

# Public Testimony Sign-Up Sheet

## Agenda Item C-3(a) GOA sideboards for BSAI crab vessel

	NAME (PLEASE PRINT)	AFFILIATION
1	<del>Joe</del> JOE KYLE	<del>Joe</del> PROWLER FISHERIES
2	<del>Jeff</del>	<del>Jeff</del>
3	Jennifer Villkaton	JCHP II
4	Jeff Stephens	MEMA
5	Julie Benny	AGDB
6	Genny Mernigan	
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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.



MEMORANDUM

TO: Council, SSC and AP Members  
FROM: Chris Oliver *for*  
Executive Director  
DATE: September 17, 2008  
SUBJECT: GOA Sideboards for BSAI crab vessels

ESTIMATED TIME 8 HOURS  (all C-3 items)
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ACTION REQUIRED

Final action on GOA sideboards for BSAI crab vessels

BACKGROUND

In June 2008, the Council reviewed an initial draft of GOA sideboards for BSAI crab vessels. This amendment package includes three proposed actions: 1) adjust the GOA Pacific cod sideboard exemption qualifications for non-AFA crab vessels, 2) exempt qualified non-AFA crab vessels from GOA pollock sideboards, and 3) exempt non-AFA crab vessels from GOA Pacific cod sideboard limits during the period November 1 to December 31 of each year.

At the June 2008 meeting, the Council released the analysis for public review. In addition, the Council approved the problem statement and added a new option in Action 1 that would raise the Bering Sea C. opilio catch history threshold from <500,000 lbs to <750,000 lbs to receive GOA Pacific cod exemption status for non-AFA crab vessels. The Council also clarified that the intent of Action III is to address National Standard 1 and more fully utilize Pacific cod TAC in the GOA, but not impact all other GOA Pacific cod dependent participants. To accommodate this clarification, Council asked staff to include in the analysis ways for non-AFA crab vessels to access available B season Pacific cod TAC after November 1 of each year, while at the same time protecting current GOA Pacific cod dependent participants.

At this meeting, the Council is scheduled to take final action on this agenda item. The analysis was mailed out in early September; an executive summary is attached as **Item C-3(a)(1)**.

## Executive Summary

### Introduction

The crab rationalization program was implemented in March of 2005. The program allocates IFQ to harvesters in the crab fisheries. Recognizing that rationalizing the BSAI crab fisheries could provide opportunities for fishermen to alter their crab fishing patterns and take greater advantage of other fisheries, the Council included GOA groundfish sideboard limits for vessels and licenses that had Bering Sea snow crab history that contributed to IFQ. At its December 2006 meeting, the Council heard public testimony that the GOA sideboard limits, stemming from the crab rationalization program, had overly restricted historical participants in the GOA Pacific cod fishery. In response, the Council tasked staff to prepare a discussion paper of all GOA sideboards for non-AFA crab vessels. In April 2007, the Council began developing options for adjusting the GOA sideboards. In December 2007, the Council initiated an amendment to adjust the GOA Pacific cod sideboard exemption qualifications for non-AFA crab vessels, exempt qualified non-AFA crab vessels from GOA pollock sideboards, and exempt non-AFA crab vessels from GOA Pacific cod sideboards, from November 1 to December 31 of each year.

### Purpose and Need

The purpose of the non-AFA crab sideboard limit was to prevent vessels with crab quota from disadvantaging non-crab participants in the GOA groundfish fisheries. To allow non-AFA crab vessels that were awarded small amounts of snow crab quota, but had significant GOA Pacific cod history, to continue fishing in the GOA Pacific cod fishery unrestricted, the Council exempted qualified vessels from GOA Pacific cod sideboard limits. However, based on public testimony, the exemption qualifications when the crab program was implemented in 2005, excluded non-AFA crab vessels with significant GOA Pacific cod history, because the vessels had slightly more than the maximum allowable 100,000 lbs of snow crab landings. Similar to GOA Pacific cod exemption issue, the public also testified that the lack of an exemption for vessels with small amounts of snow crab quota and significant GOA pollock history is overly restrictive. Finally, it is not uncommon to see large amounts of Pacific cod go unharvested in both WGOA and CGOA during the B season for both the inshore and offshore sectors due primarily to limits on halibut PSC. To address these GOA non-AFA crab sideboard issues and to guide the analysis of alternatives for this proposed action, the Council developed the following problem statement:

*Recognizing that rationalizing the BSAI crab fisheries could provide opportunities for fishermen to alter their crab fishing patterns and take greater advantage of other fisheries, the Council included GOA groundfish sideboard limits for non-AFA vessels that qualified for the Bering Sea snow crab IFQ fishery. To protect crab vessels that demonstrated dependence on the GOA Pacific cod fisheries, an exemption from GOA Pacific cod sideboard limits was included in the rationalization program. However, in the application of the exemption and sideboard limits, some historical participants in Gulf of Alaska groundfish fisheries may have been unduly prevented from participating in the GOA groundfish fisheries. The permanent nature of the sideboard does not allow for participants to opt out of the crab program (i.e. receive no "benefit") and remove the sideboard restriction. GOA Pacific cod sector splits may further complicate apportionment of crab sideboard amounts. Adjusting the GOA Pacific cod sideboard exemption qualifications for non-AFA crab vessels in addition to including a GOA pollock sideboard exemption could allow historical GOA groundfish participants that were unduly restricted by GOA sideboard limits to return to pre-rationalized fishing levels without disadvantaging other GOA groundfish fishery participants. In addition, given that considerable amounts of GOA Pacific cod B season TAC that has continually remained unharvested, an exemption from GOA Pacific cod sideboard limits could allow for a more fully utilized resource, which is consistent with Council policy and MSA National Standard 1.*

### Alternatives

#### Action I: Exempted Vessel Status of GOA Pacific Cod

- Alternative 1: No changes to exempted status requirements
- ~~Alternative 2:~~ Change the exempted status requirements

*DK*  
*MOVED*

Option 2.1: Exempt non-AFA crab vessels from GOA Pacific cod sideboards if the vessel's Bering Sea opilio catch history is less than 0.22% of the total over the period 1996 - 2000 and the vessel landed more than 500 mt of GOA Pacific cod over the period 1996 - 2000. The percent is of total Bering Sea *C. opilio* catch history, including both qualified and unqualified catch history pounds from non-AFA crab vessels.

~~Option 2.2:~~ Exempt non-AFA crab vessels from the GOA Pacific cod sideboards if the vessel's Bering Sea opilio catch history is less than 500,000 pounds over the period 1996 - 2000 and the vessel landed more than 2,500 mt of GOA Pacific cod over the period 1996 - 2000. The total Bering Sea *C. opilio* catch history includes both qualified and unqualified catch history pounds from non-AFA crab vessels.

Option 2.3: Exempt non-AFA crab vessels from the GOA Pacific cod sideboards if the vessel's Bering Sea opilio catch history is less than 500,000 pounds over the period 1996 - 2000 and the vessel has landed more than 680 mt of GOA Pacific cod over the period 1996 - 2000. The total Bering Sea *C. opilio* catch history includes both qualified and unqualified catch history pounds from non-AFA crab vessels.

Suboption 2.3.1: In addition to above, must also have 20 GOA pollock trawl landings during the 1996 - 2000 period.

Option 2.4: Exempt non-AFA crab vessels from the GOA Pacific cod sideboards if the vessel's Bering Sea opilio catch history is less than 750,000 pounds over the period 1996 - 2000 and the vessel has landed more than 680 mt of GOA Pacific cod over the period 1996 - 2000. The total Bering Sea *C. opilio* catch history includes both qualified and unqualified catch history pounds from non-AFA crab vessels.

All these exemptions only apply to those non-AFA crab vessels/LLPs that are eligible to participate in the GOA Pacific cod fishery (have appropriate LLP) and would leave in place the original GOA Pacific cod sideboard exemption for non-AFA crab vessels/LLPs.

Action II: Exempted Vessel Status of GOA Pollock

- Alternative 1: No changes to exempted status requirements
- Alternative 2: Exempt non-AFA crab vessels from GOA pollock sideboards if the vessel's Bering Sea opilio catch history is less than 0.22% of the total from 1996 - 2000 and the vessel had:

- Option 2.1 - 5 pollock deliveries from 1996 - 2000
- Option 2.2 - 10 pollock deliveries from 1996 - 2000
- Option 2.3 - 20 pollock deliveries from 1996 - 2000.

All these exemptions only apply to those non-AFA crab vessels/LLPs that are eligible to participate in the GOA groundfish fisheries (have appropriate LLP). The percent is of the total BS *C. opilio* catch history, including both qualified and unqualified catch history from non-AFA crab vessels.

Action III: Proposed Exemption from B Season Pacific Cod Sideboard Limit after November 1

- Alternative 1: No changes to B season Pacific cod sideboard limit
- Alternative 2: Options to include lifting sideboard restriction from 1) vessels that have GOA groundfish sideboard and 2) vessels that have a GOA Pacific cod sideboard. This exemption only applies to those non-AFA crab vessels/LLPs that are eligible to participate in the GOA Pacific cod fishery (have appropriate LLP).

The intent of the action is to address National Standard 1 and more fully utilize Pacific cod TAC in the GOA but not impact non-crab qualified vessels dependent on GOA Pacific cod harvest. NMFS may relax the B season sideboard restriction after November 1<sup>st</sup>, so that, given historical participation and the expected CPUE, the fishery is reasonably expected not to close on a date that substantially impacts non-crab qualified vessels.

## **Impacts of the Alternatives**

### Action I: Exempted Vessel Status of GOA Pacific Cod

Although sideboard limits for non-AFA crab vessels have only recently been implemented, there are indications that sideboard limits have been negatively impacting some non-AFA crab vessels. Prior to the implementation of GOA sideboard limits, non-AFA crab vessels that are Pacific cod dependent would have been permitted to continue fishing for Pacific cod until the regular A or B season fishery closed. However, the sideboard limits have resulted in a shorter fishing season which prevents Pacific cod dependent crab vessels from maintaining their historic catch of GOA Pacific cod.

Under Alternative 2, there are a number of options that change the catch criteria for exempting non-AFA crab vessels from GOA Pacific cod sideboards. Each of the options defines different catch criteria. Overall, the number of vessels/licenses that would qualify for this exemption under the different options ranges from 1 to 6. Based on the historical catch of the qualified vessels under the different option during the 2001 to 2005 period, it is likely these vessels would increase fishing effort in the GOA Pacific cod fishery to levels seen prior to the implementation of sideboard limits or greater, thereby impacting other Pacific cod participants. Unfortunately, it is not possible to determine with any certainty the extent to which the new exempt vessels would impact other Pacific cod participants given that it is not possible to predict future effort by the exempt vessels. However, differences in the options can provide some indication of effects on GOA Pacific cod participants. Option 2.1 has the greatest potential of impacting the other GOA Pacific cod participants given that six vessels qualify for the sideboard exemption, while Option 2.2 has the least potential of impacting these participants with only one qualified vessel. Option 2.3 and Option 2.4 would exempt 2 and 3 vessels, respectively.

One of the effects of exempting these vessels from the GOA Pacific cod sideboard limit is the sideboard amount for GOA Pacific cod will be reduced proportional to the exempt vessels GOA Pacific cod history during the 1996 to 2000 period. In addition, since the historic catch is not included in the sideboard limits, catch of these vessels will not count towards the sideboard caps, nor are the exempt vessels required to stop fishing when the sideboard limit is reached, if the directed fishery is open.

### Action II: Exempted Vessel Status of GOA Pollock

The limited catch history of GOA pollock during 1996 to 2000 by non-AFA crab vessels has resulted in a small sideboard limit, which NMFS, for the 2007 season, closed to directed fishing. In all likelihood, NMFS will continue to close the GOA pollock sideboard fishery for non-AFA crab vessels due to insufficient sideboard limit. With the likelihood of no pollock sideboard fishery for the foreseeable future, any GOA pollock dependent non-AFA crab vessels would likely be negatively impacted under status quo.

Alternative 2 would exempt qualified non-AFA crab vessels from the GOA pollock sideboard limit. Included in the alternative are three options, each defining a different pollock landing threshold. Applying the different qualification thresholds to the non-AFA crab vessels, 4 vessels qualify for first two options, while only 1 vessel qualified for the third option. Based on the historical catch of these qualified vessels under this proposed action during the 2001 to 2005 period, it is likely these vessel would increase fishing effort in the GOA pollock fishery to levels seen prior to the implementation of sideboard limits or greater. As a result, the change in the sideboard exemption could have an impact on non-crab pollock participants.

In comparing the impacts of Options 1 and 2 relative to Option 3, the first two options have a greater potential of impacting non-crab GOA pollock participants in comparison to Option 3 due to the number of qualified vessels. Under these two options, each of the 4 qualified non-AFA crab vessels could increase effort in the GOA pollock

fishery beyond their historic level thereby impacting non-crab pollock participants to a greater extent than Option 3, which only exempts one vessel.

An effect of this action is catch history of those vessels exempt from GOA pollock sideboard limits would not be included in the sideboard calculation for GOA pollock. As a result, the GOA sideboard limit for pollock will be reduced proportional to the pollock catch history of the qualified vessels during the 1996 to 2000 period. In addition, catch of the qualified vessels will not be counted towards the sideboard caps nor will the qualified vessels be required to stop fishing when the sideboard limit is reached, if the directed fishery is open.

### Action III: Proposed Exemption from B Season Pacific Cod Sideboard Limit after November 1

In recent years, a large amount of the B season inshore Pacific cod quota was left unharvested for both western and central GOA due to limits on halibut PSC. For the trawl B seasons (both inshore and offshore), halibut PSC limits closed the fishery 5 of the past 7 years in the central GOA, and closed the western GOA inshore season during all of the past 7 years. Halibut PSC limits closed the hook-and-line B season during 2 of the past 7 years. Despite this availability of Pacific cod TAC during the B season when hook-and-line halibut PSC is available, non-AFA crab vessels were restricted from targeting B season Pacific cod due to the sideboard limit. This action would exempt non-AFA crab vessels from GOA Pacific cod sideboards after November 1, each year.

During initial review of this action in June 2008, the Council added the following additional language:

*The intent of the action is to address National Standard 1 and more fully utilize Pacific cod TAC in the GOA but not impact non-crab qualified vessels dependent on GOA Pacific cod harvest. NMFS may relax the B season sideboard restriction after November 1<sup>st</sup>, so that, given historical participation and the expected CPUE, the fishery is reasonably expected not to close on a date that substantially impacts non-crab qualified vessels.*

The additional language added by the Council in June 2008 clarified that the purpose of this action is to address National Standard 1 and more fully utilize GOA Pacific cod TAC but not impact other vessels dependent on GOA Pacific cod harvest. To protect GOA Pacific cod dependent fishermen, the Council included language limiting the scope of Alternative 2. This proposed language would require NMFS to make a discretionary decision as to whether to relax the GOA Pacific cod sideboard restriction. Implementing a discretionary provision without sufficiently specific guidance may prove problematic. Discretionary provisions lacking specific guidance on the part of NMFS may lead to inconsistent interpretations of when and how to take the action. To help clarify the Council's intent and to ensure the consistent application of the discretionary provision, the Council should provide NMFS with further guidance for exempting vessels and LLPs from GOA Pacific cod sideboards during the November 1 to December 31 time frame.

In order to accomplish the Council's intent without putting NMFS in a position of making a discretionary decision, a threshold could be applied to evaluate the GOA Pacific cod fishery prior to November 1. One such threshold that might be employed is the percent of TAC remaining in the B season GOA Pacific cod fishery. The advantage of this approach is that regardless of the actual B season GOA Pacific cod TAC level, there would be a consistent percentage of B season GOA Pacific cod available for harvest on November 1. The disadvantage of this approach is the absence of a minimum tonnage threshold to protect the existing fishery participants during years of extremely low TACs, vessels dependent on existing GOA B season Pacific cod could be negatively impacted from increased effort by the qualified vessels released from Pacific cod sideboards.

A second threshold that might be utilized is a specific minimum tonnage of B season Pacific cod TAC. Under this approach, the Council would select an amount for this threshold that must be available for the exemption to be activated on November 1. The advantage of this approach is it could provide protection to existing fishery vessels during years of low TACs. Under low TACs, existing fishery vessels fishing at historic catch levels are more likely to catch the TAC earlier in the season which could prevent the relaxation of sideboards after November 1.

Although both thresholds can be applied on an individual basis, the Council may want to consider using both criteria together to accomplish its intended goal. In other words, the Council would select a specific percent of GOA B season Pacific cod TAC that must still be available for harvest on November 1, and the Council would also select a

specific minimum metric tonnage of B season GOA Pacific cod TAC that must be available for harvest on November 1. Combined, both thresholds could provide the advantage of a threshold that automatically adjusts to the B season GOA Pacific cod TACs and yet includes a minimum ceiling on metric tonnage of B season GOA Pacific cod TAC.

Crucial in selecting the appropriate threshold(s) is providing the right amount of opportunity for vessels to fully utilize the TAC to the extent practicable, while also leaving a sufficient amount of TAC for existing Pacific cod dependent vessels during the November 1 – December 31 fishery period to maintain their historic access to the fishery. If the percent of available B season GOA Pacific cod TAC required on November 1 is too high, there is the potential that B season GOA Pacific cod sideboards would not be relaxed, thus reducing the opportunity to fully utilize the Pacific cod resource. At the same time, if there is insufficient TAC after November 1 and the GOA B season Pacific cod sideboards are lifted for qualified vessels, existing Pacific cod dependent vessels could be negatively impacted from increased fishing effort caused by the relaxation of sideboards for qualified vessels. To ensure the Council's intent that B season GOA Pacific cod TAC is fully utilized to the extent practicable and existing B season GOA Pacific cod participants are protected, the choice of an appropriate threshold must be carefully considered.

Currently, there are 85 non-AFA crab vessels and 40 LLPs that qualify to participate in the GOA Pacific cod sideboard fishery and therefore, under Option 1, would be exempt from GOA Pacific cod sideboard limits after November 1. In contrast, under Option 2, 227 non-AFA crab vessels and 57 LLPs are restricted by GOA groundfish sideboard limits and therefore would be exempt from the GOA Pacific cod sideboard limit after November 1 of each year. Of these vessels, 147 of owners listed Washington as their state address, 43 owners listed Alaska as their address, and 25 owners listed Oregon as their address. The remaining vessel owners listed for their state address California, Idaho, Maine, Minnesota, and Montana.

Examining the annual fishing activity in the GOA Pacific cod fishery for the qualified vessels shows that very few of the vessels have been active in this fishery during the November 1 to December 31 period throughout 1995 to 2007. In contrast, the total number of other Pacific cod dependent vessels active during the November 1 to December 31 time period has ranged from no vessels during a few years to 87 vessels in 2007. In recent years, the number of other Pacific cod dependent vessels participating in the central GOA Pacific cod fishery during the November 1 to December 31 period has increased significantly.

Despite the limited number of qualified vessels that fished in the GOA Pacific cod fishery during the November 1 to December 31 period, there is a potential that lifting the GOA Pacific cod sideboards during this period could increase fishing pressure on GOA Pacific cod and thereby impact other GOA Pacific cod dependent vessels. Unfortunately, it is not possible to determine with any certainty the extent to which the new exempt vessels would impact other Pacific cod participants. In general, if effort increases significantly after November 1 due to relaxation of sideboards, some existing GOA Pacific cod dependent vessels could shift some or all of their B season effort to the September 1 to October 30 period. If the shift of effort by existing Pacific cod vessels is significant enough and if sideboard relaxation is linked to a high threshold percentage, existing GOA Pacific cod vessels could prevent the relaxation of sideboards by increasing effort during the September 1 to October 31 period. In addition, the fishing behavior of newly qualified exempt vessels could change if they perceive that sideboards will be relaxed after November 1, electing to fish crab quota during the September 1 to October 30 period and then target GOA Pacific cod from November 1 to December 31.