



**UNITED STATES DEPARTMENT OF
National Oceanic and Atmospheric Administration**
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

AGENDA B-2
FEBRUARY 2008
Supplemental

January 23, 2008

Eric Olson, Chairman
North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

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N.P.F.M.C.

Dear Chairman Olson:

At its December 2007 meeting, the North Pacific Fishery Management Council requested that we provide guidance on legal considerations associated with State of Alaska (State) management of the Pacific cod jig gear fishery in Federal waters of the Gulf of Alaska (GOA). While a more specific proposal is required to fully assess legal, management, and policy considerations, we offer the following perspectives.

First, we assume the option under Council consideration would retain Pacific cod harvested by jig gear under management of the Council's Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). Given the widespread distribution of Pacific cod in the GOA, the importance of this resource to numerous Federal water fishery sectors, and Federal oversight of Steller sea lion protection measures associated with Pacific cod as a prey species, we do not believe legal justification exists to remove the jig gear fishery from the FMP. Thus, any State management in Federal waters would occur under delegated authority established in the FMP and not by removing the Pacific cod jig gear fishery and associated harvest from the FMP, as has been done for several rockfish species distributed primarily in State waters.

Second, any management authority delegated to the State under the FMP must be consistent with provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Section 306(a)(3)(B) of the MSA allows for state management of a fishery in Federal waters provided such management is consistent with the FMP authorizing such delegation, the MSA, and other applicable law. The specific statute language is enclosed.

As with the existing delegated authority for management of crab in the Bering Sea/Aleutians and demersal shelf rockfish in the Southeast Outside District of the GOA, the State would need to identify management measures it believes would be necessary to manage the Federal water jig gear fishery and demonstrate consistency of those measures with the MSA. This constraint likely would prohibit the State's use of some management measures in Federal waters that it currently employs to manage State water fisheries, such as vessel size restrictions, exclusive registration areas, or other measures that would limit



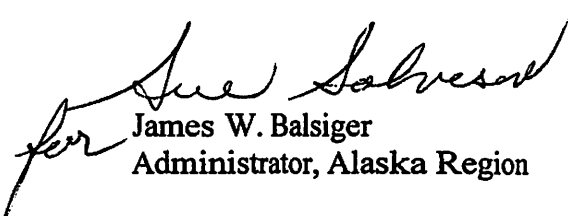
classes of vessels from participation in the Pacific cod jig gear fishery. Further, jig gear fishing for rockfish or other groundfish species could still occur under the FMP which creates complexity with respect to State management of incidental catch of Pacific cod by jig gear under a sector specific allocation.

Other management measures, such as exempting some or all jig gear vessels from Federal license limitation program requirements and the specification of a total allowable catch allocation to the jig gear sector must be developed by the Council and implemented by amendment to the FMP. Even under delegated management, Federal requirements necessary for the management and conservation of Federal water fisheries would continue to apply to jig gear vessels, such as the need for a Federal Fishing Permit and compliance with any relevant Steller sea lion protection measures such as season restrictions. Depending on the range of management measures delegated to the State, the FMP also may need to provide for Federal oversight of State management actions to ensure the fishery is managed consistent with the FMP, the MSA, and other applicable Federal law.

Finally, given the above considerations, the Council and the State of Alaska may wish to consider an alternative that would allow for Federal management of the jig gear fishery in State and Federal waters under a single TAC allocation which could remove the need for a separate State managed guideline harvest level for jig gear. An option to exempt some or all jig gear vessels from LLP requirements could be considered. We note that an increased harvest of Pacific cod in a new open access jig gear fishery could create additional management challenges under either Federal or State management authority that would need to be assessed in the analysis.

We would be pleased to offer additional guidance and perspective as the Council continues to refine its analysis of alternatives for management of Pacific cod sector allocations.

Sincerely,


James W. Balsiger
Administrator, Alaska Region

Enclosure

Magnuson-Stevens Fishery Conservation and Management Act

SEC. 306. STATE JURISDICTION 16 U.S.C. 1856

(3) A State may regulate a fishing vessel outside the boundaries of the State in the following circumstances:

(A) The fishing vessel is registered under the law of that State, and (i) there is no fishery management plan or other applicable Federal fishing regulations for the fishery in which the vessel is operating; or (ii) the State's laws and regulations are consistent with the fishery management plan and applicable Federal fishing regulations for the fishery in which the vessel is operating.

(B) The fishery management plan for the fishery in which the fishing vessel is operating delegates management of the fishery to a State and the State's laws and regulations are consistent with such fishery management plan. If at any time the Secretary determines that a State law or regulation applicable to a fishing vessel under this circumstance is not consistent with the fishery management plan, the Secretary shall promptly notify the State and the appropriate Council of such determination and provide an opportunity for the State to correct any inconsistencies identified in the notification. If, after notice and opportunity for corrective action, the State does not correct the inconsistencies identified by the Secretary, the authority granted to the State under this subparagraph shall not apply until the Secretary and the appropriate Council find that the State has corrected the inconsistencies. For a fishery for which there was a fishery management plan in place on August 1, 1996 that did not delegate management of the fishery to a State as of that date, the authority provided by this subparagraph applies only if the Council approves the delegation of management of the fishery to the State by a three-quarters majority vote of the voting members of the Council.

(C) The fishing vessel is not registered under the law of the State of Alaska and is operating in a fishery in the exclusive economic zone off Alaska for which there was no fishery management plan in place on August 1, 1996, and the Secretary and the North Pacific Council find that there is a legitimate interest of the State of Alaska in the conservation and management of such fishery. The authority provided under this subparagraph shall terminate when a fishery management plan under this Act is approved and implemented for such fishery.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

January 31, 2008

Eric Olson, Chair
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

Dear Mr. Olson:

As you know, the Alaska Fisheries Science Center reviews proposed overfishing definitions for compliance with guidelines established for National Standards 1 and 2 in 50 CFR part 600. This review includes consideration of whether the proposed definitions (1) have sufficient scientific merit, (2) are likely to result in effective Council action to protect the stock from closely approaching or reaching an overfished status, (3) provide a basis for objective measurement of the status of the stock against the definition, and (4) are operationally feasible.

During the certification process for Amendment 24 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP), we noticed that the table describing the preferred five-tier system in the Environmental Assessment (EA, Table 2-3, page 11) contains an incorrect formula for calculating the overfishing level for stocks in stock status level "c" under tiers 1 through 4. Crab stocks would be in stock status level "c" when biomass is below one half of the minimum stock size threshold (MSST). A stock is declared overfished when it falls below the MSST and the Council is required to develop a rebuilding plan for that stock.

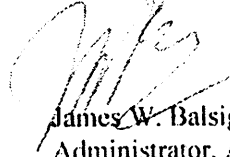
We interpret the stock status level "c" overfishing formula in the existing Table 2-3 as inconsistent with Council intent that the overfishing definitions (1) only close the directed fishery when stock size is at level "c," (2) address bycatch mortality in the rebuilding plan for that stock, and (3) comply with the National Standard guidelines. Table 2-3, as written, indicates that for stocks in stock status level "c," the overfishing level would be zero, implying that any catch in any fishery would result in overfishing. This is inconsistent with the EA analysis which explains that only the directed fishing mortality would be zero when a stock was in stock status level "c." The EA also explains that regulations to reduce the bycatch of crab in groundfish and scallop fisheries would be considered when a crab stock becomes overfished and necessitates a rebuilding plan (or revisions to an existing rebuilding plan). However, Table 2-3 does not reflect how a non-zero overfishing level would be set to account for other sources of fishing mortality. The National Standard guidelines require that an overfishing level less than or equal F_{MSY} be specified to account for all sources of fishing mortality, including bycatch. F_{MSY} is the fishing mortality rate expected to result in a long-term average catch approximating maximum sustainable yield.



We suggest modifying this table in the EA and for the Amendment 24 FMP text to reflect Council intent by clarifying that, for stocks in stock status level "c," the directed fishery fishing mortality would be zero and the overfishing rate would be set less than or equal to F_{MSY} . The Council would determine the overfishing rate less than or equal to F_{MSY} in the development of the rebuilding plan for that stock. Please see the attached proposed draft Amendment 24 FMP text for the exact suggested language.

NOAA General Counsel has advised that, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, the Council should reconsider its action on Amendment 24. If the proposed draft FMP text is consistent with Council intent on Amendment 24, then the Council should adopt the draft FMP text.

Sincerely,



James W. Balsiger, Ph.D.
Administrator, Alaska Region

Attachment: Proposed draft Amendment 24 FMP text

**Amendment 24
To the Fishery Management Plan for
Bering Sea/Aleutian Islands King and Tanner Crabs**

(1) Revise the following definitions in 4.0 DEFINITIONS OF TERMS to read:

Maximum sustainable yield (MSY) is the largest long-term average catch or yield that can be taken from a stock or stock complex under prevailing ecological and environmental conditions. MSY is estimated from the best information available.

F_{MSY} control rule means a harvest strategy which, if implemented, would be expected to result in a long-term average catch approximating MSY.

B_{MSY} stock size is the biomass that results from fishing at constant F_{MSY} and is the minimum standard for a rebuilding target when a rebuilding plan is required.

Maximum fishing mortality threshold (MFMT) is defined by the F_{OFL} control rule, and is expressed as the fishing mortality rate.

Minimum stock size threshold (MSST) is one half the B_{MSY} stock size.

* * * * *

Overfished is determined by comparing annual biomass estimates to the established MSST. For stocks where MSST (or proxies) are defined, if the biomass drops below the MSST (or proxy thereof) then the stock is considered to be overfished.

Overfishing is defined as any amount of catch in excess of the overfishing level (OFL). The OFL is calculated by applying the F_{OFL} control rule annually estimated using the tier system in Chapter 6.0 to abundance estimates.

* * * * *

(2) Revise the first paragraph of 5.0 DESCRIPTION OF FISHERY MANAGEMENT UNIT to read:

This FMP applies to commercial fisheries for red king crab Paralithodes camtschaticus, blue king crab P. platypus, golden (or brown) king crab Lithodes aequispinus, Tanner crab Chionoecetes bairdi, snow crab C. opilio in the BS/AI area, except for the following stocks exclusively managed by the State of Alaska: Aleutian Islands Tanner crab, Dutch Harbor red king crab, St. Matthew golden king crab, St. Lawrence blue king crab.

The common and scientific names used in this FMP are those included in Williams et al. (1988), appropriately amended, with secondary common names sometimes used in the fishery included in parentheses. Members of the genus Chionoecetes are often collectively referred to as Tanner

crabs; to avoid confusion, the name Tanner crab is used for C. bairdi and snow crab is used for C. opilio. Through 1989, commercial landings had only been reported for red, blue, and golden king crab; and Tanner, snow, and hybrids of these two species.

(3) Replace Chapter 6.0 SPECIFICATION OF MAXIMUM SUSTAINABLE YIELD, OPTIMUM YIELD, MINIMUM STOCKS SIZE THRESHOLDS, OVERFISHING LEVELS, ANNUAL HARVEST, AND ANNUAL PROCESSING with the following:

6.0 STATUS DETERMINATION CRITERIA

Status determination criteria for crab stocks are annually calculated using a five-tier system that accommodates varying levels of uncertainty of information. The five-tier system incorporates new scientific information and provides a mechanism to continually improve the status determination criteria as new information becomes available. Under the five-tier system, overfishing and overfished criterion are annually formulated and assessed to determine the status of the crab stocks and whether (1) overfishing is occurring or the rate or level of fishing mortality for a stock or stock complex is approaching overfishing, and (2) a stock or stock complex is overfished or a stock or stock complex is approaching an overfished condition.

Overfishing is determined by comparing the overfishing level (OFL), as calculated in the five-tier system for the crab fishing year, with the catch estimates for that crab fishing year. For the previous crab fishing year, NMFS will determine whether overfishing occurred by comparing the previous year's OFL with the catch from the previous crab fishing year. This catch includes all fishery removals, including retained catch and discard losses, for those stocks where non-target fishery removal data are available. Discard losses are determined by multiplying the appropriate handling mortality rate by observer estimates of bycatch discards. For stocks where only retained catch information is available, the OFL will be set for and compared to the retained catch.

NMFS will determine whether a stock is in an overfished condition by comparing annual biomass estimates to the established MSST, defined as $\frac{1}{2} B_{MSY}$. For stocks where MSST (or proxies) are defined, if the biomass drops below the MSST (or proxy thereof) then the stock is considered to be overfished. MSSTs or proxies are set for stocks in Tiers 1-4. For Tier 5 stocks, it is not possible to set an MSST because there are no reliable estimates of biomass.

If overfishing occurred or the stock is overfished, section 304(e)(3)(A) of the Magnuson-Stevens Act, as amended, requires the Council to immediately end overfishing and rebuild affected stocks.

Annually, the Council, Scientific and Statistical Committee, and Crab Plan Team will review (1) the stock assessment documents, (2) the OFLs and total allowable catches or guideline harvest levels for the upcoming crab fishing year, (3) NMFS's determination of whether overfishing occurred in the previous crab fishing year, and (4) NMFS's determination of whether any stocks are overfished.

Five-Tier System

The OFL for each stock is annually estimated for the upcoming crab fishing year using the five-tier system, detailed in Tables 6-1 and 6-2. First, a stock is assigned to one of the five tiers based on the availability of information for that stock and model parameters are choices are made. Tier assignments and model parameter choices are recommended through the Crab Plan Team process to the Council's Scientific and Statistical Committee. The Council's Scientific and Statistical Committee will recommend tier assignments, stock assessment and model structure, and parameter choices, including whether information is "reliable," for the assessment authors to use for calculating the OFLs based on the five-tier system.

For Tiers 1 through 4, once a stock is assigned to a tier, the stock status level is determined based on recent survey data and assessment models, as available. The stock status level determines the equation used in calculating the F_{OFL} . Three levels of stock status are specified and denoted by "a," "b," and "c" (see Table 6-1). The F_{MSY} control rule reduces the F_{OFL} as biomass declines by stock status level. At stock status level "a," current stock biomass exceeds the B_{MSY} . For stocks in status level "b," current biomass is less than B_{MSY} but greater than a level specified as the "critical biomass threshold" (β).

Lastly, in stock status level "c," current biomass is below $\beta * (B_{MSY}$ or a proxy for B_{MSY}). At stock status level "c," directed fishing is prohibited and an F_{OFL} at or below F_{MSY} would be determined for all other sources of fishing mortality in the development of the rebuilding plan. The Council will develop a rebuilding plan once a stock level falls below the MSST.

For Tiers 1 through 4, the coefficient α is set at a default value of 0.05, and β set at a default value of 0.25, with the understanding that the Scientific and Statistical Committee may recommend different values for a specific stock or stock complex as merited by the best available scientific information.

In Tier 5, the OFL is specified in terms of an average catch value over an historical time period, unless the Scientific and Statistical Committee recommends an alternative value based on the best available scientific information.

OFLs will be calculated by applying the F_{OFL} and using the most recent abundance estimates. The Crab Plan Team will review stock assessment documents, the most recent abundance estimates, and the proposed OFLs. The AFSC will set the OFLs consistent with this FMP and forward OFLs for each stock to the State of Alaska prior to its setting the total allowable catch or guideline harvest level for that stock's upcoming crab fishing season.

Tiers 1 through 3

For Tiers 1 through 3, reliable estimates of B , B_{MSY} , and F_{MSY} , or their respective proxy values, are available. Tiers 1 and 2 are for stocks with a reliable estimate of the spawner/recruit relationship, thereby enabling the estimation of the limit reference points B_{MSY} and F_{MSY} .

- Tier 1 is for stocks with assessment models in which the probability density function (pdf) of F_{MSY} is estimated.
- Tier 2 is for stocks with assessment models in which a reliable point estimate, but not the pdf, of F_{MSY} is made.
- Tier 3 is for stocks where reliable estimates of the spawner/recruit relationship are not available, but proxies for F_{MSY} and B_{MSY} can be estimated.

For Tier 3 stocks, maturity and other essential life-history information are available to estimate proxy limit reference points. For Tier 3, a designation of the form " F_x " refers to the fishing mortality rate associated with an equilibrium level of fertilized egg production (or its proxy) per recruit equal to X% of the equilibrium level in the absence of any fishing.

The OFL calculation accounts for all losses to the stock not attributable to natural mortality. The OFL is the total catch limit comprised of three catch components: (1) non-directed fishery discard losses; (2) directed fishery discard losses; and (3) directed fishery retained catch. To determine the discard losses, the handling mortality rate is multiplied by bycatch discards in each fishery. Overfishing would occur if, in any year, the sum of all three catch components exceeds the OFL.

Tier 4

Tier 4 is for stocks where essential life-history, recruitment information, and understanding are lacking. Therefore, it is not possible to estimate the spawner-recruit relationship. However, there is sufficient information for simulation modeling that captures the essential population dynamics of the stock as well as the performance of the fisheries. The simulation modeling approach employed in the derivation of the annual OFLs captures the historical performance of the fisheries as seen in observer data from the early 1990s to present and thus borrows information from other stocks as necessary to estimate biological parameters such as γ .

In Tier 4, a default value of natural mortality rate (M) or an M proxy, and a scalar, γ , are used in the calculation of the F_{OFL} . Explicit to Tier 4 are reliable estimates of current survey biomass and the instantaneous M . The proxy B_{MSY} is the average biomass over a specified time period, with the understanding that the Council's Scientific and Statistical Committee may recommend a different value for a specific stock or stock complex as merited by the best available scientific information. A scalar, γ , is multiplied by M to estimate the F_{OFL} for stocks at status levels a and b, and γ is allowed to be less than or greater than unity. Use of the scalar γ is intended to allow adjustments in the overfishing definitions to account for differences in biomass measures. A default value of γ is set at 1.0, with the understanding that the Council's Scientific and Statistical Committee may recommend a different value for a specific stock or stock complex as merited by the best available scientific information.

If the information necessary to determine total catch OFLs is not available for a Tier 4 stock, then the OFL is determined for retained catch. In the future, as information improves, data would be available for some stocks to allow the formulation and use of selectivity curves for the discard fisheries (directed and non-directed losses) as well as the directed fishery (retained catch) in the models. The resulting OFL from this approach, therefore, would be the total catch OFL.

Tier 5

Tier 5 stocks have no reliable estimates of biomass or M and only historical data of retained catch is available. For Tier 5 stocks, the historical performance of the fishery is used to set OFLs in terms of retained catch. The OFL represents the average retained catch from a time period determined to be representative of the production potential of the stock. The time period selected for computing the average catch, hence the OFL, would be based on the best scientific information available and provide the appropriate risk aversion for stock conservation and utilization goals. In Tier 5, the OFL is specified in terms of an average catch value over a time period determined to be representative of the production potential of the stock, unless the Scientific and Statistical Committee recommends an alternative value based on the best available scientific information.

For most Tier 5 stocks, only retained catch information is available so the OFL will be estimated for the retained catch portion only, with the corresponding overfishing comparison on the retained catch only. In the future, as information improves, the OFL calculation could include discard losses, at which point the OFL would be applied to the retained catch plus the discard losses from directed and non-directed fisheries.

Figure 6-1 Overfishing control rule for Tiers 1 through 4. Directed fishing mortality is 0 below β .

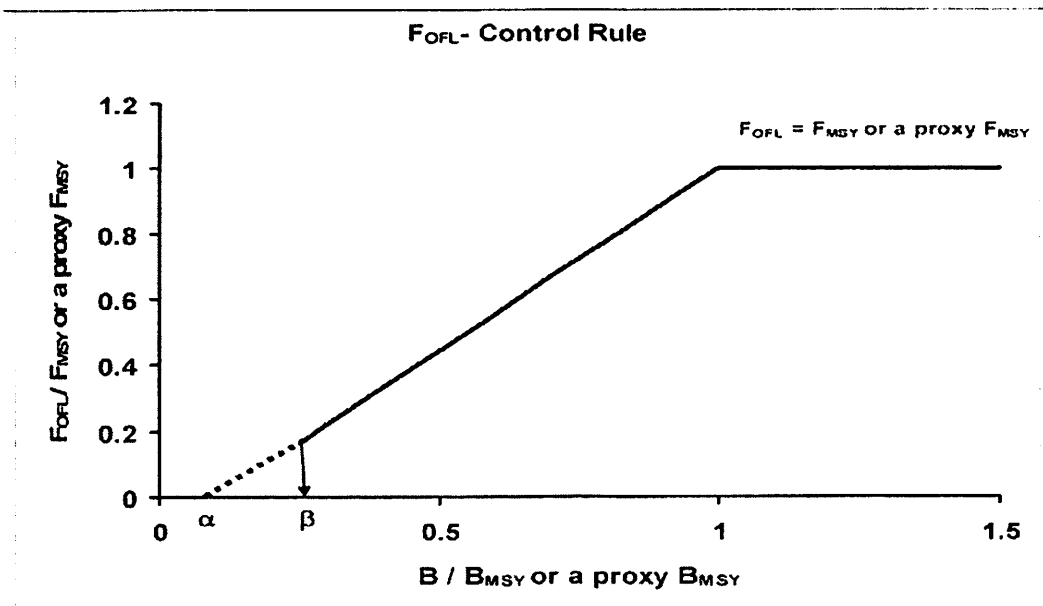


Table 6-1 Five-Tier System for setting overfishing limits for crab stocks. The tiers are listed in descending order of information availability. Table 6-2 contains a guide for understanding the five-tier system.

Information available	Tier	Stock status level	F_{OFL}
B, B_{MSY}, F_{MSY} , and pdf of F_{MSY}	1	a. $\frac{B}{B_{msy}} > 1$	$F_{OFL} = \mu_A$ = arithmetic mean of the pdf
		b. $\beta < \frac{B}{B_{msy}} \leq 1$	$F_{OFL} = \mu_A \frac{B/B_{msy} - \alpha}{1 - \alpha}$
		c. $\frac{B}{B_{msy}} \leq \beta$	Directed fishery $F = 0$ $F_{OFL} \leq F_{MSY}^\dagger$
B, B_{MSY}, F_{MSY}	2	a. $\frac{B}{B_{msy}} > 1$	$F_{OFL} = F_{msy}$
		b. $\beta < \frac{B}{B_{msy}} \leq 1$	$F_{OFL} = F_{msy} \frac{B/B_{msy} - \alpha}{1 - \alpha}$
		c. $\frac{B}{B_{msy}} \leq \beta$	Directed fishery $F = 0$ $F_{OFL} \leq F_{MSY}^\dagger$
$B, F_{35\%}, B_{35\%}$	3	a. $\frac{B}{B_{35\%}^*} > 1$	$F_{OFL} = F_{35\%}^*$
		b. $\beta < \frac{B}{B_{35\%}^*} \leq 1$	$F_{OFL} = F_{35\%}^* \frac{B/B_{35\%}^* - \alpha}{1 - \alpha}$
		c. $\frac{B}{B_{35\%}^*} \leq \beta$	Directed fishery $F = 0$ $F_{OFL} \leq F_{MSY}^\dagger$
B, M, B_{msy}^{min}	4	a. $\frac{B}{B_{msy}^{min}} > 1$	$F_{OFL} = \gamma M$
		b. $\beta < \frac{B}{B_{msy}^{min}} \leq 1$	$F_{OFL} = \gamma M \frac{B/B_{msy}^{min} - \alpha}{1 - \alpha}$
		c. $\frac{B}{B_{msy}^{min}} \leq \beta$	Directed fishery $F = 0$ $F_{OFL} \leq F_{MSY}^\dagger$
Stocks with no reliable estimates of biomass or M.	5	OFL = average catch from a time period to be determined, unless the SSC recommends an alternative value based on the best available scientific information.	

*35% is the default value unless the SSC recommends a different value based on the best available scientific information.

† An $F_{OFL} \leq F_{MSY}$ will be determined in the development of the rebuilding plan for that stock.

Table 6-2 A guide for understanding the five-tier system.

- F_{OFL} — the instantaneous fishing mortality (F) from the directed fishery that is used in the calculation of the overfishing limit (OFL). F_{OFL} is determined as a function of:
 - F_{MSY} — the instantaneous F that will produce MSY at the MSY-producing biomass
 - A proxy of F_{MSY} may be used; e.g., $F_{x\%}$, the instantaneous F that results in x% of the equilibrium spawning per recruit relative to the unfished value
 - B — a measure of the productive capacity of the stock, such as spawning biomass or fertilized egg production.
 - A proxy of B may be used; e.g., mature male biomass
 - B_{MSY} — the value of B at the MSY-producing level
 - A proxy of B_{MSY} may be used; e.g., mature male biomass at the MSY-producing level
 - β — a parameter with restriction that $0 \leq \beta < 1$.
 - α — a parameter with restriction that $0 \leq \alpha \leq \beta$.
- The maximum value of F_{OFL} is F_{MSY} . $F_{OFL} = F_{MSY}$ when $B > B_{MSY}$.
- F_{OFL} decreases linearly from F_{MSY} to $F_{MSY}(\beta-\alpha)/(1-\alpha)$ as B decreases from B_{MSY} to $\beta \cdot B_{MSY}$.
- When $B \leq \beta \cdot B_{MSY}$, $F = 0$ for the directed fishery and $F_{OFL} \leq F_{MSY}$ for the non-directed fisheries, which will be determined in the development of the rebuilding plan.
- The parameter, β , determines the threshold level of B at or below which directed fishing is prohibited.
- The parameter, α , determines the value of F_{OFL} when B decreases to $\beta \cdot B_{MSY}$ and the rate at which F_{OFL} decreases with decreasing values of B when $\beta \cdot B_{MSY} < B \leq B_{MSY}$.
 - Larger values of α result in a smaller value of F_{OFL} when B decreases to $\beta \cdot B_{MSY}$.
 - Larger values of α result in F_{OFL} decreasing at a higher rate with decreasing values of B when $\beta \cdot B_{MSY} < B \leq B_{MSY}$.

(4) Modify sections 8.1.5, 8.3.5, and 8.3.7 to remove references to grooved Tanner crab, St. Matthew golden king crab, Al Tanner crab, St. Lawrence Island blue king crab, scarlet king crab, triangle Tanner crab, and Dutch Harbor red king crab, to read:

8.1.5 Superexclusive Registration in Norton Sound

This FMP establishes the Norton Sound Section of the Northern District of the king crab fishery as a superexclusive registration area. Any vessel registered and participating in this fishery would not be able to participate in other BSAI king crab fisheries, such as Adak, Bristol Bay, Dutch Harbor, Pribilof, St. Lawrence, or St. Matthew, during that registration year. The Norton Sound fishery is the only superexclusive registration area authorized by this FMP.

8.3.5 Gear Modifications

The FMP defers design specifications required for commercial crab pots and ring nets to the State. Pots and ring nets are the specified legal commercial gear for capturing crab in the BS/AI area (see Section 8.1.1). Multiple pots attached to a ground line are currently allowed by the State in the brown (golden) king crab, scarlet king crab (~~Lithodes couesi~~), grooved Tanner crab (~~C. tanneri~~), and triangle Tanner crab (~~C. angulatus~~) fisheries. Various devices may be added to pots to prevent capture of other species; to minimize king crab bycatch, the State currently requires tunnel-eye heights to not exceed 3 inches in pots fishing for *C. bairdi* or *C. opilio* in the Bering Sea. Escape mechanisms may be incorporated or mesh size adjusted to allow female and sublegal male crab to escape; the State currently specifies escape rings or mesh panels in regulation for pots used in the BS/AI *C. bairdi*, *C. opilio*, and brown (golden) king crab fisheries, in the Bristol Bay king crab fishery, and in the Pribilof District king crab fishery. State regulations also currently require incorporation of biodegradable twine as an escape mechanism on all pots which will terminate a pot's catching and holding ability in case the pot is lost.

8.3.7 State Observer Requirements

The FMP defers the State Observer requirements to the State. The State may place observers aboard crab fishing and/or processing vessels when the State finds that observers provide the only practical mechanism to obtain essential biological and management data or when observers provide the only effective means to enforce regulations. Data collected by onboard observers in crab fisheries include effort data and data on the species, sex, size, and shell-age/shell-hardness composition of the catch. The State currently requires onboard observers on all catcher/processor or floating-processor vessels processing king or Tanner crab and on all vessels participating in the Aleutian Islands red or brown (golden) king crab fisheries. ~~The State currently may require observers as part of a permit requirement for any vessel participating in the scarlet king crab (*Lithodes couesi*), grooved Tanner crab (*C. tanneri*), or triangle Tanner crab (*C. angulatus*) fisheries.~~ The State currently may require observers on selected catcher vessels taking red or blue king crab in the Norton Sound section, if ADF&G provides funding for the observer presence. ~~The State currently may require observers on vessels taking red or blue king crab in the St. Lawrence Island Section.~~ The State may also require onboard observers in other crab fisheries (e.g., the Pribilof Islands Korean hair crab, *Erimacrus isenbeckii*, fishery) to, in part, monitor bycatch of king or Tanner crab. Observers provide data on the amount and type of bycatch occurring in each observed fishery and estimates of bycatch by species, sex, size, and shell-age/shell-hardness for each observed fishery are currently provided in annual reports by ADF&G.

(5) Revise Appendix E Description of the Fisheries and Stocks to remove references to grooved Tanner crab, St. Matthew golden king crab, Aleutian Islands Tanner crab, St. Lawrence Island blue king crab, scarlet king crab, triangle Tanner crab, and Dutch Harbor red king crab.

COMMISSIONERS:

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January 30, 2008

Ms. Sue Salvesson
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Dear Ms. ~~Salvesson~~: *Sue*

The staff of the International Pacific Halibut Commission (IPHC or Commission) has reviewed the Proposed Rule for limiting the sport charter harvest of halibut in IPHC Area 2C in 2008. We have the following comments for your consideration.

At its recent Annual Meeting in Portland, Oregon, the Commission reviewed the halibut coastwide assessment conducted by staff. Following discussion and with advice from its advisory bodies, the Commission adopted the Total Constant Exploitation Yields (CEYs) resulting from the assessment as the scientific basis for its deliberations on catch limits. Importantly, the 2008 Total CEY for Area 2C is 6.50 Mlbs, which has implications for the corresponding Guideline Harvest Level (GHL) as defined in NMFS regulations.

The Commission noted that the CEY would result in a GHL of 0.931 Mlbs for the 2008 sport charter fishery, according to the GHL program adopted by the North Pacific Fishery Management Council (Council) and implemented in NMFS regulations (50 CFR 600.65(c)). The Council has previously stated its intent to manage the sport charter fishery to the GHL, and has proposed management options if the GHL was reduced for 2008. The Commission took this commitment into account when setting the 2008 commercial fishery catch limit. Achievement of the Commission's harvest goals and management objectives is thus dependent on the proposed action.

We note that Option B was proposed by the Council in the event that the GHL was reduced to 1.217 Mlbs. As noted, the 2008 GHL as defined in regulations would be 0.931 Mlbs, lower than what was anticipated. This lower GHL makes Option B of the NMFS Proposed Rule (including a one-fish daily bag limit) the appropriate action for the 2008 fishery.

Sincerely yours,



Bruce M. Leaman
Executive Director

cc: IPHC Commissioners

Halibut Coalition

PO Box 22073

Juneau, AK 99802-2073

(425) 949-1810msg (206) 260-9111efax

halibutcoalition@gmail.com

January 30, 2008

Via fax to (907) 586-7557

Ms Sue Salvesson
Assistant Regional Administrator
Sustainable Fisheries Division
NMFS Alaska Region
ATTN: Ellen Sebastian
PO Box 21668
Juneau, AK 99802

Re: RIN 0648-AW23 Guided Sport Charter Vessel Fishery for Halibut

We urge you to implement option B for the guided port industry in IPHC Area 2C and ensure the final rule is in effect by June 1 at the latest:

- One fish daily bag limit
- No harvest by skipper and crew
- Line limits
- Strict accounting of charter harvest, including adequate funding for logbook analysis, and active enforcement by both Coast Guard and NMFS.

These actions are necessary because of a reduced CEY and GHY caused, in part, by consistent overages by the guided sport charter vessels for the past four years. The total CEY set by the IPHC will trigger a GHY of 931,000 pounds (August 8, 2003; 68 Fed. Reg. 47256). Continued overfishing by the charter fleet is a blemish on your Alaska's conservation record that must be corrected in 2008 with affirmative action by NMFS.

The problems caused by an unrestrained charter fleet have been known since 1993 – fifteen years. It is well past time for NMFS to show leadership and stewardship, and impose management measures on the charter fleet that will effectively constraint them to the GHY set by the Council.

*Alaska Longline Fishermen's Association ♦ Cordova District Fishermen United ♦
Deep Sea Fishermen's Union ♦ Fishing Vessel Owners Association ♦ Halibut Association of North
America ♦ North Pacific Fisheries Association ♦ Petersburg Vessel Owners Association ♦ Seafood
Producers Cooperative ♦ Southeast Alaska Fishermen's Alliance ♦ United Cook Inlet Drift Association ♦
United Fishermen's Marketing Association ♦ United Southeast Alaska Gillnetters Association*

The cumulative effects of a reduced CEY in area 2C in 2007 and 2008, must be shared by both the commercial setline and charter sector. The 47% reduction in the setline quotas, and prospects for further cuts in 2009 are severe financial burden on many setline fishermen, especially those with loans, and it is only fair that the conservation burden be shared by both of the commercial sectors, setline and charter. Consumers will also feel the impacts of this CEY reduction. The charter sector did not feel the effects of the 2006 CEY reduction because of the stair step provisions in the GHL, but they should not be surprised that the time has come to share in conservation.

Charter industry claims that they cannot survive with a one-fish bag limit are unfounded. One fish bag limits have not destroyed the Chinook charter industry. Furthermore, the charter industry can easily change their marketing strategy to support conservation measures and provide realistic expectations of the amount of fish that can be responsibly be taken home. The charter industry could make this a sustainability "teachable moment" for the many non-resident anglers they bring to SE Alaska and Yakutat.

We ask that our letter of January 29, 2008 to Secretary Gutierrez be included as part of our comment on this proposed rule.

Sincerely,



Jev Shelton for the
Halibut Coalition

Encl: Halibut Coalition letter of January 29, 2008 to the Secretary of Commerce

Halibut Coalition
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January 29, 2008

Honorable Carlos M. Gutierrez
Secretary of Commerce
US Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

Dear Secretary Gutierrez,

Reference: (a) Proposal on IPHC 2008 Catch limits: Re-evaluation of the Area 2C commercial catch limit, considering ADF&G sport charter catch estimates
(See IPHC website <http://www.iphc.washington.edu/halcom/pubs/annmeet/2008/catlim/catlim2k8.htm>)
(b) August 8, 2003; 68 Fed. Reg. 47256

We am writing to you on behalf of the Halibut Coalition and its 450 members to communicate our support of actions taken in Alaskan waters by the International Pacific Halibut Commission at their annual meeting last week in Portland, Oregon.

As a preface to these recommendations I would like to first express the sincere appreciation of the all parties for the open and transparent process characteristic of IPHC proceedings. We particularly appreciate the engagement of the IPHC staff over the past year in answering questions raised by our group and others regarding the coast-wide assessment model and the apportionment method for distribution of quota between IPHC areas. We look forward to continuation of this productive dialogue.

The Halibut Coalition supports the Commissioners' decision to accept staff recommended catch limits in the Gulf of Alaska. Halibut Coalition members recognize the need for conservation of the halibut stock in general, and, a more conservative management approach in area 2C in particular. Catch rates in area 2C are at historic low levels, clearly indicating the need to reduce halibut harvest by **all commercial sectors—both setline and charter**. It is unfortunate that area 2B did not fully share in this conservation burden this year, but, that does not negate the responsibility of the US fleets, both setline and charter, to support conservation.

The Halibut Coalition firmly supports the IPHC adherence to international dictates establishing the Commission's role in conserving stocks and supporting Convention members in achieving domestic management targets. The IPHC has followed these

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Producers Cooperative ♦ Southeast Alaska Fishermen's Alliance ♦ United Cook Inlet Drift Association ♦
United Fishermen's Marketing Association ♦ United Southeast Alaska Gillnetters Association*

dictates in using the halibut charter guideline harvest level (GHL), as established by domestic law (68 Fed. Reg. 47256, 47257 (August 8, 2003), as the “acceptable pre-season estimate of halibut charter harvest,” and fully supports the Commission in this action.

In remarks regarding catch limit recommendations, the Commissioners did not support changing the harvest rate or the CEY to accommodate the charter industry proposal (Reference (a)). The Halibut Coalition supports the Commissioners in their response and we provide additional support for this response in the remainder of this letter.

In Reference (a), submitted to the IPHC on December 31, one of the charter spokesmen expressed “concern” that the staff recommendations for 2C 2008 quotas will have an “allocative impact.” With all due respect to the charter proposal (Reference (a) proposal, the IPHC recommendations are unquestionably consistent with IPHC mandates to conserve the halibut stock while leaving allocative decisions to the appropriate signatory nation. If the IPHC were to have adopted any of the approaches recommended by the charter spokesman, the result would have been allocative actions, clearly in violation of the Halibut Act and domestic law.

Reference (a) makes the following **flawed assumptions**:

1. The 2C GHL is not clearly established as a domestic management target for the charter halibut fisheries in area 2C;
2. The Secretary has the authority to unilaterally allocate between halibut sectors; and
3. Harvest control measures cannot be in place in 2008 to effectively restrict 2C charter harvest to the GHL.

These **false assumptions** are addressed in detail below.

The GHL as a domestic target: a brief history of the GHL.

GHL: “[the] level of allowable harvest by the charter vessel fishery”
(§ 300.61 Definitions, 68 Fed. Reg. 47256,47257(August 8, 2003).

The facts, and NOAA Fisheries’ own statements, show that the existing GHL is a clearly defined fixed allocation and domestic target. The origins of the GHL are traced to a decision by the North Pacific Fishery Management Council (“Council”) to address the growth in the charter fleet. In 1993, the rapid increase in that fleet caused concerns in the Council about localized depletion of the halibut resource and about the reallocation of halibut from the setline sector to the charter sector. In 1995, the Council developed a Problem Statement to direct its analysis of issues associated with the guided sport halibut fishery. One element of that Problem Statement noted:

As there is currently no limit on the annual harvest of halibut by charter operations, an open-ended reallocation from the commercial fishery to the charter industry is occurring. This reallocation may increase if the projected growth of the charter industry occurs. The economic and social impact on the commercial fleet of this open-ended reallocation may be substantial67 Fed. Reg. 3867 (Jan. 28, 2002).

In September 1997, four years after its initial concern about the expansion of the charter fishery, the Council adopted GHLs. NOAA Fisheries described the purpose and intent of the North Pacific Council in the following words:

The [North Pacific] Council stated its intent that guided recreational harvests in excess of the GHL ... would trigger other management measures to take effect in years following attainment of the GHL. These measures would restrict the guided recreational fishery and maintain harvests within the GHL allocation.
68 Fed. Reg. 47256, 47257 (August 8, 2003).

By NOAA Fisheries' own admission the GHL was intended to be a fixed harvest level. Management measures would be adopted to prevent that harvest level from being exceeded. However, because the Council did not propose specific management measures in 1997 to accompany the GHL, NOAA Fisheries refused to consider the Council's GHL recommendation. In response to NOAA Fisheries' refusal to consider the GHL, the Council in February 2000 adopted a redefined GHL, this time establishing a suite of harvest restrictions that would be triggered if the GHL was exceeded. According to NOAA Fisheries, the purpose of the GHL and the framework management measures was to constrain the charter harvest within the GHL. *Id.* at 47258.

However, NOAA Fisheries objected to the proposed management measures because they were part of a framework management plan. Leaving aside for the moment whether NOAA Fisheries' position on framework management plans is legally defensible, the facts are that the Council viewed the GHL as a fixed allocation to be enforced by appropriate management measures. Ultimately, NOAA Fisheries approved the GHL in a final rule but refused to approve the framework management measures. That an enforcing mechanism was not included in the GHL at the time it was established does not mean that the GHL is not a fixed allocation. In fact, the preamble to the final rule promulgating the GHL states unequivocally: "[t]he GHLs are established as a total maximum poundage ... to be harvested by the guided sport fishery. *Id.* NOAA Fisheries also admitted that the Council fully intended that management measures to maintain the GHL would be established. NOAA Fisheries summarized the Council's intent as follows:

*The Council stated its intent that GHLs would not close the fishery [in season], but would instead trigger other management measures in years following attainment of the GHL. *Id.* at 47259.*

That the Council intended the GHL to be a maximum harvest amount which would be maintained by management measures is a fact NOAA Fisheries acknowledges in the 2007 Proposed Rule (72 Fed. Reg. at 17073). Therein, NOAA Fisheries traces the history of the GHL noting that in 1997 the Council stated its intent that "*if a GHL was exceeded, other management measures would take effect in years following attainment of the GHL.*" NOAA Fisheries recognizes that "GHLs were not designed to increase above their maximum amounts." *Id.* Finally, NOAA Fisheries acknowledges: "*it is the [North Pacific] Council's policy that the charter vessel fisheries should not exceed the GHLs*" *Id.*

NOAA Fisheries also acknowledges that if the GHL is exceeded, that exceedance results in a reallocation of halibut from the setline sector to the charter boat sector. After noting that the commercial setline quota is determined by subtracting the estimates of all noncommercial removals (sport, subsistence, bycatch, and wastage) from the CEY, with the remaining CEY being available for setline harvest, NOAA Fisheries notes that the **“growth in the charter vessel fishery in recent years ... has resulted in a de facto allocation of the halibut resource away from the commercial fishery to the charter vessel fishery.”** *Id.* at 17072-17073. In short, failure to manage to the GHL results in a reallocation in violation of the Halibut Act and of the Council’s policy and intent in establishing the GHL, a GHL approved by the Secretary and codified in Federal regulation.

It is irrelevant that NOAA has twice rejected the GHL enforcing management regulations recommended by the Council. The Secretary has the authority to promulgate regulations implementing the Halibut Act. 16 U.S.C. § 773c(a) and (b). Once the Council has recommended, and the Secretary approved, an allocation, the Secretary can issue implementing regulations. Indeed, the Secretary is obligated to issue regulations implementing established and approved policy objectives such as the GHL allocation. The Halibut Act states the Secretary “shall” issue such regulations as are necessary to carry out the purposes and objectives of the Halibut Act. Once the GHL was promulgated by final regulation, it became one of those purposes and objectives.

In conclusion, the IPHC staff recommendations relative to establishing commercial (setline and charter) limits for 2008 are consistent with Secretarial policy, as codified in federal regulation, the Halibut Act and the Convention. The Council established the GHL as a firm allocation and domestic target for halibut charter management. The Council reaffirmed this commitment by unanimous vote in April, 2006: **“to manage each sector, charter and commercial, to the allocations established by the GHL published in the Federal Register.”** The Council again reaffirmed this commitment in June 2007 by recommending the 2C GHL restrictions recently published by NOAA Fisheries as a Proposed Rule. 72 Fed. Reg. 74257 (December 31, 2007). Indeed, in that Proposed Rule NOAA Fisheries states: “This proposed regulatory change is necessary to reduce the halibut harvest in the charter vessel sector to the GHL for Area 2C. The intended effect of this action is a reduction in the poundage of halibut harvested by the guided sport charter vessel sector in Area 2C to the GHL....” *Id.* While not yet codified into federal law, this Proposed Rule is again a clear statement of Council intent in establishing a domestic management target for the halibut charter sector.

The Secretary’s authority to establish allocations between sectors

As established above, the GHL is clearly established both through Council intent and federal law as the allocation and domestic management target for the charter halibut fishery. The same Federal Register Final Rule that established the GHL likewise established the stair-step mechanism to reduce the GHL (indexed to the 1999-2000 2C Constant Exploitation Yield (CEY)) that has been triggered according to 2008 IPHC staff recommendations. As codified in Federal law, the 2008 2C CEY triggers a 25% reduction in the GHL, lowering the 2C GHL from 1.432 to .93 million pounds. In direct

disregard for applicable law, the charter proposal (Reference (a)) proposes that the IPHC allocate 1.7 million pounds to the charter sector (this is far above the 931,000 pound GHL mandated by Council mandated GHL established in the Federal Register on August 8, 2003) or that the IPHC establish a fishery CEY that includes both the setline and charter allocations and allow the Secretary to determine the appropriate allocation between sectors. The first option is specious, given that the 1.7 million pounds has never been subject to public comment, recommended by the Council nor adopted by the Secretary; the second proposal is illegal, as explained below.

Pursuant to the Halibut Act, the Secretary and NOAA Fisheries lack the unilateral authority to change the domestic allocation established by the GHL. **The charter management proposal (Reference (a)) would violate the Halibut Act because, for reasons stated above, the proposal fails to limit the halibut charter fishery to the GHL codified in federal law, thereby reallocating fish between sectors in violation of the procedures and provisions of the Halibut Act.**

The Halibut Act authorizes the Secretary to issue such regulations as may be necessary to implement the Convention and the Halibut Act. 16 U.S.C. § 773c(a) and (b). This authority is without restriction except in one instance. That instance involves the allocation of the resource among sectors. In that instance, the Secretary may not act unilaterally, but can act only after receiving a recommendation from the appropriate Regional Fishery Management Council. 16 U.S.C. § 773c(c).

Although there is nothing in the Halibut Act precluding a Council from recommending regulations not in conflict with those adopted by the IPHC, the section of the Halibut Act titled "Regional Fishery Management Council Involvement" establishes a special procedure for allocation regulations. Under that procedure, allocation regulations are developed in a two-step process. First, the Council makes a recommendation, and, second, the Secretary approves the recommendation if the Secretary finds that the allocation is fair and equitable, based upon rights and obligations under existing law, reasonably calculated to promote conservation, and carried out so that no entity acquires an excessive share of fishing privileges. 16 U.S.C. § 773c(c). In sum, the Halibut Act establishes a clear procedure for implementing regulations allocating halibut among sectors – that procedure precludes the Secretary from establishing an allocation without first receiving a Council recommendation. Clearly the Council has repeatedly made that recommendation relative to the GHL—in 1997, again in 2000, 2006 and yet again in 2007. For Reference (a) to suggest that the Secretary should now be allowed to unilaterally establish new allocations is to ignore the mandates of existing law.

NOAA Fisheries recognizes that it lacks the authority to implement an allocation without first receiving a recommendation from the Council. The 2007 Proposed Rule ((72 Fed. Reg. at 17073) states:

Additional regulations that are not in conflict with approved IPHC regulations may be recommended by the North Pacific Fishery Management Council (Council) and implemented by the Secretary through NOAA Fisheries to

allocate harvesting privileges among U.S. fishermen in and off of Alaska.

72 Fed. Reg. 17071, 17072 (April 6, 2007). That the Secretary must await the recommendation of the Council was affirmed in a related Court of Appeals decision in which the court held that the Secretary lacked the authority to establish fishery management regulations under the Magnuson-Stevens Fishery Conservation and Management Act unless the Council first recommended those regulations. The court found that, as under the Halibut Act, the structure of the Magnuson-Stevens Act is that the Council recommends and then the Secretary may act. *Fishing Company of Alaska v. Gutierrez*, 2007 WL 4386112 (D.C. Cir.)

NOAA Fisheries and the Secretary simply lack the statutory authority to reallocate halibut between sectors unless and until receiving a recommendation from the Council. Since the Council has not made a recommendation providing for the reallocation recommended in the Reference (a) proposal, this proposal violates the Halibut Act and should be dismissed.

2008 harvest control measures to restrict charter harvest to the .931 million pound GHL
As established above, the GHL, as reduced according to procedures outlined in the 2003 regulation, is the appropriate, and only legally defensible guided sport allocation for 2008. Reference (a) suggests that the IPHC should, "to ensure conservation of the resource," reallocate halibut to the charter sector, allowing that sector a harvest that is 770,000 pounds, or 82%, above the GHL established in federal law. Reference (a) asserts that the IPHC should not "presuppose" that the Secretary will approve the Council's recommendation to implement management measures that control charter harvest to the GHL adopted by the Secretary in 2003. It is far from presumptuous to assume the Secretary will adopt the Council's recommendation when doing so ensures achievement of the allocation and domestic harvest target established by the Secretary in 2003. Curiously Reference (a) also ignored the option available to the IPHC of developing its own halibut charter management measures to ensure conservation. However, given the outcry from charter operators against just this kind of policy recommendation from the IPHC in 2007, one would expect the charter spokesman and his clients to hesitate before raising conservation concerns regarding the adequacy of charter harvest control measures for 2008. The Council's 2C GHL analysis clearly shows that a one fish bag limit for the entire season would result in a harvest reduction of 808,000 pounds of halibut in 2C (Table 4 in analysis). The ADFG estimates of 2C charter halibut harvest in 2006 were revised in September from 2.209 to 1.804 million pounds. A one fish bag limit, as allowed under the proposed rule for 2008, would result in a charter catch of 992,000 pounds of halibut, 61,000 pounds above the GHL of 931,000 pounds which results from the IPHC total CEY of 6,500,000 pounds (Reference (b)).

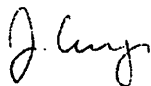
If the IPHC Commissioner's had doubts regarding NOAA Fisheries taking appropriate action to ensure conservation of the halibut resource, the Commissioner's could have recommended IPHC charter harvest control measures to hold the charter harvest to the GHL. Instead, the Commissioner's support the use of the NPFMC process for setting these measures. We remind you that the 2C halibut charter fishery has exceeded its GHL

every year since the GHL was established in 2003. Last year the charter GHL overage caused the 2C constant exploitation yield to be exceeded, creating a conservation concern. For charter operators to now propose that the setline sector bear the entire burden of conservation while their sector is once again allowed to exceed the established domestic target is irresponsible and disheartening at best. Clearly **all sectors** have a stake in resource conservation and all sectors should participate in that conservation. No sector has the right to compromise the resource, the public process that created the GHL, nor the outstanding management reputation of the IPHC.

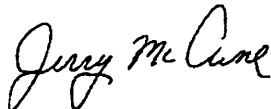
In closing, the Halibut Coalition fully appreciates the IPHC's long-term commitment to conservation of the halibut resource through an open, transparent process that is consistent with both federal and international law. We recognize that further reductions in the 2C harvest **by all commercial sectors, both setline and charter**, are necessary to rebuild halibut stocks. Clearly both sectors should share the burden of, if not support, conservation. According to the 2008 IPHC blue book, subsistence harvest in 2004 was estimated at 628,000 pounds. In 2007 it was estimated at 580,000 pounds -- a 48,000-pound drop or about 8% and this was due primarily to localized depletion. In 2007, the setline sector experienced a 20% reduction in quota and in 2008 will experience a further 27% reduction -- cumulatively 47% in two years. If Reference (a) were adopted, the charter sector would not share in the conservation burden anywhere near the same as the setline and subsistence sectors.

Finally, we fully support the Commissioners' recommendations for 2C GHL management and recognize the consistency of these recommendations with IPHC mandates under both federal and international law. By using the GHL as the "*level of allowable harvest by the charter vessel fishery*" the IPHC is acting appropriately to assist parties to the Halibut Convention in achieving domestic targets, avoiding allocation, and conserving halibut stocks.

Sincerely,



Julianne Curry, Petersburg Vessel Owners Association



Jerry McCune, President, Cordova District Fishermen United



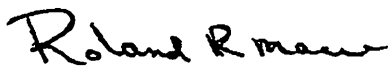
Jeff Stephan, United Fishermen's Marketing Association



Robert Alverson, General Manager, Fishing Vessel Owners Association



Linda Behnken, Alaska Longline Fishermen's Association



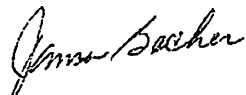
Roland Maw, Upper Cook Inlet Driftnetters Association



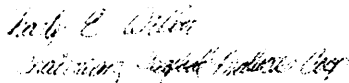
Tim Henkel, President, Deep Sea Fishermen's Union



Rhonda Hubbard, Kruzof Fisheries, LLC



James Becker, United Southeast Alaska Gillnetters



Charles Wilber, Chairman Seafood Producers Cooperative



Kathy Hansen, Executive Director, Southeast Alaska Fishermen's Association

Copy:

Mrs. Sarah Palin, Governor, State of Alaska

Senator Ted Stevens, U.S. Senate

Senator Lisa Murkowski, U.S. Senate

Congressman Don Young, U.S. House of Representatives

Mr. Denby Lloyd, Commissioner, Alaska Department of Fish and Game

Dr. Bruce Leaman, Executive Director, International Pacific Halibut Commission

Mr. Eric Olson, Chair, North Pacific Fishery Management Council
VADM Conrad Lautenbacher USN (Ret), Undersecretary of Commerce for Oceans and
Atmosphere

Mr. Jim Balsiger, Regional Administrator, NMFS Alaska

Mr. John Oliver, Acting Assistant Administrator for Fisheries

 **Alaska Longline**
FISHERMEN'S ASSOCIATION

403 Lincoln Street Suite 237 / Sitka, Alaska 99835 / (907) 747-3400 Office / (907) 747-3462 Fax

January 30, 2008

Ms Sue Salveson
Assistant Regional Administrator
Sustainable Fisheries Division
NMFS Alaska Region
ATTN: Ellen Sebastian
PO Box 21668
Juneau, AK 99802

Re: RIN 0648-AW23 Guided Sport Charter Vessel Fishery for Halibut

Dear Sue,

The Alaska Longline Fishermen's Association represents more than 100 vessel owners and deckhands who longline commercially in Southeast Alaska. Our members represent the full spectrum of the industry, from new vessel owners, to new entrants just buying quota, to fishermen with original issue IFQ, and career deckhands. All of these members have made serious financial and personal investment in the halibut fishery and are committed to the long-term health of the halibut stocks.

On behalf of our membership, I urge the NMFS to implement Option B of the Proposed Rule in time for the 2008 season. The catch limits recommended at the recent IPHC meeting are predicated on the area 2C charter fishery being managed to a GHL of 931,000 lbs. The GHL is published in the Federal Register based on a tier system. Option B was specifically developed and approved by the Council to constrain the charter harvest in the event of a reduced GHL. The 2008 GHL is reduced from the 2007 GHL. Failure by NMFS to implement Option B is a direct obstruction of Council intent and the mandates in the Halibut and Magnuson-Stevens Acts to prevent overfishing.

The IPHC Conference Board (including the 16 US charter members present), the IPHC Processor Advisory Group, and the IPHC Commissioners all **unanimously** voted to accept the Coastwide Model and the science behind this assessment. This assessment has a formula for setting Total CEY. The 2008 total CEY for 2C of 6.5 million pounds is not debatable; neither is the established Federal Register table used to set charter GHL based on the total CEY. Consequently, federal regulations mandate that the 2C charter GHL is 931,000 pounds for the 2008 season. The IPHC model output indicates that the 2C Fishery CEY will be below 9.1 million pounds at least until 2011, and the charter GHL will therefore be below the 2007 GHL level during this time period as well.

The introductory information in the Proposed Rule clearly states that the Halibut Act provides the Council with the authority to recommend regulations to the Secretary as a Proposed Rule. The Proposed Rule further notes that the current options are linked to the overall management of the halibut fisheries by the IPHC and previous actions by the Council and NMFS to establish a guideline harvest limit (GHL). Finally, the Proposed Rule also states that "it is the Council's policy that the charter vessel fisheries should not exceed the GHL's".

The Halibut Act authorizes the Secretary to issue regulations as may be necessary to implement the Convention and the Halibut Act. 16 U.S.C. § 773c(a) and (b). This authority is without restriction except in one instance. That instance involves the allocation of the resource among sectors. In that instance, the Secretary may not act unilaterally, but can act only after receiving a recommendation from the appropriate

Regional Fishery Management Council. 16 U.S.C. § 773c(c). In fully adopting the Council's recommendation for Option B management measures, the Secretary will ensure achievement of the allocation and domestic harvest target established by the Secretary in 2003, and protect the halibut resource. The Option B recommended by the Council in the event of a reduced GHL must be implemented to hold charter industry harvest to their GHL. It is the only option shown in the EA/RIR/IRFA that holds catch to the 931,000 pound GHL (http://www.fakr.noaa.gov/analyses/halibut/earirirfa_1107.pdf). Moreover, the Secretary cannot change the council's recommended plan without first receiving a new recommendation from the Council. That the Secretary must await the recommendation of the Council was affirmed in a related Court of Appeals decision in which the court held that the Secretary lacked the authority to establish fishery management regulations under the Magnuson-Stevens Fishery Conservation and Management Act unless the Council first recommended those regulations. The court found that, as under the Halibut Act, the structure of the Magnuson-Stevens Act is that the Council recommends and then the Secretary may act. *Fishing Company of Alaska v. Gutierrez*, 2007 WL 4386112 (D.C. Cir.).

The Proposed Rule also specifically seeks comments on the impact of the options to "maximize the ability of NMFS to achieve the intent of the Council to limit the catch of the guided sport charter vessel fishery in Area 2C to the GHL" and the effect on "...communities that serve as home ports for this fishery, and on fisheries for other species."

In response ALFA notes that the Council has intended to restrict charter harvest to the GHL since it first approved a GHL in 1998 with frame-worked management measures. As recently as the April 2006 Council meeting, a motion to restrict catch to the current GHL's as published in the Federal Register was unanimously approved by the Council. At the June 2007 Council meeting, Option B was specifically approved to address the possibility of a GHL reduced by the required stair-steps (see attached Council motion). The Council has repeatedly noted that uncertainty associated with the effect of new management measures coupled with the annual growth in the number of charter businesses and clients requires catch controls which reduce catch below the GHL amounts.

Given the time required to develop and implement new regulations, ALFA submits that implementing Option B with a one fish bag limit is the only option in the Proposed Rule consistent with Council intent.

With respect to the impact of the proposed action on communities and other fisheries, ALFA notes that between 2006 and 2007 the 2C commercial longline fishery took a 22% quota reduction, an additional 27% quota reduction this year, and there will be another reduction coming next year. This has devastating financial implications for many of our members and their communities. It is important to note that in addition to the extreme reduction in halibut quota, commercial longliners have also seen a decline in the eastern Gulf sablefish quota as well as the Chatham Strait sablefish quota. Taken together these reductions will cause some fishermen to default on their loan payments or be forced to take a job outside the commercial fishing sector. Many quota loans are secured with liens on houses and vessels; defaulting on these loans will have a cascading negative effect throughout our communities.

Since the GHL was implemented, the 2C charter industry has drastically exceeded their GHL in at least three years. This overharvest has caused localized depletion, affected the health of the 2C halibut stock and caused significant harm to commercial fishermen and their communities, as well as subsistence and non-guided sport halibut users. Continued failure by NMFS to constrain all sectors to their expected allocations during times of low abundance will exacerbate the social tension in coastal communities and increase the negative social and economic impact the charter fishery is having on other fisheries. Effort data from the Alaska Department and Game indicates that charter halibut catch-per-rod-hour has declined more than 50% in the Sitka area over the past few years. This is a clear indication of localized depletion. Local sport fishermen and subsistence users have seen increasing fishing grounds competition from charter vessels and have suffered declining catch as well. According to the IPHC blue book, subsistence

harvest in 2004 was estimated at 628,000 pounds. In 2007 it was estimated at 580,000 pounds, a 48,000 lbs drop of about 8%.

I feel compelled to refute some of the comments submitted to NMFS regarding this Proposed Rule. Most of the comments made by the charter industry do not address the Proposed Rule and whether the options presented would effectively hold charter harvest to the GHL but instead attack the process established for assessing and managing halibut and the established GHL. Some from the charter industry have complained that the "slow-up, fast-down" policy of the IPHC discriminates against the charter sector. This is a specious argument at best. The NMFS set the charter GHL based on a tier system. Embedded within this tier system is the stabilization requested by the charter industry: instead of having a GHL change annually with abundance they preferred to have a more stable approach. Asking to now have both the stable tier and an additional annual slow-up, fast-down adjustment set by IPHC is not credible and is inconsistent with their request that IPHC stay clear of charter management. Also, they suggest that it is appropriate to use a total CEY unrelated to this year's accepted coastwide model. There was unanimous support, including unanimous charter industry support, at the IPHC annual meeting for the coastwide model. The model is what is used to estimate biomass and to establish the total CEY. To now attack what they previously advocated casts doubts on the credibility of the charter industry and on their arguments.

At last year's IPHC meeting the Conference Board established a working group of charter industry and setline representatives. The consensus statement was presented to the Conference Board and included this statement: "**the group supports the Council process to develop management measures for 2C for 2008**". Last year, the charter industry, the Secretary of State, and the Secretary of Commerce all supported the Council process for determining appropriate charter management measures. At this year's meeting the Chairman of the IPHC commented that the "charter issue is now properly back in the Council arena". Still, the scientific integrity of the IPHC is now being questioned by some charter industry representatives because they no longer want to live with the decisions of the Council and NMFS. The charter industry has a clear propensity to advocate for a position (abide by the coastwide model, allow the Council to decide, etc) but then to abandon these positions in favor of something new whenever the process that they previously defended results in a decision they do not like. The only conclusion to be drawn from this consistent pattern of behavior is that the charter industry is not focused on fairness, good science, conservation, or sound policy but instead will find fault with the process, even one they advocated, until they get what they want.

There are 3 final issues ALFA would like to address in the Proposed Rule are 1) a misleading statement about the nature of the GHL; 2) the need to keep in place the requirement to bring halibut carcasses to shore for measurement; and 3) clarification on the definition of a charter vessel.

With respect to the nature of the GHL, the Final Rule implementing the GHL states that "*The GHLs represent a pre-season specification of acceptable annual halibut harvests in the charter vessel fisheries in Areas 2C and 3A.*" (August 8, 2003; 68 FR 47256). Yet a portion of the current Proposed Rule describes the GHL as "*benchmarks for monitoring the charter vessel fishery relative to the commercial fishery and other sources of fishing mortality.*" (P. 72458). This is an erroneous and misleading statement, which directly conflicts with the definition in the Final Rule implementing the GHL, and the repeated actions by the Council since 1995 recommending catch control measures to constrain the charter harvest to the GHL. This misleading statement should be removed from the record in the Final Rule.

With respect to the requirement for charter operators to bring halibut carcasses to shore for measurement, ALFA notes that this requirement, implemented in 2007, has greatly improved data quality. Prior to the requirement, ADF&G Sportfish noted that in some ports such as Sitka, 90% of the halibut retained by the charter fleet were disqualified from being measured in the Creel Survey because they were filleted at sea. Accurate Creel Survey lengths are fundamental to estimating the catch of the charter fleet. During this

time of low resource abundance and regulatory change, it is imperative that provisions for accurately documenting halibut removals remain in place.

Finally, with respect to the definition of a charter vessels, under the "No Harvest by Skipper and Crew" section of the Proposed Rule the text notes that *"Although a sport fishing guide on a charter vessel in Area 2C is likely to be the same person as the "skipper," captain, or operator of the vessel, in some cases the skipper and guide could be different persons. Hence, this Proposed Rule makes clear the Council's intent of applying this restriction to all persons-guide, skipper or operator, and crew-involved with the delivery of onboard services to the charter vessel angler."* Yet in the next paragraph where the definition of charter vessel is explained, the text notes that, *an existing definition of "charter vessel" (at § 300.61) describes such a vessel as one "used for hire in sport fishing for halibut, but not including a vessel without a hired operator."* ALFA agrees with the assertion under skipper and crew prohibition that the intent of the Council's action is to apply catch controls to the guided sport halibut fishery whether the guide is the operator or not. Our concern is that the definition of charter vessel as written creates a loop hole where a hired vessel may have a professional guide onboard who is not the "operator" of the vessel. We recommend the definition of charter vessel be changed to close this loop hole.

Thank you for consideration of our comments. We look forward to approval of all the management measures in Option B.

Sincerely,



Linda Behnken
Executive Director

Attachment Council Motion

cc Governor Palin
Commissioner Lloyd, ADF&G
Senator Stevens
Senator Murkowski
Congressman Young
Director Leaman, IPHC
Chairman Eric Olsen, NPFMC

**COUNCIL MOTION – JUNE 2007
Area 2C Guideline Harvest Level Measures for 2008**

Preferred Alternative.

Implement the following additional measures to restrict charter halibut harvest to the current Area 2C GHL:

- i. Two-fish bag limit, with one of the two fish less than or equal to 32 inches;
- ii. No harvest by skipper and crew when clients are on board the charter vessel;
- iii. Line limits of six per vessel, not to exceed the number of paying clients on board;
and
- iv. Annual limit of four fish per angler.

OR

Implement the following additional measures to restrict charter halibut harvest if the GHL is reduced in 2008:

- i. One-fish bag limit in May, June, July, August, September or for the entire season;
- ii. No harvest by skipper and crew when clients are on board the charter vessel; and
- iii. Line limits of six per vessel, not to exceed the number of paying clients on board.

To NPFMC

Mike Bethers
PO Box 210003
Auke Bay, AK 99821
Jan 21, 2008

Carlos Gutierrez.
U.S. Secretary of Commerce
Mail Stop 61
US Dept. Commerce
14th & Constitution Ave
Washington, D.C. 20230

RECEIVED

JAN 2 2008

N.P.F.M.C.

Subj: Proposed regulations
for 2008 guided sport fishing
in southeast Alaska (Area 2-c
- comments for public record -

Dear Secretary

THE PROBLEM:

Once again, commercial halibut fishermen working through the International Pacific Halibut Commission and the North Pacific Fishery Management Council have proposed a very restrictive fishing regulation on a small competing user group of public stakeholders. This 2008 proposal is engineered solely to reduce harvest by guided sport fishermen

in Southeast Alaska (Area 2-C) and leave a few more halibut in the water for commercial harvest.

I am writing in opposition to the proposed one fish per day bag limit, four fish annual limit and record keeping required by individual sport anglers.

The proposed regulation will—

1. Drive repeat and potential new clients away from charter businesses in Southeast Alaska to other parts of the state or to Canada where anglers feel they have a REASONABLE opportunity to access a public resource. These other areas not affected by the 2008 proposal provide at least twice the angler opportunity that would be provided by the proposal in Southeast Alaska.
2. Charter fishing businesses in Southeast Alaska will suffer and some will shut down. These local businesses spend 80%/90% of their operating costs in their home town, as do their visiting fishing clients.

3. Local and regional economies associated with tourism, sport fishing and business support will suffer while 900-950 commercial halibut fishermen each put a few extra bucks in their pocket.

RECOMMENDED ACTION:

* ADOPT NO LESS THAN A TWO HALIBUT PER DAY BAG LIMIT, ~~SIX~~ SIX FISH ANNUAL LIMIT AND NO RECORD KEEPING REQUIRE OF INDIVIDUAL SPORT ANGLERS *

DISCUSSION:

This 2008 proposal was based on erroneous harvest data that indicated the area 2-C, 2001 guided sport catch was 40+% above the C₀TL, however when data were confirmed, the catch was over the C₀TL by only 15%. The commercially dominated regulatory process did not back off any degree when the actual catch was ^{shown} ~~reported~~ to be much lower than projected. Instead, they used it as an opportunity to grab a small percentage of public resource for their use.

The 2007 requirement that one of two fish daily limit must be under 32" has had major impact on the area 2-C guided sport harvest. This 2007 regulation, coupled with the six fish annual limit will lower the 2008 catch to below the CETHL. Any further restriction in recreational harvest opportunity is not warranted until hard, accurate catch data demonstrates a problem (Conservation).

The one-fish-per-day proposal for 2008 would have a much greater impact on long term established multiday lodges and charters that it would have on neighboring one day and half day trip providers. Inconsistent sport ^{regulation} proposals for a widespread, abundant resource such as halibut are not warranted, especially when the resource is at current abundance levels.

As for the record keeping proposed in the 2008 proposal - The license numbers of individual sport anglers are required in logbooks at present. Even this is excessive. Keep in mind that we are talking about a very small portion of the total halibut harvest. The guided sport catch, even with 90,000 clients, is only a small portion of the number of halibut killed as bycatch and waste in some commercial fisheries.

I just learned that any regulation adopted for 2008 fishery will remain in effect for several years. Until two days ago, I was lead to believe that any regulations for 2008 would be only for 2008. Now I'm hearing differently. All proposals which are generated from the regulatory agencies only ratchet down the sport opportunity and have no provision to relax restrictions - even, if the halibut were to triple in abundance.

The regulatory process must communicate clearly and honestly with the public and communications CANNOT BE AMBIGUOUS.

In closing, sport harvest opportunity must be consistent statewide, given the abundance level of the halibut resource. You could limit the number of charter boats (statewide) or limit all boats (statewide) to one trip per day, but to establish differential regulations on harvest in one section of the state will just decimate small business opportunity and associated economies in the restricted area. Don't forget, all these restrictive sportfishing proposals are allocative and not based on any conservation issue. This is demonstrated by the 229 million pounds over the recommended level that commercial users voted to re-instate into the 2008 harvest.

Respect fully.

Mike Bathers

cc To!

IDHC

ADFG-6

NMFS

AK GOVERNOR

R.F.A.

Gulf of Alaska Catch Report

Through: 26-JAN-08

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting



Western, Central Pollock

Sea- sons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Wk Catch
X	Pollock, 610 Shumagin	75	17,602	17,527	0%	75
X	Pollock, 620 Chirikof	6	19,181	19,175	0%	5
X	Pollock, 630 Kodiak	445	13,640	13,195	3%	402

Western Gulf

Sea- sons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Wk Catch
	Arrowtooth Flounder	24	8,000	7,976	0%	24
	Deep Water Flatfish	0	430	430	0%	0
	Shallow Water Flatfish	1	4,500	4,499	0%	1
	Flathead Sole	3	2,000	1,997	0%	3
	Rex Sole	8	1,122	1,114	1%	8
	Pacific Ocean Perch	0	4,291	4,291	0%	0
	Rougheye Rockfish	0	137	137	0%	0
	Shortraker Rockfish	0	153	153	0%	0
	Thornyhead Rockfish	1	513	512	0%	1
	Pelagic Shelf Rockfish	0	1,752	1,752	0%	0
	Northern Rockfish	0	1,383	1,383	0%	0
	Other Rockfish	0	577	577	0%	0
X	Pacific Cod, Inshore	1,510	17,504	15,994	9%	824
X	Pacific Cod, Offshore	35	1,945	1,910	2%	35
	Sablefish (Hook-and-Line)	0	0	0	0%	0
	Sablefish (Trawl)	0	492	492	0%	0
	Big Skate	3	695	692	0%	1
	Longnose Skate	0	65	65	0%	0

Gulf of Alaska Catch Report

Through: 26-JAN-08

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting



Central Gulf

Sea- sons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Wk Catch
	Arrowtooth Flounder	188	30,000	29,812	1%	183
	Deep Water Flatfish	3	4,296	4,293	0%	3
	Shallow Water Flatfish	116	13,000	12,884	1%	115
	Flathead Sole	42	5,000	4,958	1%	41
	Rex Sole	59	5,327	5,268	1%	58
	Pacific Ocean Perch	22	7,694	7,672	0%	22
	Rougheye Rockfish	0	614	614	0%	0
	Shortraker Rockfish	0	353	353	0%	0
	Pelagic Shelf Rockfish	5	3,973	3,968	0%	5
	Northern Rockfish	15	3,365	3,350	0%	15
	Thornyhead Rockfish	0	989	989	0%	0
	Other Rockfish	0	386	386	0%	0
X	Pacific Cod, Inshore	5,407	25,583	20,176	21%	2,384
X	Pacific Cod, Offshore	0	2,843	2,843	0%	0
	Sablefish (Hook-and-Line)	0	0	0	0%	0
	Sablefish (Trawl)	0	1,232	1,232	0%	0
	Big Skate	112	2,250	2,138	5%	36
	Longnose Skate	33	1,969	1,936	2%	13

Eastern Gulf

Sea- sons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Wk Catch
	Rougheye Rockfish	0	242	242	0%	0
	Shortraker Rockfish	0	337	337	0%	0
	Thornyhead Rockfish	0	707	707	0%	0
	Pacific Cod, Inshore	0	2,155	2,155	0%	0
	Pacific Cod, Offshore	0	239	239	0%	0
	Big Skate	0	599	599	0%	0
	Longnose Skate	0	861	861	0%	0

Gulf of Alaska Catch Report

Through: 26-JAN-08

National Marine Fisheries Service Alaska Region, Sustainable Fisheries Catch Accounting



West Yakutat

Sea- sons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Wk Catch
	Arrowtooth Flounder	0	2,500	2,500	0%	0
	Deep Water Flatfish	0	2,763	2,763	0%	0
	Shallow Water Flatfish	0	628	628	0%	0
	Flathead Sole	0	2,198	2,198	0%	0
	Rex Sole	0	1,014	1,014	0%	0
	Pacific Ocean Perch	0	1,153	1,153	0%	0
	Pelagic Shelf Rockfish	0	366	366	0%	0
	Other Rockfish	0	319	319	0%	0
	Pollock	0	1,517	1,517	0%	0
	Sablefish (Hook-and-Line)	0	0	0	0%	0
	Sablefish (Trawl)	0	281	281	0%	0

Southeast

Sea- sons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Wk Catch
	Arrowtooth Flounder	0	2,500	2,500	0%	0
	Deep Water Flatfish	0	1,494	1,494	0%	0
	Shallow Water Flatfish	0	1,844	1,844	0%	0
	Flathead Sole	0	60	60	0%	0
	Rex Sole	0	1,437	1,437	0%	0
	Pacific Ocean Perch	0	1,659	1,659	0%	0
	Pelagic Shelf Rockfish	0	531	531	0%	0
	Other Rockfish	0	200	200	0%	0
	Pollock	0	6,157	6,157	0%	0
	Demersal Shelf Rockfish	0	410	410	0%	0
	Sablefish (Hook-and-Line)	0	0	0	0%	0

Entire Gulf

Sea- sons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Wk Catch
	Atka Mackerel	0	1,500	1,500	0%	0
	Other Skates	26	1,617	1,591	2%	11
	Other Species	70	4,500	4,430	2%	30
Total:		8,212	246,644	238,432	3%	4,296

Deep water flatfish: Dover sole, Greenland turbot, and deepsea sole.

Shallow water flatfish: flatfish not including deep water flatfish, flathead sole, rex sole, or arrowtooth flounder.

Gulf of Alaska Catch Report

Through: 26-JAN-08

**National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting**



Other rockfish in the Western and Central Regulatory Areas and in the West Yakutat District: slope rockfish and demersal shelf rockfish.

Other rockfish in the Southeast Outside District: slope rockfish.

Slope rockfish: aurora, blackgill, bocaccio, chilipepper, darkblotch, greenstriped, harlequin, pygmy, redbanded, redstripe, sharpchin, shortbelly, silvergrey, splitnose, stripetail, vermilion, and yellowmouth.

In the Eastern GOA only, "slope rockfish" also includes northern rockfish.

Demersal shelf rockfish: canary, china, copper, quillback, rosethorn, tiger, and yelloweye.

"Pelagic shelf rockfish" means *Sebastes ciliatus* (dark), *S. variabilis* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).

Other species: sculpins, sharks, squid, and octopus.

For changes to the harvest specifications refer to www.fakr.noaa.gov/2007/hschanges.htm

Bering Sea Aleutian Islands Catch Report
(includes CDQ)
Through: 26-JAN-08

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting



Bering Sea

Sea- sons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Wk Catch
	Other Rockfish (includes CDQ)	2	383	381	1%	1
	Pacific Ocean Perch (includes CDQ)	0	3,468	3,468	0%	0
	Sablefish (Hook-and-Line and Pot)	0	0	0	0%	0
	Sablefish CDQ (Hook-and-Line and Pot)	0	0	0	0%	0
	Sablefish (Trawl)	0	1,263	1,263	0%	0
	Sablefish CDQ (Trawl)	0	111	111	0%	0
	Greenland Turbot	2	1,462	1,460	0%	0
	Greenland Turbot CDQ	0	184	184	0%	0
X	Pollock, AFA Inshore	25,267	434,250	408,983	6%	25,267
X	Pollock, AFA Catcher Processor	17,038	347,400	330,362	5%	17,038
X	Pollock, AFA Mothership	2,814	86,850	84,036	3%	2,814
X	Pollock CDQ	620	100,000	99,380	1%	620
	Pollock, Incidental Catch, non-Bogoslof (includes CDQ)	5,366	31,500	26,134	17%	4,495
	Pollock, Incidental Catch, Bogoslof (includes CDQ)	0	10	10	0%	0

Bering Sea Aleutian Islands Catch Report
(includes CDQ)
Through: 26-JAN-08

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting



Aleutian Islands

Sea- sons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Wk Catch
	Other Rockfish (includes CDQ)	19	497	478	4%	19
	Pacific Ocean Perch, Eastern	29	4,376	4,347	1%	29
	Pacific Ocean Perch, Eastern CDQ	4	524	520	1%	4
	Pacific Ocean Perch, Central	0	4,465	4,465	0%	0
	Pacific Ocean Perch, Central CDQ	0	535	535	0%	0
	Pacific Ocean Perch, Western	0	6,805	6,805	0%	0
	Pacific Ocean Perch, Western CDQ	0	815	815	0%	0
	Atka Mackerel, Eastern ICA	0	1,400	1,400	0%	0
	Atka Mackerel, Eastern (Jig)	0	143	143	0%	0
X	Atka Mackerel, Eastern (Trawl)	3,242	14,174	10,932	23%	3,242
	Atka Mackerel, Eastern CDQ	371	1,883	1,512	20%	371
X	Atka Mackerel, Central (Trawl)	0	19,636	19,636	0%	0
	Atka Mackerel, Central ICA	0	10	10	0%	0
	Atka Mackerel, Central CDQ	0	2,354	2,354	0%	0
X	Atka Mackerel, Western (Trawl)	0	13,653	13,653	0%	0
	Atka Mackerel, Western ICA	0	10	10	0%	0
	Atka Mackerel, Western CDQ	0	1,637	1,637	0%	0
	Sablefish (Hook-and-Line and Pot)	0	0	0	0%	0
	Sablefish CDQ (Hook-and-Line and Pot)	0	0	0	0%	0
	Sablefish (Trawl)	0	596	596	0%	0
	Sablefish CDQ (Trawl)	0	52	52	0%	0
	Greenland Turbot (includes CDQ)	0	1,462	1,462	0%	0
X	Pollock	0	15,500	15,500	0%	0
X	Pollock CDQ	0	1,900	1,900	0%	0
X	Pollock, Incidental Catch (includes CDQ)	1	1,600	1,599	0%	1

Bering Sea Aleutian Islands Catch Report
(includes CDQ)
Through: 26-JAN-08

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting



Bering Sea Aleutian Islands

Sea- sons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Wk Catch
	Alaska Plaice (includes CDQ)	74	51,000	50,926	0%	74
	Arrowtooth Flounder	211	25,500	25,289	1%	138
	Arrowtooth Flounder CDQ	1	3,210	3,209	0%	1
	Flathead Sole	536	40,185	39,649	1%	494
	Flathead Sole CDQ	3	4,815	4,812	0%	3
	Northern Rockfish (includes CDQ)	23	7,539	7,516	0%	21
	Other Flatfish (includes CDQ)	97	18,190	18,093	1%	95
	Other Species (includes CDQ)	1,486	49,313	47,827	3%	697
X	Pacific Cod, Catcher Processor (AFA)	421	2,610	2,189	16%	421
X	Pacific Cod, Catcher Processor (Amendment 80)	82	15,206	15,124	1%	82
X	Pacific Cod, Catcher Vessel (Trawl)	1,768	25,078	23,310	7%	1,768
X	Pacific Cod, Catcher Processor (Hook-and-Line)	23,746	54,861	31,115	43%	5,495
X	Pacific Cod, Catcher Vessel (Hook-and-Line >= 60 ft)	115	225	110	51%	20
X	Pacific Cod, Catcher Processor (Pot)	807	1,609	802	50%	32
X	Pacific Cod, Catcher Vessel (Pot >= 60 ft)	6,358	9,463	3,105	67%	0
	Pacific Cod (Jig)	0	1,589	1,589	0%	0
	Pacific Cod (Hook-and-Line and Pot < 60 ft)	147	2,253	2,106	7%	114
	Pacific Cod, Incidental Catch (Hook-and-Line and Pot)	0	500	500	0%	0
X	Pacific Cod CDQ	12	13,596	13,584	0%	12
	Rock Sole	2,927	66,975	64,048	4%	2,926
	Rock Sole CDQ	1	8,025	8,024	0%	1
	Rougeye Rockfish (includes CDQ)	0	187	187	0%	0
	Shortraker Rockfish (includes CDQ)	2	391	389	1%	1
	Squid (includes CDQ)	2	1,675	1,673	0%	2
	Yellowfin Sole	1,592	133,950	132,358	1%	1,524
	Yellowfin Sole CDQ	0	16,050	16,050	0%	0
Total:		95,188	1,654,903	1,559,715	6%	67,824

Other flatfish: all flatfish species, except for Pacific halibut, flathead sole, Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder, and Alaska plaice.

Other rockfish: all Sebastes and Sebastolobus species except for Pacific ocean perch, northern, shortraker, and rougeye rockfish.

Other species: sculpins, sharks, skates, and octopus.

For changes to the harvest specifications refer to www.fakr.noaa.gov/2007/hschanges.htm

Observer Data and Catch Reports

During the last week of 2007 the observer program implemented new sampling procedures for observers on vessels. The Region is working closely with the Observer Program as adjustments are made to the databases that compile sampling data and develop full catch estimates in the Catch Accounting System. More work is required on the trawl data since the observers only started submitting trawl data after January 20. The Region completed most of the programming to update the Catch Accounting System as a result of new allocations from Amendments 80 and 85. Catch assignment associated with the three catcher vessel allocations for hook-and-line and pot gear still require some work. The Alaska Region continues to work on new reports for the Amendment 80 allocations.

Bering Sea and Aleutian Islands

Bering Sea Pollock

Catcher/processors

Fifteen catcher/processors (c/ps) are targeting Pollock as of January 26. In 2008, for the first week they caught a total of 21,471 mt or 3,578 mt/day. This is lower than the high catch rate in 2007 when 37,819 mt was taken in the first week. However the current rates tracks well with the 2007 A season average rate of 3,211 mt/day.

Inshore processors

Currently, 55 catcher vessels are targeting pollock (49 for same time period in 2007). In 2008, for the first week they caught 24,826 mt compared to 28,060 the first week of 2007. The 2007 average for the A season was 3,900 mt/day.

Motherships

Two motherships are currently active. In 2007, all three participated and averaged 1,035 mt/day.

Flatfish

Fourteen c/ps are targeting rock sole and yellowfin sole. As of January 26, the catch for the trawl sectors is 2,865 mt for rock sole and 1,515 mt for yellowfin sole.

Atka mackerel

The A season BSAI trawl limited access fishery for Atka mackerel in Area 541/Bering Sea subarea closed January 20. According to regulations the first HLA directed fishery for the Amendment 80 cooperative and the Amendment 80 limited access sector in 542 and 543 opened January 22, 2008.

Four c/ps registered for the 2008 A season harvest limitation area (HLA) fisheries in 542 and 543 (4 in 2007). One is in the Amendment 80 cooperative and three are in the Amendment 80 limited access sector. The last HLA fishery closes February 21.

Pacific cod

The hook-and-line, pot and jig fisheries started January 1. Trawl fisheries began January 20.

Hook-and-line C/Ps

In 2008, 36 hook-and-line c/ps have checked into the Pacific cod fishery (36 in 2007). Catch for 2007 is 23,746 mt through January 26. The 2007 A season TAC under the final specifications is 37,660 mt. Depending on the catch rates for the weeks ending February 2 and 9, the A season is expected to close the around February 8 to 11. In 2007, the catch was 24,100 mt through January 27 and the A season closed February 12.

Pot

The 2008 fishery for pot catcher vessels \geq 60 ft closed January 18 with 43 vessels taking about 6,300 mt. In 2007, the fishery closed January 26 with 59 vessels taking about 8,043 mt.

The 2008 fishery for c/ps closed January 20 with 5 vessels taking the 1,160 mt A season allocation under the final harvest specifications. In 2007 the fishery closed February 20 with 3 c/ps taking 1,690 mt. Three of the c/ps fished in the State of Alaska parallel fishery inside 3 miles without federal permits.

Pot and hook-and-line gear

Eight catcher vessels less than 60 ft LOA using pot or hook-and-line gear are fishing the 3,033 mt allocations.

Trawl

Twenty-six trawl catcher vessels delivering shore side are targeting Pacific cod (30 during same time period in 2007). The total Pacific cod catch through January 26 is 1,870 mt (including pelagic gear and mothership effort). In 2007, the catch was 1,774 mt through January 27 and the A season closed March 8.

Projections for 2008 trawl C/P fisheries are difficult since the trawl C/P fleet has now been split into three categories. NMFS prohibited directed fishing for the Amendment 80 limited access fishery effective January 23, 2008. The Amendment 80 cooperative is controlling their catch within the coop.

Gulf of Alaska

Western GOA Pacific cod

As of January 26, inshore deliveries total 1,500 mt. The 2008 A season TAC under the final specifications for the inshore component is 10,502 mt. NMFS set an incidental catch allowance (ICA) of 100 mt to support other anticipated groundfish fisheries and the remaining 10,402 mt as a directed fishing allowance (DFA). The catch by gear is: pot 89%, hook-and-line gear 2%, and trawl gear 9%. For the 2007 A season pot gear took 37%, trawl gear 41%, and hook-and-line gear 37%. In 2007, the A season fishery for inshore Pacific cod closed March 8, taking about 10,100 mt. Eleven non-American Fisheries Act (AFA) crab vessel have taken about 526 mt of the 947

mt A season sideboard limit. In 2007 13 vessels participated and the fishery closed February 16, 2007. No effort has shown up for the offshore fishery.

Central GOA Pacific cod

As of January 26, inshore deliveries total 5,400 mt. The 2008 A season TAC under the final specifications for the inshore component is 15,350 mt, with an ICA of 1,500 mt and a DFA of 13,850 mt. The catch by gear is: pot 37%, hook-and-line 36%, and trawl 27%. For the 2007 A season, pot gear took 40%, trawl gear 31%, and hook-and-line gear 29%. In 2007, the A season fishery closed February 27, taking about 13,500 mt. At the current rates the projected closure date is around February 16, 2008. In 2008 six non-AFA crab sideboarded vessels participated catching the 588 mt A season limit and the fishery closed February 4, 2008. In 2007 eight vessel participated and the fishery closed January 24, 2007. No effort has shown up for the offshore component.

Pollock

The pollock fisheries in areas 610, 620, and 630 opened January 20. The fishery in 610 closed after two days taking about 100 mt of the final A season TAC of 3,322 mt. NMFS will reopen the fishery when the participants are done with Pacific cod. The fishery in 630 closed after two days taking about 43 mt of the final A season TAC of 3,069 mt. The fishery reopened January 25 for 48 hours taking about 367 mt. Usually directed fishing in 620 starts around late February or early March. In 2007, area 620 closed March 27.

Rockfish pilot program (RPP)

Each year participants in the Rockfish Pilot Program must apply, by March 1st, to participate in one of four fisheries:

- Eligible Rockfish Harvesters (those allocated Quota Share in 2007):
 - Cooperative (catcher processors and catcher vessel)
 - Limited Access (catcher processors and catcher vessel)
 - Opt Out (catcher processors only)

For non-eligible rockfish harvesters:

Those persons who did not receive rockfish quota share may apply to participate in the Entry Level Rockfish fishery.

All applications are on our website at:

<http://www.alaskafisheries.noaa.gov/sustainablefisheries/goarat/#apps>.

NMFS will post the allocations as soon as possible after March 1 at <http://www.fakr.noaa.gov/>.

Status of FMP Amendments
February 1, 2008

FMP Amendment Status: <u>Actions Since December</u> <u>2007 Council Meeting</u>	Date of Council Action	Start Regional Review	Transmittal Date of Action to NMFS HQ for Review	Proposed FMP Amendment Notice of Availability Published	Proposed Rule Published in Federal Register	Final Rule Published in Federal Register
Amendment 24 (KTC) – Overfishing Definitions	December 2007					
Amendment 25 (KTC) - North catcher processor owner quota share <u>Approved:</u> April 12, 2007	MSA Re-auth. Act January 2007	NOA: 1/22/07 PR: 12/4/07	NOA – January 29, 2007	February 5, 2007 72 FR 5255 Comment period ended April 6, 2007		
Amendment 26 (KTC) – C Share Exemption	December 2007					
Amendment 27 (KTC) – Post-Delivery Transfers	December 2007					
Amendment 28 (KTC) – Custom Processing	December 2007					
Amendments 62/62: Single Geographic Location and AFA housekeeping	Oct 2002					
Amendment 72 (GOA) Add IR/IU trigger for SWFF	April 2003	NOA: 1/28/08				
Amendment 73/77 Removing Black Rockfish from the BSAI and GOA FMPs	April 2007					
Amendment 78 (GOA) – Rockfish Post-Delivery Transfers	December 2007					
Amendment 88/23/12/9 Aleutian Islands Habitat Conservation Area Revision Decision date: 2/13/08	April 2007	PR: 11/6/07 FR: 1/16/08	FR – January 28, 2008	November 13, 2007 72 FR 63871 Comment period ended January 14, 2008	November 21, 2007 72 FR 65539 Comment period ended January 7, 2008	
Amendment 89 (BSAI) Bering Sea Habitat Conservation	June 2007	PR: 12/5/08				

Status of Regulatory Amendments
February 1, 2008

Regulatory Amendment Status: <u>Actions Since December 2007</u>	Date of Council Action	Start Regional Review of Rule	Transmittal Date of Rule to NMFS Headquarters	Proposed Rule in <i>Federal Register</i>	Final Rule Published in <i>Federal Register</i>
Groundfish Regulatory Amendments					
Interagency Electronic Reporting System	NMFS	PR: December 27, 2006 FR: 11/6/07	PR: May 4, 2007	June 29, 2007 72 FR 35748 Comment period ended July 30, 2007	
2008 & 2009 BSAI groundfish harvest specifications	NMFS	PR: 10/30/07 FR: 1/8/08	PR: 11/19/07	December 6, 2007 72 FR 68833 Comment period ended January 7, 2008	
2008 & 2009 GOA groundfish harvest specifications	NMFS	PR: 10/24/07 FR: 1/8/08	PR: 11/19/07	December 6, 2007 72 FR 68810 Comment period ended January 7, 2008	
Revision to 2008 harvest specs to integrate Amds 80/85	NMFS	FR: 10/22/07	FR: 12/3/07		72 FR 71802 December 19, 2007
Revise MRA accounting period for non-AFA C/Ps	December 2006				
Repeal of Vessel Incentive Program	December 2006	PR: 9/4/07 FR: 1/16/08	PR: 11/5/07	November 30, 2007 72 FR 67692 Comment period ended December 31, 2007	
Remove check in/out for processors w/VMS	NMFS				
Revision to GOA pollock trip limit	December 2007				
Revisions to MRAs in GOA arrowtooth fishery	October 2007				

Status of Regulatory Amendments
February 1, 2008

Regulatory Amendment Status: <u>Actions Since December 2007</u>	Date of Council Action	Start Regional Review of Rule	Transmittal Date of Rule to NMFS Headquarters	Proposed Rule in <i>Federal Register</i>	Final Rule Published in <i>Federal Register</i>
Revise seabird avoidance measures	February 2007	PR: 7/2/07 FR: 11/5/07	PR: 8/27/07 FR: 11/26/07	September 19, 2007 72 FR 53516 Comment period ended October 19, 2007	December 18, 2007 72 FR 71601
CDQ transfers	NMFS – MSA requirement				
CDQ regulation of harvest	MSA requirement June 2007				
Halibut Regulations					
Subsistence Halibut III	December 2004				
Halibut/Sablefish IFQ: Allow processing of non-IFQ species on a vessel with B, C, or D shares onboard	June 2006	PR: 9/25/07 FR: 1/14/08	PR: 10/22/07 FR: 1/29/08	November 14, 2007 72 FR 64034 Comment period ended December 14, 2007	
Halibut/Sablefish IFQ: Allow (1) pot longline gear in BS in June for sablefish; (2) temp transfer of IFQs held by mobilized militia	June 2006	PR: 1/23/08			
Charter vessel moratorium	April 2007				
Area 2C charter vessel GHM management measures	June 2007	PR: 11/29/07	PR: 12/12/07	December 31, 2007 72 FR 74257 <u>Comment period ends</u> <u>January 30, 2008</u>	

Status of Environmental Impact Analysis Scoping
February 1, 2008

Environmental Impact Analysis: <u>Actions Since December 2007</u>	Date of Council Action	Start Regional Review of NOI	Transmittal Date of draft NOI to NMFS Headquarters	Notice Published in <i>Federal Register</i>	End of Scoping Period
SSL Protection Measures SEIS Notice of intent for scoping EIS	December 2007		December 18, 2007	December 26, 2007 72 FR 72992	April 21, 2008
Salmon Bycatch Management Measures Notice of intent for scoping for EIS	December 2007		December 18, 2007	December 26, 2007 72 FR 72994	February 15, 2008