

## NPFMC Committees & Workgroups (Revised November 30, 2011)

### Council/Board of Fisheries Joint Protocol Committee

<p>Updated: 8/10/07</p> <p>Staff: Jane DiCosimo</p>	<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"><u>Council:</u></td> <td style="width: 50%; border: none;"><u>Board:</u></td> </tr> <tr> <td style="border: none;">Dave Benson</td> <td style="border: none;">Vince Webster</td> </tr> <tr> <td style="border: none;">Ed Dersham</td> <td style="border: none;">John Jensen</td> </tr> <tr> <td style="border: none;">Eric Olson</td> <td style="border: none;">Mel Morris</td> </tr> </table>	<u>Council:</u>	<u>Board:</u>	Dave Benson	Vince Webster	Ed Dersham	John Jensen	Eric Olson	Mel Morris
<u>Council:</u>	<u>Board:</u>								
Dave Benson	Vince Webster								
Ed Dersham	John Jensen								
Eric Olson	Mel Morris								

### Council Coordination Committee

[Designated and renamed by Magnuson Act reauthorization April 2007]

<p>Appointed: 4/05 Updated: 7/23/09</p> <p>Staff: Chris Oliver</p>	<p><u>CFMC:</u> C: Carlos Farchette ED: Miguel Rolón</p> <p><u>GMFMC:</u> C: Robert Shipp ED: Steve Bortone</p> <p><u>MAFMC:</u> C: Richard Robins ED: Chris Moore</p> <p><u>NEFMC:</u> C: Rip Cunningham ED: Paul Howard</p>	<p><u>NPFMC:</u> C: Eric Olson ED: Chris Oliver</p> <p><u>PFMC:</u> C: Dan Wolford ED: Don McIsaac</p> <p><u>SAFMC:</u> C: David Cupka ED: Bob Mahood</p> <p><u>WPFMC:</u> C: Manuel Deunas ED: Kitty Simonds</p>
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### Council Executive/Finance Committee

<p>Updated: 8/10/07</p> <p><u>Status:</u> Meet as necessary</p> <p>Staff: Chris Oliver/Dave Witherell/Gail Bendixen</p>	<p>Eric Olson (Chair) Jim Balsiger (NMFS) Alt. Glenn Merrill Dave Hanson (PSMFC) Cora Campbell (ADFG) Roy Hyder (ODFW) Bill Tweit (WDFW)</p>
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### Bering Sea Crab Advisory Committee

<p>Appointed 4/25/07</p> <p>Revised 11/15/07</p> <p>Staff: Mark Fina</p>	<p>Sam Cotten (Chair) Jerry Bongen Steve Branson Florence Colburn Linda Freed Dave Hambleton Phil Hanson Tim Henkel</p>	<p>Lenny Herzog Kevin Kaldestad Frank Kelty John Moller Rob Rogers Simeon Swetzof Ernest Weiss</p>
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**NPFMC Committees & Workgroups**  
(Revised November 30, 2011)

**Bering Sea Salmon Bycatch Workgroup**

Appointed: 3/07  Staff: Diana Stram	Stephanie Madsen (Co-chair) Eric Olson (Co-chair) Becca Robbins Gisclair John Gruver Karl Haflinger	Jennifer Hooper Paul Peyton Mike Smith Vincent Webster (BOF)
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**Comprehensive Economic Data Collection Committee**

Appointed: 12/07 Updated: 2/9/09  Staff: Mark Fina	John Henderschedt (Chair) Bruce Berg Michael Catsi Dave Colpo Paula Cullenberg	Brett Reasor Glenn Reed Ed Richardson Mike Szymanski Gale Vick
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**Charter Management Implementation Committee**

Appointed: 6/11  Staff: Jane DiCosimo	Seth Bone Stan Malcolm Ken Dole Richard Yamada	Kent Huff Tim Evers Andy Mezirow
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**Crab Interim Action Committee**  
[Required under BSAI Crab FMP]

Jim Balsiger, NMFS Cora Campbell, ADF&G Phil Anderson, WDF
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**Ecosystem Committee**

Updated: 10/22/07  <u>Status</u> : Active  Staff: Diana Evans	Stephanie Madsen (Chair) Jim Ayers Dave Benton Doug DeMaster/Bill Karp Dave Fluharty John Iani Jon Kurland
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**NPFMC Committees & Workgroups**  
(Revised November 30, 2011)

**Enforcement Committee**

Updated: 7/03	Roy Hyder (Chair) Lisa Lindeman/Garland Walker, NOAA-GC Martin Loefflad, NMFS Sherrie Meyers/Ken Hansen, NMFS-Enforcement Glenn Merrill, NMFS Vacant, ADF&G CAPT Greg Sanial, USCG Jon Streigel, AK F&W Protection
<u>Status</u> : Active	
Staff: Jon McCracken	

**Halibut Charter Stakeholder Committee**

Appointed: 1/06 Revised: 3/29/10 <u>Status</u> : Idle, pending direction	Seth Bone Robert Candopoulos Ricky Gease John Goodhand Kathy Hansen Dave Hanson (Chair) Dan Hull Chuck McCallum	Larry McQuarrie Scott Meyer Rex Murphy Peggy Parker Charles "Chaco" Pearman Greg Sutter
Staff: Jane DiCosimo		

**IFQ Committee**

Reconstituted: 7/31/03 Updated: 11/09	Bob Alverson Rick Berns Julianne Curry Tim Henkel Dan Hull (Chair) Don Iverson	Jeff Kauffman Don Lane Kris Norosz Paul Peyton Jeff Stephan Phil Wyman
Staff: Jane DiCosimo		

**Non-Target Species Committee**

Appointed: 7/03 Updated: 8/10/07	Dave Benson (Chair) Julie Bonney John Gauvin Ken Goldman Karl Haflinger Michelle Ridgway	Janet Smoker Paul Spencer Lori Swanson Anne Vanderhoeven Jon Warrenchuk
Staff: Jane DiCosimo, NPFMC/ Olav Ormseth, AFSC		

**NPFMC Committees & Workgroups**  
(Revised November 30, 2011)

**Observer Advisory Committee**

Reconstituted: 1/20/11 Updated: 1/25 Status: Active  Staff: Chris Oliver/ Nicole Kimball	Bob Alverson Jerry Bongen Julie Bonney Kenny Down Dan Falvey Kathy Hansen Dan Hull (Chair)	Michael Lake Todd Loomis Paul MacGregor Brent Paine David Polushkin Darren Stewart Ann Vanderhoeven
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**Pacific Northwest Crab Industry Advisory Committee**

Appointed: 12/10  Staff: Diana Stram	Keith Colburn Kevin Kaldestad Garry Loncon Steve Minor (Chair) Gary Painter Kirk Peterson Rob Rogers (Vice Chair)	Vic Sheibert Dale Swartzmiller Gary Stewart Tom Suryan Elizabeth Wiley Arni Thomson, Secretary (non-voting)
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**Rural Outreach Committee**

Appointed: 6/09  Staff: Nicole Kimball	Eric Olson (Chair) Paula Cullenberg Duncan Field Tim Andrew Tom Okleasik Ole Olsen Pete Probasco
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**Steller Sea Lion Mitigation Committee**

Appointed: 2/01 Updated: 11/09  [formerly SSL RPA Committee; renamed February 2002]  Staff: Steve MacLean Advisor: Dan Hennen	Larry Cotter (Chair) Jerry Bongen Julie Bonney Kenny Down John Gauvin Pat Hardina Sue Hills Frank Kelty	Steve MacLean Stephanie Madsen Max Malavansky, Jr Gerry Merrigan Mel Morris Art Nelson Glenn Reed Beth Stewart
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# Groundfish Workplan

Priority actions revised in February 2007, status updated to current

General Priority (in no particular order)	Specific priority actions	Related to management objective:	Status (updated 11-28-11)	2011						2012									
				Dec	Feb	Apr	Jun	Oct	Dec	Dec	Feb	Apr	Jun	Oct	Dec				
<b>Prevent Overfishing</b>	a. continue to develop management strategies that ensure sustainable yields of target species and minimize impacts on populations of incidentally-caught species	5	Aggregate ABC/OFL for GOA 'other species' in Apr 08 BSAI skates TAC breakout in Oct 2009 remaining other species mgmt addressed under ACLs; final action in Apr 10																
	b. evaluate effectiveness of setting ABC levels using Tier 5 and 6 approaches, for rockfish and other species	4	AFSC responding to CIE reviews as part of harvest specifications process																
	c. continue to develop a systematic approach to lumping and splitting that takes into account both biological and management considerations	5	report from non-target species committee in Dec 09																
<b>Preserve Food Web</b>	a. encourage and participate in development of key ecosystem indicators	10	ecosystem SAFE presented annually; AI indicator synthesis for 2011; EBS indicator synthesis begun in 2010																
	b. Reconcile procedures to account for uncertainty and ecosystem considerations in establishing harvest limits, for rockfish and other species	11	report from non-target species committee in Dec 09 AFSC discussion paper Jun 2011, consider during harvest specifications																
	c. develop pilot Fishery Ecosystem Plan for the AI	13	FEP brochure published Dec 07 AI ecosystem assessment for Dec 2012																
<b>Manage Incidental Catch and Reduce Bycatch and Waste</b>	a. explore incentive-based bycatch reduction programs in GOA and BSAI fisheries	15	partially addressed in BSAI salmon bycatch EIS, Tanner crab Kodiak closures (C action Oct 2010); GOA pollock / Chinook final action Jun 2011 GOA Chinook 2nd analysis - discuss Dec 2011, BS chum initial review Apr 2012																
	b. explore mortality rate-based approaches to setting PSC limits in GOA and BSAI fisheries	20	partially addressed in BSAI salmon bycatch EIS analysis of BSAI crab bycatch limits in 2012																
	c. consider new management strategies to reduce incidental rockfish bycatch and discards	17	partially addressed in rockfish program																
	d. develop statistically rigorous approaches to estimating bycatch in line with national initiatives	14, 19	National Bycatch Report revised in 2011																
	e. encourage research programs to evaluate population estimates for non-target species	16	Part of research priorities, adopted in June 2007																
	f. develop incentive-based and appropriate biomass-based trigger limits and area closures for BSAI salmon bycatch reduction, as information becomes available	14, 15, 20	bycatch limit for Chinook adopted Apr 09; initial review chum bycatch analysis in Apr 2012																
	g. assess impact of management measures on regulatory discards and consider measures to reduce where practicable	17	partially addressed by arrowtooth MRA analyses (Council action: GOA - Oct 07, BSAI - Oct 10)																



**DRAFT NPFMC THREE-MEETING OUTLOOK - updated 11/28/11**

December 5-13, 2011 Anchorage, AK	January 30 - February 7, 2012 Seattle, WA	March 26 - April 3, 2012 Anchorage, AK
<p>SOPP: <i>Review and Approve</i>                      SSL CIE: <i>Review Terms of Reference</i>                      EFH Consultation process: <i>Review</i>                      Halibut Subsistence: <i>Update</i></p> <p>Sport Halibut 2010 Catch: <i>Update</i>                      Halibut CSP: <i>Review Committee Report and Disc Paper; Discuss 2012 fishery &amp; CSP deficiencies</i></p> <p>GOA Pacific cod A-season opening dates: <i>Discussion paper</i>                      GOA P.cod Jig Fishery Management: <i>Report on mgmt actions; Discuss next steps</i></p> <p>Salmon FMP: <i>Final Action</i></p> <p>CQE in Area 4B: <i>Final Action</i></p> <p>GOA Chinook Bycatch All Trawl Fisheries: <i>Discussion Paper</i></p> <p>FLL Vessel Replacement: <i>Initial Review</i></p> <p>BSAI Crab: <i>Report from stakeholders</i></p> <p>BS Habitat Conservation Area Boundary: <i>Review</i></p> <p>Groundfish SAFE Report: <i>Adopt final harvest specifications</i></p> <p>Halibut mortality on trawlers EFP: <i>Review/Approve (T)</i></p>	<p>IPHC Report                      Halibut Bycatch in BC and West Coast: <i>Report (T)</i></p> <p>GOA Halibut PSC: <i>Initial Review</i></p> <p>GOA Pollock D-season: <i>Discussion paper</i></p> <p>Halibut/sablefish IFQ changes: <i>Discussion paper (T)</i>                      Halibut/Sablefish IFQ Leasing prohibition: <i>Discussion paper</i></p> <p>GOA Flatfish Trawl Sweep Modifications: <i>Initial Review</i>                      BSAI Flatfish specification flexibility: <i>Discussion Paper</i></p> <p>FLL Vessel Replacement: <i>Final Action</i>                      AFA Vessel Replacement GOA Sideboards: <i>Discussion Paper (T)</i></p> <p>Crab EDR Revisions: <i>Final Action</i>                      Pribilof BKC Rebuilding Plan: <i>Final Action</i>                      BSAI Tanner Crab rebuilding plan: <i>Preliminary Review</i>                      BSAI Crab Model Workshop Report: <i>SSC only</i>                      HAPC - Skate sites: <i>Initial Review</i></p> <p>BBRKC spawning area/fishery effects: <i>Updated Disc paper (T)</i></p> <p>Groundfish PSEIS: <i>Discuss schedule</i></p> <p>2012-2015 Deep Sea Coral Research: <i>Report</i></p>	<p>Halibut Migration Model review; workshop report: <i>Review</i></p> <p>GOA Halibut PSC: <i>Final Action</i></p> <p>Northern Bering Sea Research: <i>Discussion paper</i></p> <p>BSAI Chum Salmon Bycatch: <i>Initial Review</i></p> <p>GOA Flatfish Trawl Sweep Modifications: <i>Final Action</i></p> <p>Grenadiers: <i>Discussion paper</i></p> <p>Scallop SAFE: Approve harvest specifications</p> <p>BSAI Tanner Crab rebuilding plan: <i>Initial Review</i></p> <p>HAPC - Skate sites: <i>Final Action</i></p> <p><b>ITEMS BELOW FOR FUTURE MEETINGS</b></p> <p>Crab PSC numbers to weight: Discussion paper                      Crab bycatch limits in BSAI groundfish fisheries                      AI P.cod Processing Sideboards: Initial Review                      Greenland turbot allocation: Discussion paper                      VMS use and requirements: Discussion paper                      BSAI halibut PSC limit: Discussion paper                      GOA comprehensive halibut bycatch amendments: Disc paper                      BS FLL GOA cod sideboards: Discussion paper                      MPA Nominations: Discuss and consider nominations</p>

AI - Aleutian Islands  
 AFA - American Fisheries Act  
 BiOp - Biological Opinion  
 BSAI - Bering Sea and Aleutian Islands  
 BKC - Blue King Crab  
 BOF - Board of Fisheries  
 CQE - Community Quota Entity  
 CDQ - Community Development Quota  
 EDR - Economic Data Reporting  
 EFP - Exempted Fishing Permit  
 EIS - Environmental Impact Statement  
 EFH - Essential Fish Habitat  
 FLL - Freezer Longliners  
 GOA - Gulf of Alaska

GKC - Golden King Crab  
 GHF - Guideline Harvest Level  
 HAPC - Habitat Areas of Particular Concern  
 IFQ - Individual Fishing Quota  
 IBQ - Individual Bycatch Quota  
 MPA - Marine Protected Area  
 PSEIS - Programmatic Supplemental Impact Statement  
 PSC - Prohibited Species Catch  
 RKC - Red King Crab  
 ROFR - Right of First Refusal  
 SSC - Scientific and Statistical Committee  
 SAFE - Stock Assessment and Fishery Evaluation  
 SSL - Steller Sea Lion  
 TAC - Total Allowable Catch

**Future Meeting Dates and Locations**

December 5-13, 2011 - Hilton Hotel, Anchorage  
 January 30-February 7, 2012 - Renaissance Hotel, Seattle  
 March 26-April 3, 2012 - Hilton Hotel, Anchorage  
 June 4-12, 2012 - Best Western, Kodiak  
 October 1-9, 2012 - Hilton Hotel, Anchorage  
 December 3-11, 2012 - Anchorage  
 February 4-12, 2013, Portland  
 April 1-9, 2013, Anchorage  
 June 3-11, 2013, Juneau  
 September 30-Oct 8, 2013 Anchorage  
 December 9-17, 2013, Anchorage  
 (T) Tentatively scheduled

# NPFMC/NMFS Action - update

AGENDA D-2 December 2011

			2012														
Action	Status	Staffing	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	
<b>Blue = Post Council Action, Rulemaking</b>																	
Halibut Catch sharing plan	Preparation of Final Rule	NMFS 90% Council 10%															See NMFS Management Report
BSAI crab arbitration, C-shares, cod sideboards	Preparation of Final Rule	NMFS 80% Council 20%															See NMFS Management Report
Litigation workload	Ongoing	NMFS 90% Council 10%															See NMFS Management Report
Am 80 lost vessel replacement	Proposed and Final Rule	NMFS 90% Council 10%															See NMFS Management Report
BSAI Chinook Salmon EDR	Proposed and Final Rule	NMFS 90% Council 10%															See NMFS Management Report
GOA Rockfish Program	Preparation of Final Rule	NMFS 90% Council 10%															See NMFS Management Report
GOA Pcod Sector Split	Preparation of rulemaking package	NMFS 90% Council 10%															See NMFS Management Report
12 month 20% halibut sablefish QS	Proposed and Final Rule	NMFS 100% Council 0%															See NMFS Management Report
Tanner crab bycatch in the GOA	Preparation of rulemaking package	NMFS 90% Council 10%															See NMFS Management Report
Scallop ACL plan amendments	Final Rule	NMFS 50% Council 50%															See NMFS Management Report
BSAI Arrowtooth Flounder MRAs	Preparation of rulemaking package	NMFS 90% Council 10%															See NMFS Management Report
Observer Program restructuring	Preparation of SOC draft and rulemaking package	NMFS 80% Council 20%															See NMFS Management Report
BSAI Crab Emerg relief	Preparation of rulemaking package	NMFS 90% Council 10%															See NMFS Management Report
New CQE communities	Preparation of rulemaking package	NMFS 90% Council 10%															See NMFS Management Report
3A CQE D class purchase	Preparation of rulemaking package	NMFS 90% Council 10%															See NMFS Management Report
EFH Amendments	Preparation of rulemaking package	NMFS 90% Council 10%															See NMFS Management Report
Halibut/sablefish Hired Skipper	Preparation of rulemaking package	NMFS 80% Council 20%															See NMFS Management Report
BSAI Crab IFQ/IPQ application	Preparation of rulemaking package	NMFS 90% Council 10%															See NMFS Management Report
Chinook salmon bycatch in GOA pollock fishery	Preparation of rulemaking package	NMFS 90% Council 10%															See NMFS Management Report
CQE Vessel Use Caps	Preparation of rulemaking package	NMFS 80% Council 20%															See NMFS Management Report
Remove inactive Halibut/Sablefish QS	Final Rule	NMFS 100% Council 0%															See NMFS Management Report



Action	Status	Staffing	Timeline											
			Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct
<b>Green=project underway</b>														
Outreach activities	Committee meetings; ongoing projects	NMFS 10% Council 90%												
Prib BKC rebuilding	Final Action in Feb	NMFS 50% Council 50%												
BSAI Chum Salmon Bycatch	Initial Review in April	NMFS 50% Council 50%												
CQE in Area 4B	Final Action in Dec	NMFS 10% Council 90%												
AI processing sideboards	unscheduled	NMFS 10% Council 90%												
GOA halibut PSC limits	Initial Review in Feb	NMFS 20% Council 80%												
BSAI Crab Economic Data Collection	Initial Review in Feb	NMFS 20% Council 80%												
BS Tanner Crab Rebuilding Plan	Initial Review in April	NMFS 50% Council 50%												
GOA Flatfish Trawl Sweeps	Initial Review in Feb	NMFS 10% Council 90%												
Skate Egg Concentrations HAPC	Initial Review in Feb	NMFS 50% Council 50%												
Salmon FMP Revisions	Final Action in Dec	NMFS 80% ADF&G 10% Council 10%												
BSAI Freezer longliner replacement	Initial Review in Dec	NMFS 20% Council 80%												
GOA P. cod jig mgmt	Disc in Dec	NMFS 50% Council 50%												







# Marine Conservation Alliance

*promoting sustainable fisheries to feed the world*

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4005 20th Avenue W, Suite 115  
Seattle, WA 98199

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2 Marine Way, Suite 227  
Juneau, AK 99801

(907) 523-0731 phone  
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Adak Community Development Corporation

Alaska Bering Sea Crabbers

Alaska Longline Co.

Alaska Whitefish Trawlers Association

Alaska Groundfish Data Bank

Alaska Scallop Association

Aleutian Pribilof Island Community Development Association

Alutka, Afka, False Pass, Nelson Lagoon, Nikohaki, St George

Arctic Storm Management Group

Bristol Bay Economic Development Corporation  
Alakusuk, Chuk'a Point, Coochigern, Egegik, Elik, Ekwook, King Salmon, L. Leavelle, Malakofek, Nalzek, Ploki Point, Port Heiden, Portage Creek, South Nakasek, Topak, Twin Hills, Ugasuk

Central Bering Sea Fishermen's Association

St. Paul

City of Unalaska

Coastal Villages Region Fund  
Cheloniak, Chevak, Eak, Goodnews Bay, Hooper Bay, Kipruk, Kongiganak, Koryllingok, Malokysak, Napaniak, Napaniak, Nentok, Nigmtura, Oosarvite, Pribilof, Quahbegak, Stenman Bay, Toksook Bay, Turidulak, Turonak

Glacier Fish Company

Groundfish Forum

High Seas Vessels  
Ocean Harvester, Sea Storm, Nashkahnie

Icicle Seafoods

North Pacific Seafoods

Norton Sound Economic Development Corporation  
Bragg Mission, Dikowak, Elni, Gambel, Golewin, Koyak, Koyak, Dale, Mikol, Oovonga, Shalovak, Stebbins, Teller, Unalakleet, Whales, White Mountain

Trident

United Catcher Boats  
Alutka Catcher Vessel Association  
Mothership Fleet Cooperative  
Northern Votav Fleet  
Polar Pass Fleet Cooperative  
Unalaska Co-op  
Unalaska Fleet Cooperative  
FV Ando Wind, FV Cullen Aon, FV Dora Merita, FV Pacific Prince

U.S. Seafoods

Waterfront Associates

Western Alaska Fisheries, Inc.

November 29, 2011

Mr. Eric Olson, Chairman  
North Pacific Fishery Management Council  
605 West 4<sup>th</sup> street, Suite 306  
Anchorage, Alaska 99501-2252

RE: Staff tasking and Pribilof Island blue king crab

Dear Mr. Olson

Recently the Marine Conservation Alliance, along with several other fishing groups, have been working toward a recommendation for you regarding the rebuilding plan for Pribilof Island blue king crab (PIBKC) and associated management measures for that plan. At present, we envision a series of private arrangements among the various industry sectors that would be designed to manage PIBKC bycatch in a manner that would still allow for an orderly and rational fishery even in the face of restrictive catch limits to help rebuild this species.

In order to help foster the development of these private agreements, we believe the NEPA analysis supporting the PIBKC action may need to include a discussion and consideration of several factors and respectfully request that staff provide analysis so that action can be taken accordingly. We do not believe that analysis of these additional factors would constitute a change or expansion of the existing alternatives, rather we see them as adding clarity regarding the manner in which the existing alternatives would be implemented. The factors we request additional analysis of include:

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>• Roll overs of bycatch from one sector to another</li> </ul> | <p>Bycatch may need to be divided to the sector level initially in order to foster a bycatch sharing agreement. However, in order to prevent available bycatch from being stranded in a sector that does not need it, the ability to roll over bycatch from one sector to another sector may be necessary</p> |
|--|---|
- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>• Whole haul sampling</li> </ul> | <p>Relatively consistent catch data streams help to develop expectations about bycatch and forecasts of such bycatch. These forecasts are an important part of any collaborative fishing arrangement. To avoid wide swings in bycatch estimation – and to help facilitate the development of bycatch expectations – whole haul sampling on board affected vessels may be necessary.</p> |
|---|---|
- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>• 100% observer coverage for affected vessels</li> </ul> | <p>Similar to the above, catch extrapolation can cause problems in bycatch management agreements due to swings in bycatch estimation and in difficulties in reporting bycatch events (among others). Vessels affected by a PIBKC bycatch cap may need to</p> |
|---|--|

November 29, 2011

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be required to carry observers if the desire is to help facilitate a private industry agreement.

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***Rollovers***

Per a conversation with NPFMC and NMFS staff, inseason rollovers are a common practice for the agency. We envision rollovers occurring on PIBKC inseason when reasonably available information indicates that one sector has finished for the year and remaining PIBKC bycatch can be shifted to the other affected sectors. In order to facilitate an orderly fishery, the rules for rolling over bycatch from one sector to another should be clearly specified so that fishing plans can be developed accordingly.

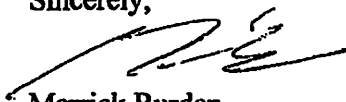
***Whole Haul Sampling***

Whole haul sampling was recently put in place to help facilitate the management of Chinook bycatch in the Bering Sea pollock fisheries. The apparent rarity at which PIBKC bycatch occurs appears to justify extending this practice to PIBKC bycatch. Several pollock and groundfish trawl representatives have indicated that their crews are willing to assist in this type of a sampling program if necessary. To facilitate whole haul sampling, vessels may need to install necessary equipment which comes at a cost. To keep costs down, invoking a whole haul sampling practice should only be done when a vessel is fishing in the PIBKC accounting district.

***100 Percent Observer Coverage***

It appears that precedent has been established before regarding the requirement of 100% observer coverage for vessels operating in certain areas. Prior action to manage BBRKC bycatch required that groundfish vessels fishing in certain areas carry observers to adequately monitor the bycatch of BBRKC.

Sincerely,



Merrick Burden  
Executive Director



November 29, 2011

Mr. Eric Olson, Chair  
North Pacific Fishery Management Council  
PO Box 103136  
Anchorage AK 99510

RE: D-2: Staff Tasking

Dear Chairman Olson,

World Wildlife Fund (WWF) recognizes the Bering and Arctic Seas as one of 19 priority conservation areas in the world, and WWF strives to protect living marine resources while also promoting sustainable harvesting practices. In the Bering Sea, one of the most productive areas is along the Bering Sea Shelf Break. The Bering Sea "Green Belt" is described by Alan Springer<sup>1</sup> and others as being an area of high primary (phytoplankton) and secondary (zooplankton) productivity, concentrating fishes and squids in a narrow corridor, and creating foraging habitat for marine birds and mammals.<sup>2</sup> Unique slope canyon formations occur within this green belt and contain long-lived corals, deep sea sponges, and species not found elsewhere. Dozens of scientists<sup>3</sup> from both sides of the Bering Sea have identified the shelf break as a high priority for biodiversity conservation, and specifically identify the slope canyons as oceanic features that may enhance this productivity<sup>4</sup>.

In 2006, the Council's Science and Statistical Committee (SSC) recommended that the Council "consider canyon areas (Pribilof, Pervenets, and Zhemchug canyons) in the Bering Sea for possible habitat conservation measures".<sup>5</sup> At that time, the Council asked the Alaska Fisheries Science Center for a discussion paper and also elevated the slope canyons in its research priorities list, but specific conservation measures were not proposed or implemented at that time. Five years have now passed since the SSC made that recommendation, and again this year the SSC has indicated that the evaluation of the Bering Sea canyons is an immediate research priority that is "partially underway".<sup>6</sup>

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<sup>1</sup> Alan M. Springer, C. Peter McRoy and Mikhail V. Flint. 1996. The Bering Sea greenbelt: shelf edge processes and ecosystem production. *Fisheries Oceanography* 5:205-223.

<sup>2</sup> Mikhail V. Flint, Sukhanova, I. N, Kopylov, A. I., Poyarkov, S.G., Whitley, T.E.. 2002. Plankton distribution associated with frontal zones in the vicinity of the Pribilof Islands. *Deep-Sea Research II* 49:6069-6093.

<sup>3</sup> [http://www.worldwildlife.org/beringsea\\_erbc/documents.html](http://www.worldwildlife.org/beringsea_erbc/documents.html)

<sup>4</sup> Stabeno, P. J., J. D. Schumacher, S. A. Salo, G. L. Hunt Jr., and M. Flint. 1999. Physical Environment Around the Pribilof Islands. Pages 193-215 In T. R. Lauglin and K. Ohtani (editors). *Dynamics of the Bering Sea*. University of Alaska Sea Grant, AK-SG-99-03, Fairbanks, Alaska, USA.

<sup>5</sup> As described in Amendment 89 EA/RIR/FRFA, page 33.

<sup>6</sup> Science and Statistical Committee. 2011. Report of the Science and Statistical Committee to the North Pacific Fishery Management Council.

**World Wildlife Fund**

406 G Street, Suite 301, Anchorage, AK 99501 USA  
Tel: (907) 279-5504 Fax: (907) 279-5509



It is clear that since 2006 new information has become available. A soon-to-be published paper by Bob (Robert) Stone (Alaska Fisheries Science Center) and John Hocevar (Greenpeace) reveals new coral data in Pribilof and Zhemchug canyons. The first comprehensive high-resolution map of Pribilof Canyon was completed in 2009 by the Alaska Fisheries Science Center and partner organizations. A recent modeling study conducted by Kinney et. al. (2009)<sup>7</sup> further developed our limited understanding of circulation exchange between the Bering Sea shelf and basins. Kinney found the largest volume transport, heat fluctuation, and salinity fluctuations occurred in a northward flow through Zhemchug and Pribilof Canyons supporting the theory that marine canyons enhance transport.

With this and other new information available to the Council, it is time to re-examine "possible habitat conservation measures" for the slope canyons. An amendment to the Bering Sea Aleutian Island Groundfish Fishery Management Plan (FMP) would be the most comprehensive and inclusive way to develop management measures.

WWF recognizes the extraordinary importance the Bering Sea places in providing economic benefits to Alaskans, and many other Americans involved in the billion-dollar fisheries. Additionally, the Bering Sea feeds millions of people in the U.S. and far beyond U.S. boundaries, thanks to the remarkable productivity of this region. Shifting ocean conditions and climate change pushes us to consider the resiliency of these fisheries and the ecosystems that support them. The Council should strive to ensure maximum resiliency of North Pacific marine ecosystems through the protection of the most productive places.

It is the view of WWF that to ensure the long-term functioning and productivity of the Bering Sea, the careful, forward-looking management of the canyons is more important than ever. An FMP amendment would allow for a renewed effort to gather scientific data, conduct analyses of these data, and consider potential management actions to ensure the long-term functioning of these canyons.

As a leader in long-term, ecosystem-based management of America's fisheries, the Council has consistently set high standards for other regions, and indeed, nations to follow. We encourage you to seize the opportunity to continue the tradition of science-based precautionary planning, return to the SSC's recommendation, and re-initiate the conversation about habitat conservation measures for the Bering Sea canyons.

Thank you,

Heather V. Brandon  
Senior Fisheries Officer

---

<sup>7</sup> Kinney JC, Maslowski, W., Okkonen, S. 2009. On the processes controlling shelf-basin exchange and outer shelf dynamics in the Bering Sea. Deep-Sea Research Part II-Topical Studies in Oceanography 56(17):1351-62.

**World Wildlife Fund**

406 G Street, Suite 301, Anchorage, AK 99501 USA  
Tel: (907) 279-5504 Fax: (907) 279-5509

# GREENPEACE

75 Arkansas Street, San Francisco, CA 94107  
Tel: 415-255-9221 • Fax: 415-255-9201  
1-800-326-0959 • www.greenpeaceusa.org

November 29, 2011

Mr. Eric Olson  
Council Members  
North Pacific Fishery Management Council  
605 West 4<sup>th</sup> Avenue, Suite 306  
Anchorage, AK 99501-2252

RE: D2-Staff Tasking

Dear Chairman Olson and Council Members,

Two vast submarine canyons, Zhemchug and Pribilof, in the Bering Sea are in need of habitat conservation measures to protect the vulnerable coral and sponge habitats occurring there from fishing practices that can harm and destroy them. The canyons, the largest in the world, are examples of rare habitats that occupy less than 4% of the world's sea floor, but may provide a home to species that live nowhere else on earth.

Relatively few biological studies have been conducted within the Bering Sea canyons – they may yield natural substances, similar to rainforests, with new medicinal and disease fighting applications – and little is known about canyon benthic communities and their potential importance for the ecosystem as a whole, or specifically for commercially important fish species.

Various attempts have been made in years past to seek protections for the canyons through the Council process given their unique and valuable role in the Bering Sea and the vulnerable nature of the corals that inhabit the area. However, in 2006 the Council decided that there was not sufficient information to pursue conservation measures for the area, and instead moved to make the canyons a research priority at the recommendation of the Science and Statistical Committee.

Greenpeace believes these canyons are in need of protections. They provide essential habitat for commercially important species, as well as marine mammals, sea birds, and other types of marine life. In addition, the Bering Sea ecosystem as a whole depends on the vital “green belt” environment occurring along the shelf break and there are no conservation measures in place currently for this highly productive habitat.

The 2010 and 2012 Reports to Congress on Implementation of the Deep Sea Coral Research and Technology Program specifically highlight Pribilof and Zhemchug Canyons as areas containing deep-sea corals. But, the reports also note the current lack of special protections for this critical habitat.

NOAA's Draft Strategic Plan for Deep-Sea Coral and Sponge Ecosystems includes the following objectives for conservation and management:



- Protect areas containing known deep-sea coral or sponge communities from impacts of bottom-tending fishing gear.
- Develop regional approaches to further reduce interactions between fishing gear and deep-sea corals and sponges.

We appreciate the paramount role of best available science in the management of these waters, and we are pleased that the SSC and the Council determined that the canyons should be a priority for research, but the precautionary approach dictates that if there are unknowns in scientific information the response should be protection until the information is available.

We have been waiting, as you may have also, for the publication in a peer-reviewed scientific journal of research by of a team of scientists who conducted a submersible expedition into the canyons in 2007. We are optimistic that this analysis will be published in time to provide a workshop presentation at the February 2012 Council meeting. We plan to share quantitative data on the density of corals and sponges in the canyons, along with analysis of their importance as habitat for fish and other marine life.

Corals and sponges may be the oldest living marine animals, many living for thousands of years. That longevity and slow growth means that recovery from fishing damage may take millennia, if it is possible at all. We cannot afford to wait to address the need for protection and continue to fish and destroy vulnerable habitat at the same time.

Thus, it is my intent to provide this comment, under staff tasking on the Council Agenda, to highlight our continued interest in addressing this essential fish habitat and ecosystem conservation issue with you in a collaborative manner. We do not believe the HAPC process is the most appropriate vehicle, but rather an EFH-level Fishery Management Plan amendment to enact new conservation areas to protect essential benthic and pelagic habitats in the Bering Sea canyons. To this end we will be looking for guidance from Council members and staff as to how move this issue forward in the most effective manner, and we look forward to bringing you a well-honed request at the February 2012 Council meeting.

Recognizing the vast knowledge and expertise of stakeholders and members of this Council process we are hopeful that a plan to effectively protect this critical habitat can be reached as swiftly as possible. We are interested in working with you all to find a suitable solution and hope you will join us in that pursuit.

Sincerely,



Jackie Dragon  
Senior Oceans Campaigner

**To: North Pacific Fishery Management Council**  
**From: Robert Snell**  
**Anacortes WA 98221 (360-770-6773)**  
**November 29, 2011**

**PURPOSE:** as a D class halibut IFQ holder in Area 4B, to request that my previous Fish-up Proposal be finalized before the implementation of Amendment 102 establishing a Community Quota Entry Program in Area 4B. Please refer to my original proposal of 2008 with updates for the justification of why the Fish Up Proposal is needed.

**BRIEF RATIONALE:** The primary reasons were focused upon safety and efficiency. The criteria establishing the fish-up proposals for areas 3B and 4C in 2007 were compared and met by this proposal, namely safety and efficiency issues. The historical amounts of unfished D class quota in area 4B would also be positively impacted if this measure were adopted. The Council appears to be preoccupied with amendment 102 establishing a CQE for Adak, obviously a work in progress that will take considerable time to assemble and provide across the board benefit to the fishing community of Adak. To address this need in front of the fish-up proposal which will provide immediate positive impact on the 12 D class shareholders in 4B, and is already in place in areas 4C and 3B, constitutes discrimination and imposes unjustifiable hardships on fishers.

**RESPONSE TO COUNCIL'S CONCERNS REGARDING FISH UP PROPOSAL** (Citations provided by Jane Di Cosimo as to why this Council tabled my proposal in October of 2011)

*The Council cited the presence of Iclicle Seafoods in Adak.* There was no intent in my proposal to deal with processing plants. The processing plant certainly must be in place to help D class shareholders since they can't carry their product to Dutch Harbor, but that has no bearing on the 10 other Atka shareholders. In fact with the new facility in Atka, it's possible all 12 shareholders would deliver in Atka if that option provided better prices and on-site supplies.

*A Potential for a newly created market for D class QS through an action to allow the community of Adak to purchase QS.* Amendment 102 to create Adak CQE's does not currently permit the purchase of D class quota, but C and B class quota can be purchased with the fish-up option. In this same document, even if permission was granted to purchase D class shares, they would still be confined to D class vessels; thereby stranding D class shareholders, as there are no D class vessels in Adak. For this reason alone, it's best if all shares are made available as C class, as they would then be in line to be fished up to any class. The two recent (May 2011) "resident" class B shareholders with their large vessels would be positioned to fish all classes of shares for the Adak CQE.

*The low amount of D QS available for new entrants in Area 4B:* The amount of D class quota share is fixed at approximately 50K lbs. The amount of D class shares remain the same. These shares will still be called D class shares and that is what occurred in areas 4C and 3B. Even when fished on larger vessels, the shares retain their D class label.

*The impact of price on D class QS if they could be fished on C class vessels.* I'm assuming the party raising this issue is concerned about the price of D class shares going up. However, the Public Review Draft for Impacts on Fish-up states on page 10, "It may increase the cost of the few Category D

Robert Snell

QS in this area. However, Category D QS constitute such a small share of the aggregate halibut TAC in Area 4B, that such a change in relative value would not be expected to substantially influence the market of QS". It may happen that the price of D class shares in 4B will increase the price of QS to other D class purchasers, particularly, if the CQE is granted more purchasing power than individuals, or they happen to be Atka residents who wish to add to their small quota shares. Currently, only 2 shareholders out of 12 have over 5K lbs of share; thus, almost everyone is an entry level shareholder and must find ways to combine their shares and/or fish in other fisheries to maintain profitability.

Based on the above response to the Council's purported concerns, there should be no impediment to getting the Fish-up Proposal out of the tabled status and moving it forward to final passage. The optimal win-win solution for all would be to move both proposals forward but to make certain that the FishUp Proposal is passed first, so that small D class shareholders are not held hostage to Amendment 102.

#### **SUPPORT FOR FISHUP PROPOSAL**

Not one D class shareholder has objected to the Fishup Proposal and most have evidenced strong support. Everette Anderson, who represents the Atka fishers, provided oral and written testimony to the Council at the October 2011 meeting in support of the Fish-Up Proposal. The 9 fishers, all Atka residents, hold approximately 88% of all D class quota share. There is one shareholder with a Unalaska residence, one from Haines, and myself from Anacortes, WA holding approximately 5%, 2%, and 5% respectively. There have been no D class shareholder residents in Adak since 2009 and no D class deliveries since my 12 in 2008. I have provided a wealth of material about why this proposal is needed to effectively fish in area 4B. This material, based on my own experience as a cod jigger and halibut fisher in areas 4B and 3B, along with other fellow Bering Sea fishers is provided without prejudice and with true intent to help other fishers to be successful and safe. I will not provide that material again but I recommend that Council members take time to review it, when the time comes to support or oppose this proposal. My last citation is from the conclusion statement from the Impact Review Draft provided by Jane Di Cosimo and staff. The Impact Draft was requested by the Council in February 2010 and presented to the Council on November 5, 2010. It concluded :

*None of the alternatives are likely to change fishing patterns or harvest amounts to an extent that would result in an impact on the halibut stock, by-catch amounts, or other environmental impacts. There are no data that suggest adverse impacts would result from a higher proportion of the harvest being taken on larger vessels. The preferred alternative is expected to increase economic efficiencies of halibut IFQ operations and safety by allowing small boat IFQ's to be fished on larger vessels. Beneficiaries of the preferred alternative would include all holders of Category D QS in Area 4B. Minor administrative costs of the program would be recovered by annual cost recovery fees for the entire program. None of the proposed actions are expected to have the potential to result in a "significant action" as defined in Executive Order*

This Impact Study provides validation for the Fish-Up Proposal and considerable motivation for the Council to move it forward. This concluding statement repeats in table format providing a quick visual comparison of Alternate 1(no action) and alternate 2( fish-up proposal) . See Attachment A

Robert Snell

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**WHY THE FISHUP PROPOSAL SHOULD RECEIVE PRIORITY OVER AMENDMENT 102**

The "Problem Statement" section from the *Regulatory Impact Review for Proposed Amendment 102* should concern this Council, as it contains the following statement: *The Council seeks to provide sustained participation without undermining the goals of the halibut and sablefish IFQ program or precluding entry-level opportunities for fishermen residing in other fishery-dependent communities.* This was written in October, 2011.

By all indications, it will be a long time before the Adak CQE could actually be in the business of having fishermen harvesting fish with leased shares. It appears that if this Council backs Amendment 102, it would be violating its own problem statement, as the creation of CQE's would prevent entry level fishers from effectively fishing their QS for an unknown, probably lengthy, time. The Atka fishers now have access to a new processing plant run by Atka Pride Seafoods. As Everette Anderson informed the Council, they will be processing p.cod, halibut, sablefish and crab in 2012. Because Atka fishers are restricted to fishing on D class vessels, their capacity for product, gear and profits is severely restricted. Only one Atka fisher has a quota share greater than 5K lbs. Thus, their shares must either be fished collectively or combined with other product. This is why Atka entry level fishers need access to larger vessels, especially in the treacherous waters and long distances required to locate fish in area 4B. These issues have been raised and needs delineated by Everette Anderson. Also they will be processing sablefish. There are currently no D class quota shares for sablefish in the Aleutian Islands. If Atka fishermen had the fish-up proposal in place, they would immediately qualify to enter the Al sablefish fishery at an entry level position. This will not happen as long as they are hostages of the Adak CQE proposal and the Council continues to deny equal fishing rights already granted to 3B and 4C.

The fish-up proposal was on the Council desk in December 2008, the Adak CQE arrived in January 2010. The fish-up proposal was sponsored by active fishermen for safety and efficiency in their fisheries. The Adak CQE proposal is not being sponsored by an active fishing community of IFQ shareholders living in Adak. In fact, they had no IFQ shareholders at the time this amendment came to Council for consideration and most of the local fleet left Adak when the fish plant closed. The Adak establishment has accrued a clouded record in managing the fisheries of Adak. As recently as the summer of 2008, Adak had an active and highly productive small boat fleet fishing there. I was recruited by John Moller to come to Adak (See Exhibit B) to fish for p.cod. For a variety of reasons, Moller left in July and things went downhill. The greatest loss were fishermen like John Moller, Adam Lalach, Russ Ott, and myself who had paid a steep price to get vessels and equipment to Adak and expected to fish there but had to move on. For others and myself, I hope the CQE is successful. I would like the opportunity to return and fish my quota shares, but more importantly, D class shareholders urgently need the fish-up proposal in place first. Having had the opportunity to fish both Adak and Sand Point, it is apparent that Sand Point, which also has the fish-up option, has a successfully managed fisheries with almost all essential components needed by fishers- something Adak has not managed to achieve. Since Sand Point has had an easier time achieving success with its location, protected waters, etc., it seems fair that Adak with its far greater challenges also needs the Fish-up option and quickly. One closing comment on the creation of CQE's in Adak would be how can different results be expected with the same players who have failed in the past?

Robert Snell

4

Category D QS in the area, and would indirectly affect an unknown number of owners of larger vessels upon whose vessels those Category D QS may be "fished up."

Although it has not been possible to fully monetize the benefits and costs from these proposed program changes, their total net impact on the economy would be expected to be *de minimus*. The proposed action generally has little attributable costs and is expected to produce benefits in the form of small economic efficiencies, greater operational flexibility, and improved safety at sea for a few fishery participants. For these reasons, they are unlikely to adversely and materially affect the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. For those reasons, the proposed alternative is not likely to meet the economic criterion for significance under EO 12866.

A summary of benefits and costs that may be attributed to the proposed alternative, relative to the status quo, is included below in Table 11.

Table 11. Summary of the cost and benefit analysis of Action 2.

	Alternative 1. No Action	Alternative 2.
Who may be affected?	Baseline	Up to 12 halibut Category D QS holders, an unknown number of Category D vessels, and up to 17 Category C vessels
Impacts to the resource	Baseline	None
Benefits	Baseline	<ul style="list-style-type: none"> <li>likely to address safety by providing an alternative to fishing on small boats in hazardous weather</li> <li>likely to increase optimum yield of the halibut resource</li> <li>may increase landings valued at \$90,000</li> <li>may increase economic efficiencies of small and larger vessel operations</li> <li>may marginally increase the value of Category D QS</li> <li>may provide <i>de minimus</i> economic relief to large vessel owners who are experiencing difficulty acquiring halibut QS</li> </ul>
Costs	Baseline	<ul style="list-style-type: none"> <li>may decrease relative market value of Category C QS</li> <li>may decrease entry-level opportunities</li> <li>likely to not reinstate use restrictions on small vessel using Category D QS in the future</li> </ul>
Net benefits	Baseline	<ul style="list-style-type: none"> <li>likely to increase safety for small vessel operators</li> <li>likely to increase optimum yield of halibut resource</li> <li>likely to increase economic efficiency by allowing small vessel IFQs to be fished on larger vessels, along with the IFQs for that size vessel class</li> </ul>
Action objectives	Does not meet safety objectives or allow for increased resource utilization.	Best meets safety objectives or allow for increased resource utilization.

Attachment A

Robert Swell

ALASKA'S NEWSPAPER

Help

Anchorage Daily News  
**adn.com**

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## Adak Fisheries - in the money

Posted by highliner  
Posted: July 3, 2007 - 1:02 pm

As close followers of Alaska's fishing industry will recall, the fate of Adak Fisheries, the fish processor way out the Aleutian chain on Adak Island, was very much in question two years ago.

The company and one of its founders, Kjetil Solberg, were feuding in court with a landlord as well as estranged former partners. At one point, the plant was closed and padlocked.

Solberg ultimately regained control of the company, and reportedly it enjoyed a dandy season this year processing cod.

The Highliner was always curious, however, where the cash came from to operate the far-flung plant, particularly in light of its troubles.

The answer, at least in part, is in this month's issue of National Fisherman magazine. On page 14 is an ad from Independence Bank of Rhode Island, which says the bank is pleased to announce financing Adak Fisheries as follows:

- \$4,350,000 for fish processing equipment and working capital
- \$1,650,000 business line of credit

Here's some other news about Adak Fisheries, recently distributed by Dave Fraser, a fisherman player at Adak:

Press Release  
June 22, 2007

FOR IMMEDIATE RELEASE

### JOHN MOLLER JOINS ADAK FISHERIES

Anchorage - June 22, 2007 - Adak Fisheries is pleased to announce and welcome John Moller to our company. John is a life long Alaskan and has participated in the Bering Sea, Aleutian Islands and Gulf of Alaska fisheries for more than 25 years. John spent ten years as the skipper of Bering Sea crab vessels.

During the past 12 years, John was the General Manager for a CDQ organization where he was instrumental in developing a small boat fleet.

John and his family live in Juneau where he is an active commercial salmon fisherman in Southeast Alaska. John's broad fisheries experience has proven valuable as he has served on the Advisory Panel to the North Pacific Fisheries Management Council for the past several years.

John joins the Adak Fisheries management team to assist with further development of our business in Adak.

Adak Fisheries' president, Kjetil Solberg, says, "John's work in the Aleutians and western Alaska for the last 25 years brings valuable experience to our team and we at Adak Fisheries are excited with John's decision to come aboard."

About Adak Fisheries

EXHIBIT B

## The Highliner

Commercial fishing is a bedrock industry in Alaska, and has been for more than a century. Every year scores of fishermen net millions of migrating salmon, challenge the icy Bering Sea to trap king crabs, lay miles and miles of baited hooks for halibut, and scoop up enough pollock for a zillion fish sticks. And when fishermen aren't out fishing, they're usually talking about fishing. That's what this blog by Wesley Loy has been all about for the two years he has written it.

### Archive

- Last set - 4/10/2009 7:35 pm
  - Seeking a PFD fishermen will actually wear - 4/10/2009 7:22 pm
  - Advice for mariculture: Grow West - 4/10/2009 7:07 pm
  - Anti-Pebble pitch to Anglo American - 4/10/2009 7:03 pm
  - Safety issues send two bouts back to Hoonah - 4/9/2009 5:05 pm
  - Palin's board pick draws fire - 4/7/2009 10:49 am
  - Cook Inlet fisherman named to board - 4/1/2009 4:51 pm
  - Wrangell deal back on? - 10/11/2009 9:26 pm
- full archive >

RECEIVED  
NOV 21 2011

North Pacific Fishery Management Council  
206<sup>th</sup> Plenary Session - December 5-13, 2011  
Anchorage Hilton Hotel

Public Comment by Ludger W. Dochtermann, Kodiak AK  
C-3 Groundfish Harvest Specifications & SAFE Reports - Final  
Approval

GOA Am. 76 - Groundfish Observer Coverage  
& Year-1 Deployment re Trawl Catcher & Catcher-Processor Subsectors

Problem: Wanton Waste & Destruction of Halibut & Tanner Crab ...  
*How much halibut & crab comes up in bottomfish tows ...?*

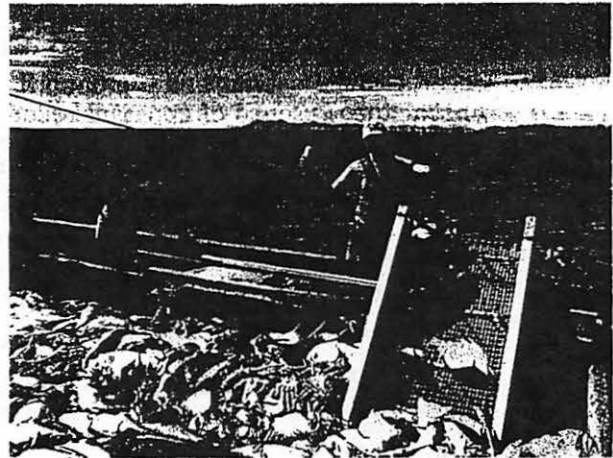
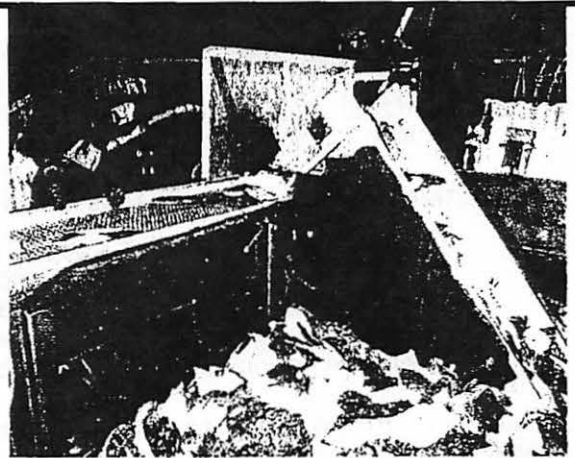
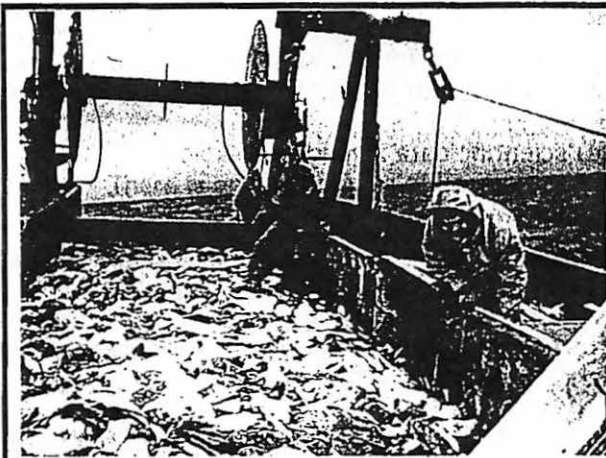


Photo source - website:  
<http://tholepin.blogspot.com/>

Proposal:  
*Full (100%) Observer Coverage on All GOA Trawl Vessels for Year-1*

**GOA GROUND FISH TRAWL SUBSECTOR OBSERVER PROPOSAL**  
**Submitted Repeatedly for 6 Years**  
**on the Official Record of NPFMC/NOAA Fisheries**  
**D-3 Groundfish Issues & D-5 Staff Tasking - Requesting Placement on**  
**the Agenda**

Name of Proposer: Ludger W. Dochtermann  
December 7, 2011

Date: (orig. June 1, 2005)

Address:  
P.O. Box 714  
Kodiak, Alaska

Telephone:  
(907) 486-5450

**Applying:** NS#1 issues of 'rebuilding', optimum yield, preventing overfishing; NS#2 -best science & providing most current, comprehensive information; NS#3 'close coordinated management'; NS#7 minimize costs (damaged stocks, wasted fuel etc.) NS#8 sustained community participation & NS#9 minimize bycatch & mortality on non-targeted species. For multi-species management to maximize net national benefits from Kodiak fisheries.

**Brief Statement of Proposal:**

Full (100%) Observer Coverage on All GOA Trawl Vessels for the Year 2012, and once in every 3 years, thereafter. By "Year 2012," I mean "year-1 deployment" - i.e., before any further Rationalization or Catch Share regulations are promulgated. So, inherent in this proposal is a halt to further action until the best (adequate) scientific data is made available.

**Objectives of Proposal (What is the problem?):**

To accurately evaluate the trawl fishery subsector's entire catch performance regarding the bycatch of non-targeted species and the on-board management conduct of the fishery's prosecution. There is a serious need to have years of full knowledge regarding bycatch for several reasons, not the least of which is for comparison with other years of reduced coverage where the Nation relies upon self-reporting during non-observer hauls.

**Need and Justification for Council Action (Why can't the problem be resolved through other channels?):**

Due to the nature of the extraordinary value of bycatch - often exceeding the value of targeted species, and due to the nature of massive discards when incidents of 'bad hauls' occur, NOAA Fisheries and the Council need more accurate base for first-data-year statistics. Absent the presence of constant recording cameras and other means of full data collection — and given the need for human confirmation of such 'remote sensing' were it to occur — the 2012 fishery would be a first start in accurate measurement.

Human behavior in the interests of overwhelming economic rewards, absent effective comparison data and enforcement, commands that NOAA base its decisions on more accurate data, and confirm that behavior is not incorrectly reported when observer coverage is not at 100% levels. The Council and NOAA are also aware of the uselessness of GOA bycatch data. The OMB needs to review Compliance with the Data Quality Act in the self-reporting system.

The recent submittal of pictures of tanner crab bycatch in the Kodiak groundfishery at the June 2009 session clearly demonstrates the need for 100% observer coverage, full time for 1 base year. The pictures from 'Tholepin/blogspot' reinforce this message. While some have historically considered Bering Sea crab pod encounters to be rare, true or not, around Kodiak trawlers do fish shallow bays and other grounds that increase the likelihood of pod encounters or are simply dragging through crab abundantly concentrated on the ocean floor.



### Foreseeable Impacts of Proposal (Who wins, who loses?):

The program would arguably be costly and operationally inconvenient to many vessels, however government could cover much of the costs in return for the knowledge gained. For the cost of not having full and complete knowledge – at least once every 7 years, and at least “once” (in 2012) – before creating any further arbitrary resource allocation (property rights shifting) regulations (such as “rationalization schemes”) may be a grave loss to society and regional economies as heavy-impact, intense methods of fishing – i.e. hard-on-bottom trawling – proceed unabated and unwatched.

The question of “who loses” has been answered — crab and halibut fishermen — unless a 100% observer program for 1 base year is put in place. Considering that Kodiak was once the “king crab capital of the world” and its restoration is severely harmed by trawl subsector bycatch incidents, the Council needs this base year to analyze such comparable losses.

The question of “who wins and who loses?” is also moot under the logic that the Public resource is an invaluable asset of the Nation, and no one loses when we all know what are the true conditions of the prosecution of such fisheries. Everyone wins when regulations are based on the best data, and when they follow the National Standards in the Magnuson-Stevens and Sustainable Fishery Acts, in their spirit and intent – especially when the regulatory process proceeds on science, not politics and greed.

### Are there Alternative Solutions? If so, what are they and why do you consider your proposal the best way of solving the problem?:

There is another means of keeping an eye on the prosecution of the fishery, but the cost of having numerous Coast Guard vessels on site, around the clock, along with ‘random-boarding’ (fair) observer coverage would be much higher than instituting a full-coverage year-stratification program that operates only once every 5 to 7 years.

Also, the Council could ban bottom trawling in state waters around Kodiak altogether.

### Supportive Data and Other Information (What data are available and where can they be found?):

This is a complex matter, as NOAA has not had adequate budgets for better research. But the conduct of the trawl fishery and the witnessing of its highly destructive prosecution are well known among NOAA, Alaskan communities and fishing crews. The Council and NOAA might have greater insight on data collection and statistical need, and that could all come out during the evaluation of this proposal were the Council to create an agenda item specifically to task going forward with 100% observer coverage in 2012 (i.e. year-1 of deployment).

I ask you to please take this into discussion in Groundfish issues, and to propose in staff tasking to agenda this proposal and to conduct complete analysis as soon as possible.

### Signature

Ludger W. Dochtermann, F/V North Point, F/V Stormbird – Kodiak, AK



## Public Comment:

The Observer issue is a straight forward problem — hard on bottom trawl fishing has been seriously under observed. The damage to tanner stocks in the Gulf of Alaska has been overly obvious during the TAC-setting process. But even more severe has been the destruction – wanton waste – of ping pong paddle-sized halibut, that never get a chance to become available for the commercial halibut fishery.

I am a directed Halibut fisherman whose GOA catch pounds have been reduced approximately in half in just the past two years. For what reason does the Council not also cut the trawl fleet catch allowances in half, as well?

Since 2005, you have repeatedly ignored and failed to address the 100% trawl subsector option that would provide you with solid baseline data, to compare all lesser observed years of trawl behavior to, and in doing so, you have ignored the requirement of National Standard 9.

- NS#9 states the requirement “to minimize bycatch & mortality on non-targeted species” is to know what the actual total annual impact from trawl fisheries is on the GOA habitat.

Now, the Council has the flexibility as well as the responsibility to make a recommendation to NOAA on what it sees as priorities for observer coverage under Amendment 76; without it requiring any other regulatory or FMP adjustments.

There is a chance that year-one deployment will be paid for by the taxpayers through NOAA’s budgets, so there is no excuse to miss this golden opportunity to gain solid baseline data for the one commercial fishery most harmful to all other participants in the multispecies complex management.

- Please provide 100% coverage of the trawl subsector(s), starting with year-1 deployment – followed by partial (30% or hopefully more) coverage for year-2 and year-3 deployments.

I can think of no truly legitimate argument – given all of the multispecies issues it would help resolve – why first-year deployment should not prioritize deployment of observers to 100% (or near total) coverage of the trawl subsector, as your preferred instruction to NOAA. This will get the program underway with a reasonable level of the number of observers, and you can make your secondary priorities to observe bigger longliners and try monitoring on a few smaller vessels. But the mission is clear – first, figure out the largest volume fishery’s interaction with all other multispecies interests.

Now is the time to exercise your duty under this flexible structure by finally considering the 100% trawl subsector proposal, herein.

There is only one thing that can stand in your way – and that would be a deliberate lack of political will to observe the fishery in compliance with best science. This is especially important given the need to observe the fishery sufficiently to do an environmental impact assessment prior to any further intent to privatize GOA fisheries, just to enrich a few special interests – the very ones who have stood in the way of your priorities and duty.

Please — I’d like to see a Council motion to make this proposal a priority beginning today, as you well understand the cost saving this would also mean for industry. Thank you,



F/V North Point, F/V Stormbird — December 5, 2011

Description of Alternatives: Pribilof Islands Blue King Crab Rebuilding Plan (includes Council modifications in October 2011)

*Note see figure at end for comparisons of Alternatives 1-5 closures*

**Alternative 1: Status Quo**

Alternative 1 retains the current protections for PIBKC stock. Pribilof Islands blue king crab is currently managed under the rebuilding plan that was implemented in 2004.

Provisions of the rebuilding plan in the Crab FMP (and ADF&G management): Directed fishery closure until the stock is completely rebuilt. ADF&G has also closed the following to further protect the PIBKC stock by minimizing bycatch: Directed fishery closure of the PI red king crab; area closure to snow crab fishing.

Provisions of the rebuilding plan in the BSAI Groundfish FMP: 1) blue king crab is a prohibited species and must be avoided while fishing for groundfish, and must be returned to the sea with minimum of injury; 2) Pribilof Islands Habitat Conservation Zone (PIHCZ) is closed to all trawl gear.

**Alternative 2: Expand the current Pribilof Islands Habitat Conservation Zone closure to apply to additional select groundfish fisheries or expand to apply to Pacific cod pot fishing.**

Option 2a: Closure applies to all groundfish fisheries which have contributed greater than a designated threshold to bycatch of PIBKC since 2003. ~~Only Rock sole exceed the 10 percent criteria, and it is already prohibited in the PIHCZ because it is a trawl fishery.~~ The only additional fisheries that would fall under the 5 percent threshold for being subject to the closure, in addition to the existing trawl closure are **pot and hook-and-line Pacific cod fisheries.**

Option 2b: In addition to the existing trawl closure, all **Pacific cod pot fishing** would also be prohibited in this zone year-round.

Option 2c: Vessels fishing for **Pacific cod with pot gear** in the existing Pribilof Island Habitat Conservation Zone (PIHCZ) must carry 100% observer coverage. Pacific cod pot fishing in the PIHCZ will be closed for the year if total PIBKC bycatch across all fisheries reaches:

- i) 20%
  - ii) 30%
  - iii) 50%
- of the overall trigger closure cap (75% ABC)

**Alternative 3: ADF&G crab closure areas applied select groundfish fishing and just Pacific cod pot fishery.**

Option 3a: Closure applies to all groundfish fisheries which have contributed greater than a designated threshold to bycatch of PIBKC since 2003. Under the five percent criteria threshold the closure would apply to the following fisheries: ~~rock sole trawl,~~ **yellowfin sole trawl, other flatfish**

**trawl, Pacific cod pot and Pacific cod hook and line fisheries. Under the ten percent criteria threshold the closure would only apply to the rock sole trawl fishery.**

**Option 3b:** Under this option no federal Pacific cod fishing with pot gear would be allowed within the confines of the closure.

**Alternative 4: Closure that covers the entire distribution of the Pribilof Islands blue king crab stock.**

There are two year-round closure options under Alternative 4:

**Option 4a:** Closure applies to all groundfish fisheries which have contributed greater than a designated threshold to bycatch of PIBKC since 2003. Under the five percent criteria threshold the closure would apply to the following fisheries: ~~rock sole trawl, yellowfin sole trawl, other flatfish trawl, Pacific cod pot and Pacific cod hook and line fisheries. Under the ten percent criteria threshold the closure (shown in Figure 10-3 (a or b)) would only apply to the rock sole trawl fishery.~~

**Option 4b:** Closure area applied only to pot fishing for Pacific cod. Under this option no federal Pacific cod fishing with pot gear would be allowed within the confines of the closure shown in Figure 10-3 (a or b).

**Alternative 5: Trigger closures with cap levels established for PIBKC in all groundfish fisheries.**

Cap sub-option	Cap description	Cap (lb)	Cap (numbers of crab)
1	OFL	2,557	957
2	ABC	2,301	862
3	90% ABC	2,071	775
4	75% ABC	1,726	646

There are 4 closure options under Alternative 5:

**Option 5a:** The existing PIHCZ, as described in Alternative 1 (Figure 10-1), would be modified to apply to Pacific cod pot and hook and line as the non-exempt trawl fisheries are already closed from this area year-round. The closure would be triggered by attainment of a fishery-wide cap set at the options below. Cap options are the following:

- Sub-option 1: Cap level =
- OFL Sub-option 2: Cap level =
- ABC
- Sub-option 3: Cap level = 90%
- ABC Sub-option 4: Cap level = 75%
- ABC

**Option 5b:** The existing ADF&G crab closure areas between 168° and 170° West longitude, and between 57° and 58° North latitude would be closed to additional fishing effort as

indicated in Figure 10-2. The fisheries to which this closure would apply are **Pacific cod pot and hook-and-line, rock sole trawl, yellowfin sole trawl, and other flatfish trawl while under threshold criteria b only rock sole would be included**. The closure would be triggered by attainment of a fishery-wide cap set at the options below. Cap options are the following:

Sub-option 1: Cap level = OFL  
Sub-option 2: Cap level = ABC  
Sub-option 3: Cap level = 90%  
ABC Sub-option 4: Cap level = 75%  
ABC

Option 5c: The closure area consists of the full distribution of the Pribilof Islands stock aggregated from 1975 to 2009 based on the NMFS EBS bottom trawl survey Figure 10-3A). The fisheries to which this closure are **Pacific cod pot and hook-and-line, rock sole trawl, yellowfin sole trawl, and other flatfish trawl while under threshold criteria b only rock sole would be included**. The closure would be triggered by attainment of a fishery-wide cap set at the options below. Cap options are the following:

Sub-option 1: Cap level =  
OFL Sub-option 2: Cap level =  
ABC  
Sub-option 3: Cap level = 90%  
ABC Sub-option 4: Cap level = 75%  
ABC

Option 5d: The smaller closure area (Option 2) consists of the full distribution of the Pribilof Islands stock aggregated from 1984 to 2009. In 1984, there was a constriction of the PIBKC distribution towards the Pribilof Islands that has persisted until 2009 (Figure 10-3B). The fisheries to which this closure would apply are **Pacific cod pot and hook-and-line, rock sole trawl, yellowfin sole trawl, and other flatfish trawl while under threshold criteria b only rock sole would be included**. The closure would be triggered by attainment of a fishery-wide cap set at the options below. Cap options are the following:

Sub-option 1: Cap level =  
OFL Sub-option 2: Cap level =  
ABC  
Sub-option 3: Cap level = 90%  
ABC  
Sub-option 4: Cap level = 75%  
ABC

Under Option 5d, suboptions 3 and 4, there is an additional option for allocation of the cap by gear types. This allocation is as follows:

Trawl gear: 40%  
Pot gear: 40%  
Hook and Line gear: 20%

**Alternative 6: PIHCZ closure to Pacific cod pot fishery and triggered area closure to qualified fisheries (PPA)**

**Component 1:** Year-round closure of the PIHCZ to fishing for Pacific cod with pot gear. This closure would be in addition to the existing closure to all trawl gear of the PIHCZ. Thus only fishing with hook and line gear would be allowable inside the PIHCZ.

**Component 2:** Triggered closure of the area representing the distribution of the PIBKC stock between 1984-2009 (see Figure 10-3). The PSC cap associated with this closure is established as a fishery-wide level at 75% of the ABC (currently this equates to a cap of 1,726 lb or 646 crab). This PSC cap is then further allocated to sectors by gear type as follows:

Trawl Gear – 45% of trigger cap

Pot Gear – 45% of trigger cap

H&L Gear – 30% of trigger cap

Under the current 2011/12 ABC this would equate to cap levels by sectors as indicated in the table below (in lb and numbers of crab):

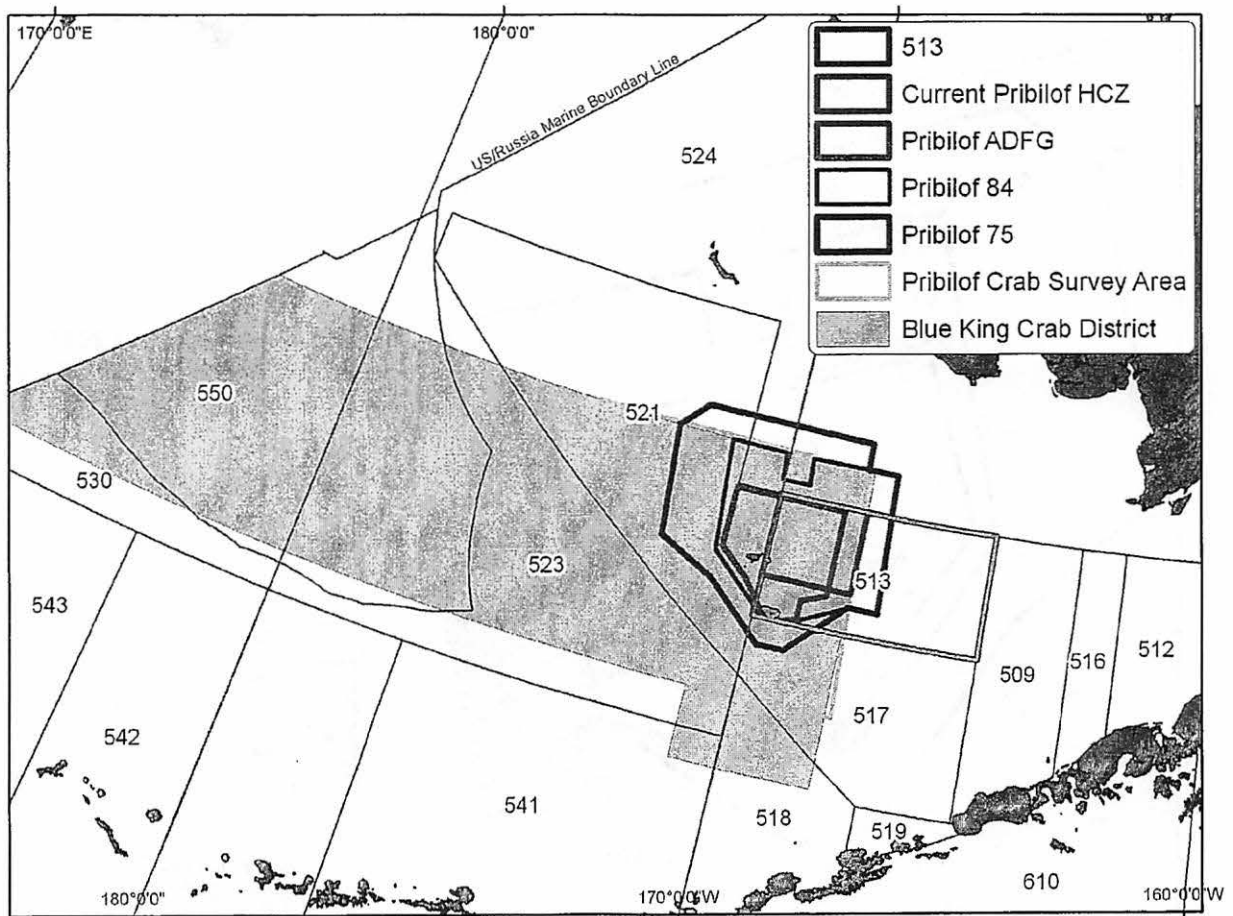
Gear type	% allocation	Cap (lb)	Cap (numbers of crab)
Trawl	45%	777	291
Pot	45%	777	291
Hook and Line	30%	518	194

#### **Option for Increased Observer Coverage**

**Option 1:** Apply increased observer coverage to fisheries which contributed to PIBKC bycatch above a threshold criteria since 2003 for which a cap (PSC or trigger) or closure applies;

**Option 2:** Apply increased observer coverage to specific fisheries.

**Sub-option (applies to both options 1 and 2):** This would sunset under implementation of the restructured observer program.



Comparison of alternative closure configurations under alternatives 1-5 with NMFS reporting areas(numbered) and the PI District (shaded area). Note that Alternative 6 (not pictured) is the area labeled "Pribilof 84" without the portion of the area to the east which extends beyond the shaded boundary of the PI District.

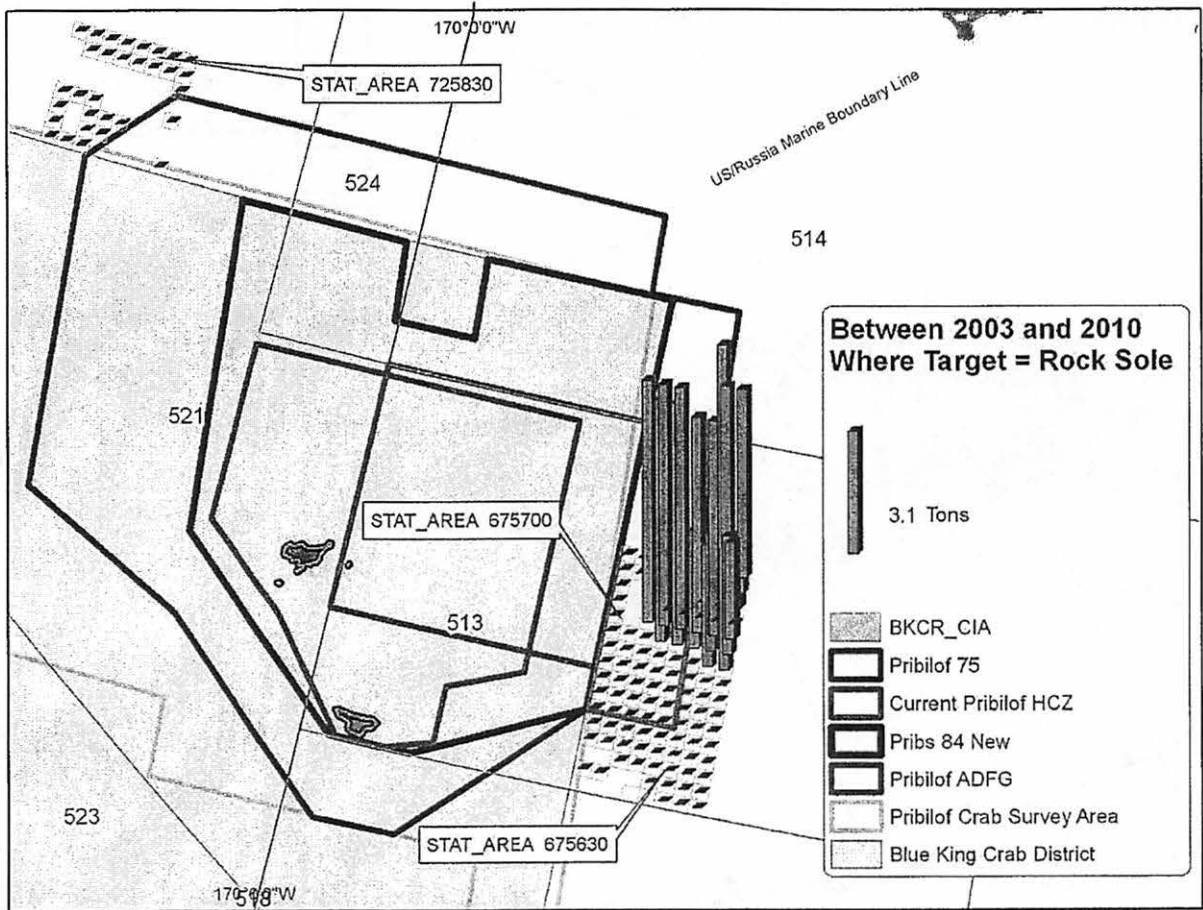


Figure 1. PSC of PIBKC by the Rocksole target fishery by State statistical area between 2003-2010 compared against the boundary for the PI District (shaded) and the alternative closure configuration in the analysis. Note this is estimated using the Catch-in-Areas database.



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September 28, 2011

Mr. Eric Olson, Chairman  
North Pacific Fishery Management Council  
605 West 4th Street, Suite 36  
Anchorage, AK 99501-2252

**RE: NPFMC March 2011 Adoption of Amendment to the Halibut and Sablefish Quota Share Program to Restrict Initial QS Recipients**

Dear Chairman Olson:

The Fishing Vessel Owners' Association ("FVOA") requests that the North Pacific Fishery Management Council ("Council") reconsider and clarify a previously adopted final action. We request that the control date of February 12, 2010, which is part of the Amendment adopted by the Council, referenced above, be effective no earlier than the date on which the Council actually adopted the amendment in March 2011. We are asking the Council to take this action before the regulatory process of NMFS begins to finalize the Council's action. The members of FVOA respect the Council process and wish this date to be the choice of the Council. We intend to provide comments to the Council at the December meeting under NMFS B reports regarding this issue.

In March 2011, the Council adopted an amendment to the halibut and sablefish Individual Fishing Quota ("IFQ") plan prohibiting the use of hired skippers for certain catcher vessel quota share ("QS") transferred after February 12, 2010 ("Amendment"). The effect of the Amendment is to require that the IFQ owner be aboard the vessel when it is fishing for halibut or sablefish QS acquired after February 12, 2010. The FVOA believes that applying the Amendment to existing and valid contracts for the sale and purchase of QS entered into before the Amendment was actually adopted violates existing law on the retroactive application of rules and is unfair and inequitable. Therefore, we urge the Council to clarify that the effective date of the Amendment is no earlier than the date on which the Council actually adopted the Amendment.

In February 2010, the Council stated its intent to consider February 12, 2010 as the control date on which to apply any owner on board ("OOB") rule the Council might later adopt regarding the acquisition of additional QS. The Council did not actually adopt the Amendment and the control date until 13 months later in March 2011.

This series of events creates two general categories of people. First, there is the category of people who had entered into contracts for the sale and purchase of QS before the February 2010 Council action but who had not completed performance of the contract by

February 12, 2010. These contracts often contained penalty clauses for non-performance. Second, there are people who initiated contract negotiations for the sale of QS after February 12, 2010, which contracts closed before March 2011. Many of these contracts also had penalty clauses for non-performance.

In 1988, the Supreme Court clarified the law concerning the power of agencies to make rules with retroactive effect. *Bowen v. Georgetown*, 488 U.S. 204 (1988). In that case, the Court unanimously held that the Department of Health and Human Services lacked the statutory authority to issue retroactive legislative rules to implement the Medicare program. The Department of Health and Human Services had promulgated a rule retroactively changing the formula by which hospitals received Medicare reimbursement. The Court held:

Retroactivity is not favored in the law.... [A] statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms.

*Id.* at 208. The Court noted “[t]he statutory provisions establishing the Secretary’s general rulemaking power contain no express authorization of retroactive rulemaking.” *Id.* at 213. In other words, *Bowen v. Georgetown* prohibits an agency from issuing a retroactive legislative rule such as the Amendment unless Congress has expressly authorized the agency to issue retroactive legislative rules. *Id.* at 208. See also *Kankamalage v. INS*, 335 F.3d 858 (9th Cir. 2003).

Nowhere does the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §1801 *et seq.* (“MSA”), expressly authorize the retroactive application of rules. Not only does the MSA contain no such express authorization, but the issues in *Bowen v. Georgetown* are analogous to the Amendment in that the Medicare reimbursement costs at issue were determined by a formula akin to a contract between the government and the providing hospitals. The Court held that the contract could not be changed retroactively. Here, initial IFQ recipients had lawful contracts for the sale or purchase of QS that were entered into before the Council adopted the Amendment in March 2011. Indeed, the Council admits the actions the Amendment now seeks to proscribe were legal. Public Review Draft of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis for the Proposed Regulatory Amendment to the Halibut and Sablefish Individual Fishing Quota Program to Prohibit Use of Hired Skippers for Future Transfers of Halibut and Sablefish B, C, and D Class Quota Shares After Control Date of February 12, 2010, dated March 2011 (“Draft RIR/IRFA”) at 3. It is these legal contracts that would be improperly changed by the Amendment in violation of the standards set out by the Supreme Court in *Bowen v. Georgetown*.

A recent decision, *Sierra Forest Legacy v. Sherman*, 646 F.3d 1161 (9th Cir. 2011), is instructive. In that case, plaintiffs asserted the United States Forest Service (“Service”) had violated the National Forest Management Act (“NFMA”) by failing to comply with monitoring requirements in a 2004 forest management plan. The Service asserted the 2004 requirement was mooted by a 2007 amendment to the forest management plan that retroactively eliminated the monitoring requirement. In holding that retroactive application of the 2007 amendment was unlawful, the Ninth Circuit reasoned that the 2007 amendment could not apply retroactively without statutory authority in the NFMA because the Service would only have the authority to

"change the legal consequences of completed acts ... if Congress conveys such authority in an express statutory grant." *Id.* at 1188, citing *Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1070 (9th Cir. 1998). The court held the NFMA did not provide the Service with such authority. *Id.* at 1188. The analogy to the control date in the Amendment is that the Amendment changes the legal consequences of valid contracts without express statutory authorization to take such retroactive actions.

The Amendment also violates the Administrative Procedure Act ("APA"). A fundamental purpose of the APA is to provide due process to persons affected by new rulemaking. In that regard, the critical point is that the Council did not adopt the February 12, 2010 control date in February 2010. The Council's only action before March 2011 was to state an intent to consider February 12, 2010 as a control date. The Council did not, in fact, adopt February 12, 2010 as a control date until thirteen months later. Thus, there was no legal requirement of which the public could be aware until March 2011 at the earliest. In taking this action, the Council violated the principles and requirements of the APA. See *U.S. v. Mowat*, 582 F.2d 1194 (9th Cir. 1978); *Paulsen v. Daniels*, 413 F.3d 999 (9th Cir. 2005); *Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479 (9th Cir. 1992); *Service Employees International Union Local 102 v. County of San Diego*, 60 F.3d 1346 (9th Cir. 1995); *Bohner v. Daniels*, 243 F.Supp.2d 1171, 1174-1175 (D. Or. 2003), *aff'd* 413 F.3d 999 (9th Cir. 2005).

FVOA recognizes that control dates are typical in fishery management plans and plans containing such dates have withstood judicial challenge. That may be true but those cases involve management plans conferring future rights based on past performance. Such future management plans differ significantly from the Amendment. The fundamental distinction is that the Amendment retroactively changes existing and legal contractual rights and obligations. NMFS' regulations authorize the contracts affected by the Amendment's control date and the Council admits the contracts are legal. Retroactively applying new rules to invalidate previously legal behavior is contrary to the APA.

In sum, FVOA believes the Amendment violates the Supreme Court's prohibition on retroactive rulemaking. The MSA does not expressly grant to the Council or NMFS the authority to issue retroactive rules. Even if such authority existed, the earliest time the Council can be said to have actually adopted the February 12, 2010 control date was March 2011. Before that, the Council's only action was a statement of an intent to consider a date, hardly the adoption of a legally binding standard. The Council's action violates the intent and standards of the APA.

For all of these reasons, we urge the Council to clarify that the effective date of the Amendment is no earlier than the date on which the Council actually adopted the Amendment.

Sincerely,



Robert D. Alverson  
Manager

RDA:cmb

Cc: Eric Schwaab

JAY INSLEE  
1ST DISTRICT, WASHINGTON

COMMITTEE ON ENERGY AND COMMERCE  
ENERGY AND POWER



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November 29, 2011

Eric C. Schwaab  
Assistant Administrator for Fisheries  
NOAA Fisheries Service  
1315 East West Highway  
Silver Spring, MD 20910

Dear Mr. Schwaab:

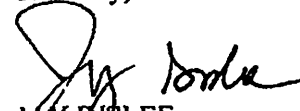
I write to you concerning an issue that has caused uncertainty for Washington state's fishing industry and threatens to impact local jobs. In March 2011, the North Pacific Management Council approved an amendment to the Halibut and Sablefish Individual Fishing Quota program regarding changes to the owner-on-board provisions as well as the rights of initial quota holders. The approved amendment retroactively applied to all quota shares transferred after February 12, 2010, nearly a year before the amendment was passed.

Prior to passage of the amendment, the Council allowed initial quota shareholders in the Alaska fleet to purchase additional quota shares without requiring an owner-on-board provision. This amendment makes changes to that provision now requiring initial quota holders to meet the owner-on-board requirement should they purchase any additional shares. The amendment was backdated to February 12, 2010, meaning that any transactions between that date and the passage of the amendment in March 2011 will now be subject to the new requirements of the amendment.

It is my understanding that the backdating of the amendment could threaten Washington state-based quota shareholders engaged in business transactions during the backdating period that now exist in legal limbo, with possible financial penalties to owners for deconstructing those contracts. Further, the retroactive application may introduce a factor of uncertainty into the market for quota shares; parties seeking to trade their shares in the future could find transactions more difficult to arrange and complete if the regulations are viewed as unpredictable.

I respectfully ask that you consider striking the retroactive dating clause from the approved amendment in order to bring certainty to Washington state-based businesses. Fishing is a vital industry for Washington state's economy and the potential disruption produced by backdating this amendment could impair Washington state fisheries and cost local jobs. By aligning the effective date with the date on which the amendment is adopted, consistency can be maintained in the quota shares market and the legal quandary for existing transactions can be prevented.

Sincerely,

  
JAY INSLEE  
Member of Congress