

Council Motion

C-4 BSAI Pacific cod Trawl Catcher Vessel LAPP

June 14, 2021

The Council recommends releasing the analysis for final action after making the following revisions to the elements and analysis. Staff should consider and address comments from the SSC to the extent practicable. Additions are shown in underline and deletions are shown in ~~strikethrough~~. The Council's preliminary preferred alternative is shown in **bold**.

Purpose and Need:

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

Element 1. Cooperative Style System

Voluntary harvester cooperatives ~~with no minimum number of licenses required.~~

Holders of qualified trawl CV LLP licenses under Element 2 must join a cooperative annually in association with an eligible licensed processor (FFP or FPP) to harvest trawl CV allocations of Pacific cod. Harvesters may change cooperatives and cooperative associations may change annually without penalty.

No limitation on the number of LLP licenses holders or eligible catch history needed to form a cooperative.

No limitation on the number of cooperatives that may form.

Inter-cooperative formation is allowed.

Option: A minimum of three unique LLP licenses holders are needed to form a cooperative, ~~using the 10% ownership rule.~~

Element 2: Allocation to LLP Licenses

Catch history to determine allocations under this management action will not be considered beyond December 31, 2019.

2.1. Eligibility – Any LLP license assigned to a vessel that made legal landings of targeted trawl catcher vessel BSAI cod during the qualifying years (or an LLP license as of December 31, 2019 assigned to an AFA trawl CV that had BSAI Pacific cod catch in 1997)¹ and any transferable AI endorsement is eligible to receive harvest shares.

¹The latter criteria (LLP assigned to an AFA trawl CV that had BSAI Pacific cod catch in 1997) is only applicable if one of the blend options is selected under Option 2.2.4.

Option: Establish a minimum threshold percentage range of 0.25%-1% by LLP holder for eligibility to receive harvest shares. Partial ownership of LLP licenses counts toward the minimum threshold using the individual and collective rule. Does not apply to those 8 licenses with a transferable AI endorsement.

2.2. Harvester Allocations – Eligible LLP licenses must be assigned to a cooperative to receive annual Pacific cod quota. The ~~sector's~~ initial allocation of harvest shares will be ~~allocated~~ made to eligible LLP licenses or transferable AI endorsements, with each LLP license's or transferable AI endorsement's allocation based on the Pacific cod catch history (legal landings) of targeted BSAI cod authorized by that LLP license or a transferable AI endorsement² during the following qualifying years:

Option 2.2.1: 2014 - 2019

Option 2.2.2: 2009 –2019

Option 2.2.3: 2004 –2019

Option 2.2.4: Allocations based on a blend of catch history and AFA sideboard history³

Suboptions to credit catch history/sideboard at:

Suboption 2.2.1: 50%/50%

Suboption 2.2.2: 80%/20%

Suboption 2.2.3: 20%/80%

Suboptions (applicable to Options 2.2.1 – 2.2.4):

Suboption 2.2.1. Drop 1 Year

Suboption 2.2.2. Drop 2 Years

2.3. For the initial allocation of harvest shares, ~~C~~ catch history is attached to the LLP license at the time of harvest. If multiple licenses authorized catch by a vessel, in the absence of an agreement ~~of~~ provided by the license holders at the time of application, history will be:

Option 2.3.1: divided equally between those licenses.

Option 2.3.2: assigned to an LLP license by the owner of the vessel that made the catch.

2.4. Annual cooperative quota (CQ) will be issued to each cooperative license by NMFS based on the aggregate QS attached to LLP licenses based on its share of the total qualifying BSAI trawl catcher vessel catch history that are assigned to the cooperative by the LLP license holder. Allocations will not be designated for harvest in a management area (i.e., BS or AI) but may be harvested from either area.

2.5. Option to allocate A and B season BSAI trawl CV Pacific cod only:

A and B season TACs (after deduction of the ICAs) will be allocated to cooperatives as CQ annual cooperative quota (and to seasonal limited access fisheries, if applicable). Annual cooperative allocations ~~(and seasonal limited access allocations, if applicable)~~ attributable to each LLP license will be that LLP license's proportional share of the total qualifying Pacific cod history.

The C season allocation will remain 15 percent and remain a limited access trawl fishery to any vessel with an eligible groundfish LLP license with an applicable area endorsement. The C season limited access fishery will be managed as currently by NMFS, including management of incidental catches of Pacific cod

² Landings of targeted AI Pacific cod in the parallel fishery prior to receiving a transferable AI endorsement (2004 through September 13, 2009) in addition to legal landings of targeted Pacific cod in the parallel and federal fishery after receiving a transferable AI endorsement would qualify for catch history.

³ Using staff approach of blending 1997 sideboard history with qualifying year option catch history attached to the eligible LLP license at the time of implementation of the trawl CV LAPP.

in other directed fisheries. C season TAC (and A and B season ICAs and ~~CQ cooperative quota~~) that NMFS projects to go unused are subject to reallocation to other sectors under current reallocation rules.

2.6. All species not allocated to cooperatives will be managed by maximum retainable amounts (MRAs), as under current management.

2.7 The BSAI Pacific cod sideboard limit for AFA trawl CVs at 50 CFR 679.64(b)(3)(ii) is removed upon implementation of this program.

Element 3. Prohibited Species Catch Limits

The annual crab and halibut PSC available to the BSAI trawl catcher vessel Pacific cod sector will be as follows:

Establish trawl CV Pacific cod and halibut PSC apportionment based on historic use (using qualifying years selected under Element 2) and between the trawl CV sector and the AFA C/P sector.

Option 3.1: Crab PSC will be maintained at the BSAI trawl limited access sector level.

Option 3.2: Establish separate PSC limits for the BSAI trawl CV Pacific cod sector. Halibut PSC limit will be based on historic use (using qualifying years selected under Element 2) between the trawl CV sector and the AFA C/P sector. Crab PSC limits will be based on the proportion of BSAI Pacific cod allocated to the trawl CV sector and the AFA C/P sector.

Reduce (Suboption 1: halibut and crab PSC Suboption 2: halibut PSC) apportionment to BSAI trawl CV Pacific cod sector by 10% to 35%.

Option 3.3: Reduce PSC limit to BSAI trawl CV Pacific cod sector.

Suboption 3.3.1: Reduce halibut PSC limit by 10%; 25%; 35%.

Suboption 3.3.2: Reduce crab PSC limit by 10%; 25%; 35%; 45%.

Suboption 3.3.3: Phase in PSC limit reduction over 3 years. One-third of the total reduction is implemented each year.

Option 3.4: If Element 2.5 is selected, establish separate C-season halibut and crab PSC apportionments (5-15%) before applying PSC limit reductions for the PCTC program.

Each cooperative will receive annual ~~CQ cooperative quota~~ allocations of Pacific cod and apportionments of PSC based on members' qualifying catch histories (and processing histories, if applicable) to be harvested in accordance with the harvest cooperative agreement. The sector's PSC will be apportioned to cooperatives in proportion to their members' Pacific cod qualifying catch histories (and processing histories, if applicable). PSC limits are transferable between cooperatives based on the same rules established for Pacific cod CQ.

Element 4: Gulf of Alaska (GOA) Sideboards

Option 4.1: All AFA non-GOA exempt CVs and AFA LLP licenses will be sideboarded (in aggregate) as to for all GOA groundfish fishing activity, except for vessels when⁴ participating in the CGOA Rockfish Program, based on their Gulf GOA catch history during the BSAI Pacific cod qualifying period.

Prohibit directed fishing in regulations for the GOA non-exempt AFA CVs and LLPs for SEO pollock, Western shallow-water flatfish, and both Central and Eastern deep-water flatfish, and Eastern POP.

Option 4.2: AFA GOA-Exempt and non-AFA CVs ~~and assigned to~~ LLP licenses that receive annual BSAI Pacific cod CQ will not be permitted to lease their BSAI Pacific cod CQ cooperative quota as a condition of benefiting from an AFA GOA sideboard exemption. If the vessel assigned to the qualified GOA exempt LLP license does not fish the GOA during the calendar year, except for the CGOA Rockfish Program, the BSAI Pacific cod CQ generated by the LLP license can be leased that calendar year. Cooperatives will be required to monitor GOA AFA exempt and non-AFA ~~exempt~~ vessels to ensure they do not lease their BSAI Pacific cod CQ and implement a penalty structure for violations. Cooperatives will be required to report leasing activities and penalties issued in the BSAI Pacific cod cooperative annual report.

Suboption 4.2.1: AFA GOA Exempt and non-AFA CVs with LLP licenses of less than 200 mt, 400 mt, or 600 mt of average annual qualifying BSAI Pacific cod history may lease their BSAI Pacific cod history and benefit from the AFA GOA sideboard exemption.

Element 5: Processor and Community Provisions

5.1. No closed class of processors; all processors with an eligible FPP or FFP are eligible to process BSAI Pacific cod under this program (subject to eligibility requirements under ~~the April 2019 Council action~~ BSAI FMP Amendment 120 to limit catcher processors acting as motherships).

5.2. Limit (sideboard) on directed BSAI Pacific cod that can be delivered by trawl CVs to eligible C/Ps acting as motherships. The sideboard would be based on BSAI Pacific cod processing history by eligible C/Ps during qualifying years under Element 2.

Option 5.2.1: Each eligible CP acting as a mothership may process up to the higher of 1) the eligible CP's processor's processing history (percentage based on qualifying years selected in Element 2.2); or 2) the history (percentage based on qualifying years selected under Element 2.2) from LLP licenses that are owned (in excess of 75%) directly or indirectly by the owner of a catcher processor LLP eligible for the offshore sector of the target non-CDQ BSAI Pacific cod trawl CV fishery (as of December 31, 2019), not to exceed 125% of the eligible CP's processing history.

Option 5.2.2: Each eligible CP acting as a mothership may process up to the eligible CP's processing history (percentage based on qualifying years selected in Element 2.2).

5.3. Limit number of trawl CVs in the directed BSAI Pacific cod fishery that can deliver to eligible CPs acting as motherships. Trawl CVs can qualify for the offshore sector in one of two ways:

- 1) An LLP license that is owned (in excess of 75%) directly or indirectly by the owner of a catcher processor LLP eligible for the offshore sector of the target non-CDQ BSAI Pacific cod fishery (as of December 31, 2019)

⁴ The word "when" was added by staff based on clarification during Council discussion while developing the final motion.

- 2) ~~Council will develop other eligibility thresholds for LLPs on trawl catcher vessels~~ An LLP license in which a) 90% or b) 75% or more of the quota arising from the history of the LLP license qualifying for the non-CDQ BSAI trawl CV Pacific cod fishery was delivered offshore during the qualifying years selected in Element 2.2.

Only initial quota arising from the history of an LLP license qualifying for the offshore sector will be permitted to be delivered offshore. Only vessels that are assigned LLP licenses that qualify for the offshore sector will be permitted to make offshore deliveries. Vessels using LLP licenses that are permitted to deliver offshore may also deliver any or all of the quota derived from the LLP license to shore based or floating processors.

5.4. Allocation of harvest shares to processors (this option is only applicable to Bering Sea processors and eligible C/Ps if AI allocations provisions are selected under element 6):

Onshore and offshore processors with an eligible FFP or FPP (subject to eligibility requirements under ~~the April 2019 Council action~~ BSAI FMP Amendment 120 to limit catcher processors acting as motherships) that have history of processing in the federal BSAI Pacific cod trawl CV fishery will be eligible to receive a percentage of total harvesting shares based on each onshore processor's and offshore processor's processing history. To be used, the processor's harvest shares would be transferred to the CV cooperative.

Option: A cooperative cannot assign a greater proportion of the harvest shares allocated to a processor to an vessel LLP license owned by that processor for harvest by a vessel owned by that processor than the vessel LLP license would have brought into the cooperative absent any processor held shares. The cooperative will monitor this provision and include reporting on allocation and harvest of processor held shares in their BSAI Pacific cod cooperative annual report to the Council.

Percent of harvest shares to be allocated to eligible processors:

- Option 5.4.1: 5%
- Option 5.4.2: 10%
- Option 5.4.3: 15%
- Option 5.4.4: 20%
- Option 5.4.45: 25%
- Option 5.4.56: 30%

Processing history years to receive harvest shares are the same as harvester years in Element 2.

Processors that are no longer active (no longer hold an FPP) would not be issued harvester shares. The processing history associated with those processors would be deducted from the total amount of eligible processing history during the qualifying years when calculating the distribution of harvester shares to processors.

Element 6: Aleutian Islands Processor Provisions

Options 6.1 and 6.2 are mutually exclusive.

Under this element:

An Aleutian Islands shoreplant is defined consistent with vacated Amendment 113 regulations.

An Aleutian Islands shoreplant operating under the provisions of this element is exempt from the processing facility use cap in element 8.4.

All cooperatives will be required to establish an intercooperative agreement that describes how either the set-aside provision in option 6.1 or the annual Aleutian Islands community shore plant allocations in option 6.2 will be administered by the cooperatives to ensure that harvests in the Bering Sea do not exceed the minimum set aside or shore plant allocation amounts. This intercooperative agreement should establish how the cooperatives intend to harvest the set-aside or shore plant allocation amounts in years when it applies. This intercooperative agreement must be provided as part of the annual cooperative allocation and is required before NMFS can issue CQ.

Option 6.1: In any year when the community of Adak and/or Atka files a notice of intent to process, require the cooperative(s) to reserve a set-aside for delivery to an Aleutian Islands shoreplant, ~~as defined in Amendment 113 regulations, in the Aleutian Island management region.~~ The amount of the set-aside will be 10% to 25% of the BSAI CV trawl directed A season harvest amount and is in effect only during the A-season. Any remaining portion of the set-aside will be reallocated to cooperatives in the same proportion as the initial allocation if Adak and/or Atka, ~~Adak or Atka may~~ withdraws its intent to operate notice during the A-season, or after the end of the A-season, whichever comes first if necessary; if so, the set aside requirement is removed.

The intercooperative agreement must establish how cooperatives would ensure that CVs < 60 feet LOA assigned to an LLP license with a transferable AI trawl endorsement have the opportunity to harvest a percentage of the Aleutian Islands set-aside for delivery to an AI shoreplant. Option 1: 50%, option 2: 25%, or option 3: 10% of the A-season Aleutian Islands community set-aside.

Option 6.2: In any year when the community of Adak and/or Atka files a notice of intent to process, annual harvest quota shall be issued to the plant operator designated in that notice of intent. In the event, one community issues a notice, ~~the lesser of 5,000 mt or~~ (option 1: 5.5%, option 2: 10%) of the total BSAI trawl catcher vessel Pacific cod quota (prior to allocations based on harvesting or processing histories) shall be issued to the plant. In the event both communities issue a notice the allocation shall be divided equally between two plants. Adak or Atka may withdraw its intent to operate notice during the season if necessary. In that case, the unharvested portion of the allocation will be reissued to the other AI shoreplant if it is operating.

Suboption 6.2.1: If no AI shoreplants are operating, the amount of annual quota equivalent to unharvested portion will be reissued to cooperatives (holders of LLP licenses with BS and/or AI harvest history in proportion to their annual allocations).

Annual Aleutian Islands community shore plant allocations shall be transferable to any cooperative(s) (and between cooperatives) for harvest by member vessels that are assigned an AI trawl CV LLP license eligible under this program. Quota shall be harvestable exclusively in the AI and landed in the AI management region.

Suboption 6.2.2: If the community of Adak and/or Atka files a notice of intent to process, annual harvest quota should be issued to an entity representing the community designated in the notice of intent.

Suboption 6.2.3: AI trawl vessels less than 60' assigned to an LLP license with a transferable AI endorsement will be eligible under the program to receive and harvest be assigned to a cooperative annually in association with the Adak and/or Atka plant regardless of whether they otherwise qualify for the program. ~~Option 1: 50%, option 2: 25%, or option 3: 10% of the Annual Aleutian~~

Islands community shore-plant allocation of which must be harvested by these vessels. These vessels will be eligible to join a cooperative annually in association with the Adak and/or Atka plant regardless of whether they otherwise qualify for the program.

Element 7. Transferability

7.1. Catch histories are attached to trawl CV LLP licenses and are non-severable from the LLP. Transfer of an LLP license eligible for this program results in the transfer of any program eligibility and catch history/harvest shares associated with the LLP license.

Suboption 7.1.1: For the LLPs associated with the non-exempt AFA vessels, within ninety (90) days of ~~publishing the Final Rule of this program~~ initial issuance of harvest quota shares, the owners of the LLP licenses that are associated with AFA non-exempt catcher vessels that had engaged in fish transfer agreements during the qualifying periods ~~will be allowed to~~ may transfer the quota shares between other LLPs associated with AFA non-exempt vessels. After these transfers are approved by NMFS, Upon redistribution of the initial allocation to the designated LLP license, the BSAI Pacific Cod harvest quota shares will no longer be severable from it's the applicable LLP license to which it was reassigned.

7.2. Allocations based on processing history are issued as separate permits, and the permit is only transferable to another processor. Permits issued to shoreside processors can only be transferred to other shoreside processors that hold an FPP. The history is non-severable from the permit except in the case that transfer of the permit to another eligible processor would result in exceeding the use cap under Option 8.3. In that case, the portion of the history over the cap is allowed to be severed from the permit and transferred to another eligible processor permit or shoreside processor that holds an FPP.

7.3. Annual allocations of Pacific cod and PSC (whether derived from harvesting or processing histories) are transferable between cooperatives.

7.4. Post-delivery transfers of CQ cooperative quota are permitted, but must be completed by December 31 (i.e., prior to annual CQ cooperative quota expiring).

Element 8: Ownership and Use Caps

8.1. Harvester-issued cooperative shares. Processor-issued cooperative shares do not count toward this use cap. No person may hold or use more than option: ~~5%- 10% percent~~ of the Pacific cod CQ cooperative quota issued:

Option 8.1.1: using the individual and collective rule or

Option 8.1.2: using 10% ownership threshold or management and control for assigning quota to a holder's/entity's cap.

Suboption 8.1: Persons over the cap at the time of ~~implementation~~ quota share issuance are grandfathered.

8.2. No vessel may harvest more than option: ~~3%; 4%; -5% percent~~ of the annual Pacific cod CQ cooperative quota issued in the fishery.

Option 8.2.1: Vessels over the cap at the time of ~~implementation~~ quota share issuance are grandfathered.

8.3. Processor-issued cooperative shares⁵: No person may hold or use more than option: 15% - 20% percent of the Pacific cod CQ cooperative quota:

Option 8.3.1: using the individual and collective rule or

Option 8.3.2: using 10% ownership threshold or management and control for assigning quota to a holder's/entity's cap.

Suboption 8.3: Persons over the cap at the time of ~~implementation~~ quota share issuance are grandfathered.

8.4. No processing facility may process more than 20%-30% percent of the Pacific cod CQ cooperative quota.

Option 8.4.1: Processing facilities over the cap are grandfathered.

Element 9. Cooperative Provisions

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

Cooperatives shall be formed by holders of qualified LLP licenses with trawl CV Pacific cod history QS. Each LLP license is ~~eligible to join~~ may be assigned to one cooperative. ~~A vessel assigned a qualified LLP license is a member of that LLP license's cooperative. A vessel may join a single cooperative. A list of CVs (both trawl and pot gear vessels, if Element 14 is selected) eligible to harvest a portion of that cooperative's CQ must be identified in the annual cooperative application. Vessels that are not designated on a trawl CV qualified LLP license are not eligible to join a cooperative unless participating under Element 14.~~

Cooperatives are intended only to conduct and coordinate harvest activities of members and are not Fishermen's Collective Marketing Act (FCMA) cooperatives.

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

Element 10. Share duration

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

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

Element 11. Monitoring

All vessels ~~in the program harvesting CQ~~ will be in the full coverage program (100% observer or electronic monitoring coverage category, if applicable). This element is not intended to modify the observer coverage exception provided for CVs delivering unsorted codends to a mothership or the current observer data transmission requirements for non-AFA trawl catcher vessels. NMFS will develop monitoring and

⁵This cap refers to any harvest shares initially issued to processors on a processor permit under Element 5.3.

enforcement provisions necessary to track quota, harvest, PSC, and use caps. The Council authorizes NMFS to report weekly vessel-level bycatch information as authorized under MSA Sec 402(b)(2)(A).

Element 12. Reporting and Program Review

Each cooperative shall annually produce a report for the Council describing its membership, cooperative management, and performance in the preceding year including use of processor issued harvest shares, if applicable.

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

Element 13. Cost recovery

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

Element 14. Gear Conversion

Pacific cod ~~CQ allocations/quota~~ associated with trawl CV LLP licenses may be fished annually ~~with~~ by a CV using pot CV gear, by vessels that are a member of the trawl CV cooperative. A pot endorsement is not ~~necessary~~ required, but the LLP license used by a CV must have the appropriate area endorsement. Harvest would ~~continue to~~ be deducted from the annual trawl ~~CQ cooperative quota~~ account to which the LLP is assigned and will not affect sector allocations. ~~Cooperative Qquota derived from this program harvested by a pot CV~~ is not permanently designated as pot CV quota. If Option 2.5 is selected, gear conversion only applies to the A and B seasons based on the start and end dates for the trawl fishery. Pot CVs harvesting CQ would be subject to 100% coverage and PSC use would be deducted from the PSC allocated to the cooperative. NMFS will develop monitoring and enforcement provisions necessary to track quota, harvest, PSC, and use caps.