

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver *Chris*  
Executive Director

DATE: December 4, 2003

SUBJECT: Gulf of Alaska Groundfish Rationalization

ESTIMATED TIME 20 HOURS all C-1 items
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**ACTION REQUIRED**

- (a) Receive report from Joint Protocol Committee.
- (b) Receive report from Groundfish Development Authority (Council only).
- (c) Review and refine alternatives and options.

**BACKGROUND**

State issues

The Joint Protocol Committee will convene on December 8 to review the State's progress in defining analytical alternatives for managing State water groundfish in the Gulf of Alaska. The Alaska Board of Fisheries has appointed a steering committee to identify recommended alternatives for allocation and management of the GOA groundfish fisheries in state waters, in concert with the Council's intent to rationalize the GOA groundfish fisheries. The Board's committee convened on October 29 (Item C-1(a)) and December 3-4, 2003. Minutes of the December meetings will be provided when available.

The Board and Council will meet together during the Council's February 2004 meeting. Later in February, the Board will convene and take a final report from its committee. The Board will review the committee recommendations and report its timeframe for promulgating state regulations during the April 2004 Council meeting. The EIS can be finalized once these options for managing state groundfish fisheries are finalized by the Council.

Groundfish Development Authority

In October 2003, the Council requested a presentation on the Canadian Groundfish Development Authority (GDA) (Item C-1(b)(1)). Mr. Bob Humphreys, Executive Director of the GDA, will provide a summary of a five year review of the program (Item C-1(b)(2)). The GDA was established as a result of an agreement reached between the Department of Fisheries and Oceans, the B.C. Ministry of Agriculture, Fisheries and Food, the Coastal Community Network, and fishing industry participants (i.e.; processors and vessel owners). Its purpose is to ensure fair crew treatment, to aid in regional development, to promote the attainment of stable market and employment conditions and to encourage sustainable fishing practices. Under the Groundfish Trawl Long-Term Management Plan introduced in 1997, 80% of the groundfish trawl, Gulf hake

and offshore hake total allowable catches have been allocated as individual vessel quotas and 20% have been set aside for allocation by the Minister of Fisheries, subject to advice by the GDA. This information may be useful to the Council in its deliberations of possible revisions to community protection options during its review of elements and options for analysis in the environmental impact statement (EIS).

#### Alternatives, elements and options

In October 2003, the Council considered, but did not act on, proposed changes to the June 2003 suite of alternatives, elements, and options to rationalize the Gulf of Alaska groundfish fisheries. Instead, the Council requested that staff prepare a discussion paper to assist it in its deliberations of the proposed October changes. Once a final suite is defined by the Council, staff can begin preparation of the EIS and regulatory impact analysis. The staff discussion paper was distributed on November 26 and is also attached as (Item C-1(c)). Proposed changes address:

- 1) revisions to the June 2003 alternatives for fixed gear catcher vessels, trawl catcher vessels, and catcher/processors;
- 2) a Council motion that addresses 29 staff topics identified in the October 2003 draft discussion paper;
- 3) options for halibut and sablefish IFQ participants and Southeast Outside fisheries;
- 4) revisions to community protection options;
- 5) a motion on salmon and crab prohibited species catch limits for GOA groundfish fisheries.

**ALASKA BOARD OF FISHERIES**  
**Gulf of Alaska Groundfish Rationalization Committee**  
**October 29, 2003**

**ATTENDEES**

**Board members:**

Ed Dersham  
Mel Morris  
Art Nelson

**ADF&G:**

Diana Cote  
Sue Aspelund  
Earl Krygier  
Herman Savikko  
Denby Lloyd  
Rachel Baker

**CFEC:** Kurt Schelle

**Dept. of Law:** Jon Goltz and Lance Nelson

**NMFS:** Glenn Merrill

**NPFMC:** Jane DiCosimo

**Public panel members:**

Tim Blott  
Julie Bonney  
Glenn Carroll  
Joe Childers  
Sam Cotten  
Duncan Fields  
Melvin Larsen  
Chuck McCallum  
Gerry Merrigan  
David Polushkin  
Jeff Stephan  
Joe Sullivan

**GOAL OF MEETING:** Identify ideas and approaches for state waters groundfish fisheries in the Gulf of Alaska; the ideas will be sorted out at a later time. For the next meeting, steering committee members should be ready with specific comments on these, and also prepared to answer questions.

**OPENING STATEMENT—Chairman Dersham**

The NPFMC's Gulf of Alaska groundfish rationalization process will compel the state, through the Board of Fisheries, to make decisions about state waters groundfish fisheries and parallel fisheries. The board desires to coordinate its process with council process as much as possible. At the July 2003 board/council joint protocol committee meeting, the board stated intent to put groundfish rationalization on agenda for the 2003/2004 meeting cycle. The board will attempt to look at and refine options as much as possible in order to give council and fishermen as much head's up as possible about where the state may go, depending on what happens in the council process.

By February 2004, the goal is to refine options identified through this steering committee, and then take this process through the board's regular committee work during its February meeting (for a copy of the board's policy on in-meeting committee process, contact the executive director). The board hopes to come to a point where, if possible, it can create regulatory language for a solution, then hold that language (not take final action on it) until council action. The board recognizes there are no guarantees that the steering committee or the board's process will get that far; for example, we may end up with more than one option. However, the board wants to give council and stakeholders an idea of where it is likely to go, and to be as ready as possible for when council takes its final action.

Note regarding groundfish proposals that are scheduled for February 2004: The chairman's advice is to not focus too much on those individual proposals. His guidance is going to be for the

board to deal with the Gulf as a whole. Solutions that the steering committee brings are as viable as those proposals that were published in the proposal book.

#### OPENING STATEMENTS: Stakeholders

Stakeholders provided comments and expressed concerns. Various opinions included being an advocate of state having control over and managing fisheries in its waters with rules that favor local residents, and not wanting to see state cod fishery co-opted under this rationalization process. Concerns were expressed about protecting communities, such as Chignik and others, so they are not disadvantaged, and that all participants walk away feeling they had a say in this process. Coordination with the federal process is important, with the goal of a fishery that is on a continuum from 0-200 miles, as well as assessing the biological information that will be used. Recognize bycatch and habitat issues; comments were also made about a two-pie coop system.

An important issue is whether the state might be able to mirror the federal ability to capture and use historical catch for individual fishermen, in order to limit some access in some reasonable way. Preservation of catch history and preservation of fishing rights (i.e., ability to fish where you have always fished) is important to the fishermen. Fishermen also want economic and biological viability; an unrestricted fleet is probably not in best interest of state.

The fishery needs to be rationalized to protect overall health of resource and of fishery. If it is going to be successful, the federal solution must be "married" to state's solution. The two fisheries may not need to be managed in the exact same way to accomplish this goal. Under the current management system, fleets feel disadvantaged economically due to the race for product, cannot respond effectively to environmental stress, etc. Interest was expressed in a "seamless" and least conflict/least complications between two systems as possible; fishermen should be as least disadvantaged as possible. Recognize state's rights at stake. In past, state has put vessels over 60 feet at disadvantage in order to forward/protect state's rights and interests; would like to see those vessels' (60+ feet) interests considered.

#### ADF&G WHITE PAPER

(Note: edit on decision tree, first box under "no" column: delete the word "back")

The steering committee reviewed the "decision tree" created by ADF&G. The tree provides some options for the answer to the following: "Under a rationalized program, can the State of Alaska open a groundfish fishery for non-federally permitted vessels in state waters that is managed to a specific TAC while also allowing federally permitted vessels to fish in the same water, but their harvest coming from the federal TAC? State permitted vessels, operating under state management, would be fishing toward their allocation of TAC. When the state allocation is reached, state waters would close to BOTH state and federally permitted vessels." If the answer is "yes," the next step suggests a dialogue/consultation with the council to agree on TAC apportionments between state and federal waters, with an eye toward coming up with a solution that is the best for Alaska. The board would not have to negotiate an agreement; that would be giving up state authority that the board could not give up—the state has to decide what happens in state waters. (Note: this is the position of the board committee members, and the whole board has not yet weighed in. Also, if this steering committee goes down the "yes" column, all issues would be considered (i.e., not just the parallel fishery)).

The state has to identify if it even WANTS to participate; make an affirmative decision. Staff also noted that this is a state arena, not just an adjunct to the council.

DEPARTMENT OF LAW MEMO AND DISCUSSION

(Clarification: This memorandum is not a formal AG opinion.)

Assistant attorney general Jon Goltz provided an overview of a September 30, 2003 memo regarding "Statutory and Constitutional Issues Affecting Individual Fishing Quota (IFQ) Allocations" with the steering committee. The memo discusses whether the board or CFEC has statutory authority to grant a right to harvest that differs for different individuals, and whether the state constitution imposes additional restrictions. Department of Law is doubtful that the board or CFEC has statutory authority for above (catch history), but could do equal share. CFEC can limit entry but not allocate fish to individuals.

Constitutional questions: Whether legislature could grant authority for historical catch shares (i.e., "constitutional question") is hard to answer in abstract because there is not yet a specific idea/proposal that is been forwarded for analysis. The legislature likely could—constitution allows for limited entry, and following down that line of thinking, the legislature could allocate based on catch history. Complications include equal access clauses in constitution. Limited entry systems are permissible, but should impose the least impingement on equal access values expressed in the constitution. Resource conservation and prevention of economic distress are reasons that could support limiting entry, but going beyond those goals has triggered negative response by courts.

Would historical IFQs qualify under the "least impingement" test? Before that question can be answered, specifics need to be worked up. How permanent are the rights? How would it serve resource conservation or the prevention of economic distress? Are legitimate purposes of limited entry being served? Is this "less impinging" on equal access than other systems that could be designed? Etc.

Can state set up an IFQ program that is similar to halibut (for both parallel and state waters fisheries)? There are various barriers to entry under the halibut program that do not appear to be able to meet the least-impingement test. If the court finds that it could have been done in a less exclusive way, then that IFQ system would not be constitutionally sound. For example, the "optimum number provision" in the state's current salmon entry system preserves the right of CFEC to adjust the level of participation in that system. This provision is not in the halibut IFQ program. If permits were to revert to the state, then the CFEC could reissue or do whatever that tailors to the need of the fishery.

Limited Entry/License Limitation: CFEC described its authorities and how the program works. CFEC does not think the current limited entry program would fit very well or be an effective tool with these groundfish fisheries.

Permanency of limited entry permit: What if permits were not issued with permanency like salmon permits are now? Right now the Department of Law cannot say for certain that transferability of permits in a new system would lend it better able to meet constitutional requirements, but it should be analyzed if a system were set up. In the abstract it is hard to say how that would shake out, but should be considered. If permanency is desired, the board/state will need to show conservation, economic, or resource development reasons; it could not be based on creating a closed class of people simply in order to preserve their fishing history.

Attaching IFQs to vessels versus individuals: Needs more legal analysis. If and IFQ is issued to a vessel, the state would know the “unit” that is out there; if issued to individual, the state would not know what kind of gear, etc. was out there.

The board likely does not have the ability to consider a federal license as a methods, means, gear, etc. provision (e.g., could not say, “If you have this gear type or that vessel length along with a federal permit, you can fish here in state waters.”)

Transferability: The CFEC could limit transfer/sell-off of permits if, for example, someone gets permits for three different types of gear and decides to sell off everything but one type. This allows more people to fish and would not accomplish limited entry because more people would be entering the fishery. Area M example—could have considered it ONE salmon fishery, instead of allowing folks to get gear-based permits because they participated in the fishery in multiple ways. CFEC could have designed that fishery differently had this been anticipated.

Moratorium: There are two separate ways to pursue a moratorium: 1) The CFEC already has statutory authority to implement a moratorium at the request of the commissioner of ADF&G. 2) The legislature may impose a moratorium directly (the Korean hair crab moratorium is example—CFEC did not have authority to limit entry vessels rather than persons, so the legislature did it directly rather than take the time to grant that authority and then finally implement the moratorium). The CFEC statutes do not restrict legislature when it directly imposes a moratorium. If a moratorium would not work under CFEC’s current statutes, that would be a reason to go to the legislature.

Within a moratorium, a person’s area to fish may be limited only if those areas were identified as separate fisheries beforehand. Also, board could identify registration areas (superexclusive, etc.). A moratorium may also be issued by gear type.

License limitation versus moratorium: A CFEC-imposed moratorium is temporary (four years), and if it expires without the fishery being limited to entry, then five years have to pass before another moratorium can be set. This is meant to give CFEC time to analyze fishery and implement a limitation program without increasing participation while doing so. The state can do license limitation without moratorium. Also, a moratorium does not have to result in a license limitation/limited entry fishery.

State Authority and Preemption: The NPFMC cannot preempt state management; that authority lies with the Secretary of Commerce. The Magnuson Act (section 306B) has criteria that have to be met. In addition, neither the department nor the board can give away authority, or say they will not meet statutory requirements that they are supposed to meet.

The halibut fishery is not useful comparison of “preemption” under the Magnuson Act because halibut is subject to a special federal act. The state is preempted to managing that fishery in a certain sense, but the state did not take an affirmative action to give up management, and did not invite federal management. It was done to implement a treaty. Now state cannot “frustrate” or counter those rules.

Can the state do provisional, time-specific, area-specific (Gulf) giving up of state authority in order to achieve order and rational management? There is both a constitutional and a statutory problem with relinquishing management authority in state waters to facilitate a federal allocation system

that the state could not implement. Also, the federal program cannot take management actions in state waters at all without going through Magnuson Act formal preemption, so there cannot be any such thing as a passive or "friendly" preemption.

## DISCUSSION

*The steering committee took time to ensure all of the ideas and approaches were identified. Following are some concepts, questions, and ideas expressed, without necessarily the endorsement of the entire steering committee. The concepts and suggestions were not deliberated at this meeting.*

Federal goals for rationalization are important: stop the race for fish, safety, and provide ownership in the fishery.

Restricting the "inputs" (i.e., new entrants or harvest effort) into a fishery is what IFQs do and what CFEC does; ADF&G/the board need to regulate "outputs": figure out what it is going to be and give it to harvesters in temporary, dynamic manner. It is not a property right, based on something like history. A coop could be formed, history can be issued as a quota share. Would create a market in fish histories and people would sell them (they do today). But it could be designed so that it would not guarantee an amount in the fishery, but would be used as guaranteeing the right to fish in that fishery. In state waters, control outputs, not inputs. Control the rate at which the fish are extracted, not the number of people who extract them.

Providing an IFQ based on a history in both waters makes sense. Access to state waters with fishermen holding IFQ during state fishery makes sense. One idea is that if a person holds a federal IFQ, then history in both waters counts. The person can fish in both waters, but what is caught in state waters goes against that IFQ, too. Limit how many participants who have federal IFQs crossover to state waters/fishery. The federal system would have to do this because state would be unable to legally. "Bright line" the state and federal systems by putting quota on each side, issue IFQs based on total history, and limit the state waters fishery. Once the quota shares are issued, the fishermen working the federal quota share system would be separate from state system. Possibly grandfather in fishermen who have both state and federal history, but ultimately would like to see people become part of one fishery or the other. If have class of fishermen who could jump back and forth between either fishery it would disadvantage the other folks who have only federal or only state IFQs.

Bering Sea pollock example/coop system is a way to address equity issue of who gets IFQs in what system, and whether you get both state and federal history to count. Significant problem of disadvantaging people who purposely chose to maintain eligibility in multiple fisheries for diversification purpose—would be unfair to make those people then choose either state or federal histories; would be poor policy choice to tell these people that their strategy of diversifying does not matter.

Public policy issues in limited entry: upon transfer, those permits revert back to pool to be reissued under some criteria, so that permit does not become property. This provides access to those fisheries over time (for which the salmon limited entry system is criticized).

The options for rationalizing state waters seem to be: 1) a traditional petition for limited entry to CFEC; 2) request a moratorium w/CFEC; 3) request a legislative moratorium; or 4) have legislature give some guidance and further statutory ability to CFEC to do the moratorium.

Need to know there is an effective state waters eligibility program that enables the state fisheries to stay open for a long enough period of time for the rationalization to work/attaining federal TAC. Therefore need a moratorium right away. Legislative moratorium seems the "easiest" option; however the steering committee should not limit itself right now to pursuing only this option; might be worth pursuing the CFEC moratorium too. Objectives could be "how do we keep state waters fishery open for period of time that gives opportunity to attain federal TAC, and how to do it where its likely to stand up to legal challenge."

Currently, if the state waters are open it is like an open access fishery, and the state believes that the only way to constrain the state TAC is to close waters. Are there ways the state can constrain take without closure—other ways to slow down the TAC? For example, a legislative moratorium that sets a landing requirement; only folks who were significant participants get to fish. Waters could then be kept open, without having to worry about going over state TAC, and the race for fish is eliminated.

Size of TAC that goes to state might influence how the state approaches its fishery and whether it needs to be exclusive. If small amount of TAC, but limiting it to jig boats, some issues go away (e.g., could even have an open access state fishery).

A portion of the state TAC could be set aside for benefit of state.

Consider owner-on-board requirements; look into skipper and crew shares; consider issues relative to community benefits.

Think beyond cod. Need a state quota for pollock, flatfish, etc so can have a state fishery there/so fishery can be prosecuted in state waters. Will need to form management structures for those species, too. Also, consider closing state waters (0-3 miles) to some species (note that pollock could not be done that way) and all of the TAC would be divvied out by the federal program.

Envision small state waters fisheries for all of the other species (except pollock and cod). For example, arrowtooth flounder: up to 5% allocation: first year at 1%, second year at 2%, etc. Later talk methods and means. Then after a certain number of years, if no one fishes the TAC, the board might give it back to federal program.

Jig fishery: Once fishery is rationalized the history becomes irrelevant in making further management decisions.

Small boat fishermen need to be able to qualify to fish in state waters in order to remain diversified and make a living.

If federal IFQ holders are able to receive state IFQs they will have an interest in keeping state waters open.

(Following is a series of questions that was identified as a block):

- Do we believe that the state proposal works for the parallel fishing issue and management of the state water fisheries?
- Is there another option available?
- What quota amount needs to be allocated to state waters and for what species?



- What mechanism would be used to keep state waters open virtually all year?
- How do we close the class to new entrants for the state water fisheries?
- What method of effort control should be used to manage state fisheries (e.g., limited entry, coop, equal share permits)?
- How to determine how to split the quota between state and federal fisheries?

How to allocate in state waters?

Who gets to fish the “new” state waters pollock fishery, if it is developed?

If in limited entry a person holds a permit that provides an equal share to the resource, how can sideboards be done, because sideboards are numbers? Would setting contingencies on ability to fish the permit be one approach: if you have an IFQ in fishery “A,” you can only catch up to XXX amount in some other fishery?

#### ASSIGNMENTS/NEXT STEPS

Dept of Law (Goltz), ADF&G (Krygier and other staff) and CFEC (Schelle) will provide a discussion paper on three options in rationalizing state waters: CFEC moratorium, CFEC limited entry petition, and legislative moratorium. The steering committee should be prepared to discuss and decide whether to take one of these steps at the next meeting.

Other information requests to Dept. of Law include:

- Why did the legislature set up the Southeast Alaska Dungeness crab fishery moratorium in the manner that they did? (AS 16.43.227)?
- Can both transferable and nontransferable permits be issued in the same fishery?

Information requests to ADF&G and CFEC include:

- Who are the participants in all of the “boxes” and where is the overlap [the “boxes” are history in: LLP, nonLLP who participate in parallel fishery, state participants in state water fisheries, how many of those state water fisheries participants are federally licensed, and how many nonfederally licensed participants are there].

#### BOARD COMMITTEE MEMBERS: Where we’re at now

The approach in ADF&G’s white paper has merit. Board committee members favor the option of answering “yes” to the question on the flow chart, and proceeding down that part of the page at this time. Board members do not have preconceived ideas about what the numbers should be on the apportionment.

Vessel vs. skipper will be an issue in what to do for IFQs if the state goes there.

The board has not explored the relatively new idea of a percentage of state water quota going back to the federal program for the IFQ.

#### NEXT MEETING

The steering committee will next meet on Dec 3-4 at the Captain Cook Hotel in Anchorage.

## COMMISSIONERS:

CLIFF ATLEO  
PORT ALBERNI, B.C.  
JAMES BALSIGER  
JUNEAU, AK  
RICHARD J. BEAMISH  
NANAIMO, B.C.  
RALPH G. HOARD  
SEATTLE, WA  
ANDREW SCALZI  
HOMER, AK  
JOHN SECORD  
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## INTERNATIONAL PACIFIC HALIBUT COMMISSION

ESTABLISHED BY A CONVENTION BETWEEN CANADA

AND THE UNITED STATES OF AMERICA

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December 1, 2003

Mr. Chris Oliver, Executive Director  
North Pacific Fishery Management Council  
605 West 4th Avenue, Suite 306  
Anchorage, Alaska 99501-2252

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N.P.F.M.C

*RE: December 2003 Meeting, Agenda Item C-1*

Dear Chris:

The staff of the International Pacific Halibut Commission has reviewed several options the Council is considering in the Gulf of Alaska Rationalization proposal. We have the following comments for you consideration.

**Accounting of Halibut Bycatch (Section 2.5.1)**

- **Pot vessels** – We support the continued exemption for pots, as they fish relatively cleanly and with very low mortality.
- **Hook and Line** – The Council is considering four options, several of which would require landing legal-sized halibut. The IPHC staff does not view this as a problem as long as the commercial halibut season is open. Management of the fishery can accommodate such removals if these landings are counted and tracked in some form of IQ (e.g., IFQ or harvest share). Retention of halibut outside of the commercial IFQ season would require Commission approval. If approved, the Commission may wish to limit the amount landed if it has concerns about interceptions of fish moving between regulatory areas or increase bycatch. Unrestricted retention during the closed period may result in an undesired high mortality of juveniles (sublegals), which the Commission would not support. For example, we note that the GOA hook and line fishery for Pacific cod has a relatively large bycatch of sublegal-size halibut.
- **Trawl fishery** – The Council is looking at the option of harvest shares in addition to status quo. We regard any type of IQ bycatch management program as a step forward, for trawls or hook & line fisheries. We note that these programs require higher levels of observer coverage in order to adequately monitor catches against the allocations.

**Retention of Halibut Bycatch Outside the Season (Section 2.5.5)**

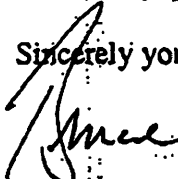
We have discussed this concept in previous letters to the Council. Implementation would require action by IPHC to change the definition of the period when halibut could be landed, and may also require retention allowances to limit interceptions and to act as a disincentive to targeting.

(...continued)

December 1, 2003 - letter to NPFMC

Mr. Gregg Williams of the IPHC staff will be attending the Council's December meeting and can answer any questions the Council may have.

Sincerely yours,



Bruce M. Leaman  
Executive Director

cc: Commissioners