

# North Pacific Fishery Management Council

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Approved: Reggie Kirchner

## ADVISORY PANEL MINUTES North Pacific Fishery Management Council February 8–11, 2010

The following members were present for all or part of the meetings:

Joe Childers	Tim Evers	Matt Moir
Mark Cooper	Jeff Farvour	Ed Poulsen
Craig Cross	Becca Robbins Gisclair	Beth Stewart
John Crowley	Jan Jacobs	Lori Swanson
Julianne Curry	Bob Jacobson	Anne Vanderhoeven
Jerry Downing	Simon Kinneen	
Tom Enlow	Chuck McCallum	

The AP unanimously approved the minutes from the previous meeting.

### Election of Officers

The AP re-elected Tom Enlow as Chair and Lori Swanson and Joe Childers as Co-Vice Chair for 2010. The motions passed unanimously.

### C-1 Halibut Sablefish IFQ Program

The AP recommends that the following proposals be moved forward for either further analysis or development of a discussion paper as noted. The AP notes that these proposals are not intended to interfere with or supplant actions already taken by the Council.

- 1) Initiate a discussion paper on the use of pots in the GOA and/or SE sablefish fishery and establish a gear committee to identify possible gear conflicts and grounds preemption issues. *Passed 17/0*
- 2) Initiate an analysis to allow 4B category D QS to be fished on category C vessels. *Passed 17/0*
- 3) Initiate a discussion paper to increase the halibut IFQ vessel use cap in Area 4. *Passed 17/0*
- 4) Initiate a discussion paper to add Adak as CQE community. *Passed 16/1*
- 5) Initiate a discussion paper for elimination of vessel use caps for CQEs. *Passed 17/0*
- 6) Initiate a discussion paper on the subject of changing the residency requirements (on a one time basis for each individual lessee of CQE quota) with two options:
  - a) Require that lessees establish their primary residence in the CQE community and sign an affidavit attesting to their intent to permanently reside in the CQE community.
  - b) Waive the restriction for the CQE to lease quota to non residents for two years to individuals who sign affidavits of their intent to move their primary residence to the CQE community within that two year period. *Passed 17/0*

- 7) Initiate discussion paper to allow CQE communities to purchase QS in all vessel categories. A CQE could only buy D class QS from residents of CQE-eligible communities. *Passed 17/0*
- 8) Initiate an analysis of the IFQ Implementation Committee language to change the delivery notification requirement from 3 hours to one hour for vessels  $\leq 26$  feet delivering  $\leq 500$  lbs. *Passed 12/5*

*Main motion passed 17/0*

*A motion to initiate analysis of the IFQ Implementation Committee language to sunset hired skipper provisions failed 7/10.*

*A substitute motion to initiate analysis to amend grandfather/hired skipper privileges in the halibut/sablefish fishery to sunset these rights, on any future quota which is bought/traded/gifted; excluding leased (A) shares, failed 3/14.*

The AP moved to reconsider their entire motion (above) given staff clarification due to mischaracterization on the hired skipper issue. *Passed 9/7 with 2 abstentions.*

A substitute motion was made that the AP believes the transition from first generation to second generation is moving along at a decent pace as envisioned and that the AP sees no further action necessary on hired skippers. *Passed 10/7 with 2 abstentions.*

*The main motion passed 15/2 with 2 abstentions.*

*Minority Report:* *The undersigned AP members support moving the following proposal forward for analysis:*

*Amend grandfather/hired skipper privileges in the halibut/sablefish fishery to sunset these rights, on any future quota which is bought/traded/gifted, excluding leased (A) shares.*

*The AP agreed to reconsider the main IFQ amendment motion upon information provided by staff that clarified the "20% rule" for ownership of a vessel on which to hire a skipper is applied to both corporations and individuals who are initial QS recipients, as published in regulation. A motion to move the above proposal forward for analysis was replaced by a substitute motion that recommended no further action on the grandfather/hired skipper privileges.*

*Rationale: The hired skipper provisions were the cause of significant discussion in public testimony and by the AP. Questions regarding whether the hired skipper provisions are allowing the current IFQ program to meet original Council intent of the program remain controversial. Analysis of the above proposal would provide insight as to whether the hired skipper provisions allow for absentee ownership of quota share that results in resource rents being extracted at the expense of active harvesters. Analysis would also reveal the extent to which the current hired skipper provisions are contributing to quota consolidation and reduced opportunities for new entrants/second generation fishermen to enter the fishery.*

*Amending the grandfather/hired skipper privileges in the halibut/sablefish fishery to sunset these rights, on any future quota which is bought, traded or gifted was a compromise position to the more disruptive suggestion of retroactively sunseting the grandfather provisions. The IFQ Implementation Committee (comprised of a broad range of industry representatives from across the State of Alaska) recognized that not extending the hired skipper provisions for future halibut and sablefish QS transferred by initial recipients, excluding leased (A) shares, was a reasonable compromise solution and passed with one person voting in opposition. Signed by: Becca Robbins Gisclair, Jeff Farvour and Julianne Curry*

## C-2 Observer Program

The AP recommends the Council begin analysis of the five options developed by the Observer Advisory Committee for restructuring the observer program contained in the document. The AP supports the concerns contained in the OAC report, and also recommends the analysis contain a discussion of a pilot program for vessels which have not been previously covered by the observer program.

*Motion passed 19/0*

*A motion to request that NMFS deploy observers (intended for >60 ft vessels) in 2010 in the Gulf of Alaska in order to address any weak areas of coverage, failed 7/12.*

## C-3(a) BSAI Crab Right of First Refusal

The AP recommends the following actions and alternatives move forward for analysis, noting the changes (bold and strikeout) to Action 2, Alternative 2 below:

### **Action 1: Increase a right holding entity's time to exercise the right and perform as required.**

#### Alternative 1 – status quo

- 1) Maintain current period for exercising the right of first refusal at 60 days from receipt of the contract.
- 2) Maintain current period for performing under the right of first refusal contract at 120 days from receipt of the contract.

#### Alternative 2: Increase an entity's time to exercise the right and perform.

- 1) Require parties to rights of first refusal contracts to extend the period for exercising the right of first refusal from 60 days from receipt of the contract to 90 days from receipt of the contract.
- 2) Require parties to rights of first refusal contracts to extend the period for performing under the contract after exercising the right from 120 days from receipt of the contract to 150 days from receipt of the contract.

### **Action 2: Increase community protections by removing the ROFR lapse provisions.**

#### Alternative 1 – status quo

- 1) Maintain current provision under which the right lapses, if IPQ are used outside the community of the entity holding the right for three consecutive years.
- 2) Maintain current provision, which allows rights to lapse, if the PQS is sold in a sale subject to the right (and the entity holding the right fails to exercise the right).

#### **Alternative 2 – Strengthen community protections under circumstances where ROFR may lapse.**

~~Increase community protections by removing the provisions under which the right lapses.~~

**Option 1:** Require parties to rights of first refusal contracts to remove the provision that rights lapse, if the IPQ are used outside the community for a period of three consecutive years

**Option 2:** **If any entity with a right of first refusal chooses not to exercise its right, and the IPQ is sold and used in another community, then the right of first refusal as to the original entity lapses and is acquired by the community entity where the IPQ is currently being used.**

~~Require parties to right of first refusal contracts to remove any provision for the right to lapse, if an entity chooses not to exercise its right~~

**Option 3:** Require that any person holding PQS that met landing thresholds qualifying a community entity for a right of first refusal on program implementation to maintain a contract providing that right at all times

**Action 3: Apply the right to only PQS and assets in the subject community.**

**Alternative 1 – status quo**

The right of first refusal applies to all assets included in a sale of PQS subject to the right, with the price determined by the sale contract.

**Alternative 2: Apply the right to only PQS.**

Require parties to rights of first refusal contracts to provide that the right shall apply only to the PQS subject to the right of first refusal. In the event other assets are included in the proposed sale, the price of the PQS to which the price applies shall be determined by a) agreement of the parties or b) if the parties are unable to agree, an appraiser jointly selected by the PQS holder and the entity holding the right of first refusal.

**Alternative 3: Apply the right to only PQS and assets in the subject community.**

Require parties to rights of first refusal contracts to provide that the right shall apply only to the PQS and other assets physically present in the community benefiting from the right of first refusal. In the event other assets are included in the proposed sale, the price of the PQS to which the price applies shall be determined by a) agreement of the parties or b) if the parties are unable to agree, an appraiser jointly selected by the PQS holder and the entity holding the right of first refusal.

*Motion passed 19/0*

### **C-3(b) WAG King Crab Regional Delivery**

The AP recommends the Council move the package forward for analysis. *Motion passed 19/0*

*Minority Report: After a motion to delete Alternative 3 from the analysis failed (8/11), a motion was made to add an alternative to convert Western Alaska Golden King Crab QS to B shares (failed 3/16).*

*Converting WAG to a B share fishery accomplishes the same thing that removing the regional landing requirement does. Neither of these alternatives addresses the Council's Purpose and Need statement. The undersigned believe that if the Council is going to include an alternative as drastic as removing the regional landing requirement, consideration should be given to a B share conversion as well. Signed by: Beth Stewart, Jerry Downing, Chuck McCallum*

### **C-4 Groundfish Annual Catch Limits**

The AP recommends that the Council have the Non-target Species Committee convene to address this item prior to the April meeting and consider management measures that may be needed in a trailing amendment. *Passed 18/0*

The AP further recommends the Council move forward with this analysis. *Passed 18/0*

## C-5(a) Amendment 80 Lost Vessel Replacement

The AP recommends the Council approve the staff proposed Purpose and Need Statement as written. Further, the AP recommends the Council move the analysis forward for public review with the following modifications to the alternatives and options (bold and strikeout):

### Staff Suggested Purpose and Need

Allowing Amendment 80 vessel owners to replace their vessels due to actual total loss, constructive total loss, permanently ineligibility to be used in a U.S. fishery, or for other reasons would allow vessel owners to improve vessel safety, meet international class and load line requirements that would allow a broader range of onboard processing options, or to otherwise improve the economic efficiency of their vessels. Allowing smaller vessels to be replaced with larger vessels could improve the ability of vessel owners to comply with the groundfish retention standard (GRS) applicable to all Amendment 80 vessels.

Alternative 1: Status quo. Vessels may not be replaced.

Alternative 2: The owner of an Amendment 80 vessel may replace that vessel with another vessel only in cases of actual total loss, constructive total loss, or if that vessel permanently ineligible to be used in a U.S. fishery under 46 U.S.C. 14108. Only one replacement vessel may be used at the same time (one-for-one replacement).

Alternative 3: The owner of an Amendment 80 vessel may replace that vessel with another vessel for any purpose. Only one replacement vessel may be used at the same time (one-for-one replacement).

Option 1 (Applicable to Alternatives 2 and 3): Vessel size restrictions.

- (a) A replacement vessel may not have a length overall greater than the original qualifying Amendment 80 vessel it replaces.
- (b) The maximum length overall (MLOA) requirements on LLP licenses assigned to an Amendment 80 vessel would still apply.
- (c) No length restriction on replacement vessels (the MLOA requirements on LLP licenses assigned to an Amendment 80 vessel would **not** apply).

~~Option 2 (Applicable to Alternatives 2 and 3): GOA flatfish sideboard restrictions. A replacement vessel that replaces an original qualifying Amendment 80 vessel that is allowed to directed flatfish in the GOA:~~

- ~~(a) would not be allowed to directed fish for flatfish.~~

The replacement vessels would be allowed to directed fish for flatfish in the Gulf of Alaska if the original vessel qualified.

Option 3 (Applicable to Alternatives 2 and 3): *Golden Fleece* sideboard restrictions. A replacement vessel that replaces the *Golden Fleece*:

- (a) would not receive the same exemptions that apply to the *Golden Fleece*.  
**Amendment 80 sideboards in the Gulf of Alaska would be adjusted to account for the history of the *Golden Fleece* in the same manner as other Amendment 80 vessels.**
- (b) would receive the same exemptions that apply to the *Golden Fleece*.
- (c) if the replacement vessel for the *Golden Fleece* is greater than the LOA of the license that was originally assigned to the *Golden Fleece*, than that replacement vessel will be subject to all sideboards that apply to other Amendment 80 vessels, with the catch and PSC use of the *Golden Fleece* added to the existing GOA sideboards. If the *Golden Fleece* replacement vessel is less than or equal to the LOA of the license that**

**was originally assigned to the Golden Fleece, then the Golden Fleece sideboards would apply.**

**Option 4 (Applicable to Alternatives 2 and 3): Assigning QS to Lost Vessels. Allow the owner of an Amendment 80 Vessel to choose to assign a QS permit from an original qualifying Amendment 80 vessel to the replacement vessel or to the LLP license derived from the originally qualifying vessel.**

**(a) A replacement vessel cannot enter an Amendment 80 fishery without QS being assigned to that vessel.**

**(b) Persons holding a QS permit associated with a vessel that is permanently ineligible to re-enter US fisheries is eligible to replace the vessel associated with its QS permit.**

**Option 5 Any vessel replaced under this program would be ineligible to be designated on an FFP and an LLP.**

- **Requirement under all alternatives:** Monitoring and enforcement, permitting, recordkeeping and reporting, prohibitions, and general GOA sideboard measures that apply to original Amendment 80 vessels would continue to apply to all replacement vessels.

**The AP recognizes the need to address the unique situation of the Ocean Peace which could lose its ability to fish its AFA allocation if the vessel is replaced.**

**The AP notes that there are continuing legal concerns with the authority of the Council to allow Amendment 80 vessel replacement under the proposed alternatives, given the definition of the non-AFA trawl CP sector in legislation and the limited scope of the decision in Arctic Sole v. Gutierrez. The AP recommends that the Council request further clarification of this issue by NOAA GC.**

**The AP recommends the Council request that the analysis contain a table that indicates the age of each of the Amendment 80 vessels.**

*Passed 19/0*

*A motion to add a suboption to Alternative, Option 1, which stated that a replacement vessel may not have an MLOA 10 or 20% larger than that designated on the vessel it is replacing, failed 9/10.*

*Minority Report: A motion to leave Option 2 in the main motion failed 7/11/1. This is an initial review document and the minority believes it is premature to make a policy decision at this point removing option 2 from the motion. Signed by: Matt Moir, Bob Jacobson, Tim Evers and Joe Childers*

## **C-5(b) Amendment 80 Cooperative Formation**

The AP recommends the Council take final action on this agenda item selecting the preferred Alternative 4 with suboptions shown below in bold:

### Purpose and Need

Most participants in the Amendment 80 sector have successfully established a cooperative in the first year of the program. However, some participants have expressed concern that over the long term, cooperative formation standards may disadvantage them, and they may be constrained from establishing cooperative relationships, receiving an exclusive annual harvest allocation, and ending the “race for fish.” Smaller vessel owners with limited QS are likely to have weakened negotiating leverage as the groundfish retention standard (GRS) increases if they cannot be competitive in the limited access fishery and options in the Gulf of Alaska (GOA) are not viable. Participants of any size will find it difficult to receive the benefits of cooperative management if they cannot reach agreement on negotiated terms and the limited access fishery is an unattractive outside option, or a cooperative is able to derive some benefit from forcing an entity into the limited access fishery.

Relaxing cooperative formation standards either by reducing the number of quota share (QS) permits that must be assigned, or the number of owners required, or by requiring that any otherwise eligible member be accepted by a cooperative subject to the same terms and conditions as other members could: (1) provide additional opportunities to QS holders to form cooperatives, because more relationships are possible; (2) diminish the negotiating leverage of vessel owners who may be necessary to meet the threshold requirements under more stringent cooperative formation standards; (3) reduce the potential risk of any one company being unable to negotiate settlement and be able to fish only in the limited access fishery; and (4) reduce the incentive for members of a cooperative to attempt to create conditions that are unfavorable for certain fishery participants to form a cooperative.

Alternative 1: Status quo. A minimum of three unique QS holders holding at least nine QS permits are required to form a cooperative.

Alternative 2: Reduce the number of unique QS holders required to form a cooperative from three to two or one unique QS holder.

Alternative 3: Reduce the number of QS permits required to form a cooperative from the existing 9 permits to some lower range (e.g., three permits to the existing 9 permits).

Alternative 4: Reduce both the number of unique QS holders and the number of QS permits required to form a cooperative (combination of Alternatives 2 and 3 above).

#### Suboption: 2 QS holders and 6 QS permits

Alternative 5: Allow a cooperative to form with a minimum of three unique QS holders holding at least nine QS permits (status quo), or a single or collective group of entities that represent 20 percent, 25 percent or 30 percent of the sector QS.

Alternative 6: Require that a cooperative accept all members of a cooperative who are otherwise eligible to join a cooperative subject to the same terms and conditions as all other members.

**GRS Suboption (Applicable to all Alternatives): The GRS shall be applied in aggregate, to all cooperatives if this calculation meets or exceeds the GRS requirement.**

**QS Assignment Suboption (Applicable to all Alternatives): A QS holder must assign all QS permits either to a cooperative or the limited access fishery.**

*Passed 18/0*

## **C-6(a) 2009 Rockfish Cooperative Reports**

The AP heard reports for the 2009 Rockfish Cooperatives from Julie Bonney and Mike Szymanski representing the two entities. The AP recommends that the Council request a table be included in future co-op reports that shows prohibited species catch for all years since the beginning of the program.

*Passed 18/0*

## C-6(b) GOA Rockfish Program Analysis

The AP recommends that the Council request staff to expand the analysis as follows:

- Add an option for CP excessive share use caps to include 20-30-40%,
- Add an option to remove sideboard provisions in CP sector with respect to stand-downs under 18.2 and sideboards for WYAK/WGOA rockfish and SW/DW halibut
- Include PFMC discussion regarding Amendment 20
- Respectfully request council request GC discussion of implications and decisions regarding LAPPs in the MSA relative to processor associations
- Add 5% option for harvester shares to processors
- Provide denominators for allocations.

*Motion passed 18/0*

## D-2 Data Collection

The AP requests the Council develop a discussion paper specifically regarding Crab EDRs. This discussion paper should focus on the following:

- An evaluation of each variable's informative value, accuracy, and collection cost, and availability of variables from other data sources.
- Consider the use of focused studies.
- A review of the EDR survey developed by the industry workgroup on Crab EDRs, as well as feedback from the Alaska Fisheries Science Center.
- Definition of specific objectives and key factors that need to be gathered to meet the objectives, and the feasibility of collecting these key factors.

*Motion passed 18/0*

The AP notes that similar concerns exist in the Amendment 80 EDR program which will need to be addressed. The AP wholeheartedly agrees that meaningful data collection is important but recommends that no more new data collection programs be developed until the existing crab and Amendment 80 programs are reviewed and refined.

*Motion passed 18/1*

## D-1 American Fisheries Act Co-op Reports and 2010 Agreements

The AP received reports from AFA cooperative representatives, Ed Richardson, John Gruver and Karl Haflinger. No action was taken.

## D-3(b) Area Closure Options for Chum Bycatch Alternative

The AP recommends the Council move forward with the following revised (bold) components for analysis:

Component 5: Area Option

- a) Large area closure
- b) **Discrete, small area closures identified by staff in February Discussion paper (20 ADF&G statistical areas, identified in Table 4)**



## Component 6: Timing Option – Dates of Area Closures

- a) **Trigger closure of Component 5 areas when the overall cap level specified under Component 1(a) was attained.**
- b) **Under Component 5 (b) discrete small closures would close when overall cap was attained and would close for the time period corresponding to periods of high historical bycatch, considering both number of salmon and bycatch rate (i.e. Table 11 in February Discussion Paper)**
- c) **Under Component 5, areas close when bycatch cap is attained within that area (i.e. Table 12 in Feb. Discussion Paper).**
  - a. **for the remainder of year**
  - b. **for specific date range**

**In addition, include the following items in the next discussion paper:**

- \* **Analyze discrete area approach normalized across years (i.e. proportion of salmon caught in an area in a year rather than numbers of salmon);**
- \* **Discuss how Component 7 and suboption would be applied;**
- \* **Discussion from NMFS of catch accounting for specific caps for discrete areas [Component 6(c)];**
- \* **Examine differences between high bycatch years (i.e. 2005) and other years to see what contributes to high rates (i.e. timing/location, including fleet behavior and environmental conditions).**

*Motion passed 19/0*

## **D-3(d) HAPC Criteria and Schedule**

The AP recommends that the Council stay with timeline B recognizing that this is an important process which should not be rushed and that the Plan Team schedule is a concern with timeline A.

*Passed 18/0*

The AP recommends that the Council adopt the recommended HAPC criteria with the SSC's recommendation to include mid-water habitat.

*Passed 18/0*

## **D-3(e) AI FEP Addendum**

The AP received a report on the Aleutian Islands Fishery Ecosystem team.

## **D-3(f) Stranding of BSAI Pacific cod TAC**

The AP reviewed the discussion paper and believes there is nothing that warrants action on this issue at this time. The AP notes that it may be appropriate to revisit this issue in the future and explore options for reducing the amount of stranded Pacific cod TAC in the Amendment 80 sector, including soft caps and compensated transfers between coops in the Amendment 80 and longline catcher-processor sectors.

*Passed 15/0*

### **D-3(g) Halibut PSC Limits**

The AP recommends that the Council develop an analysis for a new GOA Groundfish FMP amendment that establishes the GOA halibut PSC limits in regulations. The analysis should include a suite of alternatives that consider possible adjustments to the present halibut PSC caps.

Council staff should first bring back a discussion paper that develops the background information and clarifies the nature of the problem that needs to be addressed in context of considerations set forth in the FMP for the establishment of halibut PSC limits, using Appendix 1 as a base paper.

The AP further recommends a discussion paper be developed to discuss halibut PSC caps in the Bering Sea.

*Motion passed 15/2*

### **D-4 Staff Tasking**

The AP recommends that the Council agenda Bering Sea Emergency Relief for the April meeting. The AP requests industry and community representatives to provide a consensus document of elements and options for that meeting.

*Passed 18/0*

The AP reviewed the Halibut Charter Catch Shares Integration Program proposed in written comments under item C-1. The AP recognizes the need to move forward with this issue and recommends the Council decide whether a discussion paper or stakeholder committee is the appropriate first step.

*Passed 18/0*

The AP recommends that the Council create a Charter Halibut Moratorium Permit implementation committee to address concerns with the permit issuance process, which should meet prior to the June 2010 Council meeting.

*Passed 15/0*

### **Other Business**

There was an evening presentation from Scott McMullen, Chair of Oregon Fishermen's Cable Committee. Mr. McMullen provided an overview of the history and current standing of Oregon's fishermen-underwater cable company cooperative.