

# North Pacific Fishery Management Council

David Benton, Chairman  
Chris Oliver, Executive Director



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Certified \_\_\_\_\_

David Benton, Chairman

Date \_\_\_\_\_

## DRAFT MINUTES

### **NORTH PACIFIC FISHERY MANAGEMENT COUNCIL January 29-February 4, 2003 Seattle, Washington**

The North Pacific Fishery Management Council met January 29-February 4, 2003, at the Renaissance Madison Hotel in Seattle, Washington. The Scientific and Statistical Committee met January 27-29, and the Advisory Panel met January 27-February 1, at the same location. The following members of the Council, staff, SSC and AP attended the meetings.

#### Council

David Benton, Chairman  
Stosh Anderson  
Dr. Jim Balsiger/Sue Salvesson  
John Bundy  
Anthony DeGange for David Allen  
Kevin Duffy/Earl Krygier for Frank Rue  
Dr. Dave Hanson

Dennis Austin, Vice Chair  
Dr. David Fluharty  
Roy Hyder for Lindsay Ball  
Stephanie Madsen  
Hazel Nelson  
RADM James Underwood/CAPT Richard Preston

#### NPFMC Staff

Chris Oliver, Executive Director  
Gail Bendixen  
Cathy Coon  
Jane DiCosimo  
Elaine Dinneford  
Diana Evans

Dr. Mark Fina  
Nicole Kimball  
Jon McCracken  
Dr. Diana Stram  
Shannon Vivian  
David Witherell

**Support Staff**

Lisa Lindeman, NOAA-GCAK  
John Lepore, NOAA-GCAK  
Tom Meyer, NOAA-GCAK  
Joe McCabe, NOAA-GCAK  
Herman Savikko, ADFG  
Jeff Passer, NMFS-Enforcement  
Dr. Doug DeMaster, NMFS-AFSC  
Dr. Anne Hollowed, NMFS-AFSC  
Dr. James Ianelli, NMFS-AFSC  
Dr. Pat Livingston, NMFS-AFSC  
Dr. Loh-lee Low, NMFS-AFSC  
Dr. Grant Thompson, NMFS-AFSC

Shane Capron, NMFS-AKR  
Steve Davis, NMFS-AKR  
Tamra Faris, NMFS-AKR  
Mary Furuness, NMFS-AKR  
Jay Ginter, NMFS-AKR  
Cindy Hartmann, NMFS-AKR  
Ted Meyers, NMFS-AKR  
Glenn Merrill, NMFS-AKR  
Rance Morrison, NMFS-AKR  
Michael Payne, NMFS-AKR  
Tom Pearson, NMFS-AKR  
Sue Salveson, NMFS-AKR

**Scientific and Statistical Committee**

Dr. Keith Criddle  
Dr. Steven Hare  
Dr. Susan Hills  
Dr. George Hunt  
Dan Kimura  
Dr. Gordon Kruse  
Dr. Seth Macinko

Dr. Richard Marasco, Chair  
Dr. Ken Pitcher  
Dr. Terry Quinn  
Dr. David Sampson  
Dr. Jack Tagart, Vice Chair  
Dr. Doug Woodby

**Advisory Panel**

Dave Benson  
Dave Boisseau  
John Bruce, Chairman  
Al Burch  
Craig Cross  
Tom Enlow  
Dan Falvey, Co-Vice Chair

Duncan Fields  
Dave Fraser  
Arne Fuglvog, Co-Vice Chair  
Bill Jacobson  
Teresa Kandianis  
Mitch Kilborn  
Kent Leslie  
Tracey Mayhew

Sandra Moller  
Kris Norosz  
Eric Olson  
Jim Preston  
Michelle Ridgway  
Jeff Steele  
Jeff Stephan

**Other Attendees**

The following people signed the attendance register:

Brent Paine  
Thorn Smith  
Ben Enticknap  
Simeon Swetzof, Jr.  
Beth Stewart  
Arni Thomson  
Denby Lloyd  
Matt Doherty  
Heather McCarty

Jay Johnson  
Craig Cross  
Pat Carlson  
Joe Kyle  
Jeff Stephan  
John Henderschedt  
Stephen R. Taufen  
Sherri Gross  
Donna Parker

Joe Childers  
Gary Loncon  
Lory Swanson  
Agafon Krukoff  
Phillip Lestenkof  
Ilarion Philemonof  
Martha Malavansky  
Florence & Keith Colburn  
Patience Mercurief

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**Other Attendees (cont'd)**

David Woodruff  
Gary Johnson  
Joe Sullivan  
Glenn Reed  
Shirley Marquardt

Frank Kelty  
Simon Kinneen  
Mike Szymanski  
Stan Moeb  
Julie Bonney

Linda Kozak  
Bob Alverson  
Bill Atkinson  
Whit Sheard

A list of those who provided public comment during the meeting is found in Appendix I to these minutes.

**A. CALL TO ORDER/APPROVAL OF AGENDA/MINUTES OF PREVIOUS MEETING(S)**

Chairman David Benton called the meeting to order at approximately 8:07AM on Wednesday, January 29, 2003. The Chairman then welcomed new Council member Ben Ellis and was administered the oath by Dr. Jim Balsiger, Regional Administrator for National Marine Fisheries Service.

Agenda. Stephanie Madsen moved to approve the agenda as submitted. The motion was seconded by Kevin Duffy and carried without objection.

**B. REPORTS**

The Council received written reports from the Executive Director (Agenda item B-1), NMFS Management and IFQ Cost Recovery Report (B-2), ADF&G (B-3), U.S. Coast Guard (B-4), NMFS Enforcement (B-5), and the International Pacific Halibut Commission (B-7).

**DISCUSSION RESULTING FROM REPORTS**

**Executive Director's Report**

Chris Oliver reported to the Council that he and Chairman Benton attended the Interim Chairman's Meeting on January 9-10 in Washington, DC. During that meeting they discussed budgets, reauthorization of the Magnuson-Stevens Act, public outreach initiatives, development of NMFS' long-term bycatch management strategy, national capacity reduction plan, general NEPA compliance and several other national issues. Mr. Oliver mentioned he and Chairman Benton were informed that the Oceana petition for national level bycatch management measures would be completed and released in the near future. They also learned that regardless of the response to that specific petition, a national bycatch management strategy was very high on the Agency's list over the next several years. He reported that the FY2003 budget did not hold much promise for increases in NMFS' budget or the Council's base budget, leaving additional funds earmarked for NEPA compliance and other issues available to this Council in 2003. Mr. Oliver then briefly spoke of a few other issues discussed at the Interim Chairman's Meeting including the status of the Magnuson-Stevens Act Reauthorization, which appeared would likely gain momentum this spring. The Council should expect release of the U.S. Ocean Commission Report as well as the Pew Ocean Commission report soon. There is also language circulating for a draft bill by NOAA Fisheries reflecting their recommendations for reauthorization. Mr. Oliver suggested the Council may want to reactivate their Magnuson-Stevens Reauthorization Committee.

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He then informed Council members of the All Council Conference and celebration of the 25-year anniversary of the Magnuson-Stevens Act which is tentatively reserved for November 13-15, 2003 at the Omni Shoreham hotel in Washington, DC. The conference will give NOAA Fisheries and each Council the opportunity to tell the fishery management story in each region and nationally over the past 25 years. While obviously highlighting each Council's successes, the conference will include a series of panels and workshops to address challenges that still remain.

Mr. Oliver reported that the final version of the National Academy of Sciences/National Research Council report on the decline of the Steller sea lion had been mailed to Council members but that the final bound version with full-color figures wouldn't be available for another 4-6 weeks.

Mr. Oliver advised the Council he had hired a Protected Resources Coordinator to Council staff. William J. Wilson, previously on the Council's staff, will be starting in a couple weeks contributing to all analyses, environmental assessments, environmental impact statements and other documents relative to the suite of protective resources consideration. Mr. Oliver also expected Mr. Wilson to work closely with NMFS, Fisheries and Protected Resource Staff on larger projects.

Mr. Oliver then informed the Council of the University of Washington project with the Alaska Fisheries Science Center. The UW-School of Fisheries and Ocean Sciences has a joint project with AFSC in supporting a full-time faculty position, Dr. Beth Bryant, and associated graduate research assistant working at AFSC aimed at supporting compliance with NEPA, ESA and other applicable laws.

Mr. Oliver spoke of a Notice of Availability and NOAA's Draft FY03-08 Strategic Plan (Agenda Item B-1(b)), which is a result of workshops held around the country outlining their Strategic Plan for the next 5 years. Of particular interest to Council members would be Mission Goal 1 which is to protect, restore and manage the use of coastal and ocean resources through ecosystem management processes. Mr. Oliver had just received the documents so had little time to review them, but mentioned that comments were due by February 14<sup>th</sup>, 2003 and that Council members may want to look at the documents and talk about them later in the meeting.

Mr. Oliver mentioned a letter received from Jeff Stephens, Chair of the Council's IFQ Implementation Committee, regarding the IFQ proposal schedule for halibut/sablefish amendments. Mr. Stephens suggested a very ambitious schedule for processing IFQ amendments, giving priority to them and shooting for Council action on them by October 2003. Mr. Oliver had also placed a copy of Mr. Stephens' letter under Agenda Item D-2, Staff Tasking, so that Council members could think about it and bring it up later in the meeting.

Mr. Oliver reminded Council members of the Industry-sponsored reception on Thursday, January 30<sup>th</sup> from 5:30-8:00PM in the Visions Room (28<sup>th</sup> floor) of the Renaissance Madison hotel - where the Council meeting was being held.

### **NMFS Management Report**

Sue Salvesson gave a brief status report of FMP Rules and Amendments, specifically stating that the final rule for Amendment 10, establishing crab recency criteria, was apparently not consistent with Council intent. NMFS was approached by a member of the industry who expressed concern that the Final Rule made certain provisions that were not consistent with Council intent and specifically stated that vessels who fished during the recent participation period could not accrue or purchase history from other vessels preventing them from continuing to fish in the recent participation period while still qualifying for a license. When NMFS reviewed the record and Council analysis, they agreed with the industry member. Ms. Salvesson reported that NMFS intended to initiate proposed and final rulemaking to make sure the final rule implementing Amendment 10

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does follow Council intent and would allow vessels that purchase history and fished during the recent participation period to qualify for an LLP license. Ms. Salveson also reported that NMFS had, with one exception, approved the CDQ allocations for the next 3-year period. The one exception involved the other red rockfish group in the Bering Sea for which they formed a slightly different allocation scheme for that species group.

### **USCG Report**

The Council welcomed RADM James Underwood who spoke briefly about the USCG being moved into the new Homeland Security Division on March 1<sup>st</sup>. He also reported the Coast Guard was receiving a new cutter, "Long Island" soon to be docked in Valdez. Captain Rich Preston then gave the Council the 2002 year in review highlighting the story of Alaskan crab fishermen caught in the Russian Exclusive Economic Zone the previous week (January 22<sup>nd</sup>, 2003).

### **NMFS-Enforcement Report**

Jeff Passer presented the Enforcement Division's report to the Council and requested they reactivate the Enforcement Committee. John Bundy commented on the IRIU and roe retention rule and believed the key to the problem was reliance that the rule would be in place by January 1. He remembered statements made in October that either an emergency rule or null enforcement would take effect by January 1<sup>st</sup>. Word then came down that the rule would not be in place by January 1. Mr. Bundy thought a phone call to Dr. William Hogarth was in order to convey that concern. Chairman Benton sensed the will of the Council was that he and Dr. Balsiger should contact Dr. Hogarth and talk about the dilemma the Council was facing with the regulatory time line and the approach they were being faced with for enforcing regulations that possibly shouldn't be enforced now, and that the Council was in the process of changing those rules. After speaking to Dr. Hogarth, Chairman Benton and Dr. Balsiger reported to the Council that Dr. Hogarth understood the problem, would contact James R. Walpole, NOAA-GC for clarification, and then contact Chairman Benton and Dr. Balsiger via a return phone call.

Svein Ludvigsen, Minister of Norwegian Fisheries, was visiting Seattle during the Council meeting and requested the opportunity to speak briefly to Council members. Mr. Ludvigsen spoke of visiting the United States to learn more about the U.S. Coast Guard as well as many fishermen in Seattle. His delegation is based on ports and infrastructure including lighthouses, and dealing with acute pollution and oil spills. Joining Mr. Ludvigsen were Fishery Counselor Jolbergar Johannsen, Secretary General for Coastal Administration in Ministry of Fisheries Kjerstin Seldvig, Evan Steinjer, Managing Director of the National Coastal Administration taking care of ports, infrastructure and lighthouses, and Morton Almhos, Deputy Secretary General in Norwegian Society for Sea Rescue (voluntary organization). Mr. Ludvigsen believed the Norwegians could learn a lot from the U.S. and that, being in Seattle, he wasn't sure if he was abroad or in a branch of the Norwegian fishing industry. The Norwegian industry talked about crab and how they now have king crab in Norway because the Russians brought crab from the Pacific into Norway in the 1960s. The king crab is now moving more into the Norwegian sector. Norway began a commercial fishery in 2002 and currently manages the resources very differently from the Russians by giving quotas to small coastal boats. Last year they had 100,000 king crab, and in 2003 they had 200,000. They gave 700 crab (quotas) to each boat - bringing in an income of about \$225,000-\$230,000 Norwegian crowns. That's the average income for an industrial worker in Norway, so its comparable. But on the other side, a very hot discussion ensued recently on whether they should allow the crab to move into the Norwegian sector (although he didn't know how to forbid it!), but the crab were so big and crawling up onto Norwegian shores that some people believed they were a threat to the reindeer! Mr. Ludvigsen spoke of a large conference/seminar being held in June with the Russians to discuss the future management of the resources and whether it could be dangerous to the other managed species. The Norwegian Ministry of Fisheries has also agreed with the Russians to make a

western fishing boundary. In practice, this would mean that on the western side of the boundary there would be national management of the resources. The fisheries in Norway are the second largest industry in the country, and the main industry for the north and some parts of the western coast. They believe the fishery industry has much potential - currently at 30,000,000 Norwegian crowns per year in export income - and in 20-30 years it could be 6 times that much. This would not be due to a larger catch, but because they would use the whole fish. Norway believes the day will come where the part of the fish that you eat is less valuable; e.g., using portions of the shell of prawns where police use it as DNA in courts. Mr. Ludvigsen's cellular phone has components made of pieces of cod skin. He was very impressed with how the Council takes care of the resources in this part of the U.S. and thinks the Norwegian Ministry of Fisheries can learn from them. He expressed his appreciation for the opportunity to meet and speak to the Council and gave his condolences from the Norwegian government for the NASA space shuttle accident.

### **FORMAT FOR COUNCIL MEETING MINUTES**

Each agenda item requiring Council action will begin with a copy of the original "**Action Memo**" from the Council meeting notebook. This will provide an "historical" background leading up to the current action. This section will be set in a different type than the actual minutes. Any attachments referred to in the Action Memo will **not** be attached to the minutes, but will be part of the meeting record and available from the Council office on request. Following the Action Memo will be the **reports** of the Scientific and Statistical Committee, Advisory Panel, and any other relevant committee or workgroup on the subject. Last will be a section describing Council **Discussion and Action**, if any.

### **C. NEW OR CONTINUING BUSINESS**

#### C-1 Gulf of Alaska Rationalization

#### **ACTION REQUIRED**

- (a) Review discussion paper on elements and options for analysis.**
- (b) Receive NOAA GC legal opinion on regionalization alternatives.**
- (c) Receive report on state/federal parallel fisheries.**
- (d) Identify alternatives, elements, and options for analysis.**

#### **BACKGROUND**

##### Staff discussion paper

In December, the Gulf of Alaska Work Group provided the Council with final recommendations for alternatives, elements, and options for analysis on a proposed action to rationalize the GOA groundfish fisheries. The Council deferred action on initiating formal analysis until February, and requested that staff prepare a discussion paper on the draft list of elements and options, to provide a more detailed review of the analytical, legal, administrative, and enforcement aspects associated with them. Specific issues to be addressed include data limitations, duplicative proposals, administrative issues, legal issues, enforcement issues related to regionalization elements, ill-defined elements, possible missing elements of catcher/processor proposals, and identification of GOA communities that may be eligible for regionalization measures. This discussion paper was mailed out on January 22.

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### **NOAA GC legal opinion**

At its December 2002 meeting, the Council formally requested a legal opinion on the four regionalization options recommended for analysis by the Gulf of Alaska Working Group. The letter dated December 30, 2002, from Chris Oliver to Lisa Lindeman, NOAA GC is attached as Item C-1(a). NOAA GC will provide an opinion at the meeting.

### **ADFG report on state/federal parallel fisheries**

At its October 2002 meeting, the Council formally requested assistance from the State of Alaska in identifying potential solutions to the issue of additional fishing access in state waters after the federal fisheries are rationalized. The goal would be for the Board of Fisheries to take complementary action to the Council's future preferred alternative in state waters. The letter dated October 15, 2002 from Chris Oliver to Kevin Duffy, ADFG, is attached as Item C-1(b). This report will be provided at the meeting.

### **Identify alternatives, elements, and options for analysis**

After receiving the above three reports, AP recommendations, and public testimony, the Council will identify a suite of alternatives, elements, and options for analysis. Staff then could provide an analytical outline and timetable on the suite at the June 2003 Council meeting.

### **Scientific and Statistical Committee Report**

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

### **Report of the Advisory Panel**

The Advisory Panel endorsed the staff changes in the Elements and Options "redline" document, but made several changes and additions. The AP's revised document is attached to these minutes as Appendix II.

## **DISCUSSION/ACTION**

**Roy Hyder moved the Council adopt the AP's recommendations referring to their document entitled "AP Revised Elements and Options", dated January 30, 2003 (attached to these minutes as Appendix II).** The motion was seconded by Stosh Anderson. Chairman Benton suggested the Council review the document section by section amending it as they go along, and voting on the final amended main motion.

Chairman Benton asked Council members for a brief discussion of why the Advisory Panel deleted Alternative 2. Hazel Nelson offered that Alternative 2 did not meet the objectives outlined in the problem statement, there were too many latent licenses, and that the majority of people providing public comment recommended removing Alternative 2. Stephanie Madsen agreed that Ms. Nelson captured her feelings as well adding that comments received in the public scoping process did not support including Alternative 2 either. Kevin Duffy commented that the discussion paper generated by Council staff pointed out the inconsistency of LLP with the problem statement.

**Kevin Duffy moved to add a suboption to Alternative 3, Element 1, Option 2. The suboption would include the years 1998-2002 (drop 1).** The motion was seconded by Stephanie Madsen and carried without objection. **Stephanie Madsen then moved to add a new Option 4, specific to AFA vessels, that would include the years 1995-1997 and asked Council staff to provide a discussion on the impacts of setting**

**aside the sideboard amount as an allocation and have it managed through the coop, as it's managed today.** The motion was seconded by Dr. Fluharty and carried with Roy Hyder objecting.

Under Element 2, Qualifying Landing Criteria, **Stosh Anderson moved to add the following introduction language before Issue 1: "For underutilized species, the combined total of all pounds landed during the qualifying years will be compared with the total TAC for the qualifying years to determine the "percent of the fishery utilized." During each successive year, the "percent of the fishery utilized" is applied to the total TAC with the resulting sum apportioned among qualifying vessels. The remaining TAC is available for an open access fishery.** The motion was seconded by Kevin Duffy and carried without objection.

The Council continued on to Element 3, Target Species Rationalization Plan, where **Kevin Duffy moved the Council change the word "allocation" to "allocate" and change "and/or" to "and" under Issue 1, Option 1.** The motion was seconded by Stosh Anderson and carried without objection.

**Stephanie Madsen moved to delete iii) activity based on legally harvested or legally processed fish in the last year of the qualification period by species, under Suboption 2, Option 2, Element 3.** The motion was seconded by Stosh Anderson and carried 8-3, with Balsiger, Bundy and Fluharty voting against. Ms. Madsen reasoned that by leaving this option in, it had the potential to shift past activity to something that isn't in the best interest of coastal communities. If you were a CV for 8 years, and then a CP for 2 years following that, that last year would carry the CP designation all the way through the qualifying years.

**Kevin Duffy then moved to add a new Option 3 under Issue 3, Transferability and Restrictions on Ownership of QS/IFQs, and renumber the remaining Options:**

**Option 3. Redesignate CP shares as CV shares upon transfer to a person who is not an initial issuee of CP shares:**

- A. all CP shares**
- B. trawl CP shares**
- C. longline CP shares**

The motion was seconded by Stephanie Madsen and carried 10-1 with Austin voting against. Mr. Duffy pointed out this was in response to the Minority Report given by the Advisory Panel on this option.

**Hazel Nelson then moved the Council delete Option 2 in its entirety and all suboptions under Issue 3.** The motion was seconded by Kevin Duffy and carried 9-2, with Roy Hyder and Dr. Balsiger voting against.

**Stephanie Madsen moved the Council add a new Suboption 4, including a sunset provision, under Option 13, Processing Restrictions, Element 3:**

- Suboption 4: CPs are prohibited from buying CV fish**
  - a. 3-year sunset**

The motion was seconded by Stosh Anderson and carried without objection. Ms. Madsen clarified that these were not CP shares, but when you act as a catcher processor. She added that this was another place where it would be helpful if staff, in the analysis, could define catcher processor. Stosh Anderson then began a discussion about the definition of catcher processor questioning the restrictions in Gulf of Alaska groundfish for a CP buying salmon, herring or crab.

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**Kevin Duffy moved the Council delete the words: “In West Yakutat only” in Option 4 under Element 6, Allocation of Bycatch Species.** (Editor’s note: Due to misnumbering in the AP’s revised document dated January 30, 2003 at 9:00AM, all Element numbers from Element 6 on are incorrect. Element 6 should be numbered Element 4. However, the Council continued using this draft version for their deliberations.) The motion was seconded by Stephanie Madsen and carried without objection. Mr. Duffy believed this recommendation originally came from the Gulf of Alaska Rationalization Committee and he was interested in seeing the concept of “T” shares on a wider basis in the analysis. He recommended staff differentiate by listing Western Gulf and Central Gulf and West Yakutat.

**Kevin Duffy then also modified Suboption 1 under the same Option 4 he amended above to read: These shares may be used with either ~~hook & line~~ fixed gear or trawl gear.** Jane DiCosimo clarified that this did include pot gear. The motion was seconded by Stosh Anderson and carried without objection.

**Stosh Anderson moved to change Option 1, Element 9, Entry Level Rockfish Program, as follows:**

**Option 1. Allow entry level Jig and <60 longline harvests of Pelagic rockfish (except for POP) and POP.** The motion was seconded by Hazel Nelson. **Stephanie Madsen then moved to amend Mr. Anderson’s Amendment such that adding POP was a suboption, as follows:**

**Option 1. Allow entry level Jig and <60 longline harvests of Pelagic rockfish.  
suboption: and POP**

The amendment was seconded by Kevin Duffy and carried without objection, and Mr. Anderson’s amended amendment carried with Stephanie Madsen objecting.

**Stosh Anderson then moved to change the start percentage from 5% to 3% for the range of percentage in Suboption 1, Option 1, Element 9.** The Council discussed the fact that it would be difficult for entry level people to get started and the possibility of establishing steps of 3%, 5%, 7%, etc. It also talked of a stepwise process being discussed in the committee process. The motion was seconded by Kevin Duffy and carried without objection.

**Stosh Anderson then moved to correct what appeared to be a typographical error in Suboption 2, Option 1, Element 9 by replacing “ABC” with “TAC”.** The motion was seconded by Stephanie Madsen and carried without objection.

**Stephanie Madsen moved the Council carry Nos. 2-12 of Element 11 to a trailing amendment.** The motion was seconded by Kevin Duffy and carried without objection.

**Stosh Anderson moved to amend #1 (definition of a caption) of Element 11 by adding the following language to the end of the sentence: “and signs fish tickets.”** The motion was seconded and carried without objection.

The Council then moved on to Element 12, Option 2, Community Fisheries Quota (CFQ). **Kevin Duffy moved to add a new Option 3, Community Level, to Issue 1.** Mr. Duffy explained that if the analysis looked only at a Gulf-wide or regional concept, a particular community could dominate. So adding a community level would help break that down. The motion was seconded by Stephanie Madsen and carried without objection.

Stosh Anderson questioned whether in Issue 2, Option 3(a, b, c) the economy referred solely to groundfish or to all fish. Chairman Benton, hearing no objection, thought it was the sense of the Council their intent was all fish as it would be much more difficult to sort out by species.

Stephanie Madsen moved to delete Option 2, Issue 3, Element 12 as follows:

~~Option 2. Species historically fished by coastal communities~~

The motion was seconded by Stosh Anderson and carried without objection.

Kevin Duffy moved to change the range of percentages in Option 1, Issue 4, Allocation from 10%-20% to 5%, 10%, 15% and 20% of the annual TAC. This lowered the bar just a bit and provided more clarity for staff. The motion was seconded by Stosh Anderson and carried without objection. Kevin Duffy then moved to delete Option 2, Issue 4, Allocation, as follows:

~~Option 2. Allocation of an approximate annual value of product. Range of \$5,000,000-\$15,000,000.~~

Mr. Duffy explained that it was more difficult for staff to analyze a range. Stephanie Madsen seconded the motion and it carried without objection.

Dr. Balsiger moved to delete Option 2, Issue 6 in its entirety. The motion was seconded by Kevin Duffy. Dr. Balsiger stated that the Council was trying to provide opportunities for communities but that as revenues are earned, communities should be able to use those revenues as they see fit, not as the Council directs. Ben Ellis commented that he would be opposing this motion as he saw the Use of Revenue issue as making an investment in those communities. The motion failed 6-5 with Balsiger, Bundy, Duffy, Fluharty and Nelson voting in favor.

Kevin Duffy moved to change Option 3, Community Purchase, such that Eligible Communities became Issue 1 and all language following, including the two suboptions, was stricken. Mr. Duffy then added two new options as shown below: These new options are the same as Option 2, Geography, and Option 3, Economy, on Issue 2, Eligible Communities, Option 2, Community Fisheries Quota.

**Option 3. Community Purchase**

**Issue 1. Eligible Communities**

**Option 1. Geography**

- A. Coastal Communities without road connections to larger community highway network.
- B. Coastal communities adjacent to salt water.
- C. Communities within 10 miles of the Gulf Coast

**Option 2. Economy**

- (a) Fisheries dependent communities defined as communities with a range of greater than 10-30% of their base industry economy is harvesting or processing related.

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- (b) Fisheries supplemented communities defined as communities with a range of 5-10% of their base industry economy is harvesting or processing related.**
- (c) All communities.**

Mr. Duffy explained that he made this change to have some symmetry between the two issues of Community Fisheries Quota and Community Purchase. The motion was seconded by Dr. Fluharty and carried without objection.

**Kevin Duffy then moved to replace Option 4, Community Protections-Coop, with the CIFT concept outlined in the Minority Report under Element 12 in the AP Minutes, and shown below:**

**Option 4. Community Protections-Coop**

**Element 12 Community Protection**

- 1. Option 2 CIFTs - clarify that the CIFT has full ownership of CIFT QS and holds these shares in trust for the communities, processors and crew members in the region to use as leverage to mitigate impact directly associated with implementation of a rationalization program.**
- 2. Issue 1: Reduce CIFT allocation range to 10 to 30%.**
- 3. Issue 6: Replace as follows: Distribution of IFQ**
  - a. CV CIFT Crew member representatives shall develop criteria which ensure that vessels participating in the CIFT program retain their historic crew payment formula and award 1/3 of the CIFT IFQ to vessels agreeing to these terms.**
  - b. CV CIFT Community representatives shall develop criteria which ensure that vessels participating in the CIFT program maintain delivery patterns in communities which gave rise to their qualifying catch histories and award 1/3 of the CIFT IFQ to vessels agreeing to these terms.**
  - c. CV CIFT Processing representatives shall develop criteria which ensure that vessels participating in the CIFT program have price agreements and/or maintain the delivery patterns which gave rise to their qualifying catch histories and award 1/3 of the CIFT IFQ to vessels agreeing to these terms.**
  - d. The CP CIFT shall have Crew member representatives which develop criteria to ensure that vessels participating in the CIFT program retain their historic crew payment formula and award 1/3 of the CIFT program to vessels agreeing to these terms.**
  - e. The CP CIFT shall have CP representatives which develop criteria to ensure that vessels participating in the CIFT program have contractual agreements controlling bycatch, enforcing IR/IU standards and other matters as necessary. The CP CIFT representatives shall award 2/3 of the CIFT IFQ to vessels agreeing to these terms.**
- 4. Issue 7: Allocation Procedure - Retain Options 1-4.**
- 5. Defer all remaining elements and options to a trailing amendment.**

The motion was seconded by Hazel Nelson. Mr. Duffy supported this motion by saying that Alaskan coastal communities on the Gulf observe these fisheries in their backyards. He believed it was incumbent upon the Council with National Standard 8 to adequately look at a range of alternatives to protect Alaskan coastal

communities. The Council is at a point in the process where staff will start an analysis and he wanted to be careful that the Council not preclude options that may be viable in the end. General discussion by Council members followed with several indicating clarification as to what staff could bring to the analysis in April that had not been defined as yet, and just what would be deferred to the trailing amendment. **Dennis Austin moved to amend Mr. Duffy's motion to characterize it as a trailing amendment addressed by the Council at a later date.** He believed the Council could significantly load this package up so that it would be impossible to deal with and he felt a sense of urgency from public testimony that people wanted the Council to handle it now - not 4 or 5 years from now. Mr. Austin's amendment failed for lack of a second.

**Stephanie Madsen moved a substitute motion to replace Option 4 to only include Nos. 1 and 2.** The motion was seconded by John Bundy. Ms. Madsen spoke of her sensitivity to the discussion of the trailing amendment but that without detail, no one understood it. In response to Ms. Nelson's confusion as to how the details heard in public testimony would be worked out, Ms. Madsen suggested those people roll up their sleeves and get inventive to help make the rationalization program work. The substitute motion passed 8-3 with Bundy, Fluharty and Hyder voting against.

**Stephanie Madsen moved to substitute the following language (from the AP-modified red/blue document) in Element 13, Habitat:**

**Element 13. PSC Crab, Salmon and Other Species (Excluding Halibut):**

**The Committee recommends the Council prepare a discussion paper to describe processes currently underway to address bycatch of salmon, crab and herring and other forage fish species (including FMP amendments and PSEIS options for crab bycatch). The paper should (1) provide timelines and how they relate to the GOA rationalization timeline, and (2) describe fishery, survey, and habitat data sources that will be used. Based on the recommendations in the paper, the Council would determine (1) if existing processes are sufficient or if some measures need to be more closely linked to rationalization decisions, and (2) if other or additional management approaches are appropriate to include in a rationalized fishery in a trailing amendment.**

The motion was seconded by Stosh Anderson and carried without objection.

**Stephanie Madsen then continued on to Alternative 3, Element 3, Sector Identification, and moved the Council delete Nos. 1, 3 and 5, essentially making it a sector processor/sector coop proposal.** The motion was seconded by Kevin Duffy. Ms. Madsen believed this came from the catcher processor sector as a viable option for them without going to a quota based program and there was no public testimony supporting this concept. This would leave the catcher processors without an option for sector allocation, but they would have a quota share program with coop proposals within. The motion carried with Roy Hyder objecting.

**Stephanie Madsen moved the Council substitute the following for Element 4, Target Species:**

**Issue 1: Initial Allocation of catch history**

**Option 1: Allocate catch history by sector and gear type**

**Option 2: Allocate catch history on an individual basis**

- a. Trawl CV and CP  
Pollock  
Pacific cod  
Deepwater flatfish**

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- Rex sole**
- Shallow water flatfish**
- Flathead sole**
- Arrowtooth flounder**
- Northern rockfish**
- Pacific ocean perch**
- Pelagic shelf rockfish**
  
- b. Longline CV and CP**
  - Pacific Cod**
  - Pelagic shelf Rockfish**
  - Pacific ocean perch**
  - Deepwater flatfish (if turbot is targeted)**
  - Northern rockfish**
  - Arrowtooth**
  
- c. Pot CV and CP**
  - Pacific Cod**

**Issue 3: Transferability and Restrictions on Ownership of QS/IFQs**

**Option 1. Persons eligible to receive QS by transfer must be:**

- Suboption 1. US citizens who have had at least 150 days of sea time**
- Suboption 2. Entities that have a U.S. citizen with 20% or more ownership and at least 150 days of sea time.**
- Suboption 3. Initial recipients of harvesting of CP quota share**
- Suboption 4. U.S. citizens eligible to document a vessel**
- Suboption 5. Communities would be eligible to receive QS by transfer (See Element 12)**

**Option 11. Retention requirements for rockfish, sable fish and Atka mackerel.**

- Suboption 1. No retention requirements**
- Suboption 2. Require retention (all species) until the IFQ for that species is taken with discards allowed for overages**
- Suboption 3. Require 100% retention (all species) until the IFQ for that species is taken and then stop fishing.**

**Option 13. Processing Restrictions.**

- Suboption 1. CPs may buy CV fish**
  - a. 3-year sunset**
- Suboption 2. CPs are not permitted to buy fully utilized species (cod, pollock, rockfish, sablefish, and QS portion of flatfish) from CVs**
- Suboption 3. Exempt bycatch amounts of these species delivered with flatfish**
- Suboption 4. CPs are prohibited from buying CV fish.**

The motion was seconded by Stosh Anderson. Ms. Madsen stated she took everything out that applied to catcher vessels and everything that applied to a QS program, and noted that this is a target species sector allocation. The motion carried without objection.

**Kevin Duffy moved the Council delete Suboption 3 of Issue 1, Element 11, Coops, in its entirety as it is no longer needed because the previous motion removed the CV sector.** The motion was seconded by Stephanie Madsen. **John Bundy moved to amend the amendment by allowing staff analysts to discuss the issue of allowing multiple coops in this sector.** The amendment was seconded by Stosh Anderson and carried without objection. Mr. Duffy's amended motion then also carried without objection.

Jane DiCosimo pointed out that since the Council had essentially split CP and CV, Option 3, under Issue 1 of Element 11, Coops, should probably also be deleted. Chairman Benton remarked that he believed most Council members felt it had been split, so several nuances similar to Option 3 would need to be cleaned up in the analysis by staff so that some options would be placed only under CP or only under CV, as appropriate.

**Stephanie Madsen moved to define "Operator" on Element 19, Closed Class Processor Qualifications, Option 2, Suboption 1, as follows: A federal processor permit holder.** The motion was seconded by Ben Ellis. Ms. Madsen clarifies that the "operator" must have held a federal permit, and it wasn't clear that the operator of the plant was necessarily the plant manager who operated the plant, but it was actually the person who held the federal processor permit. **Ms. Madsen withdrew her motion,** with concurrence of the second (Mr. Ellis) and **restated the motion such that "operator" be defined as a federal or state holder of a processor permit.** The motion was seconded by Ben Ellis and carried without objection.

Stephanie Madsen pointed out that the definition for operator in her last motion would also apply to Alternative 5, Subalternative 1, Element 18, Issue 1, Options 1(b) and 2(b).

**Stephanie Madsen then moved to strike and add language to the 3<sup>rd</sup> sentence of Element 18, Processing Sector-Applicable to Two pie (IFQ/IPQ) Cooperatives, so it would read as follows:**

**Processor Purchase Requirements. Any processor within any Gulf community can buy IPQ shares from the Catcher processor sector. C/P will be issued C/P QS which combines the privilege of catching and processing product.**

The motion was seconded by Stosh Anderson. Ms. Madsen was attempting to define catcher processor quota shares. Jane DiCosimo then clarified that by adding this statement, it only changed it from being an option to being a statement. There was no material change in the analysis. **Stephanie Madsen withdrew her motion,** with concurrence of the second (Stosh Anderson).

The main motion, as amended, passed unanimously 11-0.

C-2 Crab Rationalization

**ACTION REQUIRED**

- (a) **Receive Committee reports, select preferred alternatives for completed trailing amendments, and provide clarification on previous actions.**
- (b) **Discuss EIS progress and alternatives**

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**BACKGROUND**

(a) The following items contained in trailing amendments will be presented to the Council at this meeting:

- 1) **Arbitration System.** The Council will be presented the report of the arbitration committee and the analysis of options for an arbitration program to settle price disputes between IFQ holders and IPQ holders. The primary objective of the Council will be to select an arbitration standard, an arbitration structure, and provide general guidance on future oversight and management of the arbitration program by the Council and NOAA Fisheries.

At its October meeting, the Council requested NOAA General Counsel to examine any antitrust issues under arbitration program of the rationalization program. NOAA GC will update the Council on the status of its response to this request.

- 2) **Alternative protections for communities.** The Council will be presented the report of the community protection committee and the analysis of alternative protections for communities. The analysis will examine options for the cooling off period, restrictions on the movement of processing shares from the community of origin, rights of first refusal on the sale of processing shares for movement from communities, caps on the amount of IPQs, and a right of first refusal for crab dependent communities in the Northern Gulf of Alaska.
- 3) **Data collection.** The Council will be presented the report of the data collection committee and the analysis of options to establish a system to collect economic data for evaluating the success of the rationalization program. The analysis examines the types of data for collection, the system for collecting those data, and protecting confidentiality.
- 4) **CDQ ownership caps.** The Council will be presented with an analysis of options for increased harvest share ownership and use caps for CDQ groups. At its December meeting, the Council elected to defer decision on this issue to this meeting.
- 5) **Clarification of Vertical Integration Caps.** Staff requests that Council clarify its intention with respect to caps on vertical integration from the June 10, 2002 motion. The limit on vertical integration specifically provides:

1.6.4 Controls on vertical integration (ownership of harvester QS by processors):

Option 2: A cap of 5% with grandfathering of initial allocations as of June 10, 2002, including transfers by contract entered into as of that date.

Option 3: Vertical integration ownership caps on processors shall be implemented using both the individual and collective rule using 10% minimum ownership standards for inclusion in calculating the cap. PQS ownership caps are at the company level.

Since the vertical integration cap is in addition to the general caps on IFQ holdings, caps on IFQ holdings of processors (and persons with more than 10 percent common ownership with processors) would have the following two dimensions:

- 1) Each individual IFQ holder would be subject to the general IFQ caps, which apply to all IFQ holders (e.g., 1 percent for Bristol Bay red king crab).
- 2) Each processor (identified as the processor and any persons with 10 percent common ownership with the processor) is subject to the 5 percent vertical integration cap on IFQ holdings.

Under these restrictions, an individual that is subject to a processor's collective vertical integration cap (because of common ownership with the processor) could be prohibited from holding any IFQs in a fishery, if the processor and other persons associated with the processor under the vertical integration cap own 5 percent or more of the IFQs in the fishery. The Council, however, should clarify whether or not the 5 percent processor cap would exempt the processing entity (a corporation only) from the generally applicable individual IFQ cap. If interpreted as an exemption, all individuals would remain subject to the generally applicable IFQ cap (e.g., 1 percent in Bristol Bay red king crab). Only the primary processing corporation (and no individual) might be exempt from that individual generally applicable cap.

- (b) The Council will be updated on the development of an alternatives framework and the schedule for the Environmental Impact Statement (EIS). The alternatives framework provides Fishery Management Plan review and analysis of the Council's rationalization program alternatives, with full discussion of FMP changes and potential changes to State crab management. In addition, the Council will be updated on the EIS schedule, specifically the scheduling of Council initial review of the draft EIS, the submission of the EIS for public comment, the public comment period, the summary of public comment, and Council final action. A letter from Jim Balsiger on these issues is included as Item C-2(b)(1). Council concurrence with the alternatives framework and schedule will be requested.

### **Scientific and Statistical Committee Report**

The SSC received reports from the Data Collection Committee, Binding Arbitration Committee and Community Protection Committee. The SSC commended the Data Collection Committee for the progress they had made and encouraged it to continue working toward mutually agreeable resolutions for the degree of aggregation of reported data and the level of information provided regarding fixed costs. The SSC also recommended the Community Protection Committee more clearly emphasize the uncertainty of the actual outcome of protection measures and urged Council staff and NMFS to work on developing a research plan which could provide useful information. Gretchen Harrington, NMFS staff, updated the SSC on the progress of the Crab EIS including its target completion date of December 2003. The SSC found the schedule ambitious due to the complex nature of impending changes in the management of the crab fishery. The SSC Minutes are lengthy and can be found attached as Appendix III.

### **Report of the Advisory Panel**

The Advisory Panel divided their minutes into four sections: Binding Arbitration, Community Protection (in both the Bering Sea/Aleutian Islands and Gulf of Alaska), Data Collection, and CDQ Ownership Caps.

#### Binding Arbitration

The AP recommended the Council adopt the fleet-wide binding arbitration model as described in the Report of the Working Group on Binding Arbitration, however, they also offered a minority report supporting the "last best offer proposal" adding the following paragraph to (4) Arbitration Decisions, of the Process Section in the Report of the Working Group on Binding Arbitration:

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“The arbitrator who makes the last pre-season arbitration decision will review all of the arbitration decisions for that season and select the highest arbitrated price(s) which is representative of 7% of the market. That price shall become the price for all arbitrated prices for that season, inclusive of the opt-in provision, and, independent of delivery terms at the harvesters’ option. If the arbitration decisions include both formula and straight price decisions, the arbitrator shall have the discretion to select and apply one of each type.”

The arbitrator who makes the fleet-wide price decision should have the flexibility to determine the mechanism for selecting the highest price. He could, for example, take a single arbitrated price if it covers at least 7% of the market, or could take a weighted average of three prices to cover 7% of the market, etc. This process will be very similar to the current price negotiations in which harvesters negotiate delivery with their intended market and then obtain a fleet-wide price close to the season opening.

### Community Protection

The AP recommended the Council select as a preferred alternative the cool down period provisions recommended by the Community Protection Committee with the following change:

- (c) 10% of the IPQs may leave a community on an annual basis, or up to 500,000 pounds, whichever is less. *The requested clarification of the “slippage” rules should be that slippage is measured on a fishery-by fishery basis.*

The AP recommended the Council select, as a preferred alternative, IPQ caps of:

- Opilio - IPQ percentage times a TAC of 125 million pounds
- Bristol Bay Red King - IPQ percentage times a TAC of 9 million pounds

The AP recommended the Council add an option under the community protection provisions that those vessels homeported within the city of Kodiak, as determined by registration with the Kodiak Harbormaster as a current lessee of a Kodiak boat harbor stall, shall have the option to declare their last trip of the season for delivery to Kodiak, and it shall not be subject to regionalization and IPQ requirements.

The AP also recommended the Council add an option to the community protection provisions such that PQS with regional categories for deliveries of opilio crab and Bristol Bay red king crab be allocated proportionally from the northern and southern regions. This option is outlined in more detail in the AP Minutes, attached to these minutes as Appendix IV.

The AP recommended the Council adopt as its preferred alternative the Community Protection Committee’s recommendations for first right of refusal, as amended. First right of refusal provisions were separated into areas for the BSAI and GOA as well as a community purchase option and identification of community groups and oversight. Provisions for each are outlined in detail in the AP Minutes, attached as Appendix IV.

### Data Collection

The AP recommended the Council re-examine the transfer of B shares to processors and whether B shares can be transferred independently of A shares.

CDQ Ownership Caps

The AP reiterated their December 2002 recommendation that the Council amend the proposal and analysis of CDQ ownership and use caps to include analysis of the same range of caps for non-CDQ participants, with the clarification that the same harvest QS caps apply to all non-CDQ participants, including processors. After two failed motions for CDQ QS caps of percentages for different crab species, the AP recommended CDQ QS caps be set at the individual and collective level.

**DISCUSSION/ACTION**

**Kevin Duffy moved the Council adopt the following elements for a system of Binding Arbitration to resolve failed price negotiations. All page references are to the Council document entitled “BSAI Crab Rationalization Program, Trailing Amendments” dated February 2003. The motion was seconded by Stephanie Madsen with amendments by Council members shown below. Additions are shown italicized and deletions are stricken out.**

- 1. The Standard for Arbitration is Option 4, page 3.7-7**
- (b) The Binding Arbitration system shall include a market report, page 3.7-19**
- (c) The arbitrator(s) and market analyst shall be selected by mutual agreement of the PQS and QS holders, page 3.7-20**
- (d) Binding Arbitration does not apply to Class B shares nor Class C shares until they are subject to delivery restrictions, page 3.7-20**
- 5. Shares of processor affiliates, Option 3, page 3.7-21**
- 6. Payment of the arbitration and market analysis, Option 1, page 3.7-22**
- 7. Quality dispute resolution using either a formula or a fixed price for delivery terms, as described in the second paragraph, page 3.7-23**
- 8. Data used in arbitration proceedings as described on page 3.7-23**
- 9. Arbitration decisions will be enforced by #1) Civil Damages, as described on pages 3.7-24/25**
- 10. Oversight and administration of the Binding Arbitration system as described on page 3.7-25**
- 11. The structure for the system of Binding Arbitration system shall be as described below:**

**LAST BEST OFFER BINDING ARBITRATION**

**GENERAL**

**The Last Best Offer Model provides a mechanism to resolve failed price and delivery negotiations efficiently in a short period before the opening of the season. The Model includes the following specific characteristics:**

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- 1. Processor-by-processor.** Processors will participate individually and not collectively, except in the choice of the market analyst and the arbitrator/arbitration panel.
- 2. Processor-affiliated shares.** Participation of processor-affiliated shares will be limited by the current rules governing antitrust matters.
- 3. Arbitration standard.** The standard for the arbitrator is the historic division of revenues between harvesters and processors in the aggregate (across the entire sectors), based on arm's-length first wholesale prices and ex-vessel prices (Option 4 under "Standard for Arbitration" in the staff analysis). The arbitrator shall consider several factors including those specified in the staff analysis, such as current ex vessel prices for both A, B and C Shares, innovations, efficiency, safety, delivery location and timing, etc.
- 4. Opt-in.** An IFQ holder may opt in to any contract resulting from a completed arbitration for an IPQ holder with available IPQ by giving notice to the IPQ holder of the intent to opt in, specifying the amount of IFQ shares involved, and acceptance of all terms of the contract. Once exercised, an Opt-in is binding on both the IPQ holder and the IFQ holder.
- 5. Performance Disputes.** Performance and enforcement disputes (e.g. quality, delivery time, etc.) initially will be settled through normal commercial contract dispute remedies. If those procedures are unsuccessful, the dispute will be submitted for arbitration before the arbitrator(s). If those procedures are unsuccessful and in cases where time is of the essence, the dispute will be submitted for arbitration before the arbitrator(s). The costs of arbitration shall be paid from the fees collected, although the arbitrator(s) will have the right to assign fees to any party for frivolous or strategic complaints.
- 6. Lengthy Season Approach.** For a lengthy season, an IPQ holder and an IFQ holder (or group of IFQ holders) may agree to revise the entire time schedule below and could agree to arbitration(s) during the season. That approach may also be arbitrated pre-season if the holders cannot agree.

**PROCESS**

- 1. Negotiations and Voluntary Share Matching.**  
At any time prior to the season opening date, any IFQ holders may negotiate with any IPQ holder on price and delivery terms for that season (price/price formula; time of delivery; place of delivery, etc.). If agreement is reached, a binding contract will result for those IFQ and IPQ shares. IPQ holders will always act individually and never collectively, except in the choice of the market analyst (which may occur at any time pre-season) and the arbitrator/arbitration panel for which all IFQ and IPQ holders will consult and agree.
- 2. Required Share-Matching and Arbitration.**  
Beginning at the 25-day pre-season point, IFQ holders may match up IFQ shares not already subject to contracts with any IPQ shares not under contract, either as collective groups of IFQ holders or as individual IFQ holders (the offered IFQ Shares must be a substantial amount of the IFQ Holder(s)' uncontracted shares). The IPQ holder must accept all proposed matches up to its non-contracted IPQ share amount. All IFQ holders "matched" with an IPQ holder will jointly choose an arbitrator with that IPQ holder. The matched share holders are committed to the arbitration once the arbitrator is chosen (if the parties wish, the arbitrator

may initially act as a mediator to reach an agreement quickly). Arbitration must begin no later than 15 days before the season opening date.

**3. Data.**

The Arbitrator will gather relevant data independently and from the parties to determine the historical distribution of first wholesale crab product revenues (at FOB point of production in Alaska) between harvesters and processors in the aggregate (across the entire sectors). For a vertically integrated IPQ holder (and in other situations in which a back-calculation is needed), the arbitrator will work with that IPQ holder and the IFQ holders to determine a method for back-calculating an accurate first wholesale price for that processor. The Arbitrator will receive a pre-season market report from the market analyst, and may gather additional data on the market and on completed arbitrations. The Arbitrator will also receive and consider all data submitted by the IFQ holders and the IPQ holder. The Arbitrator will not have subpoena power.

~~All data obtained by the Arbitrator will be shared with the parties, subject only to antitrust and confidentiality limitations. The Arbitrator may consult with the third party data collector (e.g., the Pacific States Marine Fisheries Commission) for purposes of verifying data.~~ Stephanie Madsen moved to amend this paragraph by adding the language shown in italics. The motion was seconded by Dr. Fluharty and carried without objection. Dave Hanson believed the second sentence conflicted with the first sentence and wondered if confidentiality applied or not. He did not believe this amendment carried Mr. Duffy's intent. Mark Fina replied that he believed the correct language could be taken from Item 8 above, referencing pages 3.7-3.23 of the Trailing Amendment document. Ms. Madsen then moved to delete the entire paragraph with the understanding that the intent is covered in the portion of the Trailing Amendment incorporated into the main motion. The amendment was seconded by Dennis Austin and carried without objection.

**4. Arbitration Decisions.**

Arbitration will be based on a "last best offer" system, with the Arbitrator choosing one of the last best offers made by the parties. The Arbitrator will work with the IPQ and IFQ holders to determine the matters that must be included in the offer (e.g. price, delivery time & place, etc.) and will set the date on which "last best offers" must be submitted. The last best offers may also include a price over a specified time period, a method for smoothing prices over a season, and an advance price paid at the time of delivery.

If several groups or individual IFQ Holders have "matched" with that IPQ Holder, each of them may make a last best offer. Prior to submission of the last-best offers, the Arbitrator may meet with parties, schedule joint meetings, or take any actions aimed at reaching agreement. The Arbitrator will notify the IPQ holder and the IFQ holders of the Arbitration Decision no later than 10 days before the season opening date. The Arbitration Decision may be on a formula or ex-vessel price basis. The Arbitration Decision will result in a contract for the IPQ holder and the IFQ holders who participated in arbitration with that IPQ holder.

~~The arbitrator who makes the last pre-season arbitration decision will review all of the arbitration decisions for that season and select the highest arbitrated price(s), which is representative of 7% of the market share of the PQ. That price shall become the price for all arbitrated prices of that season, inclusive of the opt-in provision, and independent of delivery terms at the harvester option. If the arbitration decisions include both formula and straight price decisions, the arbitrator shall have the discretion to select and apply one of each type. The decision on which price is the "highest arbitrated price" shall take into consideration~~

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~~terms of delivery that may have a significant impact on price, including time and place of delivery.~~ John Bundy moved to delete this paragraph in its entirety, and add a new #7(a,b), as shown below. The amendment was seconded by Stosh Anderson and carried without objection.

**5. Post-Arbitration Opt-In.**

Any IFQ holder with shares not under contract may opt in to any contract resulting from an Arbitration Decision for an IPQ holder with IPQ that is not under contract, on all of the same contract conditions (price, time of delivery, etc.). If there is a dispute regarding whether the “opt in” offer is consistent with the contract, that dispute may be decided by the arbitrator who will decide only whether the Opt-in is consistent with the contract.

**6. Formula and Prices.**

Throughout the year, the market analyst will survey the crab product market and publish periodically a composite price. That price will be a single price per species, based on the weighted average of the arm’s length transactions in products from that species.

**7. Additional Modifications**

*The Committee is requested to consider the following modifications to this preferred alternative and to report back to the Council at the April meeting:*

- a. The arbitrator who makes the last pre-season arbitration decision will review all of the arbitration decisions for that season and select the highest arbitrated prices(s), which is representative of 7% of the market share of the PQ. That price shall become the price for all arbitrated prices of that season, inclusive of the opt-in provision, and, independent of delivery terms at the harvester option. If the arbitration decisions include both formula and straight price decisions, the arbitrator shall have the discretion to select and apply one of each type. The decision on which price is the ‘highest arbitrated price’ shall take into consideration terms of delivery that may have a significant impact on price, including time and place of delivery.*
- b. A single annual fleet-wide arbitration will be used 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 (1990-2000) distribution of first wholesale revenues between fishermen and processors. The formula may be adjusted by the arbitrator(s) to take into account post-rationalization developments as the arbitrator(s) deem appropriate, subject to certain general guidelines.*

Stosh Anderson then moved to amend the main motion by deleting #11 and everything following it, and replacing it with the AP’s recommendation (not including the Minority Report) to adopt the Fleet-Wide Binding Arbitration Model outlined in the Report of the Working Group on Binding Arbitration. The motion was seconded by Roy Hyder.

Stephanie Madsen moved to amend Mr. Anderson’s amendment on page 3.7-32 of the Trailing Amendment, #9 Delivery Mechanics, to read as follows: “In the absence of a contract, a fisher would have the option to ‘put’ his IFQs to a processor with available IPQs at the default price, during the ‘put’ exercise. ‘Puts’ must be exercised in advance of arbitration to set fleet-wide price.” All remaining text in #9 would remain as shown in the Trailing Amendment. The motion was seconded by Ben Ellis. Stosh Anderson questioned staff that by mandating the ‘put’ before exercising arbitration, you would

establish a time with the processor before setting the price. Mark Fina agreed that it was establishing a pre-set price, and the amendment passed 7-4 with Anderson, Balsiger, Bundy and Hyder voting against.

Dr. Balsiger stated he didn't believe this motion backed up the decisions the Council made previously, and the choice comes down to what each Council member supported and what they believed from public testimony. Stephanie Madsen said she believed binding arbitration should be a last ditch effort and she would not support the motion. Kevin Duffy said he couldn't support the motion either as he tended to err on the side of the last/best offer concept. Mr. Duffy wanted the benefit of the expertise of the people on the Committee. The amended amendment failed 8-3 with Anderson, Balsiger and Hyder voting in favor.

Dr. Fluharty then asked Mark Fina and Darrell Brannen if there would be any benefit to going back and running the Dr. Plott models with informed people in that the results might produce more confidence from Council members. Mark Fina responded that there are a few new models on the table, but he would have to speak to Dr. Plott as he didn't think Dr. Plott had enough time to run the new models and there wasn't much time between this meeting and the April meeting. He did say that Council members would have the benefit of the Committee discussing these new models and where the advantages and disadvantages might be, and that the Committee could provide some insight before the April meeting.

Mr. Duffy's main motion, as amended, passed 9-2 with Anderson and Hyder voting against.

The Council then moved on to the Community Protection issue. **Kevin Duffy moved the Council adopt the recommendations of the Community Protection Committee, with the following changes:**

### **Community Purchase and Right of First Refusal Options**

**The Committee believes that communities need an effective right of first refusal on any shares sold for use outside of the community. Development of further details of a system for exercising those rights that does not overly decrease efficiencies in the fisheries should continue.**

#### **1. First Right of Refusal**

**For communities with at least three percent of the initial PQS allocation in any BSAI crab fishery, based on history in the community except for those communities that receive a direct allocation of any crab species (currently only Adak), allow CDQ groups, qualified communities, or community groups representing qualified communities a first right of refusal to purchase processing quota shares that are based on history from the community which are being proposed to be sold for processing outside the boundaries of the community of original processing history. Intra-company transfers within a region are exempt from this provision. To be exempt from the first right of refusal, the use of the PQS must be by the same company.**

**If any owner of IPQ decides to sell the IPQ, a first right of refusal shall go to:**

- 1) in CDQ communities: to the CDQ group**
- 2) in non-CDQ communities:**
  - a. In communities with two or more processing facilities, the first right of refusal goes (first) to the remaining processor(s) and (second) to the entity identified by the community. Under this paragraph, a processor must exercise the right within 30 days of presentation. If not exercised by a processor, the entity identified by the community must exercise the right within 60 days of the presentation to processors.**

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- b. In communities with only one processor, the first right of refusal goes to the entity identified by the community. Under this paragraph, the entity must exercise the right within 60 days of presentation.**

**Any right of first refusal must be on the same terms and conditions of the underlying agreement. If a first right of refusal is exercised by another processor and that processor proposes to transfer the shares from the community in a subsequent sale, the subsequent sale is subject to the first right of refusal.**

**The right of first refusal applies only to the community within which the processing history was earned. If processing quota is transferred to another community (in a manner authorized by these provisions), it no longer is subject to a right of first refusal.**

**2. GOA First Right of Refusal**

**For communities with at least three percent of the initial PQS allocation of any BSAI crab fishery based on history in the community that are in the area on the Gulf of Alaska north of 56°20'N latitude, processors in qualified communities or groups representing qualified communities will have a first right of refusal to purchase processing quota shares which are being proposed to be transferred from unqualified communities in the identified Gulf of Alaska area. Intra-company transfers within a region are exempt from this provision. To be exempt from the first right of refusal, the use of the PQS must be by the same company.**

**The first right of refusal goes (first) to the remaining processor(s) and (second) to the entity identified by the community. Under this paragraph, a processor must exercise the right within 30 days of presentation. If not exercised by a processor, the community entity must exercise the right within 60 days of the presentation to processors.**

**Any right of first refusal must be on the same terms and conditions of the underlying agreement. If the first right of refusal is exercised by a processor, further transfers of the shares from the purchasing community are subject to the general first right of refusal of the new community under 1) above.**

**3. Community Purchase Option**

**Allow for a community organization in those communities that have at least 3 percent of the initial PQS allocation of any BSAI crab fishery based on history in the community to be exempted from the restriction for the 150 days of sea time requirement under 1.6, Transferability and Restrictions on Ownership of QS.**

**4. Identification of Community Groups and Oversight**

**For CDQ communities, CDQ groups would be the entity eligible to exercise any right of first refusal or purchase shares on behalf of the community. Ownership and management of harvest and processing shares by CDQ groups will be subject to rules similar to CDQ regulations.**

**For non-CDQ communities, the entity eligible to exercise the right of first refusal or purchase shares on behalf of a community will be identified by the qualified city or borough, except if a qualified city is in a borough, in which case the qualified city and borough must agree on the entity. If no entity is identified and approved by the date of presentation of an offer over which the entity would have a right of first refusal, no community entity will have the right. Ownership and management of harvest**

**and processing shares by community entities in non-CDQ communities will be subject to rules similar to those of the halibut and sablefish community purchase program.**

**5. IPQ Caps**

**The amount of IPQ in any year shall not exceed the percentage of the TAC for crab as follows:**

**Opilio: Option 1 - IPQ percentage times a TAC of 175 million pounds.**

**Bristol Bay red king crab: Option 3 - IPQ percentage times a TAC of 30 million pounds.**

**IPQ issued in excess of IPQ limit shall be subject to regional landing requirements.**

**6. Cool Down Period**

**During the Cool Down Period the following elements will apply:**

- 1) the method to determine the shares associated with a community will be the same method used for allocating processing quota as established by the Council.**
- 2) Community shall be defined as the boundaries of the Borough or, if no Borough exists, the first class or second class city, as defined by applicable State statute. A community must have at least 3 percent of the initial PQS allocation in any fishery based on history in the community to require continued use of the IPQs in the community during the cool down period.**
- 3) 10% of the IPQs, on a fishery by fishery basis, may leave a community on an annual basis, or up to 500,000 pounds, whichever is less. The amount that can leave will be implemented on a pro-rata basis to all PQS holders in a community.**
- 4) Exempt the Bairdi, Adak red crab and Western Aleutian Islands brown crab fishery from the cool down provision.**
- 5) There should be an exemption from the requirement to process in the community if an act of God prevents crab processing in the community. This provision will not exempt a processor from any regional processing requirements.**

**7. Regionalization of the Bairdi Fishery**

**If the bairdi fishery becomes a directed fishery, it shall become subject to the regionalization provisions of the Council Crab Rationalization program.**

The motion was seconded by Stephanie Madsen. Several Council members had questions on the motion before making any amendments. Dr. Fluharty questioned the rationale after processing quota was transferred from one community to another, he thought the same provisions should apply because the need might still exist or the quota could get sent back. Mr. Duffy replied that he understood it was meant to be a provision that, once authorized, would not occur several times. Mark Fina recalled in Committee discussions that it was intended to protect the historic distribution of processing in communities. If they wanted to let it go they had the right to exercise the right of first refusal, but then it was gone. Chairman Benton also clarified that he interpreted the motion would have the Committee continue working on refining implementation of the provisions, but that the Council was not asking the Committee to look at completely new programs - work within the framework and make it work efficiently. Mr. Duffy replied that he wanted Council concurrence on the concept of first right of refusal, but the implementation details were best worked out at the Committee level. Dr. Balsiger asked if the Council had the option to reconsider the program if the Committee discovered big problems while working out implementation details. Chairman Benton replied that in the past if the

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Council identified fatal flaws, the Council could reconsider and withdraw it, bring it back and rework it. Ms. Madsen understood the process but wanted to flag the concern brought out in public testimony and the AP report to drop out the provision for first right of refusal to go to the other processor.

**Stosh Anderson moved to amend the motion by deleting paragraph a) in its entirety, under 1) First Right of Refusal, 2) in Non-CDQ Communities, and deleting the words “In communities with only one processor” from paragraph b), as shown below.**

**If any owner of IPQ decides to sell the IPQ, a first right of refusal shall go to:**

- 1) in CDQ communities: to the CDQ group**
- 2) in non-CDQ communities:**
  - a. ~~In communities with two or more processing facilities, the first right of refusal goes (first) to the remaining processor(s) and (second) to the entity identified by the community. Under this paragraph, a processor must exercise the right within 30 days of presentation. If not exercised by a processor, the entity identified by the community must exercise the right within 60 days of the presentation to processors.~~**
  - b. ~~In communities with only one processor, the first right of refusal goes to the entity identified by the community. Under this paragraph, the entity must exercise the right within 60 days of presentation.~~**

**Any right of first refusal must be on the same terms and conditions of the underlying agreement. If a first right of refusal is exercised by another processor and that processor proposes to transfer the shares from the community in a subsequent sale, the subsequent sale is subject to the first right of refusal.**

The motion was seconded by Stephanie Madsen. Lisa Lindeman, NOAA-GC, asked if the Council planned to set up any criteria that the “entity”, referred to in paragraph b), would have to meet. Mr. Duffy replied that he thought it was an implementation issue and something the Committee would have to work on. Mark Fina pointed out that under 4. Identification of Community Groups and Oversight, for non-CDQ communities the idea was to use halibut and sablefish community purchase provisions in a general way to identify who could manage it. The Committee also spoke of the community itself exercising this right while being governed by rules similar to the halibut and sablefish community purchase program. Ms. Lindeman then verified that the eligibility criteria would be worked out in implementation details by the Committee. Chairman Benton replied affirmatively.

**Hazel Nelson moved to amend the amendment by also deleting the last sentence of the paragraph following paragraph b), as shown below.**

**~~Any right of first refusal must be on the same terms and conditions of the underlying agreement. If a first right of refusal is exercised by another processor and that processor proposes to transfer the shares from the community in a subsequent sale, the subsequent sale is subject to the first right of refusal.~~**

The motion was seconded by John Bundy. Ms. Nelson thought this sentence no longer applied due to the amendment deleting paragraph a) giving the first right of refusal to the remaining processor. The motion carried without objection, and Mr. Anderson’s amended amendment also carried without objection.

**John Bundy moved to amend the motion by deleting Part 1) First Right of Refusal, in its entirety. The motion was seconded by Roy Hyder, but failed 9-2 with Hyder and Bundy voting in favor.**

Ms. Nelson then brought up two issues that she believed needed to be discussed by the Committee. First was how history would be applied for floaters since they move around so much. Ms. Madsen recalled a discussion about catcher-processors and floaters, and about cities or boroughs and if they had landed their history in that community. Originally, CPs didn't want regionalization because they didn't realize fish tickets divulged their catch location, which allowed the Council to regionalize CP shares. If a floater is outside the boundaries of a community, that floater's history was not assigned to that community. Every community has a boundary, but you wouldn't want to prohibit the committee from insuring the boundaries of the communities were identified; every community has a legal boundary. Chairman Benton asked if Ms. Madsen thought it appropriate to ask the Committee to review that to make sure there weren't implementation difficulties. Ms. Madsen replied she thought that was a good idea as long as the Committee didn't try to redefine how the PQS was assigned. Chairman Benton understood the Committee would look at the way the program was constructed to see if it generated any implementation issues for this provision.

**Stosh Anderson moved to strike the last two sentences from the first paragraph of 1. First Right of Refusal, as shown below.** The motion was seconded by Hazel Nelson.

**For communities with at least three percent of the initial PQS allocation in any BSAI crab fishery, based on history in the community except for those communities that receive a direct allocation of any crab species (currently only Adak), allow CDQ groups, qualified communities, or community groups representing qualified communities a first right of refusal to purchase processing quota shares that are based on history from the community which are being proposed to be sold for processing outside the boundaries of the community of original processing history. ~~Intra-company transfers within a region are exempt from this provision. To be exempt from the first right of refusal, the use of the PQS must be by the same company.~~**

Mr. Anderson stated he thought these two sentences gutted the whole concept. If Company A were in a community, Company B could purchase that company and then transfer those shares out of that individual community. By deleting these two sentences, it provides regional protection which may help in the northern region of the Bering Sea while not harming any other communities participating in the program. The Council had much discussion about how this would affect companies and shares, intra-company transfers, and sales. Mark Fina clarified after this discussion, that a sale would trigger this provision; it takes a sale in the open market to trigger the community the right to purchase. The amendment failed 7-4 with Anderson, Balsiger, Nelson and Benton voting in favor.

**Stosh Anderson moved to amend the first paragraph (shown above) by inserting new language in the second to last sentence to read as follows:**

***“Intra-company transfers for originally issued entities within a region are exempt from this provision.”***

The motion was seconded by Hazel Nelson. Mr. Anderson explained that this amendment was slightly more liberal in that it would allow processors' companies who were originally issued quota share to transfer, within the company, subject to provisions in the remainder of the paragraph. But if the companies were purchased by another company, they wouldn't have the exemption. Ms. Madsen still didn't believe they were exempted from the first right of refusal. Chairman Benton asked Dr. Hanson if there was discussion of this issue at the Committee level. Dr. Hanson responded affirmatively, adding that the language from the Committee was outlined by Mr. Duffy in the main motion. Chairman Benton clarified that the Committee's language would allow for transfers without the first right of refusal within the same company, but would apply the first right of refusal to sales within the same company. Dr. Hanson clarified that this first right of refusal was outside of the cool-down period.

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Mr. Anderson's amendment failed 10-1 with Anderson voting in favor.

Lisa Lindeman asked Mr. Duffy if, in the 2<sup>nd</sup> paragraph under First Right of Refusal, he intended IPQ to be Processing Shares. Dr. Fina spoke of a conversation at the Committee level where it was unclear whether it should be IPQ or PS and it was proposed that this was another issue the Community Protection Committee could take up. He suggested the Council use "processing shares" in place of IPQ in that paragraph to give some flexibility until the right term was chosen. Mr. Duffy clarified that was the intent of his motion.

Moving on to Item 2. GOA First Right of Refusal, **Stosh Anderson moved to delete the second paragraph in its entirety and the last sentence of the third paragraph as shown below:**

**~~The first right of refusal goes (first) to the remaining processor(s) and (second) to the entity identified by the community. Under this paragraph, a processor must exercise the right within 30 days of presentation. If not exercised by a processor, the community entity must exercise the right within 60 days of the presentation to processors.~~**

**~~Any right of first refusal must be on the same terms and conditions of the underlying agreement. If the first right of refusal is exercised by a processor, further transfers of the shares from the purchasing community area subject to the general first right of refusal of the new community under 1) above.~~**

The motion was seconded by Stephanie Madsen. Kevin Duffy commented that if the Council was contemplating taking this action, he believed there needed to be a language change in the first paragraph. Chairman Benton suggested an amendment to Mr. Anderson's motion. **Kevin Duffy moved to amend the amendment by deleting the words "processors in" in the first paragraph, as shown below.** The motion was seconded by Ben Ellis and carried without objection, and Mr. Anderson's amended amendment carried without objection.

**For communities with at least three percent of the initial PQS allocation of any BSAI crab fishery based on history in the community that are in the area on the Gulf of Alaska north of 56°20'N latitude, ~~processors in~~ qualified communities or groups representing qualified communities will have a first right of refusal to purchase processing quota shares which are being proposed to be transferred from unqualified communities in the identified Gulf of Alaska area. Intra-company transfers within a region are exempt from this provision. To be exempt from the first right of refusal, the use of the PQS must be by the same company.**

Stosh Anderson commented that he had concerns with the last two sentences of the first paragraph and the last sentence of the third paragraph and wanted to highlight those concerns for Committee discussion.

The Council then moved on to 5. IPQ Caps. **Stosh Anderson moved the Council strike 175 and replace it with "X" (an unknown number) in the first paragraph for opilio Option 1, and strike 30 and replace it with "Y" (an unknown number) in the second paragraph for Bristol Bay red king crab, Option 3. He further moved to change the third paragraph to read "IFQ issued in excess of IPQ . . .", and added the following language to the end of the sentence: "Staff from NMFS, ADF&G and NPFMC are jointly tasked to provide fixed numbers or the methodology to provide X and Y values to achieve the goal of TACS to exceed IPQ caps as calculated above for two cases. The Council will consider at it's April 2003 meeting:**

- Option A: 25% of the times cap will be exceeded**
- Option B: 33.3% of the times cap will be exceeded**

The motion was seconded by Hazel Nelson. Mr. Anderson also handed out two documents outlining the landing information from 1990 to 2002. He stated the information on the two documents was not totally accurate but that they represent the boundaries of realistic expectations of the concept. He also stated the intent of this motion was to provide access to communities competing for QS in times of abundance. Mr. Duffy wanted to make clear the documents handed out were not generated by the Department of Fish & Game, and thought the motion was asking for a large amount of analysis and didn't believe it was a community protection measure. **Ms. Madsen moved to amend the amendment by including a new Option C of 5% of the times the cap will be exceeded up to 33% of the time.** The motion was seconded by Kevin Duffy. Ms. Madsen didn't believe the exploitation rate would result in a substantially changed level and was sympathetic to making sure the Council looked at exploitation rates. Chairman Benton clarified that Mr. Anderson stated he thought there were two issues: one being whether or not to have IPQ caps, and the other being how much. By this motion, there would be caps but the Council wouldn't know what they were until the outlined additional analysis was brought back. **Ms. Madsen withdrew her amendment with Kevin Duffy's concurrence, followed by Mr. Anderson withdrawing his amendment with concurrence of Ms. Nelson.**

**Stosh Anderson then moved a new motion to replace 175 million pounds with 150 million pounds for opilio, Option 1; and replace 30 million pounds with 12.5 million pounds for Bristol Bay red king crab. He also included changing "IPQ issued in excess of IPQ . . ." to "IFQ issued in excess of IPQ . . ." in the fourth paragraph.** The motion was seconded by Roy Hyder. Chairman Benton asked for Council concurrence in that changing IPQ to IFQ was a typographical error in Mr. Duffy's main motion, to which Mr. Duffy agreed and Council members concurred. Mr. Anderson explained that with the changing in exploitation rate and clarification of 10% CDQ reduction in TAC, he believed it provided the best protection for processors and communities in following the June motion's intent and also shared abundance with communities that haven't got access. **Stephanie Madsen moved to amend the amendment to reinsert 175 million pounds for opilio, and replace 12.5 million pounds with 20 million pounds for Bristol Bay red king crab.** The amendment was seconded by Ben Ellis. Ms. Madsen explained that this was her best guess and heard 175 and 30 in public testimony. Mr. Anderson spoke of his opposition to the amendment. The motion passed 7-4 with Anderson, Balsiger, Bundy and Hyder voting against.

**Stosh Anderson moved to add the following language to the end of the last sentence of 5) under Item 6, Cool Down Period, as shown in italics below:**

- 5. There should be an exemption from the requirement to process in the community if an act of God prevents crab processing in the community. This provision will not exempt a processor from any regional processing requirements *if there is processing capacity in the region.***

The motion was seconded by Stephanie Madsen. Mr. Anderson stated this was basically an escape clause should an act of God prevent processing to happen. The motion carried without objection.

Kevin Duffy was asked by Council members to provide his intent of the main motion on the issue of Regionalization of the Bairdi fishery to which he stated he intended to revisit the issue in the future and have the appropriate analysis done, should it become a possibility.

**Mr. Anderson moved to amend Item 7, Regionalization of the Bairdi Fishery to read as follows, with additions shown in italics and deletions stricken out:**

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**If the bairdi fishery becomes a directed fishery, it shall ~~become~~ *be allocated according to the original distribution of Bristol Bay red king crab and shall not be subject to the regionalization provisions of the Council Crab Rationalization program.***

The motion was seconded by Roy Hyder. Mr. Anderson explained that if there will be directed fishery, he believed the allocation currently established is not appropriate and disenfranchised the community of Kodiak. He spoke of hearing public testimony that Kodiak would pay the biggest price with the current allocation plan. Chairman Benton made clear Mr. Anderson's intent that if biological information indicated the bairdi fishery was likely to become a directed fishery in the near future, at that time the Council would schedule a review of the bairdi fishery looking at this alternative, including possible consideration of other alternatives, and go through the analytical process to address what happens to the bairdi fishery as a directed fishery. Mr. Anderson concurred this was his intent. Lisa Lindeman asked if this could be restated as a motion, to which **Stephanie Madsen so moved**. The motion was seconded by Hazel Nelson. Kevin Duffy supported this as an amendment to his main motion, and it carried without objection.

**Stosh Anderson moved to amend the main motion by inserting a new Item 8, Last Load Home, as follows:**

**The related QS as qualified with vessels home ported within the Kodiak Island Borough during the qualifying period for the vessel. The vessel will have to document registration with the Kodiak Boat Harbor by lease of a harbor stall and paying Kodiak Island Borough taxes during the qualifying period. QS holders shall have the option to declare their last trip of the season for delivery to Kodiak, and it shall not be subject to regionalization and IPQ requirements. This privilege is limited to QS issued with these privileges and does not apply to QS purchased without these originally issued privileges.**

The motion was seconded by John Bundy. Mr. Anderson stated his intent to provide the capacity for vessels that have a legitimate home port history in Kodiak to be able to bring their last trip home. He believed the language defines a very limited class of vessels so that in the future, people couldn't paint "Kodiak" on the back of their boat to get these privileges. By defining it as the "qualifying years," whichever qualifying years that vessel chooses with the Council's criteria, they had to have had a slip in the Kodiak Harbor and been on the tax rolls for the Kodiak Island Borough - both of which are easily documented and not forgeable. Stephanie Madsen asked if the qualifying period meant all years in the qualifying period or any one of the years. Mr. Anderson referenced the qualifying years for each vessel having drop out provisions. His motion meant all qualifying years the boat chose within that parameter. For example, if a boat had 5 years, drop two; they would have to meet the stated qualifications for all three years. Ms. Madsen stated she thought this would protect one community at the detriment of other communities and would not support it. The motion failed 9-2 with Anderson and Nelson voting in favor.

The main motion, as amended, passed 10-1 with Anderson voting against.

The Council then moved into the Data Collection issue. **Kevin Duffy moved the Council adopt the following motion for the Data Collection Program.** The motion was seconded by Dennis Austin.

**The mandatory Data Collection Program shall have the following elements:**

- A. Purpose. The purpose of the data program is as set out in the June 2002 motion. The Council will require the production of data needed to assess the efficacy of the crab rationalization program and to determine its relative impact on fishery participants and communities.**

- B. Type of data to be collected. The data collected shall be that needed to achieve the Council's purpose, with the following general guidelines:**
- 1. The information will be specific to the crab fisheries included in the crab rationalization plan.**
  - 2. The data shall include information on costs of fishing and processing, revenues for harvesters and processors, and employment data.**
  - 3. The general guide for information requirements will be as set out in the draft surveys prepared by National Marine Fisheries Service dated 9/18/02, except:**
    - a) Non-variable costs shall be collected only as needed to explain and analyze variable cost data.**
    - b) Collect a unique identifier for harvesting and processing crew members to explain changes in participation patterns as requested by the AP.**
  - 4. Historical information will be required as recommended by the Data Collection Committee.**
- C. Method of Collection. Data shall be submitted to an independent third party agent such as the Pacific States Marine Fisheries Commission.**
- D. Use of data. Data will be used following these general guidelines:**
- 1. Data shall be supplied to Agency users in a blind and unaggregated form.**
  - 2. The agencies will develop a protocol for the use of data, including controls on access to the data, rules for aggregation of data for release to the public, penalties for release of confidential data, and penalties for unauthorized use.**
  - 3. The agencies will revise the current Memorandum of Understanding (MOU) governing the sharing of data between the State of Alaska and National Marine Fisheries Service, and will address in this MOU the role of the third party data collection agent.**
  - 4. The Agency and Council will promote development of additional legislative and regulatory protection for these data as appropriate.**
- E. Verification of Data. The third party collection agent shall verify the data in a manner that assures accuracy of the information supplied by private parties.**
- F. Enforcement of the data requirements. The Council endorses the approach to enforcing the data requirements developed by the staff and the Data Collection Committee, as set out on page 3.17-20 in the February 2003 document entitled "BSAI Crab Rationalization Program, Trailing Amendments".**

In thinking back to the crab rationalization program's selection of a preferred alternative, Mr. Duffy remembered the Council emphasizing going forward with an unprecedented data collection program so the Council could assess the impacts on harvesters, processors and the communities. In particular, the relationship between harvesters and processors. If a sufficient amount of information was not provided to perform quantitative assessments of those issues, then one key provision of the program was being undermined. Dennis Austin complimented Mr. Duffy for taking the initiative on something that is very controversial, but extremely important to the Council. He believed this motion addressed both the data requirements and also confidentiality concerns. Roy Hyder asked Mr. Duffy to clarify whether the "third party" referred to in this motion falls within the framework of Section 14 of the June 10<sup>th</sup> motion stating that data "may not be released to any party other than staffs of federal, state, etc." Mr. Duffy replied that the intent of his motion was to be entirely consistent with what the Council described in the June 10<sup>th</sup> motion and any inconsistencies should be cleared up. The motion passed 10-1 with Hyder voting against.

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**John Bundy moved the following motion outlining CDQ Ownership Caps.**

**Under Section 3.4.1.2 of the Community Protection Trailing Amendment, the issue of CDQ Ownership Caps, which are also referenced in Section 1.6.3(g) of the Council's motion, shall read:**

**The following ownership caps shall apply to CDQ ownership of crab QS:**

<b>Bristol Bay Red King Crab</b>	<b>5%</b>
<b>Bering Sea Opilio Crab</b>	<b>5%</b>
<b>Bering Sea Bairdi Crab</b>	<b>5%</b>
<b>Pribilof Red and Blue King Crab</b>	<b>10%</b>
<b>St. Matthews Blue King Crab</b>	<b>10%</b>
<b>EAI Brown King Crab</b>	<b>20%</b>
<b>WAI Red King Crab</b>	<b>20%</b>
<b>WAI Brown King Crab</b>	<b>20%</b>

**In addition, the Council shall apply the Individual and Collective Rule for calculation of CDQ ownership caps, under which the holder of an interest in an entity will be credited with holdings in proportion to its interest in the entity.**

The motion was seconded by Stosh Anderson. Dr. Fluharty asked if these caps applied to CDQ communities individually or collectively. Mr. Bundy replied they applied to each CDQ entity individually and that this was not an allocation, but that CDQ groups could compete up to these caps. Dr. Balsiger then questioned whether the CDQ allocations took place before these caps, to which Mr. Bundy replied that allocations are separate from these caps. Mr. Anderson asked how caps will be handled for non-target species. Mark Fina answered that there would be shares allocated in that fishery just like other fisheries. For example, the harvest of bairdi would be as a non-target and it would be caught as bycatch in the Opilio and Bristol Bay red fishery, so it applied the same; it caps their holdings of shares. The motion passed 11-0.

The Council continued with Vertical Integration. Chairman Benton looked to Mr. Duffy as this issue was a clarification of his June 10<sup>th</sup> motion and asked if the Council's earlier discussion was sufficient for Mark Fina's purposes. Mark replied that Mr. Duffy expressed his intention that a processing entity would be exempt from the 1% individual cap and could hold 5%. Any individual or partnership would still be subject to the 1% cap, however, the vertical integration cap would exempt the processing entity from the 1% cap.

Stosh Anderson asked Mark Fina and Darrell Brannan to verify that at a minimum it would take five 20% owners of a company to have enough people involved in the company to reach 5%. Dr. Fina answered affirmatively, and that in order for a company to buy above 1% it had to have more than one owner and each owner would be allowed to go to their own 1% cap. Mr. Anderson then followed with an issue brought out by the public of share composition in either the 1% or the 5%. He recalled hearing in public testimony that 5% of B shares would not be his desire and didn't think it was the Council's intent. He also questioned how the A shares and B shares are linked. Mr. Anderson recalled from the June motion that the function of the B shares was to have an effect on A shares by the harvester, so they had a ratio of 10:1 A/B shares. Mr. Duffy didn't have a particular opinion on this issue and suggested Dr. Fina might be able to help. Mark pointed out in the analysis there are two ways to look at it: the balance of power if you don't have a 90/10 split in each holder's name and if they all end up in the processor's, you end up shifting it. Mr. Anderson stated he didn't believe the Council was capable of taking action on this issue at this meeting because he didn't think the public had been noticed and it was an issue the Council needed to address. Chairman Benton asked if he correctly understood Mr. Anderson's question whether "there was a direct linkage between A shares and B shares, or if they were severable?" Mr. Anderson replied affirmatively, adding that if they are severable, who

gets them? Stephanie Madsen stated that unless the Council prohibited the severability, she interpreted it to mean they are severable concluding the Council had not put restrictions on people selling them separately. Ms. Madsen added that C shares were similar in that there are three different categories of C shares with different uses, but no restrictions other than who could hold them and caps. Ms. Madsen also expressed she didn't understand how the Council's actions would react with the EIS and the ability of the public to understand the facts based on the Council's decisions. Chairman Benton agreed and asked Council members to continue keeping a list of things needing clarification.

Chairman Benton then asked if Council members agreed to the approach outlined by Gretchen Harrington, NMFS, on the EIS and asked if Council members were comfortable with an earlier discussion on the EIS. Ms. Harrington stated she didn't believe a motion was necessary but was looking for Council concurrence with the direction the EIS was going or if there were outstanding issues that needed clarifying. Chairman Benton responded that the Council was looking at the crab management program with FMP-level analysis and the EIS as a separate but included component of that document with more specific analysis of the rationalization alternatives. Gretchen concurred and clarified there was only one document for the Council to review. Council members indicated their understanding and concurrence.

Chairman Benton then outlined a few issues and assignments for Committees including the nature of agreements and how they fit in with community protection provisions, and the A/B share linkages. Chris Oliver added the PQS issue for processing share/IPQ. Chairman Benton also flagged an assignment to the Arbitration Committee. Lisa Lindeman brought up the issue of defining an entity with specific criteria under first right of refusal, as well as working with the Community Protection Committee on adjudications and appeals and how they would play into communities. Mr. Oliver then asked what the Council should do with the A/B share linkage dispute because it wasn't relevant to a specific committee. Chairman Benton asked if staff could think about that issue and provide a short issue paper along those lines for further consideration. Mark agreed and thought 3 pages would take care of it.

C-3 Steller Sea Lions

**ACTION REQUIRED**

**(a) Receive status report on litigation and discuss potential next steps.**

**BACKGROUND**

**In October 2001, the Council adopted a suite of fishery and area specific measures to mitigate potential impacts of pollock, cod, and mackerel fisheries. This suite of measures was deemed to avoid jeopardy and adverse modification of critical habitat for Steller sea lions in the October 19, 2001 Biological Opinion, which was challenged in US district court (*Greenpeace, American Oceans Campaign, and Sierra Club vs. NMFS*).**

**On December 18, 2002, U.S. District Court Judge Zilly ruled that the 2001 Biological Opinion's (and the incidental take statement contained in that BiOp) finding of no adverse modification of critical habitat and no jeopardy to the continued existence of Steller sea lions is arbitrary and capricious, because the necessary analysis of the impact of the Amended RPA on Steller sea lions, their prey, and their critical habitat was not adequately performed in two key areas. The Court remanded the 2001 BiOp to the National Marine Fisheries Service (Item C-3(a)). Further, on December 30, Judge Zilly ruled that the BiOp shall remain effective until June 30, 2003.**

**At this meeting, NMFS may discuss their game plan and timelines for addressing the Court Order, as well as interface with the Council.**

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**Scientific and Statistical Committee Report**

The SSC received a report by Dr. Gordon Kruse, who served on the NRC Committee, presenting the National Academy of Sciences/National Research Council Report on the Decline of Steller Sea Lions in Alaskan Waters. The SSC was impressed with the quality and thoroughness of the report. The SSC suggested that in light of current data and the NRC analyses, NMFS re-evaluate the jeopardy finding for the groundfish fishery. Although there was substantial interest in the adaptive management experiment proposed by the NRC Committee, the SSC wondered if such an approach would be practical due to the highly contagious nature of both Steller sea lion rookeries and fisheries, but supported the idea of exploring the concept to evaluate the practicality of the experiment. Despite support for adaptive management schemes, the SSC is concerned that ESA regulations might preclude their adoption.

**Report of the Advisory Panel**

The AP recommended the Council concur with the approach outlined in the letter from Dr. Balsiger to Dr. Hogarth dated January 16, 2003.

**DISCUSSION/ACTION**

The Council received a staff report by Mike Paine, NMFS, followed by a short discussion between Council members. Chairman Benton recalled an earlier discussion with Dr. Balsiger about staffing and getting documents prepared. His recollection was that NMFS staff, perhaps ADF&G and Council staff put together biological information for the response to Judge Zilly's three points and go through the consultation process. The Chairman asked Dr. Balsiger if that was still the plan, to which Mr. Paine replied that it was part of the process. NMFS had drafted most of the response and he wanted to set up a conduit to include NMFS staff, ADF&G staff and Council staff, but keep it separate from a committee. Dr. Balsiger added that whatever process the court wants, NMFS would put together the response and send it to the consultants. Chris Oliver stated that he had been in conversations with NMFS staff and come up to speed on what the issues are. He also stated he was working on a draft for the Council geared toward reclassification of the groundfish fishery into a Category II instead of a Category III pointing to a recommendation that the appropriate classification remains where it is, as well as suggestions for possibly changing the current approach for classifying the fisheries. The Council concurred with the Chairman's suggestion that Mr. Oliver continue working on the draft response to the request for public information from NMFS on behalf of the Council. Mr. Oliver agreed to have his draft response to NMFS by February 10<sup>th</sup>, 2003. Chairman Benton also received concurrence from Council members on Dr. Balsiger's memo to Dr. Hogarth.

C-4 Essential Fish Habitat

**ACTION REQUIRED**

- (a) **Receive progress report on EIS development.**
- (b) **Review staff clarification of mitigation alternatives.**
- (c) **Receive EFH Committee report.**

**BACKGROUND**

**The Council adopted final alternatives for the EIS analysis during its December meeting (motion attached as Item C-4(a)) and a suggested methodology to proceed with the analysis. The Council directed staff within the EIS to compare all of the alternatives to a scenario (baseline) that includes status quo conditions absent all area closures, effort reduction, gear measures and rationalization**

programs. A draft EFH Baseline discussion paper was prepared by staff and is attached as Item C-4(b).

A preliminary draft of the Supplemental Environmental Impact Statement (SEIS) was scheduled for initial review in April 2003. However, it has become apparent that more time will be necessary to prepare the analysis. Nevertheless, the terms of the settlement agreement require that a Draft SEIS be available for public review by August 1, 2003. Staff will provide a report on the status of the project.

#### **Review Mitigation Alternatives**

At this meeting, the Council needs to finalize the boundaries for closure areas included in the mitigation alternatives. Staff will provide maps depicting closure areas designated under these alternatives.

#### **EFH Committee Comments**

The EFH Committee met in Seattle on January 26, 2002. Staff will provide a draft Committee report to the Council during the meeting.

#### **Scientific and Statistical Committee Report**

The SSC heard a report on Essential Fish Habitat by Jon Kurland, John Olson and Cathy Coon outlining recent activities of the EFH Committee and a list of current alternatives and maps with proposed closure areas. The SSC recognized the hard work by staff and other members of the EFH Committee but continues to find it extremely difficult to provide meaningful scientific input on this issue. The SSC also found it very difficult to digest the alternatives and associated maps resulting from the January 26<sup>th</sup> EFH Committee meeting given the lack of time for review of the draft documents. The SSC offered detailed guidance on conceptual approach, goals and objectives, alternatives, research closures, and analysis as well as requesting staff to respond to the comments provided in their December meeting minutes. The complete SSC Minutes are found attached as Appendix III.

#### **Report of the Advisory Panel**

The AP recommended Alternatives 1 through 6 be included in the EIS. However, they noted Alternative 6 was included at the request of the Plaintiffs, using criteria they identified. The AP reiterated its previous statement that a blanket 20% closure measure is better developed through an extensive Marine Protected Area process, and that the package should move forward for analysis with no new or modified alternatives added. The AP is concerned with plaintiffs' negotiating an extension of time outside the public process in exchange for new or modified alternatives and doesn't believe extending the comment period will substantially refine Alternatives 5B and 6.

The AP believes the potential number of combinations of EFH, HAPC and mitigation alternatives make defining a specific research proposal problematic at this time. They recommended the concept of a research program imbedded in each alternative, but specific areas and design be developed as a trailing amendment, and that no EFH alternative may be implemented without a fully developed research plan.

The AP concurred with the SSC in that the current set of EFH alternatives lacks any component for effort reduction and the NRC's study on effects of fishing recommended effort reduction as one of the three principle tools for EFH mitigation. Despite this, none of the EFH alternatives have economic rationalization or any other approach to effort reduction.

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**DISCUSSION/ACTION**

The Council received staff reports by Cathy Coon, Council staff, and Jon Kurland, NMFS, as well as a presentation on mitigation alternatives by Ms. Coon and John Olson, NMFS. Cindy Hartmann, NMFS, presented EFH Committee minutes as well as a presentation on the Research Plan. **Earl Krygier moved the Council adopt the following motion:**

- 1. Alternatives 1 through 6 shall be included in the analysis.**
- 2. The EIS package shall move forward with no new or modified alternatives added, with the exception of those changes listed below.**
- 3. The following changes to Alternatives 4 and 5 for the Bering Sea shall be made to reflect the SSC's comments on rotational closures:**

**Alternatives 4 and 5 for the Bering Sea would be modified as follows:**

**Bering Sea Alternative 4, starting in the third sentence:**

**“Closure areas would be designated in Blocks 1, 2, 3, 4, and 6 as identified by the EFH Committee, with ten-year closed periods for 25% of each block. After ten years, the closed portion of each block would re-open and a different 25% of each block would close for ten years, and so on thereafter. After 40 years, all areas within each block will have been subjected to a ten-year closure. This assures that 20% of the habitat has matured to an 'unaffected by fishing' status, assuming a two-year recovery interval.”**

**Bering Sea Alternative 5, starting in the third sentence:**

**“Closure areas would be designated in Blocks 1, 2, 3, 4, and 6 as identified by the EFH Committee, with five-year closed periods for 33 1/3% of each block. After five years, the closed portion of each block would re-open and a different 33 1/3% of each block would close for five years, and so on thereafter. After 15 years, all areas within each block will have been subjected to a five-year closure. This assures that 20% of the habitat has matured to an 'unaffected by fishing' status, assuming a two-year recovery interval.”**

- 4. In Alternatives 4 and 5, the map of the open area should be corrected to reflect the Committee's intent that the open area at the southernmost boundary be extended to include Cod Alley.**
- 5. In Alternatives 4 and 5, the language in the second sentence should be modified by adding at the beginning: "In the Bering Sea only, bottom trawl gear . . . "**
- 6. In Alternative 5b, the sub-option for the Aleutians, add language clarifying that pelagic trawls may be used in the closed areas, but only in the off-bottom mode. Discuss in the analysis a method for identifying bottom contact acceptable to Enforcement.**
- 7. In Alternative 5b, Area Definition, open areas shall be modified by staff per suggestions from USCG in the following manner: use Lat/Lon grid based on 3 minutes of latitude by 6 minutes of longitude. This will align with and subdivide existing ½ by 1 degree ADF&G statistical areas**

in the geo-reference system familiar to the fishing fleets, and is roughly equivalent to a 5 by 5 km block.

8. Under all alternatives, evaluate how VMS and/or a secure on-board tracking system may or may not improve enforcement.
9. Each mitigation alternative shall include a research component to help determine the efficacy of that alternative, should it be implemented, and to determine to the extent practical the effects of fishing on habitat. Each alternative shall contain specific language as to the intent and objectives of its research component, linked with the goals of the alternative. The final hypothesis derives research design shall be developed when the preferred alternative is selected, in a subsequent process that includes public and stakeholder input.

All alternatives should contain benthic mapping to improve future management and meet research goals.

In the proposed research components - attempt to have all research closure/open blocks square rather than irregular shapes.

The Council supports full funding of the essential fish habitat research described in #9 above.

The motion was seconded by Dennis Austin. Mr. Krygier believed this motion brought together the concerns of the public, stakeholders as well as the EFH Committee and by incorporating Alternatives 1-6 including the proposed changes, it would help the Council stay on track.

Stephanie Madsen directed a question to staff about Alternative 5B on their opinion of bycatch caps. David Witherell responded that "coral sponge bycatch limits" meant that in each statistical area, only so much coral is allowed and when that amount is reached the area would be closed. However, at this point staff had not done any research or analysis on which areas it might be or whether they apply to certain types. Ms. Madsen then asked if, in Alternative 5B, the Council wanted to look at it without the TAC reduction element, did the Council need to put that in now or implement it later without the TAC reduction element, and if the Council needed to give staff the direction that it wanted to look at it both ways. Mr. Witherell replied that when staff provided the Council with what the alternatives might be, they would provide the TAC and what the ex-vessel value might be including the expected impacts. It was up to the Council if it wanted to alert the public it was considering doing that now.

Chairman Benton said that until the Council has a fairly well-crafted analysis, he didn't believe stakeholder meetings would be productive. The Council needed to sharpen up the alternatives and incorporate the SSC's comments into the analysis.

**Dr. Fluharty moved to add the following new language, as shown below in italics, to the first sentence of #9:**

9. Each mitigation alternative shall include a research *motion and monitoring* component to help determine the efficacy of that alternative . . .

The motion was seconded by Ben Ellis and carried without objection. The amended main motion then carried without objection.

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Chairman Benton asked if staff could bring back to the Council the objectives portion in response to the SSC's comments and statements to which David Witherell responded affirmatively. Chairman Benton complimented the staff on working very hard, being professional and doing a good job on a complicated, controversial, contentious issue where emotions are running very high. He went further saying the Council individually and as a body did not intend to come down on staff and that they should be proud of the work they had accomplished as Essential Fish Habitat is a very difficult issue.

### **C-5 AFA Issues**

#### **ACTION REQUIRED**

- (a) Review final co-op reports and agreements**
- (b) Final action on BSAI Pacific Cod sideboard amendment**

#### **BACKGROUND**

In December 2002, staff presented for public review the EA/RIR/IRFA for Amendment 73 (Pacific cod sideboard provisions). The purpose of the amendment is to provide greater protection to non-AFA trawl catcher vessels targeting BSAI Pacific cod during the months of January and February. The concern is over impacts to the non-AFA vessels that have traditionally fished Pacific cod and may have been subject to increased competition as a result of implementation of the AFA. The potential impacts of this increased level of competition include factors such as decreased catch per unit of effort (resulting in longer fishing times per trip), reductions in catch, and decreased safety.

At the December meeting, the Council selected as a preferred alternative a joint proposal by AFA and non-AFA trawl catcher vessel participants. The preferred alternative would limit access to the directed trawl catcher vessel fishery for Pacific cod for the period of January 20 through February 25<sup>th</sup> in area 655430 to qualified non-AFA vessels, cod exempt AFA vessels, and AFA non-exempt vessels not to exceed a daily average of 10 vessels for the period of January 20 to February 25<sup>th</sup>. Exceeding this 10-vessel limit in 2003 or any later year by the AFA non-exempt catcher vessels will trigger an area closure to Pacific cod fishing for AFA non-exempt vessels the following year from January 20 to February 25<sup>th</sup>. The EA/RIR/IRFA was changed to reflect the Council's preferred alternative and is presented now for final action. The Executive Summary is attached as Item C-5(b)(1).

Also at the December meeting, the Council requested that NMFS assess the 'do ability' of this approach, and provide draft regulatory language for implementing the preferred alternative. A discussion paper written by NMFS addressing these issues has been submitted for review by the Council. It is included here as Item C-5(b)(2).

In addition, it has come to the attention of NOAA GC that the problem statement for Amendment 73 may not be sufficient to draw a clear connection between the action selected and the authority delegated to the Council by statute. Currently, the problem statement has language that indicates that the problem being addressed is a "claim" that competition has increased considerably, and that increased competition is "thought" to have adversely impact non-AFA vessels. This language could be interpreted that Amendment 73 may not be justified under the AFA as a conservation and management measure determined by the Council to be necessary to protect other fisheries and their participants from adverse impacts caused by the AFA or fishery cooperatives in the directed pollock fishery (pursuant to Section 211 of the AFA) and under the Magnuson-Stevens Act as a limited access measure. The Council may want to revise the problem statement accordingly.

#### **Report of the Scientific and Statistical Committee**

The SSC did not address this agenda issue.

## Report of the Advisory Panel

The AP did not address this agenda issue.

## DISCUSSION/ACTION

The Council received a staff report by Jon McCracken, Council staff, and Jeff Hartman, ADF&G. **Roy Hyder moved to table final action on Additional Sideboards for the BSAI Winter Pacific Cod Fishery indefinitely.** The motion was seconded by Stephanie Madsen. Chairman Benton asked if Mr. Hyder intended to table the action for an indefinite period as with similar types of issues in the past, the Council has said to the industry folks "you've got this sort of worked out, but we can't seem to get the management industry worked out." If the industry folks find a different solution, the Council would move to bring the issue back in front of them, but until then it's suspended. The Council expected industry to work it out amongst themselves and if a really large problem became apparent, the Council would bring it back to the table and look at it again. Mr. Hyder agreed this was the intent of his motion.

Dr. Fluharty spoke of the amount of time the Council had invested on this issue and NMFS coming forward with problems about it, but he **moved to amend the motion to have the Council request NMFS continue to look at rulemaking possibilities, start looking at a limited access program required to clarify the Council's action and continue to flesh out issues like enforceability and others raised by staff so the Council has an opportunity to come back and work on it as soon as NMFS and others working on it have a workable package.** The motion was seconded by Dennis Austin.

Dr. Hanson clarified for Council members that if it's not taken up later in this meeting or at the next meeting, it would automatically die. Therefore, there were two solutions - postpone it indefinitely and kill it, or postpone it to a set time or event. Ms. Madsen stated she wasn't sure if she supported the amendment or not, but thought it better to postpone the issue until evidencing AFA vessels were not complying with the intended effect of monitoring and enforcement outlined in the document. She did not support NMFS researching further solutions. **Ms. Madsen moved to amend the amendment by postponing the issue indefinitely.** The motion was seconded by Hazel Nelson. Chairman Benton asked Ms. Madsen for clarification of her amendment in that if it passed, and the Council saw a problem of displacement by AFA vessels, it would cause reason for the Council to think about a solution. However, the Council would not ask staff to spend time working on this long and difficult issue in part because the industry agreement is working, and in part because there is limited staff time. The motion passed, as amended, 8-3 with Anderson, Balsiger and Fluharty voting against.

C-6 IR/IU

## ACTION REQUIRED

Initial review of Trailing Amendments C and D

## BACKGROUND

**In October 2002, the Council voted to delay implementation of IR/IU flatfish regulations for the BSAI until June 1, 2004. The Council also initiated analyses of four trailing amendments as a means to accomplish bycatch reductions and facilitate reductions in flatfish discards:**

- (a) Amendment A (PSC cooperatives) - Establish prohibited species bycatch reduction cooperatives operating in the BSAI.**

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- (b) Amendment B (bycatch caps) - Create bycatch caps (discard caps) for the flatfish fisheries in the BSAI.**
- (c) Amendment C (minimum retention standards) - Establish minimum groundfish retention standards as an alternative to flatfish retention requirements in the BSAI.**
- (d) Amendment D (5% exemption) - Establish regulatory process for the routine review of flatfish bycatch in the BSAI and GOA fisheries and the exemption of fisheries with less than 5 percent bycatch of IR/IU flatfish from flatfish retention and utilization rules.**

**Amendments A and B would be completed as soon as practicable and Amendments C and D would be expedited for final action in April 2003.**

**The IR/IU Technical Committee met in Seattle on January 14, 2003 to provide further input to the Council on how best to create a minimum groundfish retention standard in the BSAI (Amendment C) given NMFS has determined that flow scales are necessary to enforce a retention standard. The Committee recommends the Council develop a retention goal for the BSAI fleet and then encourage the fleet to meet these standards. The amendment would be a change to the FMP Goal and Objectives and would not promulgate any new regulations. In addition, the Committee also recommends the Council pursue enforceable standards only for the trawl catcher processor fleet. In the trawl catcher processor fleet, NMFS has reported that 26 of the 32 trawl catcher processors over 125 feet already have approved flow scales on board. For the 7 trawl catcher processors under 125 feet, the Committee recommended they should be exempt from having to install flow scales. Minutes from the January 14<sup>th</sup> Committee meeting are attached as Item C-6(a).**

**An EA/RIR/IRFA analysis for Amendment D and a discussion paper of Amendment C are presented for initial review. The Executive Summary for Amendment D is attached as Item C-6(b). With regards to Amendment C, the increasing complexity in recent weeks and the need for further guidance from the Council has delayed development of a full EA/RIR/IRFA in time for initial review at the February meeting. In its place is a discussion paper on Amendment C that outlines the work to date. After the February Council meeting, the discussion paper will be integrated into the EA/RIR/IRFA for final review in April 2003. The discussion paper provides an overview on the purpose and need for action, a description of the fishery, and a detailed description on the mechanics of establishing a minimum groundfish retention standard. Staff will be on hand to summarize the analysis for Amendments C and D.**

### **Scientific and Statistical Committee Report**

The SSC received reports from Jon McCracken, Council staff, and Marcus Hartley, Northern Economics, on Trailing Amendments C and D. Due to the increasing complexity of establishing a minimum groundfish retention standard (Trailing Amendment C), a full EA/RIR/IRFA could not be prepared in time for this meeting, however, a Discussion Paper was prepared containing many elements of an EA/RIR/IRFA. Although the Discussion Paper addressed several important issues, the SSC believed there was a need for further discussion of several points before the EA should be released for public review. One major concern is the issue of enforceability. NMFS has stated that no minimum groundfish retention program can be enforced without the use of a flow scale. In NMFS' opinion, only flow scale measurements of total catch will withstand legal challenge. Due to space limitations, flow scales are practical only on vessels greater than 125' in length. In essence, the regulations from Amendment C are unenforceable for vessels under 125'. Other issues the SSC deemed necessary for consideration are monitoring of use and calibration of flowscales. The Discussion Paper briefly mentioned alternatives for monitoring every haul, including 100% observer coverage, video surveillance, and reduced fishing frequency. The SSC believed a greatly expanded discussion was warranted on the impacts of the alternatives.

The Discussion Paper also did not report on the source or history of the published product recovery rates, and it is likely the values shown are outdated. The SSC foresees problems in that vessels with actual retention rates greater than the official rate will be able to discard a larger fraction of their total catch than vessels with retention rates less than the official rate.

The SSC received the EA/RIR/IRFA on Trailing Amendment D (5% Exemption) and recommended it be sent out for public review.

### **Report of the Advisory Panel**

The AP recommended the Council accelerate analysis of Amendment A, modified from a PSC cooperative to a multi-species cooperative.

The AP acknowledged that the Amendment C analysis was not ready to send out for public review and recommended the Council reconsider its action of October 2002 delaying implementation of IRIU for 18 months. At reconsideration, the AP recommended the Council delay implementation indefinitely until IRIU is replaced by a legal and enforceable action accomplishing the goal of reducing bycatch to the extent practicable in the BSAI groundfish fisheries.

The AP believed additional work on Amendment C should focus on the development of retention goals including a clear statement that the goal and purpose of the program is to reduce bycatch of all groundfish in the BSAI and draft an exemption process by fishery and gear based on enforceability, total groundfish retention levels analyzing a range of 60%, 70% and 80%, and minimum retention standards. The AP provided a minority report outlining options for analyzing Amendment C separately from Amendments A, B and D, and can be found in its entirety in the complete AP Minutes (Appendix IV).

The AP also recommended the Council reactivate the Enforcement Committee in combination with agency staff to devise recommendations allowing implementation of programs requiring monitoring.

The AP recommended that the MRB for pollock be moved from the Amendment C analysis to the Amendment A analysis and that Council request staff complete analysis of Amendment C with the following modifications:

1. Ground truth actual costs for purchase, installation and operation of flow scales (Section 1.4).
2. Examine variability in PRRs.
3. Expand the quantitative discussion of the section regarding use of bin volumes as an enforceable means of monitoring.

For Trailing Amendment D (5% exemption), the AP recommended the EA/RIR/IRFA for Amendment 76 to the BSAI Groundfish FMP and Amendment 72 to the GOA Groundfish FMP be sent out for public review.

### **DISCUSSION/ACTION**

**Earl Krygier moved the Council adopt the following motion:**

**The Council requests the Enforcement Committee be reactivated to work with agency staff in crafting recommendations that will allow implementation of programs requiring monitoring.**

**The Council requests the IRIU Technical Committee begin work on Amendment A including modification from a PSC cooperative to a multi-species cooperative by the April Council meeting.**

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**The Council also requests the Committee review, evaluate and analyze the AP recommendations for Amendment C including the following modifications:**

- 1. Ground truth actual costs for purchase, installation and operation of flow scales (Section 1.4) as well as explore options for scale monitoring that would ensure that all catch is weighed.**
- 2. Examine variability in PRRs and for products typically produced by the H&G fleet.**
- 3. Expand the quantitative discussion of the section regarding use of bin volumes as an enforceable means of monitoring.**
- 4. Clarify treatment of vessels unable to install flow scales (vessels <125 LOA), including:**
  - a. Vessels exempt from the program**
  - b. Exploring limitations on weekly production amounts for exempted vessels**
  - c. New vessels entering the fishery should do so recognizing that new entrants must have flow scales regardless of length or weekly production amounts.**

**Lastly, incorporate into Amendment C the recommendations regarding Options 1 through 7 from the IRIU Technical Committee Meeting held on January 14, 2003.**

**The Council requests staff complete additional analysis on Amendment D - 5% exemption, if needed, and send it out for public review.**

The motion was seconded by Stephanie Madsen. Mr. Krygier recalled the Council initially addressing this issue about seven years ago and believed his motion would take the Council where it wanted to go. Although Amendments C and D need to get resolved, Alternative A might be the answer. Chairman Benton noted that Amendments A and B were scheduled for initial review at the April meeting, so this motion fell right in line. Stephanie Madsen asked Marcus Hartley, Northern Economics, if he believed there was any additional analysis on Amendment D or if it was ready to go out. Marcus replied it was ready to go. Ms. Madsen also pointed out she believed it was too early to pick just one option for Amendment C as the IRIU Technical Committee had several comments. She believed the simplest thing to do was to direct staff to not delete any decision points within the options, but to take new direction provided by the IRIU Technical Committee. She clarified that for Amendment A, the Council was waiting for industry to clear the way eventually matching up with Amendment C and obtaining the tools necessary to meet retention requirements.

Stosh Anderson asked Mr. Krygier to clarify that his motion included all paragraphs in Option 7 of the IRIU Committee recommendations or only up through (c). Mr. Krygier replied his intent was to include everything up through (c), but not beyond.

In speaking of Amendment D, John Bundy asked Mr. Hartley if the analysis made a distinction between AFA and non-AFA vessels for yellowfin sole. Mr. Hartley responded that currently the analysis only split out the Pacific cod fishery between AFA and non-AFA vessels, but it would be very easy to do the same for yellowfin sole. Neither Chairman Benton nor Mr. Bundy believed a motion was necessary, but appropriate to instruct staff to do so.

The motion passed unanimously, 11-0, without amendment.

C-7 Observer Program

**ACTION REQUIRED**

- (a) Review discussion paper on alternatives for restructuring the North Pacific Groundfish Observer Program**

- (b) Review Observer Advisory Committee report and provide further direction

**Background**

In July 2002, the Observer Advisory Committee (OAC) met in Seattle to consider the need to restructure the North Pacific Groundfish Observer Program (Observer Program), based on direction from the Council and issues stemming from NMFS, industry, observer providers, and observers. The overriding goal of restructuring the program would be to increase the quality of observer data to more effectively accomplish inseason management and conservation goals in the North Pacific groundfish fisheries. As a result of that meeting, the OAC concluded that it supports full Federal funding of the Observer Program, but it would consider support of a program design that includes a blend of Federal funding and a fee plan. In addition, the OAC agreed that the Council should focus first on addressing the problems in the unobserved and 30% fleet. The committee recognized the difficulty in recommending restructuring alternatives in light of the uncertainty surrounding potential Magnuson-Stevens Act reauthorization, industry efforts to secure Federal funding for the Observer Program, and the direction of developing rationalization programs.

At its October 2002 meeting, the Council reviewed the OAC report from July and noted that it supports the continuing work of the committee. It further tasked the committee to develop a problem statement and alternatives to be presented at the February Council meeting. In order to facilitate further progress by the committee, NMFS and Council staff developed an outline for a discussion paper which proposes a problem statement, scope, and general alternatives and issues for long-term, significant revisions to the Observer Program. NMFS also drafted a summary of a potential pilot project to test deployment of observer resources to determine catch composition and bycatch rates in a specific fishery. These draft outlines were presented to the Council at the December meeting and a January OAC meeting was scheduled to present the discussion paper to the committee for review and feedback.

- (a) Review discussion paper on alternatives for restructuring the Observer Program

The draft discussion paper was completed in January and reviewed by the OAC prior to this meeting. The discussion paper outlines five primary issues relevant to restructuring the Observer Program, including a proposed problem statement, scope, funding mechanisms, coverage and deployment issues, and the role of observer providers and contracts. Staff anticipates that these issues would be developed into a full analysis at some point in the future, should the Council provide such direction. Thus, the discussion paper is provided to show the general direction of proposed changes to the Observer Program and to provide a starting point for discussion of a problem statement and alternatives for analysis. Item C-7(a).

- (b) Review Observer Advisory Committee report and provide further direction

The OAC convened on January 23 - 24, 2003 in Seattle to review the discussion paper mentioned above, with the primary focus of the committee on refining the scope of the proposal, the problem statement, and if time permits, the alternatives and options for a potential formal analysis. The committee also discussed a NMFS proposal for a short-term pilot project intended as a step toward determining appropriate coverage levels and improving catch accounting and PSC estimation, as well as testing deployment and contracting aspects. The full committee agenda is attached as Item C-7(b), and the summary of the pilot project is attached as Item C-7(c).

The draft OAC report from January will be distributed at the Council meeting. This report will summarize the work of the committee and its feedback on the discussion paper and other agenda items. Should the Council choose to initiate an analysis of the effects of a new program design, the next likely steps would be to approve a problem statement and alternatives for analysis. The Council may initiate these steps at this meeting and/or provide further direction.

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**Scientific and Statistical Research Committee Report**

The SSC was given a report by Nicole Kimball on options for observer program restructuring and the Observer Advisory Committee (OAC) report reviewing that document. The SSC commended the Agency and the OAC for presenting clearly defined options for moving forward on longstanding problems. The SSC concurred with key OAC recommendations and noted the importance of studies which could provide clearer answers to statistical questions.

**Report of the Advisory Panel**

The AP recommended the Council approve the following problem statement for restructuring the North Pacific Groundfish Observer Program (as approved by the Observer Advisory Committee):

**Problem Statement**

The North Pacific Groundfish Observer Program (Observer Program) is widely recognized as a successful and essential program for management of the North Pacific groundfish fisheries. However, the Observer Program faces a number of longstanding problems that result primarily from its current structure. The existing program design is driven by coverage levels based on vessel size that, for the most part, have been established in regulation since 1990. The quality and utility of observer data suffer because coverage levels and deployment patterns cannot be effectively tailored to respond to current and future management needs and circumstances of individual fisheries. In addition, the existing program does not allow fishery managers to control when and where observers are deployed. This results in potential sources of bias that could jeopardize the statistical reliability of catch and bycatch data. The current program is also one in which many smaller vessels face observer costs that are disproportionately high relative to their gross earnings. Furthermore, the complicated and rigid coverage rules have led to observer availability and coverage compliance problems. The current funding mechanism and program structure do not provide the flexibility to solve many of these problems, nor do they allow the program to effectively respond to evolving and dynamic fisheries management objectives.

The AP further recommended staff develop a time line and analytical outline for potential analysis based on OAC recommendations to restructure the Observer Program design and funding mechanism to address data quality and disproportionate cost issues resulting from the current program structure. The primary alternative focusing on modification of the Program for all vessels and processors operating in the GOA with a suboption to extend the fee-based program to all vessels currently having less than 100% coverage requirements in the BSAI. The AP concurred with the OAC conclusions shown on page ii of the Executive Summary of the OAC Report, changing bullet #1 as follows:

The Council and NMFS proceed with an analysis to modify the current Observer Program design and funding mechanism to address the data quality and disproportionate cost issues resulting from the current program structure. This analysis would propose changing the current program to one in which NMFS contracts directly with observer provider(s) for observer services and the costs of observer coverage are paid for through a combination of Federal funding and a fee program.

## DISCUSSION/ACTION

Stosh Anderson voluntarily recused himself from this issue as he is involved with a company that performs on-board video taping of observers which will be a topic of discussion. Dr. Fluharty also recused himself as he was advised it was not legally required, but a responsible thing, as the University of Washington is involved in some of the studies being performed on observers.

Nicole Kimball updated with Council with a staff report pointing out that one big problem with the observer program was the bias of data because observers were being controlled by fisherman - not the Agency - and as long as fishermen met the 30% on-board requirement, they get to choose when and where observers are on-board.

**Stephanie Madsen moved the Council adopt the AP's recommendation.** The motion was seconded by Kevin Duffy. Ms. Madsen believed this motion would get the Council on the right path and hoped the Council could come back in April to a more fleshed-out discussion so as to solve some of the problems and continue to be a model for the rest of the country.

John Bundy asked if the goal was to develop a system consistent with successfully prosecuting cases or develop a system consistent with the Magnuson-Stevens Act and protecting the resource. Chairman Benton replied that was part of the program, not just criminal or civil cases, but the Council had to be able to enforce the rules. Roy Hyder stated that in conversations with SSC members, to improve statistical collection that will somehow separate a bit from supervising activities on the boat, he questioned if the motion included room to explore the nexus between the two activities and lessen the abrasiveness. Ms. Madsen responded she didn't intend to preclude anything. The motion passed 9-0, with Anderson and Fluharty recusing.

**Kevin Duffy moved the Council endorse the concepts embodied in Appendix D, Fisheries Observer Compensation Act.** The motion was seconded by Stephanie Madsen. Mr. Duffy believed this motion was self-explanatory and well-addressed by Michael Lake in public comment, and suggested sending a letter to the Secretary of Commerce suggesting those concepts. Ms. Madsen thought it important to draw the connection of the Council's work on the Observer Program in the letter to the Secretary as well as providing potential cost benefits. Mr. Duffy accepted Ms. Madsen's comments as friendly and the motion carried without objection (Anderson and Fluharty recused).

### C-8 Halibut Management

## ACTION REQUIRED

**Receive SSC report on data reconciliation for initial allocation of halibut charter quota shares**

## BACKGROUND

Council staff is seeking clarification by the Council on the scientific validity of using Alaska Department of Fish & Game (ADF&G) logbook data for initial allocation of quota shares (QS) to halibut charter operators, as adopted in the Council's April 2001 preferred alternative to incorporate the charter sector into the current halibut QS program. Clarification of Council intent on the use of the data in question would result in preparation of the regulatory amendment package for Secretarial review. This clarification would respond to a September 6, 2002 letter from NMFS to the Council (Item C-8(a)) which identified concerns related to the quality of the Sport Charter Vessel Logbook Program data, as identified in a memorandum dated September 21, 2001 from the ADF&G Sportfish Division to Kevin Duffy (Item C-8(b)). Council staff requested that ADF&G staff further examine the data quality issues identified in its memo of August 13, 2002 (Item C-8(c)). The October 2002 ADF&G report on the

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**potential use of the data for the specific purpose of initial allocations to qualified participants was inconclusive (Item C-8(d)).**

**The Council has deferred determination on the suitability and appropriateness of using the logbook data to the SSC. In summary, the SSC deferred any recommendations to the Council because it had not reviewed the September 2001 ADF&G report that contained ADF&G's original caution regarding the use of the data for management purposes. In October 2002, the SSC posed additional points for consideration by ADF&G staff for its review at this meeting (Item C-8(e)). A letter of request was sent to ADF&G on October 29, 2002. The January 2003 ADF&G report was mailed to you on January 17, 2003, and is attached to the memo (Item C-8(f)).**

### **Scientific and Statistical Committee Report**

The SSC received a report on comparisons of halibut harvests reported in logbook entries having estimates derived from annual statewide surveys of licensed anglers by Rob Bentz and Allen Bingham (ADF&G). The analysts pointed out that their studies examined the appropriateness of using logbook data to determine the magnitude of total sport catches. Their finding was that logbook data are not consistent with estimates from the statewide survey of licensed anglers. The SSC reported in their October 2002 minutes that *"there appear to be two issues related to use of halibut charter logbook data and implementation of a Charter Halibut IFQ Program. First is the appropriateness of using these data to establish whether or not a vessel was active in the fishery during the qualifying years (1998-1999). The second is whether logbook data are representative of the distribution of catch among participating charter vessels in those years, and suitable as documentation for a catch-history based initial allocation of quota shares. Finally, the suitability of the logbook data as a basis for GHL management is also in question."* Responding to the first two issues, the SSC noted the logbook requirement is public record and consequently compliance with this requirement could serve as a criterion in determination of initial allocations. Additionally, the SSC found it reasonable for the Council to use logbook data to determine whether a vessel was active in the fishery during qualifying years (1998-99 in Area 2C, 1998 in Area 3A) and/or as a basis for determining initial allocation of quota shares.

Whether logbook records are appropriate as a basis for GHL management depends on whether it is more important to have accurate estimates of sportfishing catches or more important to have timely estimates. The SSC also noted that if there is concern about accuracy of information recorded in charter operator logbooks, it might be advisable to consider designing a strategy for sampling charter clients as they disembark.

### **Report of the Advisory Panel**

The AP recommended the Council send the preferred alternative for the charter halibut IFQ program adopted in April 2001 to NMFS for preparation of a proposed rule.

### **DISCUSSION/ACTION**

The Council received reports from both the AP and SSC, however, there was no Council action on this agenda issue.

D-1(a) Research Priorities

### **ACTION REQUIRED**

**Discuss and identify research priorities.**

## BACKGROUND

The BSAI and GOA Groundfish Plan Teams revised the current list of research priorities during its November 2002 joint meeting (Item D-1(a)(1)). No revisions were provided by the Crab Plan Team. After receiving comments from NMFS and the SSC at this meeting, the Council will forward the priorities to NOAA for use in preparing its annual budget, as well as to the North Pacific Research Board (NPRB). These would be in addition to the thematic list of priorities drafted by Dr. Fluharty and approved by the Council in October 2002, which were forwarded to the NPRB.

### Scientific and Statistical Committee Report

The SSC did not address this agenda issue.

### Advisory Panel Report

The AP did not address this agenda issue.

## DISCUSSION/ACTION

The Council did not address this agenda issue.

D-1(b) Rockfish Management

## ACTION REQUIRED

**Review NMFS discussion paper on rockfish research and management**

## BACKGROUND

In October 2002, the Council requested that NMFS staff prepare a discussion paper on short and long term approaches to managing BSAI rockfish. The Council requested that the paper first address rockfish management for 2003, including issues associated with reliable identification of species, NMFS strategy for collecting species-specific information, and considerations for breaking out the shortraker/rougheye rockfish TAC in the Aleutians Islands by district. That paper was presented in December 2002.

In December, the Council requested a follow-up discussion paper to address implications for more long term (2004 and beyond) management of the red rockfish complex. Issues of interest include the scientific information/research necessary to support separate species management by area, management implications of separate species OFLs/ABS/TACs, adequacy of existing survey methodology for these species and potential enhancements to existing protocol to address shortcomings, and potential management response to ongoing and perhaps unavoidable bycatch. Dr. Paul Spencer, NMFS AFSC, will present a discussion paper on rockfish research and management (Item D-1(b)(1)).

Sarah Gaichas, AFSC, and Jane DiCosimo, will provide additional information and suggestions for prioritizing the BSAI and GOA rockfish issues from the larger analysis to revise management of all target and non-target groundfish. Staff will continue to consult with the SSC on the analytical approach over the next few meetings.

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### Scientific and Statistical Committee Report

The SSC considered three issues related to rockfish management: 1) rockfish research and management, 2) criteria for lumping or splitting rockfish assemblages, and 3) use of commercial fisheries data to estimate northern rockfish biomass in the Eastern Bering Sea. The SSC believed their historic approach of aggregating independent regional estimates of allowable catch and overfishing levels is appropriate for this stock. Detailed comments on each issue can be found in the complete SSC Minutes, attached as Appendix III.

### Report of the Advisory Panel

The AP did not address this agenda issue.

### DISCUSSION/ACTION

The Council received a presentation on the discussion paper on Rockfish Research and Management by Dr. Paul Spencer, AFSC. **John Bundy moved the Council adopt the revised ABC and OFL values recommended by the SSC for northern rockfish in the BSAI. These amounts are 7,101 mt and 9,468 mt, respectively, applying to the aggregate BSAI management areas. Also request NMFS use whatever means necessary to revise the 2003 BSAI specifications to incorporate these new ABC & OFL amounts for northern rockfish.** The motion was seconded by Stephanie Madsen. Mr. Bundy clarified that his motion did not request any adjustment to the TACs, and believed it addressed a major management problem for the pollock fishery. He did not, however, intend this motion to indicate the Council's intent to lower the priority of rockfish. Sue Salveson stated she did not think this would require an emergency action as the Agency had only submitted final specifications to headquarters, but not approved them. Ms. Salveson also believed it appropriate for the Council to provide input to the Agency as it considers the approval process for the final specifications. She further stated that if the Agency pursued this it would explain in the record the Council's December 2002 recommendation and why that might warrant change relative to the information presented by NMFS scientists.

Chairman Benton then clarified that Mr. Bundy's motion did not require emergency action. After further discussion, Mr. Bundy withdrew his motion with concurrence of Ms. Madsen, and then **moved to substitute the following motion: Council recommend the Agency consider revising ABC and OFL values recommended by the SSC for northern rockfish in the BSAI. These amounts are as stated previously. Further, if NMFS decides it appropriate, they shall revise the ABC and OFL values and take whatever means appropriate to do so in a timely fashion.** The motion was seconded by Stephanie Madsen. Chairman Benton questioned whether Mr. Bundy intended to ask the Secretary to consider the information provided by the SSC in their February 2003 draft minutes, Item #3, Agenda Item D-1b, for setting ABC and OFL values. Mr. Bundy responded affirmatively and the motion carried without objection.

In response to public testimony, Stephanie Madsen requested guidance regarding the protocols of the survey and also looked to NMFS whether they are considering protocols and if increased funding was an issue in the short-term future. She further explained that the Council, in an effort to better assess the stock, needed to take into consideration the protocols suggested in public testimony for the survey. Chairman Benton then asked Ms. Salveson if it would be inappropriate for the Council to ask the Rockfish Working Group (RWG) to provide it with an update of their work at the April 2003 meeting including consideration of survey protocol information provided in public comment. Ms. Salveson deferred to Paul Spencer, who pointed out most of the RWG funding came from NMFS-AFSC and they hadn't come up with a budget yet. Mr. Spencer did say that the RWG could provide an update on some of the basic project components to the Council at the April 2003, however it would be comprehensive. Chairman Benton, referring to the SSC Report, then asked Mr. Spencer if the Council could also expect to receive a progress report on the lumping/splitting of rockfish

assemblages as well as management issues. Mr. Spencer replied that the RWG was working on that issue not his Rockfish group specifically. Jane DiCosimo replied that there would not be an analysis completed by year end, and for resolution of this issue for the 2004 fishing season, the Council would have to take final action in June. However, it was more an issue of developing criteria and the technical aspects splitting/lumping rockfish and they were nowhere near having that information by the April meeting.

D-1(c) Review NOAA-GC Report on Alternatives for TAC-Setting Amendment

**ACTION REQUIRED**

**Report from NOAA General Counsel**

**BACKGROUND**

In October, final action to revise the annual specification (TAC-setting) process was rescheduled until NOAA General Counsel reported back to the Council on the viability of two additional alternatives proposed by industry. The two alternatives are: (1) minor adjustments to proposed rulemaking to include current biological information on groundfish that would best approximate the information available as a result of November Plan Team meetings; and (2) set preliminary specifications for 15-18 months. The Council has requested a legal assessment of these proposed alternatives to determine whether either would satisfy the requirements of the Administrative Procedures Act. NOAA General Counsel staff will advise the Council during the meeting. The executive summary of the initial review draft of the analysis is attached as Item D-1(c)(1).

**Scientific and Statistical Committee Report**

The SSC did not address this agenda issue.

**Report of the Advisory Panel**

The AP did not address this agenda issue.

**DISCUSSION/ACTION**

The Council agreed to address this agenda issue at a later meeting.

D-1(d) Demersal Shelf Rockfish

**ACTION REQUIRED**

**Final action on revised GOA Groundfish FMP Amendment 53**

**BACKGROUND**

Full retention of demersal shelf rockfish (DSR) in the hook-and-line and jig gear fisheries in the Southeast Outside regulatory area of the Gulf of Alaska has been an issue for several years. In February 1999, the Council adopted full retention requirements for DSR as Amendment 53. In June 1999, the Council reconsidered its original motion, and adopted a revised Amendment 53, as a way to address long-term legal issues regarding disposal of DSR in excess of the amount that may be sold. The legal issue is that there is no authority under the Magnuson-Stevens Act to regulate the sale proceeds from legally harvested fish. These issues are detailed in the September 27, 2002 letter from NMFS (Item D-1(d)(1)). NMFS has revised the analysis to include additional alternatives for Council

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consideration. **Alternative 3 is a modification of the Council's June 1999 preferred alternative. Alternative 4 would implement an observer program on all hook-and-line fisheries in the Southeast Outside area of the Gulf of Alaska. The public review draft of the analysis was mailed to you on January 10. The executive summary is attached as Item D-1(d)(2).**

### **Scientific and Statistical Committee Report**

Ben Muse and Nina Mollet, NMFS-Sustainable Fisheries, presented the EA/RIR/IRFA on "Full Retention of Demersal Shelf Rockfish in Longline Fisheries in the Southeast Outside District" to the SSC. NOAA-GC expressed legal concerns for Alternative 2 in that it would likely exceed NMFS' authority under the Magnuson-Stevens Act on disposition of legally caught fish. And although NOAA-GC believed Alternative 3 is acceptable, it differs from Alaska State regulations. The EA/RIR/IRFA concluded that an observer program could provide good data, but the costs of carrying observers for small vessels could be high. The SSC noted coverage problems associated with the existing 30% program could also be an issue. The SSC also heard from Howard McElderry, Archipelago Marine Research, Canada, on how Canada is approaching a rockfish bycatch problem using flexible landing regulations and electronic monitoring. The SSC noted that the Pacific Council (PFMC) manages 100% rockfish retention in arrowtooth and dogfish fisheries using Experimental Fishing Permits (EFP) and thought they might be useful areas to explore.

### **Report of the Advisory Panel**

The AP commended NMFS staff in their efforts to resolve the issue of full retention of DSR and recommended the Council delay final action on this issue until the April 2003 Council meeting. The AP requested the Council request NMFS investigate and comment on the applicability of a retention and forfeiture program under an EFP under the jurisdiction of the PFMC. The AP further recommended the Council request NMFS explore options for a donation program under Alternative 3 and explore the applicability of video-observer technology in the DSR fishery.

### **DISCUSSION/ACTION**

Ben Muse and Nina Mollett, NMFS, gave a staff presentation while Tori O'Connell, NMFS, answered Council members' questions. Howard McElderry, Archipelago Marine Research, Ltd., also gave a presentation on how the rockfish and halibut fisheries are handled by Canada Fisheries & Oceans Department.

**Earl Krygier moved the Council adopt Alternative 3 and request ADF&G to assess the mandatory retention program relative to the objective of collecting information on incidental catch mortality of DSR 3 years after implementation.**

**In adopting Alternative 3, the Council recognizes the enhanced opportunity for donation of landed DSR may exist in the near future so that potential wastage of DSR, beyond the amount allowed to be sold, could be reduced.**

**The Council also requests NMFS and ADF&G further investigate whether a subsequent exempted fishing permit program could be developed to provide additional opportunity for distribution of landed fish.** The motion was seconded by Sue Salvesson. Mr. Krygier admitted this motion was not perfect, although it was approved by NOAA-GC and allowed the Council to move forward.

John Bundy questioned Mr. Krygier on the impact of state law being different with regard to the requirement of full retention as he was less concerned about waste than the status of individual rockfish stocks. Mr.

Krygier replied that retention was a factor in both state and federal waters, however, this motion was an attempt to make a better assessment for federal waters and gave the Council more comfort so as not to overfish the stocks. Mr. Bundy then asked if the result would then be that under both federal and state law, 100% of DSR would be retained, to which Mr. Krygier replied affirmatively.

Ben Ellis felt compelled to mention the AP's recommendation of delaying implementation of this retention program and to have NMFS look at the applicability of retention and forfeiture programs as well as look at the option of the donation program and explore the video explorer observer technology program. Sue Salveson mentioned NMFS had spoken with people in Oregon and Washington who have implemented an exempted fishing permit (EFP) program. NMFS couldn't say an EFP wouldn't work in Alaska, and acknowledged it wasn't a perfect solution - but was a step in getting additional information. Stosh Anderson asked if the EFP was outside the regulatory process. Ms. Salveson responded saying it was dependent on what the EFP was designed to accomplish and that NMFS couldn't authorize activity under an EFP that wasn't authorized by the Magnuson-Stevens Act. However, if the EFP meets the criteria for good design, it could be forwarded to the Council for their review. Ms. Salveson further stated if the Council adopted this program, it would require NMFS to work with the State to figure out what sort of EFP would work and what activity could not be pursued under existing regulation. NMFS would then have to assess whether it was within the scope of the EFP. Ms. Salveson believed it was a two-step process, to the extent an EFP was a viable option, and the motion passed unanimously.

D-2    Staff Tasking

**ACTION REQUIRED**

**In December you directed me to carry over any staff tasking discussions, and proposals received, for consideration at this meeting.**

**Over the past several meetings the Council has initiated a limited number of new amendments or analyses, due to the press of other, ongoing business. Attached (Item D-2(a)) is a summary of the status of Council projects, a three-meeting outlook, and an updated list of Council Committees and their status. In addition to reviewing the list of ongoing projects and their status, I would like for the Council to review the status of the various Committees, as they represent a significant investment of staff resources. Several Committees associated with Crab Rationalization, which have been very active over the past few months, may no longer be necessary as the Council finalizes actions on several trailing amendments. As I mentioned under the ED report, the Council may want to consider reactivating the MSA Reauthorization Committee.**

**Also attached (Item D-2(b)) are letters/proposals received which are requesting the Council to initiate new plan or regulatory amendments. There are two letters related to IFQ 'fish-up/fish-down' provisions among vessel classes, suggesting allowing fishing down in Area 2C, and fishing up from C to B class in all areas. Given that there are existing amendments to the IFQ program already in the hopper (awaiting staff resources or prioritization), I suggest these be forwarded to the IFQ Implementation Committee for consideration, relative to other proposed amendments. There is also a letter from CBSFA requesting the Council to initiate a Community IFQ purchase program for St. Paul and St. George, similar to the program recently approved for the Gulf of Alaska.**

**There is a letter from Terry Haines, Kodiak, requesting the Council to establish a fishermen's insurance fund from a 12% share of each rationalized fishery, and another letter, from Norman Stadem citing additional support for his previous letter (recently included in a Council mailing), suggesting "compensation for disenfranchised halibut fishermen" (who were excluded from the halibut IFQ allocations or received limited QS).**

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Relative to the Council's regulations defining halibut subsistence fisheries, there is a letter from Mr. David Tyner requesting the Council to add Ninilchik to the list of eligible communities for purposes of halibut subsistence. Since the Council's action on this issue, the Federal Subsistence Board has established a C&T finding for that area. According to the Council's program, a community receiving such a designation could then petition the Council for inclusion. It appears that a regulatory amendment will be required to accomplish this inclusion, for Ninilchik or any other community, rather than a simple adjustment to the regulations now being prepared. The Council is scheduled to review the proposed rule for the subsistence package at their April 2003 meeting in Anchorage. The Council could wait until April to address this and any other subsistence related issues, or you could initiate a regulatory amendment at this time.

As I mentioned under the ED report, there is a letter from Jeff Stephan (Item D-2(c)), Chair of the Council's IFQ Implementation Committee, suggesting expedited action on previously tasked halibut/sablefish IFQ amendments, as well as a Call for Proposals after this meeting, with a target date of October 2003 for final Council action. The previously tasked IFQ amendments are summarized under Item D-2(d).

### **Scientific and Statistical Committee Report**

The SSC did not address this agenda issue.

### **Report of the Advisory Panel**

The AP did not address this agenda issue.

## **DISCUSSION/ACTION**

Executive Director Chris Oliver began by asking Council members to review the status of various committees that recently have been very active, although many of which may no longer be necessary. Mr. Oliver then referenced letters and proposals in the notebooks requesting new plan or regulatory amendments: two letters related to IFQ fish-up/fish-down provisions among vessel classes, a letter from Central Bering Sea Fishermen's Association requesting initiation of a community IFQ purchase program for St. Paul and St. George, a letter from Terry Haines from Kodiak requesting establishment of a fishermen's insurance fund from a share of each rationalized fishery, and a letter from Norm Stadem suggesting a compensation program for "disenfranchised" halibut fishermen. Mr. Oliver also outlined a letter from David Tyner from Ninilchik relative to halibut subsistence regulations due to receiving a customary and traditional finding from the Federal Subsistence Board. The last item referenced by Mr. Oliver was a letter from Jeff Stephan, Chairman of the IFQ Implementation Committee, suggesting expedited action on previously tasked halibut/sablefish IFQ amendments and initiation of call for proposals after this meeting for additional amendments to the halibut/sablefish IFQ program having a target date of October 2003.

Mr. Oliver then referred to the summary of Council projects shown in the Three Meeting Outlook, however he didn't want to walk through it one by one. Chairman Benton then reminded Council members there is very little room for staff to take on additional work due to the enormous workload they are currently under. He suggested avoiding solicitation of new proposals at all costs, and reminded Council members they had added days to Council meetings, shortened and tightened up the public process, and should not heap more work on staff.

Mr. Oliver also reminded the Council they had a discussion previously about adding a day to the front part of the meeting in either April or June to take up the SEIS and possibly include EFH, to tackle the

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programmatic issue better. Chairman Benton agreed and thought most Council members found it very helpful suggesting Mr. Oliver talk with Steve Davis about organizing an additional meeting day at the June meeting.

Mr. Oliver continued with the Three Meeting Outlook of tasks for the April meeting, including halibut subsistence, possibly looking at adding Ninilchik to the list of eligible communities. Jane DiCosimo suggested one way to accommodate the request would be to go through the draft proposed rule language providing clarification to staff, and then scheduling final action on additional communities to include in the halibut subsistence program based on the Federal Subsistence Board's criteria. Stosh Anderson asked if he remembered correctly there was a Joint Protocol Committee meeting scheduled before the April Meeting, to which Chris Oliver replied affirmatively.

Mr. Oliver continued briefing the Council on staffing issues including anti-trust issues relative to arbitration on the crab rationalization EIS, having an analytical outline on essential fish habitat as well as bycatch information on corals/sponges from the Aleutians, initial review of Amendment 77 with final action in June, the discussion paper and analysis for the Aleutian Island pollock closure, programmatic SEIS, Amendments C and D for IRIU on flatfish as well as Amendment A, the Observer Program and how it will evolve and possibly parallel Gulf of Alaska rationalization, next steps/final action on the National Academy of Sciences report on Steller sea lions, the F<sub>40</sub> Report and non-target species for rockfish.

Mr. Oliver also added research priorities to the SSC's list of tasks and reiterated how heavily burdened staff is between this meeting and the April meeting primarily with EFH, Gulfrationalization, crab rationalization, programmatic SEIS as well as IRIU and Pacific cod allocations. As far as committees go, the Council has continuing work with some of the crab committees, the IRIU Committee - including possibly adjusting its membership, and possibly reactivating the Enforcement Committee, Magnuson-Stevens Act Reauthorization Committee and the US/Russia International Committee. Chairman Benton believed the Council could reduce the number of active committees by eliminating the large BSAI Crab Rationalization Committee, CDQ Policy Committee, Halibut Subsistence, and after the April meeting the Council would start looking at eliminating more of the crab committees. Dennis Austin noted the US/Russia International Committee incorporated a substantial advisory body (comprised mainly of council family individuals) attached to the committee's negotiations. Chairman Benton then also recalled the Socioeconomic Committee, and thought it could be eliminated too.

**Hazel Nelson moved the Council request NMFS prepare an analysis for a proposed rule for final action at the April meeting to manage Other Species CDQ similarly to Bering Sea shortraker, roughey and northern rockfish. That is, Other Species be allocated to the CDQ reserve, but not allocated to individual CDQ groups, that maximum retainable bycatch levels be established for the CDQ fisheries, and once aggregate CDQ harvests of Other Species reaches 7.5% of the Other Species TAC, CDQ Other Species would become PSC. CDQ fisheries would be treated the same as non-CDQ fisheries with regard to reaching the Other Species' OFL. The Council further requests NMFS prepare an analysis for a similar Emergency Rule to proceed on a parallel track with the proposed rule in order to implement these fishery management changes as soon as possible in the 2003 CDQ fisheries. The motion was seconded by Ben Ellis.**

John Bundy asked Sue Salvesson if this motion was possible, in terms of timing. Ms. Salvesson responded that NMFS was aware of this possibility and had been talking with various CDQ groups on this issue. Although it is possible, Ms. Salvesson stated the Council should recognize it was a reallocation of staff resources from existing projects, and NMFS staff would not continue to pursue the big administrative action for Amendment 71, due to being focused on the motion stated above. She believed that if the Council did receive an analysis from NMFS on the Other Species issue, they might be asked to see whether emergency rule justification exists for taking that action - accomplishing alternative management of other species reserved in time by late

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summer when it may be needed, and that the Council would be asked to take final action on a regulatory amendment to permanently implement this “fix” for the future. It would be a single Council consideration and action in April.

The motion carried without objection.

Stosh Anderson requested Council concurrence on NMFS’ request for a time extension regarding EFH litigation and, if possible during discussions, he requested Chairman Benton and Chris Oliver be party to those discussions. Chairman Benton asked for general Council concurrence that if asked, both he and Chris Oliver should attend? Roy Hyder stated he understood NMFS was making a request to the court, not to the plaintiffs. Chairman Benton clarified that indeed Mr. Hyder was correct, and that if discussions occur beyond the court about extensions of time and what would happen under those time extensions, the Chairman and Mr. Oliver would be party to them. Mr. Hyder stated he concurred with Mr. Anderson’s request.

Chris Oliver then spoke of a 2-day workshop sponsored by NMFS geared toward industry, the public and Council members, which would NOT be tacked onto the end of a Council meeting.

Chris Oliver stated he would have an update for the Council at the April meeting concerning the Washington, DC Conference.

D-3 Other Business

**Scientific and Statistical Committee Report**

The SSC did not address this agenda issue.

**Report of the Advisory Panel**

The AP did not address this agenda issue.

**DISCUSSION/ACTION**

The Council did not address this agenda issue.

**Stephanie Madsen moved the Council meeting be adjourned. The motion was seconded by Stosh Anderson and carried without objection.** The Council meeting then adjourned at 3:53pm.

MINUTES

160<sup>th</sup> Plenary Session  
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL  
January 29-February 4, 2003  
Seattle, Washington

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APPENDICES:

- I List of Persons Giving Public Comment
- II AP Revisions to Elements and Options for GOA Rationalization (“red/blue” version)
- III SSC Report
- IV AP Report