

PUBLIC TESTIMONY SIGN-UP SHEET

Agenda Item: D-2 STAFF TASKING

	NAME (PLEASE PRINT)	TESTIFYING ON BEHALF OF:
1	Brian Lynch	Petersburg Vessel Owners Assoc
2	Chad See	FLC
3	Bob Krueger	AK Whitefish Trawlers
4	George Hutchings	Americans for Equal Access
5	HENRY MITCHELL	CVRF
6	Frank Kelly	City of UAA Alaska
7	Heather Mcarty	CBSEA
8	Jackie Dragon	Greenpeace
9	GEORGE PLETNIKOV	AITE
10	TIM ANDRENI	ARCP
11	ART IVANOFF	SNSAC
12	Stephanie Madzler <i>hans</i>	APA
13	Jon Worenduk	Oceana
14	DENBY WOODS	CITY BOROUGH - KODIAK
15	Math Upton	US Seafoods
16	Linda Kozak	Kodiak Vessel Owners
17	Bern Stewart	PPC
18	ANNA MORGAN	
19	Julia Bonny	AGDIB
20	Michelle Bridgway	AK Deep Ocean Science Institute
21		
22		
23		
24		
25		

together

Round 3/15/09

NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person "to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.

Petersburg Vessel Owners Association

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Petersburg, AK 99833

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May 8, 2013

Mr. Eric Olson, Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501

RECEIVED
MAR 13 2013

RE: Proposed regulation changes at 50 CFR 679.20(e) governing enforcement of Maximum Retainable Amounts (MRA).

Dear Chairman Olsen and members of the Council,

The Petersburg Vessel Owners Association (PVOA) is a diverse group of over 100 commercial fishermen and businesses based in Alaska. Our members provide millions of meals to the public annually by participating in a variety of fisheries statewide with our foremost interest being the commercial halibut and sablefish fisheries managed by the North Pacific Fishery Management Council.

PVOA wishes to propose changes in the regulations at 50 CFR 679.20(e) governing the enforcement of Maximum Retainable Amounts (MRA) for catcher vessels and catcher/processors. The existing specific regulations of concern are at §679.20(e)(3)(i) and (ii).

PROPOSAL §679.20(e)(3) Application.

- (i) For catcher vessels, the maximum retainable amount for vessels fishing during a fishing trip in areas closed to directed fishing is the maximum retainable amount applicable in any area, and this maximum retainable **[AMOUNT MUST BE APPLIED AT ANY TIME AND TO ALL AREAS FOR THE DURATION OF THE FISHING TRIP.]** is calculated at the end of each offload and is based on the basis species harvested since the previous offload. For the purposes of this paragraph, offload means the removal of any fish or fish product from the vessel that harvested the fish or fish product to any other vessel or to shore.
- (ii) For catcher/processors fishing in an area closed to directed fishing for a species or species group, the maximum retainable amount for that species or species group **[APPLIES AT ANY TIME FOR THE DURATION OF THE FISHING TRIP.]** is calculated at the end of each offload and is based on the basis species harvested since the previous offload. For the purposes of this paragraph, offload means the removal of any fish or fish product from the vessel that harvested the fish or fish product to any other vessel or to shore.

ISSUE: The MRA should be calculated at the time of offload, not during a fishing trip. These regulation changes would make the existing regulations more consistent with similar regulations at §679.20(e)(3)(iii) and (iv) governing the Am.80 Pollock and the CGOA Rockfish Program participants.

Under the current regulations, in the federal sablefish longline fishery, for example, any non-target species that had an MRA without a full retention requirement would need to be immediately discarded or the vessel would be in violation, regardless of the condition of the released fish. These regulations, as currently written, actually promote wastage, is an unintended consequence and not the initial intent of the regulations. We do believe that the intent was to prevent intentional excessive bycatch of economically valuable species by limiting the bycatch to a percentage of the weight of the target species at the time of delivery/offloading.

Although we don't know of any specific problems associated with this regulation to the present time, our concerns are directed toward potential problems resulting from implementation of the restructured observer program for the small boat halibut and sablefish longline fisheries. With an increased number of observers being deployed on a larger number of vessels, and the potential for future implementation of electronic monitoring (EM) systems, situations could arise where an observer could report the above scenario as a violation, or the EM system would document the violation, resulting in enforcement action irrespective of the percent species composition at the time of delivery/offload.

POTENTIAL PROBLEMS: We believe that implementation of these changes would not functionally change the way the regulations are currently being enforced. It's unlikely that any MRA enforcement actions have ever been initiated on a vessel actively fishing at sea, and are routinely only initiated at the time offload. As such, we don't foresee any obvious potential problems arising from our proposed regulatory changes.

PVOA is also preparing regulatory proposals to the Alaska Board of Fisheries to address similar changes to State of Alaska bycatch retention regulations.

Thank you for consideration of our proposal.

Sincerely,



Brian Lynch
Executive Director

May 21, 2013

Eric Olson, Chairman
North Pacific Fisheries Management Council
605 West 4th, Suite 306
Anchorage, Alaska 99501-2252

RECEIVED
MAY 24 2013

Dear Chairman Olsen and Council Members,

We are writing to you as a coalition of fishing companies with vessels that participate in almost all sectors of the federal fisheries in the North Pacific. Almost all the fisheries we participate in have been rationalized and have recently cleared the *legal* impediments to the replacement of the aging Bering Sea crab, AFA Pollock, Pacific Cod freezer longline and Amendment 80 trawl fleets.

It has come to our attention that NOAA Fisheries has an outdated policy, which has been in place since passage of the Sustainable Fisheries Act of 1996. At present, the National Marine Fisheries Service (NMFS) Fisheries Finance Program (FFP) prohibits loans for new vessel construction that increase harvesting capacity.

As you are well aware, overcapitalization was one of the driving factors in the development and implementation of several catch-share programs in Alaska. Rationalization, combined with federal buyback loan programs, has nearly eliminated excess capacity in North Pacific fisheries. In rationalized fisheries, where quotas are assigned to individual participants or sectors and the class of participants are limited, the number of vessels and fleet capacity is irrelevant to the management of the fishery. Rationalization provides the incentive to build new vessels that are safer, more efficient, utilize more of the fish and are more cost effective.

The Council, following action by Congress to remove restrictions on the replacement of AFA vessels, has taken significant action to lift restrictions on vessel replacement and rebuilding with the passage of Amendment 97, allowing the Amendment 80 fleet to replace vessels. The Council also recently incentivized the replacement of freezer longline vessels with action allowing the MLOA to increase. As with almost all the North Pacific catch share programs, the Council has sideboards in place to prevent impacts on other fisheries and an increase in participation by the rationalized fleet.

According to the National Marine Fisheries Service, there were 1,646 vessels participating in federal fisheries offshore of Alaska in 2010, and more than 900 of these were built in the 1970's and 1980's. With the average vessel over 30 years old, there is a significant and immediate need for the fleet to start upgrading and replacing vessels.

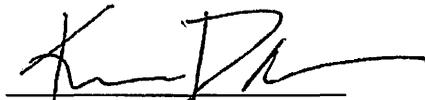
The coalition members are working to change the NOAA policy prohibiting loans for new vessel construction and major reconstruction that do not increase harvest capacity. We respectfully request the North Pacific Fisheries Management Council write a letter to NOAA explaining how rationalization programs in Alaska have eliminated excess capacity, the aging North Pacific fleet now needs to be rebuilt and replaced, and the policy of prohibiting FFP loans for new vessel construction should be modified to allow the fleet to access this program.

Thank you for your consideration.

Sincerely,



Chris Swasand, President
Aleutian Spray Fisheries
F/V Starbound
F/V Muir Milach
F/V Siberian Sea
F/V Liberator
F/V Nordic Sea
F/V Kiska Sea



Kenny Down, President/CEO
Blue North Fisheries
F/V Blue Attu
F/V Blue Ballard
F/V Blue Gadus
F/V Blue North
F/V Blue Pacific
F/V Blue Pearl



H.J. Park, President
Fishermen's Finest, Inc.
F/V America No. 1
F/V US Intrepid



John Bundy, Owner/Director
Glacier Fish Company
F/V Alaska Ocean
F/V Northern Glacier
F/V Pacific Glacier



Edward Poulsen
North Pacific Catcher Vessel
Construction Group

halibut allocation

Subject: halibut allocation
From: <danrear@yahoo.com>
Date: 9/23/2012 12:17 PM
To: <npfmc.comments@noaa.gov>

to whom it may concern,

hi, my name is dan rear. I live in sitka alaska, and have been a commercial fisherman since 1959. I have seen many changes during that time, but nothing compares with what has been happening with the halibut quota. I have always been in favor with conservation and maintaining the resource, and have seen many ups and downs over the years in order to accomplish that purpose. that never bothered me.

what does bother me is re-allocating that resource to another commercial business. taking money out of my pocket, and my family's pocket, and the other five family's pockets that are dependent on the halibut fishery. that is simply not right, and must stop.

halibut is a finite resource, there is only so much available. if the charter business wants more quota, they should buy it from a willing seller. same for us. if we want more quota we have to buy it. how can it be right that we have to buy quota, only to have it taken away and given to another business?? the answer isit's not right! it wasn't before, and it isn't now. just make the quota available to either one. I might want to buy some charter shares.

let the market determine where the shares go. what happens if the charter business goes broke? we would have all that quota laying around doing nothing.

sincerely, dan rear

KODIAK VESSEL OWNERS' ASSOCIATION
P. O. BOX 2684
KODIAK, ALASKA 99615
Phone: (907) 486-8824 Fax: (907) 486-6963

May 28, 2013

Mr. Eric Olson, Chair
North Pacific Fishery Management Council
Anchorage, Alaska 99510

Sent by Fax: 907-271-2817

Re: Agenda D-2 - Staff Tasking

Chairman Olson:

Attached is a proposal which we would ask that the Council forward to the Halibut/Sablefish IFQ Implementation Team and request that this be added to the agenda for their next meeting.

Also attached is a summary and graph taken from data provided by the Restricted Access Management Division which show the harvest limits/TAC and vessel caps for sablefish and halibut for the years 1997-2013.

In recent years, we have had discussions about how vessel owners are dealing with the significantly reduced harvest limits and subsequent vessel caps, particularly for halibut. Shown below are the high and low vessel cap limits for halibut in Area 2C and statewide.

**2C HALIBUT
VESSEL CAPS**

Highest (2005) 109,300
Lowest (2011) 23,300

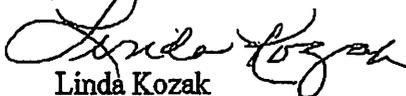
**STATEWIDE HALIBUT
VESSEL CAPS**

Highest (02/03) 295,050
Lowest (2013) 109,054

These numbers clearly show, as the attached documentation details, that the vessel cap has been reduced dramatically over the years. The concern is that the caps may be reduced further due to lowering harvest limits and cause significant hardship to the fishery participants.

This is an issue which we believe should initially be addressed by the IFQ Implementation Team and we thank you for considering our request.

Sincerely,


Linda Kozak

**HALIBUT AND SABLEFISH IFQ PROGRAM
AMENDMENT PROPOSAL
North Pacific Fishery Management Council
Fax: (907) 271-2817**

Name of Proposer: Linda Kozak

Date: May 24, 2013

Address: P. O. Box 2684, Kodiak, Alaska 99615

Telephone: 907-486-8824

Brief Statement of Proposal: To analyze the current IFQ vessel caps and consider modifying the cap based on the annual harvest limits/TAC. While halibut is the primary concern, sablefish should also be examined in the event that the TAC is significantly reduced in the future.

This would not change the caps for quota share, simply the amount of IFQ halibut or sablefish that could be harvested on a single vessel during a given season.

Objectives of Proposal (What is the problem?): As harvest limits for halibut have decreased significantly in recent years, the vessel cap is now very restrictive and is creating unnecessary operating and maintenance costs for vessel owners. If the harvest limits continue to decline, it will be difficult to attract a crew to work on a boat, with little return expected. The objective is to consider creating a sliding vessel cap based on harvest limits/TAC that would allow for a reasonable amount of IFQ pounds to be harvested on a single vessel.

Need and Justification for Council Action (Why can't the problem be resolved through other channels?): The proposal, if adopted, would require Council action and a change to the IFQ regulations.

Foreseeable Impacts of Proposal (Who wins, who loses?): The winners would be the vessel owners, quota share holders and crew. Potential losses would be crew jobs. However, if the harvest limits are so low that a vessel owner can't attract a crew or afford to harvest the IFQ, then the losers would be the participants in the fishery, processors, communities and the public.

Are there Alternative Solutions? If so, what are they and why do you consider your proposal the best way of solving the problem? I cannot think of an alternative solution that would address this problem.

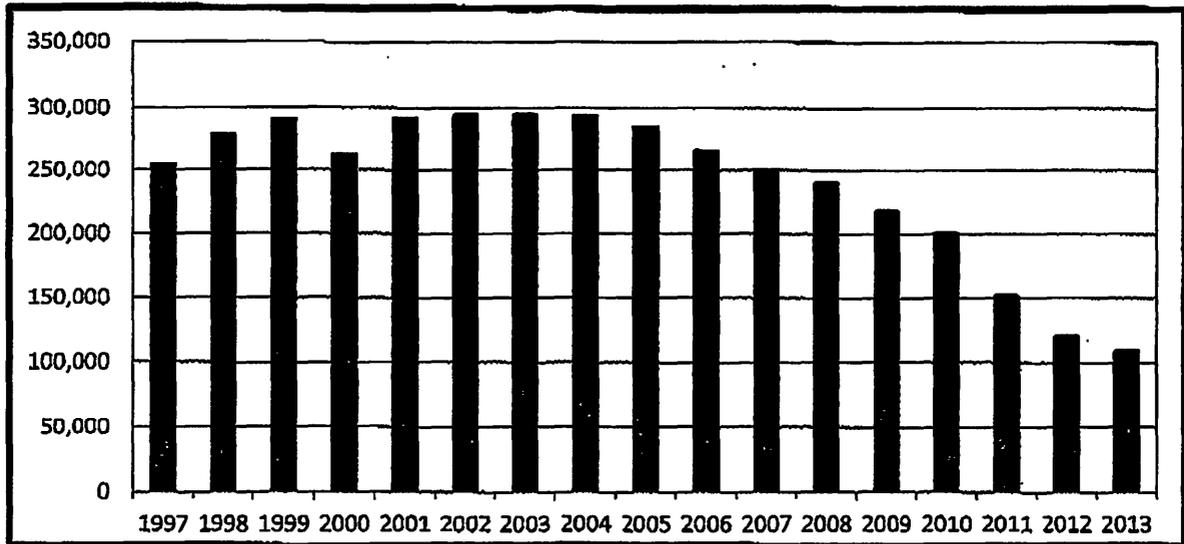
Supportive Data and Other Information (What data are available and where can they be found?): Attached is a spread sheet and chart derived from information obtained from the Restricted Access Management Program, which show the harvest limits and vessel caps from 1997-2013.

Signature:

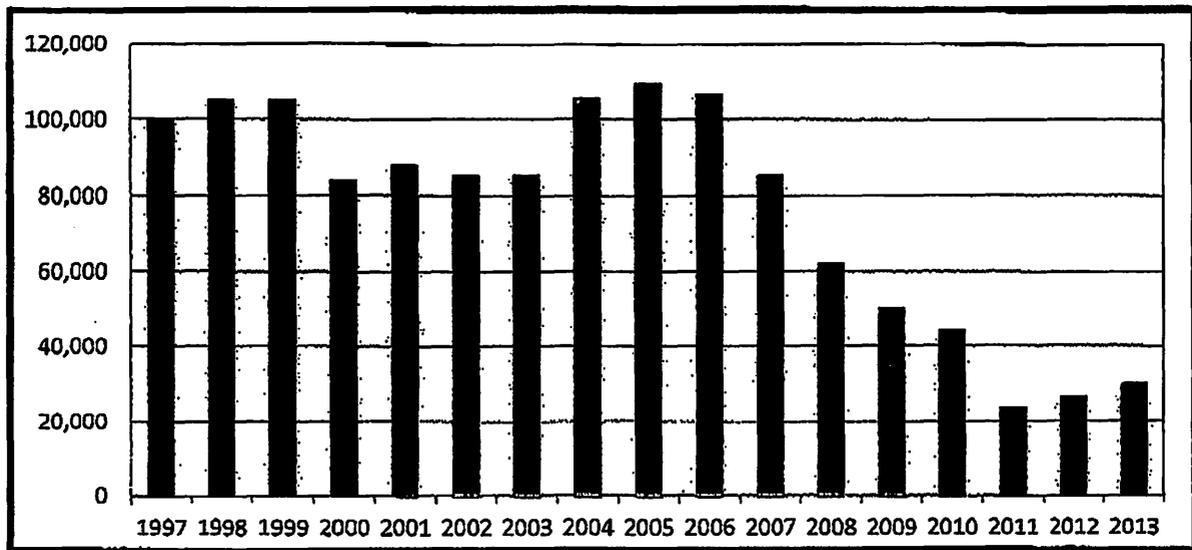
Linda Kozak

HALIBUT IFQ VESSEL CAPS 1997 - 2013

Statewide - 1/2% of all IFQ TAC



Area 2C - 1% of IFQ TAC



Information derived from the Restricted Access Management annual cap calculations

HALIBUT AND SABLEFISH ANNUAL TAC AND VESSEL CAPS FOR 2C/SOUTHEAST AND STATEWIDE – 1997 - 2013

YEAR	2C HALIBUT IFQ TAC	2C HALIBUT VESSEL CAP	ALL HALIBUT IFQ TAC	ALL HALIBUT VESSEL CAP	SE SABLEFISH IFQ TAC	SE SABLEFISH VESSEL CAP	ALL SABLEFISH IFQ TAC	ALL SABLEFISH VESSEL CAP
1997	10,000,000	100,000	51,116,000	255,580	8,042,381	80,424	30,233,885	302,339
1998	10,500,000	105,000	55,708,000	278,540	7,687,440	76,874	29,845,875	298,459
1999	10,490,000	104,900	58,390,000	291,950	7,054,720	70,547	27,154,059	271,541
2000	8,400,000	84,000	53,074,000	265,370	7,832,944	78,329	29,926,122	299,261
2001	8,780,000	87,800	58,534,000	292,670	7,407,456	74,075	29,120,561	291,206
2002	8,500,000	85,000	59,010,000	295,050	7,076,766	70,768	29,388,199	293,882
2003	8,500,000	85,000	59,010,000	295,050	7,848,376	78,484	34,863,545	348,635
2004	10,500,000	105,000	58,942,000	294,710	8,311,342	83,113	37,936,756	379,368
2005	10,930,000	109,300	56,976,000	284,880	7,870,422	78,704	35,765,226	357,652
2006	10,630,000	106,300	53,308,000	266,540	7,760,192	77,602	34,546,083	345,461
2007	8,510,000	85,100	50,211,800	251,059	7,429,502	74,295	33,450,396	334,504
2008	6,210,000	62,100	48,040,800	240,204	7,098,812	70,988	29,967,127	299,671
2009	5,020,000	50,200	43,548,800	217,744	6,053,832	60,538	26,488,269	264,883
2010	4,400,000	44,000	40,298,000	201,490	5,687,868	56,879	24,876,707	248,767
2011	2,330,000	23,300	30,382,000	151,910	6,481,524	64,815	26,794,708	267,947
2012	2,624,000	26,240	24,003,027	120,015	6,995,196	69,952	29,326,912	293,269
2013	2,970,000	29,700	21,810,800	109,054	7,032,674	70,327	28,013,851	280,139

Agenda Item D1-a

Alaska Charter Association, Public Testimony

The stated Council's purpose and need for the proposed change in definitions, as described in the Initial Regulatory Impact Review, is to keep anglers from fishing in a manner that is contrary to the Council's intent. The review also mentions that the Council does not intend to change allocations to the charter sector under the Catch Sharing Plan or to increase the number of charter halibut permits initially issued under the Charter Halibut Limited Access Program.

The Alaska Charter Association finds issues with these statements.

A change in the federal definition, Alternative 1, option 1 would create a new category of angler, the assisted-guided angler. These assisted-guided anglers existed prior to the implementation of the charter Guideline Harvest Level management program, which divided the recreational fishery into guided and non-guided anglers. It was not the intent of the Council at that time to include these assisted-guided anglers into the charter guideline harvest level. The GHL, at that time, was established on harvest records of anglers that fished only from charter vessels. The staff's analysis mentions that they could determine how many anglers probably fished outside the guided restrictions by the instances a logbook had entries of more than one fish in Area 2C where there is a one fish restriction. A quick survey of the internet will bring up many operators that offer both guided and non-guided activities. Many of which do not carry logbooks for their non-guided fleet, but may fall under assisted-guiding definitions. The number of these operations that may be required to fill out a logbook are unknown at this time, however their removals up to now, have been accounted for as non-guided removals.

The Council's intent has evidently now changed to want to include this sector of the recreational fishery, those that want to access the fishery by means of a vessel they control themselves, but with the guidance of local area fishing experts and for safety considerations, want a nearby emergency vessel. If the intent of the current Council is concern over these assisted-guided removals significantly impacting non-guided removals, as was the case with the charter sector at the time of the GHL implementation, then these removals should be given a separate GHL. Before these assisted-guided removals are deducted from the charter allocations under the current GHL management system or the propose Catch Sharing Plan, allocation consequences should be analyzed. This was not done in the Initial Regulatory Impact Review as the staff were instructed that there would be no change in charter sector allocations.

How the change in definitions would affect the Charter Halibut Limited Access Program was deemed outside the tasking of the staff's analysis as well, however the analysis raised some pertinent questions. The question of who would need to possess a Charter Halibut Permit when fishing and retaining halibut would be an important one. The current Council does not want to increase the number of Charter Halibut Permits. This seems reasonable as permits were given to charter vessel owners and owners of assisted-guided vessels were not given an opportunity to apply for a limited entry permit. If the Council wishes to restrain the growth of these assisted-guided vessels, then an amendment to the Charter Halibut Limited Access Program would need to be analyzed to establish a different class of permit, an Assisted-Guided Halibut Limited Access Permit.

The issues that exist with an already divided recreational fishery would be further complicated with another division and class of recreational angler, solely based on how an angler accesses the fishery. Instead, time, resources, and associated enforcement issues could be significantly decreased by seeking a method to reunite the recreational fishery and managing all recreational removals under one set of harvest rules.

In closing, we would like to see the Council staff provide further analysis regarding any allocation consequences that might be brought about by a change in definitions and to review any changes that would need to be made to the Charter Halibut Limited Access Program if the proposed change in definitions were adopted. Thank you for your time and consideration.

Harley Ethelbah
F/V Jean C.
Post Office Box 972
Petersburg, Alaska 99833

June 8, 2013

Dear North Pacific Council Members and Staff:

We have a sperm whale problem! I know how we can alleviate that problem and save the black cod resource. My name is Harley Ethelbah and I am a longliner. I'm 42 years old, I am captain of a boat named the Jean C., based out of Petersburg Alaska. And I have been longlining since I was 12-years-old.

2013 we might as well call the year of the sperm whale!

It used to be we could spread the whales out amongst the vessels participating in the Gulf of Alaska black cod fishery. Not anymore, the sperm whale population has increased to the point that now every vessel participating has at least one whale on them; if it's one whale you're lucky, as it is more than likely 5 to 7 sperm whales feeding off of your boat the whole time you are hauling!

NMFS estimates the annual "take" that the sperm whales get off our gear at 3%. As a fisherman, I have to disagree. I have to say it's much larger than that! When I start a trip and I have no whales on me, my sets are 3,000 lbs to 4,000 lbs each (central gulf), but when the whales show up, my sets dwindle to 300 lbs to 400 lbs. So you tell me, is that 3% that the whales are taking? Let's say I have 100,000 pounds to catch in Central Gulf, how many pounds of black cod do I have to haul off the bottom to achieve that 100,000 lbs? As a fisherman, I feel I have to haul 150,000 or more pounds off the bottom just to get my 100,000 lbs of IFQs on board. So if everyone is doing this and they are, then there is a huge amount of fish being taken that is not coming off the overall quota!

We are seeing the effects of this as fisherman! Fishing has changed! We have the tools to change this: long lining black cod pots!

As I mentioned I am a longliner. I use hook and line gear in Alaska, and I use pots off the coast of Washington, Oregon and California. I have been longling pots for 5 years. So I am probably the only guy you have here from Alaska that uses both gear types and knows the pluses and minuses of each gear type. I am very interested and eager to volunteer in any way I can help us deal with this topic.

I've read through the discussion paper. It is thorough and well done, and it covers the main concerns and issues. The one thing I have to say after reading the paper, and after talking to several of my peers is let's not limit ourselves before we give this a try. The wheel has already been invented. Our neighbors to the south in British Columbia are using 100% pots to catch their black cod and 62% of the fleet off the coast of Washington, Oregon and California are longlining black cod pots. With that said I want to touch on each of the points that the council motioned April 2012.

1. Gear Restrictions.

(a) Single pot vs. Longline pots

With Single pots the gear loss could be astronomical, and this ultimately is not the way to be efficient when catching black cod, so to put it bluntly, single pots are not the way to go. Longlining pots in strings longer than 2 is the way to go.

If gear is lost it can be drug up quite easily and retrieved off the grounds!

(b) Pots retained on grounds for long soaks vs. retrieved during deliveries.

We should be careful here as there is a safety risk. If fisherman are required to bring their pots to town each delivery then you're talking about stacking gear and this can be dangerous in rough weather and can be cumbersome for the smaller vessels. I would recommend allowing the fleet to work it out and if it's an issue in the future then have something set up to implement to deal with it.

(c) Pot storage.

If it's needed then the department can set up a gear storage area close to each town where deliveries are made, but I have to say right off the bat, it wont be an issue even for the smaller vessels as if your hauling gear to and from the grounds especially in a pot/longling situation your either going to set the gear or your going to town to take it out of the water!

(d) Gear Configuration Requirements

Consider the configuration requirements that the Pacific Council is using -- don't reinvent the gear here so to speak as it's been done.

(e) Gear Conflicts

I've heard a lot of back and fourth on this one among the fleet. And the general consensus is that it will work itself out and there will not be gear conflicts. As it is now we rarely have instances of gear conflict. The Derby Days are over. Gear is too expensive to have conflicts!

(f) Use the 200fm depth contour to mark open areas.

My comment here is are we trying to save a resource and what is the reasoning for this? If it's bycatch issues then we would be implementing this for nothing, as longling black cod pots is absolutely the cleanest way to catch black cod in the world!

(g) Pot soak time

Not an issue. Gear is money, fisherman are not just going to leave gear out haphazardly; they're going to be on top of hauling and setting it. It will not be left lying on the bottom for someone else to stumble into and tangle with.

2. Area Management (SE. vs. GOA)

Use the same lines and delineations, nothing has to change.

3. Exacerbation of Halibut Mortality

This is an interesting one. If you have Halibut IFQ's and you get legal Halibut in the pot, then great -- retain them and sell them. If you do not have Halibut IFQ's and you do get Halibut in the pot then throw them over as they will be alive and well and swim away happily. Yes we might have a sand flea issue and such, but we can address that.

4. Dynamic (Social/Economic) Effects

(a) Safety issue related to use of pots by small vessels

I would like to add my two cents here as I get asked this question all the time, "Can I fish pots on my smaller vessel?" My response is always, "Yes." I have a friend that longlines black cod pots out of Morro Bay, California on a 100-year-old 36-foot wood double ender.

He fishes 8 pot strings. I know of several 32-foot boats longlining pots out of Illwaco, Washington. Yes it can be done safely on smaller vessels!

(b) Crew Employment

It takes just as many guys to run the pots as it does to bait the hooks. That's a fact! There will be no loss of crew jobs!

(c) QS prices

Fishing pots should keep the QS prices better than they have been, as you are delivering a product that has not been touched by a gaff and a product that can be easily bled or delivered live. Yes live! I have delivered live fish into Morro Bay, two day live trip. Now we're talking quality!

(d) Ongoing acoustic research for avoiding whales

I understand the external pressures to continue exploring this option, but in summary, I have to say after fishing hook and line my whole life and then going to pots off the coast 5 years ago, black cod pots are the most efficient cleanest way to fish black cod!

Again, I am very interested and eager to volunteer – I am available to be on a committee if a committee is formed to deal with this topic.

The goal here is to mitigate whale interaction, reduce bycatch, and keep the resource strong. At this moment in time we are starting to lose the resource. It's time to do something about it. We don't have years come up with a solution – we have the solution available to us now.

Thank you for your time and consideration.

Sincerely,

Harley Ethelbah

Staff Tasking
Re: Right of First Refusal
June 11, 2013

Our request is for the Council to ask staff to prepare a discussion paper, preferably for presentation in October, that addresses questions about the "Contract Terms for Right of First Refusal based on Public Law 108-109" - attached.

This document lays out the requirements for the ROFR contracts between PQS/IPQ holders and the ROFR holders for each crab-dependent community.

The Final Rule implementing ROFR actions taken by the Council at the February 2013 meeting will make a number of changes to this document. These include changes to the lengths of time for exercising the right in Section G, and changes to the provision in Section C that refers to the lapsing of the right.

However, some provisions will remain unchanged, reflecting the "status quo" decision by the Council on two of the six items in the ROFR action. One example is Section B, which states that any ROFR must include "all processing shares and other goods included in" the underlying proposed sales agreement.

The community ROFR holders would like to explore the possibility of entering into private contractual agreements with holders of PQS/IPQ that limit the scale of what must be included in the exercising of a ROFR. There are other potential areas where a private contract might solve problems associated with community protections.

The question is:

Do the regulations ALLOW such private contracts that agree to something different than is stated in this list of required ROFR contract terms?

Contract Terms for Right of First Refusal based on Public Law 108-199

- A. The right of first refusal will apply to sales of the following processing shares:
1. PQS and
 2. IPQs, if more than 20 percent of a PQS holder's community based IPQs (on a fishery by fishery basis) has been processed outside the community of origin by another company in 3 of the preceding 5 years.
- B. Any right of first refusal must be on the same terms and conditions of the underlying agreement and will include all processing shares and other goods included in that agreement.
- C. Intra-company transfers within a region are exempt from this provision. To be exempt from the first right of refusal, IPQs must be used by the same company. In the event that a company uses IPQs outside of the community of origin for a period of 3 consecutive years the right of first refusal on those processing shares (the IPQs and the underlying PQS) shall lapse. With respect to those processing shares, the right of first refusal will not exist in any community thereafter.
- D. Any sale of PQS for continued use in the community of origin will be exempt from the right of first refusal. A sale will be considered to be for use in the community of origin if the purchaser contracts with the community to:
1. use at least 80 percent of the annual IPQ allocation in the community for 2 of the following 5 years (on a fishery by fishery basis), and
 2. grant the community a right of first refusal on the PQS subject to the same terms and conditions required of the processor receiving the initial allocation of the PQS.
- E. All terms of any right of first refusal and contract entered into related to the right of first refusal will be enforced through civil contract law.
- F. A community group or CDQ group can waive any right of first refusal.
- G. The right of first refusal will be exercised by the CDQ group or community group by providing the seller within 60 days of receipt of a copy of the contract for sale of the processing shares:
1. notice of the intent to exercise and
 2. earnest money in the amount of 10 percent of the contract amount or \$500,000 whichever is less.

The CDQ group or community group must perform all of the terms of the contract of sale within the longer of:

1. 120 days of receipt of the contract or
2. in the time specified in the contract.

H. The right of first refusal applies only to the community within which the processing history was earned. If the community of origin chooses not to exercise the right of first refusal on the sale of PQS that is not exempt under paragraph D, that PQS will no longer be subject to a right of first refusal.

I. Any due diligence review conducted related to the exercise of a right of first refusal will be undertaken by a third party bound by a confidentiality agreement that protects any proprietary information from being released or made public.

2. GOA First Right of Refusal

For communities with at least three percent of the initial PQS allocation of any BSAI crab fishery based on history in the community that are in the area on the Gulf of Alaska north of 56°20'N latitude, groups representing qualified communities will have a first right of refusal to purchase processing quota shares which are being proposed to be transferred from unqualified communities in the identified Gulf of Alaska area.

The entity granted the right of first refusal and terms and method of establishing the right of first refusal will the same as specified in the general right of first refusal.

Staff Tasking Rockfish Motion

Request that staff prepare a trailing amendment to address the the council's inability to combine both an uncertainty buffer and a rollover of Chinook from the Rockfish CV fleet in its Preferred Alternative for GOA Trawl Chinook bycatch cap.

The analysis should examine three alternatives:

1. The addition of the rollover provision as described in the EA/RIR to the CV rockfish chinook cap and uncertainty buffer.
2. The additional of a provision allowing the rollover of all but 160 chinook and a Rockfish CV uncertainty buffer. *ect!*
3. The rollover of all chinook remaining in the Rockfish CV chinook cap when all rockfish cooperatives have checked-out of the fishery but no later than November 15 and no uncertainty buffer.

It is the intent of the council that it take final action in December and request the agency to incorporate the outcome of that decision into the final rule for GOA chinook bycatch in the non-pollock trawl fishery.

Agenda Item D-2, Staff Tasking

Tuesday, June 11, 2013

Motion for Octopus Discussion Paper:

The Council requests a discussion paper for consideration at its October 2013 meeting regarding the potential for a directed octopus fishery in the Gulf of Alaska. The discussion paper should include information which would allow the Council to consider recommending a directed octopus fishery, possibly by GOA subarea, during the initial specifications process in October, including: relevant stock assessment information, recent incidental catch information, information from existing State water octopus fisheries, and in-season management/catch accounting considerations. As part of this motion the Council is requesting stock assessment authors and the GOA groundfish Plan Team to provide, to the extent possible, area-specific (western, central, and eastern GOA) OFL and ABC estimates in this year's SAFE document.

The Council has previously identified this as a critical shortcoming in the overall approach to the EIS, and the way the process is unfolding for public comment and Council participation. This problem was also raised once again by the Council's Steller Sea Lion Mitigation Committee, noting that the DEIS remains deficient, and without this analysis the committee cannot provide informed advice to the Council or the agency.

In our April motion, the Council stated that, "At minimum, the DEIS should contain a stand-alone section identifying the findings of the 2010 BiOp, the findings and recommendations of the Independent Reviews, and NMFS' response to each controversial issue identified by the Independent Reviews." We repeat this recommendation here. NEPA requires that the document include all of the analyses and information discussed above in order to be complete.

Steller Sea Lion Draft EIS

The Draft Environmental Impact Statement on Steller Sea Lion Protection Measures for Groundfish Fisheries in the Bering Sea and Aleutian Islands Management Area, consisting of two volumes and over 1,000 pages, was released to the public and the Council on May 10, 2013. At this meeting the Council received presentations from NMFS Alaska Region on the Draft EIS, as well as some preliminary information about the analytical approach that will be used in the future biological opinion on Steller sea lion mitigation measures (See memo Demaster to Kurland dated May 24, 2013; memo Balsiger to Olson May 28, 2013 and supporting documents). The Council again acknowledges the hard work of NMFS staff in putting together the DEIS as well as the analyses prepared in response to previous comments by the Council. We appreciate that these issues continue to be controversial, and express our appreciation for the professionalism brought to the task.

The Council's preliminary review of the Draft Environmental Impact Statement on Steller Sea Lion Protection Measures for Groundfish Fisheries in the Bering Sea and Aleutian Islands Management Area (DEIS) confirms that the Council and the public are still left without the key information needed to make fully informed public comment and a final decision on Steller sea lion mitigation measures. Many of the relevant supporting analyses are incomplete and pending, and there remains continued reliance on draft unpublished studies in critical sections of the document, particularly chapter 5. The Council reiterates its earlier comments about the need to have all of the relevant information and a complete analysis available for review and comment by the public before the Council makes a decision on a preferred alternative. Failure to provide this information jeopardizes the NEPA process in that the Council and the public will not have the necessary information to make informed comments or decisions on a final preferred alternative.

Although improved from the Preliminary Draft EIS presented in April, the DEIS is written with the implicit assumption that the findings of the 2010 Biological Opinion will not change, even though the agency has stated that new information available since the completion of the 2010 Biological Opinion is significant, will be objectively reviewed, and may result different metrics for evaluating fisheries mitigation measures. And, while the DEIS very generally acknowledges the two independent scientific reviews of the 2010 Biological Opinion, and addresses a few aspects of the criticisms of those reviews, it does not present the agency's responses to the heart of those critical reviews: namely, that there is no scientific support for the conclusion of the 2010 Biological Opinion that fisheries jeopardize Steller sea lions through competition for prey, which results in chronic nutritional stress and reduced natality. Whether such a significant negative impact on Steller sea lions from the groundfish fisheries exists is as relevant under NEPA as it is under the ESA. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. NEPA documents must concentrate on the issues that are "truly significant to the action in question, rather than amassing needless detail" 40 CFR § 1500.1(b).

The truly significant issue is the potential for negative interactions between fisheries removals and Steller sea lions. The DEIS assumes that more fishing and more areas open to fishing results in greater negative effects on Steller sea lions, and evaluates the alternatives accordingly, without explaining how or why this assumption is merited in light of the existing criticism of the independent reviewers. NEPA requires that all major points of view on the environmental impacts of the alternatives must be discussed and disclosed in the draft EIS (40 CFR § 1502.9(a)). The EIS should include an analysis of the potential impacts of fishing on sea lions, their prey, and critical habitat, and incorporate the agency's responses to the findings and recommendations of the independent reviews into this analysis, and then apply it across all alternatives. This information must be included in order for the EIS to meet the requirement to "take a hard look at the environmental effects" of each of the alternatives. Without these analyses, the EIS will not be based on the best scientific information, nor will the resulting decisions that depend on the EIS analysis.

Cotten Motion
@ 4:31 pm
on 6/11/13

D-2

Agenda Item D-2, Staff Tasking

Tuesday, June 11, 2013

Motion for Octopus Discussion Paper:

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~~area-specific~~
Gulf-wide OFL
& area specific
ABCs!

No objection
T. West/Hend

271-111