

D R A F T
ADVISORY PANEL MINUTES
January 31 – February 3, 2011
Seattle, Washington

The following (20) members were present for all or part of the meetings:

Kurt Cochran	Jeff Farvour	Theresa Peterson
Craig Cross	Becca Robbins Gisclair	Ed Poulsen
John Crowley	Jan Jacobs	Neil Rodriguez
Julianne Curry	Bob Jacobson	Beth Stewart
Jerry Downing	Alexus Kwachka	Lori Swanson
Tom Enlow	Chuck McCallum	Anne Vanderhoeven
Tim Evers	Matt Moir	

Minutes of the December 2010 meeting were approved.

Election of Officers

The AP elected Tom Enlow as Chair. Lori Swanson, Matt Moir and Becca Robbins Gisclair were nominated for the positions of co-vice chair. Mr. Moir was elected by a vote of 11-9 over Ms. Gisclair to serve as co-vice chair along with Lori Swanson.

C-1(a) Initial review of Halibut/Sablefish Hired Skipper

The AP recommends the Council send the analysis out for public review with the following changes:

- Include a description of the goals and objectives of the original IFQ program as was noted in Pautzke and Oliver (1997). (Pautzke, C., C. Oliver. 1997. Development of the Individual Fishing Quota Program for Sablefish and Halibut Longline Fisheries off Alaska Presented to the National Research Council's Committee to Review Individual Fishing Quotas, September 4, 1997, Anchorage, Alaska.)
- Include information on the percentage of new entrants by management area.
- Add a new Alternative 3: An initial recipient who owns 50% of a vessel and hires a second generation quota share holder as a hired skipper will not be restricted by the limitation to be on board for additional quota that is acquired.

Motion passed 19-0.

C-1(b) Final action on CQE area 3A D class purchase

A motion to recommend the Council adopt Alternative 2 failed 6-13.

Minority Report: The minority recommended that the Council adopt Alternative 2. The excellent staff report concluded on page vi that "No significant effect on individual participants, is anticipated under alternative 2 compared to the status quo." (see also page 42) The staff report noted that "CQE's would be limited to purchasing a relatively small percentage of the overall pool of Area 3A D category QS (9.6%)" and that "under existing program rules a CQE is limited to purchasing a maximum of 10 blocks of halibut QS in Area 3A in total."

The vast majority of CQE communities now have significantly less D share holdings and D shares holders than they did at initial issuance. On page 35 of the analysis it is appropriately noted that "Regardless of individual holdings, the CQE Program is premised on the concept that communities need the opportunity to hold a perpetual investment in nearby fisheries that have been historically available to resident fishermen, in order to provide long-term benefits to community members."

At this point the CQE program cannot be thought of as a success and while there is no one magic bullet to fix the program, alternative 2 provides a needed and reasonable amendment to the program that does not significantly impact other stakeholders.

Signed by: Chuck McCallum, Becca Robbins Gisclair, Anne Vanderhoeven, Beth Stewart, John Crowley

C-2(a) Discussion paper on Am 80 Replacement Vessel Sideboards

The AP recommends that the Council take no further action on this agenda item.

Motion passed 16-2-1 (abstention).

C-2(b) Final Action on GRS Program Changes

The AP recommends that the Council adopt Alternative 2: Remove groundfish retention standard requirements from the Federal regulations. In addition, include a requirement that the Amendment 80 sector report to the Council, on an annual basis, the sector's groundfish retention performance.

Motion passed 14-6.

Minority Report: A minority of the AP opposed the motion to adopt Alternative 2 removing the groundfish retention standard (GRS) requirements from regulation. The GRS was intended to improve retention and utilization. Improved retention and utilization was one of the primary conservation benefits promised by Amendment 80 and was one of the arguments for rationalizing the fishery. By removing the GRS from regulation, there are no longer assurances that this goal of Amendment 80 will be met. The minority was uncomfortable with moving from a regulatory approach to an industry-regulated approach, particularly without a 3rd party audit in place (Note that an amendment to add a requirement for a 3rd party audit of the Amendment 80 sector's GRS performance and report directly to the Council failed 7-13). Finally, the minority was concerned that reversing regulations because of enforcement difficulties sets a dangerous precedent, as similar arguments could possibly be made for other bycatch and PSC issues.

Signed by: Becca Robbins Gisclair, Chuck McCallum, Jeff Farvour, Tim Evers, Theresa Peterson, Alexis Kwachka

C-2(c) Flexibility of using unspecified reserves in specification process to address Am 80 hard caps

The AP recommends the Council request an expanded discussion paper to address legal, practical, and policy implications of the proposed action, including consultation with NOAA General Counsel, In-season Management, and stock assessment scientists. The AP further recommends the Council request that the expanded discussion paper include possible impacts on prohibited species bycatch, and examine the possibility of expanding the proposed action to include the CDQ sector.

Motion passed 18-0-1 (abstention).

C-3(a) BSAI Chum (non-chinook) Salmon Bycatch

The AP recommends that when the Council adopts a problem statement it include the following elements:

- An effective approach to reduce non-Chinook (chum) salmon bycatch in the Bering Sea Pollock trawl fishery is needed to meet National Standard 9, and to contribute towards efforts to reduce bycatch of Yukon River salmon under the Yukon River Salmon Agreement.
- Current information indicates that non-Chinook salmon bycatch includes stocks from Alaska, Asia and the Pacific Northwest.
- Chum salmon are an important stock for subsistence and commercial fisheries in Alaska and are a key resource for sustenance, culture and economies in Alaska communities.
- Chum salmon bycatch has been managed under chum salmon savings areas and the Voluntary Rolling Hotspot System in the past. New approaches should be considered to ensure bycatch is consistently reduced.
- Hard caps, area closures, a hotspot system or some combination thereof may be needed to ensure bycatch reduction goals are met.
- Chum salmon bycatch reduction measures should focus, to the extent possible, on reducing impacts to Alaska chum salmon as a top priority.
- Chinook salmon bycatch reduction should remain the priority.
- The Council is also aware of the contribution that the pollock fishery makes in the way of food production and economic activity for the country as well as for the State of Alaska and the coastal communities that participate in the CDQ [Community Development Quota] program; and the need to balance tensions between National Standard 1 to achieve optimum yield from the fishery and National Standard 9 to reduce bycatch.

Motion passed 20-0.

The AP recommends the Council move this analysis forward for initial review analysis in June as a top priority with the following changes/additions:

1. Change Component 5 – Rolling Hot Spot Program and its associated sub-option to its own alternative, Alternative 4;
2. Expanded discussion of the sampling utilized in genetic stock analysis, including any caveats associated with the results of genetic stock analyses;
3. Expand discussion of impacts of chum bycatch reduction measures on Chinook bycatch.
4. Under the status quo, discussion of the Rolling Hotspot System (RHS) should include separate examination of the pre-2007 and post 2007 RHS agreements.

Motion passed 19-0.

C-3(b) GOA Chinook Salmon Bycatch

The AP recommends that the Council reconsider the timeline for implementing Chinook bycatch measures in the Gulf of Alaska pollock fishery. Western GOA and other fishermen will not be able to attend either the June or October meetings because they will be fishing.

The AP requests that that Council conduct an outreach program during development of these regulations; so that they can provide more meaningful comment.

Motion passed 12-8.

Minority Report: A minority of the AP opposed the motion to reconsider the timeline for GOA Chinook salmon bycatch measures. Addressing this issue is long overdue. The extremely high Chinook salmon bycatch numbers in the GOA at the same time as many Chinook runs have been low makes this a priority issue, particularly given the number of stocks of concern and ESA-listed species potentially impacted. This action has already slipped from being an emergency action to one on an expedited timeframe, and it is appropriate to maintain the expedited timeframe rather than delay this action for an indefinite time. Signed by: Becca Robbins Gisclair, Chuck McCallum, Julianne Curry, Jeff Farvour, Tim Evers, Theresa Peterson, Alexis Kwachka

The AP recommends that the Council change the language under Alternative 2 as shown in **bold/underline** and ~~strikeout~~.

Alternative 2: Chinook salmon PSC limit and increased monitoring.

Component 1: 15,000, 22,500, or 30,000 Chinook salmon PSC limit (hard cap) **GOA wide cap where cap is divided between Central and Western GOA.** ~~Option:~~ Apportion limit between Central and Western GOA **where the sum of the individual areas equals overall GOA wide cap:**

Option a) proportional to the **historic** pollock TAC **(based on 5- or 10-year average)**

Option b) proportional to historic average bycatch rate of Chinook salmon (5 or 10-year average) **and historic Pollock TAC (5 or 10 year average)**

Option c) proportional to historic average bycatch number of Chinook salmon (5 or 10-year average).

Option d) each regulatory area (C/W) receives the highest cap option a, b, or c adjusted pro rata to equal overall GOA wide cap.

Component 2: Expanded observer coverage.

Extend existing 30% observer coverage requirements for vessels 60'-125' to trawl vessels less than 60' directed fishing for pollock in the Central or Western GOA.

Component 3: Consequences if the cap is exceeded

Option a) Any overage within a regulatory area is applied to the GOA wide cap and thus could affect the other regulatory are (i.e. overage in CGOA would shut down WGOA if the overall GOA cap is reached).

Option b) Any overage within a regulatory area is not applied to the overall GOA cap and only the area that is over its cap is shut down (i.e., overage in the CGOA does not shut down the WGOA).

Motion passed 19-0.

The AP recommends the Council replace the descriptive language under Alternative 3 with the language presented by staff on pages 12-14 with two modifications shown in **bold/underline**. *Motion passed 19-0.*

To be eligible to participate in the Central Gulf of Alaska or Western Gulf of Alaska pollock fishery, the holder of an appropriately endorsed License Limitation Program license would be required to join a Chinook salmon bycatch control cooperative.

Each cooperative would be formed for participation in a single regulatory area (e.g., Central Gulf of Alaska or Western Gulf of Alaska).

To form, a cooperative is required to have more than:

- a) 25 percent;
- b) 33 percent; or
- c) 40 percent

of the licenses that participated in the applicable regulatory area in the preceding year.

Any cooperative is required to accept as a member any eligible person, subject to the same terms and conditions that apply to all other cooperative members. In addition, the cooperative agreement shall not disadvantage any eligible person entering the fishery for not having an established Chinook salmon bycatch history in the fishery.

Each cooperative agreement shall contain:

A requirement that all vessels retain all salmon bycatch until the plant observers have an opportunity to determine the number of salmon and collect scientific data and biological samples.

Measures to promote gear innovations and the use of gear and fishing practices that contribute to Chinook salmon avoidance.

Vessel reporting requirements to be used to identify salmon hotspots and an appropriate set of measures to limit fishing in identified hotspots.

A system of vessel performance standards that creates individual incentives for Chinook salmon avoidance, which could include rewards or penalties based on Chinook salmon bycatch.

A system of information sharing intended to provide vessels with timely information concerning Chinook salmon bycatch rates.

A monitoring program to:

ensure compliance with the full retention requirement,

catalogue gear use and fishing practices and their effects on Chinook bycatch rates,

ensure compliance with vessel reporting requirements and limits on fishing under the system of salmon hotspots,

determine compliance with measures that require use of fishing gear or practices to avoid Chinook salmon PSC, and

verify vessel performance and implement any system of rewards and penalties related to vessel performance.

A set of contractual penalties for failure to comply with any cooperative requirements.

Each cooperative shall annually provide a report to the Council that includes the cooperative agreement and describes the cooperative's compliance with the specific requirements for cooperatives and the cooperative's performance with respect to those requirements (including salmon retention, gear innovations and fishing practices, vessel reporting requirements and hotspot identification and fishing limitations, vessel performance standards, information sharing, and monitoring). Cooperative reports shall also document any rewards or penalties related to vessel performance and any penalties for failure to comply with the cooperative agreement. The cooperative report should also describe the Chinook salmon bycatch seasonally, identifying any notable Chinook salmon bycatch occurrences or circumstances in the fishery. As a part of its report, a cooperative shall describe each measure adopted by the cooperative, the rationale for the measure (specifically describing how a measure is intended to serve the objective of addressing Chinook salmon PSC, while ensuring a fair opportunity to all participants in the fishery), and the effects of the measure.

In the event more than one cooperative is created within a regulatory area, those cooperatives will be required to enter an intercooperative agreement prior to beginning fishing. The intercooperative agreement will establish rules to ensure that no cooperative (or its members) are disadvantaged in the fishery by its efforts to avoid Chinook salmon.

The parties to any intercooperative agreement shall annually provide report to the Council including the intercooperative agreement and describing each measure in the agreement, the rationale for the measure (specifically describing how a measure is intended to serve the objective of addressing Chinook salmon PSC, while ensuring a fair opportunity to all participants in the fishery), and the effect of the measure.

Motion passed 19-0.

Finally, the AP recommends the Council move forward with an analytical package of Alternatives 1-3, as described above, for initial review for Chinook salmon bycatch in the pollock fishery.

Motion passed 19-0.

C-4(a) Discussion paper/finalize alternatives on HAPC - Skate sites

The AP recommends that the Council expand this discussion paper to include a better description of:

1. Refined VMS tracking for these specific sites.
2. Biomass history and trends.
3. Life history
4. Density and area determination rationale.
5. Does the definition of rarity and the process apply to this species at this time with new and current knowledge.
6. What the process will be for addressing future site discoveries.
7. History of commercial fishing activities in the proposed areas.
8. Enforcement challenges in enforcing fishing regulations that may be applied to these areas.
9. Arrange alternatives so six sites may be selected individually or as a group.
10. Information on effects of fishing on skate egg sites.

Motion passed 20-0.

C-4(b) Initial review EA: EFH Amendment

The AP recommends that the Council delay action on Pacific salmon methodology to refine the geographic scope of EFH until that document is fully peer-reviewed. *Motion passed 16/0.*

The AP recommends that the Council send the EFH amendment document out for public review for the remaining EFH items. *Motion passed 16-0-1 (abstention).*

C-5(a) BS and AI Pacific Cod Split Discussion paper

AP recommends that the Council bring this issue back for further discussion following the CIE review, the 2012 trawl survey, and after the fishery has been conducted under the new RPAs and state water fishery for at least one year.

Motion passed 20-0.

C-6(a) BSAI Crab - Final action on Right of First Refusal

The AP recommends the Council adopt the following preferred alternatives for each action under this agenda item (*bold/italic* is new language):

Action 1: Increase a right holding entity's time to exercise the right and perform as required.

Alternative 2 – Increase an entity's time to exercise the right and perform.

- Require parties to rights of first refusal contracts to extend the period for exercising the right of first refusal from 60 days from receipt of the contract to 90 days from receipt of the contract.
- Require parties to rights of first refusal contracts to extend the period for performing under the contract after exercising the right from 120 days from receipt of the contract to 150 days from receipt of the contract.

Action 2: Increase community protections by removing the ROFR lapse provisions.

Alternative 2 – Strengthen community protections under circumstances where ROFR may lapse.

- Require parties to rights of first refusal contracts to remove the provision that rights lapse, if the IPQ are used outside the community for a period of three consecutive years.
- Require that any person holding PQS that met landing thresholds qualifying a community entity for a right of first refusal on program implementation to maintain a contract providing that right at all times.
- *In cases where the right holder has affirmed that it has allowed the right to lapse, the ROFR will not be required.*

Action 3: Apply the right to only PQS or PQS and assets in the subject community.

Alternative 1 – status quo

The right of first refusal applies to all assets included in a sale of PQS subject to the right, with the price determined by the sale contract.

The AP recommends the Council move forward with Alternative 2 for Action 4 as a trailing amendment, along with the Statement of Council Intent language provided in *bold/italic*.

Action 4: Require community approval for IPQ subject to the right to be processed outside the subject community.

Alternative 2 – Require community consent to move IPQ outside the community

Require the PQS holder to obtain written approval from the community prior to processing IPQ subject to the right (or formerly subject to the right), at a facility outside the subject community.

Statement of Council Intent

In developing the crab rationalization program, the Council included several measures to protect regional and community interests. One of the specific measures designed to protect communities from the loss of crab processing include the right of the community to exercise the right of first refusal (ROFR) to purchase the PQS in the event the owner proposes to sell the shares outside the community. Many aspects of the ROFR limit the effectiveness of the provision in protecting community interests.

It is the intent of the Council that while the community entity must consent to IPQ processing outside the community where the PQS was historically originated, the consent should not be unreasonably

withheld. In cases of unforeseen circumstances or emergencies, it is expected the community entity will allow, on a timely basis, the movement of the processing until the temporary issues have been resolved. In addition, end of season consolidation of small amounts of IPQ should be accommodated.

The AP recommends the Council move forward with Alternative 2 for Action 4 as a trailing amendment. The adoption of Alternative 2 for Action 4 including the new Council intent language was an amendment to the original motion which replaced status quo.

The amendment passed 17-3.

The final motion as amended (Action 4) passed 20-0.

A motion to adopt Alternative 2 for Action 3, in place of status quo, failed 8-12.

C-6(b) BSAI Crab - Initial Review of IFQ/IPQ Application Deadline

The AP recommends the Council release the document for public review with the current alternative to change the filing deadline date, with addition of the following:

- Reduce the time for filing an appeal from 60 days to 30 days
- Add a statement that maintaining proof of timely filing of an application (e.g., fax record) creates a presumption of timely filing.

Motion passed 20-0.

D-1(a) Discussion paper on Sablefish Recruitment Factors

The AP urges continued research to identify EFH and important recruitment areas for juvenile sablefish. The AP also urges the Council to work with the Board of Fisheries and State of Alaska through its Joint Protocol Committee to protect juvenile sablefish within St. John the Baptist Bay which has been an important rearing area.

Motion passed 19-0.

D-1(b) Discussion paper on GOA Trawl Sweep Modifications

The AP recommends the Council move forward with the testing plan of trawl sweep modifications in the Gulf of Alaska, as outlined in the discussion paper; however, limiting it to the Central Gulf of Alaska flatfish fishery only.

Motion passed 19-0.