

ADVISORY PANEL MINUTES
Anchorage Hilton
February 4-8, 2002

Advisory Panel members in attendance:

Alstrom, Ragnar	Fuglvog, Arne
Benson, Dave	Jacobson, Bill
Boisseau, Dave	Kandianis, Teresa
Bruce, John	Mayhew, Tracey
Burch, Al	Nelson, Hazel
Cross, Craig	Norosz, Kris
Ellis, Ben	Preston, Jim
Enlow, Tom	Ridgway, Michelle
Falvey, Dan	Stephan, Jeff
Fields, Duncan	Yeck, Lyle
Fraser, David	

C-1 PSEIS

The AP recommends the Council adopt the attached “Purpose and Needs Statement” and suggests the following new range of alternatives for the PSEIS:

- Alternative 1: GOA unamended FMP without current statutory requirement
- Alternative 2: BSAI unamended FMP without current statutory requirement
- Alternative 3: OFL Harvest strategy (old alternative 6.2)
- Alternative 4: Status Quo based on snapshot of 2002 fishery with revisions to more accurately reflect the ongoing process of establishing new MPA’s and MRA’s through the EFH, HAPC, and proposal process
- Alternative 5: Rationalized, Sustainable Ecosystem Approach
- Alternative 6: An Ecosystem-based FMP
- Alternative 7: No Fishing, with deletion of objectives

The AP recommends that the Council form a committee to work collaboratively with staff in defining and differentiating tools, objectives, and goals in each of the alternatives. Additionally, the AP requests that these goals, tools and objectives be evaluated against the NAS recommendations, and the National Standards.

Motion passed unanimously.

C-2 Essential Fish Habitat

The AP recommends the Council support the tasks and timeframe proposed by the EFH committee in the draft EFH meeting report. Further, the AP recommends the Council consider the following:

1. The AP endorses the subcommittee concept proposed by the EFH committee. This subcommittee proposal to revise the fishery descriptions is a good one, however it is important to note that for specific fisheries, any gaps in information that still exist after the meeting should be identified rather than using existing descriptions as a substitute. The AP recommends Council staff identify fishery descriptions that are needed and contact known participants and industry groups to assist them in the development of fishery descriptions.

2. Further, the AP recommends that NMFS consult the list of scientists recommended by the EFH committee to develop initial fishery descriptions and make those descriptions available to the public prior to the March EFH workshop. This will have the added benefit of making industry aware when description modification is required and make the EFH workshop more likely to accurately describe fisheries.

3. The AP believes that the overall timeline for developing EFH EIS amendments for the FMPs is ambitious and cautions that accelerating an already tight schedule may prevent adequate staff and Council review as well as limit opportunities for a full public process. *Motion passed 20-1.*

4. Finally, the AP believes that a public process for nomination of HAPC types and sites is important, but must be approached with great caution. Proposals often take on a life of their own, regardless of merit. Any public process design should be carefully constructed so that proposals are evaluated by staff for adherence to standards of scientific rigor before progressing further in the Council process.

Motion passed 21-0.

C-3 IFQ Program

The AP recommends the Council encourage NMFS to proceed with a Regulatory Amendment for the following items:

A. Prior Notice of Landing as recommended by the IFQ Implementation and Cost Recovery Committee

B. Offload Window: Although the Committee recommended maintaining the current offload window of 6:00 am- 6:00 pm, the AP recommends that NMFS review options for extending the offload window.

D. Shipment Report as recommended by the IFQ Implementation and Cost Recovery Committee.

Additionally, the AP request the Council recommend NMFS proceed with a Plan Amendment for item C. Vessel Clearance Requirement as recommended by the IFQ Implementation and Cost Recovery Committee.

Motion passed 20-0.

Further, the Advisory Panel recommends that the draft EARIR analysis of the community IFQ purchase proposal be forwarded for public comment with the following elements and options clarified, considered and reviewed. (Additions in **bold and underlined** – deletions noted)

Element 3. Use Caps for Individual Communities

(Suboption under options d & e)

Suboption 1: Place caps on individual communities so that the caps are area specific and not combined with more than one area.

Element 4. Cumulative Use Caps for all Communities

Substitute for (e) as follows:

(e) 20% of the combined 2C,3A and 3B halibut QS, and 20% of the total combined Gulf of Alaska sablefish QS. However, communities would be limited to 10% of the combined

2C, 3A and 3 B halibut QS and 10% of the total combined Gulf of Alaska sablefish QS prior to the Council's review of the program in 3-10 years.

Suboption 1: Communities would be limited to 5% of the combined 2C, 3A and 3B halibut QS and 5% of the total combined Gulf of Alaska sablefish QS in the first 2-5 years of the program.

(f) for options a-e, cumulative use caps that are area specific rather than applying to combined areas

(g) No cumulative use caps.

Element 5. Purchase, use, and sale restrictions

Block Restrictions

(c) Allow communities to buy blocked and unblocked shares

Add Suboption 3: Restrict community purchase of blocked quota share to blocks of shares which, when issued, exceeded a minimum poundage of IFQ.

(a) For halibut management areas 2C, 3A and 3B, minimum halibut IFQ poundage in a range of 2,500 - 10,000 pounds. (Current sweep up provision is to 3,000#)

(b) For sablefish management areas SE, WY, CG and WG, minimum sablefish IFQ poundage in the range of 3,000 - 10,000 pounds. (Current sweep up provision is to 5,000#)

Element 5. Purchase, use and sale restrictions

Vessel Size Restrictions:

(c) Transferability of QS (permanent) and IFQ's (on annual basis [leasing]) from commercial to community is restricted to the follow class of shares

Delete:

- (i) A category
- (v) A, B, and C category
- (vi) no transferability restrictions

(d) Individual communities are limited in their purchase of D category QS up to the ratio of D category QS holdings in a specific management area.

Sale Restrictions

- (b) after 3 years of ownership
- (c) to other communities

Suboption 1. Communities may only sell their acquired quota shares for one of the following purposes:

- (a) generating revenues to sustain, improve or expand the program (e.g. debt repayment, obtain additional QS, provide for program management, etc.) or,
- (b) liquidating the entity's QS assets for reasons outside the program (e.g. fund or support other public projects within the community). In that event, NMFS would not qualify that entity or another entity to hold QS for that community for a period of three years.

(d) No sale restrictions

Use Restrictions:

- (a) Transfer of community quota shares shall be limited to an amount equal to 25,000# -75,000# of halibut and sablefish IFQs per transferee.

Element 6. Code of Conduct

Communities wishing to purchase and use halibut and sablefish QS shall, prior to submitting an application for eligibility to NMFS, establish a code of conduct that provides for, the following provisions:

New Option (a) Transfer of annual IFQ's resulting from community owned quota shares shall be limited to residents of the ownership community.

Suboption 1. Transfer of community quota shares shall be limited to residents of the ownership community and residents of other qualifying communities.

Option (b) maximize benefit from use of community IFQ for crew members that are community residents

Option (c) insure that benefits are equitably distributed throughout the community.

Option (d) insure that QS/IFQ allocated to an eligible community entity would not be held and unfished.

- Delete:
- (a) Maximize fishing of community IFQs by community residents (covered with specific language in (a) above)
 - (b) Minimize administrative costs (difficult to assess/community choice)
 - (c) Minimize bycatch and/or habitat impacts (difficult to assess/community choice)

Element 7. Administrative Oversight

A. Require submission of a detailed statement of eligibility to NMFS prior to being considered for eligibility as a community QS recipient. The statement would include:

- A. Code of Conduct
- B. Certificate of Incorporation

- C. Verification of qualified entity as approved in element 2.
- D. Documentation demonstrating accountability to community.

B. Require submission of an annual report detailing accomplishments.

The annual report would include:

- 1. A summary of business, employment and fishing activities under the program
- 2. A discussion of any corporate changes that alter the representational structure of the group.
- 3. Specific steps taken to implement the Code of Conduct.
- 4. Intended changes to the Code of Conduct.

Motion passed 19-1.

C-4 Gulf of Alaska Rationalization

Experience with fishery cooperatives in the North Pacific has demonstrated that co-ops are an effective tool to resolve the race for fish and long-standing allocation disputes affecting fishing communities. Additionally, co-ops have proven to be an effective management component to address environmental issues facing fisheries such as bycatch, discards, and potential competition with Steller sea lions. The AP requests that the Council petition Congress to designate fishery cooperatives as an allowable fishery management option that is now not allowed under the current ban on ITQs. In this way, interested fisheries can work with the North Pacific Council to craft effective solutions to problems facing the fisheries of the North Pacific that are not covered by the American Fisheries Act. This is a request to authorize the use of coops either by fishery or gear type as a management tool, and to require the development of specific coops to occur in the council process. *Motion passed 15-5.*

MINORITY REPORT

The minority cannot support this motion because it presupposes a preferred alternative for Gulf rationalization which may not be appropriate for some segments of the fishing industry. Staff has clearly advised that a piecemeal approach to GOA Rationalization will entail as much work in developing side boards as rationalizing all fisheries in a comprehensive, simultaneous manner. Since unrationalized fisheries will influence coop members' operations, a coop under these conditions will not serve as a realistic model for achieving coop benefits. Finally, a piecemeal process for rationalizing the GOA fleet will allow the economic impacts of racing for fish to continue.

Signed; Michelle Ridgway, Dan Falvey, Duncan Fields, and Hazel Nelson

An amendment to change the wording of "co-ops" in the above motion to "the assignment of fishing histories" failed 13-8.

The AP further recommends the Council proceed in the determination of individual catch histories for federally managed fisheries in the Gulf of Alaska and suggests that Council give notice to the public to review the GOA white papers and provide suggestions for options for determination of individual catch histories at the April Council meeting. *Motion passed 17-0-1.*

C-5 Crab Rationalization

The AP agrees with the SSC's recommendation of revisiting the problem statement for BSAI Crab Rationalization to provide greater clarity regarding the processor and community concerns that rationalization seeks to address; and that the analysis be complete with respect to all the customary information which otherwise meets the requirements of an IRFA, RIR, EA etc. prior to submission to congress. *Motion passed 18-0.*

In addition, the AP recommends the following additions and clarifications be included in the crab rationalization analysis before sending the document out for public review:

- 1) The Initial Council Review Draft of the plurality coop is complete. Further analysis should focus on the options for an individual quota framework – both one-pie and two-pie – for management of the BSAI crab fisheries. The analysis should include a discussion of the use of the voluntary cooperative as a fishery management tool within the individual quota framework.
- 2) The analysis should include information on the alternative fisheries that harvesters and processors have participated in, so that alternative allocation options can be better assessed based on an individual harvester or processor's dependence on a particular crab fishery.
- 3) The amount of stranded capital in the processing sector should be analyzed. Options for addressing the stranded processing capital issue, such as a processor buyback program should also be discussed.
- 4) The effect of regionalization on ownership caps should be added to the analysis.
- 5) The analysis should include a qualitative discussion of cumulative impacts of the options on different classes of vessels.

Motion passed 16/0

The following motion failed 15-3: Harvester Individual Fishing Quotas (IFQs) for the BSAI crab Harvesting Sector should proceed separate from and prior to the consideration and analysis of Processor Individual Processing Quotas (IPQs) for BSAI crab Processing Sector. IPQs should be considered as part of a "trailing amendment".

Minority Report:

Harvesting Sector rationalization is acutely needed in the BSAI Crab fishery. Those many safety, resource, conservation, management and economic and social circumstances and factors that are customarily considered and accepted as a rationale for the implementation of harvester rationalization, and specifically with respect to IFQs, are present in the BSAI crab fishery.

IPQs are not BSAI Crab Rationalization, rather, they represent economic protectionism. IPQs do not address the safety, resource, or conservation and management needs that are extant in the BSAI crab fishery. IPQs are not currently applied in fisheries management, carry with them significant anti-competitive implications, and should demand complex and significant analysis and understanding as to their cumulative impacts if they are to be seriously considered.

The linking, tying, and concurrent consideration, development and analysis of IFQs and IPQs will unnecessarily and seriously delay progress toward and the achievement of needed rationalization in the BSAI crab fishery, and should be considered as part of a "trailing amendment". The linking and tying of

IFQs and IPQs is not relevant to existing resource, conservation and management concerns and issues, nor to the rationalization of the BSAI crab fishery. Signed, Jeff Stephan, Michelle Ridgway, Tracey Mayhew

The AP further recommends the following changes in the alternatives:

1. Harvesting Sector Elements

- Section 1.1

Add an option excluding the E AI tanner, W AI tanner and Dutch harbor red king crab fishery.

Motion passed 16/0

- Section 1.3 – Categories of QS/IFQs

Add new section for clarification of CP shares:

QS-IFQ for the Catcher/Processor sector shall confer the right to harvest and process crab aboard a catcher processor in accordance with section 1.7.2.

- 1.4.1 Calculation of Initial QS distribution

Add a new option to 1.4.1 (b)

Option 3: In cases where the fishing privileges (i.e. moratorium qualification or LLP license) of an LLP qualifying vessel have been transferred, the distribution of QS to the LLP shall be based on the aggregate catch histories of (1) the vessel on which LLP license was based up to the date of transfer, and (2) the vessel owned or controlled by the LLP license holder and identified by the license holder as having been operated under the fishing privileges of the LLP qualifying vessel after the date of transfer. Only one catch history per LLP License. *Motion passed 16-0.*

- Section 1.4.2.7 Brown King Crab

Add a new Option 5. **96/97 - 01/02 (6 seasons)**

(a) all seasons

(b) drop one season

Motion Passed 10/2/3

- Section 1.7.1

Amend with the following language:

VI. CP-QS initially issued to a catcher/processor shall not be regionally or community designated.

VII. catcher processors and eligible processors may purchase and process class B shares of IFQ crab. *Motion Passed 17/0*

- Section 1.7.2 - Catcher/Processor shares:

Add a new option

1.7.2.1.1 Catcher/Processors shall be granted CP-QS in the same manner as catcher vessels.

1.7.2.4 Transfers to shore-based processors:

(c) Catcher/Processors shall be allowed to sell CP/QS to shore based processors.

(d) When CP/QS, without a regional designation, are sold to a shore based processor, the shares become CV and PQ shares designated by region.

Motion passed 17-0

The following motion failed 7/10:

Section 1.8 Other optional provisions

- a. A portion (range of 15-50%) of the quota shares initially issued to fishers/harvesters would be designated as "owner on board."*
- b. All initial issuees (individual and corporate) would be grandfathered as not being required to be aboard the vessel to fish shares initially issued as "owner on board" shares*
- c. Shares transferred to initial issuees in the first (range of 3-7 years) of the program would be considered the same as shares initially issued*
- d. "owner on board" shares transferred by initial issuees, after the grace period, would require the recipient to be aboard the vessel to harvest the IFQ/ITQ*
- e. In cases of hardship (injury, medical incapacity, loss of vessel, etc.) a holder of "owner on board" quota shares may, upon documentation and approval, transfer/lease his or her shares for the term of the hardship/disability*
- f. Shares initially issued to CDQ groups are exempt from owner on board requirements*

We, the undersigned minority of the AP, supported the above "owner on board" requirements for the following reasons:

- 1. Maintain the status quo of owner on board within the fishery*
- 2. Need to provide additional options for entering the fishery. Without some owner on board requirement crewmembers and hired skippers will have a difficult time acquiring quota shares. It is anticipated that ownership of QS will soon separate from vessel ownership and fishery participation and be viewed as another investment commodity. It is difficult to envision a catalyst that would encourage sale of the QS investment commodity to provide entry opportunities to skippers and crews entering and participating in the fishery. In contrast, "owner on board" QS will pass to newer entrants in the fishery as the QS holder leaves the fishery.*
- 3. Accountability for safety decisions. As ownership of harvester QS separates from vessel ownership and participation in the fishery, hired skippers and vessels may face increasing economic pressure from both owners and processors to fish or make a trip in adverse conditions.*
- 4. Skipper, crew and resource protections. The halibut and sablefish IFQ experience indicates that owners on board significantly increase crew protections -- crew shares and job security. In addition, ownership interests that actively participate in the fishery may ensure better resource protections and stewardship.*

Signed, Duncan Fields, Arne Fuglvog and Dan Falvey

- **Section 2.1 Eligible Processors**

*Add the following language for clarification: Eligible Processors – processors (**including catcher-processors**) eligible to receive an initial allocation of processing quota shares (PQs) are defined as follows:*

- (b) U.S. corporation or partnership (not individual facilities) that*
- (c) Processed crab for any crab fishery included in the IFQ program during 1998 or 1999.*

- **Section 2.4 Percentage of seasons GHL of TAC for which IPQs are distributed:**

The following motion failed 9/8/1.

2.4.1 Option 6 - The Processing Sector BSAI Crab IPQ Pool shall be allocated no more than 20% of any BSAI crab GHL for any BSAI crab species or management area in any year

Minority Report:

IPQs will limit the market freedom, opportunity and ability of Kodiak, other non-BSAI based, and non-dominant BSAI-based processors to compete for the purchase of BSAI crab from the entire class of BSAI crab vessels that number in the range of 250 to 300 entities. Moreover, IPQs may limit the ability and market freedom of approximately 250 to 300 BSAI crab vessels to choose the processor and region where they sell their crab.

IPQs in the BSAI crab Processing Sector, partially because of the number of participants, and the existing relative distribution of economic power and influence, possesses significant potential to impact free and open markets and vigorous competition in the BSAI crab fishery.

The only decision points that are currently offered in the Analysis at Section 2.4 include only limited options for analysis with respect to the amount of a season's GHJ that may be allocated to the IPQ Pool; these are 100%, 90%, 80%, 70% and 0%. The 100%, 90%, 80% and 70% options are excessive. The inclusion of a 20% option is a reasonable inclusion of a necessary decision point for the Council. Signed: Jeff Stephan, Duncan Fields, Bill Jacobson, Ragnar Alstrom, Dan Falvey, Tracey Mayhew, Al Burch, Michelle Ridgway

- 2.7.1 Ownership Caps

Option 4: A processor that changes its ownership structure in a way that, under the current halibut and sablefish IFQ program would require divestiture, must divest itself of all IPQs that it owns or otherwise controls in excess of the ownership cap. *Motion passed, 11/7*

- 6.1 Coop model with the following elements and options

Replace number 6 with the following:

Processing history may leave an eligible community of origin in which the history was established with permission of the eligible community. The processing QS may change communities with negotiated agreement between the processor and the originating (eligible) community; these agreements will be filed with the Secretary of commerce thirty days prior to the quota share leaving the eligible community.

“Eligible communities” shall be defined as any community in which aggregate (community) landings exceeded 0-8% of the species for which processor QS is awarded during the qualifying period.

“Community landings” for closed fisheries will be determined using a formula that mirrors “processor option one” as defined in the current analysis. *Motion passed 18-0.*

The AP requests the Council encourage NMFS to finalize the BSAI Crab LLP and make a determination regarding interim and permanent licenses.

Motion passed 14/0

The AP wishes to reiterate that the rationalization program developed for the BSAI crab fisheries is one intended only for those fisheries. Any other fishery rationalization program must be crafted based upon their unique circumstances, including the resource and conservation issues they face; the harvester, processor and community interests at stake; and any other factors relevant to that particular fishery.

Motion Passed 16/0

The AP agrees with the SSC comments regarding the economic study by Millon-Hamilton paper (appendix 3.7) particularly the need for revising the assumptions about the industry which were incorrect. After the corrections are made, the AP recommends releasing it as a stand alone document. *Motion passed 16/0*

Finally, the AP made the following specific additions/clarifications which staff indicated they would incorporate into the revised analysis

Page 100 Table 2.4. Add a table that includes those vessels owned by the inshore processors or their shareholders. It should be noted along with this table that the vessel ownership standard used was the “10% rule” as in the AFA.

Page 101 2.5.1 It should be noted that since this draft was written, the AMA similarly rewarded the processor that offered the price accepted for the 2002 Opilio fishery with an increased and guaranteed share of the GHL.

Page 196, Eligible processors. Staff should calculate the “denominator” (i.e., the total pounds processed using the best of four approach) and make it available to the public.

Page 216, Section 2.5 Describe the fishery employing Class B shares using terminology other than open access.

Page 218 – 221, controls on vertical integration. Revise the analysis to reflect ownership by the inshore processing sector of harvesting rights (the inclusion of the CP sector unaffiliated with the inshore sector inflates the number).

Page 232, ADF&G rationalization option. Clarify that the various sub-options to the “two pie” model all apply to the ADF&G proposal

Page233, Expand the discussion of custom processing.

Pages 281 – 282, AFA/Non-AFA allocations compared to AFA crab processing sideboards. Clarify if the allocations contemplated under each option are for eligible processor or all processors.

Appendix 2-4, vessel ownership information and vertical integration. Note that the vessels listed under Alyeska Seafoods are actually owned by either Wards Cove Packing Company, a minority owner of Alyeska, Alaska Boat Company, an entity affiliated with Wards Cove, or shareholders of either Wards Cove or Alaska Boat. Alyeska Seafoods itself owns no vessels. *Motion passes 15/0/1*

C-7 Observer Program

The AP recommends the Council release the draft EA to the public with modifications and expansion of discussion on the following:

1. NPGOP proposed drug and alcohol policy and requirements for the observers and observer providers
2. The observer “fit for duty” requirements
3. The observer providers responsibility in data transmission
4. Observers in-person mid-deployment data reviews
5. Insurance requirements for placing NMFS staff on vessels
6. Observers duties during offload before the observer is released from duty and the vessel can return to fishing
7. Guidelines which will be used in determining placement of observers on vessels <60' in length. Examples could include:
 - A. Consent of vessel owner/operator
 - B. Availability of safety equipment to accommodate an observer
 - C. Availability of berthing space
 - D. Availability of an observer workstation
 - E. Advance notice requirements
 - F. Expected length of deployment
 - G. Safety decal requirements and Coast Guard’s ability to examine these vessels
8. Clarity that the intent and purpose of the program is to fulfill data needs and solve sampling problems
9. A new Suboption under option 2 for Alts 2 and 3 which would grant NMFS authority to place observers on vessels that are required to have observer coverage, but have already satisfied their observer requirements only subject to vessel owners approval. *Motion passed 15-3.*
10. Develop and analyze a range which would represent an annual cap on the number of NMFS staff deployment days.

Motion passed 20-0.

The AP believes that the overall structure of the observer program is inconsistent with the goals of the NPGOP. The AP recommends to the Council that an analysis of the overall structure of the program be assigned a high priority and that staff tasking for this analysis be discussed at this meeting. The AP further recommends that beyond present action, no further time be devoted to quick fixes for the existing program until this restructuring is complete and in place. Analysis of the restructuring will include a fully federally funded observer program. Development of a problem statement and additional alternatives could be tasked to the Council’s Observer Committee which will be meeting in May to discuss these issues.

Motion passed 20-0