

North Pacific Fishery Management Council

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Enforcement Committee Agenda

June 5, 2018 1pm – 4pm
Kodiak Convention Center, Katurwik Room, Kodiak, Alaska

The North Pacific Fishery Management Council's Enforcement Committed will meet on Tuesday June 5, 2018 at the Kodiak Convention Center in Kodiak, AK. The meeting will take place from 1 PM to 4 PM. Written comment will be accepted by emailing comment to <http://comments.npfmc.org/Meeting/Details/121?agendaID=181> by 12:00 PM on Friday June 1, 2018.

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1. Voluntary Halibut Deck Sorting

Background

This Regulatory Impact Review evaluates the benefits and costs of a proposed regulatory amendment to allow halibut to be sorted on deck of trawl catcher processors when operating in non-pollock groundfish fisheries off Alaska. This would allow Pacific halibut to be returned to sea from the deck prior to crossing the flow scale. The purpose of these regulations is to reduce the discard mortality of halibut aboard trawl catcher processors operating in non-pollock fisheries off Alaska. This reduction in discard mortality of halibut will increase the amount of time trawl catcher processors operating in non-pollock fisheries off Alaska can fish for groundfish before reaching the halibut prohibited species catch (PSC) limit. The objective of deck sorting is to minimize halibut bycatch to the extent practicable, which may provide additional harvest opportunities in the commercial halibut fishery.

The deck sorting program will impact three of the NMFS Office of Law Enforcement's (OLE) highest priority areas including observer data quality, halibut PSC management, observer work environments, and observer safety.

2. C5 BSAI Halibut in Pots

Background:

The action analyzes proposed management measures that would apply exclusively to the commercial halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) individual fishing quota (IFQ) and Community Development Quota (CDQ) fisheries in the Bering Sea and Aleutian Islands (BSAI). The measure under consideration would allow retention of legal-size halibut in pot gear in the BSAI, provided

the operator holds sufficient halibut IFQ or CDQ for that IPHC regulatory area. The purpose of this action is to allow for more efficient harvest of the halibut resource by decreasing the wastage of legal-size halibut discarded in the BSAI sablefish pot fishery, and to allow for the possibility of reduced whale depredation of halibut off of hook-and-line gear, by allowing operators that hold halibut IFQ/CDQ the opportunity to retain halibut in pot gear.

Alternatives

The Council adopted the following revised alternatives, elements, and options to allow halibut retention in pot gear in the BSAI for analysis.

Alternative 1: No action (status quo).

Alternative 2: Allow retention of legal-sized halibut in single or longline pot gear used to fish for halibut or sablefish IFQ/CDQ in the BSAI provided the IFQ/CDQ holder holds sufficient halibut IFQ/CDQ for that IFQ regulatory area.

Element 1: Gear retrieval

Option 1: No gear tending requirements (status quo)

Option 2: A vessel with unfished IFQ/CDQ onboard cannot leave gear on the grounds untended for more than (sub-options 5-10 days)

Element 2: Limit of a 9-inch maximum width of tunnel opening does not apply when vessel has unfished halibut IFQ/CDQ onboard.

Element 3: All vessels using pot gear to fish IFQ/CDQ are required to use logbooks and VMS.

Element 4: Require escapement mechanism in the mesh panels of pots.

Element 5: Establish regulations that would allow NMFS to close IFQ fishing for halibut if an overfishing limit is approached consistent with regulations in place for groundfish.

This analysis should examine:

- *How fishing for IFQ/CDQ halibut and sablefish is defined, and whether additional regulatory clarifications are required to define IFQ/CDQ halibut and sablefish fishing for pot gear.*
- *Whether additional regulations (e.g., pot tags) are needed to account for IFQ/CDQ halibut and sablefish fishing with pot gear.*
- *The need and potential options for escapement mechanisms and gear modifications for pots intended to be used to fish halibut IFQ/CDQ.*
- *Potential gear conflict from the use, storage, retrieval, or loss of IFQ/CDQ halibut and sablefish pots and potential management measures to reduce gear conflict.*
- *The potential implications of allowing retention of IFQ/CDQ halibut and sablefish by vessels directed fishing for Pacific cod, crab, or other groundfish species.*
- *The potential scope of closure areas for pot gear (e.g., the Pribilof Islands Habitat Conservation Zone) that may be required to minimize the risk of overfishing Pribilof Islands Blue King Crab. The Council requests that NMFS include IFQ pot gear effort in its annual inseason management report to the Council.*

The Council intends to review the effects of allowing retention of halibut in pot gear five years after implementation.

Based on the language of the alternative, the analysts assume halibut retention would only be permitted/required in the BSAI which is different from halibut Area 4. **Specifically, the Council should clarify if action applies to all of Area 4A, or just the section of Area 4A that overlaps with the BSAI.**

IFQ Fishing Versus Directed Fishing for Other Species

Similar to the IFQ/ CDQ hook-and-line (HAL) fisheries, this action alternative would provide Area 4/BSAI quota holders the opportunity to use pot gear on a trip solely intended to harvest halibut, or on a mixed trip in which both halibut and sablefish are the intended target, provided the vessel has quota for the appropriate areas for both species. Based on Federal regulations at Section 679.7(f) (11), IFQ permit holders are prohibited from discarding halibut or sablefish caught from with fixed gear for which they hold used halibut or sablefish IFQ for. Therefore, this alternative would also *require* those who are fishing sablefish in the BSAI with pot gear to retain legal-sized incidentally-caught halibut for which they have the quota for.

The Council's motion suggests halibut retention would be permitted in "pot gear used to fish for halibut or sablefish IFQ/CDQ". Based on this language, the analysts assume the Council is considering the ability and the requirement of retaining halibut in pot gear to be specific to the IFQ fishery. **The scope of this action would not allow for the retention of halibut IFQ or CDQ in other directed pot fisheries, including the BSAI crab fisheries and BSAI Pacific cod pot fisheries. An IFQ permit holder that was participating in other directed groundfish fisheries with pot gear (such as Pacific cod) or the BSAI crab fishery, would not be required to or permitted to retain halibut on a pot fishing trip while directed fishing for a species that was not halibut or sablefish, even if they held available IFQ.**

ENFORCEMENT CONSIDERATIONS: Section 4.7.6 of the analysis

The following describes enforcement challenges and recommendations, as informed by OLE (Office of Law Enforcement) representatives for NMFS Fisheries Enforcement. In general, OLE noted challenges regarding consistency with GOA regulations, and that their preference would be maintaining consistency across the GOA and BSAI where possible, while balancing maximum flexibility for fishermen. As in the GOA, this action poses some enforcement challenges that are not easily solved.

OLE does not have the personnel, vessel, or fiscal resources to conduct at-sea inspections. The USCG is responsible for conducting at-sea fisheries law enforcement boardings onboard vessels participating in the sablefish IFQ fishery. At-sea boardings are conducted at random or in response to specific intelligence of suspected possible violations or inconsistencies provided by OLE. Boarding teams conduct enforcement of NMFS regulations at-sea to include, logbook inspections, documentation checks, and limited gear inspections (gear is inspected on deck, and thus deployed gear is not directed to be retrieved for inspection). Following these at-sea boardings, the USCG forwards any suspected violations complete with documentation and evidence to OLE for further investigation. The OLE may make random spot checks of the gear, but typically this would be done dockside and not while the vessel is actively fishing. Given OLE resources and other priorities, a relatively small number of vessels are checked for gear specification. The OLE also may conduct limited monitoring and enforcement activities through at-sea boarding in coordination with the USCG and Alaska Wildlife Troopers.

Currently, legal-size, incidentally-caught halibut are required to be retained in the BSAI HAL sablefish fishery if any permit holder on the vessel has unharvested halibut IFQ. The procedures NMFS uses to verify that sufficient halibut IFQ are held by permit holders onboard a HAL vessel fishing sablefish could

be used for a vessel using pot gear to fish a mix of sablefish and halibut IFQ (as is already done with solely sablefish IFQ in pots). Since IFQ are specific to regulatory area and vessel size category, the amount of halibut retained and landed by a vessel is crosschecked against the IFQ permit database to verify that the permit holder's IFQ balance is sufficient for that area and vessel size category. In addition, OLE can reference information in NMFS logbooks and IPHC logbooks at the time of landing.

Regarding Alternative 2:

OLE recommends allowing and requiring the retention of legal-size halibut, for consistency with GOA regulations.

However, under Amendment 101 in GOA, the ability to retain halibut in pot gear is also dependent on the availability of sablefish IFQ (in addition to following all the regulations under for sablefish IFQ fishing with pot gear described in §679.42(1)). Since there is no requirement or regulatory definition that an IFQ species be a certain proportion of the vessel's total catch, enforcement representatives stated that, particularly in the field, it can be very difficult to prove what a vessel is "fishing for". Enforcement is able to identify that participants have IFQ for the species they are retaining.

- Element 1: Gear retrieval

OLE recommends the BSAI remains consistent with Western Gulf regulations by adopting the requirement that a vessel operator must redeploy or remove all [longline] pot gear that is assigned to the vessel and deployed to fish IFQ sablefish within seven days of deploying the gear. (§679.42(k)(5)(iii)(D)).

- Element 2: Tunnel opening

OLE recommends keeping the existing 9-inch maximum tunnel opening requirement for all areas for consistency. A different requirement could make enforcement difficult in GOA locations near the BSAI. Additionally, having different applicability of the 9-inch requirement could make general enforcement difficult.

- Element 3: Logbooks and VMS

VMS is already required for federal waters (§679.42(k)(1)(i)). However, state AI sablefish requirements do not require VMS. *If the State adopts these rules, a VMS requirement should be considered as well. OLE recommends requiring the use of Daily Fishing Logbook (DFL) for consistency with GOA requirements (§679.42(k)(7)(i)).*

- Element 4: Escapement mechanism

OLE stresses the importance of consistency across fisheries and areas with regards gear mechanisms. OLE also noted it is very difficult to enforce this.

- Element 5: NMFS authority

OLE noted that all the above proposed requirements (with exception of logbook & VMS) are difficult to enforce. They also noted that consistency across all areas makes enforcement easier, even in GOA areas that are not part of this proposal.

3. Review Terms of Reference

Background:

During the April 2018 Enforcement Committee meeting, the reviewed the committee's Terms of Reference. During that review, the committee noted that Section 302(i)(2)(D) of the Magnuson-Stevens Fishery Conservation and Management Act requires all interested persons shall be permitted to present oral or written Statements regarding the matters on the agenda at meetings. The committee agreed to change its Terms of Reference to allow written public testimony regarding Enforcement Committee agenda items only. The revised Terms of Reference are provided below.

NPFMC Enforcement Committee TERMS OF REFERENCE (June 2018)

1. **Establishment and Statement of Purpose.** The North Pacific Fishery Management Council (Council) may establish and maintain an Enforcement Committee to advise it on matters related to enforceability of fishery plans and regulations. The Committee's primary function is to review proposed plans, regulations, or other management actions and provide their assessment of enforcement issues as early as possible in the development process. The Committee would not be limited to purely enforcement aspects, but would also consider part of its role to be discussion and development of monitoring and compliance approaches that facilitate implementation of, and compliance with, management program regulations and consideration of measures that could affect safety at sea.
2. **Membership.** Committee members will be appointed by the Council Chair from governmental agencies and organizations having expertise relating to the enforcement and monitoring of North Pacific groundfish and crab fisheries of the BS/AI and GOA. At a minimum these agencies would include NOAA Fisheries Enforcement, NOAA Office of Sustainable Fisheries, U.S. Coast Guard, Alaska State Fish and Wildlife Protection, Alaska Department of Fish and Game, NOAA Fisheries Observer Program, and NOAA Office of General Counsel. The Committee will be Chaired by a member of the Committee, as elected biennially by the Committee. All appointments will be subject to approval by the Council and should reflect the Committee's responsibility to provide advice in the areas of enforcement and monitoring. Staff for each meeting will be designated by the NPFMC Executive Director as appropriate, depending on availability and issues on the agenda.
3. **Organization.** The Committee will be directed by the Chairperson, and may divide some of its responsibilities among work groups organized according to subject matter.
 - a) **Rules of order.** In general, rules of order will be informal. Committee advice will be reached by consensus, whenever possible. Committee minutes will reflect the range of perspectives of all members.
 - b) **Meetings.** Committee meetings will be held on a regular basis, typically in conjunction with regular Council meetings. Notice of these meetings would be accomplished through the Council agenda notice process. Additional meetings during the week of the Council meeting will be held as necessary, and announced at the Council meeting. Meetings will be open to the public, but only written comments regarding Enforcement Committee agenda items will be accepted.

- c) **Development of Agenda.** A draft agenda will be prepared in advance of each meeting by the Council staff in consultation with the respective Chairperson and Executive Director. The Committee would be assigned issues for consideration on its agenda by (1) identification of future agenda items at the current Committee meeting, subject to approval by the Council; (2) identification and assignment of issues by the Council as identified during the course of a Council meeting; (3) identification of critical, time-sensitive issues between Committee/Council meetings from Council staff, agency staff, or Committee members and vetted through the Executive Director. In these instances, the Executive Director will confer with the Council Chair and Committee Chair as necessary, and determine whether the additional issue warrants inclusion on the agenda.
 - d) **Meeting Record and Distribution.** A summary report of each meeting will be prepared by the Council staff, distributed to Committee members for review, and revised as necessary before the Committee report to the Council. The Committee Chair will maintain final approval of the minutes. The Committee report will be provided to the Council on an issue-by-issue basis, similar to the AP and SSC reports, as the relevant issue is addressed on the Council agenda.
4. **Additional Function.** While the primary function of the Committee is to provide advice directly to the Council on relevant issues, it is also recognized that the Committee, or its subgroups, may provide information directly to Council staff or other agency staff for inclusion in analytical documents ultimately destined for Council review. Such activities will be coordinated between the Committee Chair and Council Executive Director.