

April 4, 2003 (3:36pm)

DRAFT
ADVISORY PANEL MINUTES
March 31, 2003 to April 4, 2003
The Hilton, Anchorage, Alaska

Advisory Panel members in attendance:

Benson, Dave
Boisseau, Dave
Bruce, John (Chair)
Burch, Alvin
Cross, Craig
Enlow, Tom
Farr, Lance
Fields, Duncan
Fraser, Dave
Jacobson, Bill
Kandianis, Teressa

Kilborn, Mitch
Leslie, Kent
Mayhew, Tracey
Moller, Sandra
Norosz, Kris
Olson, Eric
Preston, Jim
Ridgway, Michelle
Steele, Jeff
Stephan, Jeff

As both Arne Fugulvog and Dan Falvy will be absent for the entire meeting, Chairman John Bruce suggested that the election of chairman, vice-chairman be delayed until the June meeting. There was no objection.

There were no adjustments to the agenda

C-1 Gulf of Alaska Rationalization

The AP endorses the staff changes presented in the “redline” version of the elements and options with changes/additions (outlined in blue). These red/blue changes can be seen in a separate pdf file entitled “draft_ap_0403_GOA”. {All AP recommendations were without objection except where vote counts are noted.}

C-2 BSAI Crab Rationalization Trailing Amendments

The AP recommends that the Council adopt the following modifications to the **non-binding annual arbitration** element of the BSAI Crab rationalization:

There will be a single annual fleet-wide arbitration to establish a non-binding formula under which a fraction of the weighted average first wholesale prices for the crab products from each fishery may be used to set an ex-vessel price. The formula is to be based on the historical distribution of first wholesale revenues between fishermen and processors, taking into consideration the size of harvest in each year. The formula shall be in the form of a benchmark price including identification of various factors such as product form, delivery time, and delivery location. The non-binding arbitration shall be based upon the Standard for Arbitration set out in the February 2003 Council motion, Item 1 including a. through i. The arbitrator in the non-binding arbitration shall not be an arbitrator in the last best offer binding arbitration (s).

Motion passed 18:0

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The AP recommends that the Council adopt the following modifications to the **binding arbitration** element of the BSAI Crab rationalization:

The arbitrator, in making the last best offer pre-season arbitration decision will review all of the arbitration decisions for that season and select the highest arbitrated price for a minimum of at least 7 percent of the market share of the PQ. This provision allows for the aggregation of up to 3 arbitration findings, that collectively equal a minimum of 7 percent of the PQS, to be considered for the highest price for purposes of this provision. If arbitration findings are aggregated with two or more entities, then the lesser of the arbitrated prices of the aggregated entities included to attain the 7 percent minimum market share of PQ, shall become the minimum fleet-wide price, for all arbitrated prices of that season.

Motion passed 13/6

The AP recommends that the Council adopt the following modifications for **A and B shares**:

After initial allocation, processors or their affiliates can no longer purchase B shares.

Processors defined as:

- Option 1. IPQ holder
- Option 2. Entity engaged in processing activity
- Option 3. Both

Processor Affiliates defined as:

- Option 1. AFA Standard – The 10% standard used for crab sideboards
- Option 2. MARAD Standards – 25% standard and the MARAD test
- Option 3. US Coast Guard Controlling interest standard – Greater than 50% ownership
- Option 4. Determined by whether an IPQ holder has authority to control delivery of IFQ harvests, without regard to ownership interest level – determined by annual affidavit from QS holder.

Motion passed unanimously

The AP recommends that the Council clarify its intent with regards to the **linkage/severability of the A and B quota shares** at the April Council meeting.

Quota Shares A-shares and B-shares are linked, and must be transferred in proportion.

Motion passed 13/6

The AP recommends that the Council adopt the **Community Protection Committee's** recommendations with the following clarifications:

1. Request that NOAA fisheries explore methods to assist communities, to the extent reasonable, in administration and enforcement of the right of first refusal. In addition, communities could enforce the right through contract law.
2. The right of first refusal is non-assignable by a community.

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3. The fisheries exempt from the right of first refusal are the Western Aleutian Islands (Adak) red king crab, the Western Aleutian Islands golden king crab, and the Bering Sea *C. bairdi* fisheries.

Motion passed 16/1

The AP recommends that the Council adopt the following selections from the **General Right of First Refusal, Contract terms** from the Crab Rationalization Errata, page 1, C:

Intra-company transfers within a region are exempt from this provision. To be exempt from the first right of refusal, IPQ's must be used by the same company. In the event that a company uses IPQs outside of the community of origin for a period of

1. 3 consecutive years.
2. ~~5 consecutive years~~

the first right of refusal on those processing shares (the IPQs and the underlying PQS) shall lapse. With respect to those processing shares, the right of first refusal will not exist in any community thereafter.

Motion passed unanimously

The AP recommends that the Council adopt the following selections from the General Right of First Refusal, Contract Terms (Crab Rationalization Errata, page 2, G)

The right of first refusal will be exercised by the CDQ group or community group by providing the seller within 60 days of receipt of a copy of the contract for sale of the processing shares:

- 1 . notice of the intent to exercise and
2. earnest money in the amount of 10 percent of the contract amount or
 - a. ~~\$250,000 or~~
 - b. \$500,000

Motion passed 17/0

C-3 Steller Sea Lion Issues

The AP received a copy of the draft remand order from Judge Zilly, dated December 17, 2002 regarding the 2001 BiOp followed by a power-point presentation by NMFS staff summarizing the draft response to the remand. The AP also received written copies of a NRC report on Steller sea lion/ fishery interactions and NMFS' Aleutian Islands pollock trawl closure report.

C-4 Essential Fish Habitat

The AP applauds the extensive efforts made by NMFS and Council staff to clarify the rationale behind the development of EFH mitigation alternatives, research priorities associated with the alternatives, and update on the contents of the EFH EIS.

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The AP recommends that the Council consider the following modifications to the EFH EIS process:

1. Research priorities: request that the research plan add elements which explore the potential benefits of EFH mitigation measures for productivity of FMP species
2. Request that the EFH Committee be tasked with refining the HAPC process and provide input to the Council at the June Council meeting
3. Request that NMFS and NMFS enforcement provide information regarding an appropriate application of gear definitions to address the habitat protection goals of alternative 5B and allowing "pelagic trawls in off-bottom mode"
4. Drop the coral and sponge bycatch component of alternative 5B.
5. Drop the TAC reduction component of alternative 5B
6. Dinglebars should be added to gear excluded from closed areas in Alternative 6

Amendment added:

The AP does not support the extension of Oceana's 5B approach to the Bering Sea and GOA for the following reasons:

- Because it is late in the process and the current proposal would move EFH back substantially with additional analysis and the time needed for review
- Preliminary analysis shows is inappropriate because it shows that the average rate of coral, sponge and bryozoan bycatch is lower in the closed area than in the open area.
- The existing sealion closure areas, when superimposed on the open areas would greatly reduce "open" area.
- The effects of currents and food distribution fluctuation over broad shelf areas in the GOA and BS means that groundfish species move widely over shelf areas. The proposed 5B approach would not accomplish FMP objectives

Amendment passed 18\2

Main motion passed 19\0

C-6 BSAI Pacific Cod Allocation

The AP commends Council staff for an excellent analytic document on this issue. The AP recommends that the Council direct staff to release the Amendment 77 initial analysis for public review.

Motion passed unanimously.

C-7 (a) IR/IU Review of Amendment A proposed analysis

The AP recommends that the amendment A document go forward for further analysis with the following changes:

1. Add a section 27.1.1 The PSC bycatch allowances referred to above should also be analyzed using the years 2000 - 2002.
2. Revise decision point 8 as follows:
The vessel owner must be eligible to own a fishing vessel under Marad, and

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8.1.1 To be eligible a vessel must have caught with trawl gear and processed between 1998-2001:

1. 100mt.
2. 150mt.
3. 500mt.
4. 1000mt.

8.1.2 To be eligible a vessel must have caught with trawl gear and processed between 1997-2002:

1. 100mt.
2. 150mt.
3. 500mt.
4. 1000mt.

Second generation owners of eligible vessels remain eligible as long as they can register under Mara regulations for fishing vessels.

3. The draft decision tree should clarify that the “catch history” of the boats that are found eligible in decision point 8 will determine the “catch history” applied when making sector apportionments in section 26.
4. The removal of paragraph 20.1 under decision point 20 — “Elimination of LLP gear designations”.

Motion passed 19/1

C-7 (b) IR/IU Initial Review of Amendment C (minimum groundfish retention standards)

The AP recommends that the Amendment C analysis be sent out for public review with the following changes:

1. Add a decision point 7 “MRA compliance accounting” - with the language contained in amendment A, Section 2.1.2. “Status Quo Plus 2”.
2. Include an expanded discussion regarding whether or not PRRS (Product Recovery Rates) provide an accurate representation of current production practices.

Motion passed 20/0.

C-7 (c) IR/IU Relationship of Amendment A and Amendment C

The AP recommends that Amendments C and A be linked and integrated at the earliest possible time.

Motion passed 19/1

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C-7 (d)(1) IR/IU Amendment D (5% exemption from flatfish IR/IU Requirements)

This amendment was reviewed in at the February meeting and was released for public review afterwards. Marcus Hartley reviewed the analysis and alternatives. There was no public comment on this item.

The AP recommends that the Council adopt alternative 2 with subalternative 2.1 . The intent of the AP is to exempt all fisheries from the IRIU flatfish regulation with the exception of the following:

- a. BSAI non-AFA trawl CP Pacific cod fishery (Non-AFA and AFA trawl catcher processor fisheries are defined as separate fisheries.)
- b. BSAI flathead sole fishery (CDQ and non-CDQ)
- c. BSAI non-AFA rock sole fishery (CDQ and non-CDQ)
- d. BSAI non-AFA yellowfin sole fishery (CDQ and non-CDQ)

Motion passed unanimously

C-8 Observer Program

AP continues to encourage NMFS to request full federal funding for the Alaska observer program prior to implementing changes to the program. The AP appreciates staff's work on identifying and discussing observer issues and encourages Council to move forward with the review and outline of potential issues for analysis.

Motion passed unanimously

C-9 Halibut Subsistence

The AP moves to take "no action" at this time.

Motion passed 19\0

Comment — Staff responded to several questions regarding the "customary and traditional use" designation for Ninilchik and staff's list of similarly situated communities. Consequently the AP was not comfortable choosing either of the alternatives in the analysis.