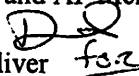


MEMORANDUM

TO: Council and AP Members
FROM:  Chris Oliver
Executive Director
DATE: February 2, 2010
SUBJECT: Miscellaneous Issues

ESTIMATED TIME 8 HOURS (All D-3 items)
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ACTION REQUIRED

- (f) Review discussion paper on stranding of BSAI Pacific cod TAC

BACKGROUND

At its December 2009 meeting, the Council received public testimony on the amount of unharvested Pacific cod total allowable catch (TAC) in the Bering Sea and Aleutian Islands (BSAI). The Council requested staff to prepare a discussion paper examining reasons for unharvested Pacific cod and possible changes to fully use the TAC.

BSAI Amendments 85 and 80 were implemented in 2008. Amendment 85 revised the allocations of BSAI Pacific cod TAC among various harvest sectors, including the non-AFA trawl sector. Amendment 80 allocated total allowable catch of specified groundfish species, including Pacific cod, among several BSAI non-AFA trawl sectors, and facilitated the formation of harvesting cooperatives in the non-AFA trawl CP sector. For 2005 through 2007, the years before Amendment 85 and 80 allocations, the average remaining Pacific cod TAC unharvested was 547 metric tons. The hook-and-line catcher processor sector is typically the sector capable of harvesting most of the additional amounts of Pacific cod reallocated during the last few months of a fishing year. Since Amendments 85 and 80 were implemented in 2008, 4,477 mt and 2,538 mt remained unharvested in 2008 and 2009, respectively. These amounts could have supported about nine and five days, respectively, of additional fishing for the hook-and-line C/P sector. The majority of the unharvested BSAI Pacific cod TAC is attributed to the Amendment 80 sector.

Currently, there is no regulatory mechanism that authorizes reallocation of Pacific cod from the Amendment 80 sector to other sectors. The discussion paper describes the issue, and proposes several possible options to address reallocations from the Amendment 80 sector, all of which would require rulemaking. This paper was mailed to you on January 25 and is attached as D-3(f)(1).

Alaska Region, NMFS
February 2010

**Discussion Paper on Background of and Possible Changes to Unharvested Pacific Cod
Total Allowable Catch in the Bering Sea and Aleutian Islands**

At its December 2009 meeting, the North Pacific Fishery Management Council (Council) received public testimony on the amount of unharvested Pacific cod total allowable catch (TAC) in the Bering Sea and Aleutian Islands (BSAI). The Council requested staff to prepare a discussion paper examining reasons for unharvested Pacific cod and possible changes to fully use the TAC.

Background

The final rules implementing Amendments 85 and 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Area (FMP) were published in the Federal Register on September 4, 2007 (72 FR 50788) and September 14, 2007 (72 FR 52668), respectively. Amendment 85 revised the allocations of BSAI Pacific cod TAC among various harvest sectors, including the non-AFA trawl sector. Amendment 80 allocated total allowable catch of specified groundfish species, including Pacific cod, and halibut and crab prohibited species catch (PSC) limits among several BSAI non-American Fishery Act (AFA) trawl sectors, and facilitated the formation of harvesting cooperatives in the non-AFA trawl catcher/processor (C/P) sector. Both amendments were first in effect in 2008.

Currently, if the Regional Administrator determines that a sector will be unable to harvest the entire amount of BSAI Pacific cod allocated to that sector, NMFS reallocates the projected unused amount of Pacific cod to other sectors that are likely to harvest additional BSAI Pacific cod TAC. Amendment 85 established a reallocation hierarchy that takes into account the capability of a sector to harvest an additional amount of Pacific cod. The reallocation hierarchy is fully described in regulations at 50 CFR 679.20(a)(7)(iii). In general, NMFS reallocates projected unused allocations in any catcher vessel (CV) sector primarily to other catcher vessel sectors before reallocating that amount to any offshore sector (i.e., C/P sectors) and, secondarily, within a gear type before reallocating that amount to another gear type. This reallocation hierarchy is consistent with the Council's decision to increase harvest opportunities for fleets delivering shoreside and represents a reasonable balance of National Standard 4, that allocations should be fair and equitable to all fishermen, and National Standard 8, to consider the importance of fishery resources to fishing communities. The intent of Amendment 85 was to revise sector allocations to better reflect historic dependence and use by sectors and thus reduce the frequency and amount of inseason reallocations. However it was noted at the time of the Council action that some reallocations are likely to continue.

The BSAI Pacific cod sector allocations, reallocations, and catch from 2005-2009 are listed in Table 1. This table also shows the amount of Pacific cod unharvested and whether a sector was open or closed for directed fishing for Pacific cod at the end of the year. The remaining amounts in the Aleutian Islands (AI) State of Alaska (State)-waters and Community Development Quota (CDQ) allocations were omitted from the totals for the column "Final allocation minus catch" since no reallocations are allowed out of these sectors. For 2005 through 2007, the years before Amendment 85 and 80 allocations, the average remaining Pacific cod TAC unharvested was 547 metric tons (mt). The hook-and-line C/P sector is typically the sector capable of harvesting most of the additional amounts of Pacific cod reallocated during the last few months of a fishing year. Based on past Pacific cod B season catch rates of about 500 mt per

day for the hook-and-line C/P sector, 547 mt would have supported one day of fishing. Since Amendments 85 and 80 were implemented in 2008, 4,477 mt and 2,538 mt remained unharvested in 2008 and 2009, respectively. These amounts could have supported about nine and five days, respectively, of additional fishing for the hook-and-line C/P sector. In 2008 and 2009, the majority of the unharvested BSAI Pacific cod TAC is attributed to the Amendment 80 sector.

In 2008, the only Amendment 80 cooperative, the Best Use Cooperative (BUC), chose not to target its allocation of Pacific cod until the end of the year to ensure that incidental catch needs in other groundfish fisheries and Pacific halibut prohibited species catch limits would not prevent the opportunity for fishing before the end of the B season. In 2009, BUC started targeting Pacific cod earlier in the year than in 2008 and less of its Pacific cod allocation remained unharvested. For the entire year in 2008 and 2009, NMFS prohibited directed fishing for Pacific cod for the Amendment 80 limited access sector after determining that the full amount of the sector's Pacific cod allocation was necessary to support incidental catch of Pacific cod in their other fisheries. The Amendment 80 limited access sector is defined as a person with Amendment 80 quota share permits, Amendment 80 LLP licenses, or Amendment 80 vessels assigned to the Amendment 80 limited access fishery. The remaining Pacific cod amounts unharvested for BUC were 3,617 mt in 2008 and 1,017 mt in 2009. Note that in 2009, the BUC harvested its initial allocation, and received a reallocation that was not fully harvested. For the 16 BUC C/Ps, the average amounts per vessel were 226 mt in 2008 and 60 mt in 2009. The remaining Pacific cod amounts unharvested for the Amendment 80 limited access sector were 1,060 mt in 2008 and 1,446 mt in 2009. For the six Amendment 80 limited access C/Ps, the average amounts remaining per vessel were 180 mt in 2008 and 200 mt in 2009.

In 2008 and 2009, the hook-and-line C/P Pacific cod sector requested that NMFS assess available options for annually reallocating unharvested BSAI Pacific cod allocated to the Amendment 80 sector to other harvesting sectors that may be in a better position to harvest this fish. NMFS did not act on these requests because no regulatory mechanism currently exists that authorizes reallocation of Pacific cod from the Amendment 80 sector to other sectors. In developing Amendment 80, the Council examined but ultimately chose not to develop such a mechanism, due primarily to procedural due process requirements that would apply to modifying a cooperative's allocations of a quota share permit. The following discussion examines the existing regulations and briefly discusses possible options to enhance flexibility.

An Amendment 80 cooperative permit is issued an annual permit that establishes the cooperative's annual allocation of Amendment 80 species, including Pacific cod. NMFS cannot change the allocation of Pacific cod to an Amendment 80 cooperative mid year revoking and reissuing its Amendment 80 cooperative permit. If NMFS made the determination inseason that a cooperative is unable to harvest its allocation of Pacific cod, NMFS would have to provide procedural due process in revoking that permit, including allowing for an appeals process. Because of the time associated with this process, the concept of timely "reallocations" of unharvested Pacific cod from an Amendment 80 cooperative to another sector or entity is impracticable. Thus, neither the Council nor NMFS developed regulatory provisions for such reallocations. As a result, the record supporting Amendment 80 acknowledges that unharvested amounts of Pacific cod allocated to the Amendment 80 cooperative(s) could go unharvested by the cooperatives(s). Although § 679.20(a)(7)(iii) describes the Pacific cod reallocation hierarchy for the non-CDQ sectors, no rollover provision is set forth for trawl vessels in the Amendment 80 sector. Regulations at § 679.91(f) describe how the allocations of Amendment 80 species, including Pacific cod, may be reallocated from a BSAI limited access fishery to Amendment 80 cooperatives, but not the reverse, because of the procedural due process issues described above. Even if an Amendment 80 cooperative requested NMFS to modify its annual Amendment 80 cooperative permit to reduce the cooperative's Pacific cod allocation, mitigating the likelihood of an appeal, no regulatory framework currently exists to guide NMFS on how to reallocate this amount of Pacific cod to other sectors. NMFS also is not able to rollover Amendment 80 limited access to the Amendment 80 cooperative. The BSAI trawl limited access sector means persons

using trawl gear and who are not using an Amendment 80 vessel or LLP license, or fishing for CDQ groundfish. Provisions could be built into the system by regulatory change; depending on the nature of the regulatory change, an FMP amendment could be required as well. The Amendment 80 final rule (72 FR 52668, September 14, 2007) addresses the reasons why no provisions are implemented for reallocations from the Amendment 80 limited access sector. The Council did not indicate that it intended, or that it would be necessary, to allow catch from the Amendment 80 limited access fishery to be reallocated to the Amendment 80 cooperatives.

Both the Amendment 80 cooperative and Amendment 80 limited access allocations are locked in as part of the overall allocation to the Amendment 80 sector. The Amendment 80 record recognized that the Amendment 80 sector allocation(s) would go unharvested, however, no provisions were developed to allow for reallocation of these fish. Current trawl gear reallocation regulations at § 679.20(a)(7)(iii)(B) only apply to Pacific cod allocated to trawl catcher vessels and AFA C/Ps and do not address either the Amendment 80 cooperative(s) or Amendment 80 limited access sectors. Section 679.91(f) only addresses the rollover of BSAI trawl limited access Amendment 80 species to Amendment 80 cooperatives

State waters Aleutian Islands Pacific cod fishery

Note that unharvested BSAI Pacific cod TAC can also result from the Aleutian Islands State waters Pacific cod fishery, established by the Alaska Board of Fisheries (BOF proposal 399) and effective in February 2006. The guideline harvest level (GHL) for the State waters fishery is calculated as three percent of the federal BSAI Pacific cod acceptable biological catch. All parallel Pacific cod directed fisheries are closed during the State-waters fishery. A maximum of 70 percent of the GHL may be harvested prior to June 10. Any unharvested A season GHL is rolled into the B season opening on June 10. A total of 30 percent of the GHL plus the unharvested amount from the prior season up to a maximum of 70 percent is available for the "B" season. The overall effect of a State waters Pacific cod fishery in the Aleutian Islands is that all sectors, including the CDQ fishery, realized a proportional reduction of three percent of their current federal BSAI allocations. Table 1 shows catch of AI Pacific cod during 2006–2009. In 2006, Alaska Department of Fish and Game (ADF&G) made available 1,588 mt of unharvested Pacific cod from the Aleutian Islands State waters Pacific cod fishery to the federal Pacific cod fisheries. NMFS announced an inseason adjustment that increased the federal TAC from 188,180 mt to 189,768 mt and revised all the federal BSAI Pacific cod allocations. Since 2006, the ADF&G revised the State's regulations and does not allow for a reallocation of unharvested Pacific cod back to the federal TAC. Since 2007, the amount of the GHL remaining unharvested has ranged from zero to more than 50 percent. This paper does not propose any solutions to address unharvested Pacific cod in the AI State waters fishery.

Possible Changes

Several possible options exist to address reallocations from the Amendment 80 sector, all of which would require rulemaking. If Pacific cod being left unharvested in the Amendment 80 sector is a repeating pattern and the Council is interested in changing the regulations so that a cooperative's or Amendment 80 limited access sector's allocations can be modified at some point in the year to release unharvested Pacific cod to other sectors, NMFS has initially identified three potential options are suggested as follows.

The first option would be that at any time of the year an Amendment 80 cooperative could be allowed to voluntarily release Pacific cod by notifying NMFS, and regulations could be developed to guide NMFS on how this fish would then be reallocated among other sectors. One option for reallocation would be to use the hierarchy for the reallocations established by Amendment 85 at § 679.20(a)(7)(iii). A second option would be to allocate all Pacific cod unharvested by the Amendment 80 sector to the hook-and-line C/P sector, since in the past the majority of reallocations, in terms of metric tons, have been from the trawl sectors to the hook-and-line C/P sector.

A second option would be to change regulations so that the permit issued annually to Amendment 80 cooperative(s), which stipulates the annual cooperative allocation of Pacific cod, would expire on November 1 each year when directed fishing for Pacific cod using trawl gear closes. NMFS could be authorized to reallocate any Pacific cod from the cooperative(s) or Amendment 80 limited access sectors projected not to be necessary to support other fisheries for the remainder of the year using the reallocation hierarchy described above under the first option.

Third, pending the formation of a Freezer Longline Conservation Cooperative (FLCC) and associated regulations authorizing a Pacific cod allocation to the FLCC (legislation currently pending in Congress), an FMP amendment and authorizing regulations could be developed to allow inter-cooperative transfers between an Amendment 80 cooperative and the FLCC. Such transfer provisions could be included in any FMP amendment and rulemaking associated with FLCC formation. While this option may be the easiest solution, it is currently dependent on Council or Congressional action to establish the FLCC.

Conclusion

For the reasons presented above and to the extent that the Amendment 80 sector does not harvest its annual Pacific cod allocation, amounts of Pacific cod may go unharvested until such time FMP amendments and regulatory measures are developed and implemented that allow greater flexibility to reallocate Amendment 80 sector allocations to other sectors. In 2010 the Amendment 85 and 80 allocations only have been in effect for the two years. The sectors continue to gain experience with the program. A five year review for the Amendment 80 program is expected in 2013.

Table 1 - BSAI Pacific cod Allocations and catch, 2005-2009.

Name	Initial allocation	Added allocation	Subtracted allocation	Final allocation	2005 catch	2006 catch	2007 catch	2008 catch	2009 catch	Final allocation minus catch	End of year status
2009											
AI State-waters	5,460	-	-	5,460					2,622	2,838	Closed
CDQ	18,890	-	-	18,890					18,553	337	Open
HAL	76,375	7,700	-	84,075					84,290	(215)	Open
C/P											
HAL	314	-	312	2					-	2	Closed
CV											
>=60											
HAL/Pot	3,137	1,600	303	4,434					4,640	(206)	Open
CV < 60 ft											
ICA	500	-	-	500					71	429	Closed
HAL/Pot											
Jig	2,207	-	2,182	25					22	3	Open
Pot C/P	2,352	1,198	-	3,550					3,496	54	Open
Pot CV	13,173	-	6,800	6,373					6,488	(115)	Open
>=60											
TRW	3,626	1,200	-	4,826					4,817	9	Closed
C/P											
AFA											
TRW	21,125	3,000	-	24,125					21,662	2,463	Closed
C/P A80											
TRW	34,841	-	5,101	29,740					29,626	114	Closed
CV											
Total	182,000	14,698	14,198	182,000					155,112	2,538	
2008											
AI State-waters	5,280	-	-	5,280				5,319		(39)	Closed
CDQ	18,267	-	-	18,267				18,183		84	Open
HAL	73,844	2,230	-	76,074				76,327		(253)	Closed
C/P											
HAL	303	-	303	-				8		(8)	Closed
CV											
>=60											
HAL/Pot	3,033	2,177	-	5,210				5,111		99	Open
CV < 60 ft											
ICA	500	-	-	500				306		194	Closed
HAL/Pot											
Jig	2,134	150	2,104	180				176		4	Open
Pot C/P	2,274	815	-	3,089				3,374		(285)	Closed
Pot CV	12,737	-	1,315	11,422				11,340		82	Open
>=60											
TRW	3,506	1,200	-	4,706				4,761		(55)	Closed
C/P											
AFA											
TRW	20,429	-	-	20,429				15,752		4,677	Closed
C/P A80											
TRW	33,692	-	2,850	0,842				30,820		22	Closed
CV											
Total	174,649	6,572	6,572	174,649				147,975		4,477	
2007											
AI State-waters	5,280	-	-	5,280			5,279			1	Closed
CDQ	12,804	-	-	12,804			12,773			31	Open
HAL	64,030	4,075	-	68,105			69,039			(934)	Closed
C/P											
HAL	240	-	-	240			222			18	Open

Name	Initial allocation	Added allocation	Subtracted allocation	Final allocation	2005 catch	2006 catch	2007 catch	2008 catch	2009 catch	Final allocation minus catch	End of year status
CV											
HAL/Pot	1,121	1,807	-	2,928			2,921			7	Closed
CVs < 60 ft											
HAL/Pot	500	-	-	500			273			227	Closed
ICA											
Jig	3,158	-	3,032	126			83			43	Open
Pot C/P	2,641	27	-	2,668			2,758			(90)	Closed
Pot CV	12,006	123	-	12,129			12,061			68	Closed
Trawl	37,110	-	-	37,110			38,280			(1,170)	Closed
C/P											
Trawl	37,110	-	3,000	34,110			31,904			2,206	Closed
CV											
Total	176,000	6,032	6,032	176,000			157,541			375	
2006											
AI State-waters	5,820	-	1,588	4,232		3,857				375	Closed
CDQ	14,114	119	-	14,233		14,256				(23)	Open
HAL	70,619	14,090	-	84,709		85,109				(400)	Closed
C/P											
HAL	265	2	-	267		246				21	Open
CV											
HAL/Pot	1,236	2,006	-	3,242		3,198				44	Open
CVs < 60 ft											
HAL/Pot	500	-	-	500		366				134	Closed
ICA											
Jig	3,481	29	3,296	214		89				125	Open
Pot C/P	2,913	140	-	3,053		3,149				(96)	Closed
Pot CV	13,241	639	-	13,880		13,375				505	Open
Trawl	40,906	345	5,406	35,845		35,323				522	Closed
C/P											
Trawl	40,906	345	7,427	33,824		33,650				174	Closed
CV											
Total	194,001	17,715	17,717	193,999		174,505				1,029	
2005											
CDQ	15,450	-	-	15,450	14,689					761	Open
HAL	77,344	22,175	-	99,519	100,327					(808)	Closed
C/P											
HAL	290	-	60	230	230					-	Closed
CV											
HAL/Pot	1,354	2,000	753	2,601	2,428					173	Open
CVs < 60 ft											
HAL/Pot	500	-	-	500	-						Closed
ICA											
Jig	3,811	-	3,645	166	117					49	Open
Pot C/P	3,190	162	-	3,352	3,339					13	Closed
Pot CV	14,502	736	2,410	12,828	12,174					654	Open
Trawl	44,779	-	9,273	35,506	35,448					58	Closed
C/P											
Trawl	44,779	-	8,932	35,847	35,748					99	Closed
CV											
Total	205,999	25,073	25,073	205,999	190,549					238	

¹ For confidentiality reasons the AI State-waters catch for 2006 and 2009 only includes the A season total catch.

² Yearly catch totals and "final allocation minus catch" do not include the AI State-waters catch.

Source: NMFS catch accounting database, 2006-2009.

BSAT Pod
stranding

PUBLIC TESTIMONY SIGN-UP SHEET

Agenda Item: ~~XXXXXXXXXXXXXXXXXXXX~~ D-3(f)

	NAME (PLEASE PRINT)	TESTIFYING ON BEHALF OF:
1	LORI Swanson	GROUND FISH FORUM
2	Kenny Down	Freezer Longline Coalition
3	Mik Szymanski	FCIT
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NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person "to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.