

**ADVISORY PANEL
Motions and Rationale
October 1-5 2019 - Homer, AK**

D2 BSAI Pcod CV

AP Motion 1

The AP recommends the Council initiate an Initial Review Analysis for a BSAI Pacific cod Limited Access Privilege Program for the Trawl Catcher Vessel Sector with the following updated Purpose and Need Statement and Elements, Alternatives and Options:

*Over the last several years, total allowable catch for Pacific cod in the Bering Sea-Aleutian Island has steadily decreased. ~~At the same time, the number of LLP licenses used by trawl CVs to participate in the BSAI non-CDQ trawl Pacific cod fishery has increased.~~ 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, motherships, shoreside processors, and communities). This race for fish also discourages fishing practices that can minimize bycatch **and threaten the sustained viability of the fishery.** ~~The potential for continued re-entry of additional entrants could exacerbate these unfavorable conditions and threaten the sustained viability of the fishery.~~ The Council is considering the development of management tools to improve the prosecution of the fishery, including the development of a cooperative-based program, with the intent of promoting safety and increasing the value of the fishery, **and ensuring lasting sustainability and viability of the resource.***

A. TRAWL CATCHER VESSELS

1. COOPERATIVE MANAGEMENT SYSTEMS

- a. One Single Cooperative
- b. Two Cooperatives: AFA CV Cooperative and a non-AFA Cooperative
- c. Two Cooperatives: Inshore Cooperative and an Offshore Cooperative
- d. **²Annual voluntary CV cooperatives with processor affiliation. No minimum number of LLP licenses is required to form a cooperative. Harvesters may change cooperatives on an annual basis and without penalty.**

2. ALLOCATIONS

- a. Cod would be allocated based on the catch history of LLPs in the directed BSAI P. cod fishery with the following year options for consideration:
 1. 2014 – ~~February 7, 2019⁴~~ **amended A season⁵ 2019⁴**
 2. 2009 – ~~February 7, 2019⁴~~ **amended A season⁵ 2019⁴**
 3. 2004 – ~~February 7, 2019⁴~~ **amended A season⁵ 2019⁴**
 4. Allocations based on a blend of catch history and AFA Sideboard history
 5. ~~³For the AFA non-exempt fleet, utilize the sideboard percentages and management structures as memorialized in the Intercoop and Cod Agreements.~~

For the first three options, allow for Sub-options of

- Drop 1 Year
- Drop 2 Years
- b. Catch History is attached to the LLP used at the time of harvest.
- c. For multiple LLPs on one catcher vessel: catch history earned with multiple LLPs shall be:
 - 1. Assigned to a single LLP in whole at the discretion of the CV owner.
 - 2. Fully credited to all licenses.

3. PSC

PSC will be managed by the cooperative and distributed to an LLPs pro-rata cod history. Cooperative will establish rules for fishing practices to conserve PSC.

4. GULF OF ALASKA PROTECTIONS/LIMITATIONS

- a. AFA LLPs or CVs will be sideboarded as to all Gulf of Alaska (GOA) fishing activity, except for the CGOA Rockfish Catch Share program, based on their history during the years selected for cod history.
- b. AFA GOA-exempt CVs will not be permitted to transfer their BSAI cod history on their respective LLP as a condition of continuing to benefit from the GOA exemption.
 - 1. AFA GOA exempt CVs with LLPs of less than a threshold amount may transfer their BSAI cod history and continue to benefit from GOA exemption.
- c. Non-AFA LLPs would be sideboarded in the GOA, the same as AFA CVs, with exception for those non-AFA CV that receive a certain amount of BSAI cod history below a certain threshold, which would exempt them from the sideboard provision. An additional exception would be for the CGOA Rockfish Catch Share program. CVs can be allowed to opt out as a one-time option.

5. PROCESSOR AND COMMUNITY PROTECTIONS

- a. No closed class of processors.
- b. Allocation of harvester shares to processors:
 - 1. Onshore processors that have history of processing in the BSAI cod fishery will be eligible to receive harvesting shares based on each onshore processor's processing history.
 - 2. Both onshore and offshore processors that have history of processing in the BSAI cod fishery will be eligible to receive harvesting shares based on each processor's processing history.
- c. To be harvested, the processor's harvest shares would be transferred to a CV Cooperative.
- d. Processor Allocations
 - 1. Quantity to be allocated to processors:
 - 5%
 - 10%
 - 15%
 - Sub-Option: Processing history years for allocations within Processor Allocation:
 - Same as harvester years
 - Different set of years
- e. **Analyze the applicability of a fishing community allocation, as provided for under section 303A(c)(3) of the MSA⁶**

6. TRANSFERABILITY

- a. Harvester shares issued to LLPs
Options:
 1. Fully Transferable
 2. Transferable subject to ownership/use caps
 3. Non-transferable to processors
- b. Harvester share issued to Processors:
Options:
 1. Non-transferable
 2. Transferable only to processors subject to ownership/use caps
 3. Fully Transferable

7. OWNERSHIP AND USE CAPS (To be developed)

8. OTHER BSAI ITEMS

- a. This LAPP program would apply to all BSAI cod quota and can be delivered in either the Aleutian Islands or Bering Sea areas subject to LLP eligibility of delivering CVs.
- b. Require the Cooperative(s) to reserve a set-aside for delivery to Adak/Atka under conditions similar to Amendment 113. The amount of the set-aside will be ~~in an amount equal to: 1) 10%, 2) 15%, or 3) 25%~~ **in the range of 10% to 25%**⁸ of the BSAI CV trawl directed A season harvest amount but not to exceed 5,000 mt **or not less than 5000 mt⁸ option 2,000 mt⁹**. The set-aside will be reduced by any amount Adak/Atka processors receive as a direct allocation of harvesting shares pursuant to this LAPP Program, regulation or legislation.
- c. All CVs would be eligible to harvest BSAI cod under the LAPP Program within the limitations of their LLPs and subject to the rules of the Cooperative(s).
- d. **¹The Advisory Panel recommends that the Council request additional analysis on impacts to other sectors due to development of cooperative management programs proposed under this action — including access for the under 60 hook and line/pot sector, the freezer longline sector in the AI, and community-based participants in the BSAI region.**
- e. **⁷Request Council staff examine applicability and use of gear conversion mechanisms. (ability to harvest trawl cod with fixed gear only). Also, request the analysts examine potential benefits to vessels, processors and communities when a gear conversion tool is available. Consider impacts to the trawl sector as well as impacts to other sectors.**

Amendment¹ passed 20-0

Amendment² passed 20-0

Amendment³ failed 14-5 (1 abstention)

Amendment⁵ to strike "amended A season" from amendment 4 passed 20-0

Amendment⁴ passed 20-0

Amendment⁶ passed 19-1

Amendment⁷ passed 12-8

Amendment⁸ passed 13-4 (1 abstentions)

Amendment⁹ passed 20-0

Motion as amended passed 19-1

Rationale for amended final motion:

- *Improving the sustained viability of the BSAI trawl CV cod fishery has been an issue of concern to its participants for a long time and the urgency for a solution is only progressing. The problems being faced by the BSAI trawl CV cod fishery are similar in nature to problems previously faced by other North Pacific fisheries that now operate under a LAPP program. The participants in the BSAI cod fishery believe that the development of a cooperative-based program for BSAI Pacific cod is the best solution for promoting safety in the fishery, for protecting harvesters, processors, and communities, and for increasing the value of the resource and ensuring its lasting sustainability.*
- *The analysts did an excellent job meeting the Council's request of developing a scoping paper that considers methods to rationalize the BSAI cod trawl CV fishery. This included specific discussion on: allocation of quota share to LLP licenses; establishing trawl CV cooperative(s) for cod; recognition of historical AFA cooperative-based cod harvest arrangements; recognition of historical harvest of AFA exempt and non-AFA boats; protections for harvesters, processors, and communities; use caps and transfer requirements; and establishing sideboard limits to protect limited access GOA and BSAI fisheries.*
- *The alternatives and options contained in this motion encompass many of these items and are intended to form the backbone of a BSAI cod LAPP program for trawl CVs. This backbone was developed with input and participation from AFA-exempt, AFA non-exempt, and non-AFA catcher vessels, which collectively represent the majority of the BSAI cod trawl CV sector. While many of the alternatives and options need further development, their inclusion is meant to provide a foundation for moving forward and represent those items that were the initial focus of the BSAI cod trawl CV participants.*
- *Finally, regarding the minor changes to the Purpose and Need Statement, the edits are simply intended to focus on the true necessity for this action, which is ensuring the lasting sustainability and viability of the BSAI cod resource.*
- *Including an option to form Annual voluntary CV cooperatives with processor affiliation is similar to the rockfish program and will facilitate harvest shares going to processors if the council decides includes that option. A single cooperative with multiple processors could cause anti-trust issues, so it's important to include an option for multiple cooperatives.*
- *Analyzing the applicability of a fishing community allocation in the next document could help determine whether that could be a good tool for addressing community protections.. For example, for Adak, a community fishing association may be a more appropriate entity to allocate harvest shares to instead of a plant.*

Rationale for Amendment 7:

- *A gear conversion mechanism (trawl to fixed only) in a rationalized trawl fishery may provide added benefits to the fishery participants, communities, and processors, including: increasing value of the fishery, minimizing bycatch, providing flexibility in harvest methods and allowing fuller utilization of trawl cod allocations*
- *If PSC limits are approached with a trawl, switching to fixed gear may be a viable option for full utilization of cod allocations*
- *Fixed gear, for purposes of this amendment, is not intended to include longline CPs*

Minority Report in Opposition to Amendment 7 gear conversion:

A minority of the AP do not support inclusion of the amendment related to the option for gear conversion as a component of a BSAI P. cod LAPP for the Trawl Catcher Vessel sector. A majority of the BSAI P. cod fishery came together during the formation of the various Elements, Alternatives, and Options that form the backbone of this LAPP proposal. This not only included conversations amongst the large number of P. cod trawl catcher vessels themselves, but also conversations between trawl catcher vessels, shoreside processing representatives, and community representatives. While these representatives may not have ultimately agreed on the various components, the development of this LAPP proposal was a highly collaborative process with everyone recognizing the urgent need to develop a comprehensive solution for the multiple issues facing this fishery. There was zero public comment (including submitted comment letters) provided on the topic of including a gear conversion component. The inclusion of this component takes away from the true focus of this action, which is on providing tools to trawl catcher vessels for the best execution and management of their fishery, including those related to PSC. Its inclusion also raises concerns with inequity issues rising from: 1) fixed gear fisheries having never invested in the trawl CV fishery but now receiving a benefit and 2) transferring an amount of P. cod meant for the CV trawl sector (under Amendment 85) to another user group (outside of rollover and reallocation provisions). Related to these concerns, its inclusion will add an unnecessary level of complexity to the economic analysis (with little benefit to the main purpose of the action) because it will need to include a discussion on the impacts of using LAPP allocation shares in non-LAPP fisheries. Finally, from experience in the west coast groundfish program, allowing the trawl sablefish fishery to convert to fixed gear has resulted in a large amount of stranded fish (e.g., Dover sole) that would have otherwise been taken by trawl vessels. Stranded fish results in a lower amount of fish delivered shoreside, which could negatively affect the number of jobs available on trawl vessels, the level of shoreside employment, and community benefits in the form of landing tax.

Signed: Ruth Christiansen, Kurt Cochran, John Gruver, Paddy O'Donnell, Anne Vanderhoeven, Matt Upton and John Scoblic

Rationale for Amendment 8:

- *The motion should consider a “floating” set-aside amount in the form of a percentage range tied to the A season CV trawl sector allocation and any “ceiling” should be paired with a “floor”. Including a floor of 5000mt, allows the analysis to incorporate an option that more closely mirrors the original set-aside implemented through AM 113.*

Rationale in opposition to Amendment 8:

- *Amendment 113 was a controversial requirement that 5,000 of the BSAI CV cod be delivered to essential Adak's shoreplant. Requiring 5,000 mt of the BSAI trawl CV cod be delivered is even more unreasonable because it puts all the burden on the trawl CV sector and gets to be a larger percentage as the cod abundance declines.*

Motion 2

The AP recommends the Council initiate an Initial Review Analysis for a BSAI Pacific cod Limited Access Privilege Program for the Pot Catcher Vessels ≥ 60 feet with the following updated Purpose and Need Statement, Elements, Alternatives and Options:

Over the last several years, total allowable catch for Pacific cod in the Bering Sea-Aleutian Island 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. This race for fish also discourages fishing practices that can minimize bycatch and threaten the sustained viability of the fishery. The Council is considering the development of management tools to improve the prosecution of the fishery, including the development of a cooperative-based program, with the intent of promoting safety and increasing the value of the fishery, and ensuring lasting sustainability and viability of the resource.

A. POT CATCHER VESSELS ≥ 60 FEET

1. COOPERATIVE STYLE SYSTEMS

Alternatives:

- a. One Single Cooperative
- b. Two Cooperatives: Affiliated and Non-Affiliated
- c. **¹Annual voluntary CV cooperatives with processor affiliation. No minimum number of LLP licenses is required to form a cooperative. Harvesters may change cooperatives on an annual basis and without penalty.**

2. ALLOCATION

- a. Pacific Cod would be allocated based on the catch history of LLPs in the directed BSAI $\geq 60'$ Pacific Cod Pot Catcher Vessel sector with the following year options for consideration:

Options:

1. 2014 through 2019
2. 2009 through 2019
3. 2003 through 2019

Sub-options:

- a. Drop 1 year
 - b. Drop 2 years
- b. Catch history is attached to the LLP used at the time of harvest.
 - c. Multiple LLPs on one Catcher Vessel: Catch history earned with multiple LLPs shall be:
 1. Assigned to a single LLP in whole at the discretion of the catcher vessel owner.
 2. Fully credited to all licenses.

3. GULF OF ALASKA PROTECTION/LIMITATION

- a. LLPs or Catcher Vessels will be sideboard limited to their historic participation in the Gulf of Alaska Pacific cod fisheries.

4. PROCESSOR AND COMMUNITY PROTECTION

- a. No closed class of processors.

- b. Processors that have a history of processing in the BSAI $\geq 60'$ Pacific Cod Pot Catcher Vessel sector will be eligible to receive harvesting shares based on each processor's processing history.
- c. To be harvested, the processor's harvest shares would be transferred to a catcher vessel.
 1. When assigning processor harvest shares to a catcher vessel for harvest, priority must be given to non-affiliated vessels.
 2. Pro-rata between affiliated and non-affiliated catcher vessels.
- d. Percentage of Harvest Shares Allocated to Processors
Options:
 1. 5%
 2. 10%
 3. 15%Sub-option: Processing history years for allocation of Processor Harvest Shares:
 1. Same as harvester's years (2. Allocation, a. Options: 1-3)
 2. Different set of years.

5. TRANSFERABILITY

- a. Harvest shares issued to LLPs
Options:
 1. Fully transferable.
 2. Transferable subject to ownership/use caps
 3. Non-transferable to processors.
- b. Harvest shares issued to processors:
Options:
 1. Fully transferable.
 2. Transferable only to processors subject to ownership/use caps
 3. Non-transferable.

6. OWNERSHIP AND USE CAPS

- a. 2%
- b. 4%
- c. 6%
- d. 10%

Amendment¹ passed 19-0

Motion as amended passed 17-3

Rationale:

- *Improving the sustained viability of the BSAI Pcod Pot $\geq 60'$ CV cod fishery has been an issue of concern to its participants for a long time and the need for a solution grows larger each season.*
- *The problems faced by the BSAI Pcod Pot $\geq 60'$ CV cod fishery are similar to problems previously faced by other North Pacific fisheries that now operate under a LAPP program. (e.g., large increase in participation in recent seasons, severely compressed season length, increased bycatch, the need to slow the pace of the fishery).*

- *Stakeholders in our sector believe that the development of a cooperative-based program for BSAI Pacific cod is the best solution for promoting safety in the fishery, for protecting harvesters, processors, and communities, and for increasing the value of the resource and insuring its lasting sustainability.*
- *The alternatives and options contained in this motion are intended to form a framework for the basis of a BSAI cod LAPP program for Pot \geq 60' CVs.*
- *Some of the alternatives and options need further development, their inclusion is meant to provide a framework for development moving forward.*
- *Based on information found in the document and discussions with Council staff it appears there are required elements of a LAPP program that are not currently included in this draft. These elements are incorporated by reference as required. (e.g., reporting requirements, program review, cost recovery fee, etc.)*
- *Some stakeholders have expressed concern about not being able to participate in this fishery to the extent they would like. This is a result of personal business decisions based on opportunity costs and access to other fisheries. However, one range of years proposed for consideration will capture fishing activity by all permits regardless of recency.*
- *No stakeholders should feel blindsided by this. The Bering Sea Pot Cod Cooperative has been an active advocacy group for the sector for the last 6 years. There have been several meetings open to all stakeholders, not just dues paying members, to discuss this and many other issues related to the sector.*
- *Consolidation should not be a concern for this sector. There is a potential for a reduction of LLP leasing which is not the same as consolidation. Some people point to the crab rationalization program as an example of how drastic or bad consolidation can be. Consolidation of the fleet was a prime objective of the crab rationalization program. It was not an unintended consequence and should not be assumed to be a negative result of all rationalization programs.*
- *It is important to keep the two sectors on as close to a parallel path as possible to prevent a last-man-standing situation. If the Trawl CV sector program moves forward without a program for the Pot \geq 60' CV sector, it would mean that 86.5% of the BSAI Pcod is rationalized, leaving this sector as the last non-entry level BSAI Pcod sector unrationalized.*
- *This draft was developed by the Bering Sea Pot Cod Cooperative, which represents approximately 75% of the Pot \geq 60' CV sector. There is far more support for development of this program than the document and public testimony would suggest. I am not aware of any rationalization programs that had 100% buy-in from all stakeholders at the beginning of it's development.*
- *Responsive to public testimony, including support from processors, communities and the majority of stakeholders in the sector.*

Rationale in opposition:

- *Heard some concerns in public testimony that the entire fleet is not aware a LAPP for this sector is under consideration, may be helpful for more discussions within sector before council gets involved.*

Motion 3

The advisory panel requests that the Council initiate an independent discussion paper in response to the recent court order concerning Amendment 113 to the National Marine Fisheries Management Service for reconsideration consistent with the court's opinion.

Motion passed 11-9

Rationale:

- *The Court recognized that NMFS had the authority to develop and implement 113, but that they did not provide a sufficient record. As a result, the court remanded AM 113 to the agency for reconsideration consistent with the court's opinion. The proposed Discussion Paper is intended to begin that process and is responsive to the court's request. There is a nearly ten-year analytical history related to Amendment 113; including three papers since December 2018 that should be very helpful in directing this action.*
- *The agency, Council and stakeholders have been assessing various legal, regulatory and legislative routes that can be used to address AM113, both in the interim and long term. As it stands going into the 2020 cod season, none of those routes has been implemented and Adak remains in a very vulnerable situation because of a growing cod race in the BSAI that will likely preempt the Al fishery that the community is heavily dependent on. The urgency of this issue was underscored by letters sent from the State to the Congressional delegation and from the Council to the Department of Justice.*
- *While a more comprehensive package may be where an ultimate solution is eventually encompassed, this program is expected to take many years to develop and has an uncertain outcome; Am 113 has already been developed and approved by the Council and its original framework is vital to the economic survival of Adak and the potential development of Atka.*
- *The larger package would have been an acceptable route on its own at this meeting, had some temporary protections been implemented, such as through proposed legislation with sunset provisions or emergency action, but for a number of reasons, these have not been successful.*

Rationale in opposition:

- *The Adak stakeholders have an opportunity to make their national standards' arguments in the appeal, the motion here seems more focused on having council staff help with their record building. NOAA general counsel can make these arguments, this is not an appropriate use of staff time.*
- *The Council has already provided a discussion of the implications of the court's decisions in a few different papers, it's unclear what staff would provide further based on this request.*
- *Adak's stakeholders should focus on working within the BSAI LAPP elements under consideration instead of trying to resurrect Amendment 113 through making more National Standard 4 and 8 arguments while maintaining the same structure.*
- *A discussion paper in response to the most recent Court ruling on Amendment 113 is a legal exercise requiring legal expertise and not an appropriate request for Council staff, who have already provided a similar discussion paper for Council consideration in June 2019. Asking Council staff to develop rationale in response to the inadequate record identified by the Court ruling shouldn't be the job of Council staff (record building is the responsibility of the Council and NMFS at the time of action).*