, Alaska and predominantly fish in the Western gulf with some time spent in the Central gulf. At the N.P.F.M.C. meeting, Oct. 2014 the state of Alaska put forth a catch-share plan to give the trawl fleet the "tools" to control and reduce by-catch. I liked the plan, testified this to the council, and asked that they move forward.

I have read the six points that the program intends to accomplish, and I agree with all of them. I wish there would have been a seventh point, and that would be to save the financial well being of the fishing vessels.

There have been fifteen years of different plans and/or discussions on G.O.A rationalization. The second time around there was much concern for the crew members. This last time all we heard was about protecting the communities. At some point, someone ought to be concerned with the financial well being of the boats and the owners. Without a healthy business environment for boat owners, eventually crew jobs will go elsewhere. My boat is based in Sand Point, a small community which the core of its economy is fishing based. G.O.A. ground fish is important to Sand Point, and without some stability soon for the local fleet, fishing businesses will go elsewhere. There was one "local" boat sold this spring and it was not sold to another Sand Point resident. It was sold to a Seattle resident that has money made from the American fisheries act. Another sale pending is also not being sold to a local resident, but to a person who owns a Bering Sea crab boat. Does this give you any idea of where money is actually generated in this business? In the last four years an average 71% of my boat's gross income has been from a combination of trawl cod and pollock.

With all the restrictions and by-catch quotas placed on the trawl fleet it is becoming more and more difficult to remain profitable and make a living for myself and my crew. In June of 2014 I listened to Nicole Kimball tell the council, and B.O.F. members present, that the trawl fleet would be fishing under a catch-share plan by 2017. You cannot reduce, or in many cases control by-catch while racing for fish. The mind set is to get as much target species on the boat before the next guy does.

The trawl fleet has never been given the opportunity to prove just how clean we can fish if we are not racing for fish. When at a council meeting, all the focus is on reducing by-catch so that's all we talk about. In reality, when I haul back, what I am focused on is how much target species we have. I'm trying to make money for the boat. I've got three guys behind me that are depending on me to make them a living, so I'm doing whatever I can to put as much fish on the boat, before the next boat does. Some of us know you can clean up fishing by investments in gear. When the consensus was that we were going to be fishing under a catch share plan I spent, in the last three years, over thirty thousand dollars on excluders, gear to make the excluder work better, freight, and excluder modifications, for both the pollock and the cod trawl. At this point I feel foolish for spending that money, because I am just lumped in with a fleet that hasn't made the same investments. Of the small boat fleet there are only two of us that are using salmon excluders on our pollock nets, but my investment does absolutely no good if everyone else who is trying to catch the same quota does not comply to measures that have been proven to reduce salmon by-catch.

As with the processors, these businesses need to show a profit. Starting with sea lion restrictions placed on the trawl fleet 15 years ago and now the by-catch quotas, it has resulted in more and more uncertainty with the business. All those protections come with a cost. Cod and pollock are both a commodity that have to compete on the world market. All the protections that we have to live with make my fish more expensive than that same fish coming from another country.

Cod and pollock are worth what they are worth on the world market. When it is sold all the costs from area restrictions, from having the quotas divided up, from observers, from "stand downs" (where the majority of the fleet believe it is a good idea not to fish when one vessel has a bad observed tow), and now having to try and control by-catch by "committee", ultimately comes out of the price of fish.

The last goal is continued support of the coastal communities. I couldn't agree more. If you have a healthy, profitable fishing fleet and local processor, the community should also do well. I have no problem linking my catch history to the processor to whom I have historically sold. That will then tie me to that same community or town. (In my case, Sand Point, Kodiak, and a little of it delivered into Akutan).

I support catch share plan (alternate 2). I like the plan because it was based on history which represents a person's investment and time in the fishery. All catch share plans, to this point, have been history based. Fishing history reflects investment, risk of money, time and hard work. You would be responsible for controlling your own by-catch. I like that if a boat owner wished to participate, that person could then organize with a co-op. That co-op would then provide protection for both the processors and the communities where those processors were based. I like the solution to the parallel fishery that we depend on in the Western gulf.

The only concept that under no circumstance could I support, in fact the thought of makes my blood run cold, is "community shares" aka CFA (alternative 3). One could only imagine the corruption bred from placing control of quota in the hands of the community. I have been advocating rationalization for fifteen years now, but given the choice of any community shares or status quo, I would choose status quo.

It was discouraging when the state delayed the package that was moving forward. We have been trying since 2000 to rationalize the G.O.A. groundfish fisheries. I support Alternative 2 in the October 2014 Council motion which calls for a cooperative management structure with target species pollock and cod allocated to the coops based on history (investment) as well as PSC allocations. I strongly believe that the status quo (Alternative 1) is not working and that alternative 2 is the way to move forward and should be analyzed in the EIS.

Sincerely,

Tom Evich
owner/operator
F/V Karen Evich

POLAR EQUIPMENT, INC.
dba
Polar Seafoods

August 26, 2015

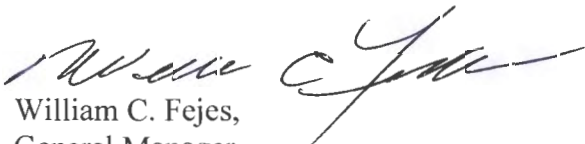
Glenn Merrill
Assistant Regional Administrator for
Sustainable Fisheries
NMFS, Alaska Region
NOAA-NMFS-201-0150

Re: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for any
Gulf of Alaska (GOA) trawl bycatch management program

Polar Seafoods is in favor of trawl bycatch reduction, and appreciates the effort put forth
by everyone involved to make that goal a reality.

However, we do oppose any part of the plan that would require the fish to be delivered to
only one port in the Gulf of Alaska – Kodiak.

Polar Seafoods has a history of processing Pollock and Cod and would suffer
economically, and by extension the economy of the City of Seward where Polar is
located, if the fish are forced to be delivered to Kodiak.



William C. Fejes,
General Manager
Polar Equipment, Inc. dba
Polar Seafoods

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