

# North Pacific Fishery Management Council

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Certified by: John Bruce

Date: 10-05-00

## ADVISORY PANEL MINUTES Sheraton Hotel, Anchorage, Alaska September 6-9, 2000

### Advisory Panel members in attendance:

Alstrom, Ragnar	Jones, Spike
Benson, Dave	Jordan, Melody
Bruce, John (Chair)	Kandianis, Teresa
Boisseau, Dave	Madsen, Stephanie (Vice-Chair)
Burch, Alvin	Nelson, Hazel
Cross, Craig	Ogden, Doug
Falvey, Dan	Ridgway, Michelle
Fanning, Kris	Steele, Jeff
Fuglvog, Arne	Stephan, Jeff
Fraser, Dave	Yeck, Lyle

### B-1 (b) October Agenda

The AP requests the Council direct staff to include the following problem statements as items for consideration in the context of the staff tasking agenda item in October.

#### *Action to allow inshore coops to contract with non-member inshore AFA CVs to harvest coop allocation.*

1. Problem Statement: NMFS' current Emergency Rule implementing AFA and its proposed Final Rule allow only those CVs that are members of an inshore coop to harvest and deliver pollock allocated to that coop. It is not permissible under current NMFS regulations for a CV that is a member of a coop to assign its right to harvest its coop shares to another inshore AFA vessel that is not also a member of the same coop, nor is it possible for a coop to contract with non-member AFA CVs to assist in harvesting its coop allocation.

The following are some of the adverse results under status quo:

A. If a coop CV is unable to harvest its coop shares, the universe of available CVs to take its place is very limited under existing regulation and as a practical matter may make it very difficult or impossible for the CV

owner to make reasonable arrangements for the harvest of its coop shares. In some coops there may only be processor-owned vessels available that have enough capacity to harvest the member's share which will place the independent catcher vessel owner at a substantial disadvantage. In addition, in some coops, the remaining member vessels simply may not have the capacity to harvest the coop shares of the member vessel that is not able to harvest its own share for the season in question.

B. In some cases it may not just be that it is impossible for a coop catcher vessel to harvest its share, but it may be very inefficient for it to do so. Some CVs have a relatively small amount of pollock quota and for them to travel to the Bering Sea from the Gulf or west coast to fish in every season, for example, in a Summer/Fall season where the price is low, is extremely inefficient. It would be beneficial to the catcher vessel owner to have the maximum flexibility to allow other CVs already on the grounds to harvest their quota. This would also be consistent with reducing gear and effort on the grounds.

C. Small CVs are particularly at a disadvantage with the SCA now closed even to CVs under 99 feet. For these vessels to now be forced outside the SCA to harvest their own coop shares will increase safety risks. In addition, there may be times that safety could be improved for CVs that are not included within the 99 foot rule. For example, during certain seasons or times of the year, safety could possibly be improved in situations where midsize vessels could have additional flexibility to allow other larger CVs to harvest their shares. This flexibility is not always available within the coop under the existing regulation.

D. Independent CVs that are unable to make reasonable arrangements for other coop members' CVs to harvest their shares are essentially permanently damaged because of the lack of flexibility in being able to switch to coops where more harvest flexibility may exist. This is because the Council decided under Dooley-Hall that CVs may not switch coops without first fishing open access for a year. As a result, there is no practical solution for a CV to find another harvesting solution for its vessel except within the captive market of its own coop.

*Action to allow an inshore coop to contract with another processor in the event its processor is unable to process.*

2. Problem statement: Pursuant to the AFA, once an inshore coop is formed, it enters into a contract with the eligible shoreside processor whereby the processor agrees to process the pollock to which the coop is entitled. Thereafter the coop is required, by the terms of the AFA, to deliver at least 90% of the coops allocation to that inshore processor.

No provision is made, within the AFA or elsewhere within regulation, to take into consideration the situation whereby the processor may, for a variety of reasons, be unable during one or more pollock seasons to process at least 90% of the coops' pollock allocation. These circumstances could include temporary or permanent financial inability to continue as a processor for one or more seasons. The processor could incur a partial or total casualty which could impair its ability for one or more seasons. In addition, natural elements could prevent processing to the degree required by such events such as lack of water or other essentials for processing.

If the coop's processor is unable, for any reason, to process at least 90% of the coop's pollock in any season, the coop members would suffer irreparable harm for the reason that there are no alternatives provided for allowing the coop to continue operating and deliver this pollock elsewhere. It is in the best interest of both the AFA inshore processors and the AFA inshore CVs to make immediate provision for resolution of this issue to avoid the risk of a coop suffering economic disaster.

*Motion passed unanimously 20-0.*

### C-3 AFA Crab Processing Sideboards

The AP recommends the Council exercise its authority under section 213 of the AFA to lift the crab processing caps contained in Section 211 of the AFA. The AP understands this would be by emergency action in order to be in place for the 2001 opilio season.

*Motion passed 10-8-2.*

### C-2 Steller sea Lion P-Cod interactions

The AP concurs with the SSC that the premise upon which Council action is based is so tenuous that the AP's adoption of the alternatives is imprudent and may deprive individuals and communities of their livelihoods without justification. However, because this is the initial review we feel compelled to add additional options and information sources for review and analysis in the event that NMFS chooses to proceed with this action. The following alternatives are recommended for inclusion in NMFS's environmental analysis.

*Motion passed 17-0.*

#### Alternative for the GOA:

- A. Divide fishery into two seasons. ("A" & "B")
  - 1. Season A: January 1 - April 30
  - 2. Season B: May 1 - December 31
  
- B. Phase in implementation of seasonal and critical habitat TAC limits.
  - A. B season CH limit to be frameworked and based annually on biomass distribution in summer survey.
  - B. No B season limit in CH. (*Motion passed 15-0.*)
    - 1. 2001 "A" Season: No more than 80 % of TAC and no more than 60% in critical habitat.
    - 2. 2002 "A" Season: No more than 70% of TAC and no more than 50% in critical habitat.
  
- Note: The phase in would be superceded when winter survey data on biomass distribution is available
  
- C. Keep federal waters open under current regulations around rookeries and haulouts open to all gear types.
  
- D. During the federal fishery within State waters, (zero to three miles), the fishery will start on January 1 and fishing may occur within currently open rookeries and haul out areas. The fishery is limited to pot and jig vessels with the following restrictions:
  - 1. Pot Limits
    - a. 60
    - b. 75
    - c. 100

*(Motion passed 13-1)*
  - 2. A 5 mechanical jigging machine limit for vessels using jig gear.
  - 3. Retain inside trawl exemptions provided by Board of Fisheries in Shumagins  
*(Motion passed 13-2)*

- E. Remainder of seasonal and critical habitat limits in federal waters is allocated to catcher vessels, catcher processors and pot fisheries by gear type based on historic catch and percent within critical habitat.

**Alternative for the Bering Sea**

The AP recommends that an additional alternative be added to the EA/RIR for the Bering Sea. The elements of this option are:

**A. Management measures**

- 1. Two seasons, A and B

Rationale: This part of the mechanism we propose to spread harvest across the year in CH (CH as identified in this alternative NOT as defined by NMFS that includes haulouts. *Motion passed 15-1-1*) waters of the Bering Sea

- 2. A season start/end dates

	<u>Trawl</u>	<u>Fixed Gear</u>
A season start	January 20	January 1
A season end	May 31	May 31?
B season start	June 1	June 1
B season end	November 15	December 31

Rationale: This A season start provides to fixed gear fleet the advantage of access to their traditional fishing grounds and reduces the potential for high catch rates at the outset of the season by delaying the start of the trawl fishery until January 20. The B season start for the fixed gear sector should balance catch objectives with potential for significant rollovers and bycatch considerations. The end date for B season for trawl is the date used for the Atka mackerel trawl fishery.

- 3. Critical Habitat limit on P. cod removals in the A season:

A season TAC=60% of annual TAC and 60% of the A season TAC can be taken in CH in A season

Note: This season split should be used to determine the A season harvest limit for CH. This alternative does not limit the amount of cod that can be harvested outside of CH.

Rationale: This is a mechanism to ensure a balanced harvest of cod in CH throughout the year, while still preserving some element of the basic nature of the fishery which is that cod are best fished for when they are aggregated during the first part of the year.

The actual winter distribution of P. cod is currently not obtainable from available data, but distribution of cod fishing effort in the Bering Sea suggests that cod are mostly found in the Bering Sea CH for at least the first two to three months of the year. When a winter survey is conducted, the proportion of P. cod in CH can be substituted for the above CH fishing limit.

- 4. No A or B season limit outside CH

Rationale: The objective is to spread fishing over the year to reduce potential for competition with Steller sea lion foraging. Given that increased fishing outside of CH has little or no impact on sea lion CH and serves to reduce overall CH removals to below the “A” season CH limit, then fishing outside of CH should not be limited. This could also help the industry reduce the economic impacts of modifications to the cod fishery by increasing opportunity to harvest the entire TAC in an area that is less important to sea lion foraging, as per the designation of CH.

5. No "B" season CH limit

Rationale: Cod are not primarily located in CH during the second portion of the year and little fishing occurs in CH for that reason. The creation of a "B" season limit could actually trigger a small "race for fish" inside CH.

6. CH cod catch in the "Residual CH" area do not count against CH catch limit

Rationale: The "crescent" shaped area on the eastern edge of sea lion CH (also referred to in the analysis as "residual SCA") is not CH. This means that in designating CH, the area once sufficiently distant from areas in the feeding range of sea lions to mean it was not included in the CH designation. The argument in the analysis that "edge effects" could occur could be said of any area adjacent to CH, regardless of how far that line is placed.

7. Attainment of CH "A" season limit closes CH to directed cod fishing only. Bycatch in non-cod target fisheries should be deducted from individual gear and sector catch limits, based on historical usage. Attainment of the CH limit should trigger MRB (bycatch-only) status for cod in CH, not closure of area to non-cod target fisheries

Rationale: Flatfish and other non-pollock fisheries that occur during the proposed "A" season period do not generally take large quantities of cod as bycatch. Evidence of this is apparent when catch per week of cod is evaluated in weeks where P. cod is closed to directed fishing or in weeks when little or no cod effort is occurring. There is no reason to hamstring vessels targeting other species that need to fish in their traditional areas in order to maintain catches at economic levels and low bycatch rates.

8. Rookery "no-trawl" areas to be maintained according to current regulations.

Rationale: Sea lions demonstrate no fidelity to haul outs and use of haul outs is variable (testimony of John Burns to AP on September 8, 2000). Existing measures restricting trawl fishing for non-pollock species to outside ten miles around sea lion rookeries (including the seasonal 20 mile closures at three specific sites) have not been tested for efficacy. Until this research is done, there is no evidence to suggest that extension of the rookery closures will benefit sea lions.

9. Fixed gear can continue to be fished in rookery "no trawl" zones (note: fishing with any gear is not restricted in haulouts)

Catch rates of cod per week by the portion of fixed gear vessels fishing in Bering Sea CH are relatively low. To force these vessels to fish outside of rookeries could impact their ability to fish (in the case of smaller vessels) and will create needless grounds conflicts and possibly gear conflicts.

## **B. Proposed distribution of allowed CH fishing between different gear sectors**

The “pain sharing” formula will use historical dependence on fishing during the first half of the year and historical dependence on fishing to determine fishing limits in CH in the first half year per gear and sub-sector.

The principle for compensation for pain sharing, as we envision it, would be that in the event of a significant rollover of cod from trawl to fixed gear, the trawl sector would work with the fixed gear sector to maximize the ability of the fixed gear sector to harvest the fish that are rolled over. A formula for rolling over cod earlier in the year so that the rollover works for the fixed gear sector should also be developed.

*Motion passed 15-1-1.*

Additionally, the AP recommends the Council delete Alternative 3.

*Motion passed 15-0.*

The AP further recommends the Council identify Alternative 1 as the preferred option for both the Gulf of Alaska and the Bering Sea and Aleutian Islands.

*Motion passed 12-0-3.*

Further, the AP requests the Council request NMFS prioritize an annual winter biomass surveys in the GOA, BSAI and that adaptive management research and surveys be allowed to continue in critical habitat.

*Motion passed 15-0*

The AP shares the concerns identified by the SSC regarding the EA/RIR. In addition to the changes recommended by the SSC, the AP recommends that the council make the following comments on the draft EA/RIR on Cod and Sea Lions:

The analysis needs to be enhanced with the following information to better evaluate the question of competition between the fishery and the sea lions. Therefore the AP recommends the following:

Where there is discussion in the text concerning elements of overlap (diet composition, fishing/diving depths, size composition, etc.) that the text avoid presenting information on the extreme ends of those ranges of data, without providing characterization about the distribution of the data that provides the reader with a clear understanding of the central tendency of the data.

The presentation of fishery depths and sizes on pages 37 & 38 is an example of an appropriate presentation.

Examples of inappropriate presentations:

- Page 53 Sea lions dive up to 250 meters (doesn't represent the avg or range)
- Page 57 Sea lion scats contain up to 62% cod (doesn't give avg or range)
- Page 57 Sea lions consume cod up to 80 cm (nothing in data to support-only one data point of 75)
- Page 28 Mackerel, herring, capelin, etc. can be less than 5% of cod diet in any given year (no average given per year).

Though the EA “tears” off the prior BiOps, the public would be better informed if important information regarding sea lions were recapped (and updated) in the EA.

- Population data (both counts and population estimates by year and area, including pup counts and pup population estimates by year and area). This should update and expand upon Table 7 from the December 1998 BiOp.

- Telemetry data on sea lion dive depths should include and update figure 36 from the December 1998 BiOp. (Including similar data tables from the paper on diving behavior by Loughlin et al. 1998 , as well as a review of information on ongoing research that may be available to the agency but not yet in press.)
- Expanded information on GIS analysis of foraging patterns (presented in such a way that the reader has an understanding of the central tendency of the data, as well as the extremes of the ranges.), including a review of information on ongoing research that may be available to the agency but not yet in press..
- Presentation of quantitative data on estimates human caused sea lion kills and an estimate of their contribution to the decline.
- Presentation of best available data on estimates of killer whale populations and their consumption of sea lions and the role they might play in impeding recovery.
- A review of the literature regarding the applicability of the “nutritional stress” hypothesis to the decade of the 1990s, with regard to data on condition factors of sea lions, including a review of information on ongoing research that may be available to the agency but not yet in press..
- A presentation of the case for “regime shift hypothesis.”

The EA should also include a quantitative analysis of the probabilities of overlap and competition as outlined in the SSC minutes. This should include quantification of the area of overlap in depth by category of animal (ie: juveniles, lactating females, etc.) and by fishery and area. It should also include a quantification of overlap in diet in both weight/biomass consumed by the fishery and by sea lions by age/size class of cod by area.

The analysis of total groundfish consumption by Stellers presented on page 55 is based on 1980’s population estimates and provides little area specific information. This portion of the EA needs to be updated using current population levels by area, and broken down by key prey species to the extent possible. A review of the current literature should be undertaken (including a thesis by Winship in 2000) for more recent estimates.

The size analysis of cod in sea lion scat shown in Figure 31 on page 235 is a much smaller data set than Table 3 of the June 2000 discussion paper. Both sets of information should be included in the EA. Additionally, the review of stomach contents studies from the December 1998 BiOp should be included (Table 6 pages 147-157)

The preliminary CPUE analysis presented on page 34-37 and in figure 5 should be include only if the deficiencies noted by the SSC are incorporated. Additionally, the statement concerning interpretation of the Martin Smith analysis based on this work (page 49) should be deleted.

CPUE analysis should be undertaken to compare winter and summer CPUEs in CH as a potential index of abundance changes between seasons. However, any further CPUE work undertaken should avoid mixing CV and CP catches, as well as mixing target and non-target catches. Time series of CPUE data should clearly delineate the opening and closing of target fishing in the study areas, or sub-components thereof.

The EA should include a thorough review of the cumulative measures that constitute the current cod fishery management regime, together with the matrix of closures that apply to the cod trawl fishery, as well as a quantification of the reduction in fishing for pollock and mackerel in CH that has resulted from actions related to sea lion concerns.

The estimate of cod in the SCA based on the summer trawl survey should include the amount of cod estimated in the Southern Bering Sea portion of the AI survey.

The statement regarding bottom trawl and Spectacled Eiders on page 72 should be deleted.

Expand the tropic analysis relative to P.cod diet.

Include information on how rookeries and haulouts were identified, particularly the haulouts.

Discussion on page 41 regarding edge effects should be deleted from the document as the crescent is not designated as CH and edge effects, by definition, would occur anywhere the edge is replaced.

An expanded discussion on the ramifications of the state water fishery relative to the federal fishery.

*Motion passed 16-0.*

Also, the AP recommends that the Council send a letter to Congress requesting that the \$7 million line item in the Department of Commerce's budget for Steller sea lion research be earmarked for immediate use by NMFS RACE division to launch winter biomass surveys in sea lion critical habitat and the 3 aquatic foraging habitat areas this year. This letter should emphasize that at a minimum this level of funding is needed on an annual basis to provide essential data for managing fisheries. We further recommend that NMFS utilize commercial fishing vessels, crews and expertise, as well as collaborate with the State of Alaska to the extend possible to most efficiently use these limited funds to conduct stock assessment and management efficacy studies.

*Motion passed 16-0.*