

ADVISORY PANEL
Motions and Rationale
June 4; 7-9, 2024 - Kodiak, AK

D4 BSAI Pacific Cod Pot LAPP

Motion

The AP recommends the Council adopt the following purpose and needs and alternative for analysis, request staff to create an initial review document using the following Alternatives, Elements, and Options to analyze creating a LAPP catch and allocation program for the Bering Sea and Aleutian Island Catcher Vessel and Catcher Processor sector pot cod fishery vessels and shoreside processors.

Purpose and Need:

Over the last several years, total allowable catch for Pacific cod in the Bering Sea Aleutian Islands (BSAI) has steadily decreased. The pace of the fishery has contributed to an increasingly compressed season, resulting in decreased ability to maximize the value of the fishery, and negatively impacting all fishery participants (catcher vessels, catcher processors, shoreside processors, and communities). This race for fish also discourages fishing practices that can minimize bycatch and threatens the sustained viability of the fishery. Fishery participants are unable to form durable cooperative fishery-based structures due to the large number of inactive vessels that could enter the fishery. The Council is considering the development of a cooperative-based program for the Bering Sea and Aleutian Island Pacific cod pot fisheries to improve the prosecution of the fishery, with the intent of promoting safety and stability in the harvesting and processing sectors, increasing the value of the fishery, minimizing bycatch to the extent practicable, providing for the sustained participation of fishery dependent communities, and ensuring the sustainability and viability of the resource.

BSAI PCod Pot CV and CP Management

Alternative 1. Status Quo – No Action Alternative

Alternative 2. Cooperative management program for BSAI pot CVs $\geq 60'$ and pot CPs

Element 1

Cooperative Style Systems (May choose separate alternatives for CP and CV). Annual voluntary CV cooperatives in association with eligible processors. Harvesters may change cooperatives on an annual basis and without penalty.

Option 1. One Single Cooperative

Option 2. No limitation on the number of cooperatives that may form. Inter-cooperative formation is allowed.

- Sub-option a. No minimum number of LLP licenses is required to form a cooperative.
- Sub-option b. A minimum of two LLP licenses are needed to form a cooperative.
- Sub-option c. A minimum of three LLP licenses are needed to form a cooperative.

Element 2

Initial Allocation to LLP Licenses

Catch history to determine eligibility

2.1. Eligibility – Any LLP license assigned to a vessel that made qualifying catch history (legal landings) of targeted pot CV, or pot CP, BSAI Pacific cod during the qualifying years is eligible to receive QS.

Option: Establish a minimum threshold percentage range of 0.25%-1% by LLP holder for eligibility to receive QS. Partial ownership of LLP licenses counts toward the minimum threshold using the individual and collective rule.

2.2. Harvester Allocations – Eligible LLP licenses must be assigned to a cooperative for the cooperative to receive annual BSAI Pacific cod cooperative quota (CQ). The initial allocation of QS will be made to eligible LLP licenses, with each LLP license's QS based on the Pacific cod qualifying catch history (legal landings) of targeted BSAI Pacific cod authorized by that LLP license during the following qualifying years:

- a. Pacific Cod would be allocated based on the catch history of LLPs in the directed BSAI $\geq 60'$ Pacific Cod Pot Catcher Vessel and Catcher Processor sector with the following year options for consideration: (May choose separate options for CP and CV)

Options:

- 2.2.1 2017 through 2023 (7 years)
- 2.2.2 2014 through 2023 (10 years)
- 2.2.3 2009 through 2023 (15 years)

Sub-options:

- a. Drop 1 year
- b. Drop 2 years
- c. Drop 3 years
- d. Drop 4 years

2.3. Development and administration of a Reserve Pool funded by (1%, 5%, or 15%) of available Sector allocation, for use by active vessels* without an LLP. Minimum threshold of legal catch in years selected in Element 2.2.

Options:

- 2.3.1 Threshold of 100 Mt
- 2.3.2 Threshold of 200 Mt
- 2.3.3 Threshold of 500 MT

*Denotes vessels owned and active in years selected in 2.2.a (above) in which the vessel owner is not designated on an BSAI Pot CV or CP LLP

2.4. Pacific Cod would be allocated in equal shares to every LLP based on:

1. Full sector allocation in an equal share to all active LLPs. This option is mutually exclusive of the option in Element 2.2.

2. A blended allocation:

Options: These options (below) are not mutually exclusive of options in Element 2.2.

Range of:

- 2.4.2.1 10% of available Sector allocation allocated in equal shares to every LLP
- 2.4.2.2. 25% of available Sector allocation allocated in equal shares to every LLP
- 2.4.2.3. 50% of available Sector allocation allocated in equal shares to every LLP
- 2.4.2.4. 75% of available Sector allocation allocated in equal shares to every LLP

2.5. For the initial allocation of QS, qualifying catch history is attached to the LLP license at the time of harvest. If multiple LLP licenses authorized catch by a vessel, in the absence of an agreement provided by the LLP license holder at the time of application, qualifying catch history will be:

Options:

- 2.5.1: Divided equally between those LLP licenses.
- 2.5.2: Assigned to an LLP license by the owner of the vessel that made the catch.
- 2.5.3: Transferred to preferred LLP license agreed to by the LLP license holders.

2.6. Annual CQ will be issued to each cooperative by NMFS based on the aggregate QS attached to LLP licenses that are assigned to the cooperative. NMFS will issue CQ by season and rely on the cooperatives to ensure the seasonal limits are not exceeded. Unused A season CQ may be rolled over to the B season. CQ will not be designated for harvest in a management area (i.e., BS or AI) but may be harvested from either area.

2.7. Allocate both A and B seasons. All groundfish species not allocated to cooperatives will be managed by maximum retainable amounts (MRAs), as under current management.

Element 3. Crab Prohibited Species Catch Limits

Use same qualifying years as allocation under section 2.

Annual crab PSC limits available to the BSAI pot CV and CP Pacific cod sector will be established through the annual specification process as follows:

Options:

3.1: Crab PSC limits will be maintained at the BSAI pot CV and CP limited access sector level.

3.2: Establish separate PSC limits for the BSAI pot CV and CP Pacific cod sectors.

Sub-option 3.2.1: Crab PSC limit will be apportioned based on historical use (using qualifying years selected under Element 2) between the pot CV sector and the pot catcher processor (CP) sector.

Sub-option 3.2.2: Calculate overall PSC limit to the BSAI pot CV and CP cod sectors based on historical use. Divide the Crab PSC limits between CV and CP sectors based on the proportion of BSAI Pacific cod allocated to the pot CV sector and pot CP sector.

3.3: Set crab PSC limits below historical use set in 3.2 above. Reduce by 10%; or 25%; or 35%; or 45%.

Sub-option 3.3.1: Red king crab Zone 1

Sub-option 3.3.2: Red King Crab area 512

Sub-option 3.3.3: C. opilio Bycatch Limitation Zone

Sub-option 3.3.4: C. bairdi Zone 1 and Zone 2

Sub-option 3.3.4 (applicable to any sub-option 3.3 chosen above): Phase in crab PSC limits over

3.3.4.1: 2 years. One half of the total set crab PSC limit reductions implemented each year.

3.3.4.2: 3 years One-third of the total set crab PSC limit reduction implemented each year.

Each cooperative will receive annual CQ of Pacific cod and apportionments of crab PSC limits based on members' qualifying catch histories (and processing histories, if applicable) to be harvested in accordance with the harvest cooperative agreement. The sector's crab PSC limits will be apportioned to cooperatives in proportion to its initial Pacific cod CQ apportionment and will be monitored at the cooperative level, resulting in a prohibition on directed fishing for Pacific cod in a specified management area (crab PSC limits) by that cooperative, if the cooperative PSC limit apportionment is reached. PSC limits are transferable between cooperatives based on the same rules established for Pacific cod CQ. (Refer to Element 6).

Element 4: Gulf of Alaska Protection/Limitation

Option 4.1: CV Pot and CP pot LLPs and/or Vessels will be sideboarded to their historic participation in the Gulf of Alaska Pacific cod fisheries. (History during the time period selected in 2.2.a.)

Option 4.2: CV Pot and CP pot LLPs and/or Vessels will be sideboard limited to their historic crab bycatch in the Gulf of Alaska Pacific cod fisheries. (History during the time period selected in 2.2.a.)

Sub-option 4.2.1: Set GOA crab PSC limits by reducing historic crab bycatch: 10%; 25%; 35%; or 45%.

Element 5: Processor and Community Provisions

5.1. No closed class of processors. All processors with an eligible FPP or FFP are eligible to process BSAI Pacific cod CQ under this program.

5.2 Processors that have a history of processing in the BSAI $\geq 60'$ Pacific Cod Pot Catcher Vessel sector will be eligible to receive harvesting QS based on each processor's processing history during the time period selected in 2.a.

5.3 To be harvested, the processor's harvest shares would be assigned to a catcher vessel coop.

- i. When assigning processor harvest shares to a catcher vessel for harvest, priority must be given to non-affiliated vessels.
- ii. Pro-rata split between affiliated and non-affiliated catcher vessels.
- iii. If a processor holding QS does not associate with a cooperative, it does not receive CQ. That processor's CQ will be divided among cooperatives in the same proportion as the processor's CQ assigned to individual cooperatives by the associated processor that year relative to total processor derived CQ that was issued that year.
- iv. If a processor is associated with more than one cooperative during a year, the CQ associated with their FPP or FFP would be divided between the cooperatives in the same proportion as the CQ derived from LLP licenses.
- v. Processing history qualifying years (including any drop year option selected in element 2.2) to receive QS are the same as harvester qualifying years in Element 2.
- vi. Processors that are no longer active (no longer hold an FPP) would not be issued QS. The processing history associated with those processors would be deducted from the total amount of eligible processing history during the qualifying years when calculating the distribution of QS to processors.

5.4. Percentage of CV* Harvest Shares Allocated to Processors

Options:

1. 5%
2. 10%
3. 15%
4. 25%

*Only percentage of CV harvest shares. CP LLP while operating in CP mode derived harvest shares are not considered in any allocation to Processors.

Element 6: Transferability

6.1 Harvest shares issued to LLPs

Initially issued QS are attached to pot CV or CP LLP licenses and are non-severable from the LLP licenses. Transfer of an LLP license eligible for this program results in the transfer of any program eligibility and QS associated with the LLP license.

Sub-option 6.1.1: For the LLP licenses: Within ninety (90) days of initial issuance of QS, the owners of the LLP licenses that are associated with CVs or CPs that had engaged in fish transfer agreements during the qualifying periods and whose QS allocation at initial issuance does not exceed the ownership cap in element 7 may transfer the QS between other LLP licenses associated with CP or CV vessels subject to the ownership cap in element 7. After these transfers are approved by NMFS, the BSAI Pacific cod QS will no longer be severable from the LLP license to which it was reassigned unless modification is supported by an operation of law.

Sub-option 6.1.2: CV operation derived QS cannot transfer to CP but CP operation derived can transfer to CV LLP.

6.2. Harvest shares issued to processors:

QS based on processing history are issued as separate permits, and the permit is only transferable to another processor. Permits issued to shoreside processors can only be transferred to other shoreside processors that hold an FPP. The QS is non-severable from the permit except in the case that transfer of the permit to another eligible processor would result in exceeding the use cap under Option 7. In that case, the portion of the QS over the cap is allowed to be severed from the permit and transferred to another eligible processor permit or shoreside processor that holds an FPP.

6.3. Annual Pacific cod CQ and PSC limits (whether derived from harvesting or processing histories) are transferable between CV cooperatives.

i. If more than one CP cooperative is approved: CP Annual Pacific cod CQ and PSC limits (whether derived from harvesting or processing histories) are transferable between CP cooperatives.

6.4. Post-delivery transfers of CQ are permitted, but must be completed by August 1 (i.e., prior to annual CQ expiring).

Element 7: Ownership and Use Caps (May choose separate options for Ownership and Use)

7.1 Ownership Caps: 7.2 Harvester-issued QS. Processor-issued QS does not count toward use cap. No person may hold more than the sub-option chosen below of the Pacific cod QS issued:

7.1.1 CV only

- a. 2%
- b. 4%
- c. 6%
- d. 10%
- e. Grandfather provisions. Persons over the cap at the time of QS issuance are grandfathered (can be chosen in combination with any option)

7.1.2 CP Only

- a. 25%
- b. 50%
- c. 75%
- d. No Cap on ownership or use for CP's
- e. Grandfather provisions. Persons over the cap at the time of QS issuance are grandfathered. (can be chosen in combination with any option)

7.1.3 (applies to both 7.1.1 and 7.1.2)

- a. using the individual and collective rule
- b. using 10% ownership threshold or management and control for assigning QS to a holder's/entity's cap.

7.2 Harvest caps: No vessel may harvest more than [the option chosen below] of the annual Pacific cod CQ issued in the fishery.

Options:

- 3%
- 4%
- 5%
- 7%

Sub-option 7.2.1: Vessels over the cap at the time of QS issuance are grandfathered. The grandfather provision is applied to the vessel designated on an LLP license that yields more than 5% of the annual Pacific cod CQ at the time of initial allocation. This grandfather provision is not transferrable if the LLP license is transferred to a new owner.

7.3. Processor-issued QS* Ownership Caps: No person may hold more than [the option selected below of the Pacific cod QS:

*This cap refers to any QS initially issued to processors on a processor permit under Element 5.4.

Options:

- a. 15
- b. 25%
- c. Persons over the cap at the time of QS issuance are grandfathered (can be chosen with options a or b)

Sub-option 7.3.1: using the individual and collective rule

Sub-option 7.3.2: using 10% ownership threshold or management and control for assigning QS to a holder's/entity's cap.

7.4 Processor Use Caps: No company may process more than [the option chosen below] of the Pacific cod pot CV CQ.

Option:

- a. 15%
- b. 30%
- c. Persons over the cap at the time of QS issuance are grandfathered (can be selected with options a or b).
- d. No use caps under certain conditions (can be selected with a or b) (²e.g., low cod quota **or lack of processing capacity—thresholds TBD**)

Element 8. Cooperative Provisions

Annual cooperative applications must be filed on or before November 1 of the preceding year.

Cooperatives shall be formed by holders of qualified LLP licenses with Pot CV or Pot CP Pacific cod QS. Each LLP license may be assigned to one cooperative. A list of CVs or CP's eligible to harvest a portion of that cooperative's CQ must be identified in the annual cooperative application.

Membership agreements will specify that processor affiliated members cannot participate in any price setting negotiations, except as permitted by antitrust laws.

Element 9. Share Duration

All QS and allowances under this program are revocable privileges that 1) may be revoked, limited or modified at any time; 2) shall not confer any right of compensation to the holder, if they are revoked limited, or modified, and; 3) shall not create or be construed to create any right, title or interest in or to any fish before the fish is harvested by the holder.

The duration of all QS and associated PSC apportionments is 10 years. These permits will be renewed before their expiration, unless revoked, limited, or modified.

Element 10. Monitoring

10.1 CV Only (CPs will remain in full observer coverage category). Monitoring and enforcement provisions will be implemented to track quota, harvest, PSC, and use caps. All CV vessels harvesting CQ will:

- i.) Remain in the trip section pool for partial coverage. Observer coverage rate depends on the full and selection rates in the annual deployment plan
- ii.) Move to full observer coverage category.

This element is not intended to modify the current at-sea observer data transmission requirements for CV or CP vessels for the first 3 years after implementation.

'The Monitoring Requirements section of the analysis should provide a description of both observer and electronic monitoring options for the catcher vessel sector. This should include, but is not limited to, a breakdown of the sector's participation in observer versus the Fixed Gear EM program, observer availability and cost, challenges to utilizing EM in the fishery, and the potential tradeoffs between the two monitoring options.

Shoreside processors will be required to operate under a NMFS-approved Catch Monitoring and Control Plan. The Council authorizes NMFS to report weekly vessel-level PSC information as authorized under Magnuson-Stevens Act (MSA) Sec 402(b)(2)(A).

Element 11. Reporting and Program Review

Each cooperative shall annually produce a report for the Council describing its membership, cooperative management, and performance in the preceding year including use of CQ derived from processor issued QS.

Per the MSA, a formal detailed review of the program shall be undertaken 5 years after implementation, with additional reviews, at a minimum, each seven years thereafter.

Element 12. Cost recovery

A fee, not to exceed 3% of the ex-vessel value, will be charged on all program landings to cover the actual costs directly related to the management, data collection, and enforcement of the program.

Amendment 1 passed: 21/0 (include a section on monitoring requirements)

Amendment 2 passed: 21/0 (modify language in 7.4 option d)

Main Motion as amended 21/0

Rationale in Favor of Amended Main Motion:

- *Multiple issues are simultaneously impacting the sustained viability and rational prosecution of the fishery for all its participants. These factors include: Decreasing Pacific cod TACs, an increase in the number of participating LLP licenses in the CV sector, the potential for additional new participants in the CV sector, a race among existing participants (often in unsafe conditions), resulting in an inability to control bycatch of crab and Increasingly shortened seasons in recent years.*
- *A cooperative rationalization program will allow for greater ability to control bycatch, at the same time a program will expand removing crab predators from the grounds which will aid in the recovery of BBRKC.*
- *A rationalized program will improve product quality and value, promote safety at sea (slow the pace of the fishery) and promote sustainability and viability of the Pacific cod resource.*
- *Rationalized programs can promote stability in the harvesting and processing sectors while also providing opportunities for increased flexibility in fishing plans.*
- *This action is in line with the recommendations from the Alaska Bycatch Review Task Force and this action is a priority for the State of Alaska.*
- *The Pacific cod pot fisheries are the last Olympic style fisheries in the Bering Sea. Rationalizing virtually all other Pcod sectors in the BSAI but leaving out these two sectors is not appropriate. The over 60 Pot Cod fishery is not an entry level fishery. It requires multimillion dollar platforms and expensive gear.*
- *Since this issue was first considered by the Council in 2019, the Council has directed stakeholders to collaborate on a comprehensive framework for analysis. While there is still not 100 percent consensus among stakeholders over allocation issues, the majority of historical participants would like to see the Council analyze a variety of allocation options.*
- *There are no existing rationalization programs where all stakeholders were in complete agreement either at the outset of development or after implementation.*
- *Moving this program forward meets several National Standards, including: National Standard 4 on Fair and equitable allocations, National Standard 5 on Efficiency, National Standard 9 on Bycatch Reduction and National Standard 10 regarding safety at sea.*
- *The proposal is responsive to public comment and the variety of allocation considerations is responsive to all the public comment, and no action is always an option.*
- *When developing the program, the Council is required to consider the basic cultural and social framework of the fishery. This includes policies promoting the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including how the program will impact the less than 60 foot fleet.*
- *As with any development of a program like this, the review should include analysis on impacts to other sectors; specifically on the U60 Pot Cod fleets. U60 participants are concerned about displaced, well positioned fishermen; stacked LLPs being freed up; leasing situations that expand available LLPs; and the ability to “fish down” LLPs in the ground fish fishery.*
- *The purpose of analyses is to provide stakeholders and the public with the data and information necessary to make informed decisions as it relates to their sector. Sectors should not be required to have full consensus on how to handle complex rationalization programs in order to move forward. This motion should provide a well-rounded and robust analysis that reflects the differing viewpoints on how to handle allocation and other issues.*

Rationale in Favor of Amendment 1:

- *The AP felt that an analysis should provide a comprehensive look at both observers and electronic monitoring as monitoring options. The discussion paper focused on observers, but some participants participate in Fixed Gear EM. While there are challenges in Fixed Gear EM, there are also challenges in observer availability so summarizing options and tradeoffs early in the process would provide participants with the information they need. It would also provide participants time to make improvements for their sector if they wish to have EM as a voluntary option for monitoring going forward.*
- *The addition of this amendment should not impact Staff workload since much of the requested information is available in the Observer Program Annual Report, Annual Deployment Plan, PSMFC's Alaska Fixed Gear Electronic Monitoring Report for the 2023 Season, and the upcoming Observer Availability paper. While this information is already available, including it in the analysis allows participants to understand how those issues directly relate to their sector to help them make informed decisions.*
- *The AP believes that using EM should be a voluntary choice, and not be made mandatory at this time.*

Rationale in Favor of Amendment 2:

- *With uncertainty in the processing sector, the range of processor use caps may constrain processing and therefore harvesting capacity, leading to stranded fish.*
- *The efficacy of processing use caps is unclear in today's economic environment and we have seen issues in several fisheries with constraining use caps leading to stranded quota.*
- *The purpose of this amendment is to allow for flexibility when there are certain circumstances and to ensure that processing use caps do not lead to stranded fish.*
- *Embedding flexibility into the program ahead of time allows for more dynamic management to respond quickly to changing conditions without having to go through a lengthy rulemaking process.*