

## **ADVISORY PANEL Motions and Rationale February 5-7, 2019 - Portland, OR**

The Advisory Panel met Tuesday, February 5, through Thursday, February 7, 2019, in the Benson Hotel in Portland, Oregon. The following members were present for all or part of the meetings (absent members are ~~stricken~~):

Christiansen, Ruth	Johnson, Jim	Scoblic, John
Cochran, Kurt	Kauffman, Jeff	Stevens, Ben
Donich, Daniel	Kwachka, Alexus	Upton, Matt (Co-Vice Chair)
Drobnica, Angel (Co-Vice Chair)	Lowenberg, Craig	Vanderhoeven, Anne
Gruver, John	Nichols, Carina	Velsko, Erik
Gudmundsson, Gretar	O'Connor, Jamie	Weiss, Ernie (Chair)
Hayden, Natasha	<del>O'Donnell, Paddy</del>	Wilt, Sinclair
	Peterson, Joel	

The AP approved the minutes from the December 2018 meeting.

### **C1 BSAI Crab Specs**

#### **Motion**

The AP recommends the Council approve the SAFE document and the 2019 OFL & ABC for Norton Sound Red King Crab as recommended by both the CPT and SSC.

*Motion passed 21-0*

#### Rationale:

- Both the CPT and SSC agree on the SAFE, OFL, ABS and buffer
- The 20% buffer is consistent with the 2015 CPT recommendation and other Tier 4 stocks.

### **C3 Fixed Gear Rockfish**

#### **Motion**

The AP supports the Council's preliminary preferred alternative for final action in April with the addition of a 20% MCA to option 2 and suboption under Alternative 3.

The alternatives are shown below with the preliminary preferred alternative in bold:

Alternative 1: No action

*Alternative 2: Require full retention of rockfish species by all fixed gear CVs (hook-and-line, pot and jig) in the BSAI and GOA.*

Alternative 3: Require full retention of rockfish species by hook-and-line CV's in the GOA.

**Option 1 under Alternatives 2 and 3: Require full retention of rockfish even if the species is on prohibited species status but prohibit these retained rockfish from entering commerce.**

**Option 2 under Alternatives 2 and 3: Establish a maximum commerce allowance (MCA) of 10% or 15% or 20%.**

Suboption: Rockfish delivered above the MCA cannot enter commerce, with the exception of meal.

The AP requests additional analysis be provided on the following:

- The anticipated poundage of rockfish overage to be delivered by area or by port under all three of the MCA options.
- Discussion should be provided in the analysis on differences in processor ability to discard or dispose of rockfish by region over the MCA.
- Clarify management considerations for Demersal Shelf Rockfish east of 144 degrees W. longitude.

*Motion passes 21-0*

Rationale:

- *This action would minimize the waste of rockfish bycatch. Rockfish have a very high mortality rate when discarded.*
- *When compared to current regulations in place, this action could simplify and streamline rockfish regulations by bringing state and federal policies into similar full retention management*
- *This action could improve data collection on the overages of rockfish in order to more accurately predict fishing mortality and improve stock assessments*
- *Establishing a maximum commerce allowance at levels reflective of estimated current overages is anticipated to reduce financial incentive to change fishing behavior to target rockfish.*
- *Alternatives 2 & 3 would likely result in increased production costs for processors; allowing a higher MCA threshold (20%) may help reduce this burden and accommodate to situations where there is less opportunity to dispose of fish over the MCA. The analysis highlighted that the state's system for addressing rockfish above the MCA is not a transferable process for the federal fisheries.*
- *Investigating the allowance of fish meal into commerce above an MCA may be important to accommodate situations where the product is not of adequate quality to be donated or used for personal consumption and/or where a port may have environmental restrictions on fish waste disposal.*
- *While the AP recommends final action be scheduled for April, the panel recognizes that additional analysis regarding allowing fish meal into commerce above the selected MCA may be needed.*
- *Information on how rockfish overages and MCA levels translate into poundage is necessary to better understand the regional and port specific impacts of a full retention requirement.*
- *This action improves management and is consistent with MSA objectives*

## **C4 BSAI Pcod**

### **Motion 1**

The AP recommends the Council bifurcate the C-4 BSAI trawl CV Pacific cod fishery analysis and release for public review Alternatives 1, 2, 3 and 6 and the first paragraph of the purpose and need statement.

*Motion passes 21-0*

#### Rationale:

- *The increases in mothershiping by catcher processors in the BSAI Pacific cod fishery in recent years has diminished the historical participation of shoreside processors and communities in the Bering Sea. Action is needed to control processing activity to protect critical revenue streams and economic development in coastal Alaska communities.*
- *Bifurcating the motion between the processor and harvester actions will help stakeholders better understand the implications specific to the alternatives for limiting processing participation and better inform policy decisions at final action.*
- *The range of alternatives and options allows for policy decisions to evaluate whether to restrict the ability to mothership in the BSAI pacific cod fishery to the two historical and consistent catcher processors (1 A80 CP + 1 AFA CP) or to allow for the more recent mothership A80 CPs to continue with, or without, sideboard limitations.*
- *Providing controls on offshore processing in the BSAI P.cod fishery alone will not stop the issues with the race for fish and subsequent action will be needed to address harvesting capacity.*

### **Motion 2**

The BSAI trawl catcher vessel Pacific cod fishery is facing multiple issues simultaneously that are negatively impacting the sustained viability and rational prosecution of the fishery for all its participants. These factors include: decreasing Pacific cod TACs, an increase in the number of participating LLP licenses, the potential for additional new participants, a race among existing participants (often in unsafe conditions), and an increasingly shortened season. The AP recommends the Council initiate action to fully address the numerous concerns being encountered by the fishery and consider adopting the following Purpose and Need Statement:

Over the last several years, total allowable catch for Pacific cod in the Bering Sea-Aleutian Island has steadily decreased. At the same time, the number of LLP licenses used by trawl catcher vessels to participate in the BSAI non-CDQ trawl Pacific cod fishery has increased. The pace of the fishery has contributed to an increasingly compressed season, resulting in decreased ability to maximize the value of the fishery and negatively impacting all fishery participants (catcher vessels, motherships, shoreside processors, and communities). The potential for continued re-entry of additional entrants could exacerbate these unfavorable conditions and threaten the sustained viability of the fishery. The Council is considering the development of a cooperative-based program to improve the prosecution of the fishery, with the intent of promoting safety and increasing the value of the fishery.

To address the Purpose and Need Statement, the AP recommends the Council develop provisions that could be incorporated into alternatives for a comprehensive BSAI cod trawl catcher vessel management program that consider the following:

- Allocation of BSAI Pacific cod quota share to BSAI LLP licenses
- Establishing trawl catcher vessel cooperative(s) for Pacific cod
- Recognition of historical AFA cooperative-based cod harvest arrangements since implementation of pollock cooperatives under the AFA
- **<sup>3</sup>Recognition of historical harvest of AFA cod exempt boats**
- **<sup>3</sup>Recognition of historical harvest of non-AFA boats**
- <sup>1</sup>Establishing linkage(s) between trawl catcher vessels and processors that encompass protections for harvesters, processors, and communities
- **<sup>2</sup>Establishing sideboards to protect limited access GOA and BSAI fisheries**

The AP further recommends the Council consider establishing a control date that may be used as a reference date for any future management action to address trawl catcher vessel participation in the BSAI Pacific cod fishery.

Amendment<sup>1</sup> passed 18-3

Amendment<sup>2</sup> passed 21-0

Amendment<sup>3</sup> passed 21-0

*Motion as amended passed 16-5*

Rationale:

- *As demonstrated in the current analysis, the processing/mothership issues covered under Alternatives 2, 3, and 6 do not adequately address the need for a functional trawl CV cod fishery. Further, Alternatives 4 and 5 do not capture the full scope of the issues currently faced by the BSAI cod participants. Alternative 4 as currently written will not reduce the number of LLPs in the fishery to even the current level of over capitalization that contributes to the race.*
- *Improving the viability of the BSAI trawl CV cod fishery has been an issue of concern to its participants for a long time. The urgency facing the cod CV trawl participants has progressed since the June 2018 Council action. The problems currently being faced by the BSAI trawl CV cod fishery are similar in nature to problems previously faced by other fisheries that now operate under a catch share program. The multiple successes achieved under these varying programs established in the North Pacific now lead the participants in the BSAI cod trawl fishery to believe that the development of a cooperative-based program for BSAI Pacific cod is the best solution for protecting harvesters, processors, and communities and increasing the value of the resource.*
- *This motion is directly responsive to the concerns and recommendations made in public testimony and is intended to replace Alternatives 4 and 5, as well as the second paragraph of the Purpose and Need Statement, found in the current analysis.*
- *This motion is not intended to be prescriptive of any specific cooperative-based management framework but is meant to capture the key considerations the Council should incorporate into any potential management alternatives under this action item. These key considerations (and*

*any combination of) encompass a variety of potential alternatives ranging in nature from an AFA/non-AFA split to a full-blown catch share plan for the BSAI cod trawl CV fishery.*

- *The harvester-processor linkage language in the main motion may be interpreted as signaling intent for a specific management framework. The amendment strikes the language in order to look at a broad range of community protection measures as alternatives are constructed for future analysis.*
- *The operational dependency on cod for non-AFA and AFA cod exempt vessels should also be explored in future analyses because those vessels either have no pollock or minimal amounts respectively, and may be impacted differently by the short seasons.*
- *Recognition of AFA boats leasing cod or halibut sideboards as part of possible program should not impact the non-AFA and AFA cod exempt vessels that are only harvesting cod.*

*Rationale in Opposition:*

- *Catch share programs that allocate quota to LLPs can make access to the fishery more expensive for new entrants and have potentially negative impacts on communities.*
- *A Catch share program for BSAI trawl CV cod may have negative impacts on other fisheries.*

*Minority Report to first amendment that removed "linkage(s)":*

*Use of the term linkage in the original language was intended to be broad in nature and not prescriptive of any particular outcome as this action moves forward with the development of a alternatives to address the many issues faced by BSAI cod harvesters. There are multiple examples of successful harvester-processor linkages in other catch share programs of the North Pacific (e.g., GOA Rockfish, BSAI Crab, AFA) that can be used as examples to inform any potential alternative under this action item. The original language (in both the bullet and suggested Purpose and Need Statement) acknowledge the need for protections for all fishery participants: harvesters, processors, and communities. The revised language replaces a broad-based consideration with an even broader-based consideration that does not specifically address BSAI cod trawl catcher vessel harvesters, who are the central focus of this action.*

*Signed: Ruth Christiansen, John Gruver, Anne Vanderhoeven*

## **C5 IFQ Lease Provisions**

### **Motion**

The AP supports the Council's preliminary preferred alternatives in bold for preliminary final action:

Alternative 1: no action

### **Alternative 2: Modify the medical transfer provision**

#### **Element 1: Define 'Certified Medical Professional'**

**Option 1: Replace the current definition with a single, broader definition of certified medical professional, such as 'Health care provider'. Health care provider could be defined as:**

**An eligible health care provider is an individual authorized to provide health care services by the State where he or she practices and performs within the scope of their specialty to diagnose and treat medical conditions as defined by applicable Federal, state, or local laws**

**and regulations. A health care provider outside the U.S. and its territories licensed to practice medicine is included in this definition.**

Option 2: Define a Certified Medical Professional as all or a sub-set of those individuals defined in the Social Security Act Sections 1861® and 1861(s).

Suboption: Option 1 and 2 would be limited to U.S. medical professionals.

Option 3: The Council directs staff to review definitions of ‘immediate family member’ that could be used for the medical transfer provision which are more restrictive than those used for designated beneficiary provision regulations.

**Element 2: Revise federal regulations to allow the medical transfer provision to be used for any medical reason for:**

Option 1: 2 of 5 most recent years

**Option 2: 3 of 7 most recent years**

Note: only transfers after implementation of new rule would count towards the limit

Suboptions to apply to either Option 1 or 2:

Suboption 1: Establish a limit on the number of times (based on two options to define years) the medical transfer provision may be used (range of 5 to 10 times).

Suboption 2: Define most recent year as one year (365 days) from the date the medical transfer applications was approved by NMFS.

Option 3: To allow QS holders to transfer 100% of IFQ associated with QS held under eligible medical transfer to designee for two years; in the third time a medical transfer is used out of 7 years, the QS holder can transfer 80% of IFQ (by area by species) to designee; in the fourth time, the QS holder can transfer 60% of IFQ; after the fourth transfer, medical transfers would not be allowed during that 7-year period.

**Alternative 3: Modify the beneficiary transfer provision.**

**Element 1: At 50 CFR 679.41(k) modify all references to surviving spouse and immediate family member by adding ‘estate’.**

**Element 2: Define ‘immediate family member’ in regulations at 50 CFR 679 as follows:**

**Option 1: US Office of Personnel Management definition**

Option 2: Federal Family Medical Leave Act definition

*Motion passed 15-4*

Rationale:

- *Alternative 2, element 1, option 1 (PPA) offers NMFS the greatest flexibility and would not require regulatory modifications should the definition of a medical professional change in the future.*
- *Alternative 2, element 2 maintains flexibility within the medical provision while also reducing potential abuse of the provision*
- *There are administrative cost concerns regarding Option 3. The government shutdown has not allowed for an analysis of the costs associated with partial quota issuance. Since we are unable*

*to take final action at this meeting, the AP requests that cost information be provided to the council and additional consideration taken at that time.*

- *Broadening regulations to apply to any medical condition will aid NMFS in implementation, as the agency will no longer be tasked with interpreting what constitutes as a distinct medical issue for the purpose of transfers.*
- *Alternative 3 addresses an existing issue under the beneficiary lease provision; there is a need to define the term 'immediate family member', as this has been an administrative issue for NMFS.*
- *Alternative 3 is intended to offer clarity on the definition of a beneficiary in the context of the IFQ program and to provide a greater level of consistency between the program and traditional estate planning*

### Minority Report

*A minority of the AP supported those portions of the motion that addressed agency concerns to clarify definitions for medical professionals and designated beneficiaries. We were not supportive of Alternative 2, Element 2 and had concerns that it was a step too far for a problem that likely doesn't warrant such a strong response.*

*Signed by: Jeff Kauffman, John Gruver, John Scoblic, and Anne Vanderhoeven*

## **D1 Crab Partial Deliveries**

### **Motion**

The AP recommends the Council consider the following purpose and need statement and draft alternatives for BSAI crab partial deliveries and move to the initial review draft stage at a future Council meeting.

### **Draft Purpose and Need**

The purpose of this action is to allow vessels participating in the Bering Sea and Aleutian Islands Crab Rationalization (CR) Program to make partial deliveries of crab and then continue fishing before fully offloading all harvested crab. This action would be to remove Federal regulations that prohibit the continuation of a fishing trip subsequent to a partial offload of crab in the CR program. The need for this action is to provide operational flexibility to vessels to conduct their business in the most safe, and economically efficient manner when emergencies or special circumstances arise, while also ensuring proper catch accounting.

### **Draft Alternatives**

*Alternative 1 (No Action)* – Status quo is maintained. Vessels are prohibited from resuming fishing for CR crab on board a vessel once a landing has commenced and until all CR crab are landed, unless fishing in the Western Aleutian Islands golden king crab fishery.

*Alternative 2* – Remove the prohibition on resuming fishing for CR crab on board a vessel once a landing has commenced and until all CR crab are landed. This will allow vessels to make partial deliveries of CR crab and then continue fishing before fully offloading all harvested crab.

Option: In the event of a partial offload within a fishing trip, ~~only full tanks may be offloaded.~~ **any tank started for offload must be fully offloaded.**

*Amendment passed 20-0*

*Motion as amended passed 20-0*

Rationale:

- *This issue was brought to the Council as an industry request through PNCIAC (Pacific Northwest Crab Industry Advisory Committee) and is responsive to public testimony*
- *The crab program has matured and the original concerns that were the impetus for this regulation have not proven to be an issue.*
- *It is anticipated that partial deliveries would rarely be used, and only in emergency or special circumstances. These situations may include for safety/stability issues in winter conditions, addressing delivering logistics to multiple processors or meeting North and South regional deliveries.*
- *Partial deliveries are already allowed for golden king crab and should be considered for the rest of the CR Program. Western Aleutian Islands golden king crab was provided an exemption starting in 2016 to allow partial deliveries and to date, has been used only once.*
- *Allowing partial deliveries would give the fleet the operational flexibility envisioned in the rationalization program to conduct their businesses more safely and in a more economically efficient manner.*
- *The industry continues to support this action and is willing to explore options to address any agency catch accounting concerns, including advance notifications and keeping the catch separate.*
- *Preliminary indications from enforcement cited in the discussion paper (p.5) are supportive of removing this prohibition.*
- *This action should have no effect on observer coverage.*

**D2 Crab eLogbook**

**Motion**

The AP recommends the Council conduct a cost analysis for BSAI crab eLogbooks in an expanded discussion paper.

*Motion passed 20-0*

Rationale:

- *This issue was brought to the Council as an industry request through PNCIAC.*
- *Elogbooks are used successfully in many other fisheries.*
- *Elogbooks would improve timeliness and accuracy of data and, with stakeholder input, could prove to be user-friendly and useful to industry.*
- *Given limited NMFS and ADFG resources, it is not likely a priority for the agencies and may be costly to implement.*
- *Third party providers have shown an interest.*
- *If implemented, there are many details to work through, including but not limited to, data needs, interface design, software and hardware options, data download options, data sharing arrangements, and ongoing support.*
- *Information on different elogbook providers (e.g., Agencies, Pacific State Marine Fisheries Commission, third party providers) will needed as a next step in the cost analysis.*

- *Elogbooks have the potential to provide a finer scale detail of which statistical area the crab was harvested in, as opposed to the current system where only the start and end of the string is recorded.*

### **D3 Halibut ABM Report**

#### **AP Motion**

The AP recommends the Council accept the five scenarios reviewed by the ABM Stakeholder Committee. **The AP reviewed the five scenarios discussed by the ABM Stakeholder Committee and forwards them to the Council for consideration.** Any range of scenarios identified by the Council at this meeting should be provided to the halibut working group for analysis, currently intended to be presented to the Council in October.

*Amendment passed 20-0*

*Motion as amended passed 17-3*

#### Rationale:

- *The AP acknowledged that there was no formal recommendation from the ABM Committee meeting. The scenarios, as constructed by the stakeholder groups, should be forwarded to the Council for consideration to be included in the development of the operating model and October analysis.*
- *The AP recognizes that the Council can make modifications to the existing stakeholder scenarios or develop new scenarios for analysis.*
- *With the exception of one, all of the stakeholder subgroups on the committee went outside of the parameters of the original motion. Some of these diversions were more technical in nature, while others were more substantive or a reflection of some ambiguity in the motion that left room for interpretation of the elements*
- *The Committee process gave stakeholders the opportunity to run scenarios through a preliminary internal analysis, which for some, highlighted that the elements and options as written in the motion did not serve to meet some of objectives of the action*
- *The work group members indicated that having a list of scenarios at this meeting would be important to inform the development of a cohesive operating model before April and to stay on track with the October initial analysis*
- *The Council process is iterative in nature and modifications to motions are often made to refine ways to better meet objectives*
- *Although not specifically discussed during the Committee meeting, a footnote in The Terms of Reference allows for the use of elements and options outside of the motion, if rationale is provided*
- *Moving all of the scenarios forward for consideration for analysis could help inform a wider range of alternatives, and highlight the tradeoffs and balancing of objectives between the various halibut user groups that will eventually need to occur if action is taken on abundance based halibut bycatch management.*

#### Minority Report:

*A minority of the AP felt that the ABM Stakeholder Committee process did not function as intended and fell just short of its directed task. The Committee was "formed to provide the Council with recommendations for the scenarios to be analyzed in the upcoming halibut abundance-based*

*management PSC limit analysis". Individual members of the Committee made recommendations to the Committee, but the Committee as a whole did not make any recommendations for specific scenarios to analyze. Giving consideration to each of the individual proposals as provided also presents an equity issue. There were Committee members who stayed within the bounds of the Council's motion and Committee TORs. While they do have the opportunity to present an alternative scenario to the Council at this meeting, doing so in a compressed timeframe over the course of a couple of days is not ideal public process; it is not fair to directly affected stakeholder groups, in that the Committee members had a couple of months to thoughtfully develop their submitted scenarios and further emphasizes the functionality and utility of the Stakeholder Committee process.*

*Signed: Anne Vanderhoeven, Kurt Cochran and Sinclair Wilt*

## **D5 Groundfish Objectives**

There was no action taken for this agenda item.

## **E Staff Tasking**

### **Motion 1**

The AP recommends the council takes the GOA **Trawl** Bycatch Management Program off the table so they can start considering how to address management in the GOA trawl fisheries.

*Amendment passed 19-0*

*Motion as amended passed 12-8*

#### Rationale:

- *The GOA trawl fisheries could benefit from a rationalization plan, which would help provide important stability to a variety of stakeholders and reduce bycatch.*
- *Pursuing a BSAI trawl rationalization program will potentially impact the GOA with increased participation; it is appropriate to consider a GOA trawl program to protect stakeholders from potential spillover effects*
- *A BSAI and GOA catch share program should happen in a similar time frame.*
- *In the past, stakeholders have been told by the Council that a GOA catch share program should be implemented before a BSAI cod program, given many of the BSAI cod stakeholders already benefit from AFA stability.*
- *The race for fish makes it challenging to safely manage a fishery, retain a stable workforce for processors and harvesters, maintain healthy fishing communities and minimize bycatch.*
- *Catch share programs can involve a variety of structures and take many forms to address any stakeholder concerns that may arise, providing the Council with more tools than a race otherwise allows.*

#### Rationale in Opposition:

- *Consideration of a GOA catch share program has been controversial in the past. Putting this back on the table in Portland, without notice to GOA communities and an opportunity*

- to share their insight, would not be responsive to the needs of the Gulf communities, and may lead to stakeholders feeling disenfranchised from the process and taken by surprise.*
- *There was no public testimony in support of reinitiating this action during staff tasking*
  - *It is critical that if the Council picks this motion up, it incorporates and recognizes the needs of GOA community inputs from the onset to be a successful program.*
  - *The GOA and BSAI are very different fisheries; interactions between communities, fishermen and the dependence on fish are all distinct. Small amounts of fish can make a big difference in the GOA between successful business plans and failure. This dependence varies greatly and must be taken into consideration*

## **Motion 2**

The AP recommends the Council initiate a Discussion Paper to consider some form of rationalization or coop management structure of the BSAI Pacific Cod Pot CV's greater than or equal to 60 feet LOA and Pot C/Ps sectors.

*Motion passed 14-6*

### Rationale in Support:

- *Various forms of rationalization plans are being proposed or considered in both the BSAI and GOA for multiple species including Pacific Cod. Initiating a discussion paper on =>60 LOA P. Cod CV and CPs will help clarify the scope of the problem in the fisheries and identify a potential range of management options to address the issues.*
- *The Pot CV sector A season fishery has historically lasted through the end of January or into the beginning of February. This year was the shortest season on record; the fishery closed on January 17<sup>th</sup> which was approximately 50% shorter than in past years.*
- *For the past decade there have been approximately 20-24 participants in the CV sector. In the 2019 A Season there were 34 participants, which is an approximate 50% increase in effort, resulting in a historically short season.*
- *There is a high rate of latency in the Pot CV sector. Until the last year or two, approximately 50% of the permits would be considered latent.*
- *Slowing the pace of the fishery will promote safety, reduce bycatch and allow the fish to be harvested at the optimum time for quality.*
- *Rationalizing virtually all other Pcod sectors in the BSAI and potentially the GOA but leaving out these two sectors could exacerbate problems for these fisheries. Hook & Line C/Ps-48.7%, Trawl CVs-22.1%, Am80 Trawl C/Ps-13.4%, AFA Trawl C/Ps-2.3% = 86.5%*
- *This request is responsive to public testimony.*

### Rationale in Opposition:

- *There are ways to address fishery management needs other than assigning ownership rights*
- *Further limiting participation in these fisheries will negatively impact coastal communities by closing off opportunities for new entrants and future generations*