

Status of FMP Amendments  
September 23, 2011

| FMP Amendment Status:<br><u>Actions Since June 2011</u>   | Date of Council Action | Start Regional Review       | Transmittal Date of Action to NMFS HQ for Review | Proposed FMP Amendment Notice of Availability Published | Proposed Rule Published in Federal Register    | Final Rule or Notice of Approval Published in Federal Register |
|---|------------------------|-----------------------------|--|---|--|--|
| Amendment 30 (KTC) – Arbitration System Changes   | April 2008             | PR: 6/21/11                 | PR: 7/19/2011                                    | July 25, 2011<br>76 FR 44297<br>EOC: 9/23/11            | August 10, 2011<br>76 FR 49423<br>EOC: 9/9/11  |  |
| Amendment 31 (KTC) – C-Share Active Participation/application deadline modification                                       | April 2008             | PR: 8/22/11                 |  |   |  |  |
| Amendment 34 (KTC) – Adjustments to GOA sideboards for BSAI crab vessels<br>Approved 6/3/11                               | Oct 2008               | PR: 3/29/10<br>FR: 5/23/11  | PR: 3/8/11<br>FR: 6/6/11                         | March 14, 2011<br>76 FR 5854<br>EOC: 5/13/11            | March 28, 2011<br>76 FR 17088<br>EOC: 4/27/11  | June 20, 2011<br>76 FR 35772<br>Effective: 7/20/11             |
| Amendment 37 (KTC) – Exemption to west region landing requirements for WAG<br>Approved 4/25/11                            | April 2010             | PR: 11/18/10<br>FR: 5/19/11 | PR: 1/24/11<br>FR: 6/2/11                        | February 1, 2011<br>76 FR 5556<br>EOC: April 4, 2011    | February 15, 2011<br>76 FR 8700<br>EOC: 4/1/11 | June 20, 2011<br>76 FR 35781<br>Effective 7/20/11              |
| Amendment 38/39 (KTC) – Crab ACLs, revise rebuilding schedule for snow crab<br><b>Approved 8/2/11</b>                     | October 2010           | NOA: 3/4/11                 | NOA: 4/27/11                                     | May 4, 2011<br>76 FR 25295<br>EOC: 7/5/11               | No regulations                                 | August 2, 2011<br>76 FR 47493                                  |
| Amendment 41 (KTC) – Crab regional emergency relief   | December 2010          |                             |  |   |  |  |
| Amendment 13 (Scallop FMP) – Weathervane scallop ACL, move non-weathervane species to EC<br><b>Decision date: 10/7/11</b> | October 2010           | NOA: 6/3/11                 | NOA: 7/3/11<br><br>Notice of Approval: 9/23/11   | July 11, 2011<br>76 FR 40674<br>EOC: 9/9/11             | No regulations                                 |  |

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|--|-------------------------------|--------------------------------------|---|---|---|---|
| Amendment 83 (GOA) Pacific cod sector splits<br><b>Decision date: 9/28/11</b>                      | December 2009                 | PR: 5/11/11                          | PR: 6/22/11<br><br><b>Notice of Approval: 9/22/11</b>   | <b>June 28, 2011</b><br><b>76 FR 37763</b><br><b>EOC: 8/29/11</b> | <b>July 26, 2011</b><br><b>76 FR 44700</b><br><b>EOC: 9/9/11</b>    |   |
| Amendment 88 (GOA)-Central GOA rockfish program<br><b>Decision date: 10/26/11</b>                  | June 2010                     | PR: 6/7/11                           | <b>PR: 7/22/11</b>                                      | <b>July 28, 2011</b><br><b>76 FR 45217</b><br><b>EOC: 9/26/11</b> | <b>August 19, 2011</b><br><b>76 FR 52148</b><br><b>EOC: 9/19/11</b> |   |
| Amendment 89 (GOA) Tanner crab protection  | October 2010                  |                                      |   |   |   |   |
| Amendment 93 (BSAI)-Modify Amd 80 sector coop formation criteria<br><b>Decision date: 10/26/11</b> | February 2010                 | PR: 2/1/11<br><br><b>FR: 9/23/11</b> | <b>PR: 7/22/11</b>                                      | <b>July 28, 2011</b><br><b>76 FR 45219</b><br><b>EOC: 9/26/11</b> | <b>August 10, 2011</b><br><b>76 FR 49417</b><br><b>EOC: 9/9/11</b>  |   |
| Amendment 93 (GOA) Chinook salmon bycatch management   | June 2011                     | PR:                                  |   |   |   |   |
| Amendment 97 (BSAI) – Amd 80 lost vessel replacement   | June 2010                     |                                      |   |   |   |   |
| Amendments to all FMPs to authorize permit fees (101/92/36/14/10)                                  | October 2009                  |                                      |   |   |   |   |
| Amendments to all FMPs for EFH omnibus related to 5-year review (98/90/40/15/11)                   | April 2011                    |                                      |   |   | No regulations  |   |

Status of Regulatory Amendments  
September 23, 2011

| Regulatory Amendment Status:<br><u>Actions Since June 2011</u> | Date of Council Action                   | Start Regional Review of Rule         | Transmittal Date of Rule to NMFS Headquarters | Proposed Rule in <i>Federal Register</i>                      | Final Rule Published in <i>Federal Register</i>          |
|--|--|---------------------------------------|---|---|--|
| <b>Groundfish/Crab Regulatory Amendments</b>                   |  |                                       |   |   |  |
| Revisions to MRAs in the BSAI arrowtooth flounder fishery      | October 2010                             | <b>PR: 8/12/11</b>                    |   |   |  |
| Remove GRS   | February 2011                            | <b>PR: 8/11/11</b>                    |   |   |  |
| BS Chinook salmon bycatch economic data collection             | 12/09 final action<br>10/10 review regs. | PR: 4/5/11                            | PR: 4/15/11                                   | <b>July 18, 2011<br/>76 FR 42099<br/>EOC: August 17, 2011</b> |  |
| BSAI fixed gear parallel fishery management measures           | June 2009                                | PR: 6/3/10                            | PR: 2/23/11                                   | March 11, 2011<br>76 FR 13331<br>EOC: 4/11/11                 |  |
| CDQ regulation of harvest                                      | MSA<br>Council 6/07                      | PR: 12/17/08<br><br><b>FR: 8/5/11</b> | PR: 6/10/10                                   | July 13, 2010<br>75 FR 39892<br>EOC: August 12, 2010          |  |
| Miscellaneous R&R revisions, including revisions to eLandings  | NMFS                                     | PR: 6/7/10<br><br>FR: 5/9/11          | PR: 1/18/11<br><br><b>FR: 6/14/11</b>         | February 11, 2011<br>76 FR 7788<br>EOC: March 14, 2011        | <b>July 11, 2011<br/>76 FR 40628<br/>August 10, 2011</b> |

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|---|------------------------|-------------------------------|---|--|---|
| <b>Halibut Regulations</b>  |                        |                               |   |  |   |
| Remove halibut/sablefish quota from initial recipients who never have fished or transferred quota     | June 2006              |                               | PR: 8/12/09                                   | August 23, 2010<br>75 FR 51741<br>EOC: September 22, 2010                    |   |
| Establish new minimum vessel ownership criteria for using hired skipper of 12 months and 20% interest | December 2007          |                               |   |  |   |
| Halibut catch sharing plan  | October 2008           | PR: 1/28/10                   | PR: 6/23/11                                   | <b>July 22, 2011</b><br><b>76 FR 44156</b><br><b>EOC: September 21, 2011</b> |   |
| Add 3 new communities to GOA CQE Program  | December 2010          |                               |   |  |   |
| Revise IFQ hired skipper provisions   | April 2011             |                               |   |  |   |

## FMP Amendments and Regulatory Actions Completed in 2011

- Steller sea lion protection measures; 75 FR 77535, (December 13, 2011), end of the comment period February 28, 2011.
- BSAI 2011/2012 harvest specifications, 76 FR 11139 (March 1, 2011), effective March 1, 2011.
- GOA 2011/2012 harvest specifications, 76 FR 11111, (March 1, 2011), effective March 1, 2011.
- Remove preliminary annual report requirement for AFA cooperatives, 76 FR 12884, (March 9, 2011), effective April 8, 2011.
- Clarify charter logbook submission requirements, 76 FR 6567, (February 8, 2011), effective March 9, 2011.
- Notice of application for an exempted fishing permit for testing a salmon excluder device for the BS pollock trawl fishery. 76 FR 17107; March 28, 2011, end of comment period April 27, 2011.
- Halibut annual management measures, 76 FR 14300, (March 16, 2011), effective April 15, 2011.
- Interpretative Rule related to the charter halibut regulations, 76 FR 19708, (April 8, 2011), effective April 8, 2011.
- Amendment 86 (GOA) – fixed gear endorsement for Pacific cod, 76 FR 15826, (March 22, 2011), effective April 21, 2011.
- Amendment 34 (KTC) – Adjustments to GOA sideboards for BSAI crab vessels, 76 FR 35772 (June 20, 2011), Effective July 20, 2011.
- Amendment 37 (KTC) – Exemption to west region landing requirements for WAG, 76 FR 35781 (June 20, 2011), Effective July 20, 2011.
- Amendment 38/39 (KTC) – Crab ACLs, revise rebuilding schedule for snow crab. Approved August 2, 2011 (76 FR 76 FR 47493)
- Renewal of permits to SeaShare authorizing this organization to distribute Pacific salmon and Pacific halibut to economically disadvantaged individuals under the prohibited species donation (PSD) program. The permits are effective from July 8, 2011 through July 8, 2014. 76 FR 40366 (July 8, 2011).
- Updates and revisions to eLandings and other miscellaneous recordkeeping and reporting requirements, 76 FR 40628 (July 11, 2011), effective August 10, 2011.

September 28<sup>th</sup>, 2011

**October 2011 NPFMC Meeting  
Written Public Testimony on Agenda item B-2  
NMFS Management Report (including GOA P. cod sector split report)**

Chairperson Olson,

My name is Scott Hansen, I am a owner-operator of the F/V Beauty Bay. To this day I remain as the primary captain onboard the Beauty Bay making the vast majority of the trips aboard the vessel. The F/V Beauty Bay is a family run operation, my own son was onboard the vessel with me for the first time this year on his summer break from college. This vessel is my primary source of income and represents by far my families largest asset.

I request that you give serious consideration to the comments submitted by Kenny Down, Executive Director of the Freezer-Longliner Coalition. I personally subscribe to and attach here by reference those comments.

What is to be gained from this action other than the loss of income to our operation as well as that of the other four vessels that were inadvertently eliminated from fishing thorough an oversight in the Gulf of Alaska P. cod sector split? Possibly the sideboard quota should be discussed and the council may wish to address this in the future but the sector split for Pcod, at final action, without proper analysis and notice to comment was not a adequate place nor proper time to properly address this issue.

We have voluntarily worked closely with NMFS, specifically Mary Furness and Josh Keaton, using one hundred percent observer coverage while also contracting Janet Smoker of Fisheries Information Service for daily monitoring of bycatch and quota to ensure that proper harvesting levels are met. Even going so far as to limit our fleets catch in 2011 to what our group would had allocated to it if GOA P.cod sector splits were in regulations today.

The quota we are currently fishing in the Gulf represents our share of the historic catch of the Freezer-Longline Cooperative vessels. We have fished responsibly in the past and feel a great injustice will be done by eliminating us from the GOA. The F/V Beauty Bay is a one boat operation so without access to the GOA for this vessel my family's business will be eliminated from participation in a fishery that represents much of what allows us to continue as a going concern. In years past, the GOA has contributed up to a quarter of our yearly income. This loss will significantly, and negatively, impact not only myself but also our crews and their families.

Please feel free to contact me for further discussion via e-mail or directly at 206-200-8897.

Sincerely,

Scott Hansen, Owner/ Operator, F/V Beauty Bay [beautybay@nwi.net](mailto:beautybay@nwi.net)

## **NOAA Fisheries**

### **Agenda B-2, October 2011 NPFMC**

#### **Update on Halibut Catch Sharing Plan Proposed Rule**

NOAA Fisheries conducted a preliminary review of the thousands of public comments received on the proposed rule to implement a halibut catch sharing plan (CSP) in Southeast and Southcentral Alaska. As anticipated, the public comment process elicited comments that raised a number of policy and technical issues. After our initial review, we believe that a number of the comments raised issues that may require additional input from the North Pacific Fishery Management Council (Council) before NOAA Fisheries can proceed to a final rule. Specifically, numerous commenters raised concerns about:

- (1) the evaluation of the management implications at lower levels of abundance;
- (2) economic impacts of the CSP under all levels of potential combined catch levels; and
- (3) methods for calculating the average weight for guided angler fish that may be leased from commercial IFQ operators and the specific means for tracking and reporting guided angler fish.

Other technical issues were raised that may require additional input from the Council after further review. Although some of these issues could be resolved by NOAA Fisheries, others raise important policy and implementation questions that are best addressed by the Council. NOAA Fisheries will provide a briefing to the Council at a future meeting requesting additional guidance from the Council on specific topics of concern.

NOAA Fisheries strongly encourages the Council to schedule time at its upcoming December meeting, or during a special meeting if the Council determines that is appropriate, to provide guidance to the International Pacific Halibut Commission (IPHC) for 2012. NOAA Fisheries encourages the Council to provide guidance to the IPHC on the specific allocation and management measures appropriate for the charter halibut fisheries in Southeast and Southcentral Alaska. At a minimum, NOAA Fisheries encourages the Council to consider the existing guideline harvest level (GHL) allocations and the suite of management measures developed under the proposed CSP if it chooses to provide guidance to the IPHC.

# PUBLIC TESTIMONY SIGN-UP SHEET

Agenda Item: B- Reports

|    | NAME (PLEASE PRINT) | TESTIFYING ON BEHALF OF:   |
|----|---------------------|----------------------------|
| 1  | Kenny Down          | Freezer Longline Coalition |
| 2  | Scott Hansen        | F/W Beauty Bay             |
| 3  | Merrick Burden      | MCA                        |
| 4  | Julie Bonny         | AKDB                       |
| 5  | Dave Benton         | self                       |
| 6  | Paul Macgregor      | APA                        |
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NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person " to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.





# Marine Conservation Alliance

*promoting sustainable fisheries to feed the world*

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Adak Community Development Corporation

Alaska Crab Coalition

Alaska Longline Co.

Alaska Whitefish Trawlers Association

Alaska Groundfish Data Bank

Alaska Scallop Association

Aleutian Pribilof Island Community Development Association

Akutan, Atka, False Pass, Nelson Lagoon, Nikolski, St. George

Arctic Storm Management Group

Bristol Bay Economic Development Corporation

Aleknagik, Clark's Point, Dillingham, Egegik, Ekuk, Erwook, King Salmon, Levelock, Manokotak, Naknek, Pilot Point, Port Heiden, Portage Creek, South Naknek, Togiak, Twin Hills, Ugashik

Central Bering Sea Fishermen's Association

St. Paul

City of Unalaska

Coastal Villages Region Fund

Chelofmak, Chewak, Eek, Goodnews Bay, Hooper Bay, Kipnuk, Kongiganak, Kwigillingok, Mekoryuk, Napaskiak, Napaskiak, Newtok, Nightmute, Oscarville, Platinum, Quinhagak, Scammon Bay, Toksook Bay, Tuntutuliak, Tununak

Glacier Fish Company

Groundfish Forum

High Seas Vessels

Ocean Harvester, Sea Storm, Neahkahnie

Icicle Seafoods

North Pacific Seafoods

Norton Sound Economic Development Corporation

Brevig Mission, Diomedes, Elm, Gambell, Golovin, Koyuk, Nome, Saint Michael, Savoonga, Shaktoolik, Stebbins, Teller, Unalakleet, Wales, White Mountain

Trident – Star of Kodiak

United Catcher Boats

Akutan Catcher Vessel Association

Mothership Fleet Cooperative

Northern Victor Fleet

Peter Pan Fleet Cooperative

Unalaska Co-op

Unisea Fleet Cooperative

F/V Arctic Wind, F/V Caitlin Ann, F/V Dona Martta, F/V Pacific Prince

U.S. Seafoods

Waterfront Associates

Western Alaska Fisheries, Inc.

Eric Olson

Chairman

North Pacific Fishery Management Council

605 West 4<sup>th</sup>, Suite 306

Anchorage, AK 99501

RE: B Reports: Steller Sea Lion BiOp Review and RPA Process

September 23, 2011

Dear Mr. Olson,

We are writing to endorse the recommendations of Alaska and Washington US Senate delegations as articulated in their letter to Under Secretary Jane Lubchenco of Commerce for Oceans and Atmosphere. In their letter dated August 1, 2011, Senators Begich, Murkowski, Murray and Cantwell recommended that NOAA work more closely with the states of Washington and Alaska, the North Pacific Fishery Management Council, and the National Academy of Sciences in a scientific review of the Steller Sea Lion (SSL) Biological Opinion (BiOp). This includes NOAA's intent to contract with the Center of Independent Experts (CIE) for peer review of the BiOp and potential partnership with the Council to review and modify, as appropriate, Reasonable and Prudent Alternatives (RPA) based on new information.

We are encouraged by remarks made by Dr. Lubchenco in a meeting hosted by Senator Begich last month in Anchorage that included representatives of the North Pacific Fishing industry. At that meeting Dr. Lubchenco indicated her intent to have a transparent CIE peer review of the BiOp that would include NPFMC participation in the development of Terms of Reference (TOR) and review process. We urge the Council to accept the invitation made by Congressional representatives and NOAA. Specifically, we request that the Council provide specific recommendations on the Terms of Reference to be used in the CIE review of the SSL BiOp. While we understand that the Council has made recommended changes to the SSL BiOp peer review TOR in the past, recent correspondence indicates that recommendations from the NPFMC will be welcomed at this time.

We believe there are several recommendations that the Council might make to NMFS that would improve both the scope of work and the transparency of the peer review process:

- 1) Review and comment on the information, rationale and conclusions used in the BiOp regarding factors affecting SSL population status and vital rates on recovery and extinction prospects.

- 2) Review and comment on the scientific basis for a positive correlation of commercial fishing activity in the Central and Western Aleutian Islands and SSL population trends in that region.
- 3) Review and comment on the finding that fisheries are causing nutritional stress to SSLs which is causing lower reproductive rates that threaten the species , including evaluation of data quality indicating a strong link between fishery removals and SSL reproductive rates .
- 4) Review and comment on the BiOp's evaluation and adequate consideration of other factors negatively impacting SSL population trends including predation, changes in the carrying capacity of the ecosystem, emigration, exposure to contaminants and disease.
- 5) Provide CIE review panel with public comment on the BiOp, the states of Washington and Alaska peer review, public comment during that peer review process as well as new and relevant information including SSL surveys, biomass surveys, tagging and telemetry studies, and relevant scientific research results including those presented to the Council's Mitigation Committee and those more recently published.
- 6) Review and comment on whether each of the RPAs developed as part of the BiOp can be reasonably expected to influence SSL population trends.
- 7) Provide the public an opportunity to participate in the review process and interact with the CIE panel.

We would like to express our appreciation for the SSL BiOp peer review process undertaken by the states of Washington and Alaska. This process, which invited public comment from the industry and environmental groups at the outset and on the draft report drew much public support because of its high level of transparency and its interactive process. We encourage the Council to recommend a similar CIE review process.

The letter from the four Senators also supported a collaborative process to revise the RPAs based on available new information . There has been significant new information to justify a review and possible revision of the RPAs. We urge the Council to accept this challenge and task its SSL Mitigation Committee to work collaboratively with NMFS next year in revising the RPAs developed for the Central and Western Aleutian Islands. If the Council chooses to engage in an RPA process, we urge that the Mitigation Committee be reconfigured to better represent those impacted by RPAs in the Aleutian Islands.

Finally, we wish to express our appreciation to the Council for its continued interest and involvement in Steller sea lions. This important issue heavily impacts many fisheries under the Council's jurisdiction.

Sincerely,

Merrick Burden  
Executive Director



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**

*National Marine Fisheries Service*  
P.O. Box 21668  
Juneau, Alaska 99802-1668

August 1, 2011

Joseph M. Sullivan  
Mundt MacGregor L.L.P.  
4005 20<sup>th</sup> Avenue West, Suite 221  
Seattle, WA 98199-1290  
[jsullivan@mundtmac.com](mailto:jsullivan@mundtmac.com)

Re: Proposed Operations of the NORTHERN GLACIER in CDQ fisheries

Dear Mr. Sullivan:

Thank you for your letter of July 15, 2011, on behalf of Glacier Fish Company LLC (Glacier), which addresses whether American Fisheries Act (AFA) harvesting sideboards should apply to the operations of listed AFA catcher/processors that are engaged in harvesting Community Development Quota (CDQ) allocations of non-pollock groundfish on behalf of a CDQ group. We understand that Glacier wishes to use its vessel, the NORTHERN GLACIER, a listed AFA catcher/processor, to harvest CDQ allocations of several groundfish species on behalf of and pursuant to a contractual arrangement with, four CDQ groups (collectively, the CDQ Groups), including the Norton Sound Economic Development Corporation (Norton Sound).<sup>1</sup>

By this letter, the National Marine Fisheries Service, Alaska Region (NMFS), clarifies that under our regulations, AFA harvesting sideboards would not restrict the harvest of groundfish species that have been allocated to the CDQ Groups under the CDQ program<sup>2</sup> (CDQ Groundfish) by the NORTHERN GLACIER, provided that such harvest is on behalf of the CDQ Groups. During such operations, harvest of prohibited species will accrue against the CDQ PSQ reserve. However, any harvest by the NORTHERN GLACIER of groundfish species that are not allocated to the CDQ Groups under the CDQ program<sup>3</sup> will be limited by the AFA harvesting sideboards and attendant prohibitions on directed fishing.

The AFA rationalized the pollock fishery in the Bering Sea and, among other things, allocated ten percent of the pollock total allowable catch (TAC) to the CDQ groups, identified by name twenty catcher processors that would be eligible to harvest and process Bering Sea pollock,

<sup>1</sup> According to information you have provided to the agency, Norton Sound holds a sizeable minority ownership interest in Glacier, which in turn owns the NORTHERN GLACIER.

<sup>2</sup> In the 2011 fishery, CDQ Groundfish includes Pacific cod, Yellowfin sole, Flathead sole, rock sole, Arrowtooth flounder, and Greenland turbot in the Bering Sea.

<sup>3</sup> In the 2011 fishery, this includes Greenland turbot in the Aleutian Islands, Kamchatka flounder, Alaska plaice, other flatfish, and Pacific ocean perch in the Bering Sea.



allowed these eligible catcher/processors to form harvesting cooperatives, and allocated a portion of the pollock TAC to the catcher/processor sector. Recognizing that the rationalization of the Bering Sea pollock fishery could create a variety of competitive advantages for AFA vessels, Congress imposed harvesting sideboards, which restrict the participation of listed AFA catcher/processors in non-pollock groundfish fisheries in the Bering Sea and Aleutian Islands Management Area.

The language of the AFA does not require NMFS to apply AFA sideboards to restrict the harvest of CDQ Groundfish. The AFA established specific sideboards that apply to the groundfish harvest of listed AFA catcher/processors:

The [listed AFA catcher/processors] are hereby prohibited from, in the aggregate (A) exceeding the percentage of the harvest available in the offshore component of any Bering Sea and Aleutian Islands groundfish fishery (other than the pollock fishery) that is equivalent to the total harvest by such catcher/processors and the catcher/processors listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997[.]

AFA Section 211(b)(2)(A). On its face, this provision limits the twenty listed AFA catcher/processors from exceeding a certain percentage “of the harvest available in the offshore component of any Bering Sea and Aleutian Islands [non-pollock] groundfish fishery[.]” The AFA defines “offshore component” as “all vessels not included in the definition of ‘inshore component’<sup>4</sup> that process groundfish harvested in the Bering Sea and Aleutian Islands Management Area.” AFA Section 205(10). CDQ Groundfish are available for harvest and processing only by CDQ groups or their hired agents, *see* 16 U.S.C. §§ 1855(i)(B)-(C); 50 C.F.R. § 679.31. CDQ Groundfish may not be harvested or processed by vessels in the offshore component unless those vessels contract with a CDQ group to harvest or process such fish. Therefore, NMFS does not consider CDQ Groundfish “available in the offshore component” of the non-pollock groundfish fishery. In NMFS’s view, the harvest of CDQ Groundfish does not count toward the harvest of groundfish “available in the offshore component” of the fishery. As a result, the harvest of CDQ Groundfish by an AFA catcher/processor cannot cause the aggregate harvest by all AFA catcher/processors to exceed the applicable percentage of harvest available in the offshore component and such harvest is not subject to the AFA sideboard restriction.

Moreover, it would not further the purpose behind AFA sideboards to construe the sideboards to restrict the harvest of CDQ Groundfish. NMFS has consistently viewed the AFA harvesting

<sup>4</sup> “Inshore component” is defined as “the following categories that process groundfish harvested in the Bering Sea and Aleutian Islands Management Area: (A) shoreside processors, including those eligible under section 208(f) [of the AFA]; and (B) vessels less than 125 feet in length overall that process less than 126 metric tons per week in round-weight equivalents of an aggregate amount of pollock and Pacific cod[.]” AFA Section 205(6).

sideboards as measures intended to protect participants in other fisheries against the competitive advantages resulting from rationalization of the Bering Sea pollock fishery. When we adopted a final rule to implement the AFA, NMFS described the general purpose behind AFA sideboards: “to protect the participants in other fisheries from spillover effects resulting from the rationalization of the BSAI pollock fishery and the formation of fishery cooperatives in the BSAI pollock fishery.” 67 Fed. Reg. at 79,702 (Dec. 30, 2002); *see also* 50 C.F.R. § 679.64(a) (“The Regional Administrator will restrict the ability of listed AFA catcher/processors to engage in directed fishing for non-pollock groundfish species to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the BS subarea directed pollock fishery.”). This view is consistent with the description of these measures in the AFA. *See, e.g.*, AFA section 211 (entitled “**Protections for other fisheries; conservation measures**”).

NMFS adopted regulations to implement the AFA in 2002. These implementing regulations state that NMFS “will establish annual AFA catcher/processor harvest limits for each groundfish species” or complex for which TAC is specified, and describe how NMFS will calculate the sideboard limits, 50 C.F.R. § 679.64(a). It is clear that, at a minimum, the sideboards apply to the harvesting operations of AFA catcher/processors in the Bering Sea and Aleutian Islands trawl limited access fisheries. These provisions do not, however, identify the specific harvesting operations to which these sideboard limits will apply.<sup>5</sup> *Id.*

NMFS regulations also include a provision which states that it is unlawful for any person to “[u]se a listed AFA catcher/processor to engage in directed fishing for a groundfish species or species group in the BSAI after the Regional Administrator has issued an AFA catcher/processor sideboard directed fishing closure for that groundfish species or species group under § 679.20(d)(1)(iv) or § 679.21(e)(3)(v).” 50 C.F.R. § 679.7(k)(1)(v). NMFS does not interpret this provision as prohibiting the NORTHERN GLACIER from engaging in directed fishing, under contract to Norton Sound, to harvest (and process) Norton Sound’s allocation of CDQ Groundfish.

We interpret section 679.7(k)(1)(v) consistent with the language of AFA section 211(b)(2)(A), under which the sideboard limits apply only to the harvest of groundfish available to vessels in the offshore sector, and in light of the general purpose of AFA sideboards—to protect

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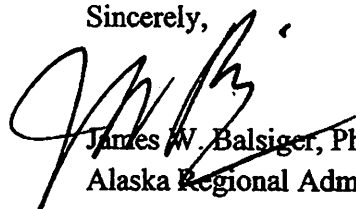
<sup>5</sup> The AFA grants the Council and NMFS authority to supercede the sideboard provisions of the Act. AFA Section 213(c). This may enable the Council and NMFS to adopt sideboard limits for AFA catcher/processors that differ from, or apply more broadly than, the sideboard limits established under AFA section 211(b)(2)(A). Indeed, when we adopted regulations to implement the harvesting sideboards for AFA catcher/processors, NMFS noted that it would depart from the statutory language of section 211(b) in several specified respects, including by basing the sideboard limits on the catcher/processors’ historic retained catch of non-pollock groundfish. The Council and NMFS did not, however, purport to supercede AFA section 211(b) by applying the sideboard limit broadly to the harvest of any groundfish that are not generally available for harvest or processing by vessels in the offshore component.

participants in other fisheries from spillover effects arising out of the formation of fishery cooperatives. Here, there is no need to protect Norton Sound against the spillover effects of the formation of fishery cooperatives. Under the CDQ program, Norton Sound enjoys an exclusive allocation of the CDQ Groundfish at issue. Moreover, CDQ Groundfish are not available for harvest and processing by NORTHERN GLACIER, other AFA catcher/processors, or any other vessels in the "offshore sector" absent a contractual arrangement with Norton Sound. Under NMFS's interpretation, therefore, section 679.7(k)(1)(v) does not prohibit the NORTHERN GLACIER from engaging in directed fishing for CDQ Groundfish when the vessel is fishing under contract to harvest Norton Sound's exclusive allocation of CDQ Groundfish.

Any harvest by the NORTHERN GLACIER of groundfish species that are not allocated to Norton Sound under the CDQ program<sup>6</sup> will be limited by the AFA harvesting sideboards and the attendant prohibition on directed fishing in section 679.7(k)(1)(v). Such fish are generally available to the vessels in the offshore sector and application of the sideboards under these circumstances would protect the participants in other fisheries, and thereby further the purpose behind the sideboards. Thus, any catch of these groundfish species would accrue towards the AFA sideboard limit. If NMFS has issued an AFA catcher/processor directed fishing sideboard closure for any of these species, the NORTHERN GLACIER would be prohibited from engaging in directed fishing for such species, 50 C.F.R. § 679.7(k)(1)(v), and any permissible retention of incidental catch would be limited by the applicable maximum retainable amount.

If you have any questions regarding this matter, please contact Forrest Bowers in our Sustainable Fisheries Division at (907) 586-7240 ([forrest.bowers@noaa.gov](mailto:forrest.bowers@noaa.gov)). Thank you for your continued cooperation in our efforts to sustainably manage our Federal fisheries.

Sincerely,



James W. Balsiger, Ph.D.  
Alaska Regional Administrator

cc: Sherrie Meyers, NOAA Office of Law Enforcement, Alaska Region  
Brent Pristas, NOAA Office of Law Enforcement, Alaska Region  
Susan Auer, NOAA General Counsel, Enforcement and Litigation  
Glenn Merrill, Sustainable Fisheries Division, Alaska Region  
Clayton Jernigan, NOAA General Counsel, Alaska Region  
Lisa Lindeman, NOAA General Counsel, Alaska Region

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<sup>6</sup> In the 2011 fishery, this includes Greenland turbot in the Aleutian Islands, Kamchatka flounder, Alaska plaice, other flatfish, and Pacific ocean perch in the Bering Sea.

**Chris Oliver, North Pacific Fishery Management Council**  
**Eric Olson, North Pacific Fishery Management Council**

September 15<sup>th</sup>, 2011

**October 2011 NPFMC Meeting**

***Written Public Testimony on Agenda item B-2***

**NMFS Management Report (including GOA P. cod sector split report)**

Chairperson Olson,

Thank you for your consideration of the attached comments that have been submitted by the Freezer Longline Coalition on the GOA Amendment 83; Proposed Rule; Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod Allocations in the Gulf of Alaska. My intention will be to provide additional comments at the October meeting during public testimony for the B reports following the update on the proposed rule by NMFS staff.

I remain convinced that the Council and NMFS was unaware of the severe implications to the hook-and-line catcher processors imparted by the Council's motion as to its application on Pacific Cod Sideboard Limits in the GOA, as the section deals with the allocation between CP and CV sectors and gear types of the non-AFA crab sideboard amounts.

I realize that the Council has a heavy agenda and time is limited, as such I am not moving this issue forward lightly but rather am respectfully hopeful the Council would welcome open discussion on the concerns expressed in the attached comments. I am also persuaded that clarification on this issue through open discussion will be quite helpful to the Secretary and NMFS administrators in responding to our comments and moving from proposed to final rule.

Kenny Down  
Executive Director  
Freezer Longline Coalition



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August 26, 2011

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

RE: RIN 0648-AY53

**Notification of availability of fishery management plan amendment; request for comments.  
Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod Allocations in the Gulf of  
Alaska; Amendment 83; Proposed Rule**

Dear Glenn,

I am submitting these as initial comments on the plan amendment and proposed rule **for Fisheries of the Exclusive Economic Zone off Alaska; Pacific Cod Allocations in the Gulf of Alaska; Amendment 83** on behalf of the Freezer Longline Coalition (FLC). We intend to submit additional comments as well on the proposed rule; request for comments but wanted to get this portion of our comments to you as early as possible.

The Freezer Longline Coalition (FLC) represents twenty-six hook-and-line catcher processors (HAL C/P) currently licensed and endorsed for Pacific cod (P. cod) fishing in the Gulf of Alaska (GOA). This is a Washington and Alaska based and owned fleet. The fleet has been operating in a cooperative fashion in the GOA continuously since 2006 in order to maintain the orderly harvest of fish in the GOA and to bring reductions in bycatch among other efficiencies. The vessel owners in the group have more than twenty-five year of continuous history operating HAL C/P's in the GOA Central and Western management areas. The GOA represents a very large percentage of history for several of our members who rely on the implementation of this amendment to allow durable fisheries cooperative among all of the GOA HAL C/P sector participants to be formed.

Therefore we are anxious to see the amendment implemented, and generally support the proposed rule moving forward, however prior to implementation our members request

**1.) That the Secretary reject the portion of the Council's motion as to its application as outlined in the proposed rule<sup>1</sup> section VII, Pacific Cod Sideboard Limits in the GOA, as the section deals with the split between CP and CV sectors and gear types of the non-AFA crab sideboard amounts.**

<sup>1</sup> <http://www.regulations.gov/#!documentDetail;D=NOAA-NMFS-2011-0185-0001>

**2.) That the non-AFA crab sideboard amounts are recalculated by combining the inshore and offshore sideboards into a single account in the respective Western and Central GOA regulatory areas (combine the inshore and offshore sideboards into a single sideboard). As was done in the same component for the non-exempt AFA CV sideboards.**

**3.) That these changes are reflected in the final rule.**

While the FLC recognizes that this recommendation may not be a permanent resolution and the final solution may well come in future Council analysis and action to end a competition for non-AFA crab sideboard quota; it is far more reasonable than allowing the proposed rule to go forward to final rule and implementation and allowing significant negative impacts to occur without proper analysis, meaningful public comment, and careful consideration and open discussion by the Council, none of which happened on this component.

The proposed split as outlined in table 11 of the proposed rule (shown below) was:

- Never properly analyzed by the Council
- Received little to no public comment on the component as outlined in the proposed rule (the FLC has found none)
- Was based on an arbitrary set of historical years not analyzed by the council in this action
- Has the unanalyzed and overly harsh effect of completely eliminating five FLC vessels from participation in a fishery in which they have significant recent catch history as well as having qualified for under GOA Fixed Gear Recency.
- In addition the components path into the proposed rule in no way clears the hurdle of meeting proper council protocol and notice. Each of these points is expanded on and explained in some detail below.

**1.) Component of proposed rule dealing with non-AFA sideboards was never properly analyzed by the Council**

In fact the sub-part of component 4 dealing with non-AFA crab sideboards in the Council motion was never discussed prior to October of 2009 when it was added by a motion of the Council. The FLC first saw this component in the final action document before the December 2009 NPFMC meeting as only a brief mention in the analysis. In fact nowhere in the "effects on Catcher Processors" was this even mentioned, nor was it mentioned in the "effects on Catcher Processors" in the Secretarial Review Draft.

If the effect was to eliminate five hook-and-line catcher processors from participating in a fishery in which they were and are active, certainly this should have been analyzed. We believe it would have, had the effect been realized. We do not believe anyone on Council or NMFS staff was aware at the time the final motion passed that the effect of this particular component was to eliminate recent participants from a sector they clearly have every right to participate in, and have been participating in recent years. If the Council was aware of this effect, certainly it would have been mentioned and analyzed as to the

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economic losses suffered by the owners, operators, and crew of these five vessels. And certainly that effect would have been mentioned in the Secretarial Review Draft EA/RIR/IRFA as their can be no question as to the significance of this impact. This clearly was an unanticipated effect of the NPFMC final motion, and was not realized in the Secretarial Review Draft, or in the proposed rule, therefore to date has never been properly analyzed. This component should be rejected and recalculated in the final rule as a logical extension of the proposed rule and released for comment.

**2.) Component of proposed rule dealing with non-AFA sideboards rule received little or no public comment on the component as outlined in the proposed rule**

The FLC has taken on the tedious task of reviewing all public comment (via available audio files) and Council deliberations on this action from the December 2009 Council meeting, including a review of the NPFMC and Advisory panel minutes and have found no evidence of support from the public comment for this component, nor any opposition. This lack of public comment highlights our argument that the effect of eliminating vessels from GOA participation was not clear in the analysis. By not mentioning the effect, only having a cursory brief mention on the potential impacts, and adding the component only at final action analysis, the Freezer Longline Members affected by this action have been denied of their proper due process and public comment opportunity.

**3.) Component of proposed rule dealing with non-AFA sideboards was based on an arbitrary set of historical years not analyzed by the council in this action**

The table used in Council analysis is shown below. This table was taken directly from the analysis before the Council at the final action December 2009<sup>2</sup>. This table was only available in the final action document as this component was not included in any prior initial review or discussion papers on this action.

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<sup>2</sup> [http://www.fakr.noaa.gov/npfmc/current\\_issues/pcod/GOAPcodsplit1209.pdf](http://www.fakr.noaa.gov/npfmc/current_issues/pcod/GOAPcodsplit1209.pdf)

Table 2-52 from the Council's Final Action 12-2009 analysis

| <b>AFA CV Sideboards</b>       |                                      |
|--------------------------------|--------------------------------------|
| <b>Area</b>                    | <b>Sideboard (percentage of TAC)</b> |
| Western GOA                    | 13.31%                               |
| Central GOA                    | 6.92%                                |
| <b>Non-AFA Crab Sideboards</b> |                                      |
| <b>Western GOA</b>             | <b>Sideboard (percentage of TAC)</b> |
| Hook-and-line CV               | 0.03%                                |
| Pot CV                         | 8.16%                                |
| Trawl CV                       | 0.60%                                |
| Hook-and-line CP               | 0.15%                                |
| Pot CP                         | 0.84%                                |
| Total CP                       | 0.79%                                |
| Total CV                       | 8.80%                                |
| Total                          | 9.59%                                |
| <b>Central GOA</b>             |                                      |
| Trawl CV                       | 0.10%                                |
| Hook-and-line CV               | 0.01%                                |
| Jig CV                         | *                                    |
| Pot CV                         | 3.54%                                |
| Hook-and-line CP               | *                                    |
| Pot CP                         | 0.92%                                |
| Total CP                       | *                                    |
| Total CV                       | *                                    |
| Total                          | 4.64%                                |

Source: NMFS inseason management.

Why this particular table was used is unclear as the analysis was completed by an analyst who no longer works for NMFS and the final action analysis had no citation. Further, it is not clear in the analysis what this table represents; the table is completely un-cited other than noting the source is from NMFS inseason management. Allocations for the HAL CP for instance in the Central GOA is simply an asterisk. The FLC was able to discover that this table is in fact an artifact from the crab rationalization analysis and represents stale history from 1996-2000. Being that this action represents a follow up to fixed gear recency and that this action used recent years up to and including the most recent year at the time of final action (2008) it highlights the need to have analyzed the issue from a broader angle than simply relying on a confusing table lacking citation and using this as a methodology without further analysis of the possible (and in our case harsh) ramifications.

This table was carried over in the proposed rule as Table 11 (shown below). However for the first time estimated allocations in metric tons were shown (as compared to the table 2-52 used in Council motion where allocation examples were not given), however the asterisk is still in place of metric tons for the Central Gulf hook-and-line CP sector. How the FLC is to comprehend and intelligently comment on an allocation that has only been portrayed as an asterisk furthers the need to have this component rejected

as stated in the proposed rule and recalculated by combining the non-AFA inshore and offshore sideboards into a single account in the respective Western and Central GOA regulatory areas.

**TABLE 11—EXAMPLE CALCULATION OF THE GOA PACIFIC COD SIDEBOARDS FOR AFA CVS AND NON-AFA CRAB VESSELS RECALCULATED BY COMBINING INSHORE AND OFFSHORE SIDEBOARDS INTO A SINGLE SIDEBOARD PERCENTAGE FOR EACH REGULATORY AREA; NON-AFA CRAB VESSEL SIDEBOARDS ALSO CALCULATED BY GEAR AND OPERATION TYPE**

| Regulatory area                | % Sideboard of TAC | 2011 Estimated sideboard MT |          |
|--------------------------------|--------------------|-----------------------------|----------|
|                                |                    | A Season                    | B Season |
| <b>AFA CV Sideboards</b>       |                    |                             |          |
| Western GOA                    | 13.31%             | 1,820                       | 1,213    |
| Central GOA                    | 6.92%              | 1,676                       | 1,117    |
| <b>Non-AFA Crab Sideboards</b> |                    |                             |          |
| <b>Western GOA</b>             |                    |                             |          |
| Hook-and-line CV               | 0.03%              | 4                           | 3        |
| Pot CV                         | 8.16%              | 1,116                       | 744      |
| Trawl CV                       | 0.60%              | 82                          | 55       |
| Hook-and-line CP               | 0.15%              | 21                          | 14       |
| Pot CP                         | 0.64%              | 87                          | 58       |
| Total CP                       | 0.79%              | 108                         | 72       |
| Total CV                       | 8.80%              | 1,202                       | 802      |
| Total                          | 9.58%              | 1,310                       | 874      |
| <b>Central GOA</b>             |                    |                             |          |
| Trawl CV                       | 0.10%              | 24                          | 16       |
| Hook-and-line CV               | 0.01%              | 2                           | 2        |
| Jig CV                         | *                  | *                           | *        |
| Pot CV                         | 3.54%              | 857                         | 572      |
| Hook-and-line CP               | *                  | *                           | *        |
| Pot CP                         | 0.92%              | 223                         | 149      |
| Total CP                       | *                  | *                           | *        |
| Total CV                       | *                  | *                           | *        |
| Total                          | 4.64%              | 1,124                       | 749      |

\*These data are considered confidential under the MSA and other Federal laws and are not included in the table.

**4.) Proposed Rule dealing with non-AFA sideboards has the unanalyzed and overly harsh effect of completely eliminating five FLC vessels from participation in the GOA fishery**

| FREEZER LONGLINE COALITION<br>NON-AFA CRAB SIDEBOARD VESSELS<br>Eliminated from GOA participation under the proposed rule* |          |      |
|--|----------|------|
| Vessel(s)  | LLP      | FFP  |
| Bering Prowler   | LLG 3681 | 4540 |
| Beauty Bay   | LLG 3617 | 4533 |
| Aleutian Lady  | LLG 3090 | 4102 |
| Baranof  | LLG 1578 | 1248 |
| Courageous   | LLG 1576 | 1276 |

\*Created by FLC

No analysis was completed, nor was there any discussion at final action during NPFMC deliberations of the significant impact of removing the above named vessels, owners, operators and crew from participation in the GOA P. cod fishery. A fishery that the vessels have had recent participation in and in which the Council had only eight months earlier (April 2009) analyzed the participation of these vessels in the GOA recency action; determining that because of recent history all five of the named vessels would receive GOA P. cod endorsements.

The analysis, Council public comment, Council deliberations and the Secretarial review draft all failed to capture the impact to this fleet and therefore this component should be rejected and recalculated as described above until such a time as the Council takes this issue up and completes a proper analysis as to the social and economic effects to the various sectors.

**5.) Proposed rule eliminates vessels that qualified under recent GOA fixed gear recency<sup>3</sup> in the western and central gulf of Alaska, and have significant recent catch history.**

The proposed rule results in elimination of five FLC member vessels from GOA participation. Four of these five vessels in fact qualified with catch history above the threshold set by the Council in the recent GOA fixed gear recency action just implemented this year. The fifth vessel qualified under the exemption for vessels that had not participated in recent years but whom participated in "standing-down" allowing other vessels to form a fishery cooperative that benefitted all GOA P. cod participants. It is hard to comprehend that the Council could have been aware of the loss of these vessels to the sector, and the resulting loss of opportunities for these vessel owners, operators and crew or we believe this loss would have been analyzed.

**6.) Non-AFA crab sideboard components path into the proposed rule in no way reflects proper council protocol and notice for an action that strips five vessel owners, operators and crews of significant historical revenue and important fishing privileges .**

The results of this action created winners and losers, however this was not analyzed. Simply stating *"Many of the sideboard percentages are only a small fraction of the respective area TACs, and are not likely to support a directed fishery"*<sup>4</sup> in no way dissolves the Council of a responsibility to properly analyze the effects and to point out an action that will eliminate a vessels owners, operators and crews from a fishery they are currently participating in and have historically participated in. Had the effects of the component been clear (properly analyzed) certainly it would have resulted in public comments and clarity in Council deliberations.

**Closing:**

It is admirable that the Council attempted in this Pacific cod sector split package to reduce the possibility of a race for fish in the non-AFA P cod sideboard quota among sectors. However if the Council wishes to take this additional action it should be analyzed fully, public notification and meaningful public comment

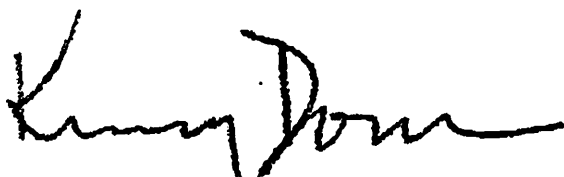
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<sup>3</sup> <http://www.fakr.noaa.gov/frules/76fr15826.pdf>

<sup>4</sup> From final Council analysis, single isolated mention of potential effect to Catcher Processors.

should be completed, and only after full deliberation on the topic should action be forwarded to the Secretary for approval. Until such a time, the component of the proposed rule dealing with non-AFA crab sideboard allocations should be dealt with in an identical fashion as the Council used for the non-exempt AFA crab sideboards, as outlined in these comments.

Please feel free to contact me with any questions or to request any clarifications,



Kenny Down  
Executive Director  
Freexer Longline Coalition



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September 19, 2011

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

**Re: 0648-BA37 Catch Sharing Plan**

Dear Mr. Merrill,

I have fished commercially for 51 years and am a year round resident of Juneau. The setline fishery for halibut has long been a significant portion of my small fishing business. As a practical matter that is no longer true, given the 80% reduction in halibut quota in Area 2C over the past several years. That is a very hard blow for my business to absorb. While reduced halibut abundance largely underlies the reduced quotas that are required to protect the long-term sustainability of the resource, persistent overfishing in the halibut charter fishery has exacerbated the decline in exploitable halibut biomass. For the sake of halibut resource conservation and of the many businesses and coastal communities that are being negatively affected by the lack of charter accountability, it is necessary now to bring the commercial charter fleet fully into the fishery management system for halibut.

The current proposed rule for halibut catch sharing represents the latest and likely best opportunity to resolve commercial halibut allocations that have lingered as a contentious issue for over 18 years. Resolution is far past due. Although the plan certainly is not perfect and is distasteful in some respects to this fisherman, I strongly recommend adoption and implementation of the plan. Specifically, the abundance-guided percentage allocations between setline and charter sectors in both Area 2C and Area 3A should be adopted as should the mechanism (Guided Angler Fish) permitting limited transfer of quota from individual setline fishermen to specific charter businesses on terms agreed by those parties. Once the IPHC identifies combined charter and commercial catch limits, the pre-specified management measures must be implemented to keep charter harvests within conservation targets. Failure to implement the present plan will complicate further the ongoing efforts to increase halibut abundance and certainly will ensure another lengthy period of acrimony and divisiveness along Alaska's coast. Failure to respond and effectively hold the charter sector accountable for their harvest will cause overfishing and undercut NMFS' credibility regarding catch limits at both the national and international levels.

The arguments for rejecting the proposed rule have changed little over the past 15 years. Three of these assertions deserve mention here. These include the propositions that the charter fishery a priori deserves a larger share of the halibut resource, that charter fishing is a sport fishery distinct from the 'commercial' nature of the setline fishery, and that



limitations on charter catches, even at low halibut abundance, will ruin charter businesses.

The halibut resource has been managed under treaty with Canada since 1923 and has been fully utilized for many decades. Prior to 1990 very little of the total annual halibut catch in Alaska was taken with hired vessels and guides. As charter catches increased rapidly in the 1990s, those harvest totals were removed annually prior to IPHC establishing the annual setline area limits. By 1993 concerns within the setline fleet were raised to the North Pacific Fishery Management Council about the development of a significant charter fishery directly on the fish that sustained the setline fleet. The Council established guideline harvest levels as limits for charter harvests that included a 25% buffer to allow for growth in the charter sector above the highest catches taken to that point in time. Charter catches continued to escalate above the Council's prescriptions. Subsequently a higher guideline harvest level was set for Areas 2C and 3A, effectively rewarding the charter sector for overfishing, and those levels have consistently been exceeded in all years up to the present in Area 2C and in three out of the past six years in Area 3A. The percentages included in the CSP proposed rule again represent increases for charter fishing and once more appear as rewards for overfishing. So, no incentive has been established to cause the more strident charter advocates to accept any real harvest limits. They clearly would prefer to continue receiving indefinitely the uncompensated transfer of halibut from the established setline fishery. It seems very poor public policy to allow businesses to develop and expand directly at the expense of previously established businesses that are the economic core of Alaska's coastal communities. No analysis of the associated effects exists or has been proposed. Yet charter advocates continue to demand more analysis and more halibut. If the current proposed rule is not enacted, the reallocation will continue whether intended or not.

That the charter fishery fundamentally differs from the setline fishery does not stand up to scrutiny. Two claims about charter fishing are common: charters involve sport fishing and provide the public access to the halibut resource and the economic values generated in the charter fleet are significantly greater than those from the setline fishery. Regarding the first point, while the setline and charter business models differ, they are virtually identically placed with respect to halibut. Both sectors involve businesses that repeatedly harvest halibut from the common resource pool. The operators of the respective businesses control the vessels, equipment, and expertise required to capture halibut efficiently, and the resulting catch is distributed into the public domain. The essential point is that both are commercial enterprises built around developed expertise in the capture of halibut. That one utilizes (inexpert) clients as its primary source of revenue is basically irrelevant. They remain similarly placed commercial fishing endeavors. It must be noted that both sectors provide public access to halibut: charter through the guiding of anglers and setline through the nation's food distribution system. In this regard it can be noted that one small restaurant group in Juneau reports selling over 100,000 halibut-based meals annually to a public that is not catching its own. Another local fish and chips shop serves 43,000 meals, primarily to locals since it is away from the tourist flow.

Regarding the relative economic output from the two fishery sectors, the initial claims that the charter fishery obviously must be the more valuable have been muted over time with more thoughtful evaluation of such statements and the complexity of the issue. It is interesting now that some are demanding a detailed economic analysis prior to acting on the proposed rule. That request must be viewed as a delaying tactic only. Considerable time (years) would be required to accumulate and evaluate the necessary economic data for a national-level analysis. Possibly such an effort is worth undertaking, but if so, the results could be brought to bear on policy questions at the time the analysis is completed, not by again placing the process in limbo in the interim. It must be observed that the most direct means for ascertaining the relative values of the two sectors on an ongoing basis (the charter IFQ program) was recommended by the Council and subsequently withdrawn under political pressure from charter advocates. Placing the two fisheries in a common individual quota system would permit the market to determine the economically appropriate division between setline and charter halibut harvests and would allow that division to vary over time as the economics of both sectors varied. NOAA economists concluded: *"Even if these data were available, changes in the halibut biomass will impact the optimal sustainable yield and the optimal allocation of halibut. Because of these ongoing changes to the resource, any allocation that is optimal when it is made (if the Council felt an "optimal" allocation was appropriate) likely would be suboptimal in the future. Leasing IFQ from the commercial sector in the form of GAF could adjust the amount of halibut available to charter clients and benefit both the commercial and charter sector."* [EA, page xxxvi] That opportunity unfortunately was forfeited, but the leasing provision included in the CSP will allow at least some market influence toward optimizing the allocation.

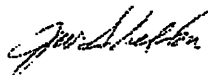
There has been one constant throughout the struggle to reach a stable setline/charter halibut allocation. Virtually any suggested limitation on charter seasons or bag or size limits has elicited a reaction from charter interests predicting ruin for individual businesses and for the charter industry more broadly. To listen to the charter sector one would conclude that any limitation means that the sky is falling. That response in the context of the current proposed rule is focused on the potential for a one fish daily bag limit in Area 3A. Just the possibility that halibut abundance may decline to the point that further bag-limit restrictions may be required in order to keep charter harvests within IPHC conservation limits has produced vocal opposition to the proposed rule. In the first instance, the proposed rule does not set one-fish-per-day bag limits for any fishery for any year. It simply provides authority to IPHC to set regulations necessary to restrain annual harvests within limits determined by the measured abundance of the halibut resource for a given year. The charter objection to this proposal is a bald assertion that business considerations should override any obligation to bear proportionally the conservation burden for sustaining the halibut population. It is a position in effect to institutionalize overfishing.

A one halibut daily limit has been in effect in Area 2C since 2009 with grumbling from charter operators but evidence that those businesses can successfully adjust. Of the litigants in the 2008 law suit opposing the one-halibut daily limit, only one operator has gone out of business and that one ran a marginal operation before any harvest limits were

Adventure in Excursion Inlet advertises, *"Security - The Doc Warner's staff is only as far away as you want them. Whether you need instructions, directions, assistance, bait, tackle or just a good suggestion, our guest-services boats are seldom out of sight. They'll help you relocate to a more advantageous spot, help answer a ponderous question, or replace a lost or broken piece of tackle. Their focus is on your safety and happiness, and they provide that element of security that makes "self-guided" work for you."* Halibut caught in these circumstances are reported as unguided sport-caught fish and thus not as halibut that apply to the annual charter limit. This approach represents a major loophole in current regulations that also is not addressed in the proposed rule. Work needs to begin immediately to amend the definition of "charter" to include outfitters and guides to halt such abuse of the intended purpose of charter limits.

I do appreciate the opportunity to offer my comments on these issues. Getting to the point of addressing a proposed rule has been a long and frustrating process. It is my sincere hope that moving this proposal to final rule status finally will give all of us who are affected respite from the misrepresentations and divisiveness that have characterized recent years. That respite will come if and only if the proposed rule is adopted and implemented. I urge you as strongly as I possibly can to elicit the Secretary's approval of this fair and balanced rule—it provides a fair and equitable allocation to consumers and guided clients at all levels of abundance while protecting the sustainability of the resource.

Sincerely,



Jev Shelton  
F/V Kirsten Anna  
1670 Evergreen Ave  
Juneau, AK 99801

Copy: Governor Sean Parnell  
Senator Lisa Murkowski  
Senator Mark Begich  
Congressman Don Young  
Representative Steve Thompson, Chair, Special Committee on Fisheries  
Senator Dennis Egan  
Representative Beth Kerttula  
Representative Cathy Munoz  
Chairman Eric Olson, North Pacific Fishery Management Council  
Dr Jim Balsiger, Chair, International Pacific Commission

September 15, 2011

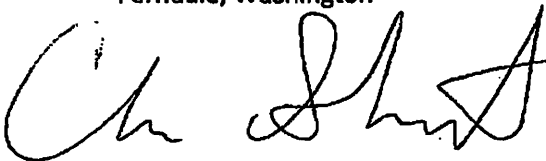
Glen Merrill and Jim Balsinger, NMFS  
Mark Begich, Senate  
Lisa Murkoswki, Senate  
Sean Parnell, Governor  
Cora Crome, Commissioner ADFG  
Jane Lubcenco, NOAA

Dear Officials:

I am strongly in support of the Catch Sharing Plan. I bought 19,000 pounds of halibut, then I had to sell 1,500 to make a payment, and now with the decline in stocks I only have 2,400 pounds left! I had to pay a total of 550,000 for this fish, and I still owe \$225,000! This IFQ system was created to protect stocks. I bought in to the system and am struggling to make my business work. I don't mind reductions if there are no fish but I do mind when the newest user group is allowed to erode the stocks and our allocation. Support the Catch Sharing Plan now.

Sincerely,

Chris Slaughter  
Ferndale, Washington

A handwritten signature in black ink, appearing to read "Chris Slaughter". The signature is written in a cursive, flowing style with a large initial "C".

September 14, 2011

Glenn Merrill, Assistant Regional Administrator  
Alaska Region National  
Marine Fisheries Service  
P.O. Box 21668  
Juneau, AK 99802

Attention: Ellen Sebastian

RE: 0648-BA37 Halibut Catch Sharing Plan

Dear Mr. Merrill,

Believe it or not, the guided halibut charter fleet in Southeast (Area 2C) and Southcentral (3A) is a commercial industry. The owners and skippers are professional guides that get paid for providing their clients the opportunity to catch a halibut. Their catch needs to be as tightly managed as other commercial industries! My wife and I have commercially fished for halibut in Areas 2C and 3A since 1975. We only get paid when we catch halibut and that fish, in turn, is bought by the general public.

For the past 36 years while fishing halibut commercially, we have seen the abundance level go up and down. We can live with that. But we have a hard time living with the uncontrolled effort and constant overages (2004-2010) by the guided charter industry. The 22%-115% Area 2C overages are unacceptable. The fact that our quota has been reduced 44% in Area 3A while the charter GHL has stayed the same is also unacceptable. Both commercial sectors should share equally in conserving the resource, but the guided halibut industry has fought every conservation regulation for the past 18 years. It is time for the overages and the arguments to stop. The Catch Sharing Plan lets both sectors share the gain in the good years and requires both sectors to conserve during the bad or low abundance years. The Catch Sharing Plan also lets the charter operators buy more access, same as my wife and I have, if they want to catch more fish. The Catch Sharing Plan is fair; the current management system is not.

Please implement the halibut Catch Sharing Plan in Areas 2C and 3A immediately.

Sincerely,

Walter Pasternak

Walter Pasternak

Box 830  
Sitka Ak  
99835