

**CITY COUNCIL—BOROUGH ASSEMBLY
JOINT WORK SESSION AGENDA**

**Tuesday, January 8, 2013
Assembly Chambers
6:30 p.m.
(City Chairing)**

Joint work sessions are informal meetings of the City Council and Borough Assembly where elected officials discuss issues that affect both City and Borough governments and residents. Although additional items not listed on the joint work session agenda are sometimes discussed when introduced by elected officials, staff, or members of the public, no formal action is taken at joint work sessions and items that require formal action are placed on a regular City Council and/or Borough Assembly meeting agenda. Public comments at work sessions are NOT considered part of the official record. Public comments intended for the “official record” should be made at a regular City Council or Borough Assembly meeting.

1. Public Comments (limited to 3 minutes each)
2. Fisheries Analyst Report
 - a. Review of NPFMC motion (October 9, 2012) on Comprehensive PSC Management in the CGOA Groundfish Trawl Fishery.....1
 - b. Overview of “Design Matters—Making Catch Shares Work”.....25
 - c. Guest Speaker: Dr. Seth Macinko, on Community Concerns and Considerations Regarding Catch Share Management..... No Backup
 - d. Review of Draft Letter From Mayors to NPFMC on Central GOA Trawl Fishery PSC Management and Catch Shares.....47
 - e. Quick Review of October and December NPFMC Newsletters.....49
 - f. Quick Review of Fisheries Consultant Annual Report.....68
3. Bike Path (Andy Schroeder)70
4. Biosolids/Composting Update76
5. Discussion of Joint City/Borough CIP List

Kodiak Fisheries Workgroup Meeting

November 19, 2012

Review of the NPFMC Motion (October 9, 2012) on Comprehensive PSC Management in the CGOA Groundfish Trawl Fishery

During its meeting in October 2012, the North Pacific Fishery Management Council (NPFMC) developed a Purpose and Need Statement with Goals and Objectives to address agenda item D-1(a) regarding comprehensive management of prohibited species catch (PSC) in the central Gulf of Alaska (CGOA) trawl fishery for groundfish (attached).

This issue evolved first from a comprehensive discussion of PSC management into a discussion of what tools should be provided to the trawl sector to effectively accommodate restrictions on PSC. Now it has evolved further into a discussion of catch shares for the CGOA trawl fishery. This is indicated by some language in the motion itself as well as direct reference to catch shares in the NPFMC October Newsletter and the NPFMC Three-Meeting Outlook.

The Council's motion accommodates many of the concerns expressed by a joint resolution passed recently by the City of Kodiak and the Kodiak Island Borough (City of Kodiak Res. No. 2012-31, KIB Res. No. FY2013-10), but not all of them. But, the Council's motion is written in fairly general language that is open to wide-ranging interpretation.

Following is a commentary on the NPFMC motion that is intended to spur discussion and potential action by the Kodiak Fisheries Workgroup and the Joint City Council/Borough Assembly.

Description of the NPFMC Motion

Purpose and Need Statement:

The first two paragraphs of the Council's Purpose and Need Statement discuss the need for a program: difficulty of compliance with various bycatch restrictions faced by the CGOA trawl fishery. The narrative is perhaps overly harsh in its assertion of these difficulties, but the intent is to recognize that the Council believes that new tools may be needed.

The second two paragraphs of the Purpose and Need Statement assert the purpose of the program: allocate allowable harvests to eliminate the derby-style race for fish, in order to improve stock conservation and other objectives. While some of this narrative can be interpreted to focus on target species and preclude consideration of a program that just addresses bycatch species (e.g., individual bycatch quotas, IBQs), oral comments by the Commissioner of ADF&G on the record and conversations with ADF&G staff confirm that potential program alternatives directly solely at PSC and other bycatch issues (e.g., IBQs) are not precluded.

The last sentence in the second paragraph states plainly that the program is not to modify management of other sectors in the GOA. Thus, trawl fisheries in the western GOA are omitted and other gear sectors such as longline, pot, and jig in the central GOA are omitted as well.

Goals and Objectives:

1. This goal is basically a motherhood statement, since all of the National Standards of the Magnuson-Stevens Act (attached) must be addressed and balanced. However, the focus here is primarily on NS 9 dealing with the minimization of bycatch and NS 1 dealing with the achievement of optimum yield (and preventing overfishing). Also of high importance is NS 8 dealing with the protection of fishing communities. Thus, here the NPFMC is asserting that the program to be developed must provide for effective control of bycatch while achieving optimum yield in such a way that assures the continued participation of pertinent fishing communities.
2. This goal aims to benefit the trawl sector by providing mechanisms to allow the fishery to be prosecuted "...more slowly, strategically, and cooperatively, both amongst the vessels themselves and with shore-based processors." One reading of this statement could be that formal linkages or cooperatives between harvesting vessels and shore-based processors are necessary. However, the intent of this goal is more generally to assert that the management program ought to provide flexibility to the fleet and to processors so that fishing patterns, delivery schedules, and other aspects of the fishery can better be controlled through cooperative efforts to achieve bycatch control. A requirement for formal cooperatives, processor linkages, or processor quotas is not mandated by this goal.
3. This goal calls for reduction of bycatch and regulatory discards. This can be interpreted to suggest that further reductions by the trawl fleet will be called for, or that the management program will simply provide tools appropriate for compliance with existing controls. Bycatch in this context refers to the harvest of species that are not wanted, including those species for which retention is prohibited (i.e., PSC). Regulatory discards refers to catches of potentially otherwise valuable species for which allowable retention is limited or restricted by regulation (e.g., required discard of an otherwise legal species after a certain amount has been caught; exceedances of MRAs).
4. This goal basically reflects current requirements in the LAPP (limited access privilege program) provisions of the Magnuson-Stevens Act (Sec. 303A), specifically within the Allocation section (Sec. 303A(c)(5)), although the Council motion broadens considerations for the processing sector. It will remain a matter of future judgment what mix of considerations will be deemed appropriate. This language may suggest, but does not mandate, the imposition of processor linkages or issuance of quota to processors; other mechanisms to address investments by processors may be through regionalized landing requirements, processor caps, or some other framework.
5. This goal is very generally worded, although it is likely to be considered a placeholder for any sector (e.g., the processing sector) that believes it is not getting equitable treatment in the developing alternatives. Again, however, this goal does not presuppose processor linkage or quota.
6. This goal expresses several of the community-based concerns outlined in the City/Borough resolutions, to limit consolidation, provide employment and entry opportunities, and increase economic viability.
7. This goal identifies the benefits to be derived from slowing down the fishery and providing participants with more flexibility to decide when/where/how they wish to harvest, deliver, and process the catch. It is basically a reference to benefits perceived to flow from a catch share program.

8. This goal was developed expressly for the processing sector, in order to promote efficiency of their operations and pursuit of new products and markets.
9. This goal, to increase safety, is not related to bycatch or PSC control, but is a restatement of a requirement in the MSA LAPP provisions.
10. This goal to improve monitoring and reporting is an indirect reference to, among other possibilities, increased observer coverage demanded of fisheries that enjoy the benefits of a catch share program. Discussions are centering on the need to impose 100% observer coverage on the CGOA trawl fleet as part of any catch share program that might be developed. Other forms of monitoring and reporting, such as economic and employment data, may also be included.
11. This goal to increase ability of the trawl fleet to adapt to other federal law (e.g., the Endangered Species Act) is thought to express the benefits again of slowing down the fishery and allowing individual operators and fleets to improve their compliance and accommodation of no-transit zones, seasonal apportionments, and other restrictions.
12. This goal, to provide measures of success and impacts of all program elements, is very similar to a goal expressed by the City/Borough. It is a gap in previous programs that is recognized now by agency personnel. A discussion paper on this particular topic will be presented to the NPFMC at their meeting in February, 2013.
13. This goal to minimize impacts to other sectors may be accomplished by imposing sideboards or other types of controls on the participation of owners of CGOA trawl catch shares in other sectors or fisheries. It remains to be seen whether or not sufficient protection can be provided.
14. This goal to promote active participation by owners of harvesting vessels and fishing privileges is similar to a goal expressed by the City/Borough. This might be accomplished by way of requirements for catch share holders to be aboard any vessel fishing those catch shares, or for catch share holders to own some minimum proportion of equity in any vessel fishing those catch shares.

The last paragraph under the Goals and Objectives section of the NPFMC motion indicates that a discussion paper will be presented at the Council's meeting in February, on various catch share options as well as how other catch share programs have satisfied requirements of the MSA LAPP provisions.

Satisfaction of the Joint City/Borough Resolution

At first glance, the North Pacific Council's motion accommodates well the concerns and goals put forward in the City/Borough resolutions. Testimony by joint city council/borough assembly members at the NPFMC Advisory Panel meeting, and by the City and Borough mayors to the North Pacific Council itself, was lauded and well-received.

A more detailed look at the Council's motion, however, indicates a number of issues may warrant further attention by the City and Borough.

Under Overarching Purpose, the resolutions refer to "...competitive harvesting and processing sectors..." yet there is no reference to such competitiveness within the Council's purpose and need statement or goals and objectives; the closest reference within the Council's motion appears to be within Goal 6.

Under the resolutions' Goals for Management Programs, there is reference in #2 to landings and revenues "...to Kodiak." While it is to be expected that the North Pacific Council would not seek to benefit just a single community, the City/Borough may wish to continue to apply pressure to make sure that Kodiak Island communities benefit from any management scheme that is developed.

The City/Borough in #3 announced a need to maintain employment opportunities for vessel crews, processing workers, and support industries. The Council's motion, under Goal 6, mentions providing for employment and entry opportunities, but to the more general categories of harvesters, processors, and support industries. It is not clear that this will be sufficient for crew members and processing workers.

And, the City/Borough in #7 specify a need to minimize the economic impacts of consolidation of both the harvesting and processing sectors, while the Council's motion in Goal 6 more simply just refers to limiting consolidation. It is not clear in the sentence structure whether this reference in the Council's motion refers to limiting consolidation in both the harvesting and processing sectors (and it makes no sense to apply this to support industries).

The City/Borough in #8 assert that active participation by vessel owners and the owners of fishing privileges should be maximized, while the Council's motion in Goal 14 asserts that such active participation should more simply be promoted.

Finally, there is no direct reference to the City/Borough goal (#9) of maintaining the strength and vitality of Kodiak's working waterfront, although perhaps the Council's Goals 6-8 are sufficient (even though Kodiak in particular is not mentioned).

Further Consideration of a Catch Share Alternative

If the North Pacific Council continues to proceed toward a catch share program to address the CGOA trawl PSC management issue, then there are a number of concerns that will need to be addressed by the City and Borough in order to protect the community. Many of the previous catch share programs for fisheries off Alaska did not fully consider the needs of communities, and many of the more recent programs have been for more "industrial" type fisheries such as the Bering Sea pollock fishery, the offshore "Amendment 80" non-pollock trawl fishery, and the Bering Sea/Aleutian Island crab fisheries.

In contrast, the Gulf of Alaska groundfish fishery, even for the trawl sector, is less industrial and more directly tied to coastal communities that have active participants in the various facets of harvesting and processing let alone support industries.

Recent amendments to the Magnuson-Stevens Act have provided specific requirements for the development of any future catch share, or limited access privilege, program. These LAPP provisions are found in Sec. 303A of the MSA (attached). A concise summary of these LAPP provisions is provided below in an excerpt from an earlier discussion paper developed by staff of the NPFMC on this CGOA trawl PSC issue.

The MSA provides extensive direction for identifying management objectives for limited access privilege programs. Any program is required to promote fishing safety, fishery conservation and management, and social and economic benefits, as well as reduce capacity in any fishery that is found to be overcapacity (MSA Sec. 303A(c)(1)(B) and (C)). The Council is also required to undertake an expansive consideration of social, cultural, and economic issues in the development of a limited access privilege program. Any allocation is also required to be fair and equitable, considering current and historical harvests, employment in harvesting and processing, investments in and dependence on the fishery, and current and historical participation of fishing communities (MSA 303A(c)(5)(A)). In

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addition, the program should provide for sustained participation of small owner operated vessels and dependent communities, as well as provide for these interests and captains and crew through set asides, where necessary and appropriate (MSA 303A(c)(5)(B), (C), and (D)). Privileges under the program are to be held and used only by persons who substantially participate in the fishery, and program elements should prevent excessive consolidation in harvesting and processing, as well as geographic consolidation of the fishery (MSA 303A(c)(5)(D) and (E)). The Council should also develop a policy on transferability of shares, consistent with the objective and goals of the program (MSA 303A(c)(7)).

The City and Borough may wish to further evaluate, in more detail, the NPFMC's development of a catch share program for the central GOA trawl fisheries against these LAPP provisions and against impacts to communities imposed by previous catch share programs. The City and Borough may also wish to review the resolution passed by the City of Kodiak in 2005 (attached) regarding the North Pacific Council's previous attempt to rationalize the Gulf of Alaska groundfish fisheries.

A number of questions come quickly to mind:

Is it possible to restrict the flight of capital from coastal communities after the award of catch shares to harvesters (and processors)?

Can the potential imposition of leasing fees be limited after the award of catch shares?

Can effects of consolidation be effectively mitigated after the award of catch shares?

Should the asset value of catch shares be limited to the extent possible, in order to limit the amount of windfall awarded to initial issuees and to limit the potential cost of new entry?

Should renewal or reissuance of catch shares be tied to performance standards such as reduced bycatch or high level of active participation?

Should a catch share program be limited to bycatch species only (e.g., IBQs) or should it include target species?

Is it possible to sufficiently protect other sectors (e.g., fixed gear) if the catch share program applies only to the CGOA trawl sector?

Do communities in the Kodiak Island Borough wish to further explore opportunities under the LAPP provisions of the Magnuson Act, in particular:

Sec. 303A(c)(3) that provides the opportunity for communities to be issued catch shares.

Sec. 303A(c)(4) that provides the opportunity for regional fishery associations to be issued catch shares.

Sec. 303A(c)(5)(A)(C) that provides for set-asides of catch shares for entry-level and small vessel owner-operators, captains, crew, and fishing communities.

Sec. 303A(c)(7) that provides for establishment of criteria to control the transferability of catch shares.

Sec. 303A(d and e) that provide the opportunity to establish an auction, in order to collect royalties for initial or subsequent distribution of catch shares, and to impose cost recovery fees to cover the costs of management, data collection and analysis, and enforcement.

**D-1(a) Council Motion - GOA Trawl PSC tools
October 9, 2012**

The Council approves the following purpose and need statement and goals and objectives for the Central Gulf of Alaska trawl PSC action:

Purpose and Need Statement:

Management of Central Gulf of Alaska (GOA) groundfish trawl fisheries has grown increasingly complicated in recent years due to the implementation of measures to protect Steller sea lions and reduced Pacific halibut and Chinook salmon Prohibited Species Catch (PSC) limits under variable annual total allowable catch (TACs) limits for target groundfish species. These changes complicate effective management of target and non-target resources, and can have significant adverse social and economic impacts on harvesters, processors, and fishery-dependent GOA coastal communities.

The current management tools in the GOA Groundfish Fishery Management Plan (FMP) do not provide the Central GOA trawl fleet with the ability to effectively address these challenges, especially with regard to the fleet's ability to best reduce and utilize PSC. As such, the Council has determined that consideration of a new management regime for the Central GOA trawl fisheries is warranted.

The purpose of the proposed action is to create a new management structure which allocates allowable harvest to individuals, cooperatives, or other entities, which will eliminate the derby-style race for fish. It is expected to improve stock conservation by creating vessel-level and/or cooperative-level incentives to eliminate wasteful fishing practices, provide mechanisms to control and reduce bycatch, and create accountability measures when utilizing PSC, target, and secondary species. It will also have the added benefit of reducing the incentive to fish during unsafe conditions and improving operational efficiencies.

The Council recognizes that Central GOA harvesters, processors, and communities all have a stake in the groundfish trawl fisheries. The new program shall be designed to provide tools for the effective management and reduction of PSC and bycatch, and promote increased utilization of both target and secondary species harvested in the GOA. The program is also expected to increase the flexibility and economic efficiency of the Central GOA groundfish trawl fisheries and support the continued direct and indirect participation of the coastal communities that are dependent upon those fisheries. These management measures shall apply to those species, or groups of species, harvested by trawl gear in the Central GOA, as well as to PSC. This program will not modify the overall management of other sectors in the GOA, or the Central GOA rockfish program, which already operates under a catch share system.

Goals and Objectives:

1. Balance the requirements of the National Standards in the Magnuson Stevens Act
2. Increase the ability of the groundfish trawl sector to avoid PSC species and utilize available amounts of PSC more efficiently by allowing groundfish trawl vessels to fish more slowly, strategically, and cooperatively, both amongst the vessels themselves and with shore-based processors
3. Reduce bycatch and regulatory discards by groundfish trawl vessels
4. Authorize fair and equitable access privileges that take into consideration the value of assets and investments in the fishery and dependency on the fishery for harvesters, processors, and communities

- 5. Balance interests of all sectors and provide equitable distribution of benefits and similar opportunities for increased value
- 6. Promote community stability and minimize adverse economic impacts by limiting consolidation, providing employment and entry opportunities, and increasing the economic viability of the groundfish harvesters, processors, and support industries
- 7. Improve the ability of the groundfish trawl sector to achieve Optimum Yield, including increased product retention, utilization, landings, and value by allowing vessels to choose the time and location of fishing to optimize returns and generate higher yields
- 8. Increase stability relative to the volume and timing of groundfish trawl landings, allowing processors to better plan operational needs as well as identify and exploit new products and markets
- 9. Increase safety by allowing trawl vessels to prosecute groundfish fisheries at slower speeds and in better conditions
- 10. Include measures for improved monitoring and reporting
- 11. Increase the trawl sector's ability to adapt to applicable Federal law (i.e., Endangered Species Act)
- 12. Include methods to measure the success and impacts of all program elements
- 13. Minimize adverse impacts on sectors and areas not included in the program
- 14. Promote active participation by owners of harvest vessels and fishing privileges

The Council requests that staff provide a discussion paper that outlines various catch share options for the Central GOA trawl sector that may be available to meet the above objectives, and how other comparable programs have considered and applied the LAPP provisions in the MSA to meet similar objectives.

The Council adopts a control date of December 31, 2012. Any catch history after this date may not be credited in any allocation system when designing a future fishery management system.

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Introduced by: Borough Assembly
Requested by: Kodiak Fisheries Workgroup
Drafted by: Borough Clerk
Introduced on: 09/20/2012
Adopted on: 09/20/2012

**KODIAK ISLAND BOROUGH
RESOLUTION NO. FY2013-10**

**A JOINT RESOLUTION OF THE KODIAK ISLAND BOROUGH ASSEMBLY AND THE
CITY OF KODIAK COUNCIL SUPPORTING COMMENTS TO THE NORTH PACIFIC
FISHERY MANAGEMENT COUNCIL ON PENDING ACTIONS REGARDING
COMPREHENSIVE MANAGEMENT OF PROHIBITED SPECIES CATCH (PSC) BY THE
TRAWL FISHERY IN THE CENTRAL GULF OF ALASKA**

WHEREAS, the North Pacific Fishery Management Council is considering the need for and beginning development of a comprehensive program to manage prohibited species catch by the trawl fleet of the central Gulf of Alaska; and

WHEREAS, any such comprehensive management program for fisheries in the central Gulf of Alaska will have major and direct effects on the economy and well-being of residents of the Kodiak region; and

WHEREAS, National Standards of the Magnuson-Stevens Fishery Conservation and Management Act require that federal fishery management decisions take into account the importance of fishery resources to fishing communities, in order to provide for the sustained participation of such communities and minimize adverse economic impacts on such communities; and

WHEREAS, the Kodiak Island Borough and the City of Kodiak represent the communities of the Kodiak region, rather than individual user groups or fishing interests; and

WHEREAS, the Kodiak Island Borough and the City of Kodiak have begun a program to participate directly in public processes for fishery policy decision-making as outlined in Resolution No. FY2013-09 of the Kodiak Island Borough

NOW, THEREFORE BE IT JOINTLY RESOLVED BY THE KODIAK ISLAND BOROUGH ASSEMBLY AND THE CITY OF KODIAK COUNCIL that these bodies support the Kodiak Fisheries Workgroup's proposed overarching purpose for consideration of fishery management issues of interest and concern to the Kodiak region as follows:

- Overarching Purpose:**
1. Maintain healthy, sustainable resources in the central (and western) Gulf of Alaska.
 2. Promote a sustainable, vigorous economy in the Kodiak region with healthy and competitive harvesting and processing sectors and support industries.
 3. Maintain quality of life and social well-being in Kodiak.

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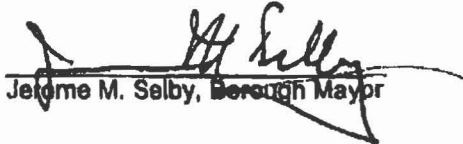
NOW, THEREFORE BE IT FURTHER JOINTLY RESOLVED BY THE KODIAK ISLAND BOROUGH ASSEMBLY AND THE CITY OF KODIAK COUNCIL that these bodies support the Kodiak Fisheries Workgroup's proposed goals for management programs as follows:

Goals for Management Programs:

1. Provide effective controls of prohibited species catch and other bycatch to provide for balanced and sustainable fisheries and healthy harvesting and processing sectors.
2. Maintain or increase target fishery landings and revenues to Kodiak.
3. Maintain or increase employment opportunities for vessel crews, processing workers, and support industries.
4. Provide increased opportunities for value-added processing.
5. Maintain opportunities for fishermen to enter the fishery.
6. Maintain opportunities for processors to enter the fishery.
7. Minimize adverse economic impacts of consolidation of the harvesting or processing sectors.
8. Maximize active participation by owners of harvesting vessels and fishing privileges.
9. Maintain the economic strength and vitality of Kodiak's working waterfront.
10. Establish methods to measure success and impacts of all programs, including collection and analysis of baseline and after-action data.

**ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH
THIS TWENTIETH DAY OF SEPTEMBER, 2012**

KODIAK ISLAND BOROUGH


Jerome M. Selby, Borough Mayor

ATTEST:


Nova M. Javier, MMC, Borough Clerk

16 U.S.C. 1851
MSA § 301

TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

SEC. 301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT **16 U.S.C. 1851**

(a) **IN GENERAL.**—Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for fishery conservation and management:

98-623

(1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

(2) Conservation and management measures shall be based upon the best scientific information available.

(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

104-297

(5) Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

104-297, 109-479

(8) Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of paragraph (2), in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

104-297

(9) Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

104-297

(10) Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

97-453

(b) GUIDELINES.—The Secretary shall establish advisory guidelines (which shall not have the force and effect of law), based on the national standards, to assist in the development of fishery management plans.

SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS

16 U.S.C. 1852

97-453, 101-627, 104-297

(a) ESTABLISHMENT.—

(1) There shall be established, within 120 days after the date of the enactment of this Act, eight Regional Fishery Management Councils, as follows:

(A) NEW ENGLAND COUNCIL.—The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in paragraph (3)). The New England Council shall have 17 voting members, including 11 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(B) MID-ATLANTIC COUNCIL.—The Mid-Atlantic Fishery Management Council shall consist of the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and North Carolina and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except North Carolina, and as provided in paragraph (3)). The Mid-Atlantic Council shall have 21 voting members, including 13 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(C) SOUTH ATLANTIC COUNCIL.—The South Atlantic Fishery Management Council shall consist of the States of North Carolina, South Carolina, Georgia, and Florida and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in paragraph (3)). The South Atlantic Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

16 U.S.C. 1853 note, 1853a
MSA §§ 303 note, 303A

P.L. 109-479, sec. 104(b), MSA § 303 note

16 U.S.C. 1853 note

EFFECTIVE DATES; APPLICATION TO CERTAIN SPECIES.—The amendment made by subsection (a)(10)¹⁶—

(1) shall, unless otherwise provided for under an international agreement in which the United States participates, take effect—

(A) in fishing year 2010 for fisheries determined by the Secretary to be subject to overfishing; and

(B) in fishing year 2011 for all other fisheries; and

(2) shall not apply to a fishery for species that have a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species; and

(3) shall not limit or otherwise affect the requirements of section 301(a)(1) or 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851(a)(1) or 1854(e), respectively).

109-479

SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS.

16 U.S.C. 1853a

(a) **IN GENERAL.**—After the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, a Council may submit, and the Secretary may approve, for a fishery that is managed under a limited access system, a limited access privilege program to harvest fish if the program meets the requirements of this section.

(b) **NO CREATION OF RIGHT, TITLE, OR INTEREST.**—Limited access privilege, quota share, or other limited access system authorization established, implemented, or managed under this Act—

(1) shall be considered a permit for the purposes of sections 307, 308, and 309;

(2) may be revoked, limited, or modified at any time in accordance with this Act, including revocation if the system is found to have jeopardized the sustainability of the stock or the safety of fishermen;

(3) shall not confer any right of compensation to the holder of such limited access privilege, quota share, or other such limited access system authorization if it is revoked, limited, or modified;

(4) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested by the holder; and

(5) shall be considered a grant of permission to the holder of the limited access privilege or quota share to engage in activities permitted by such limited access privilege or quota share.

¹⁶ Section 104(a)(10) of P.L. 109-479 added section 303(a)(15).

(c) REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.—

(1) IN GENERAL.—Any limited access privilege program to harvest fish submitted by a Council or approved by the Secretary under this section shall—

(A) if established in a fishery that is overfished or subject to a rebuilding plan, assist in its rebuilding;

(B) if established in a fishery that is determined by the Secretary or the Council to have over-capacity, contribute to reducing capacity;

(C) promote—

- (i) fishing safety;
- (ii) fishery conservation and management; and
- (iii) social and economic benefits;

(D) prohibit any person other than a United States citizen, a corporation, partnership, or other entity established under the laws of the United States or any State, or a permanent resident alien, that meets the eligibility and participation requirements established in the program from acquiring a privilege to harvest fish, including any person that acquires a limited access privilege solely for the purpose of perfecting or realizing on a security interest in such privilege;

(E) require that all fish harvested under a limited access privilege program be processed on vessels of the United States or on United States soil (including any territory of the United States);

(F) specify the goals of the program;

(G) include provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this Act, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years);

(H) include an effective system for enforcement, monitoring, and management of the program, including the use of observers or electronic monitoring systems;

(I) include an appeals process for administrative review of the Secretary's decisions regarding initial allocation of limited access privileges;

(J) provide for the establishment by the Secretary, in consultation with appropriate Federal agencies, for an information collection and review process to provide any additional information needed to determine whether any illegal acts of anti-competition, anti-trust, price collusion, or price fixing have occurred among regional fishery associations or persons receiving limited access privileges under the program; and

(K) provide for the revocation by the Secretary of limited access privileges held by any person found to have violated the antitrust laws of the United States.

(2) WAIVER.—The Secretary may waive the requirement of paragraph (1)(E) if the Secretary determines that—

- (A) the fishery has historically processed the fish outside of the United States; and
- (B) the United States has a seafood safety equivalency agreement with the country where processing will occur.

(3) FISHING COMMUNITIES.—

(A) IN GENERAL.—

(i) ELIGIBILITY.—To be eligible to participate in a limited access privilege program to harvest fish, a fishing community shall—

- (I) be located within the management area of the relevant Council;
- (II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (III) consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council's management area; and
- (IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(ii) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section for any person who fails to comply with the requirements of the community sustainability plan. Any limited access privileges denied or revoked under this section may be reallocated to other eligible members of the fishing community.

(B) PARTICIPATION CRITERIA.—In developing participation criteria for eligible communities under this paragraph, a Council shall consider—

- (i) traditional fishing or processing practices in, and dependence on, the fishery;
- (ii) the cultural and social framework relevant to the fishery;
- (iii) economic barriers to access to fishery;
- (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
- (v) the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and
- (vi) the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.

(4) REGIONAL FISHERY ASSOCIATIONS.—

(A) IN GENERAL.—To be eligible to participate in a limited access privilege program to harvest fish, a regional fishery association shall—

- (i) be located within the management area of the relevant Council;
- (ii) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (iii) be a voluntary association with established by-laws and operating procedures;
- (iv) consist of participants in the fishery who hold quota share that are designated for use in the specific region or subregion covered by the regional fishery association, including commercial or recreational fishing, processing, fishery-dependent support businesses, or fishing communities;
- (v) not be eligible to receive an initial allocation of a limited access privilege but may acquire such privileges after the initial allocation, and may hold the annual fishing privileges of any limited access privileges it holds or the annual fishing privileges that is [sic]¹⁷ members contribute; and
- (vi) develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(B) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section to any person participating in a regional fishery association who fails to comply with the requirements of the regional fishery association plan.

¹⁷ So in original.

(C) **PARTICIPATION CRITERIA.**—In developing participation criteria for eligible regional fishery associations under this paragraph, a Council shall consider—

- (i) traditional fishing or processing practices in, and dependence on, the fishery;
- (ii) the cultural and social framework relevant to the fishery;
- (iii) economic barriers to access to fishery;
- (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
- (v) the administrative and fiduciary soundness of the association; and
- (vi) the expected effectiveness, operational transparency, and equitability of the fishery association plan.

(5) **ALLOCATION.**—In developing a limited access privilege program to harvest fish a Council or the Secretary shall—

(A) establish procedures to ensure fair and equitable initial allocations, including consideration of—

- (i) current and historical harvests;
- (ii) employment in the harvesting and processing sectors;
- (iii) investments in, and dependence upon, the fishery; and
- (iv) the current and historical participation of fishing communities;

(B) consider the basic cultural and social framework of the fishery, especially through—

- (i) the development of policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including regional or port-specific landing or delivery requirements; and
- (ii) procedures to address concerns over excessive geographic or other consolidation in the harvesting or processing sectors of the fishery;

(C) include measures to assist, when necessary and appropriate, entry-level and small vessel owner-operators, captains, crew, and fishing communities through set-asides of harvesting allocations, including providing privileges, which may include set-asides or allocations of harvesting privileges, or economic assistance in the purchase of limited access privileges;

(D) ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by—

- (i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use; and
- (ii) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges; and

(E) authorize limited access privileges to harvest fish to be held, acquired, used by, or issued under the system to persons who substantially participate in the fishery, including in a specific sector of such fishery, as specified by the Council.

(6) PROGRAM INITIATION.—

(A) LIMITATION.—Except as provided in subparagraph (D), a Council may initiate a fishery management plan or amendment to establish a limited access privilege program to harvest fish on its own initiative or if the Secretary has certified an appropriate petition.

(B) PETITION.—A group of fishermen constituting more than 50 percent of the permit holders, or holding more than 50 percent of the allocation, in the fishery for which a limited access privilege program to harvest fish is sought, may submit a petition to the Secretary requesting that the relevant Council or Councils with authority over the fishery be authorized to initiate the development of the program. Any such petition shall clearly state the fishery to which the limited access privilege program would apply. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the limited access program shall be eligible to sign a petition for such a program and shall serve as the basis for determining the percentage described in the first sentence of this subparagraph.

(C) CERTIFICATION BY SECRETARY.—Upon the receipt of any such petition, the Secretary shall review all of the signatures on the petition and, if the Secretary determines that the signatures on the petition represent more than 50 percent of the permit holders, or holders of more than 50 percent of the allocation in the fishery, as described by subparagraph (B), the Secretary shall certify the petition to the appropriate Council or Councils.

(D) NEW ENGLAND AND GULF REFERENDUM.—

(i) Except as provided in clause (iii) for the Gulf of Mexico commercial red snapper fishery, the New England and Gulf Councils may not submit, and the Secretary may not approve or implement, a fishery management plan or amendment that creates an individual fishing quota program, including a Secretarial plan, unless such a system, as ultimately developed, has been approved by more than 2/3 of those voting in a referendum among eligible permit holders, or other persons described in clause (v), with respect to the New England Council, and by a majority of those voting in the referendum among eligible permit holders with respect to the Gulf Council. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the individual fishing quota program shall be eligible to vote in such a referendum. If an individual fishing quota program fails to be approved by the requisite number of those voting, it may be revised and submitted for approval in a subsequent referendum.

(ii) The Secretary shall conduct a referendum under this subparagraph, including notifying all persons eligible to participate in the referendum and making available to them information concerning the schedule, procedures, and eligibility requirements for the referendum process and the proposed individual fishing quota program. Within 1 year after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary shall publish guidelines and procedures to determine procedures and voting eligibility requirements for referenda and to conduct such referenda in a fair and equitable manner.

(iii) The provisions of section 407(c) of this Act shall apply in lieu of this subparagraph for an individual fishing quota program for the Gulf of Mexico commercial red snapper fishery.

(iv) Chapter 35 of title 44, United States Code, (commonly known as the Paperwork Reduction Act) does not apply to the referenda conducted under this subparagraph.

(v) The Secretary shall promulgate criteria for determining whether additional fishery participants are eligible to vote in the New England referendum described in clause (i) in order to ensure that crew members who derive a significant percentage of their total income from the fishery under the proposed program are eligible to vote in the referendum.

(vi) In this subparagraph, the term 'individual fishing quota' does not include a sector allocation.

(7) TRANSFERABILITY.—In establishing a limited access privilege program, a Council shall—

(A) establish a policy and criteria for the transferability of limited access privileges (through sale or lease), that is consistent with the policies adopted by the Council for the fishery under paragraph (5); and

(B) establish, in coordination with the Secretary, a process for monitoring of transfers (including sales and leases) of limited access privileges.

(8) PREPARATION AND IMPLEMENTATION OF SECRETARIAL PLANS.—This subsection also applies to a plan prepared and implemented by the Secretary under section 304(c) or 304(g).

(9) ANTITRUST SAVINGS CLAUSE.—Nothing in this Act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term 'antitrust laws' has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

16 U.S.C. 1853a
MSA § 303A

(d) AUCTION AND OTHER PROGRAMS.—In establishing a limited access privilege program, a Council shall consider, and may provide, if appropriate, an auction system or other program to collect royalties for the initial, or any subsequent, distribution of allocations in a limited access privilege program if—

(1) the system or program is administered in such a way that the resulting distribution of limited access privilege shares meets the program requirements of this section; and

(2) revenues generated through such a royalty program are deposited in the Limited Access System Administration Fund established by section 305(h)(5)(B) and available subject to annual appropriations.

(e) COST RECOVERY.—In establishing a limited access privilege program, a Council shall—

(1) develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the program; and

(2) provide, under section 304(d)(2), for a program of fees paid by limited access privilege holders that will cover the costs of management, data collection and analysis, and enforcement activities.

(f) CHARACTERISTICS.—A limited access privilege established after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 is a permit issued for a period of not more than 10 years that—

(1) will be renewed before the end of that period, unless it has been revoked, limited, or modified as provided in this subsection;

(2) will be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have failed to comply with any term of the plan identified in the plan as cause for revocation, limitation, or modification of a permit, which may include conservation requirements established under the plan;

(3) may be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have committed an act prohibited by section 307 of this Act; and

(4) may be acquired, or reacquired, by participants in the program under a mechanism established by the Council if it has been revoked, limited, or modified under paragraph (2) or (3).

(g) LIMITED ACCESS PRIVILEGE ASSISTED PURCHASE PROGRAM.—

(1) **IN GENERAL.**—A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 53706(a)(7) of title 46, United States Code, to issue obligations that aid in financing—

(A) the purchase of limited access privileges in that fishery by fishermen who fish from small vessels; and

(B) the first-time purchase of limited access privileges in that fishery by entry level fishermen.

(2) **ELIGIBILITY CRITERIA.**—A Council making a submission under paragraph (1) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under subparagraphs (A) and (B) of paragraph (1) and the portion of funds to be allocated for guarantees under each subparagraph.

(h) **EFFECT ON CERTAIN EXISTING SHARES AND PROGRAMS.**—Nothing in this Act, or the amendments made by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, shall be construed to require a reallocation or a reevaluation of individual quota shares, processor quota shares, cooperative programs, or other quota programs, including sector allocation in effect before the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.

(i) TRANSITION RULES.—

(1) **IN GENERAL.**—The requirements of this section shall not apply to any quota program, including any individual quota program, cooperative program, or sector allocation for which a Council has taken final action or which has been submitted by a Council to the Secretary, or approved by the Secretary, within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, except that—

(A) the requirements of section 303(d) of this Act in effect on the day before the date of enactment of that Act shall apply to any such program;

(B) the program shall be subject to review under subsection (c)(1)(G) of this section not later than 5 years after the program implementation; and

(C) nothing in this subsection precludes a Council from incorporating criteria contained in this section into any such plans.

(2) **PACIFIC GROUND FISH PROPOSALS.**—The requirements of this section, other than subparagraphs (A) and (B) of subsection (c)(1) and subparagraphs (A), (B), and (C) of paragraph (1) of this subsection, shall not apply to any proposal authorized under section 302(f) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 that is submitted within the timeframe prescribed by that section.

16 U.S.C. 1853a note, 1854
MSA §§ 303A note, 304

P.L. 109-479, sec. 106(e), MSA § 303A note
APPLICATION WITH AMERICAN FISHERIES ACT.—Nothing in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), as added by subsection (a) [P.L. 109-479], shall be construed to modify or supersede any provision of the American Fisheries Act (46 U.S.C. 12102 note; 16 U.S.C. 1851 note; et alia).

P.L. 104-297, sec. 108(l), MSA § 303 note
EXISTING QUOTA PLANS.—Nothing in this Act [P.L.104-297] or the amendments made by this Act shall be construed to require a reallocation of individual fishing quotas under any individual fishing quota program approved by the Secretary before January 4, 1995.

SEC. 304. ACTION BY THE SECRETARY

16 U.S.C. 1854

104-297

(a) REVIEW OF PLANS.—

(1) Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall—

(A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law; and

(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(2) In undertaking the review required under paragraph (1), the Secretary shall—

(A) take into account the information, views, and comments received from interested persons;

(B) consult with the Secretary of State with respect to foreign fishing; and

(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6).

(3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify—

(A) the applicable law with which the plan or amendment is inconsistent;

(B) the nature of such inconsistencies; and

(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.

**CITY OF KODIAK
RESOLUTION NUMBER 05-45a**

**A RESOLUTION OF THE CITY OF KODIAK, REQUESTING NORTH PACIFIC
FISHERY MANAGEMENT COUNCIL CONSIDERATION OF COMMUNITY CONCERNS
IN THE PENDING GULF OF ALASKA RATIONALIZATION PROGRAM**

WHEREAS, the harvesting and processing sectors of the Kodiak fishing community are substantially involved in and substantially dependent upon the Gulf of Alaska groundfish fisheries; and

WHEREAS, Kodiak's economic and social health is inherently dependent on the community's sustained participation in all aspects of the Gulf groundfish fisheries; and

WHEREAS, the City of Kodiak has made substantial investments in support of and in reliance upon the Gulf groundfish fishery, such as water system expansion and improvements and port and harbor expansion and improvements; and

WHEREAS, the North Pacific Fishery Management Council has developed a suite of fishery allocation alternatives for the Gulf of Alaska groundfish fisheries and is working toward adoption of a preferred alternative for implementation; and

WHEREAS, allocating exclusive harvesting and/or processing privileges promotes consolidation in the fishing fleet and the processing sector, which may improve efficiency, but also results in skippers, crew members, and processing workers bearing the costs of consolidation without fully sharing in the related benefits; and

WHEREAS, fishery rationalization may create opportunities and incentives to produce more and higher value products, it also changes the distribution of fishery revenues among participants by altering the balance of market power between fishermen and processors, with potentially disruptive effects on the communities in which they live; and

WHEREAS, by awarding harvesting and/or processing privileges, fishery allocations make possible orderly harvesting and processing, but also facilitate migration of landings to communities with infrastructure advantages (such as road system access) and create barriers to entry for later generations of fishery participants; and

WHEREAS, it is essential that the potential adverse affects of Gulf groundfish rationalization be identified and analyzed, and that program adjustments be made to mitigate the potential adverse effects of Gulf groundfish rationalization on Kodiak and its residents prior to implementation.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Kodiak, Alaska, that the North Pacific Fishery Management Council (the Council) is hereby requested to take

the following actions in connection with its development of a Gulf of Alaska groundfish rationalization program:

1. Delay adoption of a preferred alternative Gulf of Alaska rationalization program until such time as the Council has conducted its 18- month review of the Bering Sea crab rationalization program to enable the public to evaluate and comment on the impacts of crab rationalization and to enable the Council to make appropriate adjustments to the Gulf rationalization program in response.
2. Preserve the catch history of vessels that are currently participating in the fishery, during the 18-month delay, to ensure that their interests are not diluted in any final allocation scheme that may be adopted.
3. Thoroughly analyze each alternative being considered by the Council before eliminating any of the alternatives to provide the public with the opportunity to compare the effects of the various alternatives on harvesters (including skippers and crew members), processors, and Gulf fishing communities.
4. Include limits on harvesting consolidation through vessel use caps that apply without exemption, and that are calculated to sustain skipper and crew employment opportunities and compensation.
5. Include measures to maintain a diverse, competitive processing market by providing a substantial pool of groundfish privileges for each sector that can be harvested without penalty and are not subject to processor linkage or processor closed class delivery requirements.
6. If processing privileges are included, limit consolidation of such privileges through processor and facility use caps.
7. Designate Federal harvesting privileges by region to reflect landing patterns similar to those occurring prior to program adoption, and require that fish harvested under such privileges be landed in their designated region.
8. Include a reasonable groundfish allocation that may be harvested and processed without holding any Federal or State dedicated access privilege, subject to restrictions that the State of Alaska may deem necessary to maintain the entry level character of such allocation.
9. Include a community fisheries quota program that
 - provides an opportunity for small Gulf coastal communities to enhance their residents' participation in the Gulf groundfish fishery, under the conditions that the allocation to such program does not disrupt other Gulf of Alaska fishery dependent communities by displacing their fishermen
 - is required to be harvested by residents of the eligible communities
 - requires that harvests made under such program be delivered on shore within the region of their allocation.

9. Include a community purchase program that provides Gulf coastal communities with the opportunity to maintain participation by their residents in the Gulf groundfish fishery by acquiring harvesting privileges for use by their residents, under the conditions that the City of Kodiak is an eligible community, and such program includes reasonable limits on the amount of harvesting privileges that any single eligible community may hold.
10. Consider, analyze, evaluate, and include all major sectors and gear types together, at the same time, and in combination with each other as an interconnected fishery, as the Council proceeds with the process of developing and implementing a rationalization regime for Gulf of Alaska groundfish.



CITY OF KODIAK


MAYOR

ATTEST:


CITY CLERK

Adopted: November 17, 2005

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DESIGN MATTERS

Making Catch Shares Work



THE
PEW
ENVIRONMENT GROUP

DESIGN MATTERS

Making Catch Shares Work

Contents

Executive Summary	2
Design Matters: Making Catch Shares Work	4
What Is a Catch Share?	5
The Magnuson-Stevens Act	7
No Single Solution	9
Unintended Consequences	10
Mixed Results	11
Case Studies of Catch Shares	
Bering Sea and Aleutian Islands Crab Rationalization	12
Alaska Halibut and Sablefish	14
Gulf of Mexico Red Snapper	15
Georges Bank Atlantic Cod Sector	16
Conclusions	17
Elements of Successful Catch Share Programs	17
Endnotes	19

Executive Summary

Catch shares are fishery management programs that allocate fishing privileges in the form of a specific portion of the total annual catch quota. These programs range from individual transferable quotas to community-based management systems such as sectors. While catch shares take many forms, in general they allocate the quota to allow fishing entities—individuals, communities, cooperatives, etc.—exclusive access to a portion of the quota, but require that fishing cease once that entity's share of the quota is met.

Science-based annual catch limits are essential if catch shares are to be effective and if requirements to end overfishing and rebuild depleted fish populations are to be met. These limits ensure that the amount of fish taken each year remains at levels that allow fish populations to reproduce and maintain an adequate biomass to support maximum sustainable catch. After science-based catch limits have been determined, the quota can be allocated to participants in the fishery. This allocation must be done with careful consideration of the socioeconomic changes that may result.

The critical decisions about how a catch share program is designed and implemented, and who receives an allocation, must be given careful analysis. A properly designed program must include:

- **science-based annual catch limits** that include all fish killed as a result of fishing (target fish landed and non-target fish—or bycatch—discarded at sea)
- **adequate monitoring** of the target fish catch and bycatch
- **identification of explicit conservation, social and economic goals** that the program intends to achieve and metrics for measuring attainment of those goals
- **permits issued for no more than 10 years** and regular review and evaluation of program performance with opportunities to modify and improve the program, as required by section 303A of the Magnuson-Stevens Fishery Conservation and Management Act

- **adequate enforcement**, including validation of catch and discard reporting and, to the extent possible, real-time management with the authority to close the fishery as soon as the quota is reached
- **fair and equitable allocation** through a transparent and open process, including mechanisms to accommodate recreational anglers, working fishermen and coastal communities; ownership caps so that one entity does not hold an excessive share of the quota; and opportunities for new fishermen.

Ocean fish are public resources. Catch shares, therefore, grant privileges to only a portion of the total catch and do not convey exclusive property rights to the resource. These programs can improve fisheries performance, management and ecosystem health, but only if properly designed and monitored. Correctly applied, catch shares are viable management options along with other measures such as adjusting the length of the fishing season, refining areas that are opened or closed to fishing, restricting gear to protect fish habitat and limiting catch size. Catch shares are not, however, a panacea. They should be part of a comprehensive approach that strengthens conservation and supports communities by providing access for recreational anglers and diverse fleets and crew, qualities regarded by many as the heart and soul of a working waterfront.

Science-based catch limits that don't result in overfishing are critical to ensuring long-term sustainability; properly designed catch shares are a way to allocate those limits.

Design Matters: Making Catch Shares Work

Catch shares have been widely lauded for their economic and ecological benefits. Indeed, recent studies in the journals *Science* and *Nature* describe catch share programs as a solution to fishery collapse, and some conservation groups have proposed that each sector of U.S. fisheries be required to consider catch shares or explain why the management system being used instead is superior. Like other management tools—such as limits on fishing seasons, gear restrictions, area closures and size requirements—catch shares can be a viable tool if correctly designed and applied. However, there are significant questions regarding the actual impact of these programs (as opposed to other management tools) on the ecological health of the fisheries in which they have been implemented, as well as on their economic impacts—the latter of which is the specific focus of this paper.

The current discussion on catch shares too often focuses on the economic benefits that have accrued to the fishermen and fishing communities that are able to participate in these programs, without adequate consideration given to the economic downsides of these programs for those who have been left out. This paper does not seek to provide a detailed, thorough analysis of catch share programs. Rather, its purpose is to highlight some of the economic downsides of these programs, while simultaneously acknowledging their benefits, in order to provide a broader context for discussion. We believe that catch shares, like many management tools, are not a cure-all for the various problems facing fisheries in the United States and elsewhere in the world. To be effective, they need to be implemented as part of a comprehensive approach that includes measures aimed at reducing the scope and severity of negative fishing impacts on the marine environment, while also taking into account the economic needs of fishermen and fishing communities. What follows is a discussion of catch shares: examining problems created by this tool and indicating possible ways to minimize those problems through effective program design.

What Is a Catch Share?

Catch share is an umbrella term that includes a number of fisheries management strategies. Catch share programs allocate fishing privileges as a share of allowable catch to individuals, cooperatives, communities or groups of fishermen.¹ Figure 1 represents the hierarchy of programs. They are incentive-based tools that bestow privileges to access a public resource (not a property right) and that are thought to enhance fishermen's flexibility and efficiency by allowing them to choose how and when to catch their portion of the quota.² Studies of catch shares have found that they can improve economic and environmental health and eliminate the "race to fish," thus enhancing safety and minimizing bycatch and other ecosystem impacts.³

In theory, fishing privileges and exclusive access to a portion of the catch give fishermen an incentive for economic efficiency and prudent stewardship of the resource. Economic theory also suggests, however, that for market forces to work effectively, the privileges need to be permanent, secure, restricted and transferable.⁴ Since fishermen have little control over fish populations, exclusivity is reduced and the "tragedy of the commons" problem occurs—that is, all fishermen suffer when individual fishermen maximally use public resources for their personal benefit.

Granting permanent rights to a public resource runs counter to the public trust doctrine that holds that certain lands and their natural resources belong to the public and that, although the government is the legitimate administrator of those lands, resources must be managed for the public good rather than for the exclusive benefit of private individuals.⁵ Additionally, the Magnuson-Stevens Fishery Conservation and Management Act (MSA) states that quota shares are not property rights, but privileges to fish.

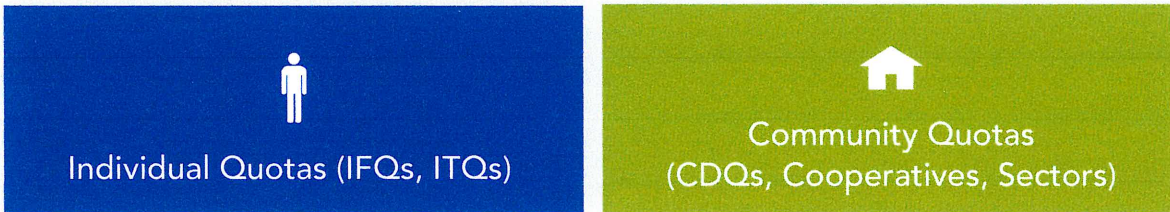
The MSA further defines catch shares as Limited Access Privilege Programs (LAPPs). While catch shares are often equated only with individual transferable quotas (ITQs) or individual fishing quotas (IFQs), the system also includes other quota share arrangements, among them community development quotas (CDQs), sector allocation, and community and regional fishing associations. Typically, various forms of catch shares have been used in commercial fisheries, where participants are readily identifiable. However, there is increasing interest in employing catch share programs in recreational fisheries, which face significant challenges, including the absence of real-time data, insufficient monitoring and untested methods of assigning quotas to individual anglers.

FIGURE 1

Some Types of Catch Shares



Limited Access Privilege Programs (LAPPs)
Dedicated Access Privileges (DAPs)



Individual Fishing Quotas (IFQs) are allocated to eligible fishermen, allowing them a specific portion of the total allowable catch (TAC). The MSA defines IFQs as a federal permit to catch a certain quantity of fish (a percentage of TAC); the permit is held for the exclusive use by a person; thus, it is distinct from a community development quota.⁶

Individual Transferable Quotas (ITQs) can be bought, sold or transferred to other fishermen.⁷ While ITQs are sometimes construed as a property right, U.S. law states that there is no creation of right, title or interest and that the quota can be revoked, limited or modified at any time without compensation.⁸

Limited Access Privilege Programs (LAPPs) are defined by the MSA as a federal permit held for exclusive use by an individual to catch a portion of the total quota. IFQs are a form of LAPP, but LAPPs include more than IFQs. LAPPs allow flexibility for allocating the total quota, whereas IFQs are always a percentage of the total quota.⁹

Community Development Quotas (CDQs) allocate portions of the annual TAC to coalitions of villages with limited economic opportunities (e.g., rural coastal communities in western Alaska).¹⁰

Sector Allocation gives a portion of a quota, in accordance with an approved plan, to a self-selecting group of fishermen bound by a contractual agreement. The participants allocate the quota to those in the sector. These allocations are a form of harvesting cooperative, but the MSA does not consider them to be LAPPs because allocations are granted to the whole sector rather than to individuals.

Recently, community-based fisheries management (CBFM) has attracted considerable interest; the U.S. Government Accountability Office (GAO) found that “the easiest and most direct way to help protect communities under an IFQ program is to allow the communities themselves to hold quota.”¹¹ CBFM encompasses programs such as CDQs, cooperatives and sectors. In CBFM programs, communities play a large role in managing their fisheries and protecting the resource. These programs have been established in Alaska, Maine, Massachusetts, Nova Scotia and Mexico.

Each type of catch share program has its strengths and weaknesses, and the diversity of U.S. fisheries and fishing communities necessitates a variety of approaches. Because each fishery is unique, catch share programs must be tailored to its needs and challenges and the communities that depend on it.

The Magnuson-Stevens Act

The MSA¹² describes catch share programs such as IFQs as limited access privilege programs (LAPPs), while the U.S. Commission on Ocean Policy describes them as dedicated access privileges (DAPs) to emphasize that they are not a property right (Box 1).

The MSA details discretionary provisions that could be included in fishery management plans, including the establishment of a LAPP. The law stipulates that in developing such management programs, regional fishery management councils shall consider historical and present-day fishing in the fishery, the communities and economies that would be affected, and the “fair and equitable distribution of access privileges.”¹³ In addition, under the MSA, a LAPP must include regular monitoring and review, a system for enforcement and monitoring, and a mechanism to prevent

an entity from acquiring an excessive share. More importantly, the MSA requires that a permit issued under a LAPP cannot exceed 10 years but that it will be “renewed before the end of that period, unless it has been revoked, limited, or modified.”¹⁴ In addition, the MSA requires that catch share holders pay the costs of the program’s implementation.¹⁵

BOX 1

The U.S. Commission on Ocean Policy

The U.S. Commission on Ocean Policy supported use of the term dedicated access privilege to underscore that shares of a quota grant access for fishing, but not a right to the fish. The Commission’s Recommendation 19-15 proposed that the National Marine Fisheries Service be responsible for issuing national guidelines for such programs, and it outlined several key features:¹⁶

- specifying goals (biological, social and economic)
- providing for periodic review
- limiting the duration of quota shares
- establishing user fees to fund the program and support ecosystem-based management
- allowing for public participation by and consultation with all stakeholders.


15 Active Catch Share Programs in U.S.

 Pacific Sablefish Permit Stacking

 Bering Sea American Fisheries Act Pollock Cooperatives

 Bering Sea King and Tanner Crab

 Bering Sea Groundfish (Non-Pollock) Cooperatives

 **Western Alaska Community Development Quota**
(Bering Sea and Aleutian Islands quotas for groundfish, halibut and crab to eligible western Alaskan villages)

 Alaskan Halibut and Sablefish

 Central Gulf of Alaska Rockfish Pilot

 Georges Bank Atlantic Cod Hook Sector

 Georges Bank Atlantic Cod Fixed Gear Sector

 Atlantic Sea Scallop General Category IFQ

 Mid-Atlantic Golden Tilefish IFQ

 Mid-Atlantic Surf Clam/Ocean Quahog

 South Atlantic Wreckfish

 Gulf of Mexico Red Snapper IFQ

 Gulf of Mexico Grouper IFQ

 Individual Fishing Quotas/Individual Transferable Quotas

 Community Development Quotas/Sectors

In addition, several more catch shares are in active development, including the West Coast Groundfish Trawl Individual Quotas and 17 sectors proposed in New England under an amendment to the Northeast Multispecies Fishery Management Plan.¹⁷

No Single Solution

Catch shares are not a cure-all for fisheries management problems and should not be considered an end unto themselves; rather, they should be evaluated as one of a number of possible tools that councils can employ when developing management plans.

Catch shares function as an allocation tool to achieve management objectives for fisheries and to obtain a continuing optimum yield of fish catch. To prevent overfishing, fishing must remain within science-based annual limits through improved accountability and enhanced monitoring.

Catch share systems can be effective and lead to substantial benefits from economic efficiency and capacity reductions. However, it is unrealistic to assume a catch share program will guarantee desired change and provide a single, simple remedy. Overfishing and other fisheries problems require a package of measures, including catch shares (where appropriate), gear and effort controls, and spatial management.¹⁸ In addition, poorly designed catch share programs may encourage compensatory behavior such as increased discarding and misreporting or underreporting of catch. They can also induce fishermen to upgrade their vessels and gear when the number of vessels in the fishery falls, thus increasing fishing effort.

In addition, catch share programs may not be appropriate for some fisheries and may lead to unintended consequences. Among these fisheries are:

- recreational fisheries where managers lack real-time data or the ability to effectively manage an allocation of quota (for-hire and charter segments may be an exception)
- fisheries where the size of the population fluctuates widely (resulting in significant variations in the value of quota shares)
- fisheries with poor or unreliable catch data
- fisheries that lack monitoring, enforcement or a hard TAC.¹⁹

In addition to these fisheries, there may be others where such programs may be ineffective. For example, the slow growth and late maturity of a species can create an economic incentive for fishermen to catch and sell fish now rather than conserve them because the economic payback for conservation is so far in the future, thus minimizing the economic-efficiency gains sought through catch shares. To counter such negative incentives, positive ones must be established—for example, the management of orange roughy requires a program that offsets incentives to catch and sell fish now and instead focuses on conserving the population for the future.²⁰ Catch shares are also of limited use in British Columbia, where five species of salmon spawn in more than 1,500 streams. Therefore, these wide fluctuations in salmon population size and distribution make it impractical to implement IFQs.²¹

Additionally, the performance of catch shares depends upon when and where quotas are used. Catch shares may not be fully effective for fish populations found in various locations at different densities and times. Under these conditions, fishermen will target highly abundant fish populations and compete for the higher-valued species.²²

Catch shares are not a panacea for all fisheries management problems and should not be an exclusive goal; rather, they are one of a number of possible management tools regional fisheries management councils can employ.

Unintended Consequences

Catch shares, as well as other types of fisheries management programs, can unintentionally create incentives for unsustainable fishing practices, such as: high grading—discarding low-market-value fish in favor of those with higher value to maximize quota returns; underreporting catch; overfishing non-quota species in multispecies fisheries; and poaching.²³

Further empirical research is necessary to determine whether catch share programs can address and manage broader ecosystem concerns, such as the unintentional catching of non-target species, habitat destruction and changes to the food web.

Catch share programs may also cause adverse social and economic consequences, including consolidation (concentration of quota in just a few large operations), loss of jobs, reduced income, unemployment and displacement of small-scale fishermen.²⁴ Consolidation was apparent in the Mid-Atlantic Surf Clam/Ocean Quahog fishery when the fleet shrank from 128 vessels to 59 in just two years. By 1995, the largest quota holders were outside investors (a bank and an accounting firm).²⁵ In contrast, the Alaskan halibut/sablefish fishery IFQ program was designed to minimize socioeconomic impacts by capping the quota share that a single fisherman or entity could have, prohibiting absentee ownership and creating categories of quota based on vessel size with rules against transferring quota to another category. Because they are data-intensive, catch share programs may also result in increased administrative costs (to train staff, hire observers, enforce quotas and collect data for accurate stock assessments) as well as in prohibitive costs for fishermen trying to enter the fishery as lease and quota prices escalate.²⁶ Once established, such programs may be difficult to adjust as conditions or management change because of vested interests in the fishery and potential difficulty in modifying or revoking shares.

Socioeconomic inequities that catch shares create or magnify are a critical concern. These inequities may arise from initial allocation of quota shares or from the ability of some quota holders to acquire more shares and dominate a fishery.²⁷ For instance, in the IFQ programs implemented in various British Columbia fisheries, reducing the number of available licenses through buybacks and policy reform also reduced the size of the fishing fleet and led to escalating license and quota prices.²⁸ As a result, the costs of licenses and quotas are now prohibitively high. Rural, small-scale and aboriginal fishermen can no longer afford to participate in the fisheries; consequently, the number of rural licenses has dropped roughly 45 percent.²⁹ A GAO report underscored this point, concluding that IFQ programs have “raised concerns about the fairness of initial quota allocations, the increased costs for fishermen to gain entry, and the loss of employment and revenues in communities that have historically depended on fishing.”³⁰

Single-factor solutions are not always sufficient: overfishing and other fisheries problems require a package of measures, including catch shares (where appropriate), gear and effort controls, and spatial management.

Mixed Results

The use of a catch share program does not necessarily result in consistent, positive changes in the size and health of a population. For example, IFQs have been widely used in a variety of fisheries and illustrate a range of effects.

An analysis of 20 fish populations managed under IFQs in many countries found that 12 populations improved after IFQ implementation, while eight continued to decline.³¹ Although IFQs played a role in helping some fisheries reduce capacity, end the race to fish and improve compliance with quotas, it is unclear to what extent these changes were due to IFQs or the larger management plan of which IFQs were a part. In some fisheries, improvements were more likely the result of hard TAC limits than an IFQ system.

This was demonstrated by declines in populations in fisheries where limits were set too high or compliance was lacking even with an IFQ system in place.³² Moreover, some IFQ fisheries may require additional, complementary measures for effective management, such as seasonal or area closures and gear restrictions to protect juvenile fish.³³

In addition, management of multispecies fisheries can be challenging because both target and non-target fish are generally caught together, causing the quota of one species to constrain the catch of relatively healthy species. However, if all species caught together are included in a properly designed and monitored catch share system with appropriately set catch limits for all, the number of discards (low-value, non-target species thrown back) can decrease. For instance, in British Columbia's groundfish trawl fishery, an IFQ system and at-sea observer coverage have successfully discouraged discarding and led to matching catches for individual species to their quotas in this multispecies fishery. This is due to the fishermen's ability to adjust their fishing practices and target species to match changes in catch limits. These fishermen avoided rougheye,

shortraker and yelloweye rockfish when limits were reduced for these species. The system, which includes annual catch limits for individual species, dockside monitoring, mortality limits (instead of landing limits) and accounting for catch in subsequent years (i.e., carry-forward of up to 37.5 percent for overruns and underruns), has resulted in fewer discards (a 51 percent decrease after IFQ introduction) than in similar U.S. fisheries.³⁴

In some fisheries, improvements are more likely to result from hard total allowable catch limits than because of an ITQ system. This was demonstrated by declines in fish populations for fisheries where limits were set too high or compliance was lacking even when an ITQ system was in place.

Bering Sea and Aleutian Islands Crab Rationalization

In 2005, to improve conservation efficacy and address social and economic concerns, the Bering Sea and Aleutian Islands crab fishery was restructured and downsized through IFQs and individual processing quotas (IPQs).

The IPQ program was intended to achieve equity between the harvesting and processing sectors by assigning processor quota shares to processors based on the amount of fish that each had processed over a period of time.³⁵ In an IPQ program, fishermen with IFQs in the fishery may sell fish only to processors with processor quotas in the fishery. In the Bering Sea and Aleutian Islands crab fishery IPQ program, 90 percent of the market is limited to processors with quotas.³⁶ The North Pacific Fishery Management Council (NPFMC) struggled with instituting the crab rationalization plan—to match fishing capacity to the amount of crab that could sustainably be caught each year—in large part because of controversy over establishing processor quotas. The program did not take effect until Congress mandated it when the MSA was amended through the Consolidated Appropriations Act of 2004.

IPQs like the one established in the Alaska crab fishery are highly controversial due to their potential for discouraging competition in the marketplace. The U.S. Department of Justice advised the National Oceanic and Atmospheric Administration to oppose IPQs on the grounds that they would inhibit efficient use of resources and thwart beneficial competition, leading to distortions in the market by giving companies excessive control over price and product.³⁷ As a result, language in the MSA requires IPQs to comply with antitrust laws. Also, in the face of much criticism of the crab rationalization plan, the NPFMC decided to require the collection of extensive socioeconomic data and to review progress at 18 months, three years and five years.³⁸

Consolidation became a significant issue in the crab rationalization system because only a few companies stood to gain from the redistribution of capital. In the Bristol Bay red king crab fishery, the number of boats fell from 251 in 2004 to 89 in 2005-6 after IFQ implementation; likewise in the Bering Sea snow crab fishery, the number of boats dropped from 189 in 2004 to 80 in 2005-6.³⁹ These declines resulted in an estimated loss of 1,200 jobs from 2004 to 2006.⁴⁰ Other estimates of the economic impact were seen in small Alaskan fishing communities such as King Cove, where there was a 75 percent reduction in income for local businesses,⁴¹ and in Kodiak, where Bristol Bay red king crab fishermen's earnings declined between \$1 million and \$1.6 million following rationalization.⁴² For those left in the Bristol Bay king crab and the Bering Sea snow crab fisheries, however, fleet-wide crew member pay increased from an average of \$24,314 in 2004 to an average of \$53,585 in 2007.⁴³ Remaining vessel owners in the Bristol Bay red king crab fishery saw their average harvest increase from 56,000 pounds per vessel in 2004 to 185,000 pounds in 2005-6, and the average value of their catch increase from \$262,000 in 2004 to \$792,000 in 2005-6.⁴⁴

In addition, processor shares have been highly consolidated, leaving only a few corporations in control of the industry and raising antitrust concerns. Trident Seafoods, for example, was allocated 23.3 percent of the red king crab quota and 25.8 percent of the snow crab quota.⁴⁵ High-grading also became a problem in the fishery. An estimated 677,000 legal male crabs were discarded in the first year of rationalization, compared to the six years prior to rationalization, when the highest estimate for total discarded

legal males was 80,000 crabs in the 2002 season.⁴⁶ In response, the Alaska Department of Fish and Game adjusted the quota down for the 2006-7 season to account for the high number of discards, and the crab industry agreed to implement measures to remove the incentive to high-grade. Discarding of legal males has not occurred on a similar scale since the initial season.⁴⁷

Absentee ownership is also a problem, and some quota holders lease their shares at rates substantially higher than the actual value. Managers therefore are considering alternatives to require that shares be held by active participants in the fishery.

Alaskan Halibut and Sablefish

In the late 1980s, the open access Alaskan halibut and sablefish fisheries were prime examples of a race to fish, and overcapitalization led to seasons as short as a day and fishing in hazardous weather.

By 1991, despite no overfishing, the effects of a drastically short season prompted the North Pacific Fishery Management Council to take steps to rationalize the fisheries and in 1995, after many years of debate, an IFQ program was implemented. Under this program, quota holders can sell their fishing privileges as long as there is no excessive consolidation or change in the character of the fishing fleet. If an overage occurs, up to 10 percent will be reduced from the subsequent year's quota and additional overage is subject to a penalty.⁴⁸

The initial allocation of quota was defined by several objectives, including preserving the character of the fishing fleets, discouraging corporate ownership and rewarding longtime and active participants.⁴⁹ As such, quotas were given only to vessel owners or fishermen leasing vessels, with a portion of the quota going to local communities under a CDQ program. To preserve the character of the fleet, vessel classes were created within each fishery (three in sablefish and four in halibut). Initially, quota holders were restricted to their initial vessel class to maintain the quota distribution among vessel classes. Flexibility was later introduced by allowing unused large-vessel quotas to be reallocated to smaller vessels in the fishery.⁵⁰

The Alaskan halibut and sablefish IFQ program is considered successful in many respects: increased economic efficiency, decreased operating costs, higher prices at the dock, decreases in lost gear and higher values for quota shares.⁵¹ There have also been improvements in vessel safety (measured by a decrease in the number of search-and-rescue operations), longer seasons, and greater availability and quality of fish for consumers.

In addition, the fishery resource continues to be sustainably managed.

Along with these improvements, however, are downsides: lost jobs, high cost of entry into the fishery, consolidation of quota holdings and increased administration costs (in 2005, administration and enforcement of these IFQ programs cost the federal government \$1.3 million and \$2.4 million, respectively).⁵² Small coastal communities in western Alaska were especially affected by the program, and a CDQ was implemented through Community Quota Entities (whose small-boat, community-based fishermen with limited financial opportunity struggle to raise sufficient capital to enter the quota fisheries) to address these concerns. More recently, fishermen can lease their quota share in every halibut/sablefish area except southeastern Alaska. This has changed the character of the fishing fleet because about half the quota for each species is leased to and caught by hired skippers rather than owner-operators.⁵³ Leasing drives up the price of quota shares and pushes out those with limited capital and other resources. Absentee ownership and high entry costs threaten one of the program's goals of protecting small-scale, community-based fishermen.

Gulf of Mexico Red Snapper

A commercial IFQ program for the red snapper fishery was implemented in the Gulf of Mexico in January 2007. This population is categorized as overfished and subject to overfishing because fishing levels remain too high.

Due to tightened regulations and lowered quotas—required for ending overfishing and rebuilding this depleted population—the commercial red snapper fishery became highly overcapitalized; the number and fishing capacity of the vessels in the fishery exceeded the amount of allowable quota. In the late 1990s, the quota was divided into two separate seasons open for only the first 15 days of the month. To further constrain catch, these seasons were reduced in 1999 to the first 10 days of the month. This small window resulted in derby fishing with a rush to fit as many trips in and catch as many fish as possible in the available time. This in turn led to instability in the supply of fresh red snapper to markets, high levels of bycatch and unsafe conditions for fishermen, all of which lowered prices.

A red snapper IFQ program, developed as Amendment 26 to the Reef Fish Fishery Management Plan,⁵⁴ was implemented to reduce overcapacity in the fishery and discourage derby fishing.⁵⁵ The overall intent of the program is to help end overfishing and rebuild the red snapper population. Specific anticipated benefits include:

- increased market stability
- replacing fishing seasons with year-round fishing
- increased flexibility to modify fishing operations
- cost-effective and enforceable management of the fishery
- improved safety at sea
- optimized social, economic and biological benefits from the fishery.

Also, the program is intended to provide direct and indirect biological benefits to red snapper and other marine resources by reducing bycatch and discard mortality and eliminating quota overages.

Since implementation, after a further reduction of the quota in 2008, the price paid to fishermen has increased 17 percent, while average landings, number of trips and days at sea have declined. Coupled with the reduction in minimum size, the ratio of landed to discarded fish has improved threefold to fourfold, reducing overall mortality by lowering the amount of discarded fish. Between 1996 and 2003, the red snapper fleet concentrated its fishing effort in an average of just 77 days to catch its quota. In the past two years, however, that same effort has been spread across an entire year. The IFQ program also provides a better system of accounting for fishing activity. In the past two years, annual landings have been just shy of the allowed commercial quota—a sharp improvement over the previous 17 years, when the quota was exceeded nine times.

The IFQ program has resulted in fewer entities in the commercial red snapper fishery.⁵⁶ Before the program was implemented, there were 764 permitted participants in the Gulf commercial red snapper fishery. After implementation, 546 entities qualified for quota shares; now, after two years of operation, the number of individuals holding IFQs has dropped to 466, a 14.6 percent reduction since the start of the program and a 39 percent reduction from pre-IFQ levels. In addition to the consolidation that followed the IFQ program's implementation, other issues have arisen. For example, catch reports have mislabeled species and underreported landings. Bycatch also remains a problem, particularly of other reef fish encountered as the red snapper population expands and returns to its historical range.

Georges Bank Atlantic Cod Sectors

The Cape Cod Commercial Hook Fishermen's Association (CCCHFA) has developed a form of community-based fisheries management that fosters a highly adaptive means of local decision-making, self-monitoring and enforcement known as sectors.

A sector is a community of fishermen who voluntarily work together to manage an annual allocation of fish. In exchange for operating under higher standards of monitoring and reporting, sector fishermen are given more flexibility in how they fish and are offered exemptions from various federal regulations. Sector members agree to stop fishing once their allocation (enforceable TAC) has been met.

In 2004, CCCHFA worked with local codfish hook-and-line fishermen to develop the Georges Bank Cod Hook Sector. By operating under their own annual enforceable TAC of Georges Bank cod, hook sector members are exempt from limits on daily trips and the number of hooks they can use. Furthermore, the fishermen of this sector are allowed to determine how to divide this allocation among members. The hook sector operates by allocating monthly quota targets of 8.33 percent of the sector's total annual quota.⁵⁷ Quota that is not landed in a particular month is rolled over to a subsequent month, and all cod fishing stops when the annual quota is reached. The agreement among these fishermen is codified in federal regulations and in the form of a binding annual contract. To prevent excessive consolidation and unfair market control, the hook sector cannot be allocated more than 20 percent of the overall Georges Bank cod TAC. One problem remains, however: fishermen are still bound by regulations for days-at-sea and trip limits for all other groundfish they catch.⁵⁸

A second sector was developed by CCCHFA in 2006—the Georges Bank Cod Fixed Gear Sector. This allowed local gillnet fishermen the opportunity to join. Support for the sector

concept has spread throughout New England, and Amendment 16 to the Groundfish Fishery Management Plan would authorize an additional 17 sectors to be implemented in 2010. Sector members would receive additional benefits, including allocations of nearly all groundfish species, transferability of quotas among sectors and additional regulatory exemptions. The 20 percent cap on sector ownership would be eliminated, and yearly overages would be deducted from subsequent years. A minimum of 30 percent observer coverage would be required, as would weekly catch reports. Fishing still would have to stop when a sector caught its allocation.

The main benefit to fishermen is that they can run their businesses more profitably and efficiently by spending less time on the water and by fishing when market prices are high. However, the costs involved in producing environmental assessments, operations plans and increased monitoring must be borne by the fishermen. These costs are shared by all sector participants and can reach \$80,000 to \$100,000 a year for the sector.⁵⁹ One of the biggest concerns to sector members is that while they operate under an enforceable TAC and must stop fishing when they meet their quota, the rest of the fishery that is not part of a sector operates under an effort-control system. Therefore, non-sector members will fish with only a target TAC and will not be required to immediately stop when that is reached. That, in turn, can undermine any conservation gains.

Conclusion

If properly designed, catch share programs can lead to substantial gains in fisheries by reducing capacity, increasing economic efficiency and ensuring sustainable catches. Poorly designed programs, however, may induce unintended behavior such as increased discarding, underreporting catch, misreporting catch or overfishing of non-quota species.

While traditionally employed in commercial fisheries, catch share programs are gaining advocates for use in some recreational fisheries. The application of catch shares needs careful design and review, and ultimately may not be feasible in many recreational fisheries as they currently are managed. A key challenge is the lack of real-time monitoring of recreational catch, which allows managers to take action before quotas are exceeded. Certain segments of recreational fisheries, such as the for-hire industry or charter boats, may be more willing to explore a catch share program because of existing licensing and reporting requirements, which would serve as the basis for such a program.

Lessons can be learned from the many IFQ programs implemented to date. In the red king crab fishery of the Bering Sea and Aleutian Islands, consolidation and reduction in the fleet led to a loss of jobs, and quotas for processors restricted the market. Elsewhere in the North Pacific, the Alaskan halibut and sablefish fishery included clear objectives that guided the design of the program, including the establishment of vessel classes to preserve the character of the initial fishing fleet. The halibut and sablefish IFQ program succeeded in ending derby fishing and extending the season, improving fishermen's safety and enhancing product quality. However, recent developments, including the trend for quota holders to hire captains to catch their portion, are driving up leasing costs and

making it difficult for rural residents to enter or stay in the fishery. In the Gulf of Mexico, the red snapper IFQ program has shown initial benefits, increasing the length of the season and the price paid to fishermen, and reducing overcapacity in the fishery. And in New England, sectors appear to be a promising alternative to the historical status quo. While there have been beneficial outcomes across the country in the fisheries that employ catch share programs, important issues remain to be addressed in many of them.

Elements of Successful Catch Share Programs

Catch share programs must include effective and explicit policies that address overfishing, bycatch and habitat protection. They should also contain regulations to protect the health and resilience of the marine ecosystems that sustain productive fisheries. Finally, catch shares should also accommodate recreational anglers and diverse community-based fleets and crew that are the heart and soul of a working waterfront.

For example, fishing businesses and communities could be harmed by the consolidation of quotas or by allocation schemes that favor just a few participants. Consequently, catch shares should be viewed as an allocation tool to be employed only in certain fisheries after being carefully designed to address potential social and economic consequences.

When properly designed and implemented, catch share programs can lead to better-managed fisheries. They should be implemented, however, only if science-based annual catch limits are properly set to ensure that fish populations are not subject to overfishing and that depleted populations are rebuilt.

All fishery management systems, including catch share programs, require an infrastructure for monitoring and accountability measures to ensure that limits are not exceeded. They entail high upfront costs to adequately handle the influx of information and data. Additionally, a well-planned program must include reliable monitoring and enforcement as well as the ability to report verifiable trip and catch information in real time.

These management imperatives, combined with the experiences of established catch share programs, underscore the importance of a carefully designed program to meet both conservation and socially responsible objectives. Positive trends in fisheries are the result not merely of catch share programs, but also of a combination of measures—an enforceable TAC and restrictions on fishing season and gear. Catch shares should be viewed as an allocation tool that is appropriate only with the right combination of other management measures in a comprehensive approach to fisheries management. As a critical step in this approach, fisheries managers should focus on setting science-based annual catch limits that end overfishing and rebuild depleted populations, as well as defining equitable social objectives for fishery management.

More specifically, catch share programs must follow the design principles outlined below if they are to succeed:

- **permits issued for no more than 10 years** and a regular evaluation of program performance, with an opportunity to modify and improve it as required by section 303A of the Magnuson-Stevens Act
 - **adequate enforcement**, including validated catch and discard reporting and, to the extent possible, real-time management that has the power to close the fishery as soon as the quota is reached
 - **fair and equitable quota allocation** that is conducted through a transparent and open process, including mechanisms to provide access opportunities to recreational anglers, working fishermen and coastal communities; ownership caps so that one entity does not hold an excessive amount of quota; and opportunities for new fishermen to enter the fishery.
- **science-based annual catch limits** that include all fish killed by fishing (target fish landed and non-target fish—or bycatch—discarded at sea)
 - **adequate monitoring** of the target fish catch and the incidental catch of non-target species
 - **identification of explicit conservation, social and economic goals** and objectives and metrics for measuring progress

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- ⁴ L. G. Anderson and M. C. Holliday (eds.), *The Design and Use of Limited Access Privilege Programs*, NOAA Technical Memorandum NMFS-F/SPO-86, November 2007, www.nmfs.noaa.gov/sfa/PartnershipsCommunications/lapp/design_and_useLAPs2007.pdf.
- ⁵ Although we cannot offer a full legal analysis here of the implications of what could be the privatization of a natural public resource and the legal ramifications of doing so within the public trust doctrine, we must draw attention to the fact that legal issues with the catch shares approach to fisheries management are unresolved.
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- ⁹ Anderson and Holliday, *Design and Use*.
- ¹⁰ *Ibid.*
- ¹¹ U.S. Government Accountability Office, *Individual Fishing Quotas: Methods for Community Protection and New Entry Require Periodic Evaluation*, GAO-04-277, February 2004, www.gao.gov/new.items/d04277.pdf.
- ¹² P.L. 94-265 as amended by P.L. 109-479.
- ¹³ 16 U.S. Code 1853 §303(b)(6).
- ¹⁴ 16 U.S. Code 1853a (f) §303A(f).
- ¹⁵ 16 U.S. Code 1853a §303A (e).
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- ¹⁷ Sustainable Harvest Sector, Port Clyde Community Groundfish Sector, New Bedford Deep Water Trawl Sector, New Bedford and Southern New England Fixed Gear Sector, New Bedford Channel Trawl Sector, New Hampshire and Southern Maine Fixed Gear Sector and Trawl Gulf of Maine Sector, Gloucester Trawl/Western Gulf of Maine Sector, Gloucester Fixed Gear Sector, Gloucester/Boston Trawl Gulf of Maine and Georges Bank Sector, South Shore Trawl Sector and Fixed Gear Sector, Port Judith and Southern New England Offshore Trawl Sector and Trawl Sector, Tri-State Sector, Pier 6 Initiative and Martha's Vineyard Community Sector.
- ¹⁸ T. Smith et al., "Fishing for More Effective Incentives," letter to the editor, *Science*, 323:337-8 (Jan. 16, 2009), www.sciencemag.org/cgi/reprint/323/5912/337b.pdf.
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--DRAFT No. 2--
--January 7, 2013--

January 9, 2013

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

Dear Chairman Olson:

The communities of Kodiak Island are following closely the issue of prohibited species catch (PSC) management in the central Gulf of Alaska (CGOA) groundfish trawl fishery. As you will recall, the City of Kodiak and the Kodiak Island Borough presented two joint resolutions to the North Pacific Fishery Management Council (NPFMC) last October on this issue. We appreciate the Council's consideration of them.

It now appears that what was once a bycatch issue has gained momentum as a catch-share proposal. In this context, it is especially important that the North Pacific Council understand and accommodate the overarching purpose and goals expressed in Kodiak's resolutions. These center upon promoting a vigorous economy in the Kodiak region, with healthy and competitive markets; providing effective controls on bycatch; maintaining or increasing target fishery landings; maintaining or increasing local employment; maintaining entry opportunities in the harvesting and processing sectors; minimizing the adverse impacts of consolidation; maximizing active participation by owners of vessels and fishing privileges; and maintaining the economic strength and vitality of Kodiak's working waterfront.

The various catch share programs developed thus far by the North Pacific Council have had varied success at accommodating these types of issues. Importantly, we note that communities and fisheries in the Gulf of Alaska are substantially different from those in the Bering Sea and Aleutian Islands, where several industrial-type catch share programs have been implemented. Even the previous halibut/sablefish IFQ program, while not geared quite so industrially as more recent programs, imposed some significant impacts on coastal communities. Therefore we believe that it is important at this stage to evaluate a broad suite of options, or alternatives, rather than just focus upon basic, target fishery catch share management.

Certainly the status quo needs to be evaluated, as is standard practice. But, in addition to a strictly "no action" alternative, the North Pacific Council could also consider direct management actions to reduce and control bycatch that do not involve the sweeping and potentially irrevocable changes usually associated with catch share programs.

If a catch share program for target fisheries is to be considered, it should be recognized that such a program does not, in and of itself, control bycatch. It is with the addition of an array of associated bycatch limitations that control of bycatch can be achieved. A possible alternative to a broad and complex catch share program might be one that focuses directly upon prohibited species catch (PSC) such as Pacific halibut, Chinook salmon, and Tanner crab. Additional elements, such as fishery cooperatives

or fishery-specific allocation of PSC, could be added to such a “bycatch quota” program to address the potential race-for-target-species-catch.

With regard to any type of catch share program, whether for multiple target species or for bycatch species only, there will need to be careful consideration given to issues surrounding ownership and control of the quota shares. Initial granting of the quota shares to harvesters with catch history has been the standard model used thus far, but evaluation of community-ownership will also be needed in order to assess what will best accomplish the goals that we’ve outlined.

It is through a meaningful evaluation of an array of alternatives that communities in the central Gulf of Alaska can be assured that any final action will be fully informed. It is the effects on our communities that we will be most concerned with. Representatives of the City of Kodiak and the Kodiak Island Borough will be working hard to assure that the goals listed in our joint resolutions are acknowledged and achieved. And, we ask for your attention and assistance.

Mr. Chairman, comprehensive management of PSC and potential catch shares for groundfish fisheries in the Gulf of Alaska will be complex and controversial. The important thing to remember at this juncture is that the fisheries and communities in the Gulf of Alaska are substantially different from those in the Bering Sea. We hope that any management changes will help us maintain and enhance the economy, employment, and social wellbeing of the Kodiak region.

Sincerely,

Jerome Selby, Mayor
Kodiak Island Borough

Pat Branson, Mayor
City of Kodiak

cc: Cora Campbell, Commissioner, ADF&G
The Honorable Sean Parnell, Governor, State of Alaska
Sam Rauch, Acting Asst. Administrator, NOAA Fisheries
The Honorable Lisa Murkowski, US Senate
The Honorable Mark Begich, US Senate
The Honorable Don Young, US House of Representatives
The Honorable Gary Stevens, Alaska Senate
The Honorable Alan Austerman, Alaska House of Representatives

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News & Notes

North Pacific Fishery Management Council

December 2012

Council Recognition

Three long-time NOAA Fisheries employees who are retiring and leaving the Council process were recognized at the December Council meeting. Ken Hansen, Assistant Special Agent in charge of NOAA's Office of Law Enforcement, was awarded the Bob Mace Distinguished Service Award. Hansen has had a long and close involvement in the fishing industry in Alaska, and has been described as "not your ordinary law enforcement officer."

Sherrie Tinsley Meyers, Special Agent in charge, also from NOAA's office of Law Enforcement, was recognized for her work with the Council and her involvement in law enforcement. Jesse Charrett, the head of National Marine Fisheries Restricted Access Management Division, will be retiring after 37 years. Charrett is an expert on limited access programs, and her expertise will be missed.

We wish them all luck in their future endeavors, and thank them for their stewardship in managing Alaska's resources.



Ken Hansen recognized by Eric Olson
NPFMC Chairman



GOA Chinook Bycatch

The Council reviewed an initial analysis of alternatives to establish a hard cap for Chinook salmon prohibited species catch (PSC) taken in the Gulf of Alaska (GOA) non-pollock trawl fisheries. The Council expanded the apportionment options for the PSC limit available under Alternative 2, and requested additional analysis to reflect the varying level of monitoring tools available among different user groups within the GOA trawl fleet.

The Council added the following options for the apportionment of a Chinook salmon PSC limit:

- a direct apportionment of Chinook PSC to the Central GOA Rockfish Program,
- a limit on the proportion of the PSC limit that can be used in the first half of the year, and
- an option to base apportionment among sectors on proportion of historic groundfish harvest.

The Council also limited, to some extent, how options will be evaluated in combination, acknowledging that the creation of very small PSC allowances poses an inseason management challenge for some sectors. The Council motion, with the complete suite of alternatives, is available on the Council website.

The Council also noted that obtaining information on stock of origin of Chinook salmon caught as bycatch in the non-pollock trawl fisheries is a high priority, and asked the agency to assess, by sector and fishery, any changes to monitoring requirements or sampling design that might be

possible in order to successfully implement a full retention requirement for Chinook salmon PSC. Other areas where the Council asked for additional analysis are referenced in the motion, available on the Council website.

A revised draft of the analysis will be released in preparation for Council final action on this issue in either April or June of 2013. Staff contacts are Diana Evans and Sam Cunningham.

Round Island Transit Corridor

The Council received a brief discussion paper outlining preliminary information for establishing a transit corridor through the Round Island walrus protection area. The Council originally directed staff to prepare an analysis to allow transit of vessels with FFPs to transit the walrus protection area while tendering herring for the Togiak area herring fishery. During investigations, staff learned of additional information that may impact the scope of the analysis. The discussion paper requested input from the Council on whether they wished to expand the initial scope of the analysis to include passage of vessels other than those tendering herring (e.g., Amendment 80 vessels delivering yellowfin sole) through the Round Island area, or to include a transit corridor through the walrus protection area around Cape Peirce. The Purpose and Need statement, along with the alternatives, are posted on the Council's website. Staff contact is Steve MacLean.

EFH Consultation

At the December meeting, NMFS provided a report on essential fish habitat (EFH) consultation actions in which they have been engaged. This is the first such report since the Council adopted its formal EFH consultation policy in April, in response to which the agency will provide regular reports to the Council.

The report also includes a discussion of future actions of possible interest to the Council, and identifies that input from the Council would be appreciated on proposed Norton Sound mining operations and implications for red king crab. The Council tasked their Ecosystem Committee with considering this issue at their next meeting. Staff contact is Diana Evans.

PSEIS SIR

The Council concurred with staff's proposed approach for developing the Supplemental Information Report (SIR) for the 2004 Alaska Groundfish Fisheries Programmatic Supplemental Environmental Impact Statement (PSEIS). The SIR will focus on re-evaluating the conclusions of the PSEIS in the light of new information and new analytical methods, to determine whether the 2004 conclusions continue to be valid. Under a tentative timeline outlined in the staff discussion paper, a draft SIR could be ready for Council review late in 2013. Staff contact is Diana Evans.

Steller Sea Lion Mitigation Measures EIS

At the December 2012 Council meeting, the Council received an update on progress made of the Steller Sea Lion Mitigation Measures EIS, and forwarded alternatives to NMFS SF for evaluation in the EIS. Staff from NMFS, Alaska Region, Sustainable Fisheries Division summarized the Scoping Report for the Council. The scoping period for the EIS closed on October 15, 2012. The Scoping Report was submitted to the Council on November 19, 2012. The Scoping Report is posted on the NMFS AKR website at <http://www.fakr.noaa.gov/sustainablefisheries/sslpm/eis/default.htm>.

The Chairman and Council staff for the Steller Sea Lion Mitigation Committee presented two draft alternatives for consideration in the 2012 Steller Sea Lion Mitigation Measures EIS. The Council passed a motion that edited those alternatives, and presented a third alternative for evaluation by NMFS. The motion reads:

- 1. The Council acknowledges NMFS' efforts to produce the EIS consistent with the court order and timelines approved therein, fully incorporating the findings of both independent reviews, and providing full analysis of all relevant issues,*
- 2. The Council expects the EIS to state how alternatives considered and decisions based on it will or will not achieve the requirements of other environmental laws.*
- 3. The Council expects the EIS process will result in reconsultation on a package of fishery measures that, when compared to the 2010 BiOp, better balance the need to protect Steller sea lion populations in the central and western AI, the needs of the groundfish fisheries and fishery dependent communities, using the best scientific information as a foundation, including the results of the peer-review process.*
- 4. The Council forwards the two alternatives developed by the SSLMC for analysis in the EIS, with the following modifications:*
 - a. In Alternative 1, strike language for Pacific cod Area 542/541 starting with "Option 1: Limit to HAL..." and ending with "Option 2: Include Mothership participation".*
 - b. In Alternative 2, strike language for Pacific cod area 543 starting with "Option 1: Limit to HAL..." and ending with "Option 2: Include Mothership participation".*

In addition, the Council moves a third alternative which consists of the regulations and RPAs for Atka mackerel and Pacific cod in place prior to adoption of the 2011 Interim Final Rule, adjusted to take into account changes in fishery management that have occurred since 2003 (e.g., Amendment 80, etc.), and for walleye pollock, includes the measures contained in SSLMC Alternative 2 to allow a fishery in areas 543, 542, 541.

The full alternatives, including detailed maps of proposed open areas, are posted on the Council website. Staff contact is Steve MacLean.

Council Appointments

Appointments to the Council's Scientific and Statistical Committee and Advisory Panel were made at the December meeting. The Council announced the following reappointments for three-year terms to the Advisory Panel: Joel Peterson, Becca Robbins Gisclair, Anne Vanderhoeven, Craig Lowenberg and Andy Mezirow. Tim Evers was appointed for a one year term to address charter halibut issues. Additionally, the AP welcomes two new members: John Gruver, of United Catcher Boats and Mitch Kilborn of International Seafoods of Alaska, in Kodiak. The AP membership also includes Kurt Cochran, John Crowley, Jerry Downing, Tom Enlow, Jeff Farvour, Alexis Kwachka, Bryan Lynch, Chuck McCallum, Theresa Peterson, Ed Poulsen, Neil Rodriguez, Ernie Weiss, and Lori Swanson. Many thanks to Jan Jacobs and Matt Moir, retiring members of the AP, for their service.

The Council also re-appointed the SSC members for another year term. SSC membership includes Dr. Jennifer Burns, Dr. Henry Cheng, Bob Clark, Alison Dauble, Sherri Dressel, Dr. Anne Hollowed, Dr. George Hunt, Dr. Gordon Kruse, Dr. Kathy Kuletz, Pat Livingston, Dr. Seth Macinko, Dr. Steve Martell, Dr. Franz Mueter, Dr. Jim Murphy, Lew Queirolo, Dr. Terry Quinn, Dr. Kate Reedy-Maschner, and Farron Wallace.

Additionally, the Council appointed Dr. Ian Stewart to replace Steven Hare on the GOA Groundfish Plan Team, and made two appointments to the Crab Plan Team: Dr. Buck Stockhausen, who replaced Lou Rugalo, and Dr. Martin Dorn. We look forward to working with them in the future.

Observer Program

At the December meeting, the Council reiterated its support for the restructured Observer Program, and the 2013 observer annual deployment plan (ADP), including the deployment of observers on vessels in the trip selection and vessel selection pools, as well as the 2013 electronic monitoring (EM) pilot project. The Council received an update from NMFS on changes the agency has made to the 2013 ADP, based on the Council's recommendations in October 2012:

- Vessels selected for observer coverage in the vessel selection pool will now be selected for a 2-month period of coverage, as opposed to a 3-month period.
- Instead of assigning a uniform ~13% coverage rate for vessels in the vessel selection pool and trips in the trip selection pool, the ADP has been revised to assign a higher rate of coverage to trips in the trip selection pool (anticipated to be approximately 14-15%). As a consequence, the coverage rate in the vessel selection pool will reduce to approximately 11%.

At the Council's request, NMFS has also been working with industry to accommodate requests for voluntary 100% observer coverage in some fisheries that currently fall within the partial observer coverage category.

The Council requested that in April 2013 the agency

bring back a framework for analyzing several of the key issues that the Council has already identified for discussion in the first year program review scheduled in June 2013. These issues are listed in full in the motion posted on the Council website. The April framework will provide an opportunity for the Council and the public to comment on the proposed data and methodology to be used for these evaluations, prior to the June report. The Council also requested a framework or outline to be presented on the EM Strategic Plan in April, which would include the identification of alternative approaches to achieving the Council's EM objectives.

Additionally, the Council asked staff to develop a discussion paper to explore cost savings and efficiencies that may be obtained by use of a third party entity, for example the Pacific States Marine Fisheries Commission (PSFMC), to solicit and contract with observer and/or EM providers, and to interface with the industry and the agency in the management of the Observer Program.

Finally, the Council noted appreciation for NMFS' clarifications on the program, in response to Council, State, and stakeholder requests, many of which have been addressed in outreach materials, including a Frequently Asked Questions document, and at outreach events. Information is accessible from the NMFS observer webpage (<http://www.alaskafisheries.noaa.gov/sustainablefisheries/observers/>). Staff contact is Diana Evans.

VMS

At this meeting, the Council reviewed a revised discussion paper on the use of, and requirements for, Vessel Monitoring Systems (VMS) in the North Pacific fisheries, and in other regions of the U.S. With respect to expanding the program to vessels that are not currently required to operate VMS, the Council passed a motion to take no further action until the Alaska Fisheries Science Center has provided information and results from the deployment of electronic monitoring (EM) under the new Observer Program in 2013. For those vessels that carry EM and already carry VMS, the agency plans to compare the effectiveness, reliability, and costs of both technologies, with results likely available by early 2014. The Council also plans to review the strategic plan for developing EM at the June 2013 meeting. Much of the Council's discussion focused on whether there are alternatives to VMS that could meet the Council's management and enforcement objectives, and which should be further investigated. The Council indicated they anticipate that a discussion of these tools will be included in the EM strategic plan.

On a related issue, the Council also considered the paper's evaluation of how advanced features of VMS are being utilized in other regions. The Council recommended that the Enforcement Committee assess the utility of features such as geo-fencing, increased polling rates, and declarations of species, gear, and area, for improving enforcement efforts and efficiency for vessels already subject to VMS requirements. The committee will provide implementation recommendations to the Council. Staff contact is Jon McCracken.

Upcoming Meetings in 2013

Ecosystem Committee:
February 5, 2013

Scallop Plan Team: February 19-20 Kodiak

Crab Modeling workshop on AIGKC and NSRKC: February 26-March 1, Anchorage

Crab Plan Team: April 30-May 3, Anchorage; September 17-20, Seattle

Managing Our Nation's Fisheries: May 7-9, Washington DC

Groundfish Plan Teams:
September 10 - 13, 2013
November 18 - 22, 2013

PNCIAC Nominations

The Council is seeking nominations to the Pacific Northwest Crab Industry Advisory Committee - PNCIAC. There are 13 seats available, and each member serves a two year term. Nominations are due by Friday, January 25, 2013.

BSAI Harvest Specifications for 2013/2014

The Council adopted the BSAI Groundfish SAFE Report and annual catch limits based on recommendations from its advisory committees. The sum of the total allowable catches (TACs) for all groundfish is 2 million mt. The TACs were set below the sum of the recommended ABCs for 2013 and 2014 are 2.64 million mt and 2.70 million mt, respectively. The Council raised the 2013 pollock TAC by about 4 percent to 1.247 million mt from 1.2 million mt from the TAC and harvests of 1.205 million mt in 2012. The 2013 Pacific cod TAC increased to 307,000 mt from 261,000 mt in 2012; a nearly 18 percent increase. The Scientific and Statistical Committee advised the Council of its intent to recommend a split of the BSAI Pacific cod ABC (and thus the TAC) into separate BS and AI allocations next December for the 2014 fishing year, based on the best available scientific information at that time. Such an action would have ramifications on Stellar sea lion (SSL) mitigation (see elsewhere in the newsletter for a discussion of the SSL Environmental Impact Statement).

Overall, the status of the BSAI groundfish stocks continues to appear favorable. Nearly all stocks are above minimum stock size thresholds. The abundances of EBS pollock; Pacific cod; sablefish; all rockfishes managed under Tier 3; and all flatfishes managed under Tiers 1 or 3 are projected to be above the B_{MSY} or the B_{MSY} proxy of $B_{35\%}$ in 2013. Two stocks are projected to be below $B_{35\%}$ for 2013: AI pollock by about 2 percent, and Greenland turbot, by about 44 percent. Two stocks are projected to be below $B_{40\%}$ for 2013: Sablefish, by about 9 percent and Atka mackerel, by about 7 percent.

The sum of the biomasses for 2013 (18.4 million mt) is 5 percent less than total biomasses reported for 2012 (19.3 million mt), following a six percent decline in total biomasses as reported in 2012 and 2011 (20.6 million mt). Pollock and Pacific cod biomasses were fairly flat at increased levels, after a period of decline. Pollock biomass was 8.34

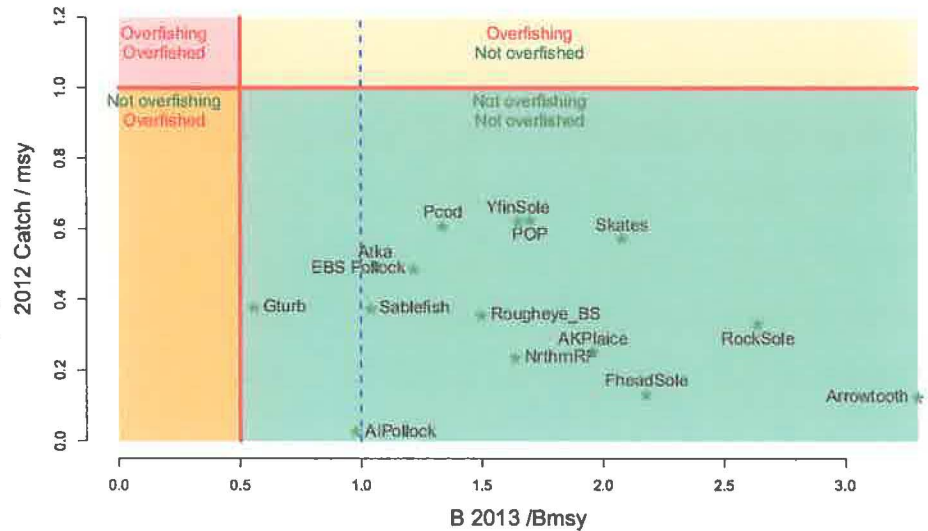
million mt for 2012, compared with 8.14 million mt for 2013. Pacific cod biomass was 1.62 million mt for 2012, compared with 1.51 million mt for 2013. Flatfish are generally increasing. Due to recent high recruitments however biomass of Greenland turbot is increasing from 69,000 mt in 2012 to 81,000 t in 2013, but is still much lower than its historic high of 494,000 mt in 1972. Biomass of Atka mackerel for 2013 is estimated at 289,000 mt, down 29 percent from 2012.

The Council also requested a briefing on how

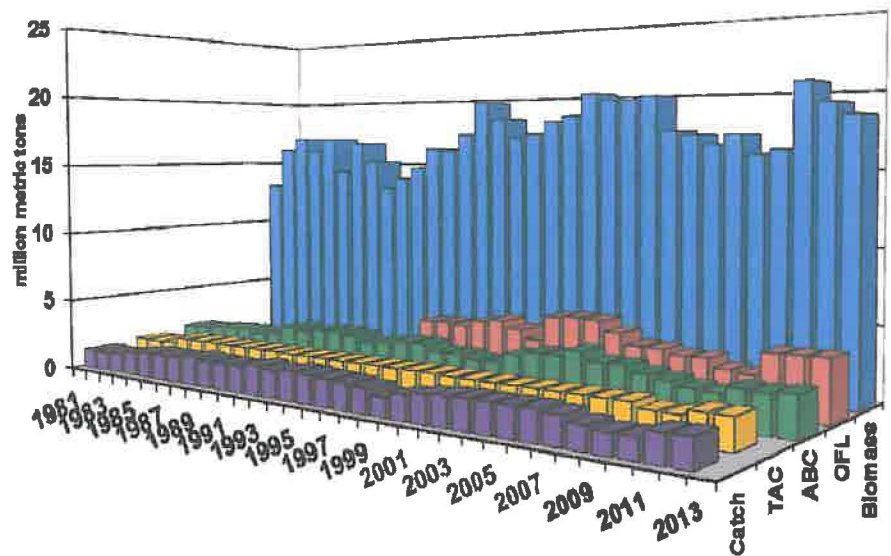
to proceed with splitting the sablefish TAC into IFQ and non-IFQ allocations to maximize sablefish harvest and possibly to reduce the halibut PSC associated with that fishery.

Final harvest specifications are posted on the Council website. Contact Jane DiCosimo for more information on prohibited species catch limits and discard mortality rates adopted for the BSAI for 2013 and 2014.

Bering Sea and Aleutian Islands



Summary status of age-structured BSAI species as measured by 2012 catch level relative to OFL (vertical axis) and projected 2013 spawning biomass relative to B_{MSY} .



BSAI Groundfish Biomass, Overfishing Level, Acceptable Biological Catch, and Total Allowable Catch. 1981-2013. and Catch. 1981-2013.

2013/2014 GOA Groundfish Specifications

The Council approved the Gulf of Alaska Stock Assessment and Fishery Evaluation (SAFE) report and recommended final catch specifications for the 2013 and 2014 groundfish fisheries. As part of the Plan Team presentations and Council deliberations, the updated ecosystem and economics SAFE report sections were presented. There was no survey in the GOA in 2012 thus most stock assessments are in an 'off-year' cycle and executive summaries of most stocks were provided for this assessment cycle. A full survey is planned for 2013 contingent upon sufficient federal funding.

The sum of the ABCs increased by 3% (15,927 t) compared with last year. This is primarily driven by increases in pollock 20,229 t (21%) and sablefish 1,670 t (15%). Based on projections, ABC levels roundfish (pollock, Pacific cod, and sablefish) are up by 22,699 t (12%) whereas flatfish declined by 8,685 t (-3%). Rockfish ABCs increased 3% (1,197 t) and the largest percentage increase was seen for octopus at 53% (501 t). Combined, the skates ABC increased by 2% (149 t).

The abundances of Pacific cod, sablefish, flathead sole, arrowtooth flounder, northern and southern rocksole, Pacific ocean perch, roughey and blackspotted rockfish, northern rockfish, and dusky rockfish are above B_{MSY} . The abundance of pollock is below B_{MSY} (see figure below). The target biomass levels for other deep-water flatfish (including Dover sole), other shallow-water flatfish, rex sole, shortraker rockfish, demersal shelf rockfish, other rockfish, thornyhead rockfish, Atka mackerel, skates, sculpins, squid, octopus, and sharks are unknown.

Previously the Pacific ocean perch stock had area-specific OFLs in the GOA. The OFLs in the WGOA and CGOA were combined for management purposes in 2013-2014 with a separate OFL continued in the EGOA where there is no fishing. The SSC concurred with recommendations of the GOA Plan Team that area-specific OFLs were no longer necessary for this stock but that consideration will continue to be given to re-establishing them depending upon new information on stock structure for POP in the future.

For most stocks the Council established TACs equal to ABCs with some exceptions. These exceptions include Pacific cod where the quota

was reduced 25% to account for removals in the state managed fishery, and those fisheries where the bycatch of other target species is a concern, specifically for shallow water flatfish (W and Central GOA), flathead sole (W and C GOA), arrowtooth flounder (GOA wide) and other rockfish (EYAK/SEO). For those fisheries, the TAC is set below the ABC. Atka mackerel was also established at levels to meet incidental catch needs in other fisheries only (no directed fishing is allowed). The Council requested that octopus and sharks continue to be placed on bycatch only status while requesting that the Agency consider allowing a directed fishery for sculpins. The Council requested staff come back with a discussion paper of issues related to opening up Big and Longnose skates to directed fishing in the EGOA but did not recommend a directed fishery go forward for them in 2013. Specifications for 2013-2014 are posted on the Council's website.

Stock Structure:

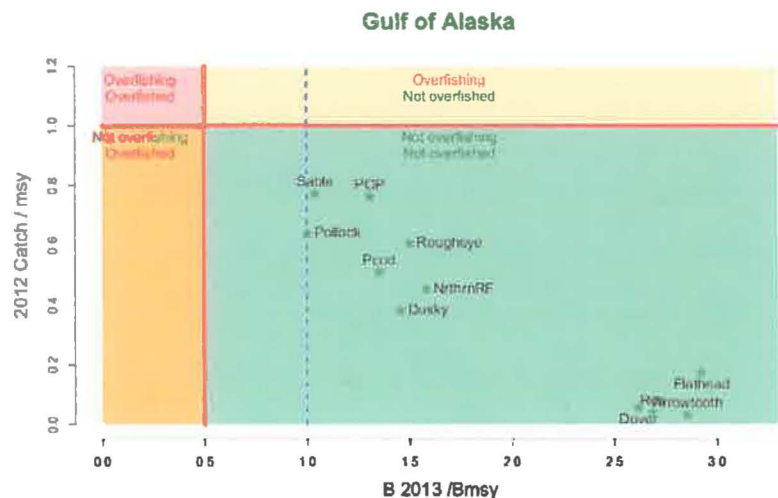
The Council recommended that staff work with the Plan Team chairs to develop an agenda and time frame for a public workshop on policy and management implications resulting from

stock structure determinations. A report to the Council on progress towards organizing this workshop was requested for February. The workshop is to be held sometime in 2013.

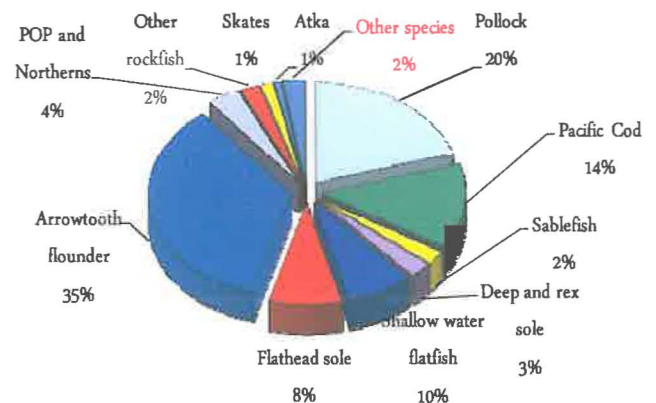
Prohibited Species Catch Limits:

The Council adopted halibut prohibited species catch limits, by season and gear apportionment for 2013-2014 and further specified apportionments of the 'other hook and line fisheries' annual halibut PSC allowance between the hook-and-line gear catcher vessel and catcher/processor sectors following the Pacific cod sector split allocation implemented in 2012. The PSC numbers and seasonal apportionments are available on the website.

The Council recommended OFLs, ABCs and TACs for 2013 and 2014, the SAFE report for GOA groundfish, the Ecosystem Considerations Chapter and the Economic SAFE report. Additional information on the summary of GOA groundfish stocks may be viewed at www.afsc.noaa.gov/refm/stocks/assessments.htm. Staff contact is Diana Stram



Summary status of age-structured GOA species relative to 2012 catch levels (vertical axis) and projected 2013 spawning biomass relative to B_{msy} levels. Note that the 2012 MSY level is defined as the 2012 catch at F_{OR} .



Percentage breakouts of 2012 ABCs by species and stock complexes.

Staff Tasking

During its Staff Tasking agenda item, the Council discussed several issues and took action on the following items (in addition to those noted elsewhere in the newsletter): (1) provided direction to the Ecosystem Committee for its next meeting; (2) passed motions regarding various aspects of the restructured observer program (see separate newsletter article); (3) requested discussion paper on possible separation of the Bering Sea sablefish TAC between IFQ and non-IFQ fisheries; (4) requested discussion paper on biological and management implications of a potential directed longline fishery for skates in the Eastern GOA; (5) put on hold an analysis of Greenland turbot sector allocations until results of the 2013 fishery become available; (6) provided direction on packaging and priorities for various halibut/sablefish IFQ program proposals; (7) provided direction to its Enforcement Committee to assess advanced aspects of VMS for vessels already subject to VMS requirements; (8) requested discussion paper on the implications of pending SSC advice to set separate ABCs in 2014 for Bering Sea and Aleutian Islands Pacific cod particularly in the context of current alternatives in the Steller sea lion EIS; (9) acknowledged that at the Council's February 2013 meeting, in the context of the Council's Central GOA trawl catch share initiative, the Council will consider related proposals including proposals relevant to the Western GOA fisheries; and (10) discussed the possibility of revisiting, sometime in 2013, a discussion paper on BSAI halibut PSC reductions.

Halibut Management

The Council adopted 2013 annual management measures based on an analysis by ADF&G and committee recommendations. The Council recommended the status quo for Area 2C and Area 3A. For Area 2C the Council recommended continuation of the one fish ≤ 45 inches or ≥ 68 inches ("U45068"). This "reverse slot limit" would continue to allow the retention of halibut approximately ≤ 32 lb and ≥ 123 lb (dressed weight). For Area 3A the Council recommended status quo (2 fish of any size). These measures are projected to keep charter halibut harvests below the guideline harvest levels expected to be in effect in 2013.

The Council also considered a proposal to the IPHC, which also would require Federal rulemaking if the IPHC redefined **legal gear to include (sablefish) pots** (single or longline) as legal gear in Area 4A. The result would only allow the use of sablefish pots fished in the Bering Sea and Aleutian Islands to retain only Area 4A halibut IFQs. The Council requested an expanded paper in 2013 to address four additional concerns listed below. The Council will send a letter to the IPHC to describe the Council's interest in, and further review of, the proposal.

1. Determine whether there is overlap in the spatial and/or temporal distribution of halibut longlining and sablefish pot fishing in the portion of Area 4A to which this proposal would apply.
2. Discuss the potential need for the following regulations:
 - a. Requiring the removal of sablefish pots from the fishing grounds upon completion of the harvest of the vessel's sablefish IFQ, and at the end of the season.
 - b. Requiring radar reflectors or other gear markers at both ends of a longline pot string.
 - c. Prohibiting "pot sharing" while pots are in the water.
 - d. Prohibiting the modification of sablefish pot tunnels.
3. Discuss the physical and market condition of halibut incidentally caught in sablefish pots.
4. Provide a discussion of the experiences and

lessons learned by the industry and managers in Areas 2A and 2B from allowing the retention of halibut incidentally caught in sablefish pots, including retention caps.

The Council reviewed its **halibut/sablefish priorities** for staff tasking. The Council affirmed that NMFS and Council staffs should place the highest priority on implementation of past actions. The second highest priority is on initial review/final action of a regulatory amendment to relieve a restriction on the number of IFQ blocks a CQE may hold and discussion papers that are scheduled for review in February 2013 on 1) IFQ leasing practices under the hired skipper provision and use of medical leases and 2) revising the Federal definition of a fishing guide. The third highest priority is on an expanded discussion paper of whether to allow Area 4A halibut IFQs to be retained in sablefish pots fished in the BSAI and a discussion paper on the potential for a Recreational Quota Entity program under a proposal for a common pool program that may be submitted to the Council for the April 2013 meeting, at the earliest. The next priority was identified for discussion papers on whether to allow the use of pot gear in the Gulf of Alaska sablefish IFQ program, which would advise a yet to be named gear committee, and a proposed increase in the cap on sablefish IFQ holdings. The Council took no action to develop a discussion paper to address unharvested halibut in Area 4C, at the request of the proposer, and on a proposal to allow ineligible family members to assist permitted subsistence halibut fishermen. All new proposals to amend the IFQ/CDQ/CQE programs will be held until the Council's next call for proposals. Contact Jane DiCosimo for more information.



CQE Small Block Restriction

At the December meeting, the Council initiated an analysis to consider removing a current limitation restricting the purchase of small blocks of halibut and sablefish quota share by community quota entities (CQEs), under the GOA community quota share purchase program. Under the current program, GOA CQEs are restricted to purchasing blocks of shares of a minimum size that resulted in an equivalent of at least 5,000 pounds of IFQ, based on 1996 TACs. Note that there is no minimum size limit for purchasing halibut quota share in Area 3B, nor are there minimum size limits in place for the recently approved Adak CQE program, once it is implemented. The Council considered a staff discussion paper providing the context of CQE purchase restrictions, as well as the original rationale for implementing the small block restriction, before initiating the amendment analysis. The problem statement and alternatives to be evaluated are available on the Council website. Staff contact is Diana Evans.

Chum salmon bycatch

The Council reviewed an updated analysis of the Chum salmon PSC management measures EA/RIR/IRFA. This amendment package evaluates alternative chum salmon PSC measures in the Bering Sea pollock fishery. Measures under consideration include PSC limits which would close the fishery upon reaching the limit either until the end of July or for the remainder of the B-season, and bycatch management under a revised rolling hot spot (RHS) system (with or without additional triggered area closures). This is the third time that the Council has reviewed the analysis in order to best tailor alternatives to meet the Council's purpose and need. The Council's problem statement is shown below.

Magnuson-Stevens Act National Standards direct management Councils to balance achieving optimum yield with bycatch reduction as well as to minimize adverse impacts on fishery dependent communities. Non-Chinook salmon (primarily made up of chum salmon) prohibited species bycatch (PSC) in the Bering Sea pollock trawl fishery is of concern because chum salmon are an important stock for subsistence and commercial fisheries in Alaska. There is currently no limitation on the amount of non-Chinook PSC that can be taken in directed pollock trawl fisheries in the Bering Sea. The potential for high levels of chum salmon bycatch as well as long-term impacts of more moderate bycatch levels on conservation and abundance, may

have adverse impacts on fishery dependent communities.

Non-Chinook salmon PSC is managed under chum salmon savings areas and the voluntary Rolling Hotspot System (RHS). Hard caps, area closures, and possibly an enhanced RHS may be needed to ensure that non-Chinook PSC is limited and remains at a level that will minimize adverse impacts on fishery dependent communities. The Council should structure non-Chinook PSC management measures to provide incentive for the pollock trawl fleet to improve performance in avoiding non-Chinook salmon while achieving optimum yield from the directed fishery and objectives of the Amendment 91 Chinook salmon PSC management program. Non-Chinook salmon PSC reduction measures should focus, to the extent possible, on reducing impacts to Alaska chum salmon as a top priority.

In developing this problem statement, the Council indicated the need to balance competing objectives including: 1) providing incentive to reduce chum salmon PSC to the extent practicable with priority within chum salmon measures placed on measures which reduce impacts to Alaska chum, 2) allowing for the pollock fishery to operate to achieve optimum yield, and 3) achieving the objectives of the current Chinook salmon PSC management program. Balancing these competing objectives has complicated developing appropriate management measures for chum salmon PSC. Analysis of the various alternatives indicates that most measures which balance OY from the pollock fishery with reduced chum salmon PSC do so at the risk of undermining reducing Chinook salmon PSC.

After consideration of the complicated suite of alternatives and the analysis of impacts, the Council elected to move the analysis to a different direction. The Council requested that the pollock industry give consideration to how they might incorporate an explicit chum salmon PSC avoidance program within their existing sector-specific Chinook salmon incentive program agreements (IPAs) with vessel-level accountability. In doing so, the Council recognized that this would delay selection of a preferred chum salmon management approach but indicated that the IPAs may provide the most adaptive, flexible forum for managing competing objectives in bycatch avoidance between Chinook salmon and chum salmon.

The Council indicated that these proposals would be presented to the Council no sooner than October 2013, and that upon review and public input the Council would then determine whether to further pursue this potential approach to meet the multiple objectives outlined in the problem statement. The Council may receive a progress report prior to October from the industry. Staff contact is Diana Stram.

WGOA Trawl Fisheries

At the December meeting the Council received testimony from participants in the Western Gulf trawl fishery requesting that the trawl fishery in that management area be included in any catch share program considered for the Gulf of Alaska trawl fisheries. To date, the Council has suggested that the program would be limited to Central Gulf trawl fisheries. On hearing this testimony, the Council requested that participants in the Western Gulf trawl fisheries who support inclusion of those fisheries in the catch share program present the Council with elements and options appropriate for the Western Gulf fisheries at the February Council meeting. The Council suggested that specific elements should be developed for the Western Gulf to recognize the different fishery, regional, and community interests.

Gulf of Alaska Groundfish recommended OFLs, ABCs and TACs for 2013-2014 and Council's adopted specifications for 2012.

Stock/ Assemblage	Area	2012				2013			2014		
		OFL	ABC	TAC	Catch ^{1/}	OFL	ABC	TAC	OFL	ABC	TAC
Pollock	W (61)		30,270	30,270	27,893		28,072	28,072		25,648	25,648
	C (62)		45,808	45,808	45,050		51,443	51,443		47,004	47,004
	C (63)		26,348	26,348	25,589		27,372	27,372		25,011	25,011
	WYAK		3,244	3,244	2,380		3,385	3,385		3,093	3,093
	Subtotal	143,716	105,670	105,670	100,912	150,817	110,272	110,272	138,610	100,756	100,756
	EYAK/SEO	14,366	10,774	10,774		14,366	10,774	10,774	14,366	10,774	10,774
Total	158,082	116,444	116,444	100,912	165,183	121,046	121,046	152,976	111,530	111,530	
Pacific Cod	W		28,032	21,024	17,703		28,280	21,210		29,470	22,103
	C		56,940	42,705	34,901		49,288	36,966		51,362	38,522
	E		2,628	1,971	338		3,232	2,424		3,368	2,526
	Total	104,000	87,600	65,700	52,942	97,200	80,800	60,600	101,100	84,200	63,150
Sablefish	W		1,780	1,780	1,390		1,750	1,750		1,641	1,641
	C		5,760	5,760	5,248		5,540	5,540		5,195	5,195
	WYAK		2,247	2,247	2,028		2,030	2,030		1,902	1,902
	SEO		3,176	3,176	3,188		3,190	3,190		2,993	2,993
	Total	15,330	12,960	12,960	11,854	14,780	12,510	12,510	13,871	11,731	11,731
Shallow-water Flatfish	W		21,994	13,250	153		19,489	13,250		18,033	13,250
	C		22,910	18,000	3,322		20,168	18,000		18,660	18,000
	WYAK		4,307	4,307			4,647	4,647		4,299	4,647
	EYAK/SEO		1,472	1,472			1,180	1,180		1,092	1,180
	Total	61,681	50,683	37,029	3,475	55,680	45,484	37,077	51,580	42,084	37,077
Deep-water Flatfish	W		176	176	8		176	176		176	176
	C		2,308	2,308	246		2,308	2,308		2,308	2,308
	WYAK		1,581	1,581	5		1,581	1,581		1,581	1,581
	EYAK/SEO		1,061	1,061	3		1,061	1,061		1,061	1,061
	Total	6,834	5,126	5,126	262	6,834	5,126	5,126	6,834	5,126	5,126
Rex Sole	W		1,307	1,307	215		1,300	1,300		1,287	1,287
	C		6,412	6,412	1,972		6,376	6,376		6,310	6,310
	WYAK		836	836			832	832		823	1,041
	EYAK/SEO		1,057	1,057			1,052	1,052		1,040	822
	Total	12,561	9,612	9,612	2,187	12,492	9,560	9,560	12,362	9,460	9,460
Arrowtooth Flounder	W		27,495	14,500	1,331		27,181	14,500		26,970	14,500
	C		143,162	75,000	18,213		141,527	75,000		140,424	75,000
	WYAK		21,159	6,900	53		20,917	6,900		20,754	6,900
	EYAK/SEO		21,066	6,900	140		20,826	6,900		20,663	6,900
	Total	250,100	212,882	103,300	19,737	247,196	210,451	103,300	245,262	208,811	103,300
Flathead Sole	W		15,300	8,650	277		15,729	8,650		16,063	8,650
	C		25,838	15,400	1,613		26,563	15,400		27,126	15,400
	WYAK		4,558	4,558			4,686	4,686		4,785	4,785
	EYAK/SEO		1,711	1,711			1,760	1,760		1,797	1,797
	Total	59,380	47,407	30,319	1,890	61,036	48,738	30,496	62,296	49,771	30,632

1/ Catch reported through November 3, 2012.

(GOA Groundfish Specifications table continued)

Stock/ Assemblage	Area	2012				2013			2014		
		OFL	ABC	TAC	Catch	OFL	ABC	TAC	OFL	ABC	TAC
Pacific Ocean Perch	W	2,423	2,102	2,102	2,452		2,040	2,040		2,005	2,005
	C	12,980	11,263	11,263	10,741		10,926	10,926		10,740	10,740
	WYAK		1,692	1,692	1,682		1,641	1,641		1,613	1,613
	W/C/WYAK					16,838			16,555		
	SEO	4,095	1,861	1,861		2,081	1,805	1,805	2,046	1,775	1,775
Total	19,498	16,918	16,918	14,875	18,919	16,412	16,412	18,601	16,133	16,133	
Northern Rockfish	W		2,156	2,156	1,817		2,008	2,008		1,899	1,899
	C		3,351	3,351	3,210		3,122	3,122		2,951	2,951
	E										
Total	6,574	5,507	5,507	5,027	6,124	5,130	5,130	5,791	4,850	4,850	
Shortraker Rockfish	W		104	104	110		104	104		104	104
	C		452	452	361		452	452		452	452
	E		525	525	402		525	525		525	525
Total	1,441	1,081	1,081	873	1,441	1,081	1,081	1,441	1,081	1,081	
Dusky Rockfish	W		409	409	435		377	377		354	354
	C		3,849	3,849	3,558		3,533	3,533		3,317	3,317
	WYAK		542	542	2		495	495		465	465
	EYAK/SEO		318	318	6		295	295		277	277
Total	6,257	5,118	5,118	4,001	5,746	4,700	4,700	5,395	4,413	4,413	
Rougheye and Blackspotted Rockfish	W		80	80	39		81	81		83	83
	C		850	850	389		856	856		871	871
	E		293	293	236		295	295		300	300
Total	1,472	1,223	1,223	664	1,482	1,232	1,232	1,508	1,254	1,254	
Demersal Rockfish	Total	467	293	293	178	487	303	303	487	303	303
Thornyhead Rockfish	W		150	150	186		150	150		150	150
	C		766	766	340		766	766		766	766
	E		749	749	217		749	749		749	749
Total	2,220	1,665	1,665	743	2,220	1,665	1,665	2,220	1,665	1,665	
Other Rockfish	W		44	44	255		44	44		44	44
	C		606	606	724		606	606		606	606
	WYAK		230	230	37		230	230		230	230
	EYAK/SEO		3,165	200	24		3,165	200		3,165	200
Total	5,305	4,045	1,080	1,040	5,305	4,045	1,080	5,305	4,045	1,080	
Atka Mackerel	GOA-wide	6,200	4,700	2,000	1,187	6,200	4,700	2,000	6,200	4,700	2,000
Big Skate	W		469	469	60		469	469		469	469
	C		1,793	1,793	1,596		1,793	1,793		1,793	1,793
	E		1,505	1,505	38		1,505	1,505		1,505	1,505
Total	5,023	3,767	3,767	1,694	5,023	3,767	3,767	5,023	3,767	3,767	
Longnose Skate	W		70	70	28		70	70		70	70
	C		1,879	1,879	656		1,879	1,879		1,879	1,879
	E		676	676	78		676	676		676	676
Total	3,500	2,625	2,625	762	3,500	2,625	2,625	3,500	2,625	2,625	
Other Skates	GOA-wide	2,706	2,030	2,030	1,110	2,706	2,030	2,030	2,706	2,030	2,030
Sculpins	GOA-wide	7,641	5,731	5,731	802	7,614	5,884	5,884	7,614	5,884	5,884
Sharks	GOA-wide	8,037	6,028	6,028	595	8,037	6,028	6,028	8,037	6,028	6,028
Squid	GOA-wide	1,530	1,148	1,148	18	1,530	1,148	1,148	1,530	1,148	1,148
Octopus	GOA-wide	1,941	1,455	1,455	368	1,941	1,455	1,455	1,941	1,455	1,455
Total	Total	747,780	606,048	438,157	227,196	738,676	595,920	436,255	723,580	584,094	427,722

1/ Catch reported through November 3, 2012.

NPFMC Council Motion 12/6/12 BSAI Specifications

Species	Area	2012			2013			2014		
		ABC	TAC	Catch 11/24/12	OFL	ABC	TAC	OFL	ABC	TAC
Pollock	EBS	1,220,000	1,200,000	1,204,554	2,550,000	1,375,000	1,247,000	2,730,000	1,430,000	1,247,000
	AI	32,500	19,000	972	45,600	37,300	19,000	48,600	39,800	19,000
	Bogoslof	16,500	500	79	13,400	10,100	100	13,400	10,100	100
Pacific cod	BSAI	314,000	261,000	231,682	359,000	307,000	260,000	379,000	323,000	260,880
Sablefish	BSAI	4,280	4,280	1,940	4,400	3,720	3,720	4,130	3,490	3,490
	BS	2,230	2,230	738	1,870	1,580	1,580	1,760	1,480	1,480
	AI	2,050	2,050	1,202	2,530	2,140	2,140	2,370	2,010	2,010
Atka mackerel	Total	81,400	50,763	47,832	57,700	50,000	25,920	56,500	48,900	25,379
	EAI/BS	38,500	38,500	37,314		16,900	16,900		16,500	16,500
	CAI	22,900	10,763	10,323		16,000	7,520		15,700	7,379
	WAI	20,000	1,500	195		17,100	1,500		16,700	1,500
Yellowfin sole	BSAI	203,000	202,000	144,253	220,000	206,000	198,000	219,000	206,000	198,000
Rock sole	BSAI	208,000	87,000	75,896	241,000	214,000	92,380	229,000	204,000	92,000
Greenland turbot	Total	9,660	8,660	4,662	2,540	2,060	2,060	3,270	2,650	2,650
	BS	7,230	6,230	3,005		1,610	1,610		2,070	2,070
	AI	2,430	2,430	1,657		450	450		580	580
Arrowtooth flounder	BSAI	150,000	25,000	22,535	186,000	152,000	25,000	186,000	152,000	25,000
Kamchatka flounder	BSAI	18,600	17,700	9,629	16,300	12,200	10,000	16,300	12,200	10,000
Flathead sole	BSAI	70,400	34,134	11,281	81,500	67,900	22,699	80,100	66,700	22,543
Alaska plaice	BSAI	53,400	24,000	16,445	67,000	55,200	20,000	60,200	55,800	20,000
Other flatfish	BSAI	12,700	3,200	3,517	17,800	13,300	3,500	17,800	13,300	4,000
Pacific Ocean perch	BSAI	24,700	24,700	24,147	41,900	35,100	35,100	39,500	33,100	33,100
	BS	5,710	5,710	5,590		8,130	8,130		7,680	7,680
	EAI	5,620	5,620	5,519		9,790	9,790		9,240	9,240
	CAI	4,990	4,990	4,798		6,980	6,980		6,590	6,590
	WAI	8,380	8,380	8,240		10,200	10,200		9,590	9,590
Northern rockfish	BSAI	8,610	4,700	2,478	12,200	9,850	3,000	12,000	9,320	3,000
Blackspotted/Roughy	BSAI	576	475	208	462	378	378	524	429	429
	EBS/EAI		231	77		169	169		189	189
	CAI/WAI		244	131		209	209		240	240
Shortraker rockfish	BSAI	393	393	342	493	370	370	493	370	370
Other rockfish	BSAI	1,280	1,070	942	1,540	1,160	873	1,540	1,160	1,159
	BS	710	500	208		686	400		686	686
	AI	570	570	734		473	473		473	473
Squid	BSAI	1,970	425	691	2,620	1,970	700	2,620	1,970	700
Skate	BSAI	32,600	24,700	23,291	45,800	38,800	24,000	44,100	37,300	25,000
Shark	BSAI	1,020	200	91	1,360	1,020	100	1,360	1,020	100
Octopus	BSAI	2,590	900	133	3,450	2,590	500	3,450	2,590	500
Sculpin	BSAI	43,700	5,200	5,585	56,400	42,300	5,600	56,400	42,300	5,600
Total	BSAI	2,511,303	2,000,000	1,833,185	4,028,465	2,639,317	2,000,000	4,205,287	2,697,498	2,000,000

DRAFT NPFMC THREE-MEETING OUTLOOK - updated 12/18/12

February 4-12, 2013 Portland, OR	April 1-9, 2013 Anchorage, AK	June 3-11, 2013 Juneau, AK
Deep Sea Coral Strategic Plan; ESA listing: NOAA Report IPHC Report: Action as necessary SSL EIS: Action as necessary AI Risk Assessment: Report Observer Program: Update and action as necessary Halibut/Sablefish IFQ Leasing prohibition: NMFS Disc. paper (T) Definition of Fishing Guide: Discussion Paper CGOA Trawl Economic Data Collection: Discussion paper CGOA Trawl Catch Shares: Discussion paper Crab bycatch limits in BSAI groundfish fisheries: Disc paper BSAI Crab ROFR: Final Action BSAI Crab active participation requirements: Initial Review BSAI Crab Cooperative Provisions for Crew: Discussion paper GOA P cod sideboards for FLL: Initial Review AFA Vessel Replacement GOA Sideboards: Initial Review BSAI Flatfish Specification Flexibility: Initial Review (T) BBRKC spawning area/fishery effects: Updated Discussion paper HAPC - Skate sites: Final Action	AFA Coop Reports; ICA report: Action as Necessary Observer Program: Update; 3rd Party discussion paper SSL EIS: Initial Review, Select PPA BS and AI P. cod ABC/TAC split: Updated Discussion Paper Retention of 4A halibut in BSAI sablefish pots: Expanded Disc Paper BSAI Chum Salmon Bycatch: Industry Progress Report GOA Chinook Bycatch non-pollock trawl fisheries: Final Action (T) Salmon Bycatch Genetics: Update CGOA Trawl Catch Shares: Action as necessary Crab modeling report: SSC only BSAI Crab active participation requirements: Final Action Scallop SAFE and harvest specifications: Review and Approve GOA P cod sideboards for FLL: Final Action AFA Vessel Replacement GOA Sideboards: Final Action Round Island Transit: Initial Review Grenadier management: Initial Review (T) BSAI Flatfish Specification Flexibility: Final Action (T) Research Priorities: SSC only	Observer Program: Update and action as necessary SSL EIS: Progress Report CQE Small Blocks: Initial Review/Final Action H/S IFQ Disc papers (GOA sablefish pots, sablefish A-share caps) (T) Halibut compensated reallocation pool: Discussion Paper (T) CGOA Trawl Catch Shares: Action as necessary BSAI Crab: CPT report; OFL/ABC specifications for 4 stocks BS Canyons: Updated AFSC report; Fishing activities and management discussion paper (T) Round Island Transit: Final Action Grenadier management: Final Action (T) ITEMS BELOW FOR FUTURE MEETINGS Crab PSC numbers to weight: Discussion paper Salmon EFH revisions: Initial Review BS Sablefish IFQ & non-IFQ specifications: Discussion Paper BSAI Halibut PSC: On Hold EGOA skate fishery: Discussion paper Greenland Turbot allocation: Initial Review MPA Nominations: Discuss and consider nominations

AI - Aleutian Islands
 AFA - American Fisheries Act
 BIOp - Biological Opinion
 BSAI - Bering Sea and Aleutian Islands
 BKC - Blue King Crab
 BOF - Board of Fisheries
 CQE - Community Quota Entity
 CDQ - Community Development Quota
 EDR - Economic Data Reporting
 EFH - Essential Fish Habitat
 EFP - Exempted Fishing Permit
 EIS - Environmental Impact Statement
 FLL - Freezer longliners
 GOA - Gulf of Alaska

GKC - Golden King Crab
 GHL - Guideline Harvest Level
 HAPC - Habitat Areas of Particular Concern
 IFQ - Individual Fishing Quota
 IBQ - Individual Bycatch Quota
 MPA - Marine Protected Area
 PSEIS - Programmatic Supplemental Impact Statement
 PSC - Prohibited Species Catch
 RKC - Red King Crab
 ROFR - Right of First Refusal
 SSC - Scientific and Statistical Committee
 SAFE - Stock Assessment and Fishery Evaluation
 SSL - Steller Sea Lion
 TAC - Total Allowable Catch

Future Meeting Dates and Locations
 February 4-12, 2013, Portland
 April 1-9, 2013, Anchorage
 June 3-11, 2013, Juneau
 September 30-Oct 8, 2013 Anchorage
 December 9-17, 2013, Anchorage
 February 2-10, 2014, Seattle
 April 7-15, 2014, Anchorage
 June 2-10, 2014, Nome
 October 6-14, 2014 Anchorage
 December 8-16, 2014, Anchorage
 February 2-10, 2015, Seattle

(T) = Tentative

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News & Notes

North Pacific Fishery Management Council
October 2012

Olson Re-Elected Council Chair

The Council unanimously re-elected Eric Olson as Chairman and elected John Henderschedt as Vice Chairman. Also at this meeting, Dr. Jim Balsiger administered the Oath of Office for new Council member Craig Cross, and for re-appointed members Dan Hull and Ed Dersham.

Plan Team Appointments

The Chairman also announced nominations that were approved for the Groundfish Plan Teams. Christopher Siddon was appointed to the BSAI Groundfish Plan Team, and Mark Stichert, and Elisia Russ on the GOA Groundfish Plan Team. Dr. Siddon is the Chief Scientist for Marine Fisheries in the ADF&G Commercial Fisheries Division. Mr. Stichert is the Area Manager for Kodiak, Chignik and Alaska Peninsula Shellfish/Groundfish. Ms. Russ is currently the Acting Area Management Biologist for the central region commercial groundfish and shellfish fisheries.

Upcoming Meetings

Charter Management Implementation Committee:
October 19, teleconference 10am

SSLMC: October 18-19, Juneau
November 7-9, Juneau
November 28-29, Seattle, WA

Groundfish Plan Teams:
September 11-14, 2012, AFSC
November 13-16, 2012, AFSC



Observer 2013 Deployment Plan

The Council reviewed NMFS' Annual Deployment Plan for the 2013 Observer Program. The plan describes the methodology that is proposed to deploy observers on vessels in the partial coverage category (distinct from the full coverage category, where a minimum of 100% observer coverage is required). Catcher vessels that are over 57.5' length overall will be in the trip selection pool, where every trip must be registered, and each trip has a probability of being randomly selected for observer coverage. Vessels from 40' to 57.5' length overall will be in the vessel selection pool, where each vessel has a probability of being randomly selected on a quarterly basis for observer coverage; if selected, that vessel must have an observer onboard for all trips during the calendar quarter. Catcher vessels under 40' length overall, or that fish with jig gear, will be not be required to carry observers. Under the 2013 plan as presented, the probability of trips (in the trip selection pool) and vessels (in the vessel selection pool) being selected for observer coverage is equal, that is, a 13% probability in either case. The Council acknowledged the considerable work of agency staff in developing the deployment plan, and keeping the restructured observer program amendment on track for implementation in 2013.

The Council recommended two changes to the plan. First, that the plan be revised to reflect a priority for monitoring vessels managed under prohibited species catch (PSC) limits in the trip selection pool. Including this as a priority would necessarily result in modifying the probability of being selected for observer coverage in both selection pools, occasioning higher coverage rates on trips in the trip selection pool, and lower coverage rates on vessels in the vessel selection pool. Secondly, the Council asked NMFS to reconsider the duration of observer coverage for vessels in the vessel selection pool, to change the proposed 3-month (calendar quarter) period to a 2-month deployment period.

The plan, and NMFS' presentation, also described the objectives for the 2013 electronic monitoring (EM) project. For 2013, the project will focus on vessels in the vessel selection pool, operating out of Homer, Petersburg, Sitka, and (if funding permits) Kodiak, and with landings of halibut and sablefish IFQ. NMFS will be soliciting volunteers to carry a video-based EM system for a calendar quarter, as well as exploring whether other, non-camera systems may provide alternate options for improving catch and discard estimation.

The Council also requested that NMFS develop a strategic planning document specific to the Council's April 2011 EM management objective, to collect at-sea discard estimates from the 40' to 57.5' IFQ fleet. The strategic plan should include a timeline, vision, and funding outlook for how the 2013 EM project and future years' work will serve to meet this objective.

The Council had a number of other specific recommendations, including requesting clarifications on the implementation of the program be addressed through NMFS' outreach efforts, scheduled for the fall and early spring. The Council also recommended a number of measures that should be included in the agency's first performance review, scheduled for June 2013. The full motion is available on the Council website.

Finally, for 2013, the Council requested NMFS work together with trawl vessels in the partial coverage category (in particular, the BSAI Pacific cod catcher vessel fleet, but also GOA trawl vessels) to develop a mechanism to allow for voluntary 100% observer coverage at certain times, with the additional costs to be borne by the vessel owners. However, the Council notes that this is an interim solution for these vessels, and also advises the trawl industry to work with NMFS to identify options for a long-term solution, which could be presented to the Council for a proposed amendment analysis at some time in the future. Staff contact is Diana Evans.

Call for SSC Nominations

The Council's Scientific and Statistical Committee (SSC) is widely recognized as a critical foundation to the North Pacific fisheries management success story. The SSC advises the Council on numerous management decisions, including stock assessment and modeling techniques, data collection, ABC recommendations, achievement of rebuilding targets, social and economic impacts of management decisions, protected species interactions, and sustainability of fishing practices. SSC members shall be federal employees, state employees, academicians, or independent experts not employed by advocacy or interest groups. SSC members serve one-year terms, but may be reappointed indefinitely. The SSC generally meets five times per year for three days at a time, and stipends are provided to non-governmental SSC members. The Council is accepting nominations to the SSC for 2013 in all areas of fishery-related expertise (biology/stock assessment, statistics, resource economics, sociology/anthropology, marine mammals, or other relevant disciplines). Please submit resume and cover letter to the Council offices by **November 19, 2012**. SSC appointments for 2013 will be determined by the Council at the December 2012 meeting. Council staff contact is Chris Oliver.

*NPFMC Newsletter
October 2012
Page 2*

Central GOA Trawl Catch Shares

Over the course of the past few years, the Council has advanced a number of actions to reduce the use of prohibited species catch (PSC) in the Gulf of Alaska fisheries. The Council recently introduced Chinook PSC limits in the Gulf pollock fisheries and will consider an action to extend similar Chinook PSC limits to non-pollock groundfish fisheries in the Gulf at its December meeting. At its June meeting, the Council took action to reduce halibut PSC available to trawl and longline fisheries in the Central and Western Gulf. This series of actions reflects the Council's commitment to reduce prohibited species catch in the Gulf fisheries. Participants in these fisheries, particularly in the Central Gulf trawl fishery, have raised concerns that the current limited access management creates a substantial disincentive for participants to take actions to reduce PSC usage (particularly actions that could reduce target catch rates). Other participants, who choose not to exert efforts to avoid PSC, stand to gain additional target catch by continuing to harvest fish at a higher catch rate, at the expense of vessels engaged in PSC avoidance. The Council has adopted a purpose and need statement and goals and objectives to support the development of actions to modify management of the Central Gulf trawl fisheries to remove this disincentive.

The purpose and need statement states that the current management limits the ability of the fleet to effectively address challenges arising from limits on PSC, Steller sea lion measures, and variable total allowable catches. The new management structure is intended to eliminate the derby-style

race for fish by allocating catch shares (i.e., the allowable harvest) to individuals, cooperatives, or other entities, which will eliminate the derby-style race for fish. The goal of the program is to improve stock conservation by creating vessel-level and/or cooperative-level incentives to eliminate wasteful fishing practices, providing mechanisms to control and reduce bycatch, and creating accountability measures when utilizing PSC, target, and secondary species. The action should also have the added benefits of reducing the incentive to fish during unsafe conditions and improving operational efficiencies. The program is expected to support the continued direct and indirect participation of the coastal communities that are dependent upon those fisheries.

To facilitate the development of alternatives for analysis, the Council requested staff to provide a discussion paper that outlines various catch share options for the Central Gulf trawl sector that may meet its objectives. The paper should also examine how other comparable programs have considered and applied Magnuson Stevens Act catch share provisions to meet similar objectives.

The Council also stated its intent to develop a data collection program for fisheries included in the program and that it would attempt to implement prior to the implementation of management changes, in order to provide baseline data to assess the effects of the change of management.

The Council also expressed concern that stating its intention to develop a catch share program could induce speculative entry to the fisheries. To dampen this effect, the Council stated that it may not credit any catch history after December 31, 2012 for purposes of making any allocation under a future fishery management program. The full motion is on the Council website. The Council will review this issue again at its February 2013 meeting. Staff contact is Mark Fina.



F/V Cape Reliant, F/V Advancer, King Cove, Courtesy PVOA

Freezer Longline MLOA Adjustment

The Council took final action on an amendment to change the maximum length overall (MLOA) on License Limitation Program (LLP) licenses that have a Pacific cod hook-and-line catcher processor endorsement for the Bering Sea or Aleutian Islands (i.e., the BSAI freezer longline cod fleet). The MLOA on all LLP licenses in the sector would be increased to 220'. Additionally, the Council affirmed that the "large vessel" capacity restrictions of the AFA should no longer apply to this sector, given the conservation and management measures in place in the BSAI cod fishery, including a direct sector allocation and a limited class of participants. The Council observed that while vessels within this sector can currently replace their vessels, relaxing length and capacity restrictions could provide substantial benefits both by improving production efficiency and addressing safety concerns that have been identified by the Coast Guard and industry.

The Council took into account the potential for this action to impact other fisheries, but noted that in most cases, capacity restrictions already exist. In order to protect other participants in the BSAI and GOA Pacific cod pot fisheries, however, an option was included in the preferred alternative which would require qualifying LLP license holders that also have pot cod endorsements to choose either to receive the larger MLOA and thus extinguish their pot cod endorsements, or to retain both the original MLOA and the endorsements. These owners have 36 months to make this decision. The Council discussed impacts to other participants in the GOA freezer longline Pacific cod fishery, but concluded that relaxing length restrictions does not change the ability of the BSAI fleet to increase its participation in GOA cod, and noted that a cooperative is under development which will provide the best mechanism for protection of vessels operating exclusively in the GOA. Staff contact is Diana Evans.

Bering Sea Habitat Conservation Area Boundary

The Council received an update from Jason Anderson (Alaska Seafood Cooperative) and Victoria Brown (Trustees for Alaska, representing Association of Village Council Presidents) on the negotiations to come to agreement on a southern boundary for the Nunivak Island-Etolin Straits-Kuskokwim Bay Habitat Conservation Area. Mr. Anderson and Ms. Brown presented a letter signed by Fred Phillip (Bering Sea Elders Group), Jason Anderson (Alaska Seafood Cooperative), and Myron Naneng (Association of Village Council Presidents) that provided highlights of an agreement reached by these groups to adjust the southern boundary of the HCA, and establish a working group to share information, review fisheries data and subsistence impacts, and work together to design and fund research that will be useful to all parties. The presenters noted that there are a few, small details that are yet to be finalized, but they are confident that the agreement will soon be in place. Therefore, Mr. Anderson and Ms. Brown requested that the Council not take any action on this issue for at least the next five years.

The Council commended all parties on their ability to reach agreement and took no action on the issue. Staff contact is Steve MacLean.

Northern Bering Sea Research Area

The Council received a brief summary from staff regarding the discussion paper prepared by the Alaska Fisheries Science Center that summarized existing knowledge of the Northern Bering Sea ecosystem, potential effects of non-pelagic trawling on the Northern Bering Sea ecosystem, and provided some considerations for designing a research plan for the Northern Bering Sea Research Area. The Council also heard public testimony from tribal, community, conservation, and environmental organizations that requested that the Council not authorize non-pelagic commercial trawling in the Northern Bering Sea, and forego any further development of a research plan for the Northern Bering Sea Research Area. The Council elected to take no further action on this issue. Staff contact is Steve MacLean.

Vessel Monitoring System

The Council requested that the staff discussion paper identifying current VMS coverage in the groundfish and crab fleets, and potential needs and possibilities for VMS usage in the future, be updated to include additional considerations as suggested by the Council's Enforcement Committee for review at its December meeting. These include an evaluation of previous search and rescue cases, and further refinement of the characterization of vessels that are not currently required to carry VMS. Staff contact is Jon McCracken.

Call for AP Nominations

The Council is calling for nominations to the Council's **Advisory Panel (AP)**. The AP is composed of representatives of the fishing industry and others interested in the management of the North Pacific fisheries, and provides advice from those perspectives. Members of these panels are expected to attend up to five meetings, three to six days in length each year. The AP appointees serve three-year terms. There are eight AP seats up for appointment. AP members whose terms expire at the end of this year include:

Tim Evers (AK), Becca Robbins Gisclair (AK), Jan Jacobs (WA), Craig Lowenberg (OR), Matt Moir (AK), Joel Peterson (WA), Anne Vanderhoeven (AK), and Andy Mezirow's (AK) special one-year appointment. The Council also confirmed Joel Peterson to the AP for the remainder of 2012 to fill the seat left vacant by Craig Cross. Brian Lynch, the new ED of PVOA, was appointed to through 2013 to fill the vacancy left by Julianne Curry.

Letters of interest or nomination, along with a resume of experience, for persons wishing to be considered for the AP should be sent to the NPFMC, 605 W. 4th Avenue, #306 Anchorage, AK 99501, by 5:00 pm on **Monday, November 19**. Appointments will be announced at the end of the next Council meeting the week of December 3 at the Hilton Hotel in Anchorage and will become effective in January 2013. For more information, contact the Council office.

AFA Vessel Replacement/GOA Sideboards

At this meeting, the Council reviewed an analysis to clarify AFA vessel replacement provisions of the Coast Guard Authorization Act of 2010 and to prevent participating AFA vessels that are replaced from increasing fishing effort beyond historical catch in the GOA. The Council requested the analysis be revised per SSC comments and bring back to the Council for initial review in December 2012. Staff contact is Jon McCracken.

AFA Vessels as Amendment 80 Replacement Vessels

At this meeting, the Council reviewed a discussion paper examining the potential for allowing American Fisheries Act (AFA) vessels to be used as Amendment 80 replacement vessels. Current regulations prohibit AFA vessels from use as Amendment 80 replacement vessels. After reviewing the discussion paper and receiving recommendations from the Advisory Panel and testimony from public, the Council initiated an analysis of options that would allow the use of AFA vessels as Amendment 80 replacement vessels. The full purpose and need statement and options for analysis are on the Council's website. Staff contacts are Mark Fina and Jon McCracken.

Proposed Groundfish Harvest Specifications

The Council recommended proposed harvest specifications for the Bering Sea Aleutian Islands (BSAI) and Gulf of Alaska (GOA) groundfish fisheries for 2013 and 2014. The purpose of the proposed specifications is to allow the public an opportunity to review and comment on potential final specifications for 2013 and 2014 that will be decided during the December 2012 meeting. The proposed harvest specifications for the next two years are based on rollovers of the harvest specifications currently in effect for the start of 2013, as no new information was available.

NMFS will publish proposed overfishing levels (OFLs), acceptable biological catches (ABCs), total allowable catches (TACs), and prohibited species catch (PSC) limits. The action includes proposed halibut discard mortality rates for Community Development Quota (CDQ) fisheries in the BSAI and non-CDQ fisheries in the BSAI and GOA based on revised estimates from the IPHC using established methodology. The Council will review the proposed rates again in December.

The Council also received numerous reports from the GOA and BSAI Groundfish Plan Teams on the results of research surveys, working group reports, other research initiatives in support of stock assessments, and a plan for revising the process for identifying 5-year research priorities each year. The Council supported a biennial cycle for all flatfish stocks, which will be timed to coincide with new survey biomass estimates, as already is the case for rockfish stocks, and other Tier 5 and 6 stocks. The Council also identified a lack of clarity and transparency for the processes by which the Stock Structure Working Group and Groundfish Plan Team account for management trade-offs under the current approach when uncertainty regarding stock structure results in a conservative recommendations for splitting stocks into separate management areas for the purpose of setting harvest specifications. The Council requested that the teams address how it will incorporate potential management solutions by federal managers, Council policy makers, and industry in its process for determining when and how to split stocks.

The Plan Team reports, proposed harvest specifications for the BSAI and GOA are posted on the Council website. Contact Jane DiCosimo (BSAI) and Diana Stram (GOA) for more information.

Crab OFLs and ABCs

The Council reviewed the final SAFE report for the BSAI crab stocks. The SSC recommended the OFLs and ABCs for the remaining six of the ten stocks (four stocks have already had specifications set in June).

One of the ten BSAI stocks remains overfished (the Pribilof Islands blue king crab stock). The Council took final action on a revised rebuilding plan for that stock in June and the analysis is being prepared for Secretarial review. The Council's preferred alternative closed the Pribilof Islands Habitat Conservation Zone (PIHCZ) to fishing with pot gear for Pacific cod, the highest source of blue king crab mortality in the groundfish fisheries.

Biomass estimates for Tanner, Norton Sound red king crab and St. Matthew blue king crab are all above their B_{MSY} estimates while estimates for Bristol Bay red king crab, EBS snow crab and Pribilof Islands red king crab are below their B_{MSY} estimates. No BSAI crab stock experienced overfishing in 2010/11. The Tanner crab stock has previously been listed as overfished following the Council being informed in October 2010 that informed by NMFS that the then most recent stock assessment for Tanner crabs indicated that the stock biomass had declined below its minimum stock size threshold (MSST). The most recent assessment approved by the SSC uses a new model which has been under development for several years and was approved for use in June to estimate stock status in this cycle. Based primarily on a modification in the time frame employed to estimate recruitment in this model, the model indicates that the stock status has changed and the stock is neither overfished nor below B_{MSY} . A rebuilding plan under these circumstances is no longer necessary.

The SSC responded to a request by the CPT for clarification of the utility of the current maxABC control rule and the treatment of uncertainty in this control rule, by proposing the formation of a joint Plan Team/SSC workgroup to evaluate how uncertainty is currently being addressed and to consider improvements to this process. The Council endorsed this request and looks forward to receiving additional suggestions for addressing uncertainty in ABC control rules by this joint workgroup. The final Crab SAFE report, Crab Plan Team report and a table with final OFL and ABC recommendations for all stocks are posted on the Council's website. Staff contact is Diana Stram.

Steller Sea Lion Issues

The Council received a presentation from staff on the activities of the Steller Sea Lion Mitigation Committee (SSLMC) and received the SSLMC's recommended scoping comments for the 2012 Steller Sea Lion Protection Measures EIS. Staff presented consensus comments when consensus was reached by the SSLMC. Otherwise, non-consensus comments were submitted to the Council. The Council also received a NMFS report on the recent CIE review of the 2010 Biological Opinion (BiOp). The Council, based largely on the recent CIE review of the BiOp, passed a multi-faceted motion requesting NMFS:

1. Take appropriate regulatory action to vacate the management measures implemented by the interim final rule in time for the 2013 fishery and revert to 2001 measures except where no longer appropriate (e.g., HLA regs with 178 degrees west line, and platooning).
2. Adopt an expedited schedule for completion of the EIS so that it supports the completion of rulemaking for a final rule with new final management measures such that these measures can be fully in place for start of the 2014 fishery.
3. Concurrent with the expedited EIS process, immediately re-initiate consultation with regard to Central and Western Aleutian Islands, and prepare a supplemental Biological Opinion that incorporates the findings and recommendations of the CIE review and Independent Scientific Review Panel. These findings substantially change what is the best scientific information that is now currently available, and the new supplemental Biological Opinion should reflect this new information as it reconsiders the jeopardy and adverse modification determinations for groundfish fisheries in the Aleutian Islands.
4. In light of the continuing overall growth of the western DPS of SSLs and the findings of the two independent scientific review panels, the Council recommends the following as part of the EIS scoping process:
 - a. The range of alternatives analyzed should include: Alternative 1 would be the 2010 interim final rule; Alternative 2 would be the regulations and RPAs in place prior to adoption of the 2010 interim final rule adjusted to take into account changes in fishery management that have been implemented since 2003 (Amendment 80, etc); and Alternative 3 has the Alternative 2 regulations with reductions in the pollock closures in the central and western Aleutians. The Council notes that the SSLMC will be

working on additional alternatives that may be appropriate to include in the EIS.

- b. The recommendations of the SSC and the SSLMC report on scoping should be fully addressed.
- c. The EIS analysis should fully incorporate the critiques and recommendations made by the CIE review reports from Dr. Bowen, Dr. Stewart, and Dr. Stokes and the Independent Scientific Review Panel report of October 8, 2011.
- d. The EIS should address and respond to public comment received on the draft 2010 BiOp and the public comment received on the interim final rule.

The Council noted that it felt that these actions are necessary to restore public confidence in the quality, validity, and reliability of NOAA science as well as the management and regulatory process, particularly in light of the recent independent scientific reviews of the BiOp. The Council will submit a letter to NOAA Administrator Dr. Jane Lubchenco outlining their concerns related to the CIE review of the BiOp, and the Council's recommended actions in response to the CIE and other independent scientific reviews. The full motion is posted on the Council website.

Scoping comments, incorporating this motion and the comments of the SSC and SSLMC will be prepared separately and presented to NMFS before the October 15, 2012 scoping comment deadline. Staff contact is Steve MacLean.

Guidelines for comments submitted by email

Comments for Council meetings may be submitted electronically via npfmc.comments@noaa.gov. The Comments must identify the submitter by legal name, affiliation, and date, and must also identify the specific agenda item by number (C-1(a) for example), and must be submitted by the comment deadline. Comments received under these conditions, will be sorted, copied, and included in the Council notebooks. PDF attachments will be accepted, as long as the above criteria are met. Comment received after the deadline will not be copied and distributed, but will be treated the same as written late comments. Emails submitted for the comments must be to the above address, and not to specific Council staff or Council members. Additionally, email comments will only be accepted on items that are on the scheduled agenda.

For more information, call the Council office.

Staff Tasking

The Council discussed several important items during staff tasking and provided feedback on relative priority for scheduling various agenda items. Two new discussion papers were initiated. The first is a white paper on potential administration and other issues regarding development of a compensated reallocation common pool for the use of IFQ in the halibut charter fisheries. The Council also requested a discussion paper on elements and options for an economic data reporting program for CV, CP, and processors in the Central GOA prior to potential implementation of a catch share program.

Several letters will be sent to other agencies. The Council authorized the Executive Director to submit comments to NMFS on proposed rulemaking for the National Standard 1 guidelines. The Council discussed the letter from the IPHC requesting comments on reopening the halibut fishery closed area in the Bering Sea, and stated its support for the IPHC action, but requested that the IPHC come back to the Council if additional allocation issues are raised at the IPHC meeting. The Council also requested a letter be sent to the NOAA Administrator requesting immediate action to relax Steller sea lion measures in response to recent independent reviews by the Center for Independent Experts and the independent reviews initiated by the states of Washington and Alaska.

Lastly, the Council requested a joint protocol meeting of representatives from the Council and Alaska Board of Fisheries to discuss issues involving proposals to the Board that affect federally regulated fisheries.

Crab Management

The Council took up several crab management issues at its October 2012 meeting. The Council reviewed an analysis of five actions to modify **community provisions** established by the program. The first action would modify the time period for community entities to exercise rights of first refusal on transfers of PQS and allow additional time for a community entity to perform under any contract on which it exercises the right. The second action would remove a provision under which rights lapse after 3 years of consecutive use of IPQ outside of the community that holds the right and, in the event an entity fails to exercise the right when it is triggered by a transfer, either continues the right in the original community entity or allows the new PQS holder to designate a community entity to hold the right. The PQS holder designation of the entity is intended to recognize that the holder will determine the community that is likely to become dependent on the PQS after the transfer. The Council removed options from consideration that would have limited the community entities that could be selected to hold the right. The third action would apply the right to either only the PQS being transferred or the PQS and any assets based in the community, rather than the PQS and all assets included in the transfer (as the right is currently defined). The fourth action would require a PQS holder to receive permission from the community entity holding the right to use IPQ outside of the community represented by that entity. A fifth action would require additional notices of the location of use of IPQ and transfers of PQS to NOAA Fisheries and the right holder from a PQS holder. The Council asked staff to include in this action an additional notice to NOAA Fisheries from the PQS holder affirming the existence of a contract establishing the right in the annual application for IPQ. The Council also added a sixth action to this analysis that would allocate PQS to Aleutia Corporation (the right holder for Aleutians East Borough non-CDQ communities) in an amount that results in that company receiving 0.0055 percent of the PQS pool. The Council is considering this allocation to address a dispute that arose after the transfer of PQS on which Aleutia held a right of first refusal. According to representatives of the right holder, it received no notice of the transfer or the triggering of the right. Although the transferor asserts that a notice was given, the transferor did not and has not provided an affidavit attesting to the notice, as required by regulations at the time of the transfer and no known record of the notice exists. The allocation would be made from newly issued PQS.

The Council took up two **arbitration** issues. First, staff presented a report of a workgroup selected to consider issues with the formula price issued under the arbitration system in the golden king crab fisheries to the Council. Harvesting and processing sector representatives have contested the formula in each of the seven years since implementation of the program. The Council took no action with respect to this agenda item, noting that although the parties did not reach any agreement concerning the formula, the difference in the positions of the two sides is slight and that the parties should be capable of resolving the dispute without further Council oversight. The Council requested that the workgroup

participants report to the Council on the resolution of the formula in the future. Second, staff presented a discussion paper concerning IPQ holder initiation of arbitration, lengthy season agreements, and release of arbitration decisions. The Council took no action on this item.

The Council postponed its review of an analysis of **active participation** requirements for holders of owner quota shares and its consideration of a discussion paper on **cooperative provisions to address crew issues**. The Council stated its intention to take up those items at a future meeting.

The Council also reviewed and approved a regulatory package (including data collection forms) implementing its revisions to the **crab economic data reporting (EDR)** program. That action will be implemented after submission of the regulatory package and completion of the rule making process.

Staff contact on these issues is Mark Fina.

Halibut Catch Sharing Plan – Final Action

The Council adopted a halibut catch sharing plan (CSP) that establishes a clear allocation, with sector accountability, between the charter and commercial setline halibut sectors in Area 2C (Southeast) and Area 3A (Southcentral). The Plan would create a combined catch limit for both the commercial and charter sectors, and then adjust the sector allocations depending on the size of the combined catch limit. Higher percentages would be allocated to the charter sectors at lower levels of halibut abundance.

Under the CSP the Council would request that the International Pacific Halibut Commission (IPHC) annually set a combined charter and setline halibut catch limit, to which the allocation percentage for each area will be applied to establish the domestic harvest allowances for each sector. The Council also would request that the IPHC deduct wastage in the commercial sector from the commercial sector's allowance and wastage in the charter sector from the charter sector's allowance. Each sector's wastage minus their allowance will determine their annual catch limit. The Alaska Department of Fish and Game (ADF&G) is developing estimates of charter wastage for IPHC consideration at a future annual meeting. The plan would be implemented by NMFS for 2014, at the earliest. Upon implementation, the ADF&G logbooks would be used as the primary data source for estimating charter halibut harvest.

The Council selected Alternative 3 (its 2012 Preliminary Preferred Alternative) for Area 2C and Alternative 4 (its 2008 Preferred Alternative plus 3.5% of the combined charter and commercial catch limit (or CCL)) for Area 3A as its final preferred alternative. The plan would replace the Guideline Harvest Level Program in both areas and add a prohibition on retention of halibut by skipper and crew while paying clients are on board in Area 3A; this last action would mirror federal regulations for Area 2C.

The Council stated that the original Area 2C CSP percentage, at the lowest CCL levels, was calculated based on 125% of the average charter harvest from 2001 through 2005. This allowed the sector limited future growth. The proposed charter allocation percentage was calculated based upon the 2005 charter harvest estimates at higher CCLs. Given that Area 2C charter halibut harvests exceeded the GHF since it was implemented (2004) through 2010, the Council determined that basis was more appropriate for determining charter allocation percentages at higher CCLs.

Alternative 4 was selected for Area 3A because it closely represents recent charter harvest, incorporating the change to logbooks and removing harvest for skipper and crew. This alternative intends to ensure that Area 3A charter halibut anglers are not immediately subjected to more restrictive harvest limitations. Alternative 4 increases the charter allocation at lower levels of halibut abundance, but did not change the allocation relative to the 2008 CSP at higher levels of abundance.

Due to an artifact in the charter allocation percentage at predefined points along the CCL, there is one point in Area 2C and two points in Area 3A where a one pound increase in the CCL results in a reduction to the charter sector allocation. To remedy this situation the Council's allocation percentages are retained over most CCL levels, but the charter allocations are set at a fixed poundage level during the short transition between CCL tiers in which this artifact occurs.

Under both the current GHF Program for 2013 and future implementation of the CSP, annual management measures for both areas would be implemented through what is described as the "2012 approach." Prior to adoption of annual management measures by the IPHC, the Council would select the management measure that best minimizes the difference between the annual projected harvest and charter halibut allocation. The Council would review recommendations from its charter halibut committee, advisory panel, and the public that would be provided after those groups review an analysis of the most current information regarding the charter fishery and its management. This approach reduces the delay in implementing regulations to address overages, allows for consideration of a greater range of potential measures, and allows for the use of the most recent charter fishery data for implementation of appropriate measure(s) for the next year. The Council recognizes that management measures are imprecise; therefore, a small variance can be expected to occur around the target allocation. The Council's expectation is that these variances will balance over time, to ensure IPHC conservation and management objectives are achieved, and that harvest projections will improve over time as fishery information improves.

Area 2C

Combined charter and setline

halibut catch limit	charter allocation
<5 million pounds	18.3% of combined catch limit
≥5 and ≤5.755 million pounds	0.915 million pounds
>5.755 million pounds	15.9% of combined catch limit

Area 3A

Combined charter and setline halibut catch limit

halibut catch limit	charter allocation
<10 million lbs	18.9% of the combined catch limit
≥10 million lbs and ≤10.8 million lbs	1.890 million pounds
>10.8 million lbs and ≤20 million lbs	17.5% of the combined catch limit
>20 million lbs and ≤25 million lbs	3.5 million lbs
>25 million lbs	14.0% of the combined catch limit

And under the Guided Angler Fish (GAF) Program, charter halibut permit (CHP) holders would be allowed to lease commercial IFQ in order to provide charter anglers with harvesting opportunities, not to exceed limits in place for unguided anglers. Details of the GAF Program can be found in the Council's October motion posted on the Council website. The Catch Sharing Plan would be implemented, if approved by the Secretary of Commerce, in 2014 at the earliest.

The Guideline Harvest Level Program will remain in effect for 2013, while rulemaking for the CSP is prepared by NMFS. The Council's **Charter Management Implementation Committee will meet on October 19, 2012** by teleconference to recommend a narrow range of management measures for analysis by ADF&G. The analysis will be released prior to the December 2012 Council meeting. The committee will convene again prior to the December meeting to recommend management measure(s) for Area 2C and, if needed, for Area 3A. Meeting information is posted on the Council website. A report on final estimates of 2011 sport halibut harvests is also posted.

On a related issue, the Council requested a discussion paper on whether a proposal to create a **Recreational Quota Entity (RQE)** to administer a common (halibut quota share) pool plan as a form of compensated reallocation under the halibut CSP would fit into the current Community Quota Entity Program. The Council requested that the paper include a discussion of legal issues by NOAA General Counsel. The Council received testimony that the full recommendations of Catch Accountability Through Compensated Halibut (CATCH) would be provided to the Council at its February 2013 meeting, at the earliest. The Council may schedule its review of this paper to coincide with the full CATCH proposal or at a later meeting to include additional details of the CATCH proposal that are still under development.

Also under its staff tasking discussion, the Council supported a potential action scheduled for consideration by the IPHC at its January 2013 meeting, which would open a currently closed area for halibut fishing and combine it into **Area 4E**. The IPHC action would not affect the commercial catch limit that the IPHC sets for the combined Area 4C/D/E area. The Council clarified that its Area 4C/D/E Catch Sharing Plan also would not be affected. If the IPHC determines that there may be allocative effects from its potential action to open the area, it would notify the Council prior to the December 2012 Council meeting. The Council would then have an opportunity to comment further prior to IPHC action at its annual meeting in January 2013. Contact Jane DiCosimo for more information on these issues.

DRAFT NPFMC THREE-MEETING OUTLOOK - updated 10/18/12

December 3-11, 2012 Anchorage, AK	February 4-12, 2013 Portland, OR	April 1-9, 2013 Anchorage, AK
Observer Program: Progress Report AI Risk Assessment: Report (T) SSL EIS: Identify Alternatives for Analysis Charter Halibut: Recommendations for 2013 IPHC Bering Sea Closed Area: Report, action as necessary (T) CQE small block restrictions: Discussion Paper (T) Retention of 4A halibut in BSAI sablefish pots: Disc. paper (T) BSAI Chum Salmon Bycatch: Initial Review GOA Chinook Bycatch All Trawl Fisheries: Initial Review Salmon Bycatch Genetic Sampling: Update VMS Use and Requirements: Expanded Discussion Paper EFH Consultations: Report Groundfish Harvest Specifications: Adopt Final specifications PSEIS/SIR: Progress Report Research/EFP Catch: Discussion paper (T) GOA pollock EFP: Review	Deep Sea Coral Strategic Plan: NOAA Report IPHC Report: Action as necessary SSL EIS: Action as necessary Definition of Fishing Guide: Discussion Paper Halibut/Sablefish IFQ Leasing prohibition: NMFS Disc. paper (T) CGOA Trawl Economic Data Collection: Discussion paper CGOA Trawl Catch Shares: Discussion paper Crab bycatch limits in BSAI groundfish fisheries: Disc paper BSAI Crab ROFR: Final Action BSAI Crab active participation requirements: Initial Review BSAI Crab Cooperative Provisions for Crew: Discussion paper GOA P cod sideboards for FLL: Initial Review AFA Vessel Replacement GOA Sideboards: Initial Review Round Island Transit: Initial Review (T) Grenadier management: Initial Review (T) BSAI Flatfish Specification Flexibility: Initial Review (T) BBRKC spawning area/fishery effects: Updated Discussion paper HAPC - Skate sites: Final Action	Greenland Turbot allocation: Initial Review (T) H/S IFQ Disc papers (GOA sablefish pots, unharvested halibut, sablefish A-share caps) (T) BSAI Chum Salmon Bycatch: Final Action (T) GOA Chinook Bycatch All Trawl Fisheries: Final Action (T) BSAI Crab active participation requirements: Final Action GOA P cod sideboards for FLL: Final Action AFA Vessel Replacement GOA Sideboards: Final Action Am 80 vessel replacement with AFA vessels: Initial Review Round Island Transit: Final Action (T) Grenadier management: Final Action (T) BSAI Flatfish Specification Flexibility: Final Action (T) ITEMS BELOW FOR FUTURE MEETINGS Crab PSC numbers to weight: Discussion paper BS Canyons: Updated AFSC report; Fishing activities and management discussion paper (June T) Halibut compensated reallocation pool: Discussion Paper Salmon EFH revisions: Initial Review MPA Nominations: Discuss and consider nominations

AI - Aleutian Islands
 AFA - American Fisheries Act
 BIOp - Biological Opinion
 BSAI - Bering Sea and Aleutian Islands
 BKC - Blue King Crab
 BOF - Board of Fisheries
 CQE - Community Quota Entity
 CDQ - Community Development Quota
 EDR - Economic Data Reporting
 EFH - Essential Fish Habitat
 EFP - Exempted Fishing Permit
 EIS - Environmental Impact Statement
 FLL - Freezer longliners
 GOA - Gulf of Alaska

GKC - Golden King Crab
 GHL - Guideline Harvest Level
 HAPC - Habitat Areas of Particular Concern
 IFQ - Individual Fishing Quota
 IBQ - Individual Bycatch Quota
 MPA - Marine Protected Area
 PSEIS - Programmatic Supplemental Impact Statement
 PSC - Prohibited Species Catch
 RKC - Red King Crab
 ROFR - Right of First Refusal
 SSC - Scientific and Statistical Committee
 SAFE - Stock Assessment and Fishery Evaluation
 SSL - Steller Sea Lion
 TAC - Total Allowable Catch

Future Meeting Dates and Locations
 December 3-11, 2012 - Anchorage
 February 4-12, 2013, Portland
 April 1-9, 2013, Anchorage
 June 3-11, 2013, Juneau
 September 30-Oct 8, 2013 Anchorage
 December 9-17, 2013, Anchorage

(T) Tentatively scheduled

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**“Annual Report” for Fisheries Consultant
to the Kodiak Island Borough and the City of Kodiak**

**Joint Work Session
January 8, 2013**

Previously written “quarterly” reports of work conducted were presented to the Joint Work Sessions on April 17, 2012 and September 4, 2012.

Here is a brief listing of work conducted during the entire year, 2012:

Meetings:

- Participated in seven meetings of the KIB/City Fisheries Workgroup (and missed one).
- Participated in four meetings of the KIB/City Joint Work Session (not including today).
- Held a number of informal meetings with the Fisheries Workgroup chairs, City mayor, and Borough mayor.
- Participated in three meetings of the Kodiak Fisheries Advisory Committee.
- Attended five meetings of the North Pacific Fishery Management Council.
- Attended one meeting of the International Pacific Halibut Commission.
- Attended one meeting of the Joint Protocol Committee of the NPFMC and BOF.
- Made two presentations to the Kodiak Archipelago Rural Regional Leadership Forum.
- Made a presentation to the Kodiak Lunchtime Rotary Club.
- Attended one meeting of the Kodiak Regional Aquaculture Association.
- Attended a meeting of the Kodiak Regional Planning Team.
- Attended a briefing by the NMFS Observer Program on the restructured program.

Products:

- Presented Alphabet Soup (ABCs) of fishery management (Fisheries 101), to JWS.
- Summarized fishery management jurisdictions in Alaska, for JWS.
- Summarized NPFMC process and how to navigate it, for JWS.

- Summarized Magnuson-Stevens Act and National Standards, for JWS.
- Summarized Alaska Constitution and state policies for sustainable fisheries, for JWS.
- Summarized fishery issues of potential importance to local Kodiak governments, for JWS.
- Helped develop a process for local governments (e.g., Fisheries Workgroup).
- Helped prepare Fisheries Workgroup principles on fishery management programs.
- Developed joint City/KIB resolution on overall approach for Fisheries Workgroup.
- Developed joint City/KIB resolution on goals for fishery management programs.
- Assisted council/assembly members and mayors with NPFMC testimony.
- Drafted letter in support of KRAA Karluk Lake Enrichment.
- Drafted letter in support of NMFS budgets.
- Drafted letter regarding concerns with restructured observer program.
- Prepared comparison of NPFMC trawl PSC/catch share purpose and need statement against the joint City/KIB resolutions on fishery management programs.
- Drafted letter regarding concerns with catch share management.

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**Memorandum of Agreement
Between the State of Alaska and The City of Kodiak
Kodiak Island Pathway
Project #59761**

The parties to this agreement of the State of Alaska acting through its Department of Transportation and Public Facilities (hereafter DOT&PF) and the city of Kodiak, a city established under Alaska law (hereafter the City):

WHEREAS, DOT&PF has the authority to plan, design, and construct Phase 1 of the Kodiak Island Pathway, identified as Project #59761, located within the boundaries of the City (hereafter the project);

WHEREAS, the Municipality desires that DOT&PF plan, design and construct the project; and

WHEREAS; the DOT&PF owns adequate right-of-way along Rezanof Drive to construct such a pathway; and

IT IS THEREFORE AGREED by the parties, in consideration of the mutual promises contained in this agreement, as set forth below, regarding the planning, design, construction, maintenance, and operation of the project.

1. PROJECT RANKING

- a. DOT&PF shall, while ranking this project with other projects during the preparation of the State Transportation Improvement Plan (STIP) and capital budgeting process, recognize that the Municipality has agreed to provide a nine point zero three percent (9.03%) match towards the total costs of the project and agrees to maintain the project, commencing upon the substantial completion of the construction project.
- b. If the City withdraws its promise to provide the funds listed in 1.a, above, DOT&PF will reevaluate the project nominated by the City without consideration of local contribution. The project will be placed in the Surface Transportation Improvement Plan (STIP) in accordance with the revised score.

2. FINANCIAL PARTICIPATION

DOT&PF requires the local government to provide local matching funds necessary to utilize available federal funds.

Based on DOT&PF estimates done prior to design work, the preliminary engineering (design) costs are estimated at \$440,000. Right-Of -Way (ROW) costs, utilities relocation and construction work are estimated at \$2,990,000.

Given the preliminary nature of the estimate, an additional 50% contingency shall be used for this agreement, bringing the total with contingencies to \$660,000 for preliminary engineering (design) costs and \$4,485,000 for Right-Of -Way (ROW) costs, utilities relocation and construction work.

The City hereby agrees to provide the 9.03% matching funds required to utilize federal funding for this project.

The City's initial payment for the project match is therefore \$59,598 and covers the project through Design. This sum is due within 30 days of execution of this agreement.

The City's subsequent matching fund contributions shall be lump sum payments due prior to initiation of each subsequent phase authorizations from the Federal Highway Administration. Currently estimated non-federal matching funds for all subsequent phases (ROW, utilities relocation and construction) that the City hereby agrees to provide is \$ 404,995.

Once the design phase is completed, the agreement shall be amended to revise the cost estimates and schedules for the ROW, utilities relocation and construction phases, and reduce the required contingency from 50% to 15% of the revised estimate for these phases.

Contingency funds collected may be used to offset cost increases in any project phase. Upon project completion and final project closeout, if the final cost is less than the Agreement cost, the local contribution will be recalculated and excess contribution will be refunded to the City.

If the project cost increases beyond the initial 50% contingency for the total project (\$5,145,000), DOT&PF may, at its sole discretion, amend the project scope to decrease costs accordingly.

3. PLANNING, DESIGN, AND CONSTRUCTION

DOT&PF shall plan, design, and construct the project within the approved scope and funding.

4. SCOPE OF WORK

DOT&PF shall design and construct a 1.3 mile pathway within the existing DOT&PF-owned right-of-way along the ocean side of Rezanof Drive in Kodiak. This 10 foot-wide pathway will be from Pier 2, near Shelikof Street up to the existing Rotary Vista.

5. MAINTENANCE AND OPERATIONS

- a. The Municipality agrees to maintain and operate the project in perpetuity commencing upon the substantial completion of the construction of the project.
- b. The Municipality agrees to maintain and operate the project consistent with 23 CFR 81.27 and DOT&PF's Alaska Highway Maintenance and Operations Manual (AHMOM).
- c. The City shall perform its activities under this agreement at its sole cost and expense and without reimbursement from DOT&PF. These maintenance activities include, but are not limited to:
 - a. planning, scheduling, administration, and logistics of maintenance activities,
 - b. traffic control and safety;
 - c. preservation of drainage in an as-built condition, including maintenance of all culverts, ditches, storm sewers, gutters, dry wells, and under-drains;

- d. embankment protection, including erosion control, to as-built conditions;
- e. guardrails and guardrail end treatments, if applicable;
- f. snow and ice control, including any plowing, sanding, culvert thawing, snow hauling, ice scraping, drift control, snow slide removal, and associated tasks as may be required for safe public use;
- g. maintaining signs in an as-built condition and their replacement, including posts and foundations, when damaged, unreadable, or worn out;
- h. removal of debris, rubbish, and dead animals;
- i. pothole repair using asphalt products on an as-needed basis;
- j. crack sealing;
- k. repairs of minor rutting, waves, sags, humps, corrugations, raveling, alligator cracks, pitting and bleeding on a basis; and

- d. Maintenance staff may be employees of the City, another unit of government, or a contractor under agreement with the City. All maintenance will be performed at regular intervals or as required for efficient operation of the complete project improvements. The City's maintenance responsibilities commence the date of project substantiated completion.

6. PROPERTY MANAGEMENT

The right-of-way where the pathway will be constructed is owned by the DOT&PF.

The Municipality agrees that its maintenance activities within the right of way are subject to the provisions of 23 CFR 51.23, in perpetuity commencing upon the substantial completion of the construction of the project.

The Municipality may not allow any encroachment within the right of way of the project without the prior consent of DOT&PF and the Federal Highway Administration. The Municipality may not sell any portion of the right of way without the prior consent from DOT&PF and the Federal Highway Administration. In the event that DOT&PF and the Federal Highway Administration give their consent to the disposal of any portion of the right of way for the project, the municipality shall pay proceeds of the sale to DOT&PF, which DOT&PF will credit to the appropriate federal aid accounts.

7. BILLING

DOT&PF will invoice the Municipality for the full amount of the initial matching funds of \$59,598 upon execution of this agreement. The Municipality shall provide the funds within 30 days of receipt of the billing after which DOT&PF work on the project may begin. The DOT&PF design project manager will initiate subsequent billings for the ROW, construction and utility phases as outlined in paragraph 2. Financial Participation.

5. TERM OF THE AGREEMENT

The Municipality agrees to perform property management and maintain and operate the project in perpetuity commencing upon the substantial completion of the construction of the project. DOT&PF shall inform Municipality of that date.

6. DISPUTE RESOLUTION

- a. If a dispute arises under this agreement between the City and DOT&PF, and the parties cannot resolve the matter between them within 45 days after the notice is given by the aggrieved party to the other party, the aggrieved party may request that the matter be resolved by arbitration.
- b. Each party shall appoint an arbitrator to hear the dispute. The two arbitrators acting together shall select a third arbitrator with all appointments to occur in accordance with State Procurement code, AS 36.50. The three arbitrators shall hear the matter under such rules and procedures, as they deem necessary to conduct the proceedings.
- c. Each party shall pay the expenses of the arbitrator it appoints and shall pay half of the cost of the proceedings and the third arbitrator.
- d. Except when the provisions of this paragraph provide otherwise, an arbitration under this paragraph is subject to AS 09.43.010 – 09.43.180, the Uniform Arbitration Act.

7. PENALTY FOR BREACH

- a. Any withdrawal of the City's promise to maintain and operate the project upon completion, including a withdrawal at any time after construction is completed, shall be considered a breach. If, prior to advertising for construction, the City withdraws its promise to maintain and operate the project upon completion, DOT&PF will reevaluate each project nominated by the City without consideration of Municipal maintenance. If the City withdraws its promise after the advertisement of a project for bid, the DOT&PF may proceed with construction of the project and seek recovery of maintenance costs from the City. In the evaluation of other projects in the City in the succeeding six years after the breach, DOT&PF will not include consideration of Municipal contribution until the City has cured the breach to DOT&PF's satisfaction.
- b. If notified by DOT&PF in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred, the City shall have thirty (30) days from the date of such notification to remedy the default or, if the remedy will take in excess of thirty (30) days to complete, the City shall have thirty (30) days to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the thirty (30) days and failure by the City to remedy, or to satisfactorily commence the remedy of, the default shall result in the termination of this Agreement by DOT&PF. If this Agreement is terminated pursuant to this clause, the City shall be liable to repay to DOT&PF all of the Federal Funds disbursed to it under this Agreement.
- c. If the City makes a written request for the cancellation of a federal-aid project, the City shall bear 100 percent of all costs as of the date of cancellation. If DOT&PF was the sole cause of the cancellation, DOT&PF shall bear 100% of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of DOT&PF or the City, the City shall bear all development costs, whether incurred by DOT&PF or the City, either directly or through contract services, and DOT&PF shall bear any administrative costs incurred. After settlement of payments, DOT&PF shall deliver surveys, maps, field notes, and all other data to the City.

8. INDEMNIFICATION

The City shall hold the DOT&PF, its officers, employees, and agents harmless from and defend and indemnify the DOT&PF for liability, claims, or causes of action arising out of this Agreement. Notwithstanding the foregoing, the City shall have no obligation to hold harmless and indemnify the DOT&PF to the extent the DOT&PF is determined to be liable for its own act or omissions, except that:

- A. To the maximum extent allowed by law, the City shall hold the DOT&PF harmless from and indemnify the DOT&PF for liability, claims, or causes of action arising from an alleged defect in the design or construction of facilities existing on the premises at the date of this Agreement or constructed or improved pursuant to this Agreement, regardless of negligence or other fault, if such liability, claim, or cause of action arises out of an incident that occurs more than two years after the City assumes maintenance duties.
- B. The City's duty to defend shall apply regardless of whether it is also alleged that the DOT&PF's acts or omissions contributed to the injury (including injury to personal property, real property or persons, including fatal injury).
- C. Neither liability, claims, or causes of action arising from injuries which occurred prior to the date of this transfer nor liabilities imposed by, or claims or causes of action arising from or asserted under AS 46.03.822 shall be governed by the paragraph.

9. CONTACTS

The DOT&PF's contact is Wolfgang Junge, P.E., Design Project Manager (907-269-0608). The City's contact is Aimee Kniazowski, City Manager, or as may be redesignated in writing from time to time.

9. AMENDMENT OF AGREEMENT

This agreement may only be modified or amended by written agreement on the prescribed Supplemental Agreement forms signed by both parties.

10. THE WHOLE AGREEMENT

This agreement constitutes the entire agreement between the parties. There are no other understandings or agreements between the parties, either oral or memorialized in writing regarding the matters addressed in this agreement. This agreement may not be amended by the parties unless agreed to in writing with both parties signing through their authorized representatives.

SIGNATURES

Dated: _____

State of Alaska
Department of Transportation and Public
Facilities

Ken Morton, P.E.
Preconstruction Engineer

Dated: _____

Municipality of Kodiak

By: _____

Aimee Kniazowski, City Manager

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**LICENSE AGREEMENT FOR
USE OF KODIAK ISLAND BOROUGH PROPERTY**

THIS LICENSE AGREEMENT, effective the 28 day of December, 20 12 is made and entered into by and between the Kodiak Island Borough, a municipal corporation, organized and existing under the laws of the State of Alaska, whose address is 710 Mill Bay Road, Alaska 99615-6340, hereinafter referred to as "Borough" and the City of Kodiak, a municipal corporation, organized and existing under the laws of the State of Alaska, whose address is 710 Mill Bay Road, Alaska 99615-6340, hereinafter referred to as "Licensee;"

1. Premises. Borough hereby grants to Licensee a license to occupy and use, subject to all of the terms and conditions hereinafter stated, a portion of the following-described premises as further identified on a drawing attached hereto as Exhibit A.

Kodiak Island Borough Landfill Tract according to Plat 96-31, recorded in the records of the Kodiak Recording District, Third Judicial District, State of Alaska.

2. Purpose. The purpose of this License Agreement is to allow the Licensee use of a portion of the Borough's landfill area to store sludge and create Class B compost.
3. Use. The premises may be occupied and used by Licensee and its contractor solely for the purpose stated in Section 2. Licensee has contracted with Quayanna Development Corporation for transportation and handling of Licensee's sewage sludge and composting on the Premises pursuant to regulations and guidance issued by the U.S. Environmental Protection Agency. Licensee will not amend its agreement with its contractor, or replace its contractor with another contractor, without providing 20 days' notice to the Borough and allowing the Borough to voice any objections or concerns. All work by Licensee or its contractor shall be conducted in a manner that will not unreasonably interfere with Borough's landfill operations. Licensee will comply with all reasonable requests from Mike Patterson, the Borough Landfill Supervisor, or other person designated by the Borough Manager.
4. Term. The term of this License Agreement shall begin on December 28, 2012 and continue until August 15, 2013, unless earlier terminated. The use of the land granted to Licensee is temporary.
5. Consideration. In consideration for this license, Licensee shall pay to Borough \$462.00 per month, prorated for each partial month. Payment is due and payable upon execution of this License Agreement and thereafter on the first of each calendar month. In addition, Licensee shall comply with all covenants and obligations herein described, which remain in effect for the term of this License Agreement. Licensee shall keep its operations safe and in good order and shall comply with all state and federal laws and regulations relating to sludge disposal and compost, hazardous material handling and disposal, and environmental cleanup and remediation.

6. Insurance. Licensee shall maintain, for itself and any contractors, (a) general liability insurance with minimum limits of \$1,000,000 per occurrence and \$5,000,000 aggregate; (b) automobile liability insurance covering all owned, hired, and non-owned vehicles with minimum limits of \$1,000,000 each occurrence; and (c) workers' compensation insurance as required by AS 23.30.045. The Borough shall be named as an Additional Insured for liability coverage. Deductibles shall be in amounts approved by the Borough Manager. Insurance carriers shall have a financial rating acceptable to the Borough Manager.

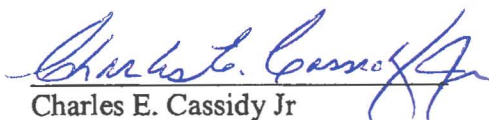
7. Liability and Indemnity. Borough makes no representations regarding the suitability of the site for Licensee's intended use. Except and to the extent solely caused by Borough's own negligence or intentional misconduct, Borough shall not be liable for damages to property or injuries to persons, including death, arising from the construction, operation, maintenance, removal, or activity of Licensee, its principals, officers, employers, associates, agents, representatives, successors, heirs or assigns, licensees, contractors, or invitees. The Licensee assumes responsibility for any negligent acts of its officers and employees, in the scope of employment, incident to this License Agreement. Any requirement for the payment or obligation of funds by the Licensee shall be subject to the availability of appropriated funds. By acceptance hereof, the Licensee assumes full responsibility for the activities, equipment, and personnel incident to this License Agreement.


8. Interest. This does not convey an interest in land, is personal to the Licensee, and is not assignable.

IN WITNESS WHEREOF, the parties hereto have executed this document by and through their duly authorized officials.

KODIAK ISLAND BOROUGH, ALASKA

CITY OF KODIAK, ALASKA

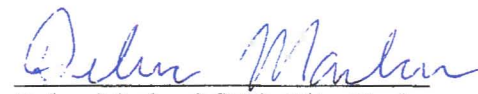

 Charles E. Cassidy Jr
 Administrative Official

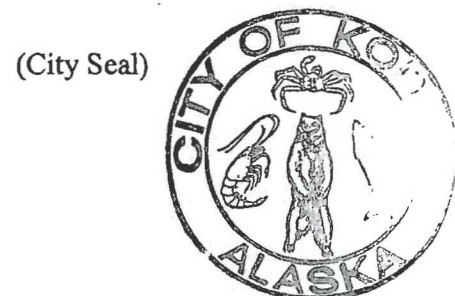
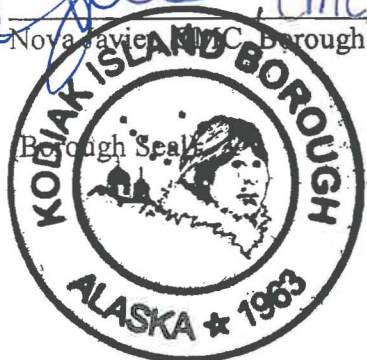

 Aimee Kniazfowski
 City Manager

ATTEST:

ATTEST:


 Nova Javier, MMC Borough Clerk
 CMC Assistant Clerk


 Debra Marlar, MMC, City Clerk



STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 28th day of DECEMBER 2012, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared Charles E. Cassidy Jr., known to me and to me known to be the Administrative Official for the Kodiak Island Borough, Alaska, and authorized to execute documents on behalf, and is the individual named in and who executed the foregoing document on behalf of the Kodiak Island Borough for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year hereinabove written.

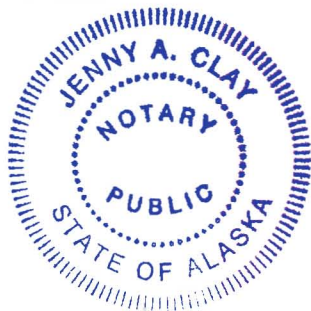


[Signature]
Notary Public in and for Alaska
My commission expires: with office

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 28th day of December 2012, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared Aimee Kozak Kniaziowski MARK MK, known to me and to me known to be the City Manager for the City of Kodiak, Alaska, and authorized to execute documents on its behalf, and is the individual named in and who executed the foregoing document on behalf of the City of Kodiak, Alaska for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year hereinabove written.



Jenny A. Clay
Notary Public in and for Alaska
My commission expires: 12/22/2015

EXHIBIT A

