

December 11, 2015

Dan Hull, Chair
North Pacific Fishery Management Council

Dr. Jim Balsiger Regional Director
Alaska Region, National Marine Fisheries Service

Re: Comments related to Council Agenda Item D 1 for the December 2015 meeting of the North Pacific Fishery Management Council and the preparation of a Draft Environmental Impact Statement and associated staff workplan.

Gentlemen:

These comments are provided in regard to Agenda item D1 for the December meeting, and as scoping comments pursuant to the National Environmental Protection Act (NEPA). NEPA requires that environmental analyses be informed by a thorough scoping of relevant issues to be analyzed and addressed in any associated Environmental Impact Statement. On July 14, 2015 NMFS announced its intention to prepare an EIS on this action due to significant impacts on the human environment. Although the official scoping period is past, we understand additional scoping and opportunities for public comment are ongoing on the range of issues that need to be evaluated as the Council considers developing a Gulf of Alaska Trawl Bycatch Management Program.

At the Council's October 2015 meeting, a new alternative was added to the suite of alternatives already under consideration. Alternative 2 has been the subject of numerous meetings and opportunities for public comment over the past 2-3 years. Despite the long record on this Alternative, a significant analytical workload remains. The new Alternative 3 (using staff proposed re-numbering) was presented at the end of the October meeting with no provision for the public to review and comment on the proposal. It was not available for public comment at the meeting, nor in scoping the comments NMFS collected prior to the October Council meeting. To our knowledge, there's no management structure globally like Alternative 3 for us to look to assess and understand likely impacts.

At the December meeting the Council is only considering the staff workplan for preparation of the Draft Environmental Impact Statement (DEIS). Review and public comment on Alternative 3 is again reserved for a future meeting.

The workplan reflects Council direction to use a “build up” approach rather than providing a complete analysis after an extended period. We urge the Council and the agency to follow the proven process for shaping significant amendment packages, through multiple iterations of alternatives based on comprehensive preliminary analyses. The staged approach outlined in the workplan appears to envision a process that would focus on different sets of issues each meeting rather than an iterative approach to refine alternatives. We are concerned the current schedule for this action will not provide sufficient opportunities for the affected industry and fishery dependent communities to fully evaluate and provide thoughtful comment on all the Alternatives under consideration. This action will be far reaching, and each of the Alternatives could have significant effects on harvesters, processors, and fishery dependent communities.

Below, we have identified major topics which we believe need to be addressed by staff analyses prior to the Council’s next review of this agenda item. If this is not possible to do in a thoughtful and reasonably complete manner by February, then we suggest the proposed schedule be adjusted accordingly. Failing to offer a full preliminary analysis, with ample time for review by all stakeholders prior to the Council meeting where these analyses will be discussed shortchanges the public process and increases the possibility of unintended consequences of Council action. The intent and requirements of NEPA must be met, and we urge the Council take advantage of the information a NEPA analysis will generate rather than make decisions that leave NMFS with the responsibility of meeting the analytical and public process requirements after Council action.

The issues outlined in this letter pertain primarily to the inshore sector, and include the following:

1. Alternative 4 - CFA development. Staff have based their workplan and proposed schedule on the desire to have community issues discussed at the June 2016 meeting in Kodiak, emphasizing that Kodiak is one of the main communities this action will affect. In order for the preliminary analysis to provide useful information regarding the effects of Alternative 4, and to provide a meaningful comparison between all the Alternatives, Alternative 4 must be more fully developed. Otherwise, the analysis will simply be speculative and of little value. It is a requirement of NEPA to fully consider all reasonable alternatives, so in order to ensure compliance with NEPA we support full analysis of Alternative 4. We believe that the Council should strongly encourage proponents of this Alternative to provide the needed additional detail for Alternative 4 at the next meeting where this agenda item is scheduled (currently February 2016) so it can be fully analyzed along with the other Alternatives and provide a basis for a thoughtful discussion at the June meeting in Kodiak. We believe that it is incumbent on the proponents of Alternative 4 to provide additional detail to what is currently before the Council in order for a meaningful analysis to be conducted, and reasonable opportunity

for public comment on this Alternative to occur. We understand the staff's desire to have discussion of community issues be a centerpiece in Kodiak and we concur with their approach. If time is limited, we urge the Council to prioritize review of Alternative 4 at the June 2016 meeting in Kodiak and reschedule review of the broader package for a later meeting.

2. Coop formation and linkages. The staff workplan describes several aspects of co-op formation (Alternative 2 and Alternative 3) that would be reviewed and discussed at the February meeting. Under the heading *Discussion Paper on cooperative formation* the staff workplan speaks solely of effects on harvesters. Both Alternative 2 and Alternative 3 have consequences for processors which need to be thoroughly reviewed and analyzed.

The staff paper also focuses on “fixed linkages” vs. “free association”. We are concerned that these are not accurate descriptions of what is before the Council and that these terms may unduly bias the analysis. For example, from a practical standpoint Alternative 3 is a “no linkage” alternative and should be analyzed in that context. How would control of PSC by a discreet number of harvesting vessels affect the interests of other harvesters as well as processors and fishery dependent communities?

Fixed linkages would be permanent linkages such as in the initial GOA Rockfish Pilot program. Alternative 2 has criteria for initial voluntary co-op formation and then explicitly allows for subsequent movement by harvesters from one co-op to another, or to a limited access fishery outside the co-op system. There are no permanent linkages under consideration under Alternative 2 or for that matter in any of the Alternatives or their various options. The analysis needs to be clear in this regard.

3. Co-op formation and incentive to participate. The staff workplan intends to explore what incentives may exist under each Alternative for harvesters to join co-ops. What is missing is analysis regarding what incentives there might be for processors to participate in the co-op program under each Alternative. It is clear that Alternative 2 envisions cooperative behavior between harvesters and processors to better manage bycatch and target species harvest. The intent is to provide incentive and opportunity for adding value to the fishery as well as to control bycatch. The Council recognized the benefits of cooperation between harvesters and processors as a way to provide opportunity for all parties: harvesters, processors, and fishery dependent communities. This was front and center when the

Council developed the goals and objectives for this proposed program. Alternative 2 was the result of these considerations. Alternative 3 is less clear in this regard. What needs to be fully explored for discussion in February is a clear description that compares and contrasts the incentives each Alternative provides to industry (harvesters and processors) to participate in co-ops, and how future opportunities for adding value to the fisheries can be achieved under each Alternative.

4. Co-op formation and the single co-op per region option. There are many questions about how the proposed single co-op per region structure would work and what are the potential benefits and pitfalls of such a management structure. In most other programs, co-ops are formed around a single processor. This proposal would have PSC control vested with a single co-op and allow for association with multiple processors.

What effect would this single co-op structure have on control of target catch or PSC? How would distribution of PSC between harvesters be accomplished, and what impact could this have on individual harvesters? What effect would this have on processor investments and operations? What effect could this have on consolidation within the harvester and processor sectors? What are the effects such an arrangement could have on fishery dependent communities? Could this structure affect price formation, and what monitoring and enforcement measures would be necessary to ensure compliance with anti-trust law? Would the effects of this proposed structure be the same for each fishery in each region? Or are the significant differences between fisheries or regions that need to be considered? These are fundamental questions that need to be addressed after careful analyses in order for the affected industry and the Council can make informed decisions about the Alternatives under consideration.

5. Historical dependence on the fishery. The MSA emphasizes consideration of historical participation by harvesters and processors when developing such programs. The analysis needs to fully and carefully evaluate how each Alternative takes into account historical participation in the fishery by harvesters and processors, and the associated dependence on the fishery by harvesters, processors, and fishery dependent communities. This is fundamental to understanding the tradeoffs within and between Alternatives. Alternative 2 is designed to take into account historical participation. It is less clear how Alternative 3 considers historical participation. The analysis needs to explicitly explore the effects of each Alternative not only on catch history, but also historical landing and delivery patterns, investments by harvesters and processors in the fishery and their dependence on the fishery, employment in the processing sector and support industries, and downstream

effects on the historical pattern of operations and potential effects on non-groundfish fisheries.

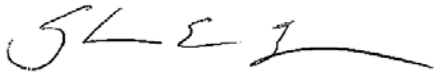
6. Effects on investment, and incentive for new capital investments. What are the effects of each Alternative on the capital assets and investments of harvesters, processors, and fishery dependent communities? Throughout the process of developing alternatives for this program, the vast majority of industry participants (harvesters and processors) have agreed that the program should be designed so that the capital assets and investments of one sector would not be devalued to benefit another sector. The analysis should describe how each Alternative would address this fundamental principle. As part of this discussion the analysis should also look at and identify what incentives each Alternative provides for new capital investment by harvesters, processors, and/or fishery dependent communities.
7. Target species allocations vs. PSC only allocations. A thorough review is required for each Alternative as it affects access to major target species and/or species groupings and the costs and benefits of the various approaches to harvesters, processors, and fishery dependent communities. Alternative 2 is explicit in this regard although there are different options regarding which target species might be allocated. Alternative 3 does not anticipate such allocations. There are costs and benefits to each approach. The staff workplan focuses on performing analyses on PSC only, and apparently does not include target catch. Understanding the costs and benefits of each of the Alternatives and the effect on target species catch is fundamental to understanding the differences between each Alternative.

For example, Alternative 3 has been described as not being a LAPP program under Section 303 (A) of the MSA because it does not specifically allocate individual quota or catch shares of target species. This interpretation of the MSA is novel and we believe the Council should request NOAA GC to provide guidance on this point. Nonetheless, the staff work plan does not speak to the question of control of target species harvest through PSC allocations. At some point control of associated PSC becomes de-facto control of access to the target catch. The analyses needs to explore under what conditions (levels of PSC allocated, number of vessels, etc) would control of PSC result in control of target species catch. The analysis should then describe the impacts such control could have on harvesters, processors, and communities on a fishery-by-fishery basis for each of the GOA regions.

8. Legal Review. Much has been made of the legal questions surrounding certain aspects of co-op formation under Alternative 2 but no comprehensive assessment has been made of other aspects of the alternatives being considered by the Council. A preliminary review of each Alternative and its relation to MSA requirements including national standards, attainment of OY, requirements for considering historical participation, and the provisions covering catch share or limited access privilege programs (LAPPs) under Section 303 (A) needs to be done. This should include an explicit analysis of how the CFA proposal fits under those provisions of Section 303 (A) regarding fishing communities.

As acknowledged in the workplan, there are many other issues and topics that the analysis will need to address. We believe that the issues identified above outline fundamental information that needs to be fully vetted and analyzed early in the process in order for the affected harvesters, processors, and fishery dependent communities (as well as other stakeholders) to understand and make meaningful comment on the various options within each Alternative as well as between Alternatives. There are complex interactions within each Alternative and between the coop alternatives and community protections that the staged or “build up” analytical approach is unlikely to adequately reveal or explain. We encourage the Council and NMFS to ensure that these analyses, and the information they will provide, will be available for public review and comment early in the process, and certainly well in advance of the Council making significant refinements to any of the Alternatives currently under consideration.

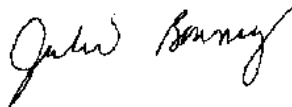
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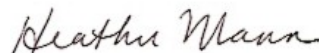
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