

# North Pacific Fishery Management Council

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Certified by Peggy Kircher

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## ADVISORY PANEL MINUTES North Pacific Fishery Management Council June 1-6, 2009

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

Joe Childers  
Mark Cooper  
Craig Cross  
John Crowley  
Julianne Curry  
Jerry Downing

Tom Enlow  
Tim Evers  
Jeff Farvour  
Becca Robbins Gisclair  
Bob Jacobson  
Simon Kinneen

Chuck McCallum  
Matt Moir  
Theresa Peterson  
Ed Poulsen  
Beth Stewart  
Lori Swanson

The AP unanimously approved the minutes from the previous meeting.

### **C-1(a) Central GOA Rockfish Pilot Program**

Glenn Merrill (NMFS-AKR) provided the AP with a table showing sideboard limits applicable in the Rockfish Program and it is included as Appendix A in these minutes. **The AP recommends the following elements and options for the Rockfish Pilot Program alternatives.** *The motion passed 18/0.* (Additions are indicated in ***bold and italics*** and deletions are indicated as ~~stricken~~.)

#### **ICA Set Aside**

Prior to allocation of catch history to the sectors, NMFS shall set aside an Incidental Catch Allocation (ICA) of Pacific Ocean perch (POP), northern rockfish, and pelagic shelf rockfish to meet the incidental catch needs of fisheries not included in the cooperative program.

#### **Entry-level Set Aside**

A percentage of CGOA POP, northern rockfish and pelagic shelf rockfish for catcher vessels not eligible to participate in the program.

#### **Trawl and fixed gear entry level fisheries**

- The annual set aside will be 5% of each of these target rockfish species.
- Set-asides shall be apportioned at 50% for trawl gear and 50% for fixed gear
- The trawl sector's allocation by weight (based on the aggregate TAC for Pacific Ocean perch, Northern and pelagic shelf rockfish) shall first be Pacific Ocean perch.
- Unharvested allocations to either sector shall be available to both sectors at the end of the third quarter.

- The entry level fishery will be managed as a limited entry fishery
- Start dates for the entry level fishery should be January 1 for fixed gear and approximately May 1 for trawl gear.

Halibut PSC Limit Allocation

Option 1 – (Alt. 2) Prosecution of the entry level fishery will be supported by general allowance of halibut PSC to the gear type and the general allocations of secondary species. If sufficient halibut PSC is not available at the start of the trawl gear fishery (May 1), the start date will be on the next release of halibut PSC.

Option 2 – (Alt. 4) Prosecution of the entry level fishery will be supported by general allowance of halibut PSC to the gear type and the general allocations of secondary species. If sufficient halibut PSC is not available at the start of the trawl gear fishery (May 1), halibut usage will be deducted against the following quarter’s halibut PSC allowance.

Vessels that can participate in the Entry Level fishery are those vessels that did not qualify for the CGOA rockfish cooperative program. Before the beginning of each fishing year an application must be filed with NMFS by the interested vessel that includes a statement from a non-qualified processor confirming an available market.

Processors who purchase and process the entry level rockfish quota must be non-qualified processors.

Entry level fixed gear sector are exempt from VMS requirements.

Fixed gear only entry level fishery (Alt. 3/4)

The annual set aside will be;

- 5 mt percent of the POP TAC
- 5 mt percent of the northern rockfish TAC
- 25 mt percent of the pelagic shelf rockfish TAC.

If the entry-level fishery harvests 90% or more of their allocation of a species, the set-aside would increase *by the amount of the initial allocation the following year*: by \_\_\_\_\_ percent, up to a maximum set-aside of 5 percent

- 5 mt POP
- 5 mt Northern rockfish
- 25 mt pelagic shelf rockfish

*This increase would be capped at a maximum of:*

- POP**
  - a. 1%
  - b. 3%
  - c. 5%
- Northern Rockfish**
  - a. 2%
  - b. 3%
  - c. 5%
- Pelagic Shelf Rockfish**
  - a. 2.5%
  - b. 3%
  - c. 5%

The entry level fishery will be managed as a limited entry fishery

Start date for the entry level fishery should be January 1.

Prosecution of the entry level fishery will be supported by general allowance of halibut PSC to the gear type and the general allocations of secondary species.

**Any vessel or gear type exempt from CGOA LLP requirements or any holder of a CGOA fixed gear LLP may enter a vessel in the entry level fishery. ~~Before the beginning of each fishing year an application must be filed with NMFS by the interested vessel~~**

Entry level fixed gear sector are exempt from VMS requirements.

*Notes: Provisions concerning processor qualification are omitted, as those requirements may be inapplicable under this structure.*

*In addition, no provision is made for reallocations of unharvested amounts, as it is assumed that the allocation to the entry level sector will be set based on harvest performance of the fishery.*

*Options for cooperative management, individual allocations, and lotteries are not included, as those options appear unable to address problems cited with the entry level fishery. If the Council wishes to pursue an entry level trawl fishery under cooperative management, additional effort could be devoted to that management structure.*

*The provision for an entry level fishery might satisfy the requirement of §303A(c)(5)(C) for the consideration of a set aside for entry level and small vessel owner-operators, where necessary and appropriate.*

***The trawl gear entry level fishery will be eliminated. Qualified Trawl entry level participants will graduate into the main quota share program.***

### **Program eligibility**

The eligibility for entry into the cooperative program is one targeted landing of POP, Northern rockfish or PSR caught in CGOA during the qualifying period using a CGOA trawl LLP license.

**Options (Alt.4)** - In addition, the following participants would be eligible to enter the program:

**Option 1** - Those persons whose vessel had one targeted landing of POP, Northern rockfish or PSR caught in CGOA during the qualifying period with interim trawl CGOA license that was later determined to be an invalid trawl CGOA endorsement, but who acquired a valid CGOA trawl license prior to December 31, 2003, which ~~is still~~ **has been continuously** assigned to ~~that~~ **the vessel with the target landing since acquired until the date of final Council action.**

~~**Option 2** - Eligible entry level CGOA trawl LLPs that participated in the entry level program.~~

### **Qualified catch**

Basis for the allocation to the LLP license holder is the catch history of the vessel on which the LLP license is based and shall be on a fishery-by-fishery basis. The underlying principle of this program is one history per license. In cases where the fishing privileges (i.e., moratorium qualification or LLP license) of an LLP qualifying vessel have been transferred, the allocation of

harvest shares to the LLP shall be based on the aggregate catch histories of (1) the vessel on which LLP license was based up to the date of transfer, and (2) the vessel owned or controlled by the LLP license holder and identified by the license holder as having been operated under the fishing privileges of the LLP qualifying vessel after the date of transfer. (Only one catch history per LLP license.)

Option (Alt. 4) – For licenses qualified based on catch of a vessel using an interim license, the basis for the allocation will be the catch history of such vessel, notwithstanding the invalidity of the interim Central Gulf trawl LLP endorsement under which the vessel operated during the qualifying period. History allocated under this provision shall be assigned to the LLP license.

Catch history will be the history during the following qualifying period:

- 1) 1996-2002 (drop two) Alt. 2
- 2) 1998-2006 (drop two or four) Alt. 3
- 3) 2000-2006 (drop two) Alt. 3

Qualified target species history is allocated based on retained catch (excluding meal) during the rockfish target fishery. Different years may be used (or dropped) for determining the history of each of the three rockfish species.

The CP catch history will be based on WPR data.  
CV catch history will be based on fish tickets.

*To include participants in the pilot program entry level fishery, pilot program years (i.e., 2005-2008) could be considered qualifying years.*

***Entry Level Trawl qualification/allocation for the main program:***

- 1) Vessels / LLPs that do not qualify for Cooperative quota (CQ) for the CGOA rockfish cooperative program.***
- 2) The trawl LLP must have registered for the entry level fishery both in 2007 and 2008.***
- 3) The trawl LLP must have made a landing of fish in the entry level fishery with trawl gear in either 2007 or 2008.***

***The Qualified Trawl LLP would receive an allocation of QS for the primary rockfish species equivalent to:***

- 1) Average of the lowest one-quarter to one-third of the qualified CV LLPs that actively fished in the RPP program in either 2007 or 2008.***
- 2) Average of the lowest one-quarter to one-third of all qualified CV LLPs.***
- 3) Actual catch history of the vessel/LLP in 2007 or 2008 (information would be withheld due to confidentially restrictions unless the vessel(s) agrees to have the data released to the public).***

***Note: secondary and Halibut PSC allocations are calculated the same as the other qualified LLPs.***

### **Sector definitions**

Trawl catcher vessel – A trawl catcher-vessel that has a CV or CP LLP license, but does not process its catch on board;

Trawl catcher processor - A trawl catcher-processor is a trawl vessel that has a CP LLP license and that processes its catch on board.

## Rationalized areas

History is allocated for the CGOA only (NMFS statistical areas 620 and 630)

## Sector allocations

### Target rockfish species

Catch history is determined by the sector's qualified catch in pounds as a proportion of the total qualified catch in pounds.

Sector allocations of target rockfish species are based on individual qualified vessel histories applying any applicable drop year provision at the vessel level.

Full retention of the target rockfish species required

### Secondary species

Secondary species history is allocated based on retained catch of the species while targeting rockfish over retained catch in all fisheries.

Except as provided below, history will be allocated to each sector for the following secondary species:

- sablefish,
- shortraker rockfish
- roughey rockfish,
- thornyhead rockfish, and
- Pacific cod.

All non-allocated species will be managed by MRA, as in the current regime. This includes Arrowtooth flounder, deep water flatfish, shallow water flatfish, flathead sole, rex sole, pollock, other species, Atka mackerel and other rockfish. Basis species for purposes of determining MRAs will be:

Option 1 (Alt. 2) - Only primary allocated rockfish species

Option 2 (Alt. 4) - All allocated species

Except as otherwise provided below, secondary species allocations will be based on:

The sector's average annual percentage of retained catch of the secondary species by the rockfish target fisheries during the qualifying period. For each qualifying year calculate the sector's retained catch of the species in the target rockfish fisheries divided by the retained catch of all CGOA fisheries. Sum these percentages and divided by the number of qualifying years. The calculated average annual percentage is multiplied by the secondary species TAC for that fishery year and allocated to each sector in the cooperative program.

Exceptions:

For the catcher processor sector, Pacific cod history will be managed by MRA of 4%.

For shortraker and roughey:

For the CP sector, a shortraker allocation of the TAC will be:

Option 1a (Alt. 2): 30.03%

Option 1b (Alt. 4): 50%

to be managed as a hard cap, and a roughey allocation of 58.87% of the TAC, to be managed as a hard cap.

Option 2 (Alt. 4): shortraker and roughey will be managed with a combined MRA of 2%.

For the CV sector, shortraker and rougheye should be managed with a combined MRA of 2%. If harvest of shortraker by the CV sector reaches 9.72% of the shortraker TAC, then shortraker should go on PSC status for that sector.

Participants must retain all allocated secondary species and stop fishing when cap is reached.

Prohibited species (halibut mortality)

Allocation to the rockfish cooperative program will be based on historic average usage, calculated by dividing the total number of metric tons of halibut mortality in the CGOA rockfish target fisheries during the qualifying years by the number of years. This allocation will be divided between sectors based on the relative amount of target rockfish species allocated to each sector (e.g., the sector's share of total qualified catch).

Allocation from sector to vessel

Within each sector, history will be assigned to LLP holders with CGOA endorsement that qualify for a sector under the 'sector allocations' above. The allocations will be to the current owner of the LLP of the vessel which earned the history.

Target Species

Each LLP holder will receive an allocation of history equivalent to the license's proportion of the total of the sector qualifying history.

Secondary Species

Each LLP holder will receive an allocation of allocated secondary species equal to the license's proportion of the sector' target rockfish history

PSC (Halibut Mortality)

Each LLP holder will receive an allocation of halibut mortality equivalent to the license's proportion of the sector's target rockfish history

Allocations are revocable privileges

The allocations under this program:

- 1) may be revoked, limited, or modified at any time,
- 2) shall not confer any right of compensation to the holder, if it is revoked, limited, or modified, and
- 3) shall not create or be construed to create any right, title, or interest in or to any fish before the fish is harvested by the holder.

Domestic processing

All fish harvested with an allocation from this program must be processed in the U.S.

*Alt. 3 – required by Section 303A(c)(1)(E)*

***Regionalization – Apply to catcher vessel sector only***

***All CV CQ must be landed in the Port of Kodiak.***

**Shore based processor provisions – Apply to catcher vessel sector only**

Processor eligibility

An eligible processor is a processing facility that has purchased:

Option 1 (Alt. 2) - 250 MT of aggregate Pacific Ocean perch, northern rockfish, and pelagic shelf rockfish harvest per year, for 4 years, from 1996 to 2000.

Option 2 (Alt. 3) - 250 MT of aggregate Pacific Ocean perch, northern rockfish, and pelagic shelf rockfish *per year, for 4 years*, from 2000 to 2006.

***Suboption: (entry level fishery processor): 250 MT of aggregate Pacific Ocean perch, northern rockfish, and pelagic shelf rockfish harvested from 2007 to 2008.***

Harvesters can participate in a:

Option 1 (Alt. 2): cooperative or LLP/open access. The LLP's share will be fished in a competitive fishery open to rockfish qualified vessels that are not members of a cooperative and must be delivered to one of the qualified processors.

Option 2 (Alt. 4): cooperative

*This option can be modified to consider years other than those provided in the rockfish legislation.*

**Option A - Processor allocation of harvest shares (Alt. 3/4)**

Allocation of the primary rockfish, secondary species, and halibut PSC to the CV sector shall be apportioned between harvesters (CV only) and shore based processors:

Option 1: 90/10

Option 2: 80/20

Option 3: 100/0

Eligible processors will be allocated target rockfish, secondary species, and halibut PSC from the processor pool of harvest shares in proportion to its qualifying processing history. Annual allocations will be of the same species and subject to the same allocation and harvest rules governing catcher vessel allocations.

***Suboption: Eligible Entry Level Processors will be allocated target rockfish, secondary species, and halibut PSC from the processor pool of harvest shares that are derived from those trawl LLPs that graduate from the entry level trawl fishery into the main program.***

Processor qualifying years

Each eligible shore based processor is allocated processor catch history based on individual processor histories of CGOA target rockfish for the years:

Option 1 - 1996-2000 (drop 1 year)

Option 2 - 2000-2006 (drop 2 years)

***Suboption: entry level processors 2007-2008***

*This option can be modified to consider years other than those provided in the rockfish legislation.*

Option: Processor allocations of CV harvest shares may be harvested only by vessels that are not owned or controlled by the holder of *those harvester processor* shares (using the AFA rules for determining control and ownership).

Option: A holder of catcher vessel harvest history or processor histories may join a cooperative to coordinate the harvest of allocations. (Cooperatives are subject to general cooperative rules below.) Membership agreements will specify that processor affiliated cooperative members cannot participate in price setting negotiations except as permitted by general antitrust law.

Cooperatives are intended only to conduct and coordinate harvest activities of the members and are not FCMA cooperatives.

**Option B – Harvester cooperatives with processor associations (Alt. 2)**

Voluntary cooperatives may form between eligible harvesters in association with the processing facility to which the harvester delivered the most pounds of the three rockfish species combined during the processor qualifying years. If an LLP holder has no deliveries to a qualified processor, the LLP holder may join a cooperative with any one of the qualified processors, but its membership would not be considered in determining whether the threshold is met for cooperative formation.

Harvester cooperative/processor association qualifying years are:

1996–2000 (drop 1 year)

Drop year is selected by the processor and applied to all LLP licenses when determining associations.

Catcher vessel cooperatives are required to have at least 75% of the eligible historical shares for each cooperative associated with its processor

If a processing facility has closed down and another processing facility has acquired that processing history through purchase, the history belongs to the facility that purchased that history. That history must remain in the community that it was generated in.

The processor will be an associate of the cooperative but will not be a cooperative member.

A pre-season contract between eligible, willing harvesters in association with a processor is a pre-requisite to a cooperative receiving an annual allocation.

Co-op membership agreements will specify that processor affiliated harvesters cannot participate in price setting negotiations except as permitted by general antitrust law.

Processors are limited to 1 co-op per plant.

Co-ops may engage in inter-cooperative transfers of annual allocations to other cooperatives with agreement of the associated qualified processor.

Membership agreements will specify that processor affiliated cooperative members cannot participate in price setting negotiations except as permitted by general antitrust law.

Harvester cooperatives are intended only to conduct and coordinate harvest activities of the members and are not FCMA cooperatives.

**Option C – Modified harvester cooperatives with initial processor association (Alt. 3/4)**

On implementation of the program, each eligible harvester will be eligible to join a cooperative in association with any processing facility in the community to which it delivered the most pounds of the three rockfish species combined in the processor qualifying years.

Harvester cooperative/processor association qualifying years are:

Option 1 – 1996-2000 (drop 1 year)

Option 2 – 2000–2006 (drop 2 years)

*Suboption:– (entry level processor 2007–2008 (no drop)*

Drop year is selected by the processor and applied to all LLP licenses when determining associations.



If an eligible harvester joins a cooperative in association with the processor to which it delivered the most pounds of the three rockfish species combined during the processor qualifying years, it will maintain all landings history without forfeiture. An eligible harvester may elect not to join the cooperative in association with the processor identified by its landings history in any year, including the first year of the program. In the first season that an eligible harvester elects not to join a cooperative in association with the processor identified by its landings history, it will forfeit:

- Option 1 - 10%
- Option 2 - 20%
- Option 3 – 0%

of its qualified catch history to the *(1) identified processor or (2) identified processor affiliated cooperative. The share forfeiture is (1) a permanent forfeiture or (2) a temporary forfeiture for a period of 1 to 2 years. If the forfeiture is a permanent forfeiture, the harvester may elect to enter and exit any cooperative in the fishery without share forfeiture. If the forfeiture is a temporary share reduction the harvester pays the penalty: (1) one time or (2) each time they exit a cooperative.*

If an LLP holder has no deliveries to a qualified processor, the harvester may join a cooperative associated with any processor in the community to which it delivered the most pounds of the three rockfish species during the harvester cooperative/processor qualifying years. After the first year, the harvester will make a forfeiture of qualified catch history on changing processor associations, as if the processor were identified by the harvester's landings history.

If a processing facility has closed down and another processing facility has acquired that processing history through purchase, the history belongs to the facility that purchased that history. That history must remain in the community that it was generated in.

The processor will be an associate of the cooperative but will not be a cooperative member.

Co-op membership agreements will specify that processor affiliated harvesters cannot participate in price setting negotiations except as permitted by general antitrust law.

Co-ops may engage in inter-cooperative transfers of annual allocations to other cooperatives with agreement of the associated qualified processor.

Membership agreements will specify that processor affiliated harvesters cannot participate in price setting negotiations except as permitted by general antitrust law.

Harvester cooperatives are intended only to conduct and coordinate harvest activities of the members and are not FCMA cooperatives.

### **Catcher processor cooperatives**

More than one co-op may form within the sector

Allocations may be transferred between co-ops of at least two LLPs.

Participants would have a choice of participating in:

- Option 1 (Alt. 4): a co-op or opt out of the rockfish program,
- Option 2 (Alt. 2): a co-op, a limited access fishery, or opt of the rockfish program

Under the LLP/open access fishery option, the LLP's historic share will be fished in a competitive fishery open to rockfish qualified vessels who are not members of a cooperative.

**General cooperative provisions – apply to both sectors**

Duration of cooperative agreements is 1 year.

The cooperative membership agreement (and an ancillary agreement with an associated processor, if applicable) will be filed with the RAM Division. The cooperative membership agreement must contain a fishing plan for the harvest of all cooperative fish.

Cooperative members shall internally allocate and manage the cooperative's allocation per the cooperative agreement.

Subject to any harvesting caps that may be adopted, allocated history may be transferred and consolidated within the cooperative to the extent permitted under the Contract.

The cooperative agreement must have a monitoring program. Cooperative members are jointly and severally responsible for cooperative vessels harvesting in the aggregate no more than their cooperative's allocation of target rockfish species, secondary species and PSC mortality, as may be adjusted by inter-cooperative transfers.

A cooperative may adopt and enforce fishing practice codes of conduct as part of their membership agreement.

Option (Alt. 2) - Cooperative membership agreements shall allow for the entry of other eligible harvesters into the cooperative under the same terms and conditions as agreed to by the original agreement.

Cooperatives will report annually to the Council as per AFA.

**Sector Transfer provisions**

CP annual allocations may be transferred to CV cooperatives. CV annual allocations may not be transferred to CP cooperatives.

All transfers of annual allocations would be temporary and history would revert to the original LLP at the beginning of the next year.

A person holding an LLP that is eligible for this program may transfer that LLP. That transfer will effectively transfer all history associated with the LLP and any privilege to participate in this program that might be derived from the LLP.

Permit post-delivery transfers of cooperative quota (annual allocations to cooperatives).

There would be no limits on the number or magnitude of post-delivery transfers. All post-delivery transfers must be completed by December 31st.

No cooperative vessel shall be permitted to begin a fishing trip unless the cooperative holds unused cooperative quota.

## **Cooperative Harvest Use Caps**

### **CV cooperatives (Alt. 2)**

No person may hold or use more than 5% of the CV historic shares, using the individual and collective rule (with grandfather provision).

Control of harvest share by a CV cooperative shall be capped at 30% of aggregate POP, Northern Rockfish and PSR for the CV sector.

### **CP cooperatives (Alt. 2)**

No person may hold or use more than 20% of the CP historic shares, using the individual and collective rule (with grandfather provision).

Control of harvest share by a CP shall be capped at 60% of aggregate POP, Northern Rockfish and PSR for the CP sector. Eligible CPs will be grandfathered at the current level.

### **Shoreside Processor Use Caps**

Shoreside processors shall be capped at the entity level.

No processor shall process more than 30% of aggregate POP, Northern Rockfish and PSR for the CV sector. (The year 2002 will be used as a base (or index) year for applying the aggregate caps.)

Eligible processors will be grandfathered.

*At the time of implementation, the Council expressed an intent to reconsider use caps for share holdings and vessels, in the event this program has a duration of more than 2 years. The Council could consider whether to modify use caps by changing cooperative or individual use cap levels or by including vessel use caps.*

*Whether processor use caps are necessary might depend on the processor provisions that are incorporated into the program.*

## **Harvesting provisions**

The cooperative season start date is May 1 and closing date is November 15.

Secondary species allocations may be fished independently of the primary species allocations.

Full retention of all allocated species is required.

## **Program review**

A formal detailed review of the program shall be undertaken 5 years after implementation. The review shall assess:

- 1) the progress of the program in achieving the goals identified in the purpose and need statement and the MSA, and
- 2) whether management, data collection and analysis, and enforcement needs are adequately met. Additional reviews will be conducted every 7 years thereafter coinciding with the fishery management plan policy review.

Antitrust review – An information collection system and a review process will be defined to provide any information to determine whether any illegal acts of anti-competition, antitrust, price

collusion, or price fixing have occurred among regional fishery associations or persons receiving limited access privileges.

*Alt. 3 – required by Section 303A(c)(1)(J) – note, this is required in any program, but its scope will be based on the program selected – further scoping can be provided after consultation with NOAA GC, NMFS, and other agencies (such as the Department of Justice)*

### **Share duration (Alt. 3)**

The duration of all CGOA rockfish LAPP program permits are *10* years. These permits shall be renewed before their expiration, unless the permit has been revoked, limited, or modified.

The Secretary may revoke any privilege under this program from any person found to have violated antitrust laws.

### **Cost recovery (Alt. 3)**

A fee, not to exceed 3% of ex vessel value, will be charged on all landings to cover the costs of administration of the program.

### **Sideboards**

#### **General Provisions**

There are no exemptions from sideboards, except for a partial exemption for CP vessels which opt out of the cooperative program or join cooperatives.

#### **WYAK and WGOA Primary Rockfish Species**

Option 1 (Alt. 2/3) For fisheries that close on TAC in the GOA, the qualified vessels in each sector (trawl CV and trawl CP) would be limited, in aggregate, in the month of July to the historic average catch of those vessels based on the retained catch as a percentage of the retained catch in the fishery in the month of July during the qualification years ~~1996 to 2002~~. Fisheries that this sideboard provision would apply to include West Yakutat rockfish and WGOA rockfish.

Option 2 (Alt. 4) For catcher processors, remove sideboard limits for WYAK and WGOA primary rockfish species.

Option 3 (Alt. 4) For catcher vessels, prohibit directed fishing for WYAK and WGOA primary rockfish species.

#### **Halibut PSC**

Option 1 (Alt. 2) For flatfish fisheries in the GOA that close because of halibut bycatch, the qualified vessels in each sector (trawl CV and trawl CP) would be limited, in the aggregate, in the month of July to the historic average halibut mortality taken by those vessels in the target flatfish fisheries in the month of July by deep and shallow complex as a Gulf-wide cap.

Option 2 (Alt. 4) For catcher processors, remove sideboard limits for WYAK and WGOA 3rd season halibut PSC.

*Option 3 (Alt. 3/4): For the month of July, limit all CVs to the shallow halibut complex fisheries (except for rockfish target fisheries in CGOA, WYAK and WGOA).*

*Suboption: Limit all CPs to the deep water halibut complex fisheries for the month of July.*

In the event that one or more target rockfish fisheries are not open, sideboard restrictions will not apply for those target allocations.

IFQ halibut and sablefish are exempt from sideboard provisions

### CP Specific Sideboard Provisions

CP vessels may decide to opt out of the CGOA cooperative program on an annual basis. These CP vessels may not target POP, Northern rockfish or Pelagic Shelf rockfish in the CGOA in the years they choose to opt out. They may retain these species up to the MRA amount in other fisheries. They will be sideboarded at the sector level in the GOA as described in the general provisions.

The history of CP vessels which opt out will remain with the sector.

CPs that opt out of the rockfish cooperative program will be prohibited, for two weeks following the start of the traditional July rockfish fishery, from entering other GOA fisheries in which they have not previously participated. Participation shall be defined as having been in the target fishery during the first week of July in at least two of the qualifying years. For purposes of qualifying under this provision, history from area 650 (SEO) will be considered the same as history from area 640 (WY). The following weekending dates will be used for determining participation in a target fishery:

1996 – July 6  
1997 – July 5  
1998 – July 4  
1999 – July 10  
2000 – July 15  
2001 – July 7  
2002 – July 6

Opting out is an annual decision. CP vessels which choose to opt out must so notify NMFS. The decision to opt out should not in any way alter the status of their catch history for future rationalization programs.

For the CP sector, the cooperative program fishery participants must either:

- 1) start fishing in the target rockfish fisheries at the same time as the opening of the CGOA rockfish limited access fisheries (in July) and harvest 90% of their CGOA rockfish allocation prior to entering any other GOA non-pollock groundfish fishery, or
- 2) standdown for two weeks from the opening of the CGOA rockfish limited access fishery prior to participating in any other GOA non-pollock groundfish fishery.

A vessel which has met either standdown requirement can then move into the GOA open access fisheries subject to the sector level limitations in the GOA in the general sideboard provisions.

To the extent permitted by the motion, history may be leased between vessels ~~that are not members of a cooperative~~. Each ~~non-member~~ of a cooperative that transfers its history to another CP or CV must still refrain from operating in any other GOA groundfish fishery until the earlier of:

- 1) 90% of all of the CGOA rockfish allocation on the stacked vessel is harvested in the CGOA, provided fishing of the allocation began on or after the opening of the limited access fishery
- 2) two weeks from the opening of the limited access fishery prior to participating in any other GOA groundfish fishery.

Members of a cooperative will be subject to all limitations and restrictions described in the general sideboard provisions and CP specific sideboard provisions except that cooperative members shall not be subject to any standdown in the GOA groundfish fisheries, *if all vessels in the co-op maintain adequate monitoring plan during all fishing for CGOA rockfish sideboard fisheries.*

In addition to the other limitations and restrictions described above, each cooperative will be limited in the aggregate:

- 1) for fisheries that close on TAC in the GOA in the month of July, to the historic average total catch of the cooperative members in the month of July during the qualification years 1996 to 2002. Fisheries that this sideboard provision would apply to include West Yakutat rockfish and WGOA rockfish, and
- 2) for flatfish fisheries in the GOA that close because of halibut bycatch in the month of July, to the historic average halibut mortality taken by cooperative members in the target flatfish fisheries in the month of July by deep and shallow complex.

The limited access fishery starts at the same time as the traditional rockfish target fishery (early July). For vessels that account for less than 5% of the allocated CP history in the Pacific Ocean perch fishery that participate in the limited access rockfish fishery, there are no additional intra-sector sideboards. For vessels that account for greater than or equal to 5% of the allocated CP history in the Pacific Ocean fishery that participate in the limited access rockfish fishery and GOA standdowns are in place until 90% of the limited access Pacific Ocean perch quota is achieved.

#### CV Specific Sideboard Provisions

The qualifying vessels in the trawl CV sector cannot participate in the directed yellowfin sole, other flatfish (flathead, etc) or Pacific Ocean perch fisheries in the BSAI in the month of July.

*Alt 4: The qualifying vessels in the trawl CV sector can participate in the limited access yellowfin sole, other flatfish or Pacific Ocean perch fisheries in the BSAI in the month of July.*

Qualifying vessels in the trawl CV sector would be limited, in aggregate, in the month of July, to the historic average catch of those vessels in the BSAI Pacific cod fishery based on the retained catch as a percentage of retained catch in the CV trawl fishery in July during the qualification years 1996 to 2002.

*Alt 4: The qualifying vessels in the trawl CV sector can participate in the BSAI Pacific cod fishery in the month of July.*

AFA non-GOA exempt CVs qualified under this program are subject to the restraints of AFA sideboards and their coop agreement, and not subject to additional sideboards under this program.

The AP recommends that the Council adopt the following Purpose and Need Statement:

The existing CGOA Rockfish Pilot Program (RPP) will sunset after 2011 unless extended by the North Pacific Fisheries Management Council or the U.S. Congress. The RPP has improved safety at sea, provided economic benefits to the community of Kodiak, controlled capacity of the fleet, and improved NMFS' ability to conserve and manage the species in the program. Economic benefits of the program to the community of Kodiak include stabilizing the residential processing work force, removing processing and fleet conflicts with salmon, bringing more rockfish on shore, and slowing the fishery to increase quality of rockfish products. Conservation benefits of the program for all sectors include no over-fishing, full retention of allocated species, vessel accountability, less sea floor contact due to more off-bottom fishing, and reduced halibut bycatch in the rockfish fishery that in turn has allowed for increased catches of underutilized flatfishes species. If the fishery reverts back to management under the license limitation program, the benefits of this share-based management program will be lost.

The Council needs to resolve identified issues in the management and viability of the entry level fishery. Additionally, the Council needs to consider issues that arise under the new MSA limited access privilege program requirements.

The intent of the action is to retain the conservation, management, safety and economic improvements created by the RPP through an amendment to the GOA FMP for the management of Central GOA Rockfish which will maintain benefits to the fishery for historically dependent harvesters, processors, catcher-processors and the community of Kodiak.

*The motion passed 17/1.*

*A motion recommending the Council appoint a workgroup to make recommendations regarding community options failed 13/4/1.*

*Minority Report: Four members of the AP supported recommending the Council appoint a work group to discuss and recommend community options for the Rockfish Program, including allocative set-asides, per MSA requirements to consider community provisions in any new LAPP. The work group would report to the Council at the October 2009 meeting.*

*The minority noted that some of the relevant issues were identified on page eight of the discussion paper: "In developing participation criteria for communities the Council is required to consider traditional fishing and processing practices and fishery dependence, the cultural and social framework in the fishery, economic barriers to fishery access, the existence and severity of projected economic and social impacts of LAPPs on harvesters, captains, crew, processors and other businesses substantially dependent on the fishery, and the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting and processing in the fishery (see 303A(c)(3))."*

*The minority also noted that:*

- It was understood and appreciated that the timeline presented challenges but the minority believed that the issues raised by the LAPP provisions of MSA were just too important to give short shrift to.*
- The Rockfish Program is complicated*
- The new LAPP provisions are also complex*
- There was inadequate time to gather meaningful comment from the CQE communities in response to the issues raised in the discussion paper*
- Rulemaking/Guidance from NOAA on the LAPP provisions of MSA has not been finalized*

*Signed: Chuck McCallum, Theresa Peterson, Becca Robbins Gisclair and Simon Kinneen.*

## **C-1(b) Parallel Waters Issue in Pacific Cod Sector Split**

The AP recommends that the Council adopt the following changes to the options in Component 10 for further analysis:

Delete Option 1. Aleutian Islands sablefish model (parallel fishery catch cap).

Revise suboption ii, under Option 2, to read as follows:

ii. Suboption: ~~In the Western/Central GOA, vessels may only surrender and/or reactivate the FFP:~~

*(a) vessels may surrender and reactivate the FFP, or (b) vessels may surrender or reactivate the FFP:*

- 1) Once per calendar year
- 2) Once every eighteen months
- 3) Once every *three* ~~two~~ years

*The motion passed 18/0.*

## **C-2 BSAI Fixed Gear Pacific Cod Parallel State Waters Fishery**

The AP recommends that the Council take final action on this issue with the following alternatives and modifications:

Alternative 2: Require any catcher processor using pot or hook-and-line gear with an FFP to also have a BSAI, CP, and pot or hook-and-line designation on their FFP. Require any catcher processor using pot or hook-and-line gear with an LLP to also have a BSAI, CP, and pot or hook-and-line designation on their LLP, along with an Amendment 67 Pacific cod endorsement and the appropriate area endorsement to participate in the BSAI Pacific cod parallel State waters fishery.

Alternative 3: as written

Alternative 4: Vessels with a BSAI endorsement, CP designation, and a pot or hook-and-line gear endorsement on the FFP cannot remove the BSAI endorsement, CP designation, or the pot or hook-and-line gear endorsement from the FFP, and:

- (c) FFP cannot be surrendered during the 3-year term of the permit.

*The motion passed 18/0.*

The AP recommends that the Council modify the Purpose and Need Statement to remove the second to the last sentence which reads, "Additionally, changes to the rules regarding Federal Fisheries Permits for CP designated licenses may need to be consistent across the North Pacific fisheries to reduce the administrative burden for NMFS and prevent unforeseen permitting loopholes." *The motion passed 18/0.*



## **C-3 BSAI Crab Program**

### **C-3(a) Initial Review of Emergency Delivery Relief analysis**

The AP recommends the Council add as options the following changes to the purpose and need statement and alternatives on the emergency delivery relief analysis. *The motion passed 17/0.* (Additions are indicated in ***bold and italics*** and deletions are indicated as ~~stricken~~.)

#### **Purpose and need statement:**

In developing the crab rationalization program, the Council included several measures to protect regional and community interests. Among those provisions, the Council developed regional designations on individual processing quota and a portion of the individual fishing quota that require the associated catch to be delivered and processed in the designated region. In the first three years of the program, all the crab IFQ was harvested and delivered. ***However, Congress's adoption of Section 122(e) of the Magnuson-Stevens Act, which grants custom processing use cap exemptions for Opilio IPQ holders on the condition that they process on shore or in the harbor of North region community, resulted in North region Opilio deliveries being concentrated in St. Paul harbor to a greater degree than prior to rationalization.*** However, icing conditions in the Northern Region did create safety concerns, and delayed and in some cases prevented harvesters from entering harbors to deliver to shore-based and floating processors located in the regions, as required by the regional share designations. In addition, other unforeseeable events, events such as an earthquake or tsunami, or man-made disaster, could prevent deliveries or limit the available processing capacity in a region necessary for compliance with the regional designations on Class A IFQ and IPQ. A well-defined exemption from regional landing and processing requirements of Class A IFQ and IPQ that includes requirements for those receiving the exemption to take efforts to avoid the need for and limit the extent of the exemption could mitigate safety risks and economic hardships that arise out of unforeseeable events that prevent compliance with those regional landing requirements. Such an exemption should also provide a mechanism for reasonable compensation to communities and IPQ holders harmed by the granting of the exemption to ensure that the protections intended by the regional designations continue to be realized despite the exemption.

#### **Alternatives:**

**Alternative 1** – Status quo (no exemptions from regional landing requirements)

**Alternative 2** – Contractually Defined Exemption

#### **Method of defining the exemption and compensation:**

The exemption shall be generally defined in regulation. To receive an exemption, however,

Option 1: an IFQ holder, the holder of matched IPQ, and the entity holding (or formerly holding) the right of first refusal for the IPQ, or

Option 2: an IFQ holder, the holder of matched IPQ, and an entity identified by the community benefiting from (or formerly benefiting from) the right of first refusal for the IPQ, or in the event that the subject IPQ was never subject to a ROFR, any entity qualified to act as the regional representative with respect to any IPQ in that region and fishery may act as the regional representative for the subject IPQ.

Option 3: an IFQ holder, the holder of matched IPQ, and a regional entity agreed to by the communities benefiting from rights of first refusal (or formerly benefiting from rights of first refusal) in the designated region of the IFQ and IPQ,

shall have entered a contract defining conditions under which an exemption will be granted and the terms of any compensation.

#### Administration of the exemption

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

*The exemption shall be administered through delivery submission of an affidavit by the holder of the IFQ for which the exemption is applied to the IPQ holder and regional representative, attesting to the satisfaction of requisite conditions for the exemption (as agreed in the contract). On receipt by NOAA Fisheries of notice of such delivery of an affidavit NOAA Fisheries shall grant the exemption. NOAA Fisheries granting of an exemption shall not affect any claim or obligation a party may have under the contract (including any claim concerning the sufficiency or content of the affidavit).*

#### Definition of the exemption

The following provision shall be included in the civil contract among the IFQ holder, the holder of matched IPQ and the entity representing community interests:

*An affidavit may only be filed if “Circumstances Outside of a Harvester’s or Processor’s Control” made it “Impracticable” for a harvester to deliver crab within the designated region to the processor(s) with whom the related Class A IFQ are matched or their designated agents, or make it “Impracticable” for a processor to process crab within the designated region.*

*“Circumstances Outside Of A Harvester’s or Processor’s Control” include ice, earthquake, volcanic eruption, silting, erosion, flooding, fire, explosion, mechanical breakdown, injury, disease, governmental agency action and comparable conditions that make it “Impracticable” for a harvester to deliver crab in the designated region to the processing facility designated by the IPQ holder with whom the related IFQ is matched, or make it Impracticable for a processor to process crab at such facility, during the applicable crab fishing season.*

*“Impracticable” means that delivery or processing of crab (a) is prohibited by governmental authority, (b) appears to be impossible, (c) involves extreme and unreasonable delay, difficulty, or expense, (d) in the judgment of the master of the affected vessel, would result in a significant risk of injury to crew or damage to vessel, or (e) involves a significant risk of substantial loss of value to the crab (i.e., equal to or greater than five percent (5%) of the affected crab’s fair market value).*

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

Additional specificity of the exemption and its term may be included in any contract between the IFQ holder, the holder of matched IPQ and the entity representing region/community interests.

A contract executed by the three parties identified above shall provide conclusive evidence that a qualifying circumstance has been adequately described in satisfaction of this requirement.

**Mitigation requirements or Conditions to Be Satisfied to File Affidavit**

Requirement to attempt to mitigate:

The following provision shall be included in the civil contract among the IFQ holder, the holder of matched IPQ and the entity representing community interests:

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

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

**Conditions to be Satisfied to File Affidavit**

*Additional conditions that must be satisfied to file an affidavit are:*

- 1. If Circumstances Outside of a Harvester's or Processor's Control are affecting a fishing trip that is in progress, such circumstances must not have been reasonably foreseeable at the time the affected harvester began setting fishing gear;*
- 2. Circumstances Outside of the Harvester's or Processor's Control must exist at the time that an IFQ holder or IPQ holder files an affidavit, and must continue to exist as of the date on which crab is transported out of the designated region under the related NMFS exemption;*
- 3. An affidavit must contain an accurate description of the Circumstances Outside of the Harvester's or Processor's Control that make it Impracticable to deliver the affected crab using regionally designated Class A IFQ for an alternate region; and*
- 4. The affidavit shall only request re-designation of an amount of IFQ and IPQ equal to the estimated amount of crab that the affected harvester or processor reasonably projects that the harvester will be unable to deliver or that the processor will be unable to process as a result of Circumstances Outside of the Harvester's or Processor's Control.*

*It would be a breach of the emergency relief contract for an IFQ holder or IPQ holder to file an affidavit if any of the conditions specified above is not satisfied at the time that the affidavit is filed.*

**Compensation**

Compensation shall be as agreed in the contract among the IFQ holder, the holder of matched IPQ, and the entity representing regional/community interests.

**Mitigation (as an alternative to Compensation)**

*To mitigate the effect of emergency relief on communities in the North region, harvesters and processors would have an obligation to insure that the percentage of Opilio crab delivered in the North region on a 3 year rolling average basis would equal or exceed the percentage of Opilio crab required to be delivered in that region during that period.*

*The 3 year rolling average requirement would apply only in connection with short term conditions that make North region landings impracticable, such as intermittent sea ice. The requirement would not*

*apply in connection with circumstances that make it impracticable to deliver in the North region for an extended period, such as an extended harbor closure or loss of an essential processing facility.*

*Class B, Class C, Catcher-Processor Owner (“CPO”) and CDQ landings in the North region would be counted toward the 3 year rolling average requirement. However, there would be no obligation to use Class B, Class C, CPO or CDQ to meet the 3 year rolling average requirement.*

*In the event that Class B, Class C CPO and CDQ landings in the North region are not sufficient to offset emergency relief landings taken out of the region, harvesters and processors would need the ability to deliver South region Class A IFQ in the North region as necessary to meet the 3 year rolling average requirement.*

*Suboption: Remove the South region designation from an appropriate amount of Class A IFQ through an amendment to the crab rationalization program.*

*Suboption: Provide for a “mitigation affidavit” under the emergency relief contract, which, when filed, would compel NMFS to remove the South region designation from the amount of South region Class A IFQ specified in the affidavit, permitting it to be delivered in the North region.*

#### Arbitration

*To facilitate use of Class A IFQ to address regional delivery relief, provide for one additional arbitration proceeding per processor per fishery per year.*

#### Contract finalization dates

Option 1: Fishery openings

Option 2: January 1

Option 3: Open, and can be finalized at any time.

The AP requests the document be released for public review, if possible.

*The motion passed 16/0/1.*

### C-3(b)(1) Right of first refusal (ROFR)

The AP recommends the Council adopt the purpose and need statement and alternatives below to enhance the community/processor right of first refusal (ROFR) agreements.

#### Purpose and Need Statement:

The Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Program recognizes the unique relationship between specific crab-dependent communities and their shore-based processors, and has addressed that codependence by establishing community “Right of First Refusal” agreements as a significant feature of the Program. These ROFR agreements apply to the Processor Quota Shares (PQS) initially issued within each community, and are entered into and held by Eligible Crab Community Organizations (ECCO) on behalf of each respective community.

To date there have been several significant Processor Quota Share transactions, resulting in ECCOs now owning between 20% and 50% of the PQS in each rationalized fishery. These community ownership levels exceed the Council's expectations this early in the Program.

In spite of this success, some communities feel that ROFRs should be permanent, and the terms for each ROFR transaction should be liberalized.

Alternative 1: Status quo, no action.

*(Alternatives 2 and 3 can be combined).*

Alternative 2: Increase community protections by making ROFRs permanent.

- a) Require parties to rights of first refusal contracts to remove the provision that rights lapses, if the IPQ are used outside the community for a period of three consecutive years.
- b) 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.
- c) Require that any person holding PQS that meet landing thresholds qualifying a community entity for a right of first refusal to maintain a contract providing that right at all times.

Alternative 3: Increase an ECCOs timeframe for acceptance and execution of a ROFR.

- a) 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.
- b) 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.

The AP recommends that the Council write a letter to the Secretary of Commerce supporting the creation of a loan program. *The motion passed 18/0.*

### **C-3(b)(2) Western AI golden king crab regionalization and PQ issues**

The AP recommends that harvesters, processors and communities work together to develop proposals for an exemption from regionalization in the event processing capacity is unavailable as described in the discussion paper. Proposals are due back by October 2009. *The motion passed 17/1.*

### **C-3(b)(3) Extinguishing crab PQ**

The AP recommends the Council take no further action on this item. *The motion passed 16/2.*

### **C-3(b)(4) Leasing restrictions**

The AP recommends the Council take no further action on this discussion paper. *The motion passed 13/4.*

*Minority Report: Minority members believe the implications of leasing and comparable transactions in rationalized fisheries is an important discussion to continue. There are currently three rationalized programs from which we can learn. There has been a decline in percentages paid to the deck and this action should be monitored. It is important to capture the characteristics of the pre-rationalized fleet, to*

*monitor and to modify each program in order to meet the intent and unforeseen consequences of the program. Signed: Theresa Peterson, Jeff Farvour, Chuck McCallum, Rebecca Robbins Gisclair*

### **C-3(c) Plan for 5-year Review of Crab Program**

The AP received the staff report on this issue.

### **C-4(a) Bering Sea Chum Salmon Bycatch**

The AP recommends the Council move forward with the following refinements to the chum salmon bycatch alternatives:

#### **Alternative 1 – Status Quo**

Alternative 1 retains the current program of the Chum Salmon Savings Area (SSA) closures triggered by separate non-CDQ and CDQ caps with the fleet's exemption to these closures per regulations for Amendment 84 and as modified by the Amendment 91 Chinook bycatch action.

#### **Alternative 2 – Hard Cap**

Component 1: Hard Cap Formulation (with CDQ allocation of 10.7%)

- a) 58,000
- b) 206,000
- c) 353,000
- d) 488,000

Component 2: Sector Allocation

- a) No sector allocation
- b) Allocations to Inshore, Catcher Processor, Mothership, and CDQ
  - 1) Pro-rata to pollock AFA pollock sector allocation
  - 2) Historical average
    - i. 2004-2006
    - ii. 2002-2006
    - iii. 1997-2006
  - 3) Allocation based on 75% pro-rata and 25% historical
  - 4) Allocation based on 50% pro-rata and 50% historical
  - 5) Allocation based on 25% pro-rata and 75% historical

Component 3: Sector Transfer

- a) No transfers or rollovers
- b) Allow NMFS-approved transfers between sectors
  - Suboption: Limit transfers to the following percentage of salmon that is available to the transferring entity at the time of transfer:
    - 1) 50%
    - 2) 70%
    - 3) 90%
- c) Allow NMFS to roll-over unused bycatch allocation to sectors that are still fishing

Component 4: Cooperative Provision

- a) Allow allocation at the co-op level for the inshore sector, and apply transfer rules (Component 3) at the co-op level for the inshore sector.
  - Suboption: Limit transfers to the following percentage of salmon that is available to the transferring entity at the time of transfer:
    - 1) 50%
    - 2) 70%
    - 3) 90%

**Alternative 3 – Trigger Closure**

**Component 1: Trigger Cap Formulation**

- a) 45,000
- b) 58,000
- c) 206,000
- d) 353,000
- e) 488,000

**Application of Trigger Caps**

- a) Apply trigger to all chum bycatch
- b) Apply trigger to all chum bycatch in the CVOA
- c) Apply trigger to all chum bycatch between specific dates

**Component 2: Sector allocation**

- a) No sector allocation
- b) Allocations to Inshore, Catcher Processor, Mothership, and CDQ
  - 1) Pro-rata to pollock AFA pollock sector allocation
  - 2) Historical average
    - i. 2004-2006
    - ii. 2002-2006
    - iii. 1997-2006
  - 3) Allocation based on 75% pro-rata and 25% historical
  - 4) Allocation based on 50% pro-rata and 50% historical
  - 5) Allocation based on 25% pro-rata and 75% historical

**Component 3: Sector Transfer**

- a) No transfers or rollovers
- b) Allow NMFS-approved transfers between sectors
  - Suboption: Limit transfers to the following percentage of salmon that is available to the transferring entity at the time of transfer:
    - 1) 50%
    - 2) 70%
    - 3) 90%
- c) Allow NMFS to roll-over unused bycatch allocation to sectors that are still fishing

**Component 4: Cooperative Provisions**

- a) Allow allocation at the co-op level for the inshore sector, and apply transfer rules (Component 3) at the co-op level for the inshore sector.

**Suboption:** Limit transfers to the following percentage of salmon that is available to the transferring entity at the time of transfer:

- 1) 50%
- 2) 70%
- 3) 90%

**Component 5: Area Option**

- a) Area identified in October, 2008 discussion paper
- b) Existing Chum Salmon Savings Area (differs from status quo with application of other components)

**Component 6: Timing Option – Dates of Area Closure**

- a) Existing closure dates (August 1 – August 31 and September 1 through October 14 if trigger is reached.)
- b) New closure dates

**Component 7: VRHS Exemption – Similar to status quo, participants in a vessel-level (platform level for Mothership fleet) VRHS would be exempt from a triggered closure.**

- a) All VRHS participants would be exempt from a triggered closure (as provided by Amendment 84)
- b) VRHS participants achieving a certain level of rate-based performance would be exempt from the triggered closures. (Enforcement through VRHC agreement).

The AP recommends that the Council: (a) compile available data on recent bycatch rates; and (b) use a blended rate of CDQ and CDQ partners' bycatch for calculating historical bycatch rates. *The motion passed 16/0.*

The AP recommends that an EIS is the appropriate measure to be used. The AP views the significance of the proposed chum salmon bycatch management measures makes an EIS essential. Not only are the proposed measures likely to be controversial in nature, but the size and scope of their potential environmental, social and economic effects on the human environment are likely to be quite substantial as well. These are two of the factors cited as key to the identification of "significant" actions which compel the preparation of an EIS under the Department of Commerce's Administrative Order (DAO) 216-6.01 and 6.02—the Order by which the DOC implemented the National Environmental Policy Act. Under these circumstances, preparation of an EIS is clearly mandated. *The motion passed 16/0.*

**C-4(b) Bering Sea Salmon Bycatch Data Collection**

The AP recommends that the Council proceed with analysis of the alternatives proposed by the Comprehensive Data Collection Committee with revisions noted. Referring to Alternatives 2A and 2B, replace components (2) and (3) which proposed using surveys to determine why a skipper chose to move fishing operations to a new area in hopes of reducing Chinook bycatch and at what cost, with the language below (additions are indicated in ***bold and italics*** and deletions are indicated as ~~stricken~~).

**Alternative 1**

Status quo (existing data sources)



### Alternative 2A

In addition to the status quo data sources:

- (1) Transaction data for salmon – quantity and price of transfers (survey will be used to determine whether these are arm's length transactions).
- ~~(2) Surveys to estimate costs of moving vessels to avoid salmon bycatch (vessel fuel use, transit time, and lost fishing time).~~
- ~~(3) Post-season surveys of skippers to determine rationale for decision making during the pollock season (fishing location choices and salmon bycatch reduction measures).~~
- (2) *Mandatory Inseason Bycatch Management Report to be filled out at the time of a move.***  
***Information collected would include:***

- a) For both the original and new fishing grounds, the date, time bycatch rate, location and CPUE of tow.***
- b) Pollock quota remaining for harvest and salmon allowance remaining at time of event.***
- c) Time, distance and use of fuel in searching for cleaner fishing grounds.***

### Alternative 2B

In addition to the status quo data sources:

- (1) Transaction data for salmon and pollock– quantity and price of transfers (survey will be used to determine whether these are arm's length transactions).
- ~~(2) Surveys to estimate costs of moving vessels to avoid salmon bycatch (vessel fuel use, transit time, and lost fishing time).~~
- ~~(3) Post-season surveys of skippers to determine rationale for decision making during the pollock season (fishing location choices and salmon bycatch reduction measures).~~
- (2) *Mandatory Inseason Bycatch Management Report to be filled out at the time of a move.***  
***Information collected would include:***

- a) For both the original and new fishing grounds, the date, time bycatch rate, location and CPUE of tow.***
- b) Pollock quota remaining for harvest and salmon allowance remaining at time of event.***
- c) Time, distance and use of fuel in searching for cleaner fishing grounds.***

### Alternative 3

In addition to the status quo data sources:

- (1) Transaction data for salmon and pollock– quantity and price of transfers (survey will be used to determine whether these are arm's length transactions).
- (2) Surveys to estimate costs of moving vessels to avoid salmon bycatch (vessel fuel use, transit time, and lost fishing time).
- (3) Post-season surveys of skippers to determine rationale for decision making during the pollock season (fishing location choices and salmon bycatch reduction measures).
- (4) Survey of roe quantity, quality, and revenues at the minimum level collected by the company (e.g., lot, trip).

### Alternative 4

In addition to the status quo data sources:

- (1) Transaction data for salmon and pollock– quantity and price of transfers (survey will be used to determine whether these are arm's length transactions).
- (2) Surveys to estimate costs of moving vessels to avoid salmon bycatch (vessel fuel use, transit time, and lost fishing time).
- (3) Post-season surveys of skippers to determine rationale for decision making during the pollock season (fishing location choices and salmon bycatch reduction measures).
- (4) Survey of roe quantity, quality, and revenues at the minimum level collected by the company (e.g., lot, trip).

(5) Survey of daily vessel operating costs (labor, observer, etc.).

NMFS staff should develop draft surveys that could be shared with interested stakeholders for comment. Workshops could be held with industry and other stakeholders to discuss revisions to surveys. Once revised, surveys could be incorporated into an analysis for presentation to the Council for initial review at its October meeting.

*The motion passed 17/0.*

### **D-1(a) Establish Permit Fees for all Fisheries**

The AP recommends that the Council send out the analysis for public review. *The motion passed 13/0.*

### **D-1(b) Workplan for ACL Requirements and Salmon FMP Withdrawal**

The AP recommends the Council adopt the action plans and move forward with the timeline recommended in the plans. *The motion passed 15/0.*

Additionally, the AP recommends that the Council request NOAA General Counsel provide legal guidance to the industry regarding what the implications of the opilio rebuilding plans are by August 1, 2009. Specifically, guidance is requested on the following issues:

- State actions that are possible under deferred authority
- Requirements to meet rebuilding plans.

*The motion passed 15/0.*

### **D-2(a) Bottom Trawl Gear Sweep Requirements**

The AP recommends that the Council send out the document for public review. *The motion passed 14/0.*

### **D-2(a) Catch Specifications for BSAI Skate Complex**

The AP recommends the Council move the analysis forward. *The motion passed 15/0.*

### **D-3(a) HAPC Process**

The AP recommends the Council delay the HAPC process until the 5-year review of EFH is completed. *The motion passed 17/0.*

### **D-3(b) Northern BS Research Plan**

The AP received the staff report on this issue.

**Sideboard Limits Applicable in the Rockfish Program**

| Sideboard Limits for July  | CV Sector  | CP Cooperatives  | CP Limited Access  | CP Opt-out  |
|--|--|--|--|---|
| <b>Catch Limits</b>  |  |  |  |   |
| Western GOA: POP, Pelagic shelf rockfish, northern rockfish                          | Limit applicable to all qualified CVs – because sideboard amounts are low, NMFS does not open sideboards for directed fishing.               | Cooperative-specific limit for each species in each region.                                | Combined Limited Access and Opt-out limit for each species in each region  |   |
| West Yakutat: POP, Pelagic shelf rockfish  |  |  |  |   |
| BSAI: Pacific cod  |  | N/A  | N/A  | N/A   |
| <b>Halibut Mortality Limits (Effective During July only – 3<sup>rd</sup> Season)</b> |  |  |  |   |
| GOA shallow-water PSC  | Combined limit to all qualified CVs: Shallow-water flatfish closed when limit reached  | Cooperative specific limit: Shallow-water flatfish closed when limit reached.              | Combined Limit: Shallow-water flatfish closed when sideboard limit reached. Sideboard is low, NMFS does not allow directed fishing           |   |
| GOA deep-water PSC   | Combined limit for all qualified CVs: Deep-water flatfish closed when limit reached. Sideboard is low, NMFS does not allow directed fishing. | Cooperative specific limit: Deep-water flatfish closed when limit reached.                 | Cooperative specific limit: Deep-water flatfish closed when limit reached.   |   |
| <b>Prohibited Fishing</b>  |  |  |  |   |
| BSAI Groundfish: (Pollock and IFQ sablefish excluded)                                | July 1-31: Directed fishing prohibited for most flatfish and rockfish species  | July 1-14: No directed fishing<br><b>Proposed Rule to Remove (Amendment 85 to GOA FMP)</b> | July 1 until 90% of CP Central GOA POP is harvested (Only for CPs with >5% of total CP Central GOA POP QS)<br><b>Proposed Rule to Remove</b> | N/A   |
| GOA Groundfish: (IFQ sablefish excluded)   | N/A  | N/A (Assuming monitoring requirements are met).  | N/A (Assuming monitoring requirements are met)   | July 1-14: Unless previous participation in that target fishery from 1996-2002. |

**Text from June 2005, Rockfish Program Motion**

**The effects of the Council motion on CP sideboards can be summarized to contain the following provisions:**

**Opt OUT Vessels**

- 1-subject to 9.1(a) at aggregate sector level – (WYAK & WGOA rockfish)**
- 2-subject to 9.1(b) at aggregate sector level – (GOA flatfish halibut limits)**
- 3-prohibited from directed fishing for CGOA rockfish**
- 4-standdowns do not apply (except in GOA fisheries for which a vessel doesn't have prior participation)**
- 5-history stays with sector (pro-rata to Limited Access and Coop vessels)**

**Opt IN Vessels (Co-op)**

- 1-subject to 9.1(a) at aggregate sector level – (WYAK & WGOA rockfish)**
- 2-subject to 9.1(b) at aggregate sector level – (GOA flatfish halibut limits)**
- 3-also subject to co-op's share of 9.1(a) sideboard – (WYAK & WGOA rockfish)**
- 4-also subject to co-op's share of 9.1(b) sideboard – (GOA flatfish halibut limits)**
- 5-subject to 2 week standdown in BSAI groundfish**
- 6-not subject to standdowns in GOA fisheries – IF - NMFS accepts the co-op sideboard monitoring program**
  - ELSE – 2 week stand-down or until 90 % of the co-op's CGOA rockfish is harvested**

**Opt IN Vessels – (Limited Access)**

- 1-subject to 9.1(a) at aggregate sector level – (WYAK & WGOA rockfish)**
- 2-subject to 9.1(b) at aggregate sector level – (GOA flatfish halibut limits)**
- 3-can't fish CGOA rockfish before July**
- 4-If 5% or >, THEN:**
  - a) stand-down from BSAI groundfish until 90% of POP taken**
  - b) stand-down from GOA non-pollock groundfish until 90% of CGOA POP is taken**
- 5-If <5%, THEN:**
  - a) 2 week stand-down from BSAI groundfish doesn't apply**
  - b) 2 week stand-down from GOA non-pollock groundfish doesn't apply**

Minority Report  
Advisory Panel  
Agenda Item C-1a  
Rockfish Program

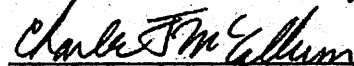
A minority of four members of the AP supported recommending the Council appoint a work group to discuss and recommend community options for the Rockfish Program, including allocative set-asides, per MSA requirements to consider community provisions in any new LAPP. The work group would report to the Council at the October 2009 meeting.

The minority noted that some of the relevant issues were identified on page eight of the discussion paper: "In developing participation criteria for communities the Council is required to consider traditional fishing and processing practices and fishery dependence, the cultural and social framework in the fishery, economic barriers to fishery access, the existence and severity of projected economic and social impacts of LAPPs on harvesters, captains, crew, processors and other businesses substantially dependent on the fishery, and the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting and processing in the fishery (see 303A(c)(3))."

The Minority also noted that:

- It was understood and appreciated that the timeline presented challenges but the minority believed that the issues raised by the LAPP provisions of MSA were just too important to give short shrift to.
- The Rockfish Program is complicated
- The new LAPP provisions are also complex
- There was inadequate time to gather meaningful comment from the CQE communities in response to the issues raised in the discussion paper
- Rulemaking/Guidance from NOAA on the LAPP provisions of MSA has not been finalized

The AP members of the Minority:

  
\_\_\_\_\_

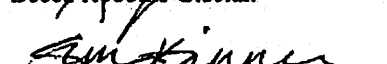
Chuck McCallum

  
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Theresa Peterson

  
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Becca Robbins Gisclair

  
\_\_\_\_\_

Simon Kinneen

Minority Report C-3 (b) 4 - Leasing  
Restrictions

Minority members believe the implications of leasing and comparable transactions in rationalized fisheries is an important discussion to continue. There are currently 3 rationalized programs from which we can learn from. There has been a decline in percentages paid to the deck and this action should be monitored. It is important to capture the <sup>characteristics</sup> ~~make up~~ of the pre-rationalized fleet, to monitor and to modify each program in order to meet the intent and unforeseen consequences of the program

Signed,

Theresa Peterson  
Jeff Farnore  
R.P.G.

Theresa Peterson  
Jeff Farnore  
~~R.P.G.~~  
Rebecca Robbins, GSULAK  
Mark McCallum