

**FINAL MINUTES**  
187th Plenary Session  
North Pacific Fishery Management Council  
April 1-7, 2008  
Anchorage Hilton Hotel  
Anchorage, Alaska

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# North Pacific Fishery Management Council

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APPROVED: \_\_\_\_\_

DATE: \_\_\_\_\_

## MINUTES

187th Plenary Session  
North Pacific Fishery Management Council  
April 1-7, 2008  
Hilton Hotel  
Anchorage, Alaska

The North Pacific Fishery Management Council met April 1-7, 2008 at the Hilton Hotel in Anchorage, Alaska. The Scientific and Statistical Committee met March 31-April 2, and the Advisory Panel met March 31-April 5 at the same location. The following Council, staff, SSC and AP members attended the meetings.

### Council Members

Eric Olson, Chair  
Doug Mecum/Sue Salvesson  
Greg Balogh  
Dave Benson  
John Bundy, Vice Chair  
Sam Cotten  
Ed Dersham  
Duncan Fields

Dave Hanson  
Roy Hyder  
Denby Lloyd/Earl Krygier  
Gerry Merrigan  
Bill Tweit for Jeff Koenings  
CAPT Neuss/LCDR Lisa Ragone  
for RADM Brooks  
Nick Klingensmith/Nicole Ricci

### NPFMC Staff

Gail Bendixen  
Jane DiCosimo  
Diana Evans  
Mark Fina  
Jeannie Heltzel  
Nicole Kimball

Jon McCracken  
Chris Oliver  
Maria Shawback  
Diana Stram  
Bill Wilson  
Dave Witherell

Scientific and Statistical Committee

Pat Livingston, Chair  
Robert Ames  
Bill Clark  
Keith Criddle, Vice Chair  
Sue Hills  
Anne Hollowed  
George Hunt

Kathy Kuletz  
Seth Macinko  
Franz Mueter  
Lew Queirolo  
Terry Quinn II  
Doug Woodby

Advisory Panel

Joe Childers  
Mark Cooper  
Craig Cross  
John Crowley  
Julianne Curry  
Tom Enlow  
Bob Gunderson  
John Henderschedt  
Jan Jacobs  
Bob Jacobson

Simon Kinneen  
Chuck McCallum  
Mike Martin  
Matt Moir  
John Moller  
Rex Murphy  
Ed Poulsen  
Michelle Ridgway  
Beth Stewart  
Lori Swanson

**Appendix I contains the public sign-in register, and a tape log of Council proceedings, including those providing reports and public comment during the meeting.**

**A. CALL TO ORDER**

Chairman Eric Olson called the meeting to order at approximately 8:05 a.m. on Tuesday, April 1, 2008. Mr. Olson welcomed new members Ed Dersham (appointed) and Greg Balogh (USF&WS representative) and noted that Doug Mecum is representing NMFS-Alaska Region, and Nick Klingensmith is sitting in for Nicole Ricci, representing the State Department. Ms. Ricci joined the meeting later in the week.

Oath of Office. Mr. Mecum administered the Oath of Office to Mr. Dersham.

Agenda. The agenda was approved as published, with minor scheduling changes.

Minutes. The minutes of the February 2008 NPFMC meeting were approved with minor editorial changes.

[NOTE: Mr. Tweit participated in the entire meeting in place of Dr. Koenings.]

**B. REPORTS**

The Council received the following reports: Executive Director's Report (B-1); NMFS Management Report (B-2); ADF&G (B-3); USCG Report (B-4); USF&WS Report (B-5); and Protected Species Report (B-6). Following are brief recaps of discussion or action taken during reports.

Executive Director's Report

*Marine Protected Areas.* Mr. Oliver advised the Council that the newly revised draft framework for developing the National System of Marine Protected Areas is still unclear whether and to what extent current closure areas will be included and whether Fishery Management Councils will have a role in the nomination process or other issues relating to current closed areas. Mr. Oliver asked for Council input for comments to be submitted during the current public comment period for the draft framework. Council members requested that the Executive Director and Chair draft a letter for Council review later in the meeting. The draft letter of comments, after Council review and discussion, was approved.

*Permit Fee Discussion.* Regarding the request from NMFS-HQ for Council input on the establishment of fees to recover administrative costs associated with the issuance of all permits, Mr. Oliver advised that NMFS regional staff will provide a discussion paper in June with an analysis to be provided in the fall.

The Executive Director's report also included information on the upcoming electronic monitoring workshop, the proposed rule for revisions to the EFP/scientific research permitting process, NMFS's current effort to gather information on nations whose vessels engage in illegal, unregulated or unreported fishing, an upcoming Arctic workshop planned by the Naval War College, and a scoping process initiated by the Navy relative to proposed Navy training activities in the Gulf of Alaska.

NMFS Management Report

Sue Salveson provided an update on the status of FMP and regulatory amendments and Andy Smoker provided the in-season management report.

*BS Amendment 89.* Ms. Salveson advised that NMFS did not include in the current proposed rule for Amendment 89 a provision the Council approved to open a 'wedge' area if and when a gear modification provision is approved for the Bering Sea flatfish fishery. NMFS has determined that that provision would have to be pursued with a follow-up analysis and rulemaking when gear modification is approved. Council members expressed disappointment that additional staff work and time would be required to initiate further action on a provision that has already been analyzed and approved. The Council discussed this further under Staff Tasking, agenda item D-6.

*Correction to Final Rule-Crab Program.* Ms. Salveson also advised that NMFS will issue a final rule correction to the Crab Program. The Council explicitly approved maximum IPQ in the Bristol Bay red king crab and Bering Sea snow crab fisheries based on 90% of 175 million pounds for snow crab and 90% of 20 million pounds, respectively. However the final rule reflected the total amounts rather than the 90% approved by the Council.

*MRA Accounting Period - Non-AFA Trawl CPs.* Ms. Salveson noted that NMFS has been working on the regulatory amendment approved by the Council in December of 2006, however tighter logbook and reporting requirements had to be developed in order to document when new trips can be triggered when vessels go in and out of Steller sea lion protection areas. That has been accomplished and the rule will soon go out for public comment. Ms. Salveson advised that tightened logbook and reporting requirements will most likely be developed for other fisheries to provide better accounting for MRAs.

ADF&G Report

Herman Savikko provided an overview of State-managed fisheries of interest to the Council and briefly reviewed recent Board of Fisheries actions. He noted that the Board delayed action on two proposals in order to consult with the Council during a joint meeting on April 8.

USCG Report

Captain Michael Neussl, sitting in for RADM Brooks, briefly reviewed the rescue operation associated with the sinking of the fishing vessel *Alaska Ranger* and complimented rescue crews as well as the crew of the vessel *Alaska Warrior* which assisted in the rescue. The Captain also briefed the Council on plans to conduct a multi-mission patrol involving CG cutter *Polar Sea* in the Arctic this summer and plans to move some Coast Guard resources into the Nome, Barrow and Prudhoe Bay to determine what is necessary to operate in those areas, logistically and effectively.

LTCDR Lisa Ragone provided an update on 17<sup>th</sup> District Coast Guard activities through March 22, 2008, including fisheries enforcement, marine safety and rescue operations.

USFWS

Greg Balogh provided a written report covering Yukon River salmon management, Pacific walrus, short-tailed albatross, spectacled eiders, sea otters, and the Kittlitz's murrelet.

Protected Species Report

Bill Wilson (NPFMC) reviewed the Council memorandum on a petition submitted to the U.S. Fish and Wildlife Service to list the Pacific walrus as a threatened species and an update on the conservation efforts for the endangered short-tailed albatross. Dr. Steve Barbeaux of the AFSC was scheduled to provide a report on the results of the EFP to conduct acoustic surveys of pollock in the Aleutian Islands; however Dr. Barbeaux was unable to attend.

**FORMAT FOR COUNCIL MEETING MINUTES FOR 'C' AND 'D' AGENDA ITEMS**

Each agenda item will begin with a copy of the original "Action Memo" from the Council meeting notebook. This will provide an "historical" background leading to any discussion and/or action. This section will be set in a different typeface and size than the actual minutes. Any attachments referred to in the Action Memo will not be included in the minutes, but will be part of the meeting record and available from the Council office on request. Following the Action Memo will be reports of the Scientific and Statistical Committee and Advisory Panel on the subject. Last will be a section describing Council **Discussion and Action**, if any.

**C. NEW OR CONTINUING BUSINESS**

C-1 Steller Sea Lion Issues

**ACTION REQUIRED**

- (a) Review NMFS Response to Fast-Tracking Two SSLMC Proposals**
- (b) Review Final Revised SSL Recovery Plan**
- (b) Receive Report from SSLMC on Preliminary Recommendations for Changes in SSL Protection Measures**

## **BACKGROUND**

### **A. Response From NMFS on Two SSLMC Proposals**

At the February 2008 meeting, the Council was requested by the public to consider fast-tracking an analysis and possible rule making for two proposals identified by the Steller Sea Lion Mitigation Committee (SSLMC) that may have minimal impact on SSLs, or may be perceived as SSL friendly, and that could improve fishery management and also benefit the industry. These include a proposal for improved Atka mackerel fishery management in the AI region using cooperatives (Proposal # 8), and a proposal for a minor change in fishing season start date for the pollock C season in the GOA (Proposal # 16). The Council heard public testimony on these proposals, and reviewed comments provided by the SSLMC. The Council requested that NMFS develop discussion papers that outline the process that would be involved in fast-tracking these two proposals, and how that might affect the overall SSL consultation process and schedule.

NMFS has completed a preliminary review of these proposals, and has provided a response to the Council. Their letter is attached as Item C-1(a). This letter was previously sent out in a Council mailing. If the Council has questions, NMFS staff is available to discuss their assessment of these two proposals.

### **B. Final Revised Steller Sea Lion Recovery Plan**

The Office of Protected Resources, NMFS, has recently completed the Final Revised Steller Sea Lion (SSL) Recovery Plan. The Federal Register Notice of Availability of the final recovery plan is attached as Item C-1(b). In development since the early 2000s, the recovery plan provides the Agency with a blueprint for "recovering" the endangered western SSL and the threatened eastern SSL. The Council and SSC previously reviewed a May 2007 draft of this recovery plan at a special meeting in August 2007. The Council's letter and SSC minutes, outlining their concerns with the draft recovery plan, is attached as Item C-1 (c). The introductory pages and the Executive Summary of the March 2008 final recovery plan are attached as Item C-1(d). NMFS staff will present the recovery plan to the Council, highlighting updates and changes made to the plan since the May 2007 draft.

### **C. Update on SSLMC Proposal Review Process**

The new EIS and consultation schedule requires the Council's SSL Mitigation Committee (SSLMC) to finalize its recommendations for changes in SSL protection measures by the Council's June 2008 meeting. The SSLMC met March 10-12, 2008 to receive a briefing on the Final Revised SSL Recovery Plan, to continue its evaluation of proposals for revising SSL protection measures, and to prepare a preliminary package of recommendations for Council review at this meeting. The SSLMC plans to complete its work in May when it reviews the draft *status quo* BiOp and finalizes its recommended changes to SSL protection measures; those recommendations will be informed by both the final SSL Recovery Plan and the draft *status quo* BiOp.

After receiving a presentation of the Final Revised SSL Recovery Plan, the SSLMC reassessed its plans for preparing a preliminary recommendation to the Council for this April 2008 meeting. In light of the conclusions in the recovery plan, and the nature of the final recovery criteria, the SSLMC was concerned that it did not have a sufficiently clear perspective on what kinds of changes in SSL protection measures might be possible. The SSLMC believes that much of this information and the Agency's view of SSL interactions with fisheries will not be available until the draft *status quo* BiOp is released for public review in May 2008, and therefore the SSLMC decided to delay further consideration of proposals until the BiOp is available. The SSLMC requested that Chairman Larry Cotter present to the Council the Committee's lingering concerns with the final recovery plan, and to outline for the Council its plans for completion of the Committee's recommendations in May 2008. The minutes of the Committee's March 10-12 meeting are attached

as **Item C-1(e)**. (Currently, the SSLMC is scheduled to meet May 12-16, 2008 to receive and review the draft *status quo* BiOp, and to finalize its recommendations.)

**Report of the Scientific and Statistical Committee**

*Recovery Plan*. Although the plan is final and no further changes will be made until it is officially revised, the SSC provided comments to build the administrative record for the next revision. Please see the SSC Minutes, Appendix II to these minutes, for those comments.

The **Advisory Panel** did not address this agenda issue.

**COUNCIL DISCUSSION/ACTION**

[NOTE: Earl Krygier participated in this discussion for Denby Lloyd.]

The Council received staff reports from Bill Wilson (NPFMC) and Kaja Brix (NMFS-AKR), and a report by Larry Cotter on the recent meeting of the Steller Sea Lion Mitigation Committee (SSLMC).

**Earl Krygier moved to direct the Executive Director to draft a letter to NMFS forwarding the concerns and recommendations expressed by the SSLMC**

The motion was seconded and carried without objection (Mr. Fields was out of the room). The Council also asked that a copy of the letter be sent to the State Department.

With regard to the recommendation to request that NMFS again allow handling and tagging of adult females for research purposes, Dr. Doug DeMaster, Director of the AFSC, advised that the prohibition is part of an agreement as a result of the lawsuit to prohibit those practices, thus NMFS does not have the authority to remove the prohibition. He advised that the agreement will be revisited in the fall of 2009.

**Earl Krygier moved to request that NMFS provide at a future meeting a description of how the four strategies listed in the plan would be accomplished. Particularly, how the first item (population monitoring and research. . .) would be accomplished in the Russian area, especially as related to current funding issues, and what can be done (working with State Department) to get a resolution. Additionally, with regard to the third item (adaptive management) request that NMFS explain what is envisioned for adaptive management.** The motion was seconded and carried without objection (Mr. Fields was out of the room.) Mr. Krygier asked that a copy of the Council's letter to NMFS be copied to the State Department.

Mr. Krygier noted that with regard to third point, the National Academy of Sciences, the Fishery Interactive Team, and the SSLMC have all pointed out major difficulties in developing large adaptive management programs.

**Gerry Merrigan moved to ask NMFS to initiate the process for delisting the Eastern population of the Steller sea lion.** The motion was seconded, and carried without objection.

C-2 BSAI Crab Management

(a-b) 90/10 A/B Share Modifications

**ACTION REQUIRED**

- (a) Receive report from the Crab Advisory Committee.
- (b) Refine problem statement and elements/options for analysis of 90/10 A share/B share modifications.

**BACKGROUND**

(a) Report of the Crab Advisory Committee

At its February 2008 meeting, the Council received a report from the Crab Advisory Committee, which included several proposals for the Council's purpose and need statement, as well as discussion of potential bases for the Council's proposed action. That report summarized the committee's discussions of the proposed revisions to the current 90/10 A share/B share split, community, processor, and crew concerns (under both the existing program and under the proposed program revisions), and emergency relief from regionalization. The report also included two proposals advanced to address crew issues and recommended processes for addressing arbitration issues and data issues.

In response to the report and public testimony, the Council directed the committee to prioritize discussion of the following items:

1. identification of problems in the Aleutian Island golden king crab fisheries and potential alternatives to address those problems;
2. potential provision for emergency exemption from regionalization;
3. proposals to provide equitable access to the program by crew;
4. review and possible revision of the community right of first refusal; and
5. development of improvements to the binding arbitration process.

Since the February Council meeting, the committee met once, during which all of the above issues were discussed. Minutes from that meeting are attached (Item C-2(a)(1)).

Three proposals concerning management changes to the Aleutian Islands golden king crab fisheries were discussed by the committee. These proposals each included a purpose and need statement. The three purpose and need statements overlap, but each has a different scope and focus. The first concerns only the Western Aleutian Islands golden king crab fishery and cites underharvest of the TAC in the first two years of the program, low market prices, inefficient processor share use caps, and other factors as the reason for a reconsideration of management alternatives for the that fishery.

The second proposed purpose and need statement also concerns the Western Aleutian Island golden king crab and Western Aleutian Islands red king crab fisheries. This proposal also identifies unharvested TAC in the Western golden king crab fishery as a problem. The proposal questions initial allocations of processing shares in both fisheries. In the golden king crab fishery, the allocations are asserted to be based on qualifying years during which the fishery was not fully utilized, and therefore, fails to allocate shares based on actual processing histories. The proposal suggests that the allocations of red king crab processor shares are arbitrary because they were based on processing in the golden king crab fishery. The proposal suggests that processor share allocations did not adequately consider National Standard 8 requirements, because the interests of Adak and Atka were not adequately taken into account. The proposal also asserts that the requirements for limited access programs were not correctly implemented because present



participation, investment, and dependency of Adak in crab processing were not adequately considered. The proposal also asserts that the analysis before the Council was inadequate because confidentiality requirements limited the analysis of IPQ impacts. The proposal concludes with assertions that the golden king crab is not fully utilized because regionalized deliveries cannot be made to Adak, that regionalization is ineffective in protection Adak interests, and that processing in Adak has dropped precipitously under the program.

The third proposed purpose and need statement concerns both the Eastern and Western Aleutian Islands golden king crab fisheries. It identifies these fisheries as unique because of their few harvesting and processing participants and suggests that failure to harvest the full Western TAC and consolidation of processing have caused problems with processor competition and realizing the full value from these fisheries.

The alternatives suggested by one or more of the proposals to address the identified concerns for the Western Aleutian Islands golden king crab fishery are:

- 1) Await full implementation of new custom processing use cap exemptions
- 2) Forced divestiture if not utilized 2 or 3 years out of five
- 3) Reallocation of PQS, CP and CPO shares to more adequately address community concerns.
- 4) Convert west-designated IFQ shares to "B" shares
  - Option 1: with compensation to PQS holders
  - Option 2: without compensation to PQS holders
  - Option A: new "B" shares are not regionalized
  - Option B: new "B" shares are west-designated
    - Suboption: require onshore delivery
- 5) Reallocation of PQS, CP and CPO shares to more adequately address community concerns and processing investment
  - Option 1: with compensation to PQS holders
  - Option 2: without compensation to PQS holders

One proposal suggested that alternatives 4) and 5) could be applied to the Western Aleutian Islands red king crab fishery. In addition, one proposal suggested that alternative 4) could be applied to the Eastern Aleutian Islands golden king crab fishery.

**(b) Refine problem statement and elements/options for analysis of 90/10 A share/B share modifications**

At its October 2007 meeting, the Council requested staff to prepare an analysis for review at the October 2008 meeting examining the effects of a change in the A share/B share split. The Council requested that the analysis examine:

- 1) the status quo 90/10 split, as well as 80/20, 70/30, 50/50, and 0/100 share splits,
- 2) incremental changes in the share split over a period of years,
- 3) a one-pie IFQ allocation to vessel owners, processors, and skippers and crewmembers based upon each sector's investments and participation in the fishery, and
- 4) the effects of shifts in the share split as the annual TAC levels rise and fall in each fishery.

At its February 2008 meeting, the Council indicated that, to better frame its consideration of changes from the status quo, it would consider revisions to its purpose and need statement and the development of more specific elements and options for that analysis. The Council also request that staff make available strawman elements and options that could be used to further specify its alternatives at this meeting. A copy of the Council's draft purpose and need statement,

its October 2007 motion, and staff's draft strawman elements and options are attached as Item C-2(b)(1).

The Scientific and Statistical Committee did not address any of the BSAI crab rationalization agenda issues at this meeting.

### **Report of the Advisory Panel**

#### C-2(a-b)

The AP recommends the following problem statement and elements and options:

The Bering Sea Crab Rationalization program was designed by the Council and authorized by Congress to recognize the prior economic interests and importance of the partnership between harvesters, processors and communities. The program was developed at a time that harvesting and processing capacity had expanded to accommodate highly abbreviated seasons, and significant portions of that capacity operated in an economically inefficient manner or were idle between seasons.

There have been continuing philosophical differences concerning the Program, but there have also been a number of targeted amendments to improve the Program. Recently, the Council, industry and crab-dependent communities have come to recognize that additional targeted amendments concerning Western AIGKC, community ROFR, and Emergency Relief from Landings requirements may be required to address the following specific problems:

1. Under-utilization of west-designated WAIGKC. A significant portion of the west designated WAIGKC TAC was left in the water during the 2006/7 season. It is not known if the Council's recent action to create a custom processing use cap exemption for this fishery will be sufficient to solve this problem. Given the potential impact on all participants, the Council has determined that this problem requires additional analysis.
2. Community ROFRs may be inadequate for long-term community protection. The Council has heard from several crab-dependent communities that the current ROFR regulations may be inadequate for long-term community protection under some circumstances. The Council's intent in establishing Community ROFRs was to insure that the PQS earned in a region created long-term benefits for that region, and that community ROFRs provided each community in that region with an adequate opportunity to acquire specific PQS if faced with the prospect that the PQS would move to another community within the region through a sales transaction. Communities have also indicated that they are unable to make their ROFR rights effective due to the lack of funding and because a ROFR may involve processing company's entire holdings and assets in a particular region which may be financially beyond the capacity and interest of a community to undertake, as the community is only interested in the processor holdings within the community boundaries. The current ROFR regulations allow for the expiration of the ROFR under certain circumstances. The Council has determined that this problem requires additional analysis.
3. Unexpected events may require some relief from regionalization and other landings requirements. Recent ice events, a processing platform fire and an oil spill have all raised the possibility of temporary emergencies, natural or man-made, preventing delivery and/or processing in certain communities or regions. The challenge is to protect the balance of the program – including the investments of crab-dependent communities – while providing flexibility to industry during extraordinary events. The Council has determined that this problem requires additional analysis.

**Elements and Options  
Western AIGKC**

1. WAG king crab options

1.1 Status Quo

1.2 Convert IFQ A shares to B shares

Suboption 1. with compensation to PQS holders

Suboption 2. without compensation to PQS holders

1.3 Convert West Designated IFQ A shares to B shares

Suboption 1. with compensation to PQS holders

Suboption 2. without compensation to PQS holders

Sub option: new B shares retain west area designation using landing requirements defined under the Custom Processing Amendment

Sub option: new B shares have no regional designation

1.4 Reallocation of PQS among other PQS holders if not utilized 3 years out of 5 years

1.5 Reallocation of PQS, CP, and CPO shares to more adequately address community concerns and processing investment

Suboption 1. with compensation to PQS holders

Suboption 2. without compensation to PQS holders

**Community ROFRs**

1. Status Quo

2. Establish a new ROFR with a starting date of October 1, 2009

Community entity has more than 60 days and 120 days but no more than 90 and 150 days, respectively, to indicate interest and to finalize agreement

A loan program is to be established to be administered by the Secretary to allow communities to exercise their ROFRs

**Emergency Relief from Landings Requirements:**

The AP would request the Crab Committee be tasked with developing elements and options for Emergency relief for the June Council meeting.

**EDR MetaData**

The AP concurs with the industry and public review process for EDR meta data recommended by PNCIAC and outlined in its testimony and recommends the following:

1. That, consistent with Council direction, a public meeting between PNCIAC and staff be convened upon completion of the draft metadata table, to inform PNCIAC and other industry members about the draft table, underlying assumptions and related audit results;
2. That immediately following that meeting, a public review and comment period of no less than 45 days be established to provide feedback to staff;
3. That the staff evaluate the comments and recommendations provided by PNCIAC and the public, and incorporate those comments and recommendations where appropriate as a "second draft" to the metadata table;

4. That upon completion of the second draft, PNCIAC will organize a public meeting for a staff presentation of the revised metadata table;
5. It is anticipated that final comments and recommendations resulting from this process will be provided to the Council by PNCIAC after the presentation of the second draft.

#### COUNCIL DISCUSSION/ACTION

The Council received a written report from the Crab Advisory Committee, a staff report on the analysis from Mark Fina (NPFMC), the Advisory Panel report, and oral public comment on this agenda issue.

**Denby Lloyd moved a problem statement and alternatives and options for an analysis of the A/B share split.** The four-page document is found in Appendix IV(a) to these minutes.

While the 'statement of intent' following the problem statement was not part of the actual motion, there was discussion regarding those elements. Mr. Lloyd noted that those elements are not explicit, crafting of the options are not necessarily focused on these elements. The Council asked many questions of staff and

**Bill Tweit moved a substitute motion which mirrored the AP recommendations to a large extent and would supplant the original Council motion from October 2007.** The motion was seconded. Mr. Tweit said that he could not support Mr. Lloyd's motion because it hinges on only two options, status quo, or major changes to the entire program going beyond addressing the original intent of the Council in October.

Mr. Tweit's motion failed, 6 to 5, with Benson, Bundy, Hyder, Tweit and Merrigan voting in favor.

Duncan Fields moved to amend Mr. Lloyd's motion to add options 2 and 2 from Alternative 2 to Alternative 3 as options 5 and 6, however withdrew the motion after discussion.

**Gerry Merrigan moved to amend Alternative 2, Option 2, as follows.** Mr. Merrigan's changes are underlined.

**Option 2) North region *C. opilio*, Pribilof Red and Blue king crab, Saint Matthew blue king crab, and Bristol Bay red king crab owner shares. Assign a North region delivery requirement to a portion of *C. opilio*, Pribilof Red and Blue king crab, Saint Matthew blue king crab, and Bristol Bay red king crab owner harvesting quota share (QS) holdings. C shares shall not be regionalized. The portion of regionalized QS shall be set such that 37 percent of all *C. opilio* harvesting QS are North region. The portion of regionalized QS for species other than *C. opilio* to be delivered in the North region shall be set at the same percentage of the TAC as is currently established for those species. North region share deliveries will be subject to a system of binding arbitration.**

**Suboptions: Apply the North region designation as follows:**

- a) based on initial allocation (adjusted proportionally by owner QS holdings such that the appropriate percentage of QS is designated North region).
- b) as a constant percentage to all *C. opilio*, Pribilof Red and Blue king crab, Saint Matthew blue king crab, and Bristol Bay red king crab owner share holdings.

**Option 3) North region *C. opilio*, Pribilof Red and Blue king crab, Saint Matthew blue king crab, and Bristol Bay red king crab owner and C shares. Assign a North region delivery requirement to a portion of all *C. opilio*, Pribilof Red and Blue king crab, Saint Matthew blue king crab, and Bristol Bay red king crab harvesting QS holdings. C shares shall be subject to a North region delivery requirement in the same proportion as owner shares. North region share deliveries will be subject to a system of binding arbitration.**

**Suboptions: Apply the North region designation as follows:**

- a) based on initial allocation.
- b) across all *C. opilio*, Pribilof Red and Blue king crab, Saint Matthew blue king crab, and Bristol Bay red king crab QS holdings. The portion of regionalized QS shall be set such that the appropriate percentage of the listed species' QS holdings are North region.

**Option 4) (NEW) Maintain existing Western Aleutian Island undesignated golden king crab regionalization.**

The motion was seconded and, after discussion, carried without objection.

**John Bundy moved to amend Alternative 3, Option 2, to add percentages of 6%, 8%, and 11% as suboptions.** The motion was seconded by Dave Benson.

**Duncan Fields moved to amend to add 33% as an additional option.** The motion was seconded by John Bundy and carried with Merrigan objecting. Mr. Bundy's amended amendment carried without objection.

**Gerry Merrigan moved to amend Alternative 3, to add a suboption: "Do not remove regionalization in all other BSAI rationalized crab fisheries where the PQS is removed, other than Bristol Bay red king crab and *C. opilio*."** The motion was seconded by Dave Benson and carried without objection.

**Gerry Merrigan moved to amend Alternative 3, to add a suboption to Options 1(a) and 1(b): "Regionalize additional B shares in each case."** The motion was seconded and carried without objection.

The Council discussed whether the options were mutually exclusive. Mr. Lloyd responded that that was his original intent, however, considering the current discussion and amendments, after analysis the Council may consider whether the options could be 'mixed and matched.'

**Bill Tweit moved to amend, Alternative 3, Option 3, Suboption (a), to add two additional suboptions: iv: 130 Milb and v: 175 Milb.** The motion was seconded

**Dave Benson moved to amend 'v' to 157 Milb.** The amendment was seconded and carried without objection.

**Duncan Fields moved to amend option 'iv' to 112 Milb.** The motion was seconded and carried without objection. Mr. Benson's amendment carried without objection.

Mr. Tweit's amended amendment carried without objection.

**Gerry Merrigan moved to amend Alternative 3, Option 2, to add a suboption to regionalize additional C shares, as in Option 1. The motion was seconded and carried without objection.**

Mr. Merrigan also offered a motion to amend Alternative 3 to add a new option to clarify use of ROFRs upon the conversion of PQS, but withdrew the motion after Council discussion.

**Gerry Merrigan moved to amend Alternative 3, Option 4, to add the following suboption:**

**ii) Additional B shares would be subject to regionalization requirements.**

The amendment was seconded and carried without objections.

The Council then began to discuss and amend the components in the main motion.

**Duncan Fields moved to amend Component 1 to increase the range similar to those in Alternative 3, Option 2: 6%, 8%, 11%, and 33%. The motion was seconded by John Bundy.**

**John Bundy moved to amend to add in the regionalization option previously approved under Alternative 3, Option 2. The amendment was seconded and carried without objection.**

Mr. Fields' amended motion carried without objection.

**Gerry Merrigan moved to amend Component 2, Option 1, to exempt the Atka. The motion was seconded. Mr. Merrigan noted that his intent is to preserve the status quo for Atka..**

Mr. Fields was concerned that the wording could actually prevent processing in Atka.

**Duncan Fields moved a substitute motion to amend the Option 1 to read (new language underlined): "Except in the community of Atka, all processing must take place at a shorebased processing facility. . .[the rest of the sentence remains the same]. The motion was seconded and carried without objection.**

**Bill Tweit moved to amend Component 4 to add two additional options: 6) 5.0; 7) 7.0. The motion was seconded by Dave Benson and carried without objection.**

**Bill Tweit moved to add a new Component (5):**

**Component 5 (applicable to non-PQS fisheries under Alternative 2 or 3)**

**Analyze options to compensate PQS holders by reallocating PQS as CVO QS.**

**Converted CVO QS would retain regional designations. This converted CVO QS would be added to the existing CVO QS pool.**

**Option 1: Analyze different ratios for assigning PQS as CVO QS based on the following ratios. Each crab fishery may have a different conversion ratio. These ratios are based on rough estimates of the relative value of each PQS to CVO QS. This range could be expanded or modified based on further analysis.**

- 1 PQS unit= .5 CVO QS unit
- 1 PQS unit= .4 CVO QS unit
- 1 PQS unit= .3 CVO QS unit
- 1 PQS unit= .2 CVO QS unit
- 1 PQS unit= .1 CVO QS unit
- 1 PQS unit= 0.075 CVO QS unit

**Option 2: Regional Designation (different suboptions may apply to each fishery).**

**Suboption a) Assign regional designations to converted CVO QS**

**Suboption b) Do not assign regional designations to converted CVO QS**

The motion was seconded by Dave Benson. Mr. Tweit's rationale explained that preliminary estimates of the relative value of QS relative to PSQ suggest that CVO QS is substantially more valuable than QS. This component would create a "one pie" system that would compensate PQS holders without the need of additional authority for a loan program and would redistribute the relative gains realized by QS holder to PQS holders to achieve greater equity in the relative value of the underlying permits.

**Dave Benson moved to amend the parenthetical "(applicable to non-PQS fisheries. . .) to delete the words 'non-PQS'.** The motion was seconded and carried without objection after staff advised how the change would be handled in the analysis. Mr. Benson noted this motion would make the component consistent with the rest of the alternatives and options.

Mr. Tweit's amended motion carried, 8 to 3, with Hyder, Merrigan and Olson voting against.

**Duncan Fields moved to amend Component 5 to include a suboption: any PQS converted to CV QS must be divested by the recipient in (a) 3, (b) 5, or (c) 7 years.** The motion was seconded by Denby Lloyd and failed, 6 to 5, with Benson, Bundy, Fields, Hyder and Olson voting in favor.

**Mr. Benson moved to amend Alternative 3, Option 4, to remove suboption a) (fleet-wide through an adjustment in the CV owner share A/B split.).** The motion was seconded and carried without objection.

The Council then discussed and amended the Problem Statement.

**Roy Hyder moved to amend the first sentence of the Problem Statement, as follows (deletions are struck out and new wording underlined):** The Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Program is a comprehensive approach. . . [rest of this sentence remains the same]. **Additionally, revise the third sentence as follows: However, in practice, Many aspects of the program have proven to be are more complex and costly than anticipated.** The motion was seconded and carried without objection.

**Bill Tweit moved to delete the phrase 'and traditional support sectors' in the first sentence of the second paragraph.** The motion was seconded and carried without objection.

**Bill Tweit moved to delete the last sentence of the second paragraph ("Elements of the program that have failed to provide anticipated benefits, such as some community protections, need to be recognized and re-crafted to reduce complexities and uncertainties experienced under the program.")** The motion was seconded and failed, 8 to 3, with Benson, Bundy and Tweit voting in favor. Those voting against noted they would prefer replacement language before removing the current sentence.

**Roy Hyder moved to postpone action on the entire motion indefinitely.** The motion was seconded and failed, 6 to 5, with Benson, Bundy, Hyder, Tweit and Merrigan voting in favor. Mr. Hyder felt the Council needs more time to consider the ramifications of the amendment with the numerous changes made during consideration of the current motion. He believes continuing with this action will destabilize the crab fisheries.

The main motion, as amended, carried, 6 to 5, with Benson, Bundy, Hyder, Tweit and Merrigan voting against.

**Gerry Merrigan moved to approve the AP recommendation regarding the public review process for EDR meta data:**

**The AP concurs with the industry and public review process for EDR meta data recommended by PNCIAC and outlined in its testimony and further directs that use of the EDR data be postponed until the Council receives and approves the meta data that is the outcome of the process and recommends the following:**

- 1. That, consistent with Council direction, a public meeting between PNCIAC and staff be convened upon completion of the draft metadata table, to inform PNCIAC and other industry members about the draft table, underlying assumptions and related audit results;**
- 2. That immediately following that meeting, a public review and comment period of no less than 45 days be established to provide feedback to staff;**
- 3. That the staff evaluate the comments and recommendations provided by PNCIAC and the public, and incorporate those comments and recommendations where appropriate as a "second draft" to the metadata table;**
- 4. That upon completion of the second draft, PNCIAC will organize a public meeting for a staff presentation of the revised metadata table;**
- 5. It is anticipated that final comments and recommendations resulting from this process will be provided to the Council by PNCIAC after the presentation of the second draft.**

The motion was seconded.

**Duncan Fields moved to amend the first paragraph, as follows:**

**The AP concurs with the industry and public review process for EDR meta data recommended by PNCIAC.** ~~and outlined in its testimony and further directs that use of the EDR data be postponed until the Council receives and approves the meta data that is the outcome of the process and recommends the following:~~ It was clarified that the intent would be that the process outlined in points 1-5 would still be completed prior to the use of the data.

The motion was seconded and carried, 6 to 5, with Benson, Bundy, Hyder, Tweit and Merrigan voting against.

Mr. Merrigan's amended motion carried without objection.



Roy Hyder moved to task the Crab Committee to address those items enumerated in the AP minutes, page 1 and 2 [up to the last recommendation on meta data which has already been dealt with]. The motion was seconded.

Bill Tweit moved to amend to include item 3 from his failed motion to include discussion of long-term crew participation in the program. The motion was seconded and carried without objection.

Mr. Hyder's amended motion carried without objection. The main motion, as amended, is found in Appendix IV(b) to these minutes.

**C-1(c-d) Crab Arbitration Issues**

**ACTION REQUIRED**

- (c) Review discussion paper concerning grant of immunity for arbitrators, market analysts, arbitration organizations, and the third party data providers.
- (d) Final action on arbitration amendment package.

**BACKGROUND**

**(c) Discussion paper concerning grant of immunity for arbitrators, market analysts, arbitration organizations, and the third party data providers**

As a part of its motion from the October 2007 meeting, the Council requested staff to proceed with an analytical process for considering an amendment to grant immunity to arbitrators, market analysts, arbitration organizations, and the third party data providers, who participate in the arbitration system of the crab rationalization program. As a starting point for the development of that analytical package, Council staff has conferred with the arbitration organizations, who administer and oversee the arbitration system, and NOAA General Counsel concerning the scope of the Council's authority under the Magnuson Stevens Act (including the amendment authorizing the crab rationalization program) to grant such immunity.<sup>1</sup> The following discussion paper, attached as Item C-2(c)(1), is the product of those communications. At this meeting, the Council will review the discussion paper, and take action as necessary.

**(d) Final action on arbitration amendment package**

An important component of the crab rationalization program is the arbitration system that is used to resolve delivery terms between holders of Class A individual fishing quota (IFQ), which must be delivered to a processor holding unused individual processing quota (IPQ). In the first two years of the program certain technical aspects of the arbitration system have limited the effectiveness of that system. This action includes alternatives that would modify the following three aspects of the arbitration system to improve it effectiveness:

- Removal of the requirement of market reports and non-binding price formulas for fisheries unlikely to open. The action would require arbitration organizations to agree to provisions for the contingency of a fishery opening being announced unexpectedly.
- Modification of the timeline for the golden king crab market report and formula does to allow for data from most recent fishery to be used.
- Address staleness of the market reports by allowing those reports to be produced and supplemented at any time (provided those reports contain only publicly available information to allay any potential antitrust concerns).

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<sup>1</sup> As a part of those communications, the arbitration organizations provided Council staff with a memo, which is part of the crab advisory committee minutes included in the material for agenda item C-2(a).

At its February 2008 meeting, the Council reviewed a draft analysis of these amendments and directed staff to release the analysis for public review at this meeting. The executive summary of the analysis is attached as Item C-2(d). The Council is scheduled to take final action on this amendment package at this meeting.

### Report of the Advisory Panel

Immunity for Arbitrators. The AP recommends the Council adopt as a preferred alternative a regulatory provision that explicitly provides arbitration administrators with the authority to establish procedures and make administrative decisions concerning the arbitration program, provided those actions are not inconsistent with any other requirement contained in the regulations. The Council would remove any uncertainty concerning the scope of authority granted these administrators. By clarifying that authority, the provision would strengthen any argument that any common law or other immunity should be extended to any acts taken to administer the arbitration program (including the development of arbitration procedures).

The AP believes that immunity for arbitrators and arbitrator administrators is important but may be beyond the scope of authority of the Council.

Crab arbitration. The AP recommends the Council select the following as preferred alternatives:  
Revising market reports and non-binding price formulas: Alternative 2  
Modifying the timeline for GKK market report and formula: Alternative 2  
Addressing staleness of market reports: Alternative 2.

### COUNCIL DISCUSSION/ACTION

The Council received a staff report from Mark Fina (NPFMC), the Advisory Panel report, and oral public comment on these two issues.

**John Bundy moved to approve the recommendations of the Advisory Panel: The Council supports immunity for arbitrators and arbitrator administrators for the reason that it promotes independence in making judgments to resolve disputes subject to arbitration. Accordingly, the Council adopts as its preferred alternative a regulatory provision that explicitly provides arbitration administrators with the authority to establish procedures and make administrative decisions concerning the arbitration program, provided those actions are not inconsistent with any other requirement contained in the regulations. The Council would remove any uncertainty concerning the scope of authority granted these administrators. By clarifying that authority, the provision would strengthen any argument that any common law or other immunity should be extended to any acts taken to administer the arbitration program (including the development of arbitration procedures). The motion was seconded. Mr. Bundy noted that while the Council does not have authority to grant immunity, his motion would put it on the record that the Council favors it and supports arbitrators and arbitrator administrators being able to develop internal procedures to maximize the ability to use the common law defense if necessary. It was clarified that the discussion paper would be folded into the crab arbitration analysis.**

**In order to make that intent clear, Bill Tweit moved to amend include that the preferred alternative also include the following from the draft RIR/IRFA: Revision of market reports and non-binding price formulas--adopt Alternative 2; for modification of the timeline for golden king crab report and formulas--adopt Alternative 2, with one modification: delete the words 'market report and'; so the non-binding price formula for the golden king crab fisheries will be required to be completed at**

least 30 days prior. Additionally, for the third issue, assessing staleness of market reports, adopt Alternative 2 as the preferred alternative. The motion was seconded by Dave Benson and carried without objection.

Sam Cotten moved to delete the first sentence of Mr. Bundy's motion -- "The Council supports immunity for arbitrators and arbitrator administrators for the reason that it promotes independence in making judgments to resolve disputes subject to arbitration." The motion was seconded. Mr. Cotten noted that he is not in a position to support 'immunity' without having more information, although he supports the intent that the Council wishes arbitrator administrators to have the authority to establish procedures and make administrative decisions.

John Lepore, NOAA General Counsel advised that because this is a final action, the Council should have the motion in written form. The motion was projected from the computer onto screens so that Council and the public could see it. The motion on the screen was as follows (This shows Mr. Cotten's proposed amendment):

~~The Council supports immunity for arbitrators and arbitrator administrators for the reason that it promotes independence in making judgments to resolve disputes subject to arbitration. Accordingly, t~~ The Council adopts as a preferred alternative a regulatory provision that explicitly provides arbitration administrators with the authority to establish procedures and make administrative decisions concerning the arbitration program, provided those actions are not inconsistent with any other requirement contained in the regulations. The Council would remove any uncertainty concerning the scope of authority granted these administrators. By clarifying that authority, the provision would strengthen any argument that any common law or other immunity should be extended to any acts taken to administer the arbitration program (including the development of arbitration procedures).

The Council selects the following as preferred alternatives for the arbitration amendment package:

Revising market reports and non-binding price formulas: Alternative 2  
Modifying the timeline for GKK formula: Alternative 2  
Addressing staleness of market reports: Alternative 2

Mr. Cotten's amendment carried 6 to 5, with Benson, Bundy, Dersham, Hyder, and Tweit voting against.

Bill Tweit moved: The Council deems proposed regulations that clearly and directly flow from the provisions of this motion to be necessary and appropriate in accordance with section 303(c), therefore the Council authorizes the Executive Director and the Chairman to review the draft proposed regulations when provided by NMFS to ensure that the proposed regulations to be submitted to the Secretary under section 303(c) are consistent with these instructions.

The motion was seconded and carried. The main motion carried unanimously. The final motion is found in Appendix IV(b) to these minutes.

#### C-1(e) C Share Active Participation

#### **ACTION REQUIRED**

(e) Final action on active participation requirements for C share acquisition and holdings.

## BACKGROUND

The crab rationalization program is unique in several ways, including the allocation of a portion of the harvest share pool to captains for exclusive use by captains and crew (C shares). In the first two years of the program, some participants have questioned the specific provisions defining active participation requirements for C share acquisition and use. During the transition to the rationalization program, the fleet contracted substantially, eliminating eligibility of several for crew to acquire C shares. In addition, some participants believe a strict owner-on-board requirement is overly restrictive. To address these issues, the Council has identified alternatives to the current active participation requirements for analysis. At the February 2008 meeting, the Council reviewed the analysis and requested that staff release the document for public review and Council action at this meeting. The executive summary of that analysis follows.

### Report of the Advisory Panel

The AP recommends the Council adopt the following as its preferred alternative:

#### Alternative 1 (Status quo)

#### Alternative 2 (may be adopted with alternative 3)

For a period of ~~5 or 7~~ 4 years from the implementation of **this amendment the program**, C shares can also be acquired by an individual who:

- 1) is a U.S. citizen,
- 2) has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery (historic participation), and
- 3) received an initial allocation of C shares.

#### Alternative 3 (may be adopted with alternative 2)

For a period of ~~5 or 7~~ 4 years from the implementation of **this amendment the program**, C shares can also be acquired by an individual who:

- 1) is a U.S. citizen,
- 2) has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery (historic participation), and
- 3) demonstrates participation in the BSAI rationalized crab fisheries during
  - i. 3 of the 5 seasons, or
  - ii. ~~2 of the 3 seasons~~,immediately preceding implementation of the rationalization program.

### **Alternatives for revision of active participation requirements for C share holders:**

#### Alternative 1 (Status quo)

#### Alternative 2 (may be adopted with alternative 3)

To receive an annual allocation of IFQ, a C share holder must:

have participated in at least one delivery in a fishery subject to the crab rationalization program in the 3 seasons (i.e., crab fishing years) preceding the application for IFQ.

Suboption: have received an initial allocation of C shares and participated in 30 days of State of Alaska or Alaska Federal fisheries in the 3 seasons (i.e., crab fishing years) preceding the application for IFQ.

**No IFQ will be withheld until 3 years after implementation of this amendment.**

Suboption: Establish a mechanism for the annual allocation of C share IFQ to ensure that the portion of the TAC available to active C share holders is equivalent to the C share portion of the fishery as established by the Council (currently 3 percent).

Alternative 3 (may be adopted with alternative 2)

A C share holder who does not meet one of the following active participation criteria will have all C share QS holdings revoked:

The person must have participated in at least one delivery in one of the rationalized crab fisheries in the preceding 5 years seasons (i.e., crab fishing years).

Suboption: The person must have received an initial allocation of C share QS and have participated in 30 days of fishing in State of Alaska or Alaska federal fisheries in the preceding 5 years seasons (i.e.; crab fishing years).

~~This provision will not require individuals to divest of Quota Share until 5-10 seasons after implementation of the crab program.~~

**No QS will be revoked before 5 years from implementation of this amendment.**

Suboption: Persons who received an initial allocation of C share QS and are 60 years of age or older on the date of implementation of this amendment are exempt from active participation requirements. This exemption is limited to initially issued QS (i.e., not purchased QS).

**No prohibition of leasing C shares will apply.**

And add to the purpose and needs statement: **C share holders who received an initial allocation who are 60 years and older at the time of implementation should be exempt from active participation requirements to ensure that they receive the intended benefit of that allocation.**

## **COUNCIL DISCUSSION/ACTION**

The Council received a staff report from Mark Fina (NPFMC), the Advisory Panel Report, and oral public comments on this issue.

**Denby Lloyd moved the following (based on AP recommendations with noted revisions):**

**The Council adopts the following as its preferred alternative:**

**Alternatives to modify active participation requirements for persons wishing to acquire C shares during the current transition:**

**Alternative 2 (may be adopted with alternative 3)**

**For a period of 4 years from the implementation of this amendment, C shares can also be acquired by an individual who:**

- 1) is a U.S. citizen,**
- 2) has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery (historic participation), and**
- 3) received an initial allocation of C shares.**

**Alternative 3 (may be adopted with alternative 2)**

**For a period of 4 years from the implementation of this amendment, C shares can also be acquired by an individual who:**

- 1) is a U.S. citizen,**
- 2) has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery (historic participation), and**
- 3) demonstrates participation in the BSAI rationalized crab fisheries during**
  - i. 3 of the 5 seasons**

**immediately preceding implementation of the rationalization program.**

**Alternatives for revision of active participation requirements for C share holders:**

**Alternative 2 (may be adopted with alternative 3)**

**To receive an annual allocation of IFQ, a C share holder must:**

**have participated in at least one delivery in a fishery subject to the crab rationalization program in the 3 seasons (i.e., crab fishing years) preceding the application for IFQ.**

~~**Suboption: have received an initial allocation of C shares and participated in 30 days of State of Alaska or Alaska Federal fisheries in the 3 seasons (i.e., crab fishing years) preceding the application for IFQ.**~~

**No IFQ will be withheld until 3 years after implementation of this amendment.**

**Suboption: Establish a mechanism for the annual allocation of C share IFQ to ensure that the portion of the TAC available to active C share holders is equivalent to the C share portion of the fishery as established by the Council (currently 3 percent).**

**Alternative 3 (may be adopted with alternative 2)**

**A C share holder who does not meet one of the following active participation criteria will have all C share QS holdings revoked:**

**The person must have participated in at least one delivery in one of the rationalized crab fisheries in the preceding 5 4 years (i.e., crab fishing years).**

~~**Suboption: The person must have received an initial allocation of C share QS and have participated in 30 days of fishing in State of Alaska or Alaska federal fisheries in the preceding 5 years (i.e., crab fishing years).**~~

**No QS will be revoked before 5 years from implementation of this amendment.**

~~**Suboption: Persons who received an initial allocation of C share QS and are 60 years of age or older on the date of implementation of this amendment are exempt from active participation requirements. This exemption is limited to initially issued QS (i.e., not purchased QS).**~~

**No prohibition of leasing C shares will apply.**

~~**And add to the purpose and needs statement: C share holders who received an initial allocation who are 60 years and older at the time of implementation should be exempt from active participation requirements to ensure that they receive the intended benefit of that allocation.**~~

The motion was seconded.

**John Bundy moved to amend:**

**Under Alternatives for revision of active participation requirements for C share holders, reinstate the suboption under Alternative 2:**

**Suboption: have received an initial allocation of C shares and participated in 30 days of State of Alaska or Alaska Federal fisheries in the 3 seasons (i.e., crab fishing years) preceding the application for IFQ.**

**and reinstate the suboption under Alternative 3:**

**Suboption: The person must have received an initial allocation of C share QS and have participated in 30 days of fishing in State of Alaska or Alaska federal fisheries in the preceding 4 years (i.e.; crab fishing years).**

The motion was seconded and carried, 7 to 4, with Cotten, Dersham, Fields, and Lloyd voting against.

**Sam Cotten moved to amend Alternative 2 (revisions of active participation. . .) to the participation requirement from 3 seasons to 2 seasons.** The motion was seconded and failed, 9 to 2, with Cotten and Fields voting in favor.

**Bill Tweit moved: The Council deems proposed regulations that clearly and directly flow from the provisions of this motion to be necessary and appropriate in accordance with section 303(c), therefore the Council authorizes the Executive Director and the Chairman to review the draft proposed regulations when provided by NMFS to ensure that the proposed regulations to be submitted to the Secretary under section 303(c) are consistent with these instructions.**

The motion was seconded and carried without objection. The main motion, as amended carried 10 to 1, with Fields voting against.

### **C-2(f) Cooling Off Period/St. George ROFR**

#### **ACTION REQUIRED**

**(f) Final action on the 'cooling off' period and renewal of rights of first refusal for St. George.**

**Selection of a preferred alternative**

#### **BACKGROUND**

**Under the crab rationalization program, processors were allocated processor quota shares (PQS) based on their respective processing histories. To protect community interests, most processing shares were required to be used in the community in which the processing history occurred during the first two years of the program (the 'cooling off period'). In addition, holders of most processor shares were required to enter agreements granting community designated entities a right of first refusal on certain transfers of those shares. The agreements also specify that the right of first refusal will lapse, if the holder of the PQS processes those shares outside of the community for a period of 3 consecutive years. Due in part to intervening circumstances, and notwithstanding these protections, no shares designated for processing in the City of St. George were processed in that community during the first two years of the rationalization program. This action considers extending the 'cooling off period' for the City of St. George and revising the conditions under which the right of first refusal will lapse with respect to those shares.**

**Since initiating this action, Aleutian Pribilof Island Community Development Association has challenged the decision of NOAA Fisheries to waive the cooling off requirement during the**

second season of the program (2006-2007). As noted in the analysis, Aleutian Pribilof Island Community Development Association (the holder of the right of first refusal on behalf of St. George) has reached a settlement with one of the two PQS holders subject to the St. George-based right of first refusal, settling any issue concerning the 'cooling off' period and right of first refusal with respect to that PQS holder. The dispute remains outstanding with the second PQS holder. The hearing administrator in the case has issued a decision concerning potential remedies. That decision states that the administrator has authority to prevent the lapse of the right of first refusal (by restarting the timeline for lapsing of the right of first refusal; however, the decision also states that the administrator has no authority to require processing in St. George.

At its February 2008 meeting, the Council reviewed the analysis of alternatives defining a new cooling off period and extending the rights of first refusal for processor shares originating in St. George. After reviewing the analysis the Council directed released the analysis for public review and final action at this meeting. The executive summary of the analysis is attached.

#### **Report of the Advisory Panel**

The AP recommended the Council delay action until the October Council meeting.

#### **COUNCIL DISCUSSION/ACTION**

The Council received a staff report from Mark Fina (NPFMC), the Advisory Panel report, and oral public comments on this issue.

**Gerry Merrigan moved to approve Alternative 2: A processor that holds St. George IPQ is subject to a two-year cooling off period and a new right of first refusal three-year agreement with a starting date of October 1, 2009 – unless that processor and the community entity provide proof to NMFS that they have otherwise entered into a written contract that addresses both the cooling-off period and the right of first refusal. The motion was seconded.**

Mr. Mecum advised he would abstain from a vote because his agency would make the determination on whether to issue a waiver.

Some Council members felt they did not have enough information on the subject at this time and could not support the motion at this time. Mr. Merrigan noted that this would reaffirm the intent of the original program, just re-starting the clock because processing could not occur due to weather-related problems.

Mr. Merrigan's motion failed on a 5-5 tie vote, with Benson, Dersham, Hyder, Merrigan and Olson voting in favor and Bundy, Cotten, Fields, Tweit and Lloyd voting against. Mr. Mecum abstained.

**John Bundy moved to approve the recommendation of the Advisory Panel to delay action on this issue until the October 2008 meeting. The motion was seconded and carried without objection.**

#### **C-3      GOA Sideboards for BSAI Crab Vessels**

#### **ACTION REQUIRED**

**Initial review of GOA sideboards for BSAI crab vessels**



## **BACKGROUND**

**At the December 2007, the Council reviewed a discussion paper on GOA sideboard limits and initiated an analysis of an amendment package which included three proposed actions: 1) adjust the GOA Pacific cod sideboard exemption qualifications for non-AFA crab vessels, 2) exempt qualified non-AFA crab vessels from GOA pollock sideboards, and 3) exempt non-AFA crab vessels from GOA Pacific cod sideboard limits from November 1 to December 31 of each year. The analysis was mailed out in mid-March; an executive summary of that analysis is attached (Item C-3(1)). At this meeting, the Council is scheduled for an initial review of that analysis.**

### **Report of the Scientific and Statistical Committee**

The SSC noted that the current draft purpose and need statement does not provide a concise or compelling expression of need for the proposed action and recommended that the Council provide clearer guidance as to its purpose, need, objectives and acceptable suite of alternatives. The SSC provide additional comments for the analyst -- please see the SSC Minutes, Appendix II to these minutes, for those comments.

### **Report of the Advisory Panel**

The AP recommended the Council release the analysis for public review with the following modifications:

2.4 Raise the threshold from < 500,000 lbs to < 750,000 lbs

For parts I and II, the AP recommended the Council clarify that it does not intend to disqualify any currently exempt vessels or licenses based on this action.

Additionally, for Part III, for the purposes of clarification, include that the intent of the action is to address National Standard 1 and more fully utilize cod TAC in the GOA but not impact non-crab qualified vessels dependent on GOA cod harvest. NMFS may relax the B season sideboard restriction after November 1<sup>st</sup> if sufficient quota exist and the fishery will not close prematurely, impacting non-crab qualified vessels.

Remove Option 2.1, suboption 2.1.1 suboption 2.2.1 into a separate category "Options reviewed but not considered."

## **COUNCIL DISCUSSION/ACTION**

The Council did not address this agenda issue because of time constraints. It will be re-scheduled for the June 2008 Council meeting. However, it was understood that staff will address SSC comments to the extent possible before the next draft is provided to the Council.

### **C -4     Trawl LLP Recency**

## **ACTION REQUIRED**

**Final action on BSAI and GOA trawl LLP recency analysis (RIR/EA/IRFA)**

## BACKGROUND

In February 2008, the Council completed initial review of the draft RIR/EA/IRFA to remove latent trawl CV and CP licenses from the BSAI and GOA groundfish fisheries, and released the analysis for public review subject to some changes. In general, the amendment proposes two alternative approaches to remove subarea endorsements (BS, AI, WG, and CG) from latent trawl catcher vessel and trawl catcher processor licenses. In order to retain the area endorsement, the license must meet specified landings criteria. Note that there are three provisions which outline exemptions to the proposed landings criteria: 1) an AFA exemption from the BSAI landings criteria; 2) a Central Gulf rockfish pilot program exemption from the CG landings criteria; and 3) a BSAI Amendment 80 exemption from the BSAI landings criteria. Other exemptions are proposed as options within the amendment package.

Given the proposed criteria and exemptions, the amendment package overall could reduce the number of trawl CV endorsed licenses by a *maximum* of: 10% in the AI; 23% in the BS; 52% in the CG; and 59% in the WG. This action could also reduce the number of trawl CP endorsed licenses by a *maximum* of: 11% in the AI; 6% in the BS; 26% in the CG; and 27% in the WG.

At its February 2008 meeting, the Council approved a restructuring of the components, alternatives, and options, as well as made some substantive changes to the alternatives under consideration. In brief, the Council removed an option that would exempt all AI endorsements from meeting the proposed landings criteria. The Council also added Option 5 under Component 1, Alternative 3, which would allow licenses endorsed for both the Western and Central Gulf with significant (20, 30, or 40) landings in only one of those Gulf areas to retain both Gulf area endorsements. Note that minor changes to the language of Option 5 are suggested in the analysis (p. xii and p. 28) in order to better reflect the intent as stated at the time the option was added.

The Council also added a suboption under Component 2. Component 2 provides that groundfish harvest history is credited to each LLP stacked on a single vessel at the time the landing was made. The new suboption would require any licenses that are stacked on a single vessel at the time of implementation of this action to be linked together in perpetuity. The rationale for adding this suboption is related to concerns with double counting groundfish history and qualifying two licenses that can then be used separately in the future to increase effort. The analysis of this suboption notes that while concerns exist relative to increasing future effort, double counting history is not relevant in this action, since allocations are not at issue. If the Council wishes to ensure that this action should not be interpreted by the public as being determinative for the crediting of catch history in the future, it could include a provision in its motion stating that in future allocation actions, the Council may credit catch to a single license in cases in which multiple licenses are stacked on a vessel. Should the Council want to select this suboption as part of its preferred action, there are a number of questions and clarifications outlined in the analysis that must be addressed.

Finally, due to a number of legal and policy concerns, the Council removed an option under Component 4 which would have exempted a number of vessels identified by the Aleut Corporation from the requirement to hold an AI endorsement to fish groundfish in the AI. Two remaining options under Component 4 would award AI endorsements to non-AFA trawl catcher vessel licenses (<60' and ≥60') that meet specified landings thresholds in the AI parallel or State water (Pacific cod) fisheries. The Council also added an option in February that would make those newly created AI endorsements severable and transferable from the overall license, which differs from every other endorsement under the existing License Limitation Program. These AI endorsements could only be transferred to other non-AFA trawl CV licenses with the appropriate (<60' or ≥60') MLOA designation.

Given that there are very few non-AFA trawl catcher vessels with AI endorsed licenses, the intent under Component 4 was to create new AI endorsements in order to help facilitate the development of a resident fishing fleet in Adak, pursuant to the Council's problem statement. With the removal

of Option 3, which proposed to allow the Aleut Corporation to control which vessels would be exempt from the AI endorsement requirement, there are no options under Component 4 that guarantee that the AI endorsements created would be used to deliver groundfish to Adak. However, the remaining options could create up to 15 new AI endorsements on non-AFA trawl catcher vessel licenses that meet the landings criteria, thus providing an opportunity for new effort in the Federal AI groundfish fisheries off Adak. If these endorsements are made severable and transferable from the overall license, it greatly increases the potential that they will be used in the AI, as the license holder that earns the endorsement can sell or lease the endorsement to an estimated universe of 91 eligible non-AFA trawl catcher vessel licenses. The analysis discusses the details and anticipated effects of this action.

The analysis was sent to you on March 10, and the executive summary is attached as Item C-4(a). The current suite of alternatives is provided as Item C-4(b). For the Council's reference, an expanded version of Table 33 from the analysis is provided as Item C-4(c). While not previously specified, this action would require both regulatory and FMP amendments (BSAI FMP Amendment 92/GOA FMP Amendment 82). Final action is scheduled for this meeting.

The Scientific and Statistical Committee did not address this agenda.

### Report of the Advisory Panel

The AP recommends the following as the preferred alternative for final action on the trawl recency amendment package:

#### Choice of Alternatives (from page 14 of the analysis):

*Alternative 1. No Action*

*Alternative 2. Remove the subarea (BS, AI, WG, and / or CG) endorsements on trawl LLPs unless the license meets a minimum landing threshold in the overall management area (BSAI or GOA).*

*\*Alternative 3. Remove the subarea (BS, AI, WG, and / or CG) endorsements on trawl LLPs unless the license meets a minimum landing threshold in the specified subarea.*

### Choose Alternative 3

#### Choice of Components (from page 15 & 16 of the analysis):

##### Component 1 (landing threshold):

*Option 1. One groundfish landing during 2000 – 2005*

*Option 2. Two groundfish landing during 2000 – 2005*

*\*Option 3. [One or two] groundfish landing during 2000 – 2006*

*Suboption: Apply opt 3 only to BSAI endorsements*

### Choose Option 3 – Two groundfish landings during 2000 – 2006

Adopt staff clarification of text for component 1 option 5 (see page 28 of the analysis – noted below with underline added text and strike through as deleted text)

*A motion to include Option 4 with a 200MT landing requirement failed 6/9/1.*

*\*Option 5. (applicable only under Alternative 3)*

*One can also ~~In order to~~ retain both GOA subarea endorsements if significant landings must have been made in one of the management areas (e.g. WG or CG). The trawl CV LLP must meet the landing*

*criteria selected (Option 1, 2, or 3 above) for a specific subarea (e.g., WG), plus the license must have participation in the same either subarea (e.g. WG or CG) in 2005 or 2006 or 2007 of at least:*

*\*Suboption 1: 20 landings  
Suboption 2: 30 landings  
Suboption 3: 40 landings*

**Choose Option 5 – Suboption 1: 20 landings**

Component 2 (stacked LLPs)

*\*Provision: Groundfish harvest history is credited to each LLP stacked on a single vessel at the time of the landing.*

Suboption: At the time of implementation, stacked LLPs will remain linked and cannot be severed back into separate LLPs.

**Accept provision do not choose Suboption.**

**In future actions, particularly those involving allocations, the Council may credit catch to a single license in cases in which multiple licenses are stacked on a vessel.”**

Component 4 (Adding new AI endorsements to trawl LLPs)

*\*Option 1. Award AI endorsements to non-AFA trawl CV <60' MLOA licenses if they meet the landing thresholds in the AI parallel P. cod fishery during 2000-2006 of at least:*

*Suboption 1: 50 MT*

*Suboption 2: 250 MT*

*\*Suboption 3: 500 MT*

**Choose Option 1 – Suboption 3: 500 MT**

*\*Component 4, Option 2 Award AI endorsements to non-AFA trawl CV ≥60' MLOA LLPs if they have at least one landing in the AI parallel groundfish fishery or AI State water P.cod fishery in 2000–2006, and [500 mt or 1,000 mt] in the BSAI P.cod fishery in 2000–2006.*

**Choose Option 2 - with 1000 MT landing requirement. These endorsements should not be severable.**

*\*Option 3. Aleutian Islands endorsements issued under Component 4, option 1, shall be severable and transferable. The AI area trawl endorsements can only be transferred to a non-AFA trawl CV LLP with a trawl CV designation and an MLOA of <60'.*

**Choose Option 3**

Additionally, the AP recommends that Components 1 and 4 move forward for rulemaking on separate but equal rulemaking tracks.

**COUNCIL DISCUSSION/ACTION**

[NOTE: Earl Krygier and Sue Salvesson participated in this discussion for Denby Lloyd and Doug Mecum, respectively. Mr. Bundy was not present.]

The Council received a staff report from Nicole Kimball (NPFMC), AP recommendations, and oral public comments on this agenda issue.

Earl Krygier moved the following (based on the Advisory Panel recommendations -- Mr. Krygier's motion shows additions and deletions to the AP recommendations with underlines and strikethroughs, respectively):

Choice of Alternatives (from page 14 of the analysis):

~~Alternative 1. No Action~~

~~Alternative 2. Remove the subarea (BS, AI, WG, and / or CG) endorsements on trawl LLPs unless the license meets a minimum landing threshold in the overall management area (BSAI or GOA).~~

~~\*Alternative 3. Remove the subarea (BS, AI, WG, and / or CG) endorsements on trawl LLPs unless the license meets a minimum landing threshold in the specified subarea.~~

Choose Alternative 3

Choice of Components (from page 15 & 16 of the analysis):

Component 1 (landing threshold):

~~Option 1. One groundfish landing during 2000—2005~~

~~Option 2. Two groundfish landing during 2000—2005~~

~~\*Option 3. Two groundfish landings during 2000 – 2006~~

~~Suboption: Apply opt 3 only to BSAI endorsements~~

Choose Option 3 – Two groundfish landings during 2000 – 2006

Adopt staff clarification of text for component 1 option 5 (see page 28 of the analysis -- as noted below with underline added text and strike through as deleted text)

~~A motion to include Option 4 with a 200MT landing requirement failed 6/9/1.~~

~~\*Option 5. (applicable only under Alternative 3)~~

~~One can also In order to retain both GOA subarea endorsements if significant landings must have been made in one of the management areas (e.g. WG or CG). The trawl CV LLP must meet the landing criteria selected (Option 1, 2, or 3 above) for a specific subarea (e.g., WG), plus the license must have participation in the same either subarea (e.g. WG or CG) in 2005 or 2006 or 2007 of at least:~~

~~\*Suboption 1: 20 landings~~

~~Suboption 2: 30 landings~~

~~Suboption 3: 40 landings~~

Choose Option 5 – Suboption 1: 20 landings

Component 2 (stacked LLPs)

~~\*Provision: Groundfish harvest history is credited to each LLP stacked on a single vessel at the time of the landing.~~

~~Suboption: At the time of implementation, stacked LLPs will remain linked and cannot be severed back into separate LLPs.~~

Accept provision; do not choose Suboption.

In future actions, particularly those involving allocations, the Council may credit catch to a single license in cases in which multiple licenses are stacked on a vessel.

**Component 4 (Adding new AI endorsements to trawl LLPs)**

***\*Option 1. Award AI endorsements to non-AFA trawl CV <60' MLOA licenses if they meet the landing thresholds in the AI parallel P. cod fishery during 2000-2006 of at least:***

***Suboption 1: 50 MT***

***Suboption 2: 250 MT***

***\*Suboption 3: 500 MT***

**Choose Option 1 – Suboption 3: 500 MT**

***\*Component 4, Option 2 Award AI endorsements to non-AFA trawl CV ≥60' MLOA LLPs if they have at least one landing in the AI parallel groundfish fishery or AI State water P. cod fishery in 2000–2006, and [500 mt or 1,000 mt] in the BSAI P. cod fishery in 2000–2006.***

**Choose Option 2 - with 1000 MT landing requirement. These endorsements should not be severable.**

***\*Option 3. Aleutian Islands endorsements issued under Component 4, option 1, shall be severable and transferable. The AI area trawl endorsements can only be transferred to a non-AFA trawl CV LLP with a trawl CV designation and an MLOA of <60'.***

**Choose Option 3**

The motion was seconded.

Mr. Merrigan asked whether the provisions for exemptions noted in Table E-6 of the analysis are included in the motion. Mr. Krygier responded that they are.

Mr. Fields moved to bifurcate to separate the GOA from the BSAI components, however withdrew the motion after discussion, and then moved to initiate a trailing amendment to address impacts on GOA small communities that may occur as a result of the implementation of this package. However, after staff that it would be difficult to provide an analysis until the new regulations have been in place for a period of time, Mr. Duncan also withdrew this motion understanding that the Council will pursue the issue in the future.

**Gerry Merrigan moved to delete Option 3 under Component 4.** The motion was seconded by Roy Hyder and failed, 7 to 3, with Benson, Hyder and Merrigan voting in favor. Mr. Merrigan indicated that he has concerns with severability because there is no way to control where the endorsements go in the future, possibly doubling effort in some areas.

**Bill Tweit moved that the Council deems proposed regulations that clearly and directly flow from the provisions of this motion to be necessary and appropriate in accordance with section 303(c) and therefore the Council authorizes the Executive Director and the Chairman to review the draft proposed regulations when provided by NMFS to ensure that the proposed regulations to be submitted to the Secretary under section 303(c) are consistent with these instructions.** The motion was seconded by Sam Cotten and carried without objection.

The main motion carried, 9 to 1, with Mr. Fields voting against (Mr. Bundy had left the meeting). Mr. Fields noted that he voted no because of his concerns over community protections, and requested that his written comments be appended to these minutes for the record (see Appendix V to these minutes).

C-5 Observer Program

**ACTION REQUIRED**

- (a) Review Observer Advisory Committee report
- (b) Final action on Observer Program regulatory amendment package (RIR/IRFA)

**BACKGROUND**

- (a) Review Observer Advisory Committee report

The Council's Observer Advisory Committee (OAC) met on March 17 to: 1) review the results of a request for observer data from May 2007; and 2) review the proposed changes in the Observer Program regulatory amendment package and provide final recommendations to the Council.

NMFS staff prepared a series of tables to respond to a Council data request stemming from the OAC's May 2007 meeting (Item C-5(a)). The tables provide estimates of the total groundfish catch by vessels while carrying an observer as a percentage of the total groundfish catch for all vessels by area, gear type, target fishery, and vessel length category, during 2004 – 2006. Data from the CDQ fisheries are not included in these tables because almost all catch in the CDQ fisheries occurs on vessels carrying an observer and much of the CDQ catch data are confidential at the level of detail of the tables. The OAC reviewed these tables in March and provided feedback to the agency. NMFS will provide a brief review of these tables at this April meeting.

The OAC also reviewed the public review draft of the RIR/IRFA which proposes regulatory changes to the North Pacific Groundfish Observer Program. The OAC's recommendations on each of the seven issues included in the analysis, as well as the observer data request and other issues, are summarized in the attached March 2008 OAC report (Item C-5(b)).

- (b) Final action on Observer Program regulatory amendment package (RIR/IRFA)

The existing North Pacific Groundfish Observer Program (Observer Program), in place since 1990, establishes coverage levels for most vessels and processors based on vessel length and amount of groundfish processed, respectively. Vessels and processors contract directly with observer providers to procure observer services to meet coverage levels in regulation. In the past several years, the Council, NMFS, and the OAC have been working to develop a new system for observer funding and deployment in the Observer Program. The concept previously proposed was often called 'observer restructuring.' In general, the program would be restructured such that NMFS would contract directly with observer providers for observer coverage, and this would be supported by a broad-based user fee and/or direct Federal funding. Concerns with the existing program arise from the inability of NMFS to determine when and where observers should be deployed, inflexible coverage levels established in regulation, disproportionate cost issues among the various fishing fleets, and the difficulty to respond to evolving data and management needs in individual fisheries.

The Council thus reviewed an amendment package in 2006, with alternatives intended to restructure the observer program. As part of initial review in February 2006, NMFS presented a letter (Item C-5(c)) regarding observer compensation issues and the status of observers with regard to the requirements for overtime pay under the Fair Labor Standards Act (FLSA) and the Service Contract Act (SCA). This issue was brought to the forefront in a memo from Dr. Bill Hogarth in November 2003, which stated that NMFS maintains that fisheries observers are biological technicians and therefore eligible for overtime compensation under the FLSA. NMFS subsequently reaffirmed its position that observers employed by companies which contract

**directly with the agency or use Federal funds for provision of observer services must apply FLSA and SCA criteria to determine observer compensation requirements.**

**The NMFS letter reviewed in February 2006 outlines ongoing concerns with not being able to provide a definitive assessment of observer costs under a new service delivery model at the time, due to uncertainty about the applicability of the SCA and FLSA. Costs may not be possible to assess until actual contracts between NMFS and observer providers are finalized. In addition, NMFS has not received a response from the Department of Labor on its request for clarification of the applicability of several FLSA provisions.**

**Also at the time of final action in June 2006, NOAA General Counsel, Alaska Region (GCAK) provided a preliminary determination that the Research Plan authority provided in the MSA (Section 313) to assess a fee for observer coverage could not be applied to only a subset of the vessels in the fisheries for which the Council and NMFS have the authority to establish a fee program. Therefore, all of the restructuring alternatives, which assessed different fees against different fisheries or sectors, were likely to require new statutory authorization.**

**Given the cost and statutory issues described above, at the time of final action in June 2006, the Council approved an extension of the current program, by removing the December 31, 2007 sunset date in existing regulations, as opposed to restructuring the observer program. This action was also recommended to the Council by NMFS and the OAC, given the need for continuing the program in the short-term and the lack of control over Congressional authority and cost issues. The final rule for this action was published on June 13, 2007 (72 FR 32559).**

**As part of its June motion, the Council recommended that a new amendment proposing restructuring alternatives for the Observer Program should be considered by the Council at such time that: (1) legislative authority is established for fee-based alternatives; (2) the FLSA issues are clarified (by statute, regulation, or guidance) such that it is possible to estimate costs associated with the fee-based alternatives; and/or (3) the Council requests reconsideration in response to changes in conditions cannot be anticipated at this time. Thus, the previous analysis of the restructuring alternatives was intended as a starting point for a future amendment.**

**Since final action in June 2006, the MSA was reauthorized (January 12, 2007). These amendments include changes to Section 313 which allow the Council and Secretary to prepare a fisheries research plan which establishes a system of fees which may vary by fishery, management area, or observer coverage level, to pay for the cost of implementing the plan. The MSA amendments also allow for a fee system to provide for the cost of electronic monitoring systems, as well as human observers.**

**Thus, while one of the criteria (statutory authority) the Council stated was necessary to meet in order to reconsider an amendment to restructure the Observer Program was provided through MSA reauthorization, the FLSA and cost issues remain unresolved. NMFS has not yet received a response from the Department of Labor on its request for clarification of the applicability of several FLSA provisions, nor have these issues been clarified by statute or regulation, significantly affecting staff's ability to estimate costs associated with a fee-based system. In April, the Council sent another letter to Dr. Bill Hogarth, requesting a response from the Department of Labor on the FLSA issues. On a related front, NMFS has requested cost estimates from observer programs in other regions, in order to provide a (limited) means for comparison. Note also that one of the OAC's March 2008 recommendations is for the Council to send another letter to NOAA HQ: 1) urging resolution of the outstanding observer compensation issues with regard to the FLSA and SCA, and 2) to re-evaluate its policy determination that North Pacific observers should be classified as technicians rather than professionals under the FLSA.**

**Given that the cost issues remain, in March 2007, NMFS sent a letter recommending that the Council continue to set the restructuring amendment package aside, and focus its efforts on necessary changes to the existing Observer Program. Several relatively short-term type actions to**



change the existing Observer Program are proposed in this RIR/IRFA, which NMFS believes need to occur regardless of observer restructuring. The OAC first met in May 2007 to make preliminary recommendations on the proposed changes and suite of alternatives. (The May OAC report is attached to the draft analysis.) The OAC's final recommendations will be reviewed by the Council at this meeting.

The Council initiated this regulatory amendment at the June 2007 Council meeting. The analysis is organized under seven different issues. It examines several alternatives to revise Federal regulations relevant to numerous administrative and procedural requirements applicable to observer providers, observers, and industry participating in the Observer Program. Specifically, the proposed actions would:

- **Issue 1: Modify the current permit issuance process to reflect that observer and observer provider permit issuance is a discretionary NMFS decision.**
- **Issue 2: Amend current Federal regulations addressing observer behavior involving drugs, alcohol, and physical sexual conduct to remove NMFS oversight of observer behavior that does not affect job performance. Require that observer providers submit policies related to these activities and continue to notify NMFS upon learning of an incident. NOAA GC advises that current regulations are unenforceable, and/or outside the authority of NMFS.**
- **Issue 3: Clarify in Federal regulations that observer providers are allowed to provide observers or technical staff for purposes of exempted/experimental fishing permits and scientific research permits.**
- **Issue 4: Revise the definition of "fishing day" in Federal regulations.**
- **Issue 5: Require observer providers to submit economic information to NMFS.**
- **Issue 6: Specify a date by which observers who have collected data in the previous fishing year would be required to be available for debriefing.**
- **Issue 7: Implement housekeeping issues related to errors or clarifications in existing regulations.**

Initial review of the draft analysis was completed by the Council at its February 2008 meeting, and final action is scheduled for this meeting. The analysis was sent to you on March 10, and the executive summary is attached as Item C-5(d). Note that prior to initial review, NMFS sent a letter outlining its recommendations on three of the seven issues (Item C-5(e)).

The Scientific and Statistical Committee did not address this agenda item.

#### **Report of the Advisory Panel**

The AP recommends the Council take final action and adopt the following as its preferred alternative:

Issue 1: Alternative 2

Issue 2: Alternative 2, Option 1. (72 hours) Additionally, the AP recommends removing the words "allegations or" in Issue 2, Alternative 2, Option 1. *Motion passed 16/0.*

Issue 3: Alternative 2

Issue 4: Alternative 2, Option 1

Issue 5: Alternative 4, Option 1, and revise the language in Option 1 to read "limit the submittal of economic data every third year and limit access to these data to agency staff."

Issue 6: Alternative 1

Issue 7: Alternative 2

Further, the AP recommends the Council consider the additional recommendations at the top of the March 2008 OAC report on page 2.

## COUNCIL DISCUSSION/ACTION

The Council received reports from Nicole Kimball (NPFMC) and Martin Loefflad (AFSC), and Joe Kyle, Chair of the Observer Advisory Committee, the Advisory Panel report, and oral public comments on this issue.

**Denby Lloyd moved to approve the recommendations of the Advisory Panel with regard to the preferred alternatives.** The motion was seconded by Ed Dersham. Mr. Lloyd noted that these recommendations were also supported by the Observer Advisory Committee and are reflective of public comments received.

In support of the motion, Mr. Merrigan noted that the proposed changes to the Observer Program address issues identified as needing revision or clarification by administrators of the Program, vessel owners, and observers.

**Bill Tweit moved to amend: The Council deems proposed regulations that clearly and directly flow from the provisions of this motion to be necessary and appropriate in accordance with section 303(c), and therefore the Council authorizes the Executive Director and the Chairman to review the draft proposed regulations when provided by NMFS to ensure that the proposed regulations to be submitted to the Secretary under section 303(c) are consistent with these instructions.** The amendment was seconded by Roy Hyder and carried without objection.

The amended main motion carried unanimously.

**Denby Lloyd moved to approve the recommendation of the Advisory Panel that Council consider the additional recommendations of the Observer Advisory Committee, listed on page 2 of the committee's March 2008 report:**

- **With regard to the observer data request, the committee recommends breaking out the GOA and AI Pacific cod State fisheries from the Federal (including parallel) fisheries data. The committee also recommended showing the Central, Western and Eastern Gulf subtotals in Table 1 on p. 11.**
- **The committee recommends the Council send another letter to NOAA HQ: 1) urging resolution of the outstanding observer compensation issues with regard to the Fair Labor Standards Act (FLSA) and Service Contract Act, and 2) to re-evaluate its policy determination that North Pacific observers should be classified as technicians rather than professionals under the FLSA.**
- **The OAC would like to convene in the future to re-evaluate the problem statement and objectives from the June 2006 observer program restructuring analysis, in order to explore whether some of the problems particular to the GOA fisheries can be resolved through regulatory measures as opposed to comprehensive restructuring.**

The motion was seconded and carried without objection.

**Doug Mecum moved to amend, as follows: The Council tasks staff to develop a discussion paper to evaluate the problem statement, issues, and alternatives in the observer restructuring analysis last reviewed by the Council in 2006. The discussion paper also will identify any new issues that have arisen in the meantime, including the Magnuson-Stevens Act amendments, the status of cost information, and any relevant changes in the fisheries. Staff will provide recommendations about possible modifications to the problem statement and alternatives. ADF&G and IPHC staff will be**

asked to participate with Council and NMFS staff in development of this discussion paper. The discussion paper will be provided to the Council for consideration at the December 2008 meeting. The motion was seconded and carried without objection.

#### **C-6 Charter Halibut Management**

##### **ACTION REQUIRED**

- (a) Initial review of Areas 2C/3A Halibut Catch Sharing Plan analysis**
- (b) SSC review of ADF&G report on 2006 charter halibut logbook program**

##### **BACKGROUND**

###### **Catch Sharing Plan**

At this meeting, the Council will conduct an initial review of a proposed halibut catch sharing plan for Areas 2C and 3A. The No Action alternative would maintain the current guideline harvest level program for the charter fisheries in these areas. Alternative 2 would implement a catch sharing plan for the two fisheries that would set an initial allocation to each sector (Element 1) and allow for seasonal increases in allocation by allowing charter halibut limited entry permit holders to lease commercial individual fishing quotas for use by anglers in the charter sector (Element 5). Potential catch accounting systems for monitoring IFQ leases for use in the charter sector are under Element 6. Additional policy decisions on the regulatory cycle for implementing changes to management measures to restrict the charter sectors to their allocations (Element 2), potential management measures (Element 3), and potential timelines for shortening the delay in implementing revised regulations (Element 4) would not be implemented in regulations. Final action on the catch sharing plan is tentatively scheduled for October 2008. If approved by the Secretary of Commerce, implementation could occur for the 2010 (or later) charter halibut season.

The analysis was mailed on March 14, 2008. The executive summary is attached under Item C-6(a)(1). A supplement that addresses Element 6 is included under Item C-6(a)(2). A list of staff requests for Council clarification of proposed options is provided under Item C-6(a)(3).

###### **ADF&G logbook report (SSC only)**

Following completion of 2006 logbook data entry, the Alaska Department of Fish and Game began an evaluation of the quality and reliability of the logbook data (Item C-6(b)). The goal of the evaluation was to utilize a number of data analyses and comparisons in order to make a recommendation concerning the use of logbooks as a reporting mechanism for the charter fishery. The report concludes that logbooks could be used to manage the charter removals of halibut but would present a mismatch with the allocation options adopted by the Council for analysis of sector allocations under the proposed catch sharing plan. Logbook harvests were consistently higher than Statewide Harvest Survey estimates for all years in which halibut were reported in the logbook.

The SSC is scheduled to review this report and provide comments to the Council at this meeting. The report was emailed to the SSC on March 25, 2008 and posted on the Council website.

###### **Report of the Scientific and Statistical Committee**

The SSC received a report on the ADF&G evaluation of 2006 logbook data and the Statewide Harvest Survey and noted that at this time it can not be determined which method produces a more accurate reflection of true harvest levels. The SSC concurs with the analysts' assessment that it is premature to conclude anything definitive about one method over the other.

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The SSC also reviewed the analysis for the charter halibut catch sharing plan and recommends the analysis be released for public review after it has been edited to address minor revisions. Please see the SSC Minutes, Appendix II to these minutes for further comments on the logbook/SWHS subject and the comments provided on the draft catch sharing analysis.

### **Report of the Enforcement Committee**

The Enforcement Committee discussed initial allocation/accounting of commercial halibut IFQs in the charter fishery. The Committee recommend that harvest of guided angler fish (GAF) and common pool fish must be reported, and that GAF should be physically identified as distinct from common pool fish. Additionally, the committee recommended daily reporting of GAF harvest, on days when GAF are taken, via logbooks and electronic monitoring. The Committee also recommended that if inseason management is needed for the common pool fish, then electronic reporting should be used rather than harvest tags and punch cards.

### **Report of the Advisory Panel**

The AP recommended the Council advance for public review the 2C/3A catch sharing plan with the following changes:

Add the following text:

The commercial fleet supports tight leasing constraints in order to minimize disruption to their sector and not open up a leasing loophole. They are concerned about the 1500 pound level allowing for perpetual leasing instead of active participation in the IFQ fishery. The 10% leasing of individual quota holding limitation doesn't make sense from a business perspective. The average quota share holding in 3A is about 8,000 pounds; in SE it's between 3,500-5,000 pounds. The 1500 pounds was an attempt to balance out how many different people a charter operator would have to go to in order to secure a couple thousand pounds to augment their charter harvest. What about a requirement that IFQ holders would have to fish their quota every few years. 10% was also used because of the IFQ 10% annual rollover provision.

There are number of charter operators that also hold IFQ, usually less than 1,500 pounds. This language was crafted in order to attempt to provide equity between charter operators that already hold QS and those that don't. Commercial fishermen believe charter operators holding QS should be allowed to lease/use all their QS as GAF if they choose because they believe this will make approximately 300,000 pounds of IFQ available to convert to GAF. Community interests also got involved in the discussion. In 2C, so much of the QS is in such small blocks that a strict 10% limitation would be extremely cumbersome.

Each CQE community is unique and the commercial and sport charter sector has a different relative importance in each community. Each CQE, which must purchase any quota which it holds, should have maximum flexibility to lease the quota to residents who are either commercial or sport charter fishermen.

Change Element 2. Annual regulatory cycle, as noted:

The initial charter allocation would be a common harvest pool for all charter limited entry permit holders. It would not close the fishery when the charter allocation is exceeded. Instead, the allocation would be linked to an annual regulatory analysis of management measures (delayed feedback loop) that take into account the projected CEY for the following year and any overages by the charter industry in the past year(s). This system would work best if there is not a time lag between the overage year and the payback year. The Council will not revisit or readjust the sector split. An allocation overage would trigger the regulatory process automatically, in contrast with current GHL management. Any underages would accrue to the benefit of the halibut biomass and would not be reallocated or paid forward. The If a

**floating allocation is selected, the Council assumes (and would request) that the International Pacific Halibut Commission set a combined charter and commercial sector fishery catch limit and would apply the allocations between the two sectors that would be recommended by the Council in a type of catch sharing plan to the combined fishery catch limit. If a fixed pound allocation is selected, the Council assumes (and would request) that the International Pacific Halibut Commission use the fixed pound allocation as the number for charter halibut removals from Areas 2C and 3A that is included each year in its "Other Removals" deduction from the Total Constant Exploitation Yield (CEY).**

**If a mixed fixed/floating allocation is selected, the Council requests analysis of the impacts of treating such allocation the same as the floating allocation or the fixed allocation for purposes of the IPHC formulas, as well as analysis of the impacts of deducting the fixed portion of the allocation from "Other Removals" and the floating portion of the allocation from a combined charter and commercial sector fishery catch limit.**

Under Element 5, change as reflected:

E. Conversion of GAF back to commercial sector

1. GAF holders may request NMFS convert unused GAF into IFQ pounds for harvest **by the owner of the Quota Share** in compliance with commercial fishing regulations ~~provided the GAF holder qualifies under the commercial IFQ regulations.~~
2. Unused GAF may revert back to pounds of IFQ ~~at the end of the year~~ and be subject to the underage provisions applicable to their underlying commercial QS =  
**Option A: automatically on October 1 of each year; or**  
**Option B: upon the request of the GAF holder if such request is made to NMFS in writing prior to October 1 of each year.**

Amend Management Objectives as follows:

The Council will evaluate its success in achieving the sport charter sector allocation, and specific needs for predictability, advance notice, and season length each year, and will adjust its management tools as needed. In designing this regime for the sport charter sector the Council recognizes that providing advance notice and predictability may result in a charter harvest that does not precisely meet the sector allocation for that particular year. Therefore, the Council intends to adjust its management measures as needed to ensure that the sport charter sector is held at or below its ~~allocation on average over a rolling five-year period~~ **allocation, recognizing that there may be annual overages or underages, so long as such overages or underages do not exceed [5 – 10 percent or agencies to recommend acceptable range]**. In meeting its conservation mandate while accommodating the charter industry's need for predictability and stability, the Council will necessarily err on the side of conservation in the selection of management tools and season length, with the result that the sport charter sector may not be able to harvest its entire allocation.

**COUNCIL DISCUSSION/ACTION**

[Note: John Bundy was absent for this discussion.]

The Council received a presentation from Scott Meyer (ADF&G) on the evaluation of 2006 charter halibut logbook and SWHS survey results. Jane DiCosimo (NPFMC), Darrell Brannan (Contractor) and Jonathan King (Contractor) reviewed the draft catch sharing plan, and Gregg Williams provided IPHC comments. The Council also received comments from the Enforcement Committee, the SSC and AP, and oral public comments on this issue.

**Denby Lloyd moved the recommendations of the Advisory Panel, with one minor change under Element 4 (please refer to the 8-page motion in Appendix VI(a) of these minutes). The motion was seconded by Gerry Merrigan.**

Mr. Lloyd noted that the motion ends in the middle of page 6; the remainder contains additional information for Council discussion as well as a copy of the points of consensus from the Halibut Negotiating Group.

With regard to the five-year rolling averages, Mr. Merrigan asked for clarification that this provision is to provide some leeway when small changes occur such as the average weight of the fish. Mr. Lloyd confirmed that the intent is to allow a realistic range around a particular measurement of harvest that would trigger future management action. It not intended to add 5 or 10 percent to a specific allocation.

It was also clarified that the explanatory language included throughout the motion is not part of the elements and options, but more a rationale and narrative to be used for staff guidance. Staff has the discretion as to whether or not to include the narrative in the analysis.

**Gerry Merrigan moved to add the stairstep suboptions listed under Element 1:**

**Element 1 Stairstep sub-options:**

**The step up/down provision would be tied to:**

- 1) **baseline years as proposed**
- 2) **CEY**
  - a. **2006-2008**
  - b. **2008**
- 3) **Baseline of combined commercial & charter catch limit in**
  - a. **2006-2008**
  - b. **2008**

The motion was seconded and carried without objection.

Mr. Merrigan noted that including this provision may be less complicated and would use more recent information.

**Ed Dersham moved to amend the Fixed Percentages under Element 1, Option 1, to add a fifth option: (e) 19.6% for Area 2C, and 17.4% for Area 3A, and under Fixed Pounds, add a fourth option: (d) 2.13 Milb for Area 2C, and 4.69 Milb for Area 3A; and under the 50 Fixed/50 floating allocation, add a fourth option: (d) Area 2C: 19.6%; .13 Milb; Area 3A, 17.4% and 4.69 Milb. The motion was seconded and failed, 6 to 4, with Benson, Dersham, Tweit and Mecum voting in favor.**

Mr. Dersham explained that his rationale for the additions is to address the fact that there has been only analysis of ONE YEAR'S logbook data and he is concerned that if the 2007 data have a similar ratio, there could be a dramatic immediate effect on the charter fleet. However, it was pointed out to Mr. Dersham that the numbers in the current motion were agreed upon by the halibut negotiating group.

**Bill Tweit moved to amend Element 1, Option 3, [50% fixed/50% floating allocation] as follows:**

**NEW OPTION: The allocation for each area shall be a fixed percent up to a specified Combined Commercial/Charter Catch Limit (CCCL) and above that shall be fixed pounds.**

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	Area 2C		Area 3A			
	Fixed % to fixed lb	CCCL	Fixed % to fixed lb:	CCCL		
a.	13.1%	1.43 Milb	10.92 Milb	14.1%	3.65 Milb	26.07 Milb
b.	17.3%	1.90 Milb	10.98 Milb	15.4%	4.15 Milb	26.95 Milb

The motion was seconded and failed, 7 to 3, with Benson, Fields, Tweit voting in favor.

Mr. Tweit noted that the intent is to provide a fixed poundage allocation across many of the higher levels of the combined charter/commercial catch limit which would be the CEY for the area, but to break it off at the point where the fixed charter poundage would become a large portion of the total and reflect from that point on that both sectors would share equally in conservation at that point.

**Duncan Fields moved to Amend Element 5, Section 'A', to add a fourth item:**

- 4. Commercial quota share holders would be limited to leasing halibut IFQ to halibut charter LEP holders to:**
- a. 2 out of 3 years
  - b. 4 out of 5 years

The motion was seconded and failed on a tie vote, 5-5, with Benson, Fields, Hyder, Tweit, and Merrigan voting in favor and Cotten, Dersham, Lloyd, Mecum and Olson voting against.

With regard to the main motion, Mr. Mecum noted that he wanted Council members to be aware there will be management and enforcement costs involved in the cost recovery component of the IFQ program and the analysis will cover that issue.

Mr. Lloyd asked staff to verify that gross revenue descriptions will be reinserted in the analysis. Staff confirmed that they would.

The main motion, as amended, carried without objection. The final motion is included as Appendix VI(b) to these minutes.

The Council discussed several other issues with regard to the analysis, including the issue of comparison of logbooks and the Statewide Harvest Survey data. Mr. Lloyd noted that data from comparison of 2006, 2007 and 2008 won't be available until the Spring or Summer of 2010 which will be too late to affect this amendment, but it may be available by time the actual management measures are implemented. He indicated that the Council will need to be prepared to react quickly in 2010 if the updated information requires changes to the program at that time.

Mr. Merrigan noted requests for staff direction in the report of the Halibut Negotiating Group and pointed out that the Stakeholders Committee had addressed some of those issues. He asked Council to concur that staff should consider those consensus points. It was understood that those issues would be covered in an implementation plan for the program.

**D. GROUND FISH MANAGEMENT**  
**D-1 Salmon Bycatch Issues**

**ACTION REQUIRED**

- (a) Preliminary review of Bering Sea Salmon Bycatch Management EIS; receive scoping report; refine problem statement/alternatives
- (b) Review GOA salmon and crab bycatch discussion paper (SSC only).

**BACKGROUND**

(a) Salmon Bycatch EIS.

Work is proceeding on the Bering Sea Salmon Bycatch Management EIS/RIR/IRFA analysis based upon the draft suite of alternatives modified by the Council in February. At this meeting the Council is scheduled to review and refine the alternatives for the analysis.

The scoping period for the EIS ended on February 15, 2008. The Scoping Report by NMFS summarizes the comments received during the scoping period (12/27/07-2/15/08). This report was mailed to you on March 7<sup>th</sup>. NMFS staff will provide an overview of the report at this meeting in conjunction with the Council's consideration of the alternatives for analysis.

Several documents have been prepared in order to assist the Council in refining alternatives at this meeting. A draft EIS Chapter 2 (Description of Alternatives) provides a detailed description of all the alternatives currently under consideration by the Council. This includes all modifications made to the alternatives at the February 2008 meeting and provides additional information as to the specific cap levels resulting under each alternative. This paper is attached at Item D-1(a)(1) and was mailed to you on March 14<sup>th</sup>. Several sections referenced in that Chapter 2 were not finalized at the time of the mailing and are included in the briefing books. These additions include the following:

- Trigger cap levels for area closure options (Item D-1(a)(2))
- Comparison of alternatives: includes preliminary information on constraints of caps by sector, comparative information about various components and options for alternatives and a summary section to assist in the decision points for building a preferred alternative (Item D-1(a)(3))
- Chinook salmon bycatch at age assessment: includes overview of modeling methodology and data utilized in estimating the relative impact of bycatch levels on salmon stocks by river or aggregated area (Item D-1(a)(4))
- NMFS management discussion paper: includes discussion of sector transfers and rollovers as well as some additional clarification on provisions for leasing pollock, inclusion of the potential for an inshore sector open access fishery for vessels that don't join a cooperative, and more information about monitoring recommendations made at the February 2008 meeting. (*Note this paper to be distributed at the meeting*)

The problem statement for the analysis was modified by the Council at the February 2008 meeting. The problem statement and the entire Council motion regarding the alternatives is included as Item D-1(a)(5). The Council may wish to revisit their problem statement to ensure it accords with the suite of alternatives for analysis, as revised at this meeting.

In addition to information included to assist the Council in refining alternatives, the draft Tables of Contents for the analyses (EIS and RIR) are provided as Item D-1(a)(6). A draft timeline for the EIS schedule is attached as Item D-1(a)(7). Initial review is scheduled for June 2008.



**(b) GOA salmon and crab bycatch discussion paper (SSC only).**

In October 2007, the Council tasked staff to update a previous discussion paper on options for salmon and crab bycatch reduction measures in the GOA. The previous paper was presented to the Council in October 2005, as part of the GOA groundfish rationalization initiative. The SSC will review a staff discussion paper that provides updated information on salmon and crab bycatch, an overview of species abundance, and discusses the previous (2005) alternatives developed to further control and minimize bycatch. This discussion paper was mailed out on March 7<sup>th</sup>. This issue is scheduled for Council review at the June meeting.

**Report of the Scientific and Statistical Committee**

BSAI Salmon Bycatch EIS. The SSC received a review of the discussion paper for the draft suite of alternatives for an EIS on managing bycatch of Chinook and other salmon in the Bering sea pollock trawl fishery and a scoping report for the proposed EIS as well as reports from AFSC staff on modeling and genetic stock identification. Considering the large effort needed to draft the EIS on the Council's accelerated schedule, the SSC recommended removing or trimming alternatives and options to a more tractable set of those that are clearly within reason and in keeping with the problem statement. Please see the SSC Minutes, Appendix II to these minutes, for those recommendations.

GOA Crab and Salmon Bycatch. The SSC received a review of a discussion paper from Council staff. The SSC concluded that the document does not provide sufficient information to assess whether current trends in salmon or crab bycatch are either a conservation or an economic concern and recommended additional information be included in the analysis in the event the Council chooses to proceed. Please see the SSC Minutes, Appendix II to these minutes, for specific recommendations.

**Report of the Enforcement Committee**

The Committee received overviews on the alternatives for the Bering Sea Salmon Bycatch Management EIS and discussed observer requirement that would be required for the various alternatives. The Committee had several recommendations – please see Appendix IX to these minutes for those comments and recommendations.

**Report of the Advisory Panel**

The AP recommended the Council include the following elements into the Salmon Bycatch EIS analysis:  
I. Modify the problem statement as follows:

An effective approach to salmon prohibited species bycatch reduction in the Bering Sea pollock trawl fishery is needed. Current information suggests these harvests include stocks from Asia, Alaska, Yukon, British Columbia, and lower-48 origin. Chinook salmon are a high-value species extremely important to Western Alaskan village commercial and subsistence fishermen and also provide remote trophy sport fishing opportunities. Other salmon (primarily made up of chum salmon) harvested as bycatch in the Bering Sea pollock trawl fishery also serve an important role in Alaska subsistence fisheries, **recognizing that bycatch levels of this species may be exacerbated by high production of Asian hatchery fish.** However, in response to low salmon runs, the State of Alaska has been forced to close or greatly reduce some commercial, subsistence and sport fisheries in Western Alaska. Reasons for reductions in the number of Chinook salmon returning to spawn in Western Alaska rivers and the Canadian portion of the Yukon River drainage are uncertain, but recent increases Bering Sea bycatch may be a contributing factor.

Conservation concerns acknowledged by the Council during the development of the Salmon Savings Areas have not been resolved. Continually increasing Chinook salmon bycatch indicates the VRHS under the salmon bycatch intercooperative agreement approach is not yet sufficient on its own to stabilize, much less, reduce the total bycatch. Hard caps, area closures, and/or other measures may be needed to reduce salmon bycatch to the maximum extent practicable under National Standard 9 of the MSA. ~~We recognize the MSA requires use of the best scientific information available. The Council intends to develop an adaptive management approach which incorporates new and better information as it becomes available. Salmon bycatch must be reduced to address the Council's concerns for those living in rural areas who depend on local fisheries for their sustenance and livelihood and to contribute towards efforts to reduce bycatch of Yukon River salmon under the U.S./Canada Yukon River Agreement obligations.~~ At the same time, the Council is aware of the contribution that the Pollock fishery makes in the way of food production, jobs, and economic activities for the country as a whole as well as for the State of Alaska and the coastal communities that participate in the CDQ program; and the need to comply with the goals and objectives of National Standard 1 to achieve optimum yield from the fishery.

II. Include the following ICA exemption to the suite of alternatives for both Chinook and Chum salmon: The AFA coops request the North Pacific Fishery Management Council to modify Option B "Exempt those vessels participating in a VRHS from area closures." to read "Exempt those vessels participating in a salmon bycatch management intercooperative agreement (ICA) from closures under Alternatives 2, 3, and 4". The coops request this modification for both Chinook and non-Chinook salmon actions. The purpose for modifying Option B is two fold.

1. To expand the analysis of this option from only reviewing a rolling hot spot program to analysis of a much more extensive intercooperative salmon bycatch agreement that includes the addition of fixed and triggered closure elements in combination with a rolling hot spot program.
2. Allow the Council to consider the Option 2 exemption for a hard cap closure as well as fixed and triggered closures.

The coops have demonstrated through the EFP's used in 2006 and 2007 and in the 2008 A season that the rolling hot-spot program is a very effective tool at reducing bycatch under typical salmon abundance conditions. However, rolling hot spots by themselves reduce bycatch in a relative manner; consequently it is apparent that in years of high Chinook abundance the rolling hot spot program requires additional mechanisms for limiting the total number of Chinook salmon taken as bycatch. The EFP's have also demonstrated that the rolling hot spot program approved under Amendment 84a is very effective at reducing non-Chinook salmon; therefore no additional mechanisms are required.

The coops request the following additional elements be included in the analysis of the Option B ICA:

1. Chinook salmon fixed closure area for the A season (Figure 1.)
2. Triggered Chinook closure areas for the A and B seasons (Figures 2 and 3.)
  - a. The area(s) are designed to cover where 90% of Chinook bycatch has occurred from the years 2000-2007.
  - b. The trigger amounts would be within the range of those currently included in Alternative 3.
  - c. B Season closure area implemented August 15<sup>th</sup>.

Details for triggered Chinook closure management:

1. The Coops expect that Chinook salmon triggers will allocated at the coop level. The allocations will be finalized prior to final action on 84b.
2. Trigger amounts would be allocated to the coops seasonally with unused salmon from the first season rolled over to the second season. For analysis, the ICA season split percentages

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would range from an 80% A & 20% B split to a split based on the historical seasonal bycatch over the years 2000-2007.

3. The ICA would provide for transfer of salmon triggers across management levels in the Agreement.

Finally, a rolling hot spot program would be running throughout the A and B seasons for both Chinook and non-Chinook salmon. Rolling hot spot closures would address the areas of highest bycatch regardless whether those areas are located inside or outside the Triggered Closure Area.

- III. Include two accounting period options (A1 and A2) for Chinook salmon alternatives so that the benefits of both can be clearly described
- IV. Separate A and B season Chinook caps with a rollover provision from season to season. Include two seasonal cap approach as options for both hard cap and triggered area closure alternatives. Seasonal distribution options would be a) 2000-2007 average distributional ratio between A and B season and b) 75% A season and 25% B season.
- V. Include the IC proposed closure area exemption to hard cap as an additional triggered area closure option.
- VI. Include a fixed closure area for chum salmon beginning September 1. Use the smallest triggered closure area option from page 53 for a fixed closure option and ask staff to develop another closure option specifically targeted for the area of highest bycatch after September 1 that is similar in size to the proposed Chinook fixed area option.
- VII. Include a 3 year phased in approach for implementation of a hard cap using 125% of the cap in the first year and 115% of the cap in the second year.

Additionally, the AP recommended the Council incorporate staff recommendations in the analysis.

#### COUNCIL DISCUSSION/ACTION

[NOTE: Earl Krygier participated in this discussion for Denby Lloyd.]

The Council received reports from Diana Stram (NPFMC), Jim Ianelli (AFSC), Gretchen Harrington and Sally Bibb (NMFS-AKR), as well as AP and SSC recommendations and oral public comments on the Salmon Bycatch EIS. The Council did not address the second part of this agenda item, GOA Crab and Salmon Bycatch because of time constraints. That issue will be on the Council's June agenda.

**Earl Krygier moved a suite of alternatives and options for analysis (please refer to the 6-page motion in Appendix VII(a) of these minutes).** The motion was seconded by Duncan Fields. Referring to the recommendations provided by NMFS, Mr. Krygier noted that most of those recommendations do not need to be part of the motion because most of those issues can be addressed by staff.

#### Action 1: Chinook Salmon

**Dave Benson moved to amend Component 4, Cooperative transfer options, Option 2 (limit transfers to percentage of salmon available. . .), to add a third option (c) -- 90%. This option should be added throughout the options where appropriate.** The motion was seconded and carried without objection.

**John Bundy moved to amend Component 2, Sector Allocation, to include a new option: Option 3: A range in between Options 1 and 2, for all sectors.** The motion was seconded.

**Dave Benson moved to amend, as follows: Choose a range between Option 1, pro rata, and the 10-year average.** The motion was seconded and carried.

Staff was asked if NMFS would have the discretion to determine whether or not to rollover only certain amounts of PSC if it determined that circumstances warranted. Sally Bibb advised that the agency would rather have more specific guidance from the Council as to when to reallocate and when not to reallocate.

**Bill Tweit moved to amend Alternative 2, Component 3, Option 2, to add the following at the end of the sentence: ". . . and only the amount of Chinook necessary to harvest that pollock." The sentence then would read: NMFS would rollover unused salmon bycatch to other sectors and other cooperatives still fishing based on the proportion of pollock remaining for harvest and only the amount of Chinook necessary to harvest that pollock. The motion was seconded and failed, 6 to 5, with Cotten, Fields, Tweit, Merrigan, and Olson voting in favor.**

Staff indicated that determining exactly how much salmon would be needed to harvest the remaining pollock would be very difficult and that it would be an imperfect projection.

**Gerry Merrigan moved to reconsider the motion on ranges under Alternative 2, Component 2 (John Bundy's amendment, amended by Dave Benson). The motion to reconsider carried without objection.**

**Gerry Merrigan moved to delete the amendment made by Mr. Benson and to add another option under Component 2, as follows: Option 3: Pick a midpoint range between Options 1 and 2, giving staff the discretion to determine how to pick that mid-point. This would be done throughout the main motion where appropriate. The motion was seconded and carried without objection.**

**Doug Mecum moved to amend Alternative 2, Component 1, to delete Option 2 (Framework Cap). The motion was seconded by Roy Hyder and carried, 8 to 3, with Bundy, Fields and Merrigan voting against.**

Mr. Mecum noted that this option could not be analyzed. Staff has noted that under Option 1 NMFS would close the sector when allocations are reached. Mr. Krygier noted that discussion with staff indicates this action would not remove the ability for the ICA to manage within the allocation and would achieve the same result.

**Dave Benson moved to amend Alternative 3, Component 2, Trigger Cap Formulation, to insert a colon at the end of the first sentence and identify the second sentence as a suboption, as follows:**

**The trigger cap amount will be within the range of hard caps established under Alternative 2:  
Suboption: Distribution to the A and B season closures shall be as specified under Action 1,  
Option A (on page 1 of the Alternatives).**

The motion was seconded by Bill Tweit and carried without objection. It was clarified that the intent would be that the options would not be mutually exclusive. Ms. Stram noted that staff understands that all of the options that are listed under Option A are suboptions for the trigger cap amount, separately from Alternative 2 and that trigger cap amounts would not specify what the split is by season; all options would be available. Council members agreed with staff's understanding.

**Action 2: Non-Chinook Salmon (Chum)**

**Doug Mecum moved to delete the last paragraph on the last page of the motion (requesting legal opinion on collection of fees per salmon). The motion was seconded by Gerry Merrigan and carried, 10-1, with Benson voting against. Mr. Mecum noted that his preference would be to leave this measure**

out of the analysis at this time, but that the agency and General Counsel could investigate the options and report back to the Council. Ms. Lindeman noted that collection of a fee would require Congressional authority.

A motion to add an option 2 under Component 1 to maintain existing Amendment 84 exemptions to trigger closures was withdrawn after discussion that pointed out that the goal is to maintain an ICA exemption to the triggered closures within any new area.

**Duncan Fields moved to amend Component 1 to add an option to provide an ICA exemption to triggered closures within any new area.** The motion was seconded by Earl Krygier and carried 7 to 3, with Cotten, Dersham and Olson voting against.

The main motion, as amended, carried without objection. A copy of the final motion is found in Appendix VII(b) to these minutes.

## **D-2 Groundfish Management Issues**

### **D-2(a-b)**

#### **ACTION REQUIRED**

- (a) Review EFP application for Trawl Salmon Excluder
- (b) Review EFP application for CGOA Rockfish Electronic Monitoring (Phase II)

#### **BACKGROUND**

##### **(a) EFP for Trawl Salmon Excluder**

An exempted fishing permit (EFP) application has been submitted to continue development of a salmon excluder device for the Bering Sea pollock fishery. The purpose of the project is to improve the performance of the salmon excluder device developed under previous EFPs in 2004 through 2007 and to validate the performance of this device for pollock trawls. The goal of the experiment is to develop an appropriate excluder device for pollock trawls that reduces salmon without significantly lowering pollock catch rates. The EFP application, AFSC's approval of the experimental design, and a letter to the Council chairman from Mr. Doug Mecum (NMFS AKR) regarding receipt of this application are attached as Item D-2(a)(1). The EA which evaluates the proposed action was mailed to you on March 18<sup>th</sup>.

This experiment would be conducted from the Fall of 2008 through the Spring of 2010. The EFP would exempt the applicant from fishery regulations regarding total allowable catch, PSC limits, observers, and the closures of the salmon savings areas to permit the applicant to collect data required to meet the experimental plan for testing the device. The applicant, Mr. John Gauvin, will be available to present a description of the experiment.

##### **(b) EFP for CGOA Rockfish Electronic Monitoring (Phase II)**

An EFP application has also been submitted to continue exploring electronic monitoring in the Central Gulf of Alaska (GOA) Rockfish Program, as a tool for monitoring and estimating amounts of discarded halibut. The proposed EFP seeks to build on the investigations conducted during 2007, and will focus on issues associated with larger scale implementation of electronic monitoring. The EFP application, AFSC's approval of the experimental design, and a letter to the Council chairman from Mr. Doug Mecum regarding receipt of this application are attached as Item

**D-2(b)(1)**. This EFP qualifies for a categorical exclusion from NEPA, because it is a research program of limited size and magnitude, with no effect on the environment and for which any cumulative effects are negligible.

This project would begin May 1, 2008, and continue until all fishing under the rockfish pilot program was completed for the year by the cooperative selected to participate in this research. The EFP would exempt the participating vessels from a portion of the observer coverage requirements. In lieu of carrying an observer 100% of the time, vessels participating in this project will, in conjunction with NMFS staff, develop an observer coverage plan that will provide approximately 30% coverage for participating vessels. The applicant is the Alaska Groundfish Data Bank, and their representative, Ms Julie Bonney, will be available to present a description of the experiment.

#### **Report of the Scientific and Statistical Committee**

The SSC recommended approval of the salmon excluder EFP. With regard to the CGOA rockfish electronic monitoring EFP, the SSC stated that it supports the principle of development of electronic monitoring technology, including this project. However, the SSC believes that the current application should contain more analytical detail concerning the data to be collected and the methods to be used. For additional SSC comments on this EFP, please see the SSC Minutes, Appendix II to these minutes.

#### **Report of the Advisory Panel**

The Advisory Panel did not address these agenda issues because of time constraints.

#### **COUNCIL DISCUSSION/ACTION**

The Council did not address this agenda issue because of time constraints, however it noted that the SSC comments will constitute Council consultation on the EFP.

#### **D-2(c)**

#### **ACTION REQUIRED:**

- (c) Initial Review of VMS Exemption for Dinglebar Gear

#### **BACKGROUND**

In July 2006, vessel monitoring system (VMS) requirements were imposed on certain vessels fishing in the Gulf of Alaska with Federal fishing permits and with dinglebar gear on board, to help enforce the GOA Coral Habitat Protection Areas. These closure areas were implemented to protect certain types of bottom habitat from gear damage. Dinglebar gear is a variant of troll gear, and has a heavy iron bar attached to the line to keep the hooks close to the bottom. This gear is used in the fishery for lingcod off Southeast Alaska, and was believed to be capable of damaging bottom habitat because it is mobile and the heavy iron bar makes the gear contact the bottom.

In February 2008, the Council requested an analysis to look at exempting the dinglebar fishery for lingcod from the VMS requirement. The VMS requirement has been questioned because the threat posed to protected habitat may be small due to the small scale of the fishery, and indications that the fishery occurs at shallower depths than the coral habitat. The initial review draft of this analysis was mailed to the Council in mid-March, and the executive summary is attached as Item D-2(c)(1).

**The Council's action at this meeting is to review the draft analysis, and decide whether to release the analysis for public review.**

#### **Report of the Scientific and Statistical Committee**

The SSC noted that the draft EA/RIR/IRFA presents several statistics pertaining to dinglebar fishing activity depth profiles (from the 2007 fishery) and to the depths at which HAPC are believed to occur. It is also reported that "any" bottom contact (e.g., anchoring) results in destruction of HAPC (e.g., Gorgonian corals), imposing long-term habitat losses. The SSC pointed out that the depth observations reported for HAPC, and those for dinglebar fishing, are interpreted in the EA/RIR/IRFA in ways that do not appear to be supportable, as presented. The SSC provided staff with areas in the document needing further revision and recommended release of the draft analysis only after resolving the inconsistencies and contradictions noted in their report (see the SSC Minutes, Appendix II to these minutes for the full set of recommendations).

The Advisory Panel did not address this agenda item because of time constraints.

#### **COUNCIL DISCUSSION/ACTION**

The Council received a report on the draft analysis from Diana Evans (NPFMC), SSC comments, and oral public comments on this issue.

**Gerry Merrigan moved to release the analysis for public review after addressing SSC comments to the extent possible. The motion was seconded.**

**Denby Lloyd moved to amend to replace the problem statement as follows for clarification purposes:**

**"Dinglebar fishermen fishing for lingcod are required to carry VMS to enforce regulations to prohibit fishing within HAPC. However, the threat they pose to Gorgonian corals protected with HPAC may be small, and insufficient to justify the costs of VMS. For example, log book evidence suggests that most dinglebar fishing takes place at average depths above 50 fathoms. Other evidence suggests that most protected ~~gorgonian corals~~ HAPCs occur below 80 fathoms."**

The motion was seconded and carried with Roy Hyder objecting.

**Bill Tweit moved to delete Alternative 2 from consideration.** The motion was seconded by Dave Benson and carried without objection. Mr. Benson noted that this alternative is beyond the scope of the original intent and problem statement and could set a precedent in the future for exempting select gears from future HAPCs.

The main motion, as amended, carried with Mr. Tweit objecting. Mr. Tweit indicated that SSC comments on this issue were extensive and serious and he thinks that the analysis needs further work and SSC review before releasing it for public review.

#### **D-2(d)**

#### **ACTION REQUIRED**

**(d) Final action on GOA 'other species' catch specifications amendment**

**BACKGROUND**

In February, the Council made an initial review of an analysis that would amend the GOA groundfish FMP to require the Council to annually set an aggregate overfishing limit (OFL) and acceptable biological catch level (ABC) for the 'other species' complex. The Council currently sets total allowable catch (TAC) for the 'other species' complex according to a formula in the FMP. Under Alternative 2, the Council would instead use the OFL and ABC specifications to determine the TAC for the 'other species' complex, according to the harvest specifications procedure laid out in the FMP for other groundfish species (see table below).

Comparison of harvest specifications for the 'other species' complex under the alternatives (illustrated using 2007 available data)

	Alternative 1 (status quo - set TAC only)	Alternative 2 (set OFL, ABC, and TAC)
ABC and OFL	none	ABC = 7,943 mt; OFL = 10,588 mt Sum of recommended Plan Team/SSC ABCs and OFLs for component species groups (only recommended for purposes of this analysis)
Maximum permissible TAC	13,271 mt Council may set TAC at $\leq$ 5% of combined TACs for target species	7,943 mt Council may set TAC $\leq$ ABC
Actual TAC	4,500 mt Council reduces TAC from maximum, to allow for incidental catch and limited directed fisheries, but reduce risk of excessive harvest on a single stock or the complex as a whole	$\leq$ 7,943 mt Council would retain prerogative to reduce TAC, as in Alternative 1

The analysis includes an environmental assessment, which is all that is required as this amendment does not have a regulatory component. In addition to the changes resulting from the proposed action, the FMP amendment will also make a technical change to the FMP, to add a description of Amendment 68. The proposed text for the FMP amendment is included in the analysis. The Council is scheduled to take final action at this meeting.

**Report of the Scientific and Statistical Committee**

The SSC recommended adoption of Alternative 2 which will provide a biological basis for setting aggregate ABC and OFL for this complex, noting that this is intended as an interim measure while the Council considers breaking out component groups and setting individual harvest specifications for each group.

The **Advisory Panel** did not address this agenda issue because of time constraints..

**COUNCIL DISCUSSION/ACTION**

[NOTE: Mr. Bundy was not present for this discussion.]

The Council received a staff report from Diana Evans (NPFMC) and the recommendations of the SSC. There were no oral public comments on the issue.

**Gerry Merrigan** moved to adopt **Alternative 2** (see the provisions in the Action Memo above). The motion was seconded.



**Bill Tweit moved that the Council deems proposed regulations that clearly and directly flow from the provisions of this motion to be necessary and appropriate in accordance with section 303(c) ,and therefore the Council authorizes the Executive Director and the Chairman to review the draft proposed regulations when provided by NMFS to ensure that the proposed regulations to be submitted to the Secretary under section 303(c) are consistent with these instructions. The motion was seconded and carried without objection.**

The main motion, as amended, carried unanimously (Bundy absent).

**D-2(e)**

**ACTION REQUIRED**

**Initial review of analysis of seabird deterrence exemption in IPHC Area 4E.**

**BACKGROUND**

**At the February 2007 meeting, the Council approved changes in regulations for seabird deterrence in groundfish fisheries. As part of the motion, the Council requested an analysis of a trailing amendment to consider an exemption for small vessels from seabird deterrence regulations in all or part of IPHC Area 4E. Available data suggested that such an exemption in Area 4E might be appropriate, but an analysis of new short-tailed albatross satellite tagging data would be required to better inform such a decision.**

**Staff presented a preliminary analysis of available data on short-tailed albatross (STAL) distribution, abundance, and movement patterns in the eastern Bering Sea and Aleutian Islands area and a draft environmental and economic analysis of the alternatives at the February 2008 meeting. The SSC provided comments on the analysis, which have been incorporated into a revised EA/RIR/IRFA that examines several alternatives for an exemption in Area 4E. The initial draft EA/RIR/IRFA was sent out in a Council mailing on March 14. The Executive Summary is attached as Item D-2(e)(1). At this meeting, the Council is scheduled for an initial review of the analysis and to approve sending the document out for public review. The Council is scheduled to take final action in June 2008.**

**Report of the Scientific and Statistical Committee**

The SSC recommended releasing the draft analysis for public review pending additional consideration of several issues (see the SSC Minutes, Appendix II to these minutes for those issues).

The Advisory Panel did not address this agenda issue because of time constraints.

**COUNCIL DISCUSSION/ACTION**

The Council received reports on the analysis from Kristin Mabry and Scott Miller (NMFS-AKR) and the SSC report on this issue. There were no oral public comments.

**Gerry Merrigan moved to release the analysis for public review after addressing relevant SSC comments. The motion was seconded and carried without objection.**

**D-3 Amendments 62/62 (single geographic location)**

**ACTION REQUIRED:**

Review action on Amendments 62/62 and affirm or repeal.

**BACKGROUND**

The Council's final action on Amendments 62/62 took place at two meetings. In June 2002, the Council took final action to revise obsolete or inconsistent inshore/offshore language in the BSAI and GOA Groundfish FMPs. In October 2002, the Council took final action to allow AFA stationary floating processors to move locations up to four times in the BSAI during a calendar year. Since that time, a combination of circumstances has resulted in the delay of bringing these amendments forward for NMFS' approval and implementation.

It is prudent to bring these amendments forward for review by the Council to confirm its previous recommendations because of changes to the pollock fishery in the intervening years, and because other amendments have incorporated some of the proposed FMP changes under Amendments 62/62. The changes in the fishery that occurred during the delay may or may not affect the Council's affirmation of its previous decision. Additionally, because other amendments incorporated many of the FMP changes, the action adopted by the Council in 2002 will not match what will be submitted for Secretarial review. The updated analysis was mailed out in mid-March; an executive summary of that analysis is attached (Item D-3(1)).

**Inshore/Offshore Language**

The purpose of the recommended revisions concerning BSAI inshore/offshore language in the FMPs was to make the FMPs consistent with the AFA, passed in 1998. All of the BSAI inshore/offshore language made obsolete by the AFA was removed from Federal regulations under a final rule published in December 2002 that implemented AFA provisions under Amendments 61/61/13/8. To revise inshore/offshore language in the FMPs, four action alternatives were adopted by the Council under Amendments 62/62: Alternative 2 removes obsolete inshore/offshore language from the BSAI FMP, Alternative 3 revises the BSAI FMP description of the catcher vessel operating area (CVOA), Alternative 4 removes references to BSAI inshore/offshore allocations from the GOA FMP, and Alternative 5 removes the December 31, 2004, sunset date for inshore/offshore sector allocations of pollock and Pacific cod from the GOA FMP.

Two of the recommended revisions have since been made to the FMP as part of comprehensive housekeeping amendments. The FMP revisions included in Alternatives 2 and 4 were made as part of Amendments 83/75, which revised the FMPs by updating harvest, ecosystem, and socioeconomic information; consolidating text; and organizing the information to improve the readability of the documents. Amendments 83/75 were approved by NMFS on June 14, 2005. Alternative 3 has still not been implemented, which is to bring the CVOA language in the BSAI FMP into compliance with current Federal regulations. Also, Alternative 5 needs to be affirmed by the Council, to remove the sunset date for the inshore/offshore sector allocations in the GOA FMP.

**Single Geographic Location (SGL)**

The purpose of this action was to provide greater flexibility for AFA stationary floating processors by allowing them to process targeted BSAI pollock in up to four geographic locations during a single fishing year. In addition, AFA stationary floating processors would be required to process all GOA pollock and GOA Pacific cod where they processed these species in 2002. There are no

revisions needed to the BSAI FMP because there is no SGL language in the FMP; this action requires only regulatory amendments. The October 2002 final Council motion for single geographic location is presented below:

*In the Bering Sea directed pollock fishery, AFA inshore floating processors would be required to operate in a single geographic location in State waters for the duration of each reporting week, but would be allowed to change locations from week to week, to a maximum of four changes per calendar year. In addition, AFA inshore processors would be required to process all GOA pollock and GOA Pacific cod in the same location at which they processed these species in 2002.*

Subsequent to the Council taking final action on SGL, changes have occurred in the pollock fishery in the BSAI. Because of the AI pollock allocation to Adak, the AFA pollock fishery in the AI no longer exists. Also, there appear to be changes in the distribution of pollock in the BS which could result in increased interest in moving AFA CV operations to the north.

These changes have led NMFS to recommend that the Council review its action from October 2002 and affirm, modify, or repeal that action. To help in this endeavor, provided below are three issues that potentially influenced the single geographic location Council action, which may need review given the change in BSAI pollock fishery since 2002.

- On the middle of page iv of the Executive Summary and on the bottom of page 22 is a discussion concerning the representatives of AFA stationary floating processors, AFA onshore processors, and other interested parties having little or no opposition to the change in the single geographic location action in 2002. Given that the discussion took place in 2002 and the BSAI pollock fishery has changed since that time, is there still little or no opposition to the change in single geographic location?
- On the middle of page 5 and on the bottom of page 33 is a brief statement with industry representatives in 2002 concerning a feasible scenario of moving a floating processor to the Pribilof Islands during the pollock B season. Given the change in the pollock fishery since 2002, is moving a floater to the Pribilof Islands still a reasonable.
- Finally, on the bottom of page 37 and on the middle of page 38 is brief discussion of future plans for the floating processors. A representative of one company indicated that his firm had not current plans to move their floating processor, while a representative from the other company indicated they may consider moving their float processor after the pollock A season. Given the change in the BSAI pollock fishery since 2002, have the future plans for these floating processors changed?

At this meeting, the Council may discuss these issues and determine how to proceed on this matter.

#### COUNCIL DISCUSSION/ACTION

[John Bundy was not present for this discussion.]

The Council received a staff report on the issue from Jon McCracken (NPFMC) and oral public comments. Neither the Scientific and Statistical Committee nor the Advisory Panel addressed this issue.

Dave Benson moved that the Council affirm its October 2002 decision to amend regulations requiring an AFA floating processor to operate in a single geographic location when processing AFA Bering Sea pollock. The 2002 motion was as follows:

**"In the Bering Sea directed pollock fishery, AFA inshore floating processors would be required to operate in a single geographic location in State waters for the duration of each reporting week, but would be allowed to change locations from week to week, to a maximum of four changes per**

**calendar year. In addition, AFA inshore processors would be required to process all GOA pollock and GOA Pacific cod in the same location at which they processed these species in 2002."**

The motion was seconded by Bill Tweit.

**Duncan Fields moved to amend to affirm the October 2002 Council actions to (a) update the CVOA to accommodate AFA-related changes, and (b) to remove the December 31, 2004 sunset date for GOA inshore/offshore allocations from the GOA FMP. The motion was seconded and carried without objection.**

**Bill Tweit moved that the Council deems proposed regulations that clearly and directly flow from the provisions of this motion to be necessary and appropriate in accordance with section 303(c), and therefore the Council authorizes the Executive Director and the Chairman to review the draft proposed regulations when provided by NMFS to ensure that the proposed regulations to be submitted to the Secretary under section 303(c) are consistent with these instructions. The motion was seconded and carried without objection.**

The amended main motion carried without objection.

#### **D-4 Scallop Management**

##### **ACTION REQUIRED**

**Receive Plan Team Report, Review and Approve SAFE report**

##### **BACKGROUND**

###### **Scallop SAFE Report**

**The Scallop Plan Team met in Anchorage on February 21-22, 2008 to review the status of the weathervane scallop stocks in Alaska and to prepare the Stock Assessment and Fishery Evaluation (SAFE) report. This SAFE report was mailed to you on March 7th. The SAFE report provides an overview of scallop management, scallop harvests and the status of the regional weathervane scallop stocks. Scallop stocks are neither overfished nor approaching an overfished condition. The report from the Scallop Plan Team meeting is attached as Item D-4(a).**

##### **Report of the Scientific and Statistical Committee**

The SSC reviewed the Scallop SAFE and noted that previous SSC comments were addressed and that the document is better organized and easier to read than previous versions. The SSC provide comments to staff for future Scallop SAFEs -- see the SSC Minutes, Appendix II to these minutes, for those comments. With regard to the potential sunset of the State of Alaska's vessel limitation program, the SSC strongly expressed its concern over potential biological conservation issues regarding the scallop resource in the event that State waters are once again subject to open access.

The **Advisory Panel** did not address this agenda issue.

##### **COUNCIL DISCUSSION/ACTION**

The Council was unable to take the staff report on the Scallop SAFE because of time constraints.

**D-5 Ecosystem Based Management**

**ACTION REQUIRED**

- (a) ~~Report from Ecosystem Committee~~
- (b) Preliminary review of Arctic FMP (Council only)

**BACKGROUND**

- (a) ~~Report from Ecosystem Committee~~

The Ecosystem Committee meeting has been postponed until May. However, one of the issues the Committee was planning to discuss may be of interest to the Council, so I am including some information in this briefing report. NOAA recently issued a public review draft of the NOAA Alaska Region Collaboration Team (ARCTic)'s Integrated Services Plan. A summary of this report is attached as Item D-5(a)(1). As you may recall, the head of ARCTic, Ms Laura Furgione, head of the National Weather Service in Alaska, briefed the Council in December 2007 on the work of the team. The report is out for public comment through May 15.

- (b) Preliminary review of Arctic FMP

At its June 2007 meeting, the Council directed staff to begin preparing a draft Arctic Fishery Management Plan (FMP) and draft amendments to the scallop and crab FMPs that terminate their geographic coverage at Bering Strait, and to develop an accompanying analysis that considers several options for the Arctic FMP: close the entire Arctic region to all commercial fishing, or close the entire Arctic region to commercial fishing except for the red king crab fishery that has previously occurred in the southern Chukchi Sea.

The Council was scheduled to receive a preliminary report on the Arctic FMP at their February 2008 meeting, but postponed this agenda item to the April 2008 meeting. However, staff did present a progress report on the Arctic FMP in February to the Council's Ecosystem Committee and to the SSC and AP. The SSC, AP, and Ecosystem Committee's comments on the Arctic FMP are provided in Item D-5(b)(1).

Since February, staff has begun the process of addressing the SSC and Ecosystem Committee comments, and has continued to enhance the EA/RIR/IRFA with additional sections, text, and data. Staff also has continued with the outreach program (presentation to the Northwest Arctic Borough Assembly, Radio KOTZ interview, and individual briefings), and additional outreach efforts are scheduled for the coming months.

The recommended alternatives for Council consideration as it proceeds with the Arctic FMP are as follows. A table of the alternatives is attached as Item D-5(b)(2), and the Executive Summary from the preliminary draft EA/RIR/IRFA is attached as Item D-5(b)(3):

**Alternative 1: Status quo. Maintain existing management authority.**

**Alternative 2: Adopt an Arctic FMP that closes the entire Arctic Management Area to commercial fishing. Amend the scallop and crab FMPs to terminate their geographic coverage at Bering Strait.**

**Alternative 3: Adopt an Arctic FMP that closes the entire Arctic Management Area to commercial fishing. Amend the scallop and crab FMPs to terminate their geographic coverage at Bering Strait. A red king crab fishery in the Chukchi Sea, of the size and scope of the historic fishery (emphasis added per Ecosystem Committee recommendation), would be exempt from the Arctic FMP.**

**Alternative 4: Adopt an Arctic FMP that closes the entire Arctic Management Area to commercial fishing. Amend the scallop FMP to terminate its geographic coverage at Bering Strait. The Arctic FMP would cover the area north of Pt. Hope for crab and north of Bering Strait for groundfish and scallops.**

**At this meeting, staff will give the Council an overview of the status of the Arctic FMP, the accompanying analyses, and the schedule. The FMP, together with its accompanying NEPA analysis, is scheduled for initial review in October.**

Neither the Scientific and Statistical Committee nor the Advisory Panel addressed this agenda item.

## **COUNCIL DISCUSSION/ACTION**

The Council did not address this agenda issue because of time constraints.

### **D-6 Staff Tasking**

**Review tasking and committees and provide direction.**

## **BACKGROUND**

### **Committees and Tasking**

**The list of Council committees is attached as Item D-6(a)(1). Item D-6(a)(2) is the three meeting outlook, and Item D-6(a)(3) and Item D-6(a)(4) respectively are the summary of current projects and tasking. In addition, an updated workplan for implementing the programmatic groundfish management policy is attached Item D-6(a)(5). The Council may wish to discuss tasking priorities to address these projects, as well as potential additions discussed at this meeting, given the resources necessary to complete existing priority projects.**

**At the last meeting, the Council reviewed a discussion paper proposing an approach to increase Alaska Native and community participation and consultation in the fishery management process, pursuant to the Council's related Groundfish Policy Workplan priority. One idea included in this approach and discussed by the Council was to create a new Alaska Native and community committee. This may be a good approach at some point, but I believe the Council would need to carefully consider the membership, direction, and role of such a committee, given the large geographic coverage required, and given the variety of specific issues or management programs that might be addressed. For example, a single standing committee with broad statewide representation might be useful for very general outreach and communication, while different, smaller committees would be needed on a more ad-hoc basis to address more local or regional matters. Participation costs may also factor into the construction of such a committee or committees. Council committees are 'no-host', meaning that committee members are not reimbursed for travel costs to attend meetings.**

**For these reasons I suggest the Council first focus more on processes for increasing Native and community participation, rather than a specific committee. In doing so we would need to more definitively assess the range of issues to be addressed in the foreseeable future, and the specific communities or other entities best suited to interact on these issues. In June, the Council is scheduled to have a more in-depth discussion of Alaska Native and community outreach and stakeholder participation. Staff will bring forward a revised discussion paper on ways to improve the process, and at that time, the Council should be in a better position to address the potential for a new committee in the context of the overall approach. The intent is that a protocol will eventually be developed to expand both formal and informal consultation, as well as a process to**

**document such activities. The Council noted that it would like to reserve time on each June agenda for an update of these issues.**

Neither the **Scientific and Statistical Committee** nor the **Advisory Panel** addressed this agenda item.

### **COUNCIL DISCUSSION/ACTION**

[NOTE: Earl Krygier participated in this discussion for Denby Lloyd; John Bundy was not present.]

Chris Oliver provided an overview of the Staff Tasking action memo. The Council also received public comment on staff tasking issues.

Kodiak Meeting. With regard to the Kodiak meeting, Mr. Fields commented that he agreed with Mr. Sullivan's suggestion during public comment that the Council will receive a large amount of public comment in Kodiak, not only on the issues on the agenda, but other fisheries-related issues and starting a half-day early specifically to hear public comments on crab rationalization as well as varied fisheries issues should be considered. Council members noted that the agenda will be packed with items for final action and will need a full seven days to complete the agenda. Mr. Cotten suggested that he and Mark Fina could field a public hearing the day before the meeting if that would facilitate things. Council members decided to defer the decision to the Chair and Executive Director when they draft the agenda which would then be circulated to Council members for comment.

Crab Rationalization Program IFO Fee Program. Mr. Mecum asked staff to brief the Council on two issues related to the Crab Program which would require FMP amendments that would clarify that the collection of fees would not exceed the actual subsidy costs of the loan program. The Council was provided with a two-page explanation of the issues and Mr. Mecum noted that NMFS staff would prepare the analysis and requested that the Council consider initial and final action at the June meeting. The Council agreed. The two-page explanation of issues is included as Appendix VIII to these minutes.

BSAI Amendment 89 -- Opening of Wedge Area. With regard to the proposed rule for BSAI Amendment 89 discussed during the NMFS Management Report earlier in the meeting, **Earl Krygier moved that the Council comment on the final rule for Amendment 89 noting that the Council linked the reopening of the wedge area with the completion of gear modification for Amendment 80 flatfish fleet. Since NMFS considered this linkage frameworking it wasn't incorporated in the proposed rule and the Council requests that NMFS describe the Council's intent in the final rule's preamble and to consider that the analysis for the FMP amendment to reopen wedge tier off the test analysis and Council discussion of Amendment 89.** The motion was seconded and carried without objection.

Mr. Tweit suggested the Council also include in their comments on the proposed rule the recommendations from the Elders' Workgroup and the H&G Workgroup to synchronize the dates for reviewing the Etolin Strait area boundary and adoption of a Northern Bering Sea research plan. Council members agreed with that suggestion.

Reporting/Licensing Requirements - CPs in BSAI fixed gear Pacific cod parallel fisheries.

**Gerry Merrigan moved the following:**

**Initiate a discussion paper on possible Council actions regarding licensing requirements for vessel participation in the BSAI CP fixed gear sectors (CP pot and CP H&L) in the BSAI parallel cod fishery. The paper should qualitatively discuss the viability of adopting the following measures (or combination of measures):**

1. **Requiring any CP pot or CP H&L vessel with an LLP must have an A.67 endorsement in order to participate in the BSAI P. cod parallel fishery.**
2. **Requiring any CP pot and CP H&L vessels with a LLP to surrender/relinquish their LLP to NMFS in order to participate in the BSAI P. cod parallel fishery.**
3. **Requiring any CP pot and CP H&L vessels to surrender/relinquish all federal fishing permits (LLP, FFP, IFQ) to NMFS in order to participate in the parallel BSAI P. cod fishery.**
4. **Other possible solutions for the Council to maintain regulatory control over federal permitted vessels fishing in the BSAI P. cod fishery with CP pot and CP H&L gear.**
5. **Potential actions for vessels with no federal licenses (may require possible Alaska Board of Fisheries action).**

**The surrender/relinquishing of federal permit(s) should be discussed as to what is the appropriate time period (i.e., annual or some other time period).**

**The intent of this paper is to explore this issue by preliminarily keeping it narrow in scope (BSAI P. cod parallel fishery for fixed gear CPs) - though the same issues may apply to other fisheries.**

**Further, the Council encourages ADF&G to consider changes to the catch reporting requirements for CP vessels participating in the parallel fishery in order to allow more timely catch accounting relative to specified federal quotas.**

Mr. Merrigan provided the following written rationale for the action:

The motion was seconded and carried without objection.

Community Protections for Central Aleutian Island Communities.

Earl Krygier provided a motion for measures to support community protections for Central Aleutian Island communities, as follows:

Processor Sideboards

**The Council requests that Council staff develop a draft analysis for the Council's consideration in June that would provide processing sideboard protections for the two central Aleutian Islands communities. The analysis should provide options for groundfish sideboards on**

- (1) **processing vessels that contributed *C. opilio* history to BSAI crab processor quota share allocations (PQS), and**
- (2) **Amendment 80 catcher processors acting as motherships.**

**The analysis should include options for developing processor sideboards on Pacific cod harvested in areas 541 and 542 from the federally managed and state managed parallel fisheries.**

**Options for sideboard amounts should include the following:**

**Processing vessels with contributing history to BSAI *C. opilio* PQS allocations - Highest annual and average annual amount (in aggregate across vessels) of area 541 and 542 Pacific cod processed in a mothership capacity during the Amendment 80 qualifying years.**



**Processing vessels that qualified under Amendment 80-  
Highest annual and average annual amount (in aggregate across vessels) of area 541 and 542  
Pacific cod processed in a mothership capacity during the Amendment 80 qualifying years.**

**Problem Statement:**

**The BSAI crab rationalization program allows for significant consolidation under the Council's recent custom processing use cap exemption action. The cooperative structure under Amendment 80 has created excess processing capacity. Each of these rationalization programs has provided benefits to processing vessels that are now free to target the un-rationalized BSAI Pacific cod fishery at the expense of other industry and community investments.**

**Additionally, the analysis should include options to sideboard Amendment 80 qualified vessels acting as motherships for deliveries of the Amendment 80 catcher vessel set-aside of POP and Atka mackerel harvested in areas 541 and 542.**

The motion was seconded by Duncan Fields. Mr. Krygier said that he thought that looking at sideboard protection for communities would provide better protections than an onshore landing requirement.

Mr. Tweit said that while he appreciates the rationale, he was concerned that the motion seems to indicate that the Council has already reached some conclusions about the nature of the problems and that he believes the options are too narrow in scope at this point. He suggested beginning with a discussion paper before initiating an analysis. Mr. Krygier responded that because the initial request was for emergency action he thinks initiating an analysis at this time is warranted. Mr. Oliver pointed out that the June agenda is already full and staff may not be able to get a draft analysis prepared by that time.

**Gerry Merrigan moved to change the request from an analysis to a discussion paper.** The motion was seconded by Dave Benson and failed on a vote of 5 to 5, with Hyder, Tweit, Mecum, Merrigan, Benson voting in favor and Krygier, Cotten, Dersham, Fields and Olson voting against (Bundy absent).

**Duncan Fields moved to remove the June date for the draft analysis and task staff to develop an analysis as soon as resources are available.** The motion was seconded by Doug Mecum and carried without objection.

**Doug Mecum moved to strike the problem statement.** The motion was seconded by Gerry Merrigan and carried with Krygier objecting. Mr. Mecum, as well as other Council members, expressed concern with the current wording of the problem statement.

The amended main motion carried, with Benson objecting.

Catch Processor Exemption - 90/10.

**Sam Cotten moved to request staff to develop a discussion paper on the issues involved with the current exemption that allows certain catcher processors the option to fish the inshore (90%) component of the Gulf of Alaska Pacific cod fishery.**

**Issues that should be discussed include:**

- 1. What was the rationale for exempting the small (<125') catcher processors and does this rationale still apply today?**

2. **Is the exemption consistent with the Council's groundfish management policy? (. . .sustainable opportunities for. . .fishing communities;. . .reduce discards by developing management measures that encourage the use of gear and fishing techniques that reduce bycatch. . .; control bycatch of PSC).**
3. **Is the exemption consistent with National Standards 8 (community protection) and 9 (bycatch)?**
4. **Bycatch of PSC and level of observer coverage.**
5. **Potential effects of pending federal legislation regarding co-op formation in the Bering Sea. (possible increased participation in the GOA)**
6. **Importance of Gulf of Alaska cod resource to the exempt fleet compared to Bering Sea harvest levels.**
7. **Importance of Gulf of Alaska cod resource to fishing communities and fishermen (Alaska residents and non-Alaska residents) who deliver to the onshore plants.**

The motion was seconded by Duncan Fields and failed, 6 to 4, with Krygier, Cotten, Fields, and Olson voting in favor (Bundy absent). Council members voting against noted that the Council is already looking at cod issues and fixed gear recency, that information has already been collected and provided to the Council, and that the Council has already taken action to eliminate the inshore-offshore designation in the catcher processor sector as well as in the Gulf cod sector split decision.

Appointments. Rex Murphy's appointment to the Advisory Panel was approved by the Council, to run through 2009. Additionally, Tim Evers was appointed to serve on the Advisory Panel to the end of 2008.

#### **D-7 Crab Model Review**

This was an SSS-only agenda item. The SSC received a staff review of the SSC the schedule for producing crab SAFEs and OFLs to satisfy the provisions of Amendment 24, which should soon be approved. Crab SAFEs will be produced for the 10 stocks identified in Amendment 24, and the Crab Plan Team drafted two documents to assist in this effort: a set of suggestions for the assessments and a guide to preparing the SAFEs. The SSC approved two documents provided by the Plan Team: a set of suggestions for the assessments and a guide to preparing the SAFEs but noted that stock assessment authors may not be able to address all of the suggestions in time for the Plan Team meeting in May. The same is true for suggestions from the CIE review that was recently released. Nevertheless, the SSC noted that these documents provide a logical structure and a good start toward developing a consistent and complete set of SAFE chapters.

#### **ADJOURNMENT**

Chairman Olson adjourned the meeting at approximately 7:40 p.m. on Tuesday, April 9, 2008.