

North Pacific Fishery Management Council

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March 28, 2003

DRAFT AGENDA
161st Plenary Session
North Pacific Fishery Management Council
April 2 - April 8, 2003
Anchorage Hilton Hotel

The North Pacific Fishery Management Council will meet April 2, through April 8, 2003 at the Anchorage Hilton Hotel in Anchorage, AK. Other meetings to be held during the week are:

<u>Committee/Panel</u>	<u>Beginning</u>
Advisory Panel	8:00 am, Mon., March 31 (Dillingham/Katmai Room)
Scientific and Statistical Committee	8:00 am, Mon., March 31 (King Salmon Room)
Council/BOF Protocol Committee	1:00 pm, Tues., April 1, 2003 (Iliamna Room)
Enforcement Committee	6:30 pm, Tues., April 1, 2003 (Dillingham/Katmai Room)

The Council, SSC and AP will meet at the Anchorage Hilton Hotel. All meetings are open to the public, except executive sessions of the Council. Other committee and workgroup meetings may be scheduled on short notice during the week, and will be posted at the hotel.

INFORMATION FOR PERSONS WISHING TO PROVIDE PUBLIC COMMENTS

Sign-up sheets are available at the registration table for those wishing to provide public comments on a specific agenda item. Sign-up must be completed **before** public comment begins on that agenda item. Additional names are generally not accepted **after** public comment has begun.

Submission of Written Comments. Written comments and materials to be included in Council meeting **notebooks** must be received at the Council office **by 5:00 pm (Alaska Time) on Wednesday March 26th**. Written and oral comments should include a statement of the source and date of information provided as well as a brief description of the background and interests of the person(s) submitting the statement. Comments can be sent by mail or fax--please **do not** submit comments by e-mail. **It is the submitter's responsibility to provide an adequate number of copies of comments after the deadline.** Materials provided **during** the meeting for distribution to Council members should be provided to the Council secretary. A minimum of **25** copies is needed to ensure that Council members, the executive director, NOAA General Counsel, appropriate staff, and the official meeting record each receive a copy. If copies are to be made available for the Advisory Panel (**28**), Scientific and Statistical Committee (**18**), or the public after the pre-meeting deadline, they must also be provided by the submitter.

FOR THOSE WISHING TO TESTIFY BEFORE THE ADVISORY PANEL

The Advisory Panel has revised its operating guidelines to incorporate a strict time management approach to its meetings. Rules for testimony before the Advisory Panel have been developed which are similar to those used by the Council. Members of the public wishing to testify before the AP must sign up on the list for each topic listed on the agenda. Sign-up sheets are provided in a special notebook located at the back of the room. The deadline for registering to testify is when the agenda topic comes before the AP. The time available for individual and group testimony will be based on the number registered and determined by the AP Chairman. **The AP may not take public testimony on items for which they will not be making recommendations to the Council.**

FOR THOSE WISHING TO TESTIFY BEFORE THE SCIENTIFIC AND STATISTICAL COMMITTEE

The usual practice is for the SSC to call for public comment immediately following the staff presentation on each agenda item. In addition, the SSC will designate a time, normally at the beginning of the afternoon session on the first day of the SSC meeting, when members of the public will have the opportunity to present testimony on any agenda item. The Committee will discourage testimony that does not directly address the technical issues of concern to the SSC, and **presentations lasting more than ten minutes will require prior approval from the Chair.**

COMMONLY USED ACRONYMS

ABC	Acceptable Biological Catch	MSFCMA	Magnuson-Stevens Fishery Conservation and Management Act
AP	Advisory Panel	MMPA	Marine Mammal Protection Act
ADFG	Alaska Dept. of Fish and Game	MRB	Maximum Retainable Bycatch
BSAI	Bering Sea and Aleutian Islands	MSY	Maximum Sustainable Yield
CDQ	Community Development Quota	mt	Metric tons
CRP	Comprehensive Rationalization Program	NMFS	National Marine Fisheries Service
CVOA	Catcher Vessel Operational Area	NOAA	National Oceanic & Atmospheric Adm.
EA/RIR	Environmental Assessment/Regulatory Impact Review	NPFMC	North Pacific Fishery Management Council
EEZ	Exclusive Economic Zone	OY	Optimum Yield
EFH	Essential Fish Habitat	POP	Pacific ocean perch
FMP	Fishery Management Plan	PSC	Prohibited Species Catch
GHL	Guideline Harvest Level	SAFE	Stock Assessment and Fishery Evaluation Document
GOA	Gulf of Alaska	SSC	Scientific and Statistical Committee
HAPC	Habitat Areas of Particular Concern	TAC	Total Allowable Catch
IBQ	Individual Bycatch Quota	VBA	Vessel Bycatch Accounting
IFQ	Individual Fishing Quota	VIP	Vessel Incentive Program
IPHC	International Pacific Halibut Commission		
IRFA	Initial Regulatory Flexibility Analysis		
IRIU	Improved Retention/Improved Utilization		
ITAC	Initial Total Allowable Catch		
LAMP	Local Area Management Plan		
LLP	License Limitation Program		

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Estimated Hours

A. CALL MEETING TO ORDER

- (a) Approval of Agenda •

B. REPORTS

- B-1 Executive Director's Report •
B-2 NMFS Management Report •
B-3 ADF&G Management Report •
B-4 Coast Guard Report •
B-5 USFWS Report •

(4 hrs for
A/B items)

C. NEW OR CONTINUING BUSINESS

- C-1 Gulf of Alaska Rationalization (6 hrs)
Review draft analytical outline, refine Alternatives as necessary.
- C-2 Crab Rationalization and other management issues (8 hrs)
(a) Receive Committee reports and finalize action on trailing amendments.
(b) Status report on EIS.
- C-3 Steller Sea Lion Issues (4 hrs)
(a) Review draft response to BiOp remand.
(b) NAS SSL Report - Schedule discussion for future action.
(c) Report on Aleutian Island pollock closure analysis.
- C-4 Essential Fish Habitat (4 hrs)
Receive progress report on EIS development, and review alternatives, objectives, and research plan - action as appropriate.
- C-5 Programmatic Groundfish SEIS (2 hrs)
Receive progress report.
- C-6 BS/AI Pacific Cod Allocation (4 hrs)
Initial review of Amendment 77 (allocations among fixed gear components).

- C-7 IR/TU (8 hrs)
 (a) Review proposal for Trailing Amendment A (multi-species H&G co-ops), and associated allocation issues.
 (b) Initial review of Trailing Amendment C (minimum retention standards).
 (c) Discussion of relationship of Amendment A & C.
 (d) Final action on trailing Amendment D (5% exemption).
- C-8 Observer Program (2 hrs)
 Review timeline and analytical outline for restructuring observer program.
- C-9 Halibut Subsistence (2 hrs)
 (a) Final action on Ninilchik inclusion.
 (b) Report on other potentially eligible communities.
- C-10 CDO Program (2 hrs)
 Final action on 'other species' exemption.

D. FISHERY MANAGEMENT PLANS

- D-1 Groundfish Issues (8 hrs)
 (a) Discuss future actions resulting from F40 Report.
 (b) Receive progress report on rockfish/non-target species management.
 (c) Review status of TAC-setting amendment package.
 (d) Review request(s) for Exempted Fishing Permits (halibut donation and salmon excluder device).
 (e) Recommend VIP rates for latter half of 2003.
 (f) SSC comments on National Standards 1 guidelines.
 (g) Review research priorities.
- D-2 Staff Tasking (2 hrs)
 Review tasking and provide direction to staff.
- D-3 Other Business (1 hr)

E. PUBLIC COMMENTS

F. CHAIRMAN'S REMARKS AND ADJOURNMENT

Total Agenda Hours: 57 hours

ADVISORY PANEL MINUTES
January 27, 2003 to February 1, 2003
The Madison, Seattle, Washington

Advisory Panel members in attendance:

Benson, Dave	Kilborn, Mitch	Leslie, Kent
Boisseau, Dave	Mayhew, Tracey	
Bruce, John (Chair)	Moller, Sandra	
Burch, Alvin	Norosz, Kris	
Cross, Craig	Olson, Eric	
Enlow, Tom	Preston, Jim	
Falvey, Dan	Ridgway, Michelle	
Fields, Duncan	Steele, Jeff	
Fraser, Dave	Stephan, Jeff	
Fuglvog, Arne		
Jacobson, Bill		
Kandianis, Teressa		

C-1 GULF RATIONALIZATION

The AP endorses the Staff changes presented in the “redline” version of the elements and options with the following changes/additions:

ALTERNATIVE 2 –MODIFICATION OF LLP PERMIT

AP recommended eliminating Alternative 2 from analysis. *Motion passed 19/2.*

ALTERNATIVE 3__QUOTA SHARED BASED PROGRAM

Element 1 Qualifying period— AP recommended removing Suboption 2 (which added 2002 to all alternatives) *Motion passed 21/0.*

Element 2, Qualifying landing criteria,

- 1) Issue 1—Retain suboption ii under both option 1 and 2 which does not include meal. CP retained catch should be based on actual WPR reports (rather than NMFS blend data). Add a Suboption iii under both option 1 and 2 allowing CP vessels which did not produce meal to have their catch history increased by a specified amount. *Motion passed 20/0.*
- 2) Issue 2 —Retain original 2 options to analyze vessel owners with permits (must meet same standard as in Crab program) and all vessels with or without permits who made legal landings. This provides the most information and contrast regarding the State parallel fishery. LLP permit holders cannot be tied to a vessel or fish ticket, presenting analytical problems and should not be pursued further. *Motion passed 20/0.*
- 3) Clarify that total pounds landed will be used as the denominator in determining allocations. *Motion passed 20/0*

Element 3, Target species rationalization plan—

- 1) Retain a place-holder comment under all elements and options which are being deferred to trailing amendments.
- 2) Add new Issue 1, Initial allocation of catch history, with 2 options: option 1, allocate catch history by sector and gear type; option 2, allocate catch history on an individual basis. *Motion passed 20/0.*
- 3) Issue 2 QS/IFQ designations—Keep original “no designations” Suboption under vessel categories, QS sector designations, and QS gear designations options as it more explicitly allows different options to be applied to different sectors. *Motion passed 20/0.*
- 4) Issue 2, QS/IFQ designations—add under option b (QS Sector Designations):

- a) Reinstate suboption ii and modify to: All catch in a given year if any was legally processed onboard a vessel by species.
 - b) A new suboption iii CP or CV designation is based on legally landed CV harvest or legally processed CP harvests in the last year of the qualification period by species.
- 5) Issue 2, option a. Transferability restrictions between CP and CV QS: Delete options 1-5. *Motion passed 16/4/1.*

A motion to create a first right of refusal option for communities was put on the table but was defeated by the majority in the above vote to delete options 1 through 5.

Minority Report:

A minority of the AP supported a community right of first refusal in the sale or transfer of catcher processor quota shares (CP shares). The AP then voted to take all right of first refusal options out of the analysis. The AP minority that supported keeping first refusal options also supported analysis of a community right of first refusal. As a matter of public policy, reinforced by the MSA, publicly owned fishery resources should benefit communities that provide infrastructure support for the fisheries. Moving CP QS to community ownership and converting these shares to CV shares will increase community benefits by providing shoreside jobs, tax revenues and increasing shoreside processing volumes. The CP sector would receive full economic value for these shares and, should communities not be willing to purchase CP shares, they could be freely sold with the CP designation.

Duncan Fields, Michelle Ridgeway, Dan Falvey, Jeff Steele, Eric Olson, Jeff Stephan

A motion to re-designate CP shares as CV shares upon transfer to a person who was not an initial recipient of CP shares failed 6/12.

Minority Report:

The minority of the AP supports an amendment to the main motion to include, for analytical purposes, an option to purchase catcher processor quota shares (CP shares) and change them to catcher vessel shares (CV shares).[Issue 2 -Transferability restrictions, page 5 of red line] The motion would allow purchase of CP quota by any initial CP recipients and retain the CP designation. However, transfer of CP shares to a non-qualified CP purchaser would convert these shares to CV shares. The minority thought that, as a matter of public policy, the exchange of CP quota share for CV quota share ---- moving processing activity and economic value ashore --- should be considered.

Mitch Kilborn, Jeff Steele, Al Burch, Duncan Fields, Jeff Stephan

- 6) Issue 3, Transferability restrictions, Option 1 Persons eligible to receive QS by transfer:
- a) Revised Suboption 3 to include initial recipients of CP QS;
 - b) Added a new Suboption 5, GOA Fishery dependent communities (communities with greater than 10 – 30% of base industry economy is harvesting or processing related) *Motion passed 15/3/1.*

A motion to exclude SE communities failed 10/10/1

- c) Move Suboption 4 and New 5 community eligibility to community protection option 12 section as new option 1 and retain a place holder for eligible communities
- d) Add Suboption 6 US citizens eligible to documents a vessel. *Motions passed 20/0.*

Under Issue 3, Option 2, CDQ holdings, clarify that Suboption 2 refers to no additional restriction to CDQ ownership beyond those applying to all QS owners. *Motion passed 20/0.*

- 7) Option 9, Owner on Board provisions--Keep "no owner on board" Suboption as it more explicitly allows different options to be applied to different sectors. *Motion passed 19/0.*
- 8) Option 10 Overage Provisions: Use whole numbers for range (i.e. 6-10 mt). *Motion passed 19/0.*
- 9) Option 12 Limited Processing-- Retain option 1, limited processing of rockfish species. Move options 2 & 3 to new option 13, heading titled "Processing Restrictions" as follows:
 Suboption 1 CP may buy CV fish.
 Suboption 2 CP's are not permitted to buy fully utilized species (cod, pollock, rockfish, sablefish and QS portions of flatfish) from CV's
 Suboption 3 exempt bycatch amounts of these species. *Motion passed 20/0.*

Element 6 Allocation of bycatch species—Remove option 4 in the WG and CG. In WY retain option 4 and suboption 1. *Motion passed 11/8.*

Element 7 PSC species, Issue 1, Accounting of Halibut Bycatch—retain Suboption 2 for hook and line vessels as this method is currently used in sablefish IFQ fishery and is working well.

Element 9 Entry Level Rockfish—

- 1) Retain Suboption b as an accounting mechanism
 - 2) Add following options
 - a) No entry level rockfish fishery
 - i gulf wide
 - ii central gulf including w yak
 - iii Western Gulf
- Motion passed 20/0.*

A motion to add POP as a candidate species failed (6/12/2)

Element 11 Reinstate option 1 no skipper and crew share option. *Motion passed 16/0.*

Element 12 Community protection

AP recommends eliminating CIFTS. *Motion passed 11/9/1.*

Minority Report:

A minority of the AP supports, for analysis, the CIFT concept. A substitute motion replaced a motion to amend the CIFT proposal in the staff document. The amended CIFT is as follows:

Element 12 Community protection

- 1) *Option 2 CIFTS—clarify that the CIFT has full ownership of CIFT QS and holds these shares in trust for the communities, processors and crew members in the region to use as leverage to mitigate impact directly associated with implementation of a rationalization program.*
- 2) *Option 2, Issue 1, reduce CIFT allocation range to 10 to 30 %.*
- 3) *Option 2, Issue 6, Replace as follows "Distribution of IFQ" (title)*
 - a. *CV CIFT Crew member representatives shall develop criteria which ensure that vessels participating in the CIFT program retain their historic crew payment formula and award 1/3 of the CIFT IFQ to vessels agreeing to these terms.*
 - b. *CV CIFT Community representatives shall develop criteria which ensure that vessels participating in the CIFT program maintain delivery patterns in communities which gave rise to their qualifying catch histories and award 1/3 of the CIFT IFQ to vessels agreeing to these terms.*

- c. CV CIFT Processing representatives shall develop criteria which ensure that vessels participating in the CIFT program have price agreements and/or maintain the delivery patterns which gave rise to their qualifying catch histories and award 1/3 of the CIFT IFQ to vessels agreeing to these terms.
 - d. The CP CIFT shall have Crew member representatives which develop criteria to ensure that vessels participating in the CIFT program retain their historic crew payment formula and award 1/3 of the CIFT to vessels agreeing to these terms.
 - e. The CP CIFT shall have CP representatives which develop criteria to ensure that vessels participating in the CIFT program have contractual agreements controlling bycatch, enforcing IR/IU standards and other matters as necessary. The CP CIFT representatives shall award 2/3 of the CIFT IFQ to vessels agreeing to these terms.
- 4) Issue 7 allocation procedure – Retain options 1–4.
 - 5) Defer all remaining elements and options to a trailing amendment.

The AP minority believes that the amended CIFT merits staff analysis because a CIFT concept may be the best mechanism to address issues of crew protection, maintaining historical processing in the communities, and insuring historical deliveries to processors. In addition, all of the community representatives that testified at the AP supported the analysis of the CIFT proposal. While staff resources are limited, the concept could easily be part of a trailing amendment package. Consequently, the minority of the AP would encourage the Council to adopt the above amended CIFT proposal for analysis.

Eric Olson, Dan Falvey, Tracy Mayhew, Arne Fuglvog, Michele Ridgeway, Jim Preston, Duncan Fields.

The AP recommends eliminating TURFS in the analysis (Motion passed 14/6/1.)

Minority Report:

The minority of the AP encourages the council, for analytic purpose, to retain the TURF proposal as revised by the staff in the redline edition. TURFS are another community protection tool that may be beneficial to the Council as it addresses area specific issues within the gulf rationalization package. Scoping comments, particularly from Cordova, indicated potential access problems that could be addressed by a preferential TURF that the minority believes staff's comments regarding TURFS are limited to the extreme example of exclusive area for all species and all time. The TURF concept is much more flexible and may have applications for limited amounts of time, limited species, and adaptable areas.

Eric Olson, Duncan Fields, Jim Preston, Dan Falvey, Tracy Mayhew, Michelle Ridgeway

CFQs (Community Fishing Quotas)

- 1) Option 2 CFQ, Issue 2 eligible communities, option 1 population add new suboption d. less than 7500.
- 2) Option 2 CFQ, Issue 2 eligible communities, define option3 a. fisheries dependant communities as follows: GOA Fishery dependent communities (communities with greater than range 10 – 30% of base industry economy is harvesting or processing related)
- 3) Option 2 CFQ, Issue 2 eligible communities, define option3 b. fisheries supplemented communities as follows: GOA Fishery supplemented communities (communities with a range of 5 – 10% of base industry economy is harvesting or processing related)

A motion eliminating CFQs from the analysis failed 7/10/2.

A motion to award a range of 5 to 15 % of IPQ directly to communities failed 8/10.

Minority Report:

The undersigned AP members believe that the analysis should include an option to allocate a percentage of IPQ to communities under the CFQ option. It is unfair to place the entire cost of the CFQ program on the harvest sector.

Dave Fraser, Arne Fuglvog, Jeff Steele, Jeff Stephan, Craig Cross, Tracy Mayhew, Duncan Fields, Jim Preston

Element 13 Habitat

A motion to reinstate language addressing the Habitat conservation plan and note its status as a trailing amendment failed 6/14/1.

Minority Report:

The minority feels that inclusion of Element 13, the Habitat Conservation Plan, as recommended by the GOA rationalization committee, will serve to more fully realize the habitat benefits we anticipate will accrue under a rationalized fishery.

Jim Preston, Bill Jacobson, Tracy Mayhew, Michelle Ridgeway, Dan Falvey, Duncan Fields

ALTERNATIVE 3— QUOTA SHARE BASE PROGRAM

Subalternative 2—Harvester only QS program with a cooperative.

- 1) Move # 10 to community protection section as a new option 5 (requiring ranges of coop IFQs to be processed in the community giving origin to the processing license). *Motion passed 20/0.*
- 2) Suboption 2, mandatory Coops, add a new 98 as follows: QS holders that do not chose to join a coop:
 - a) May fish in open access
 - b) Are not allowed to participate in the rationalized fisheries until they join a coop.*Motion passed 19/0.*
- 3) Add a new 2. allowing CPs to form a sector coop which is not subject to provisions 3-8. *Motion passed 18/0.*

The AP recommends including a new Subalternative 3 to Alternative 3: Sector allocation program with cooperatives. Motion passed 19/1/1.

(Management Areas, Gear, Elements 1: Qualifying periods, and 2: Qualifying landing criteria, of Alternative 3, Subalternative One apply throughout)

Element 3: Sector Identification

The following sectors are eligible to receive a sectoral allocation by area:

1. CV Trawl
2. CP Trawl
3. CV Longline
4. CP Longline
5. CV Pot
6. CP Pot

Element 4: Target Species

As listed in Alternative 3, Subalternative 1, Element 3

Element 5: Bycatch Species

As listed in Alternative 3, Subalternative 1, Element 6

Option 1.

a) Allocate quota to all sectors based on sector bycatch rates.

 Suboption 1. Based on average catch history by area and target fishery

 Suboption 2. Based on 75th percentile by area by target fishery

b) Allocation will be adjusted pro rata to allocate 100% of the annual TAC for each bycatch species.

 Suboption. Other rockfish in the Western Gulf will not be allocated, but will be managed by MRB and will go to PSC status when the TAC is reached.

Option 2. Retain these species on bycatch status for all sectors with current MRBs.

Element 6: PSC Species

Issue 1. Accounting of Halibut Bycatch

 Halibut bycatch would be managed by NMFS at the sector level.

Issue 2. Halibut PSC Allocation

 Initial allocation based on sector average bycatch rates for the qualifying years. Allocations will be adjusted pro rata to equal the existing PSC.

Element 7: Underutilized Species

Underutilized unallocated species are available for harvest by any sector with sufficient PSC and bycatch to prosecute the fishery, once that sector's allocation of that underutilized species has been used.

Element 8: Communities

As in Alternative 3, Subalternative 1, Element 12, Option 1 (Regionalization), Issues 1(Regional Areas) and 2 (Qualifying Years), and Option 3 (Community Fisheries Quota).

Element 9: Review and Evaluation:

Issue 1. Review

 Evaluate the results of program based on overall GOA rationalization objectives.

Issue 2. Sunset

 Add per Alternative 3, Subalternative One.

Element 10: Sideboards

Participants in the GOA rationalized fisheries are limited to their aggregate historical participation based on GOA rationalized qualifying years in BSAI groundfish fisheries.

Element 11: Coops

Members of a sector may choose to form a cooperative with a civil contract to manage harvest levels and other issues as determined by agreement of the cooperative.

NMFS will allocate quota to the cooperative based on the aggregate historical catch of target, bycatch and PSC species.

Cooperative will be responsible for managing the aggregate catch of the cooperative so as not to exceed the cooperatives allocation of target, bycatch and PSC species.

Vessels that choose not to participate in the cooperative are allocated the remaining sectoral TAC, bycatch and PSC allocations after deduction of the cooperative allocation and any other sector-wide deductions.

 NMFS may establish a minimum level of cooperative membership by sector

 Option 1: Minimum number of license holders

 Option 2: Minimum percentage of catch history

 NMFS may establish a maximum number of cooperatives by sector.

Issue 1. Coop participation**Option 1. Coops are voluntary**

Suboption 1. Coop may be formed upon agreement of 100% of sector (AFA Offshore type coop)

Suboption 2. One coop may form per sector

a. Require a minimum percentage (50 – 75 and 80%) of eligible vessels in order to form coop

b. Require a minimum percentage (50 – 75 and 80%) of catch history in order to form coop

Suboption 3: Establish a maximum number of cooperatives per sector

a. Require a minimum percentage of eligible vessels in order to form coop

b. Require a minimum percentage of catch history in order to form coop

Option 2. Coops can be comprised of one sector/gear type only

Option 3. Coops from different sectors may enter into inter-coop agreements.

Issue 2. Coop Allocations

Option 1. Coop allocations will be based on same formula as used for sectoral allocations

Issue 3. Open Access

Option 1. Any vessels that do not want to enter into coop agreements will fish in open access. The aggregate catch history from non-participating vessels, based on same qualifying years, will go into the open access pool.

ALTERNATIVE 4—HARVESTER QS WITH CLOSED PROCESSOR CLASS.

- 1) Clarify that both Subalternatives 1 and 2 apply only to the CV sector.
- 2) Element 19 (Closed Class Processor Qualifications) Option 4: Replace current alternative as follows: Analyze processing use caps by closed class processor type (trawl, fixed, or trawl and fixed), by CG and WG regulatory areas using a range of 70 to 130% of the TAC processed for all groundfish species, combined, during the qualifying years for the largest closed class processor.

ALTERNATIVE 5—HARVESTER AND PROCESSOR QS

- 1) Issue 2 categories of Processing QS—Add a new option 4 as follows:
Option: Catcher processors will be issued CP QS which combines the privilege of catching and processing product.
- 2) Issue 8 (Community protection provisions)
Moved issue 8 as new option 5 under Element 12 under Alternative 3. *Motion Passed 20/0.*

C-2 BSAI CRAB RATIONALIZATION

I. Binding Arbitration: The AP recommends the Council adopt the fleet-wide binding arbitration model as described in the report of the working group on binding arbitration. *Motion passed 13/7.*

Minority Report:

We the undersigned support the Last Best Offer proposal including the following "fleetwide" amendment. Add the following to the Report of the Working Group on Binding Arbitration Committee under the "PROCESS" section, subparagraph #4, page 6, "Arbitration Decisions", the first paragraph.

"The arbitrator who makes the last pre-season arbitration decision will review all of the arbitration decisions for that season and select the highest arbitrated price(s) which is representative of 7% of the market. That price shall become the price for all arbitrated prices for that season, inclusive of the opt-in provision, and, independent of delivery terms at the harvesters option. If the arbitration decisions include both formula and straight price decisions, the arbitrator shall have the discretion to select and apply one of each type."

The arbitrator who makes the fleetwide price decision should have the flexibility to determine the mechanism for selecting the highest price. He could, for example, take a single arbitrated price if it covers at least 7% of the market, or could take a weighted average of three prices to cover 7% of the market, etc. This process will be very similar to the current price negotiations in which harvesters negotiate delivery with their intended market and then obtain a fleetwide price close to the season opening.

The undersigned support the modified Last Best Offer/Fleetwide proposal for the following reasons:

- *Timely, businesslike procedure: Process initiates only 25 days before the season opening date, instead of 125 days prior to season opening date. Fleetwide is a complex and legalistic framework.*
- *Flexibility: Industry can choose to use either traditional dockside price or a formula-based price in arbitration. Fleetwide does not allow for use of dockside price.*
- *Arbitration is optional: Last best offer/fleetwide price is only initiated in the case of failed price negotiations, whereas the fleetwide model mandates arbitration for every fishery.*
- *Contract required between matched parties prior to entering arbitration: Fleetwide does not require a contract until a price is arbitrated and agreed upon by the parties—but either party can still opt out. In the Newfoundland fishery, processors have recently announced their intent to withdraw from the process as a result of fishermen being able to opt out after a price has been arbitrated.*
- *Reduced cost and efficiency: There is a single arbitration for price, delivery window and place in the last best offer/fleetwide. Fleetwide has two step process and two arbitrations, first for price, then delivery time and locations.*

Signed Jeff Steele, Al Burch, Kris Norosz, Dave Benson, Tom Enlow, Dave Boisseau, Mitch Kilborn

II. Community Protection:

The AP recommends the Council select the cool down period provisions of the Community Protection Committee recommendations as a preferred alternative with the following change:

3. 10 % of the IPQs may leave a community on annual basis, or up to 500,000 pounds, whichever is less. *The requested clarification of the "slippage" rules should be that slippage is measured on a fishery-by-fishery basis. Motion passed 20/0.*

The AP recommends the Council select, as a preferred alternative, IPQ caps of :

For opilio: IPQ percentage times a TAC of 125 million pounds.

For Bristol Bay Red King: IPQ percentage times a TAC of 9 million pounds. *Motion passed 12/7/1.*

The AP recommends an option be added under the community protection provisions, that those vessels homeported within the city of Kodiak, as determined by registration with the Kodiak harbormaster, as a current lessee of a Kodiak boat harbor stall, shall have the option to declare their last trip of the season for delivery to Kodiak, and it shall not be subject to regionalization and IPQ requirements. *Motion passed 13/8.*

The AP recommends the Council add an option to the community protection provisions as follows:

PQS with regional categories for deliveries of opilio crab and Bristol Bay red king crab shall be allocated proportionally from the Northern and Southern regions, to those communities with more than 3% of the aggregate historic landings of either of these species, within the area of the Gulf of Alaska lying north of 56 degrees, 20 minutes north latitude by using the best 4 season in 1996-2000 and deducting any PQS acquired by eligible processors in that region using the qualifying years. The entity that will receive the allocation will be identified by agreement between the City of Kodiak and the Kodiak Island Borough. If no entity is jointly identified and approved by the city and borough by the date of the first annual allocation, the allocation will be held in an enterprise account administered jointly by the city and borough until an entity is created by the city and borough. The allocation will be subject to rules that are similar to those that govern the Adak allocation. *Motion passed 12/9.*

The AP recommends the Council adopt as its preferred alternative the following community protection committee's recommendations for first right of refusal options as amended.

1. BSAI

For communities with at least three percent of the initial PQS allocation in any BSAI crab fishery based on history in the community except for those communities that receive a direct allocation of any crab species (currently only Adak), allow CDQ groups, qualified communities, or community groups representing qualified communities a first right of refusal to purchase processing quota shares that are based on history from the community which are being proposed to be sold for processing outside the boundaries of the community of original processing history. Intra-company transfers within a region are exempt from this provision. To be exempt from the first right of refusal, the use of PQS must be by the same company.

There needs to be some assurance that the buyer exercising the right has the financial capability to consummate the transaction.

If an owner of IPQ decides to sell the IPQ, a first right of refusal shall go to:

- 1) In CDQ communities, the CDQ group.
- 2) In non-CDQ Communities:

The first right of refusal goes to the entity identified by the community. Under this paragraph the entity must exercise the right within 60 days of presentation. Any right of first refusal must be on the same terms and conditions of the underlying agreement. Specifically, it must be clear that the transaction must be completed in its totality, not just in pieces—if the sale of PQ includes other assets, the right must be exercised on the whole transaction unless the seller agrees otherwise.

The right of first refusal applies only to the community within which the processing history was earned. If processing quota is transferred to another community (in a manner authorized by these provisions), it no longer is subject to a right of first refusal.

A public entity exercising a right of first refusal will likely gain access to proprietary confidential information. A mechanism is needed to protect the seller (and the third party buyer) from public disclosure of that data. Sunshine laws may make it difficult to protect information disclosed to a public entity.

For CDQ communities, CDQ groups would be the entity eligible to exercise any right of first refusal or purchase shares on behalf of the community. Ownership and management of harvest and processing shares by CDQ groups will be subject to rules similar to CDQ regulations.

For non-CDQ communities, the entity eligible to exercise the right of first refusal or purchase shares on behalf of a community will be identified by the qualified city or borough, except if a qualified city is in a borough, in which case the qualified city and borough must agree on the entity. If no entity is identified and approved by the date of presentation of an offer over which the entity would have a right a first refusal, no community entity will be have the right. Ownership and management of harvest and processing shares by community entities in non-CDQ communities will be subject to rules similar to those of the halibut and sablefish community purchase program. *The motion amending the committee's recommendation passed 11/8.*

2. GOA

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. Intra-company transfers within a region are exempt from this provision. To be exempt from the first right of refusal, the use of the PQS must be by the same company.

For communities, the entity eligible to exercise the right of first refusal or purchase shares on behalf of a community will be identified by the qualified city or borough, except if a qualified city is in a borough, in which case the qualified city and borough must agree on the entity. If no entity is identified and approved by the date of presentation of an offer over which the entity would have a right a first refusal, no community entity will be have the right. Ownership and management of harvest and processing shares by community entities in non-CDQ communities will be subject to rules similar to those of the halibut and sablefish community purchase program.

The first right of refusal goes (first) to the remaining processors(s) and (second) to the entity identified by the community. Under this paragraph a processor must exercise the right within 30 days of presentation. If not exercised by a processor, the community entity must exercise the right within 60 days of the presentation to processors.

Any right of first refusal must be on the same terms and conditions of the underlying agreement. If the first right of refusal is exercised by a processor, further transfers of the shares from the purchasing community are subject to the general first right of refusal of the new community under 1 above. *The motion to adopt the committee's recommendation passed 11/6/3.*

3. Community Purchase Option

Allow for a community organization in those communities that have at least 3 percent of the initial PQS allocation of any BSAI crab fishery based on history in the community to be exempted from the restriction for the 150 days of sea time requirement under 1.6, Transferability and Restrictions on Ownership of QS. *Motion passed 19/0.*

4. Identification of Community Groups and Oversight

For CDQ communities, CDQ groups would be the entity eligible to exercise any right of first refusal or purchase shares on behalf of the community. Ownership and management of harvest and processing shares by CDQ groups will be subject to rules similar to CDQ regulations.

For non-CDQ communities, the entity eligible to exercise the right of first refusal or purchase shares on behalf of a community will be identified by the qualified city or borough, except if a qualified city is in a borough, in which case the qualified city and borough must agree on the entity. If no entity is identified and approved by the date of presentation of an offer over which the entity would have a right a first refusal, no community entity will be have the right. Ownership and management of harvest and processing shares by community entities in non-CDQ communities will be subject to rules similar to those of the halibut and sablefish community purchase program.

III. Data Collection

The AP recommends that the Council re-examine the transfer of B shares to processors, and whether B shares can be transferred independently of A shares. *Motion passed 14/5.*

IV. CDQ Ownership Caps

The AP reiterates their comments from the December, 2002, AP meeting where the AP recommended the council amend the proposal and analysis of CDQ ownership and use caps to include analysis of the same range of caps for non-CDQ participants, with the clarification that the same harvest QS caps apply to all non-CDQ participants, including processors. *Motion passed 15/5 after reconsideration. It originally failed 9/10.*

A motion to set the CDQ QS caps at 3% for BBRKC, 3% for opilio, and 3% for bairdi failed 8/11.

A motion to set the CDQ QS caps at 5% for BBRKC, 5% for opilio, and 5% for bairdi, 10% for Pribilof R&BKC, 10% for St. Matthew BKC, 20% for EAI brown king crab, 20% for WAI red king crab, and 20% for WAI brown king crab failed 3/15.

The AP recommends that the CDQ QS caps be set at the individual and collective level. *Motion passed 19/0.*

C—3 Steller Sea Lion Issues

The AP recommends that the Council concur with approach outlined in the letter from Dr. Balsinger to Dr. Hogarth dated January 16, 2003. *Motion passed 18/0.*

C—4 Essential Fish Habitat

The original EFH motion excluded alternatives 5B and 6. That original motion was modified to include alternatives 1 through 6 by a vote of 14/7, leading to development of the main motion, which follows:

The AP recommends alternatives 1 through 6 are included in the EIS. However, we note that alternative 6 was included at the request of the Plaintiffs using criteria identified by them. The AP reiterates its previous statements that a blanket 20% closure measure is better developed through an extensive Marine Protected Area process. The package should move forward for analysis with **no new or modified alternatives added**. The AP is concerned with plaintiffs' negotiating an extension of time outside the public process in exchange for new or modified alternatives. The AP does not believe extending the comment period will substantially refine proposals 5b and 6.

With respect to the proposed research closures, the AP believes that the potential number of combinations of the EFH, HAPC and Mitigation alternatives make defining a specific research proposal problematic at this time. We recommend the concept of a research program be imbedded in each alternative, but specific areas and design be developed as a trailing amendment after the preferred alternative for EFH, HAPC and Mitigation are identified. No EFH alternative may be implemented without a fully developed research plan.

The AP concurs with the SSC's minutes that the current set of EFH alternatives lack any component for effort reduction. As the SSC point out, the National Research Council's recent study on effects of fishing recommends that effort reduction be one of the three principle tools for EFH mitigation. Despite this none of the EFH alternatives have economic rationalization or any other approach to effort reduction.

Motion passed 20/0.

C—6 IR/TU

1. The AP acknowledges that the Amendment C analysis is not ready to send out for public review and is unlikely to be a Final Rule by June, 2004, when flatfish IR/TU goes into effect in the BSAI.

The AP, accordingly, recommends that the Council reconsider its action of October 2002 that delayed implementation of IR/TU for 18 months. At reconsideration, the Council should delay implementation indefinitely until IR/TU is replaced by a legal and enforceable action that will accomplish the goal of reducing bycatch in the BSAI groundfish fisheries to the extent practicable.

The AP also recommends that the Council reactivate the Enforcement Committee to work with agency staff in crafting recommendations that will allow implementation of programs requiring monitoring.

2. The AP further recommends accelerating the analysis of Amendment A, modified from a PSC cooperative to a multispecies cooperative. The AP believes this is the action that will accomplish the reduction of bycatch in the BSAI groundfish fisheries to the extent practicable.

The AP also believes that further work on Amendment C should focus on the development of retention goals and include:

A clear statement that the goal and purpose of the program is to reduce the bycatch of all groundfish in the BSAI and draft an exemption process by fishery and gear based on:

1. Enforceability
2. Total groundfish retention levels, analyzing a range of 60%, 70% and 80%,
3. Minimum retention standards.

The AP also recommends that the MRB for pollock be moved from the Amendment C analysis to the Amendment A analysis and that the Council request staff complete analysis of amendment C with the following modifications:

1. Ground truth actual costs for purchase, installation and operation of flow scales (Section 1.4).
2. Examine variability in PRRs.
3. Expand the quantitative discussion of the section regarding use of bin volumes as an enforceable means of monitoring.

Trailing Amendment D—5% exemption.

The AP recommends that the EAR/RIR/IRFA for Amendment 76 to the BSAI Groundfish FMP and Amendment 72 to the GOA Groundfish FMP be sent out for public review.

Motion passed 16/5.

A Motion was made to recommend the council send out the document for public review, with modifications to alternative C and continued analysis of amendment A on a separate track, as the council directed in Dec. 2002. This motion failed 9/9/1.

Minority Report:

The minority feels that IRIU Amendment C, the general groundfish retention standard (GRS) should be analyzed separately from A, B and D – as directed by the Council in December 2002. We recognize that this amendment provides an alternative to 100% flatfish retention that gives the fleet flexibility while encouraging reduction in discards and increased utilization in the fleet. The minority concurs with the modifications to Amendment C listed in the main motion. Further, we concur with these IRIU technical committee recommendations noted in the action memo:

OPTION 1. Enforcement should be applied at what level?

- a. ~~Fleetwide~~*
- b. Pools*
- c. Individual vessel*

OPTION 2. To which fisheries would the standard apply?

- a. all fisheries*
- b. ~~selected fisheries or gear types~~*

And: GRS should be applied to all fisheries unless specifically exempted; the Pollock fishery should be exempted.

OPTION 5: Minimum utilization standard

- a. 15%*
- b. ~~some other minimum utilization standard~~*

OPTION 6. Enforcement time period

~~“cumulative running total”~~

In order to reduce the complexity of this amendment, we recommend striking option 3b, thereby focusing the analysis on a single GRS for all fisheries, and striking options 6a and 6b, focusing the enforcement time period on monthly or quarterly intervals.

Signed Michelle Ridgeway, Sandra Moller, Dan Falvey, Tracy Mayhew

C—7 Observer Program

The AP recommends that the Council approve the following problem statement for restructuring the North Pacific Groundfish Observer Program (as approved by the Observer Advisory Committee):

The North Pacific Groundfish Observer Program (Observer Program) is widely recognized as a successful and essential program for management of the North Pacific groundfish fisheries. However, the Observer Program faces a number of longstanding problems that result primarily from its current structure. The existing program design is driven by coverage levels based on vessel size that, for the most part, have been established in

regulation since 1990. The quality and utility of observer data suffer because coverage levels and deployment patterns cannot be effectively tailored to respond to current and future management needs and circumstances of individual fisheries. In addition, the existing program does not allow fishery managers to control when and where observers are deployed. This results in potential sources of bias that could jeopardize the statistical reliability of catch and bycatch data. The current program is also one in which many smaller vessels face observer costs that are disproportionately high relative to their gross earnings. Furthermore, the complicated and rigid coverage rules have led to observer availability and coverage compliance problems. The current funding mechanism and program structure do not provide the flexibility to solve many of these problems, nor do they allow the program to effectively respond to evolving and dynamic fisheries management objectives.

Further, the AP recommends that staff develop a timeline and analytical outline for a potential analysis based on the recommendations of the Observer Advisory Committee (OAC) to restructure the Observer Program design and funding mechanism to address the data quality and disproportionate cost issues resulting from the current program structure. The primary alternative should focus on modifying the Observer Program for all vessels and processors operating in the Gulf of Alaska, with a suboption to extend the fee-based program to all vessels with currently less than 100% coverage requirements in the BSAI. The AP concurs with the conclusions of the OAC as stated on p. ii of the executive summary of the OAC report, with the following change to bullet #1:

The Council and NMFS proceed with an analysis to modify the current Observer Program design and funding mechanism to address the data quality and disproportionate cost issues resulting from the current program structure. This analysis would propose changing the current program to one in which NMFS contracts directly with observer provider(s) for observer services and the costs of observer coverage are paid for through a combination of Federal funding and a fee program.

Motion passed 19/0.

C—8 Halibut Management

The AP recommends the Council send the preferred alternative for the charter halibut IFQ program adopted in April, 2001, to NMFS for preparation of a proposed rule. *Motion passed 16/0.*

D—1 Groundfish Issues:

CDQ 'Other Species' Management:

The AP recommends that the Council request NMFS to prepare a proposed rule for final action at the June NPFMC meeting to manage 'other species' CDQ similarly to Bering Sea shortraker, roughey, and northern rockfish. That is, that 'other species' be allocated to the CDQ reserve, but not allocated to individual CDQ groups, that maximum retainable bycatch levels be established for the CDQ fisheries, that once aggregate CDQ harvests of 'other species' reaches 7.5% of the 'other species' TAC, that CDQ 'other species' would become PSC. CDQ fisheries would be treated the same as non-CDQ fisheries with regard to reaching the 'other species' OFL.

The AP recommends the Council request that NMFS prepare a similar emergency rule to proceed on a parallel track with the proposed rule in order to implement these fishery management changes as soon as possible in the 2003 CDQ fisheries. *Motion passed 18/0.*

D—1(d) DSR Full Retention

The AP commends NMFS staff for their efforts to resolve the issue of full retention of DSR. The AP recommends the Council delay final action until the April council meeting on this agenda item. The AP requests the Council request that NMFS investigate and comment on the applicability of a retention and forfeiture program under an EFP under the jurisdiction of the PFMC.

The AP further recommends the Council request NMFS explore the options for a donation program under alternative 3 and explore the applicability of video-observer technology in the DSR fishery. *Motion passed 15/0.*

North Pacific Fishery Management Council

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Certified: Sue Bendix
Date: 3/17/03

DRAFT MINUTES Scientific Statistical Committee January 27-29, 2003

The Scientific Statistical Committee met January 27-29, 2003 in Seattle, WA. The following members were present:

Rich Marasco, Chair,
Gordon Kruse
George Hunt
Ken Pitcher
Doug Woodby

Jack Tagart, Vice Chair
Steve Hare
Dan Kimura
Terry Quinn

Keith Criddle
Sue Hills
Seth Macinko
David Sampson

Mark Herman unable to participate in committee discussions. Rich Marasco and Jack Tagart were re-elected chairman and vice-chair respectively.

C-2 (a) CRAB MANAGEMENT: Committee Reports and Trailing Amendments

The SSC received committee reports and staff (Mark Fina, Darrell Brannan) presentations. Public testimony was provided by Joe Sullivan.

Data Collection

Darrell Brannan and John Garner reported on continuing discussions by the Data Collection Committee. The Committee was formed to develop a mandatory data collection program that meets Agency and Council needs while satisfying industry concerns. While the Committee has achieved agreement on many important issues, some issues remain outstanding. **The SSC commends the Committee for progress and encourages the Committee to continue to work towards mutually agreeable resolution of the remaining issues.** The principle remaining issues deal with the degree of aggregation of reported data and the level of information provided regarding fixed costs. In addition, there are ongoing discussions about balancing opportunities for industry to correct inadvertent reporting errors against the need for enforcement actions in response to willful noncompliance with data reporting requirements.

Industry concern about providing disaggregated data seems to be motivated by concerns about inadvertent release of confidential data. The SSC encourages the establishment of safeguards for data access that will alleviate industry concerns about the release of confidential data. The level of data aggregation affects the quality and scope of analyses that can be conducted. As we noted in our December 2002 minutes:

“The SSC notes that if the data are aggregated prior to submission, the quality and type of economic analyses will be affected. For example: statistical analysis of variations in reported data would not be characteristic of the actual level of variability in the industry; erroneous conclusions may be made in examining average costs data over a very large and very small processor and/or vessels; it may not be possible, depending on aggregation requirements, to identify economic impacts on some of the more remote Alaska coastal communities; and, observation and reporting errors, or outliers in individual data, cannot be separated out from the aggregated data. The researchers who use the data should both be responsible for the use of the data and accountable (to the extent possible) for the accuracy of data used. In the opinion of the SSC separating the individual data from the researchers who use the data is undesirable. Therefore, the SSC recommends that the data committee work on resolving issues that currently serve as obstacles to accessing disaggregated data.”

The distinction between fixed and variable costs is arbitrary. While all costs are variable through time, some costs vary with greater frequency than other costs. While information about annual operating expenses may be sufficient for certain analytic purposes, information about investment and disinvestment in durable capital is critical for analyses of the actual or potential long-term economic consequences of management actions.

Although rationalization program will include the collection of industry cost data, there is a need to establish a program for collecting data related to community impacts. While the location-specific expenditure data and employment information provide important data that will contribute to an improved understanding of community impacts, there is need for the development and maintenance of additional information about communities.

Binding Arbitration

Mark Fina reported on the Binding Arbitration Committee and presented the results of the simulated arbitrations. It is important to recognize the limitations and strengths of the simulated arbitrations. The limitations include that the simulations were designed on an abstraction of the bargaining structures being considered by the Council and that the subjects involved lacked first-hand knowledge of the fishery or personal knowledge of the harvesters and processors engaged in the fishery. These limitations are a result of reasonable decisions to structure a model that is amenable to analysis of the structural implications of alternative arbitration program designs.

The SSC notes that binding arbitration should not be construed as a panacea. Arbitration is a tool that may be useful in negotiations that would otherwise reach impasse. The design characteristics of arbitration systems affect the bargaining strength of negotiating parties. The discussion paper by Dr. Plott provides a useful illustration of this principle. It was reported in public testimony that the simulated arbitrations have been helpful in framing committee discussion and understanding of alternative arbitration structures.

Community Protection

Mark Fina reported on continuing discussions by the Community Protection Committee. The SSC cautions against the presumption that the various protection measures will in fact be advantageous to the relevant communities. As noted in the document, the protection measures could increase market concentration and lessen market competition. **The SSC recommends that the uncertainty regarding the actual outcome of these measures be more clearly emphasized.**

The Council is contemplating extensive and novel "community protection" measures and there is, to date, no research plan focused on these community issues. It is clear that many of the concerns underlying the community protection options for crab rationalization program will confront the Council as it progresses

towards Gulf rationalization. The opportunity to gather critical pre-implementation baseline data is fleeting. **The SSC urges Council staff and NMFS to work on developing a research plan that could provide useful information.**

C-2 (a) CRAB MANAGEMENT: EIS Progress Report

Gretchen Herrington (NMFS-AKR) described progress towards development of the crab management EIS. Target completion date is December 2003. The schedule for completion is ambitious, particularly because of the complex nature of the impending changes in the management of the crab fishery.

C-3 Steller Seal Lions

Gordon Kruse, who served on the NRC committee, presented the National Academy of Sciences/ National Research Council Report on the Decline of Steller Sea Lions in Alaskan Waters. SSC members were presented a copy of the report for review prior to the meeting and the report is available on the NRC website for others interested in reading it. Public comment was provided by Bob Storrs, Unalaska Native Fishermans Association.

The SSC was favorably impressed with the quality and thoroughness of the report. While the report looked extensively at possible causes of the decline and evaluated the probability of the significance of each commonly proposed hypothesis, the focus was on factors that could be preventing population recovery and proposing ways that these might best be evaluated. Through modeling and evaluation of qualitative population response variables the committee concluded that it was probable that the population was currently regulated by top-down processes.

The SSC mentioned that an analysis by Daniel Goodman and Daniel Hennen of Montana State University on Steller sea lion population dynamics found evidence of density dependence prior to 1991 but did not find similar relationships after that date. This suggests that during recent years bottom up processes did not regulate the population and supported NRC findings.

Dr. Kruse was asked if the committee discussed the appropriateness of the finding by NMFS that the groundfish fishery in the EBS, AI, and GOA posed jeopardy to SSLs considering that they concluded that current population regulation was most likely through top-down mechanisms. He stated that they had not discussed this topic. The SSC suggested that, in light of current data and the NRC analyses, NMFS should re-evaluate the jeopardy finding for the groundfish fishery.

There was discussion on the adequacy of the various indices currently being used to evaluate the nutritional relationship of Steller sea lions to their environment such as juvenile growth, condition, and behavior. Table 6.2 in the NRC report indicated these indices overwhelmingly suggested top-down population regulation. Still there is some level of uncertainty as the possibility exists that sampling schemes and small sample sizes are masking the effects of bottom-up processes.

There was substantial interest in the adaptive management experiment proposed by the NRC Committee in which paired sets of rookeries would be subjected to differing management schemes of fishing and fishing closures. The NRC Committee believes that this could be done in such a way that the fishing industry would lose little opportunity to fish and in fact speculated that by opening areas that were now closed that additional opportunity may be provided. The SSC, while supportive of the concept, wondered if such an approach

would be practical due to the highly contagious nature of both Steller sea lion rookeries and fisheries but supported the idea of exploring the concept with a group of fisheries biologists, fishermen, local community representatives, and Steller sea lion biologists to evaluate the practicality of such an experiment. The response variable of such an experiment would be the performance of the Steller sea lion population. The experiment would not necessarily provide information regarding the impact mechanism, only whether or not there was a fishery effect. It was pointed out that a fishing impact may not necessarily be negative; e.g., a situation in which fishing of adult fishes results in increased availability of small fishes (forage fishes) important for juveniles sea lions.

Despite support for adaptive management schemes, the SSC is concerned that ESA regulations might preclude their adoption. Moreover, public testimony by Bob Storrs of Unalaska Fisheries Association expressed concern about the proposed experiment as it might have detrimental effects on local communities because of the complete closures around some rookeries.

The identification of Steller sea lion critical habitat as it pertains to the ESA was discussed by the SSC. It was suggested that identification of critical habitats could be refined using more recent information.

Appendix D of the NRC report documents the seemingly low abundance of Steller sea lions in the Bering Sea/Aleutian Islands in about 1877. A SSC member also commented on an account he had read suggesting low numbers of Steller sea lions in Alaska in early recorded history. These observations raises the question of whether SSL abundance has experienced large natural fluctuation.

C-4 Essential Fish Habitat

The SSC heard a report on Essential Fish Habitat issues by John Kurland, John Olson, and Cathy Coon. Staff focused on recent activities of the EFH committee, and presented the list of current alternatives and maps with proposed closure areas. Supporting documents received at the meeting included notebook briefing materials and supplemental documents on mitigation alternatives, research closure areas, and draft maps. Public comments were received from John Gauvin, Ben Enticknap (Alaska Marine Conservation Council), Astrid Sholtz (Ecotrust), Whit Sheard (The Ocean Conservancy), Geoff Shester (Oceana), Heather McCarty (Central Bering Sea Fishermen's Association), and Donna Parker (Arctic Storm).

Consideration of EFH, habitats of particular concern, and potential additional measures to reduce habitat effects of fishing are extremely important, and pending decisions may have long-term consequences. These issues are critical to compliance with the Magnuson-Stevens Fishery Conservation and Management Act, and they are required to satisfy current litigation under a pressing court-mandated deadline.

The SSC heard a status report on this issue at its December meeting. As noted in its minutes, the SSC "*found the alternatives difficult to evaluate because there was no statement of goals or objectives of the mitigation effort. There was no clear rationale for the particular closures proposed.*" Moreover, the SSC was "*unable to determine whether the closed areas are intended to achieve a specific reduction in fishery impacts or establish a specific percentage of protected habitat*" and was unable to tell "*whether the emphasis is on protecting habitat that supports commercially important fish species or protecting specific biogenic features.*" In addition to other comments, the SSC provided a list of 10 items that should be included in the developing EFH documentation. The requested statements of goals, objectives, methods to evaluate success of taking alternative actions, and other requested information have not been provided. All of the previous SSC comments continue to apply, as stated in the December meeting minutes.

The SSC recognizes the hard work performed by staff and other members of the EFH committee. Their task is onerous, considering the limited time and resources available. Nonetheless, the SSC continues to find it extremely difficult to provide meaningful scientific input on this critical issue. Also, the SSC found it very difficult to digest the alternatives and associated detailed maps resulting from the January 26th EFH committee meeting, given the lack of time for review of the draft documents. Testimony indicated that this very hurried process has also seriously compromised public involvement. Staff is similarly affected.

Beyond a request that the staff respond to the comments provided in the SSC's December meeting minutes, the SSC offers the following guidance.

Conceptual approach. Documentation should begin with a conceptual approach (overall strategy) to the problem. Clearly, the Rose-Fujioka model has played a significant role in the direction taken by the EFH committee and staff. EFH must be designated for all FMP species. However, with the exception of the slope rockfish complex, it is unclear for which of the FMP species the mitigation alternatives have been developed. The conceptual approach should be clearly laid out to indicate whether slope rockfish mitigations is the only EFH action proposed to satisfy MSFCMA and legal requirements or whether it is simply part of an ongoing and iterative process. Likewise, the conceptual approach for addressing both EFH and HAPC should be clearly articulated.

Goals and objectives. The MSFCMA and Council's EFH problem statement provide the broad goal for this issue. However, missing from the documentation is a clear statement of the specific goals and objectives of the mitigation alternatives and when/where mitigation is required. Some have argued that sustained productivity of Alaskan groundfish fisheries does not prove evidence of loss of productivity from habitat damage. On the other hand, linkages between habitat and productivity of FMP species are virtually impossible to establish experimentally. Based on the NRC trawling effects report and other reviews, the presumption is that mobile bottom-contact gear affects habitat.

Alternatives. It appears that the alternatives may fall into several categories. One (Alternative 5) appears to have something to do with protection of corals and sponges, and, presumably, managed fish species that utilize these habitats. Another category of alternatives (2 & 3) appears to relate to slope rockfish habitat, whereas others seem directed toward protecting a fixed percentage of some types of habitats (alternative 6). The intent of rotational closures, alternatives 4 and 5 is unclear. The SSC heard discussion about alternatives intended to constrain fishing to current fishing grounds to avert adverse effects in non-impacted deepwater areas. In any case, it may be useful to organize the alternatives into categories pertaining to the specific goals and objectives of the alternatives. **In stating these, it is not sufficient to state that the goal is "to protect corals" or "protect slope rockfish habitats." Rather, the goal statements should speak to the intent and degree of the protections and their intended FMP-related species and habitat benefits so that, if implemented, their efficacy can be evaluated.**

Lacking a clear understanding of the overall conceptual approach and specific goals and objectives of the various alternatives, the SSC found it virtually impossible to comment on the scope of the alternatives and their specifications. Description of the alternatives should begin with their origin and justification. As reported in the NRC trawling-effects report and the SSC's December minutes, three general tools are available to mitigate potential effects of trawling on benthic habitats: (1) closed areas, (2) effort reduction, and (3) gear modifications. All alternatives presented to date focus solely on the use of closed areas. It is not clear why some combination of all three measures was not considered. The NRC report indicated that the particular combination selected depends on the situation.

The SSC heard and discussed testimony relating to the piecemeal nature of some of the alternatives. For example, alternatives 2 and 3 address slope rockfish habitats in the Gulf of Alaska (and Aleutian Islands), but not in the Bering Sea. Alternative 5b considers a tradeoff between coral bycatch and groundfish catch, but appears to limit the approach to the Aleutians. Alternatives should be considered to address a species complex or habitat type throughout its range, as well as alternatives that consider all the perceived sensitive EFH habitats collectively rather than alternatives that seem to require choosing only one over another. **It is essential to present a clear rationale for the selection of areas designated for closure. These reasons should be scientifically justifiable, and not open to criticism that they solely reflect the least desirable fishing locations.**

Regarding alternative 5b, an approach that considers both coral habitats and groundfish catches has merits, but there are problems associated with a criterion based on high coral bycatch rate and low groundfish catch rate. It is possible to create large adverse affects on corals, even if the bycatch rate is low, when total groundfish catches are large. Likewise, low sample sizes (i.e., few tows) can lead to spurious results when only considering rates. Therefore, such attempts to trade off coral bycatch and groundfish catch should consider total removals as well as their rates.

Questions were raised about alternative 4, including the rotational closures. Public testimony indicated that the purpose was to afford some measure of habitat protection while providing for fishing opportunities. However, it is not clear that all of the rotational closed areas were established in areas where fishing actually occurs. The duration of open and closed periods was questioned. The supplemental briefing document shows that, over a 20-year period, each of 5 subareas are open to fishing for 16 years and closed for 4 years. Recovery time is estimated as 2-5 years. Thus, during the 4-year closure, the closed area would provide for 0-2 years of "climax" communities. So, each of the 6 areas would be impacted or recovering 90% or more of the time. Thus, this type of closure, while disruptive to fishing, will provide little to no meaningful benefit to FMP species and their habitats. Rotational closures have been recently questioned for their utility as a habitat protection measure. If Alternative 4 is to be considered seriously, it appears that other options need to be considered with much longer closed periods.

Research closures. A draft research plan and associated maps provided an example of a preliminary research closures under the status quo. Staff comments indicated that research plans for each alternative are still under development, and specifics for research under the status quo and alternatives are unavailable. **The SSC believes that it is crucial to include research to test the efficacy of fishery closures under the status quo and all mitigation alternatives. The research plan should be tailored specifically and designed explicitly to test the effectiveness of each alternative.**

Analysis. The EIS should include analysis of the following: (1) ability to meet the stated objectives; (2) biological consequences in terms of recolonization with respect to ocean currents, seed stocks, and generation time of affected species; (3) economic and social costs and benefits by sector and community; and (4) enforceability.

In summary, the SSC is frustrated with the fast pace of developing specific EFH alternatives without clear statement of the goals and objectives and overall strategy for fishery management policy development.

C-6 IR/IU: Trailing Amendments C and D

The SSC received reports from John McCracken of Council staff and Marcus Hartley of Northern Economic on trailing Amendments C and D to the IR/IU flatfish regulations. Public testimony was provided by Donna Parker (Arctic Storm).

Trailing Amendment C-Establish Minimum Groundfish Retention Standard

The purpose of this trailing amendment is to provide an alternative groundfish retention standard to the flatfish retention requirements under IR/TU in the BSAI. Due to increasing complexity of this issue and need for further guidance from the Council, a full EA/RIR/IRFA could not be prepared in time for this meeting. In its stead, a Discussion Paper was prepared which contained many elements of the an EA/RIR/IRFA. While the Discussion Paper addresses a number of important issues, the SSC believes there is a need for further discussion of several points before the EA can be released for public review.

An item of major concern is the issue of enforceability. The NMFS has stated that no minimum groundfish retention program can be enforced without use of a flow scale. To measure a groundfish retention rate, estimates of both total catch (denominator) and retained catch (numerator) are required. It is NMFS opinion that only flow scale measurements of total catch will withstand legal challenge. Due to space limitations, flow scales are practical only on vessels greater than 125' in length. In essence then, the regulations resulting from this Amendment is unenforceable for vessel under 125'. Other issues that need to be considered are monitoring of use and calibration of flowscales. Observers do not generally monitor every haul on catcher-processor vessels. The Discussion Paper gives brief mention of alternatives for monitoring every haul, including 100% observer coverage, video surveillance, and reduced fishing frequency. However, a greatly expanded discussion of the impacts of these alternatives is warranted.

Problems in determining the denominator of the groundfish retention rate appear to be minor in relation to potential problems in determining the numerator. The proposed method for estimating retained catch involves the use of NMFS product recovery rates (PRRS). Round weight of retained catch is estimated by dividing retained product weight by the published (i.e., official) PRR. The Discussion Paper did not report on the source and history of the published PRR, and it is likely these values may be dated. The SSC foresees problems using this method. Vessels with actual retention rates greater than the official rate, will be able to discard a larger fraction of their total catch than vessels with retention rates less than the official rate. Vessels found in violation of a minimum retention rate are likely to challenge NMFS official rate as unrepresentative of industry's realized retention rates.

Trailing Amendment D-5% Exemption

The SSC received the EA/RIR/IRFA on this amendment and recommends it be sent out for public review.

C-7 Observer Programs

Nicole Kimball, NPFMC council staff presented a "Discussion paper on options for Observer Program restructuring" and the OAC report on the review of this document. Public testimony was presented by Michael Lake, Alaska Observers, Inc. who discussed the importance of an alternative approach for providing insurance for observers.

The SSC commends the Agency and the OAC for presenting a clearly defined set of options for moving forward on longstanding problems. The Agency's document noted the need for federal funding combined with some fee based mechanism to allow the changes to move forward. The OAC highlighted the importance of a flexible, scalable observer program that can be tailored to meet the needs of individual fisheries as they evolve, potential bias in fisheries that are covered at 30%, and the lack of equity that allows observer costs to be high relative to gross earnings.

The SSC concurs with key OAC recommendations:

1. That a new program should have NMFS contracting directly with Observer providers.

2. That the initial program under the new regime should be small in scale, perhaps addressing the 30% coverage fleet in the GOA, and expanding to similar fleets in the EBS or the under 60' fleet as problems are worked out.

The SSC also noted the importance of studies that could provide some clearer answers to some statistical questions that surround the Observer Program:

1. Establish baseline data that would measure coverage by area, time, and fishery. This would allow examination of the extent of fisheries and observer coverage overlap. Sue Salvesson noted that fish ticket data and VMS data are available from which to make these comparisons.
2. Analyze data to determine what would be appropriate levels of observer coverage. These analyses would assume that vessels selected for coverage are randomly selected and that non-observed vessels are behaving the same as the observed vessels.
3. In particular the SSC believes that an experimental approach may be of value in evaluating the potential bias that may occur in observer data. Currently, there are concerns about possible bias in the data from the segment of the fleet that has only 30% observer coverage. Because the fishers have some choice over when they will have an observer on board, the observed trips probably are not representative of the unobserved trips in terms of fishing locations. Furthermore, there may be subtle differences in fishing operations when vessels have observers onboard. Modifying the observer system so that NMFS staff chooses the trips that will be observed may provide more uniform representation of fishing locations but this change will not rectify the problem of observed vessels having modified fishing behavior. For the revised observer system there may be merit in conducting some experiments that attempt to directly measure the bias of the current system. A portion of the new system could have the fishers selecting the trips that would be observed and a separate portion would have the observed trips selected by NMFS staff. An additional portion of the fleet could have 100% observer coverage for extended periods; say several months, with the idea that these vessels would be more likely to behave as if they were unobserved. Contrasts amongst these three portions might provide some indication of the two kinds of bias that are probably inherent in the current observer system.

C-8 Halibut Charter

Rob Bentz and Allen Bingham (ADF&G) reported on comparisons of halibut harvests reported in the logbook entries with estimates derived from annual statewide surveys of licensed anglers. The analysts clarified that their studies examine the appropriateness of using logbook data to determine the magnitude of total sport catches. To that specific question, the finding is that the logbook data are not consistent with estimates derived from the statewide survey of licensed anglers. The analyses were not structured to address whether the logbook data are suitable as a basis for determining eligibility for or the magnitude of initial charter-vessel quota shares. In our October 2002, the SSC noted that:

“There appear to be two issues related to use of halibut charter logbook data and implementation of a Charter Halibut IFQ Program. The first is the appropriateness of using these data to establish whether or not a vessel was active in the fishery during the qualifying years (1998-1999). The second is whether logbook data are representative of the distribution of catch among participating charter vessels in those years, and suitable as documentation for a catch-history based initial allocation of quota shares. Finally, the suitability of the logbook data as a basis for GHL management is also in question.”

In response to the first two issues raised in our October 2002 minutes, we note that the logbook requirement is public record; consequently **compliance with the logbook requirement could serve as a criterion in determination of initial allocations.** Moreover, **the SSC finds that it would be reasonable for the Council to use the logbook data in determining whether a vessel was active in the fishery during the qualifying years (1998-1999 in 2C, 1998 in 3A) and/or as a basis for determining an initial allocation of quota shares.** Other approaches for determining initial allocations are also available, for example, equal shares, random share assignment by lottery, or shares proportional to historic days fished.

Whether the logbook records are appropriate as a basis for GHM management depends on whether it is more important to have accurate estimates of sportfishing catches or more important to have timely estimates. We also note that if there is concern about the accuracy of information recorder in charter operator logbooks, it might be advisable to consider designing a strategy for sampling charter clients as they disembark.

D-1(b) ROCKFISH MANAGEMENT

The Committee heard public testimony from Carl Haflinger (representing the trawl fleets of the Bering Sea), John Gauvin, Ed Richardson (Pollock Conservation Cooperative), and Donna Parker (Arctic Storm).

The SSC considered three issues related to rockfish management: 1) rockfish research and management, 2) criteria for lumping or splitting rockfish assemblages, and 3) use of commercial fisheries data to estimate northern rockfish biomass in the EBS

1) Rockfish Research and Management

Paul Spencer (NMFS/AFSC) on behalf of the Rockfish Working Group summarized material presented in a "Discussion Paper on Rockfish Research and Management". He reviewed what is known about stock structure and life history characteristics for five BSAI rockfish species (Pacific ocean perch, northern, roughey and shortraker rockfish, and shortspine thornyhead), and he described the quality of trawl survey data available for these species and possible methods for improving the surveys. Recent genetic research suggests population structure at fine spatial scales for POP, weak structuring at broad spatial scales for shortraker rockfish, and little structure for northern rockfish. For roughey rockfish there is evidence of two reproductively isolated "species". Virtually nothing is known about the areas used by these species for breeding and parturition or about their early life histories. Regarding the trawl survey data and estimates of biomass, rockfish often are patchily distributed and can occur in very rough habitats, so that trawl survey estimates of biomass are quite variable and may also be biased (because the surveyed areas are not representative of untrawlable grounds). Some modest improvements may be possible from modifications to the trawl survey gear or from modifications to the sampling design, such as adaptive sampling approaches or surveys that use sonar to identify areas with rockfish aggregations. The surveys provide length and sex composition data and otoliths, but age-reading techniques have been a limiting factor, especially for shortraker rockfish and shortspine thornyhead. Also, maturity studies are needed for all five species.

The SSC noted that the rockfish discussion paper does not address how the Council could move towards separately managing the five individual rockfish species identified in the report, either in terms of setting species/area ABCs and OFLs or by using other management tools. Also, the report does not consider other minor rockfish species in the complex, which could be in danger of becoming overfished if they are caught with other members of the complex but are less productive and resilient. Finally, the report does not discuss how the residue of species in the complex would be managed following the removal of some species from the complex for management as separate species.

2) Lumping/splitting rockfish assemblages

Sarah Gaichas (NMFS/AFSC) gave a presentation about efforts by the ad hoc Other Species working group to develop a general framework for prioritizing management decisions about lumping or splitting species complexes, such as the BSAI rockfish complex.

The working group was formed in summer of 2002. Their recent efforts have been focused on developing a decision matrix to facilitate species complex management decisions. This matrix is, organized around two dimensions: vulnerability and data quality. The working group constructed a preliminary decision matrix following receipt of evaluations from several stock assessment authors concerning data quality and vulnerability and the concept shows promise as an information classification scheme. The working group indicated that it will meet soon to expedite consideration of criteria for classification of rockfish complexes.

The SSC is fully supportive of the working group's process and the direction in which it is proceeding. The SSC views management of species complexes as a multi-dimensional issue and urges expansion of the number of factors consider in the lumping/splitting decision-making process. Examples of additional factors include, the ability of fisheries to target spawning aggregations, selective harvest by age or sex, general life history traits, rarity in surveys rather than just sampling variability, costs for collecting and improving data, the feasibility of managing remaining species of interest, and the potential costs incurred by other fisheries if OFL of a small stock component is exceeded.

Further discussion is also needed on the type of decision rule to be produced. If a strict rule is designed, then interested parties may seek exceptions in many situations. If the rule is not sufficiently unambiguous, then the lumping/splitting decisions may continue to be variable and defeat the purpose of this exploration.

In addition, the Council may wish to explore alternative management measures to splitting out species assemblages. Such alternatives include time/area closures, refuges, reducing TAC by a specified safety factor, and multi-species IFQ's.

3) Northern rockfish biomass in the EBS

During the December 2002 SSC meeting, the SSC reviewed reports on the annual status of stocks, and made recommendations to the Council on Acceptable Biological Catch (ABC) and Overfishing Levels (OFL). During its review of the status of Bering Sea and Aleutian Islands northern rockfish, the SSC received public testimony challenging the credibility of biomass estimates of northern rockfish abundance in the Eastern Bering Sea (EBS). In past years, the SSC had accepted trawl survey biomass estimates as the best estimates of northern rockfish abundance in both the AI and EBS and had set ABC and OFL levels for the combined stock as the aggregate of the independent regional estimates. However, in December 2002, after considerable discussion and debate *"the SSC concluded that there was no reliable estimate of northern rockfish biomass for the EBS"*. As a consequence of this finding, the SSC recommended setting EBS northern rockfish ABC and OFL based on a tier 6 harvest strategy, i.e., on average historic catch. Catch allowance and overfishing levels for the Aleutian Islands northern rockfish were set using tier 5 harvest strategies based on estimated biomass from trawl surveys and a reliable estimate of the natural mortality rate. But unlike prior years, the SSC retained the independent regional ABC and OFL recommendations without aggregation across regions.

Acknowledging the challenge to the credibility of northern rockfish biomass estimates in the EBS, the Council passed a motion seeking immediate analysis by the NMFS of all available data, including commercial fishing data, in an effort to provide an improved biomass estimate. Drs. Jim Ianelli and Paul Spencer of the NMFS/AFSC completed such an analysis and reported to the SSC at this meeting. In addition Dr. Spencer provided a review of the state of knowledge of rockfish populations throughout the BSAI and GOA, including

a discussion of the evidence for stock structure. Dr. Spencer reports that although sample size was small, results from genetic analyses showed little evidence of pronounced northern rockfish stock structure among the regions tested. The Council requested abundance estimates of EBS northern rockfish biomass, based on analysis of commercial fishing data, suggest that biomass is likely in the range of 5,900 to 37,500 mt. The analyst caution against blind acceptance of these figures as factual representations of actual stock size due to the nature of the critical assumptions required in the analysis. Nevertheless, the authors advised the SSC that these results support the notion that harvests as large as the tier 6 recommended OFL are unlikely to pose any substantive conservation risk to this population of fish.

Having received the reports mentioned above, the SSC is persuaded that our historic approach of aggregating the independent regional estimates of allowable catch and overfishing levels is appropriate for this stock. Therefore the revised ABC and OFL values apply to the aggregate BSAI northern rockfish and are 7,101 mt and 9,468 mt respectively.

D-1(d) DSR Retention

The SSC received a presentation of the EA/RIR/IRFA on "Full Retention of Demersal Shelf Rockfish in Longline Fisheries in the Southeast Outside District" from Ben Muse and Nina Mollet from NMFS AKR Sustainable Fisheries. The SSC found the presentation to be clearly written and included necessary information for evaluating alternatives.

Unfortunately, NOAA GC has expressed legal concerns that Alternative 2 would likely exceed NMFS' authority under the Magnuson Stevens Act concerning disposition of legally caught fish. Although Alternative 3 is acceptable to NOAA GC, it differs from Alaska state regulations. State regulations allow the sale of DSR over 10% with the forfeiture of revenues to the State. Alternative 4 would require 30% coverage of halibut hook and line and non-target hook and line fisheries in the SEO management districts. The EA/RIR/IRFA concludes that an observer program could provide good data, however, the costs of carrying observers for small vessels may be high. The SSC notes that coverage problems associated with the existing 30% program may also be an issue.

Howard McElderry, from Archipelago Marine Research, Canada, described how Canada is approaching a rockfish bycatch problem using a flexible landing regulations and electronic monitoring. The SSC notes that the Pacific Council manages 100% rockfish retention in arrowtooth and dogfish fisheries using Experimental Fishing Permits. These might be useful areas to explore.