Appendix 1: Public Comments

The following public comments were received for the Notices of Intent to prepare an Environmental Impact Statement for the Gulf of Alaska groundfish trawl fishery bycatch management program.

1. E. Weiss, Aleutians East Borough
2. J. Bonney, Alaska Groundfish Data Bank
3. S. Carroll, Alaska Marine Conservation Council
4. T. Keegan
5. M. Pinto
6. D. Maynes
7. G. Kirk
8. L. Wilbur
9. T. Evers
10. K. Dutton
11. J. Mulcare
12. G. Myrick
13. L. Rhodes
14. L. Bassett
15. T. Berg
16. C. Wheaton
17. K. Riley
18. S. Glaholt
19. T. Harrington
20. A. Tennant
21. K. Zafren
22. J. Miller
23. D. Black
24. C. Bingham
25. B. Uher-Koch
26. J. Sonin
27. J. Chesnut
28. S. Morse
29. B. Ashley
30. B. Connor
31. C. Johnson
32. C. Woodley, Groundfish Forum
33. City of Kodiak and Kodiak Island Borough
34. C. Whiteley
35. D. Smith
36. D. Ashley
37. S. Jud, Environmental Defense Fund
38. H. Berns, Icicle Seafoods
39. J. Chandler
40. J. Public
41. J. Cook
42. J. Plesha, Trident Seafoods
43. J. Stoll
44. K. Cochran
45. K. Leslie
46. K. Cochran

47. L. Woodard
48. M. Chandler
49. M. Alferi
50. H. Mann, Midwater Trawlers Cooperative
51. J. Warrenchuk, Oceana
52. M. Okoniewski, Pacific Seafood
53. P. Olson, The Boat Company
54. R. Kreuger, Alaska Whitefish Trawlers Association
55. R. Puratich
56. S. Brooks
57. S. Mallison
58. S. Iankov
59. S. Kram
60. T. Kishimoto, International Seafoods
61. T. Evich
62. W. Fejes, Polar Seafoods
63. K. Cochran
64. J. Cook
65. S. Carroll, Alaska Marine Conservation Council
66. D. Miller
67. T. Denkinger, Silver Bay Seafoods
68. S. Jeffrey
69. B. Connor
70. L. Gorman Thomet
71. K. Cochran
72. D. Kasprzak, Alaska Jig Association
73. R. Moseman
74. D. Platt
75. M. Kopec
76. City of Kodiak and Kodiak Island Borough
77. W. Bisbee
78. B. Bowhay and J. Eisemann
79. G. Reed, J. Bonney, R. Krueger, and H. Mann
80. R. Wurm, Kodiak Vessel Owners' Association
81. T. Evich
82. M. Chandler
83. M. Okoniewski, Pacific Seafood
84. J. Warrenchuk, Oceana
85. P. O'Donnell
86. G. Gardner, Jr., City of Sand Point

Docket ID: NOAA-NMFS-2014-0150 August 28, 2015

Thank you for the opportunity to provide comments as part of the scoping process for the EIS related to a Gulf of Alaska groundfish fisheries bycatch management program.

The Aleutians East Borough (AEB) encompasses the six communities of Akutan, Cold Bay, False Pass, King Cove, Nelson Lagoon and Sand Point, along the Alaska Peninsula and on the Aleutian and Shumagin Islands, nestled between the Bering Sea and the Gulf of Alaska (GOA). According to AEB Municipal Code, the AEB Natural Resources Department is responsible for the study and monitoring of fish and wildlife, and to provide assistance to fishery managers. The Department is also tasked with maximizing benefits to Borough residents from the use of these natural resources.

The Aleutians East Borough fishing communities of Sand Point, False Pass and King Cove are unique single processor towns. A fishing vessel with local captain and crew will feed up to 15 mouths in the community. All of our local businesses are dependent on continued fishing opportunities.

The AEB Natural Resources Department supports an effort by the North Pacific Fishery Management Council (NPFMC) to formulate a trawl bycatch management plan for the GOA fisheries and communities. However the Resources Department does not support any new catch share program that would permanently allocate shares to individuals. Catch share programs that use a vessel's historical landings to convert them into "shares" that can be bought and sold like a commodity, can eliminate jobs and devastate fishing communities.

In April 2010, Aleutians East Borough Mayor Stanley Mack wrote to the House Natural Resources Committee, Oceans Subcommittee, "Based on the experience of the Aleutians East Borough, we believe the implementation of a Catch Shares system, which privatizes publicly owned fisheries resources, is destructive to local fishermen and communities. We also believe the record shows that implementing Catch Shares does not necessarily protect fisheries resources, and that there are other existing management tools to accomplish this which are less destructive to communities and fishermen".

In January 2013 the Aleutians East Borough Assembly stated nine goals for fishery management programs, in AEB Resolution 13-16:

1. Provide effective controls of prohibited species catch and provide for balanced and sustainable fisheries and quality seafood products.
2. Maintain or increase target fishery landings and revenues to the Borough and AEB communities.
3. Maintain or increase employment opportunities for vessel crews, processing workers and support industries.
4. Provide increased opportunities for value-added processing.
5. Maintain entry level opportunities for fishermen.
6. Maintain opportunities for processors to enter the fishery.
7. Minimize adverse economic impacts of consolidation of the harvesting or processing sectors.
8. Encourage local participation on harvesting vessels and use of fishing privileges.
9. Maintain the economic strength and vitality of AEB communities.

The AEB Natural Resources Department urges the NPFMC to continue to advance the GOA Trawl Bycatch Management proposal **only as it meets these goals.**

The AEB Natural Resources Department supports a program that includes a cooperative management structure. We believe cooperative management does not necessitate quota ownership. Instead, quota for the directed fishery could be allocated annually, and be associated with some amount of prohibited species catch (PSC) allowed. Through the cooperative, PSC could be utilized more efficiently, and encourage best fishing practices.

The current status quo system, License Limitation Program (LLP) with the sector split between gear groups and vessel designations, is working for Western GOA fishermen and communities, and should be maintained. In recent years our local trawl fishermen have fished under a voluntary agreement for a cooperative plan to limit bycatch of Chinook salmon, a potential template for future trawl bycatch management. We believe the LLP program combined with a cooperative management structure would be the most appropriate regime for GOA trawl bycatch management.

If a catch share plan like the one currently proposed in the October 2014 motion by the NPFMC is to be implemented, the AEB Natural Resources Department supports inclusion of a community fishing association (CFA) as described in Alternative 3 of the motion. The AEB has received a NFWF grant to work with stakeholders in the GOA to put a CFA in place according to NPFMC and MSA requirements.

Bycatch can be unpredictable and hard caps on PSC can be constraining, for example NMFS had to close the GOA non-pollock non-rockfish 2015 season gulf-wide for trawl catcher vessels on May 3rd of this year due to the fleet exceeding the annual 2700 Chinook salmon bycatch cap. We believe that extrapolated bycatch data onto unobserved vessels was part of the reason the cap was exceeded. Although the 58-ft limit trawl fleet in the AEB communities of Sand Point and King Cove rarely participate in this fishery later in the year, we understand the importance of this late season fishery to the community of Kodiak, and the AEB joined the request by the community of Kodiak to the NPFMC in June 2015 for an emergency regulation to allow additional chinook PSC to prosecute the fishery.

We understand that placing observers in fisheries is important for better data that results in improved fisheries management. The AEB fully supports immediate implementation & utilization of electronic monitoring in place of human observers on all fishing vessels. When human observers must be used, they should be allowed to embark/disembark to tender vessels in the fishery.

In August 2015 the AEB received a report entitled Western Gulf of Alaska Trawl Bycatch Management Social Impact Assessment written and researched by Dr. Katherine Reedy. The AEB contracted with Dr. Reedy in June 2014 to conduct an analysis of the foreseeable impacts of the proposed GOA trawl bycatch management program on AEB communities and local fishermen. The study is an accurate portrayal of the small vessel trawl fleet that fish for pollock and Pacific Cod, home-ported in Sand Point and King Cove, and of fishery management actions impacting our region. We have shared the report with NPFMC staff and have publicly posted the document at http://www.aebfish.org/wgoatbmpsia.pdf. Key Findings from the study can be found listed on pages 9 & 10 of the document. Our hope is that this Social Impact Assessment will help inform the critical decisions the Council will need to make about GOA trawl bycatch management.

The communities that rely on this fish resource must not be forgotten as this program moves forward.

Ernie Weiss, Director
Aleutians East Borough Natural Resources Department

Groundfish Data Bank

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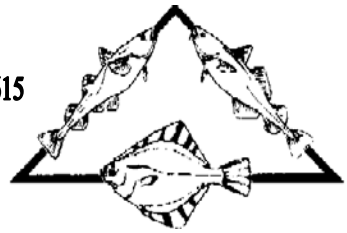


August 28, 2015

Glenn Merrill
Assistant Regional Administrator for Sustainable Fisheries NMFS, Alaska Region
NOAA–NMFS–2014–0150
Re: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for any Gulf of Alaska (GOA) trawl bycatch management program

Alaska Groundfish Data Bank (AGDB) is a member organization that includes the majority of the shorebased processors located in Kodiak and trawl catcher vessels home ported in Kodiak that participate in the Gulf of Alaska trawl fisheries.

We have been advocating for GOA trawl rationalization since 2001. Except for the shoreside cod fishery in the Bering Sea, most of which operate under AFA pollock cooperative rules, the Gulf of Alaska trawl fisheries are the only trawl fisheries remaining in Alaska and on the West Coast which have not been rationalized.

AGDB members support an analysis of ALTERNATIVE 2 as outlined in the Council's October 2014 motion for the EIS:

- It is a reasonable alternative, has undergone extensive scoping already and meets the Council's Purpose and Need Statement in that it would:
  - Create a new management structure which allocates allowable harvest to individual, cooperatives, or other entities, which will mitigate the impacts of a derby-style race for fish.
  - 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.
  - Reduce the incentive to fish during unsafe conditions and improve operational efficiencies.
  - Increase the flexibility and economic efficiency of the GOA groundfish trawl fisheries and support the continued direct and indirect participation of the coastal communities that are dependent upon those fisheries.
  - 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.
  - Improve the ability of the groundfish trawl industry to achieve Optimum Yield (OY)
- We support analyzing Alternative two with the following modifications (rationale is detailed later in the letter):
  - Analyze the allocations of secondary species to consider total catch as well as retained catch.
  - Analyze the effects of increasing the pollock trip limit from 136 mt to 159 mt.
  - Analyze the effects of changing the trawl cod directed fishery season to Jan 20 – June 10 and June 10 – Nov 1 with no change to the A and B seasonal allocations.
  - Analyze the feasibility and effects of requiring 100% retention for the inshore sector of trawl-caught pollock and cod from Jan 20 – Nov 1 and increasing the MRA's for pollock and cod in other targets for the period Nov 1 – Dec. 31 to reduce regulatory discards.
  - Analyze the effects of increasing the Chinook PSC cap from 32,500 to 40,000 fish.
  - Compare and contrast community protection mechanisms within alternative 2 versus alternative 3.
  - Analyze how best to resolve the parallel fishery with a new management structure.

Historical Background of GOA Rationalization: Congress has recognized the importance of rationalization for the Gulf of Alaska groundfish fisheries since 2000. As part of the Consolidated Appropriations Act of 2001 (Public Law 106-554 http://www.gpo.gov/fdsys/pkg/PLAW-106publ554/html/PLAW-106publ554.htm), Congress directed the North Pacific Fishery Management Council to examine fisheries under its jurisdiction to determine whether rationalization is needed—

> "*The North Pacific Fishery Management Council shall examine the fisheries under its jurisdiction, particularly the Gulf of Alaska groundfish and Bering Sea crab fisheries, to determine whether rationalization is needed. In particular, the North Pacific Council shall analyze individual fishing quotas, processor quotas, cooperatives, and quotas held by communities. The analysis should include an economic analysis of the impact of all options on communities and processors as well as the fishing fleets. The North Pacific Council shall present its analysis to the appropriations and authorizing committees of the Senate and House of Representatives in a timely manner."*

To date, the Council has not fully satisfied this congressional mandate (the crab fisheries were rationalized in 2005; the Central Gulf trawl rockfish fishery was rationalized in 2007 as a precursor to rationalizing the GOA groundfish fisheries). Changes in administrations for the State of Alaska have led to multiple starts and stops for this initiative within the Council process. Under the Murkowski Administration, consideration of a Gulf rationalization plan moved forward smoothly starting in 2001. Council progress was halted abruptly in 2006 when the Palin Administration took over. Under the Parnell Administration, the Council started to consider and scope cooperative style management of pollock in 2010; in 2012, the Council re-energized and focused their attention on Gulf trawl rationalization as a potential solution to bycatch management with a particular emphasis on halibut and Chinook salmon Prohibited Species Catch (PSC) within the trawl fisheries (termed "Gulf Trawl Bycatch Management" or GTBM program). However, with the change to Governor elect Walker in 2014, the Administration and the newly appointed Alaska Department of Fish & Game Commissioner Sam Cotten (in December 2014) opted to delay further consideration of Gulf Trawl Bycatch Management within the Council process until at least October 2015. The Commissioner on behalf of the Administration suggested that they wanted to review the cooperative catch share program as outlined in the October 2014 Council motion to determine if and how the Council and the State of Alaska might want to move forward with Gulf Trawl bycatch management.

Need for bycatch management "tools": Since 2011, the Council has adopted a number of actions to reduce prohibited species catch (PSC) in the Gulf of Alaska trawl fisheries including the implementation of Chinook salmon PSC limits in the GOA pollock and non-pollock fisheries and reducing halibut PSC caps:

1. Amendment 93 (effective August 2012) to the GOA FMP imposed a hard cap of 25,000 Chinook in the Gulf pollock fishery (6,684 Chinook limit in Area 610 Western Gulf; a separate cap of 18,316 Chinook for the Areas 620/630 in the Central Gulf);
2. Amendment 95 reduced the GOA trawl halibut PSC by 15 percent, phased in over a three year period (2014 to 2016)
3. Amendment 97 (effective Jan 2015) imposed a hard cap of 7,500 Chinook in the GOA non-pollock trawl groundfish fisheries, further broken down into three sub-limits:
    a. Central Gulf of Alaska Rockfish program catcher vessel (CV) sector: 1,200 Chinook.
    b. Central and Western GOA non-pollock, non-rockfish fisheries (CV sector): 2,700 Chinook
    c. Central and Western GOA non-pollock fisheries, catch processor (CP) sector: 3,600 Chinook

The groundfish trawl fisheries in the Gulf of Alaska are still operating under the arcane "race-for-fish" or limited access fishery structure and do not have the management structure or the tools to fully adapt to these new PSC caps and reductions, especially with an expanding groundfish fleet (new entrants). This was evident by the May 3, 2015 closure of the catcher vessel non-pollock, non-rockfish program trawl fisheries when the fishery exceeded its 2,700 Chinook salmon cap.

Scoping Process: Because of the new GOA PSC management measures, the Council has publically recognized since at least December 2010 that there is a need to develop a new management structure whereby fishery participants are held

accountable and are able to work cooperatively to modify fishing practices to adapt to these new or reduced PSC limits. Relevant council documents from the beginning of this recent scoping process include:

1. December 2010 motion Chinook PSC GOA pollock fisheries: "*The Council also requests staff to provide the following…a discussion of potential benefits, with respect to available bycatch measures and salmon savings, of a cooperative management structure for the GOA pollock fisheries. The discussion should assume a cooperative program for the Central and Western GOA directed pollock catcher vessels. Licenses qualifying for the program would annually form cooperatives that would receive allocations based on the catch histories of members."*
2. February 2011 discussion paper in response to Dec 2010 Council motion: Bycatch control cooperatives for Gulf of Alaska Chinook Salmon Bycatch. Discusses a *"system of cooperatives that would be intended to reduce Chinook salmon prohibited species catch (PSC). Specifically, cooperative formation, cooperative size, the need to create fishing opportunities for nonmembers of cooperatives, cooperative reporting requirements and continual entry into the cooperatives/fishery due to the amount of latent license."*
3. April 2011 Council motion on GOA Halibut PSC stated: *"In anticipation of a future discussion, the Council requested that staff prepare a white paper that surveys allocation of prohibited species catch in all fisheries management programs that allocate individual or cooperative catch programs in US, Canada, or other countries."*
4. September/October 2011 discussion paper in response to April 2011 Council motion – Individual Bycatch Allowances in other fisheries.

The Council focused their process in earnest in June of 2012 when they passed the following motion:

> *The Council will schedule a specific agenda item, preferably for the October meeting, that begins the process of developing a program to provide tools for effective management of PSC, incentives for the minimization of bycatch, and vessel level accountability for the Central Gulf of Alaska trawl groundfish fishery. The Council should develop a purpose and need statement with goals and objectives for a new fishery management system at that time.*

To date, the council has adopted a purpose and need statement and Council staff has prepared five different GBTM discussion papers:

1. October 2012: adopted a Purpose and Need statement, identifying goals and objectives for an action that provides flexible and effectual PSC management tools
2. Feb 2013. Options for catch share program; modified Purpose and Need statement to include WGOA
3. June 2013. State Waters management issues; benefits and detriments of limited duration quota allocations, including non-monetary auctions; potential community protection measures.
4. October 2013. A review of current literature on the effects of catch share programs; summary of the eight proposals that stakeholders presented to the Council in June; discussion of the relationship between State and Federal fisheries that occur in adjacent waters; discussion of early considerations and the Council's role in the development of a Community Fishing Association
5. April 2014. Discusses program structure defined in Council October 2013 motion; information on bycatch reduction results from other trawl catch share programs in the North Pacific and other regions.
6. October 2014. Review the expanded program structure defined at the April meeting; discuss how the fishery would operate under the proposed design; 2) discuss how well it may meet the Council's stated objectives; and 3) identify which decision points are necessary to transform the program structure into alternatives for analysis.

A parallel complementary process was started by CGOA trawl industry stakeholders (harvesters and processors) as requested by the State of Alaska and several Council members. The industry workgroup began meeting in February 2012 to start formulating their vision of a purpose and need statement and possible frameworks to provide the necessary tools to meet the Council bycatch management objectives and also create fair and equitable access to the GOA trawl groundfish fisheries that take into account the value of assets and investments in the fishery and dependency of harvesters, processors and communities for consideration by the Council. The participating groups

included: Alaska Groundfish Data Bank (AGDB), Alaska Whitefish Trawlers Association (ATWA), Pacific Seafood Processors Association (PSPA), Groundfish Forum (GFF), United Catcher Boats (UCB) and Mid-Water Trawlers Cooperative (MTC). Extensive discussion and collaboration over multiple meetings resulted in several industry comment letters that were provided to the Council for their GOA Trawl Bycatch Management agenda item. All these documents were reviewed, revised and finally approved over numerous meetings by the diverse members of these large industry groups which in combination represent virtually all Central GOA trawl industry participants, many of which also participate in WGOA trawl fisheries:

1. October 2012 Purpose and Need statement
2. June 2013 GOA Catch Share Program Proposal
3. April 2014 Comment letter C-2
4. October 2014 Comment letter C-7

At the April 2013 meeting, the Council requested that the public bring management alternatives (program proposals) to their June 2013 meeting. The Council scoping call resulted in eight different alternatives. Council staff reviewed and examined these proposals to determine whether the stakeholders proposed structure would meet the Council's purpose and need statement for the action:

1. Americans for Equal Access: IBQ's.
2. Alaska Marine Conservation Council/GOACC: CFA's
3. Industry proposal (AGDB, AWTA, GFF, PSPA, MTC): Cooperative catch shares with target and PSC allocations
4. Groundfish Forum (GFF): Western Gulf directed rockfish species (Northern, dusky, and Pacific Ocean perch) be included in the trawl catcher/processor allocation.
5. Pacific Seafoods: include harvest shares to processors and quota to the "community sector" in any program considered
6. Peninsula Fishermen's Coalition: WGOA IFQ's for both cod and pollock by over/under 60 ft. vessel length
7. United Catcher Boats: WGOA co-op proposal for vessels greater than 60 ft.
8. Christopher Riley and Joseph Plesha (Trident Seafoods): cooperatives for pollock and cod, each linked to a processing facility; harvesters, processors and communities all allocated QS. PSC avoidance incentives.

Through Council analysis and public input, the 2014 October motion was formulated (the most recent motion as of August 2015). Though the alternative with voluntary harvester cooperatives with harvester/processor linkages with both target and PSC species allocations has not been fully analyzed up to this point, it has already been through several years of scoping within the Council process.

According to NMFS's NOI to prepare an EIS for the GOA trawl bycatch management program (NOAA-NMFS-2014-0150), the process initiates a supplemental scoping process. A principal objective of the scoping and public involvement process is to identify a range of reasonable management measures. Because of the extensive scoping that has already occurred for the October 2014 motion (alternative 2 - as outlined in the federal register notice) our members believe that this alternative should be included in the EIS for analysis – **it is a reasonable alternative and will meet the Council's purpose and need statement for the action.**

For the record, we would note that the GOA groundfish fisheries have gone through a similar scoping process before. During the first attempt at rationalization for the GOA groundfish fisheries under the Murkowski administration the following public processes occurred:

EIS scoping

- May 29, 2002: NMFS published the NOI and requested written and in person public comments. The Public Scoping Report Supplemental Environmental Impact Statement (SEIS) Gulf of Alaska Rationalization was presented to the Council in December 2002 by NMFS AK Region staff.

- Eight public meetings were held in late 2002 (Anchorage, Cordova, Homer, King Cove, Kodiak, Petersburg, Sand Point, Seattle) to solicit feedback from the public on the need for action, scope, range of alternatives, and issues that should be addressed in GOA Rationalization SEIS.

From page 4 of the 2002 scoping report: *During the public hearings, and in the draft public scoping documents, NMFS and Council staff reviewed some of the potential alternatives that have been suggested, including: rights-based management programs such as individual fishing quotas (IFQs); cooperatives similar to those established under the AFA; "two-pie" management with linked IFQ and individual processor quota shares (IPQs), and mechanisms that might regionalize the catch of groundfish species…Cooperative management was the most frequently supported of the rationalization alternatives. Most public commenters supported this alternative because it was generally perceived that this alternative would provide the greatest flexibility to address management needs and avoid potentially limiting allocations of small blocks of QS to individual vessels. In particular, this issue and support for cooperatives was presented by C/P representatives in Petersburg and Seattle. Participants in Kodiak supported this approach partially based on experiences under the American Fisheries Act (AFA).*

Council Processes

Numerous GOA Rationalization Committees and the NP Council spent much time and effort scoping the different GOA rationalization management program options and different alternative frameworks throughout this earlier process, which lasted roughly from 1999 until it was permanently taken off the table by former Governor Palin in December 2006. All the trawl alternatives from this rationalization effort involved Cooperatives with target species allocations: the same result as occurred during the present scoping process from 2010 to 2014. Trawl stakeholders, from 1996 to 2006 or 2010 to 2014, have supported cooperatives with both PSC and target species allocations. This again underscores that alternative 2, as outlined in the EIS notice, **is a reasonable alternative and should be analyzed in the EIS for a new management program for trawl groundfish fisheries in the Gulf of Alaska.**

Support for Alternative 2 (October 2014 motion):

The main objectives for the new management program are to provide tools for the effective management and reduction of PSC and bycatch (NS9), promote increased utilization of both target and secondary species harvested in the GOA (NS1) and recognize that GOA harvesters, processors and communities all have a stake in the groundfish trawl fisheries (NS4 & 8). To meet these objectives there are three critical elements: (1) what to allocate, (2) how to allocate and (3) fishery harvesting design. The council and the CGOA trawl stakeholder group spent a considerable amount of time and energy resolving these questions.

What to allocate?

The goal is to prevent a "race for fish" now and into the foreseeable future. Harvesters and processors need the ability to plan and execute fisheries in a cooperative manner. Groundfish trawl vessels need the ability to fish more slowly, strategically, and cooperatively, both amongst the vessels themselves and with their shore-based processors to meet the objective of reducing bycatch, both PSC and other bycatch and meet OY. Both the Council and the industry stakeholder group spent a considerable amount of time discussing this topic. After much deliberation five target species – Pollock, Pacific cod, Pacific Ocean Perch, northern rockfish and dusky rockfish – across the GOA are suggested for possible allocation. All five of these species typically close when the TAC is reached, not due to PSC caps. The conclusion through the scoping process was that if these species were not allocated then the fleet would continue to race versus fish more slowly and strategically to avoid PSC. While both the Council and the industry stakeholders did consider allocating flatfish species, because these species have never closed due to TAC but instead due to PSC restrictions, it was determined that the appropriate control for these fisheries would be PSC allocations only. The unallocated flatfish species within the proposed management plan would be a means of incentivizing expanded harvests of these underutilized flatfishes by better utilizing PSC. As noted in the industry comment letter (October 2014), revisiting whether these flatfish species should be allocated at the 5 year review of the new program would be appropriate if harvests approach available ABCs and the fishery incentives change from clean fishing to racing for the available flatfish quotas.

Just to be clear, the objective to reduce bycatch is more expansive than just PSCs. Bycatch as defined by the MSA National Standard 9 guidelines is defined as fish that are discarded. In many cases, bycatch occurs because of regulations that require fisherman to discard their incidental catches. In the trawl fisheries, regulatory discards occur for Prohibited Species Catches (PSC) such as crab, halibut and salmon that can only be retained by certain gear types which is definitely one of the focuses of this action.

To slow the rate of harvest of some other species, Maximum Retainable Allowances (MRAs) only allow retention of an amount of a species determined as a percentage of the target species catch. Vessels that exceed the MRA must also discard this excess catch. These rules are used to implement stock management policies. To reduce bycatch on non-PSC species, efforts should be made to minimize the use of management measures that result in regulatory discards. Alternative two of the present Council motion can be used to investigate tradeoffs for relieving MRA regulations for secondary species as well as changes in other fishery regulations that force discards. AGDB members support the options for secondary species allocations and management contained in alternative 2. However, we believe the means of allocating secondary species should be expanded to consider total catch as well as retained catch. Secondary species that are managed by MRAs can change management status over the calendar year from bycatch status to PSC status so retained catch may not be a good metric for the needs of the different sectors; therefore, the analysis should look at the allocation mechanism both ways.

There are several regulations that require discards of non PSC species in the present trawl fishery environment. These are detailed in the industry letter submitted to the Council October of 2014: Seasonal Pollock structure, Seasonal Pacific cod structure, prohibition of targeting Pacific cod and pollock from Nov 1 to Dec 31 and pollock trip limits. The present Council motion addresses the pollock fishery structure but does not address changes to the Pacific cod fishery structure. The proposed changes in alternative 2 for the pollock fishery structure are having two seasons (Jan 20 – June 10 and June 10 to Nov 1) and revising the seasonal allocations to 60% for the "A" season and 40% for the "B" season. AGDB members support adding an option that would modify the Pacific cod fishery seasons to Jan 20-June 10 and June 10-Nov 1 for the trawl sector – this would remove the prohibition of directed fishing from June 10 to Sept 1 and relieve the fleet from MRAs for cod in other target fisheries during that time period. Since there appears to be some resistance to changing the directed fishing closure date of Nov 1 to Dec 31 due to SSL protections, we support a different approach; consider increasing the MRA for both pollock and cod in other target fisheries for this time period. We also support adding an option that would modify the present pollock trip limit from 136 mt to 159 mt.

The inshore sector's goal is to keep as much as we can of what we catch so relief from many of the current regulations that require discards (bycatch) is needed to allow us to meet this goal of reducing wastage. For several of the flatfish targets there can be a large amount of cod and/or pollock caught within a haul, depending on the time of year and fishing location. While allowing the industry to keep what we catch will reduce bycatch, it should be noted that neither the pollock nor the cod quotas would be exceeded since once the sector's allocation for the species is reached the sector would be required to stop fishing. Creating this type of management regime requires that both cod and pollock be allocated to the co-ops. The analysis should examine how best to reduce discards of pollock and Pacific cod within the inshore trawl fisheries with the design of a new fishery structure.

The present motion allocates PSC to participants and also considers reductions of the present PSC caps. 0- 25% reduction for the pollock Chinook caps and 0-15% reduction of the PSC halibut caps are under consideration. We believe that the analysis should consider increasing the Chinook cap for two reasons: 1) the recent closure of the non-pollock non-rockfish program fisheries because the fishery exceeded the 2,700 cap and 2) the new Chinook stock of origin data that suggests that the 97% of the Chinook bycatch are from areas with high hatchery production of Chinook salmon and not Alaska wild stocks of concern. We believe the analysis should consider increasing the overall Chinook cap from 32,500 fish to 40,000, which is the ESA limit.

How to allocate?

Allocations for a new management plan are designed to capture historical participation in the fishery and investment of the participants in those fisheries: communities, processors and harvesters. We support the proposed allocations to the cooperatives for allocated species and the method for allocation of halibut PSC and Chinook salmon PSC as outlined in alternative 2.

We also support the federally regulated processor associated-cooperative structure as proposed in alternative 2 where individual harvesting licensees choose to form an initial (2 years) association with a processor based on historical landings; those licenses that qualify for the program but wish to opt out of the co-op structure may participate in a limited access fishery. After those two years, a QS holder can change co-ops according to the terms set forth in the Processor Contract: if a harvester wants to leave that cooperative and join another cooperative or the limited access sector, they could do so if they meet the requirements of the contract.

We also believe that the processor associated-cooperatives will keep landings within historical dependent communities especially when coupled with either regionalization or a port landing requirement. These mechanisms go a long way in capturing historical participation in the trawl groundfish fisheries by communities.

Fishery design – Why cooperatives?

We believe that a cooperative program is necessary and appropriate for the conservation and management of the fishery and will provide industry with the tools, accountability and management structure necessary to better manage and control bycatch, achieve OY, and provide greater economic stability and opportunity for harvesters, processors, and communities. The increased flexibility offered by the cooperative system will allow the fleets to respond more rapidly and appropriately to the prevailing fishing conditions. Co-op structures build cooperation amongst harvesters and processors since the entire industry works together towards common goals. But cooperatives must be federally regulated.

AGDB and its members strongly support the voluntary inshore cooperative structure as described in the Council's October 2014 motion:

- Voluntary Co-op structure where qualified licenses have a choice to join a co-op in association with their historical processor or stay in the status quo fishery.
- The ability of a qualified license to be in one co-op in each region (WGOA and WYAK/CGOA).
- The Annual cooperative formation process, contracting and filing requirements
- The Annual reporting requirements & oversight by Council

Our members' experiences with co-ops structures show that these systems work. Co-op contracts can be design to meet Council's objectives for bycatch management, harvests strategies to meet OY and contracting obligations to mitigate social concerns. Fishery-based bycatch measures raise the entire fleet's bycatch performance versus a competitive structure that pits participants against one another. Co-op contracts allow the industry to self–enforce the bycatch avoidance plan (set fishery performance standards) versus the much more cumbersome and inflexible regulatory approach with input controls such as trip limits, area closures, etc. Co-op management is not true ownership like an IFQ system since allocations only occur if an LLP joins a cooperative. Allocations for the co-op are managed by all co-op members versus a straight IFQ system were one individual makes single minded decisions. Cooperative management structures are much more cost effective since industry manages the fishery with oversight by NMFS versus NMFS managing the day to day harvesting of individual vessels via an IFQ program.

These three design components – what to allocate, how to allocate and the fishery harvest design are the critical elements to meet program objectives and create the needed stability for the trawl industry when considering a new fishery management structure. However, Alternative 2 takes the next step by addressing concerns expressed by the general public with regards to balancing industry efficiencies with future industry diversity and entry into the groundfish trawl industry.

What mechanisms for community stability?

Elements in the present motion that provide community stability and protection include: processor associated-cooperatives coupled with regionalization or a port landing requirement, Consolidation limits for ownership, vessel use caps, active participation criteria, processor processing caps, and cooperative contract signed by the community that the processor is located in.

AGDB supports ownership caps with a grandfather provision but the range needs to be large enough to consider persons who own multiple LLPs/vessels. We would prefer no harvesting caps on individual vessels. However, this is most likely unrealistic, due to community concerns regarding the potential of excessive fleet consolidation such as occurred in the Crab Rationalization program which had no vessel use caps if that vessel joined a co-op (virtually all the vessels did join a co-op). Flexibility needs to be incorporated into the vessel use caps so the industry can expand and contract based on actual fishery quotas and the economics of the fishery. Caps need to allow for larger harvests by those vessels that can best avoid bycatch, incorporate liberal enough caps that acknowledge the different vessel size classes, harvesting capacities, and individual vessel's fishing plans across the fleet. Industry believes the range of caps within the Council motion is appropriate for now. Vessel use caps have been constraining for certain vessels in the Rockfish Program and for both Dusky and Northern Rockfish and the inshore co-ops have been unable to harvest all the quota. The appropriately equipped vessels that can catch these species have hit the vessel's harvesting cap resulting in stranded inshore quotas. In retrospect, no harvest caps should have been applied to these two harder-to-catch species underscoring that this is a critical decision point and needs to be thoroughly analyzed in the EIS so the right balance between NS1 (OY) and NS8 (community stability) can be struck.

Processor caps for each target species should be set at the appropriate level with a grandfather provision and be "facility-based" not entity-based. We support analyzing the active participation criteria contained in the motion to determine if the described elements meet the intended goal and whether the required active participation criteria can be enforced.

Proposals to include community approval of cooperative contracts could have the unintended consequence that no cooperatives form. Community politics should not be inserted into what are fundamentally business decisions about the daily operation of private companies and individual fishing operations. In devising GOA community protections, the Council should be very explicit in regards to its objectives with the measures it develops. We do not understand the objective for community sign off on cooperatives contracts and what the Council's objective is for this element.

We do believe that community concerns and stability can be addressed through the proper design of the cooperative program as described in alternative 2.

One additional issue - State and federal fishery coordination across the three mile boundary: Alternative 2 anticipates that a share of the pollock harvest will be taken from state waters (i.e., inside 3 nautical miles of shore) which requires coordination with the State of Alaska since the State manages all waters inside 3 nautical miles. Currently, trawl fisheries in state waters are managed by the state under a 'parallel' system, in which the state generally applies the same overall management measures imposed on the federal fishery to the adjacent state waters fishery. Both federal and state waters open at the same time and close concurrently when the total allowable catch (TAC) for the sector is taken (all vessels stop fishing at the same time). All harvest comes off of the federal TAC. This system will not work if the Council adopts some type of cooperative catch share plan (alternative 2 or 3). The EIS analysis needs to clearly demonstrate how best to meet the primary objectives of the new program - to reduce trawl bycatch by allowing vessels to fish more slowly, strategically, and cooperatively; to achieve optimum yield in the groundfish fisheries; and to promote community stability. How can state waters fishing be structured so federal participants can continue to have access to the state zone from 0 to three miles without creating a race for fish for pollock harvests inside three miles?

Approaches we do not support:

Individual or Cooperative Bycatch Quotas (IBQ's):
The Council spent a considerable amount of time scoping an IBQ system where individual or cooperative bycatch quotas were awarded without accompanying target species quota.

A discussion paper on IBQ's was presented to the council in October 2011 (Agenda item C-2(c)). The paper details PSC allocations for catch share programs that also allocate target species (Amendment 80 BSAI fisheries, Rockfish Program, West coast groundfish trawl fisheries, British Columbia Multispecies Trawl Fisheries) with only one example

of IBQ without target species allocations: incidental take of dolphins in the Eastern Pacific tuna fisheries (it should be noted here that these tuna fisheries do not have any target species harvest limits):

"In 1992, as a part of efforts to reduce dolphin mortality in the Eastern Pacific tuna fisheries, fleetwide limits on dolphin mortality were apportioned among vessels, with each receiving an equal share of the total limit. Each vessel fished subject to its individual non-transferable dolphin mortality limit, which required the vessel to suspend fishing for the season once it reached that limit"

The author of the 2011 IBQ discussion paper also notes (page 4): "*The paper* [1993 Council], *however, suggested that without IFQ for target species, the most valuable fisheries might still be prosecuted as a race for fish. This race could result in the use of most of the individual PSC allocations being used in those more valuable target fisheries, leaving a substantial share of other fisheries unharvested. In addition, any fisheries that are not constrained by the allocated PSC would be unaffected by the program. Despite these shortcomings, management of the PSC allocations would require 100 percent observer coverage, effectively imposing the cost of a fully rationalized fishery on the participants, while not providing the benefits that are derived from target species allocations.*"

From the Council October 2014 GTBM discussion paper, page 4: *The Council intends for the program to contribute to the stability of volume and timing of landings to allow better planning by processors. The allocation of PSC would create an individual incentive for each participant to obtain the greatest possible value from the use of available PSC. When allowable catch of target species is not a limiting factor on the fishery, PSC quotas may allow participants to respond to constraining PSC limits by managing their own usage. Without PSC limits, an individual vessel's PSC affects everyone fishing under that PSC limit. However, <u>if target species catch limits are a constraint, PSC quotas alone (without target species allocations or other program elements that could slow the fishery) are unlikely to result in a slower or more coordinated fishing behavior</u>. When target species are limiting – i.e., when total allowable catch (TAC) is fully harvested in a typical year – a participant with PSC quota will face a choice when determining his or her investment in PSC avoidance. The participant must decide whether more rapidly harvesting the target species (using relatively more PSC quota in the process) would sufficiently increase the participant's share of the available target catch to justify forgoing future fishing in the event that PSC limits close the fishery early. Target allocations would allow vessels to privately determine when to fish within a season or year in order to achieve the greatest return from available PSC. Secure target species allocations would allow a quota share holder to decide when and where to fish based on a variety of factors without the risk of other participants depleting the availability of the target species in the interim. Those factors include: target species catch rates, availability of marketable incidental species, PSC rates, market conditions, and weather, among others.*

<u>We do not support individual or cooperative bycatch quotas without accompanying target species quota share because it:</u>

1. Would not stop the race for fish in fully prosecuted fisheries (i.e. pollock and cod)
2. Would not foster fleet cooperation since race for target species still exists (affects fleet coordination of hot spot reporting, fleet willingness to share technology improvements such as excluders, electronics, fishing gear)
3. Creates "good" and "bad" bycatch coops with membership discrimination: fisherman adept at bycatch avoidance would likely exclude "bad" bycatch users from their coop.
4. Changes the incentives from fleet improvements for bycatch performance to individual vessel improvements
5. No ability to reduce discards of target species catches since they are not allocated

<u>Alternative 3 – Off the top allocations to Community Fishery Associations (CFA) or an Adaptive Management Program (AMP).</u> Our largest concern about alternative 3 for either the CFA or AMP is the off the top reallocation of the trawl groundfish fishery to other entities; the extra cost that this allocation will impose on historical stakeholders. During public scoping there has been little to no support from trawl industry stakeholders for this alternative. Assuming that alternative 3 is included in the EIS, the analysis should compare and contrast community protection mechanisms within alternate 2 or alternative 3. Is there additional benefit offered via a CFA or AMP versus alternative 2 (the cooperative program)? Is it just a cost with little to no discernable benefit? A CFA would still have to allocate quota (the right to fish) and could be susceptible to local community politics. It appears to us that a CFA is just adding an unnecessary third party (allocative, administrative and managing) that will increase costs and make the program more

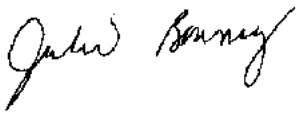
complicated. We are skeptical of proposals that simply transfer quota from one group to another unless there is a clear community interest that cannot be addressed in another way.

Adaptive Management Quota (AMQ) sounds good in that it's promoted as protection for the very broad, undefined category of "unintended consequences". If this will allay some of catch share fears expressed by other groups and individuals, then a small set aside may be appropriate as long as the objectives for the AMQ are clearly defined. If it becomes clear that this set aside is not needed to meet the stated objectives, then there needs to be a simple mechanism to reallocate this quota annually to the co-ops so it can be harvested. At some point the AMQ should sunset if it is determined that it is unnecessary. Many of the concerns raised by the general public regarding catch share programs are for high valued IFQ fisheries not low valued groundfish harvested through cooperatives. Many of the ills suggested as a result of a catch share program – destroying communities, putting participants out of business, creating excessive consolidation – are either happening now or could happen within the present fishery structure. The records of current trawl catch share programs in the North Pacific (BSAI pollock cooperatives, the Amendment 80 cooperative fishery, CGOA rockfish cooperative program – all with target species coop allocations) have shown the benefits and successes of cooperative management where harvesters and processors work together through a co-op structure to better utilize target species catch, control and minimize bycatch, reduce regulatory discards (improve retention, reduce waste), contain the costs of operations and management, and meet other conservation and community goals.

Keep in mind that whereas we strongly believe that this program, if designed correctly, will ultimately be beneficial to harvesters, processors, and communities and will be a huge improvement over the status quo, it is going to incur additional costs on the industry. These costs include 100% observer coverage, Catch Monitoring Control Plans for processors, annual NMFS Cost Recovery (up to 3% of the ex-vessel value) and Co-op Management Fees. Another added cost would be a potential State water pollock fishery. Should a portion of the pollock ABC be allocated to an open access seine, jig, and/or trawl fishery in the AK Peninsula, Kodiak, Cook Inlet and/or Southeast management areas, historical trawl participants could lose access to a portion of the pollock resource so vital to their fisheries portfolio. These extra costs will be significant and may be excessive especially if an additional off the top allocation is given to a CFA or AMQ. Given the low-value of most trawl species (on the order of 5-35 cents per pound), owners will be weighing the cost-benefits of staying in the fishery. Should the costs of staying in the fishery prove too high, we could see increased economic consolidation and stranded fish where everyone loses. Consolidation caps by regulation do not prevent economic consolidation. The program needs to be well designed to create efficiencies and increase fish value and not give the economics of the fishery away through reallocation or poor fishery design; it won't be worth it.

Given the high amount of attention this potential action has generated, we agree a more detailed and robust EIS would be more suitable than the normal EA. The members support alternative two for analysis with the suggested changes outlined in this letter. **Alternative 2 should be included in the EIS for analysis.** Thank you for the opportunity to make comments and we look forward to working with the Council and the Agency to design an effective, well-designed cooperative management program for the Gulf of Alaska trawlers, processors and communities.

Sincerely,



Julie Bonney
Executive Director
Alaska Groundfish Data Bank

Alaska Marine Conservation Council

August 28, 2015

Via Federal eRulemaking Portal (www.regulations.gov)
NOAA-NMFS-2014-0150

Glenn Merrill
Assistant Regional Administrator
Sustainable Fisheries Division, Alaska Region, NMFS
Attn: Ellen Sebastian
P.O. Box 21668 Juneau, AK 99802-1668

Re: NOAA-NMFS-2014-0150, Gulf of Alaska Trawl Bycatch Management Program EIS

Dear Mr. Merrill:

This letter provides the public comments of the Alaska Marine Conservation Council ("AMCC") in response to the National Marine Fisheries Service's ("NMFS") notice of intent ("NOI") to prepare an environmental impact statement ("EIS") on a new management program for trawl groundfish fisheries in the Gulf of Alaska ("GOA"). AMCC is a non-profit organization committed to the long-term ecological health and social and economic well-being of GOA communities. Our members include fishermen, subsistence harvesters, marine scientists, small business owners, and families. We applaud NMFS' willingness to implement measures to reduce bycatch in the GOA and we appreciate the Agency's consideration of these comments.

I. Objectives of the Proposed Action

The North Pacific Fishery Management Council ("Council") initiated the GOA trawl bycatch management program specifically to reduce bycatch in the GOA trawl fisheries. While providing the fleet with the "tools" necessary to reduce bycatch is an essential component of the program, the intent of the program is not merely to provide the fleet with the tools necessary to adapt to the current bycatch limits; rather, it is to reduce bycatch further. As such, any analysis of the bycatch management program must consider additional reductions to bycatch.

The need to reduce bycatch in the GOA remains critical. GOA Chinook salmon returns remain at depressed levels, despite significant sacrifices made by directed commercial, sport, and personal use fishermen. Halibut stocks have likewise declined, causing a sharp reduction in commercial and charter catch limits. In the last ten years, the commercial halibut harvest in the GOA (Areas 2C, 3A and 3B) has declined by 73% and strict bag limits have been imposed on the charter sector. The commercial Tanner crab fishery in the Kodiak Island district was closed in 2014 due to low crab abundance. Although fishermen in these fisheries collectively recognize the need to accept cuts during periods of low abundance, the responsibility of rebuilding these important stocks must fall on all users. And, while we commend the Council for setting salmon and halibut bycatch limits for the GOA trawl fisheries, these limits are far less than the reductions borne by participants directed fisheries. The bycatch management program must include meaningful bycatch reductions that will ensure that Chinook salmon, halibut, and Tanner crab—species that are an

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essential to Alaska's economy and culture—have the chance to rebuild. As NMFS moves forward with its analysis, therefore, it must consider specific bycatch reduction measures as a core component of the proposed action.

II. Range of Alternatives and Impacts Considered

Nearly twenty years of direct experience with catch share programs in Alaska has demonstrated that catch share programs will change the composition of the fishing fleet, alter the relationship of historical fishing communities to that fleet, and cause adverse impacts to historical fishing communities and fishermen. These impacts include, among others, absentee ownership, loss of locally-based vessels, rapid vessel consolidation, consolidation of quota ownership, lower crew pay and fewer crew jobs, out-migration of fisheries based wealth, and declining access opportunities. Given the foreseeability of these impacts, any analysis of a catch share program must consider the degree to which coastal communities and individuals will be adversely affected by these impacts. NMFS must not only consider the immediate and near-term impacts of any new management program, but must also consider the foreseeable impacts on future generations of fishermen and fishing-dependent communities. Finally, NMFS should consider these impacts in the context of its responsibility under National Standard 8 of the Magnuson-Stevens Fisheries Conservation and Management Act ("MSA"), which requires that management measures provide for the sustained participation of communities and the minimization of adverse impacts on communities. *See* 16 U.S.C. § 1851(a)(8).

It is important to note that bycatch management does not necessitate a "traditional" catch share program, nor does bycatch management preclude community protections. In that context, NMFS should consider whether a Community Fishing Association ("CFA"), as defined in section 303A(c)(3) of the MSA, can mitigate some of the negative impacts associated with traditional catch share programs. Among other things, NMFS should: consider the degree to which CFAs strengthen the relationship of captain, vessel, vessel owner, and crew to the community; address transitional entrance into the trawl fisheries; provide opportunity for future generations; and encourage equitable crew compensation. In its analysis of foreseeable impacts, NMFS should consider the benefits that CFAs provide by directly anchoring fishing quota to fishing communities, and it should explicitly address whether ensuring community access to the fishery into the future is a primary goal of the bycatch management program.

The EIS should also analyze how community protections will be provided for during allocation of quota. For example, NMFS and the Council crafted the Community Quota Entity ("CQE") program in the Halibut/Sablefish IFQ fishery to provide for community access to the resource and to reverse some of the negative community impacts experienced as part of rationalization of the fishery. However, NMFS and the Council did not provide the CQEs with an initial allocation of quota, instead requiring communities to independently secure funding to purchase quota. Consequently, only two CQEs have acquired quota, and that amount is insufficient to mitigate many of the adverse community impacts associated with rationalization. While the structure of the trawl bycatch management program is significantly different than the Halibut/Sablefish IFQ program, the dynamics of leasing, consolidation, inactive participation, and wealth migration are the same. The EIS should therefore consider whether and to what extent providing an initial allocation to a CFA is critical to the success of the CFA and the broader goals of the bycatch management program.[1]

[1] For example, the Council Goals and Objectives related to the program include authorizing fair and equitable access privileges that take into consideration the value of assets and investments in the fishery and dependency on the fishery harvesters,

NMFS should also analyze the need for flexibility in the bycatch management program. Although we know many of the impacts associated with catch share programs, some impacts are difficult to predict. Because CFAs provide communities with the ability to manage quota and respond without the time constraints of the Council and NMFS rulemaking process, CFAs will have the ability to adaptively respond to unexpected programmatic community impacts. This ability to adapt and address impacts as they arise is critical—experience from other catch share programs shows that once quota is allocated it is very difficult if not impossible for the Council to address these impacts (see, for example, Rights of First Refusal in the crab program). CFAs can provide an accessible and flexible way to address community concerns. Anchoring a portion of quota in the community ensures that the community—and community residents—retain access to some portion of the fishery over the long-term. The community can use this quota to maintain a local fleet, provide opportunities for transition and entry into the fishery (for example, by serving as a stepping stone for residents to transition into quota ownership), and ensure access to the resource for future generations. CFAs also provides a mechanism for maintaining equitable crew compensation and maintaining local crew hire. Because the community owns the quota in a CFA, they have the ability to set rules on how that quota is used, much as an individual quota owner does.

In addition to a CFAs, NMFS should consider other mechanisms for community protections including active participation requirements, requiring a community sign-on on co-op contracts and meaningful consolidation limits. More specifically, NMFS should analyze options for requiring active participation to acquire quota, as well as the need for ongoing active participation (with the exception of community entities such as CQEs and CFAs). In addition, NMFS should consider the benefits of reserving some portion of quota share for active crew and skippers-for-hire. The EIS should also analyze whether community sign-ons on co-op contracts, as well as meaningful consolidation limits, will advance the Council's of ensuring community protections.

Thank you for your consideration of our comments on this very important matter.

Sincerely,

Shannon Carroll
Fisheries Policy Director
Alaska Marine Conservation Council

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processors, and communities; promoting community stability and minimizing adverse economic impacts by limiting consolidation, providing employment and entry opportunities, and increasing the economic viability of the groundfish harvesters, processors, and support industries; and, minimizing adverse impacts on sectors and areas not included in the program.

Dear Mr. Merrill:

Thank you for the opportunity to submit scoping comments on the proposed bycatch management program in the Gulf of Alaska ("GOA"). As an Alaskan that cares about the health of our fisheries and is adversely affected by declines in Chinook salmon and halibut populations in the GOA, I recognize the importance of bycatch reduction in the GOA trawl groundfish fisheries.

The North Pacific Fishery Management Council ("Council") initiated the proposed GOA bycatch management program specifically to reduce bycatch. Bycatch in the GOA has a significant impact on the communities of Alaska that depend on Chinook salmon and halibut fisheries. For example, over the past decade, commercial halibut catch limits in the GOA have been reduced 73%, and halibut charter bag limits have been reduced in Southeast and Southcentral Alaska. Similarly, Chinook salmon returns throughout Alaska have been poor, resulting in economic and social disruption to the individuals, businesses, and communities that are dependent on the fishery. The negative impacts of bycatch have not been distributed evenly: the Council has not reduced trawl bycatch by nearly the same level as the directed salmon and halibut fisheries have been affected. To rebuild stocks everyone must do their part to support conservation.

Moving forward, the Council's bycatch management program must achieve additional bycatch reductions beyond existing levels. Importantly, catch share programs, such as those being considered in the range of alternatives, do not guarantee bycatch reduction; rather, bycatch reduction must be included as key part of the program design. Thus, in order to meaningfully evaluate both the potential impacts of the bycatch management program, and a reasonable range of alternatives, bycatch reductions beyond the status quo must represent the core component of the proposed action.

The time is now to take meaningful action to reduce bycatch in the Gulf of Alaska.

Thank you again for the opportunity to comment on this important issue.

Sincerely,

Thomas Keegan

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Sincerely,

Mercedes Pinto

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Doug Maynes

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George Kirk

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Sincerely,

Lynn Wilbur

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Sincerely,

Timothy Evers

Dear Mr. Merrill:

Thank you for the opportunity to submit scoping comments on the proposed bycatch management program in the Gulf of Alaska ("GOA"). As an Alaskan that cares about the health of our fisheries and is adversely affected by declines in Chinook salmon and halibut populations in the GOA, I recognize the importance of bycatch reduction in the GOA trawl groundfish fisheries. I have lived and worked in marine environments over seas and know first hand how wasteful and devastating high percentages of (often valuable) bycatch can be to the local communities, the fish species themselves and the environment they live in.

The North Pacific Fishery Management Council ("Council") initiated the proposed GOA bycatch management program specifically to reduce bycatch. Bycatch in the GOA has a significant impact on the communities of Alaska that depend on Chinook salmon and halibut fisheries. For example, over the past decade, commercial halibut catch limits in the GOA have been reduced 73%, and halibut charter bag limits have been reduced in Southeast and Southcentral Alaska. Similarly, Chinook salmon returns throughout Alaska have been poor, resulting in economic and social disruption to the individuals, businesses, and communities that are dependent on the fishery. The negative impacts of bycatch have not been distributed evenly: the Council has not reduced trawl bycatch by nearly the same level as the directed salmon and halibut fisheries have been affected. To rebuild stocks everyone must do their part to support conservation.

Moving forward, the Council's bycatch management program must achieve additional bycatch reductions beyond existing levels. Importantly, catch share programs, such as those being considered in the range of alternatives, do not guarantee bycatch reduction; rather, bycatch reduction must be included as key part of the program design. Thus, in order to meaningfully evaluate both the potential impacts of the bycatch management program, and a reasonable range of alternatives, bycatch reductions beyond the status quo must represent the core component of the proposed action.

The time is now to take meaningful action to reduce bycatch in the Gulf of Alaska.

Thank you again for the opportunity to comment on this important issue.

Sincerely,

KM Dutton

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Sincerely,

James Mulcare

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Sincerely,

Gary Myrick

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Sincerely,

Linda Rhodes

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Sincerely,

Linda Bassett

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I am writing this to urge you to take drastic measures to limit the amount of halibut by-catch by the trawl fleet. I am a 40 year Alaska resident and am very disappointed in the mis-management of many of our fisheries here in this beautiful State. But none is more glaring than how the halibut bio mass has been decimated. The halibut long-liners have already paid the price for the destruction that has been caused by the indiscriminate destruction caused by the super trawlers. The sport charter fleet has been cut in half due to this shortage of halibut. Alaska residents and also non-residents who fish on charter vessels have also been heavily restricted due to this critical shortage. Many user groups have suffered substantial cutbacks, except for the group of Trawlers who are the ones who are mainly responsible for this situation in the first place.

Do what is obvious and what is right – cut back at least 50% on the amount of by-catch that is allowed by the trawl fleet immediately, right now, this year. It is very hard to understand any rational reason why this has not already happened. The Trawl Fleet harvests at random, our most prized Alaska fish, both King Salmon and Halibut, for the gain of a very, very chosen privileged few.

Allowing this to continue makes no sense whatsoever.

Please do what is right.

Thank you again for the opportunity to comment on this important issue.

Sincerely,

Tim Berg

720 K-Beach Road

Soldotna, Ak. 99669

Dear Mr. Merrill:

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Sincerely,

Chris Wheaton

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Kelly Riley

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Stephen Glaholt

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Sincerely,

Tyler Harrington

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Sincerely,

Allie Tennant

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Thank you again for the opportunity to comment on this important issue.

Sincerely,

Julie Miller

Dear Mr. Merrill:

Thank you for the opportunity to submit scoping comments on the proposed bycatch management program in the Gulf of Alaska ("GOA"). As a former, long-time Alaskan resident that cares about the health of our Yukon/Kuskokwim fisheries, I am convinced that bycatch is adversely and significantly contributing to the drastic decline in these fisheries, particularly to the chinook salmon runs. I have seen with my own eyes the waste of chinook salmon bycatch at a cannery in Dutch Harbor.

It is well past time for significant bycatch reductions in the GOA trawl groundfish fisheries. To me, this is a debate over the claimed rights of big commercial fishing fleets versus the constitutionally guaranteed rights of native Alaskan subsistence fishermen and the rights of international treaty rights of Canadians to chinook salmon that run the Yukon. Our commercial fishing fleets have had their way virtually unchecked. Now is the time to reel them in, just like they reel in those devastating trawls.

The North Pacific Fishery Management Council ("Council") initiated the proposed GOA bycatch management program specifically to reduce bycatch. Bycatch in the GOA has a significant impact on the communities of Alaska that depend on Chinook salmon and halibut fisheries. In addition to adversely affecting salmon fisheries, over the past decade, commercial halibut catch limits in the GOA have been reduced 73%, and halibut charter bag limits have been reduced in Southeast and Southcentral Alaska.

Chinook salmon returns throughout Alaska, not just the Yukon and Kuskokwim Rivers, have been poor, resulting in economic and social disruption to the individuals, businesses, and communities that are dependent on the fishery.

The negative impacts of bycatch have not been distributed evenly: the Council has not reduced trawl bycatch by nearly the same level as the directed salmon and halibut fisheries have been affected. To rebuild stocks everyone must do their part to support conservation.

Moving forward, the Council's bycatch management program must achieve bycatch reductions impressively beyond existing levels. Importantly, catch share programs, such as those being considered in the range of alternatives, do not guarantee bycatch reduction; rather, bycatch reduction must be included as key part of the program design. Bycatch reductions well beyond the status quo must represent the core component of the proposed action.

It is past time to take meaningful action to reduce bycatch in the Gulf of Alaska. Please provide the backbone to stand up to the big commercial trawlers. Bring our salmon back to the Yukon and Kuskokwim Rivers.Thank you again for the opportunity to comment on this important issue.

Sincerely,

David Black

Dear Mr. Merrill:

Thank you for the opportunity to submit scoping comments on the proposed bycatch management program in the Gulf of Alaska ("GOA"). As an Alaskan that cares about the health of our fisheries and is adversely affected by declines in Chinook salmon and halibut populations in the GOA, I recognize the importance of bycatch reduction in the GOA trawl groundfish fisheries.

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Sincerely,

Charles Bingham

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Sincerely,

Brian Uher-Koch

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John Sonin

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Joanna Chesnut

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The North Pacific Fishery Management Council ("Council") initiated the proposed GOA bycatch management program specifically to reduce bycatch. Bycatch in the GOA has a significant impact on the communities of Alaska that depend on Chinook salmon and halibut fisheries. For example, over the past decade, commercial halibut catch limits in the GOA have been reduced 73%, and halibut charter bag limits have been reduced in Southeast and Southcentral Alaska. Similarly, Chinook salmon returns throughout Alaska have been poor, resulting in economic and social disruption to the individuals, businesses, and communities that are dependent on the fishery. The negative impacts of bycatch have not been distributed evenly: the Council has not reduced trawl bycatch by nearly the same level as the directed salmon and halibut fisheries have been affected. To rebuild stocks everyone must do their part to support conservation.

Moving forward, the Council's bycatch management program must achieve additional bycatch reductions beyond existing levels. Importantly, catch share programs, such as those being considered in the range of alternatives, do not guarantee bycatch reduction; rather, bycatch reduction must be included as key part of the program design. Thus, in order to meaningfully evaluate both the potential impacts of the bycatch management program, and a reasonable range of alternatives, bycatch reductions beyond the status quo must represent the core component of the proposed action.

The time is now to take meaningful action to reduce bycatch in the Gulf of Alaska.

Thank you again for the opportunity to comment on this important issue.

Sincerely,

Stephen Morse

Bert Ashley
F/V Gold Rush
PO Box 425
Kodiak AK 99615
Bert_ashley@goldrushfisheries.com

To: Glenn Merrill, Assistant Regional Administrator for Sustainable Fisheries NMFS, Alaska Region NOAA–NMFS–2014–0150
Re: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for any Gulf of Alaska (GOA) trawl bycatch management program NOAA–NMFS–2014–0150, by any of the following methods:

I own and operate the Kodiak-based trawler F/V Gold Rush and have participated in the Gulf trawl groundfish fisheries since 1989. These fisheries represent about three-quarters of my annual commercial fisheries catch so I am very dependent on these Gulf trawl fisheries.

Every year I am asked to catch less bycatch and become a better steward of the fishery and its habitat so we can have a strong, sustainable fishery into the future. Yet we still do not have the tools to perform better – we cannot continue with these voluntary catch agreements indefinitely. With an ever-increasing and diversifying fleet, these agreements will become more and more fragile and uncertain. The present fishery environment (race for fish) does not work. The Council has put many restrictions on us such as new Chinook salmon limits and reduced halibut PSC caps. The closure of the non-pollock non-rockfish program fisheries on May 3rd of this year had a major impact on our fleet this year.

☐Our fleet needs the appropriate regulated fishery management structure to stop the race for fish so we can focus our efforts on reducing and controlling bycatch (both PSC and regulatory discards).

☐ I haveextensive and positive experiences with cooperative fishery management in both the BSAI AFA pollock and Central Gulf Rockfish Program. The cooperative style management works for bycatch management, strategic fishing and increased efficiency and safety. Examples include salmon bycatch reduction in AFA co-ops, halibut bycatch in the Rockfish Program, and few discards in these fisheries with the 100% retention requirements of co-op target species. The structures also allow for improved utilization of the co-op species. The certainty of these fisheries is also improved allowing for us to draft and improve on our business plans.

☐I support the present Council motion (alternative 2) for analysis in the EIS that was developed within the Council process starting in 2010. Alternative 2 is a cooperative program that allocates cod and pollock and halibut and Chinook salmon PSC to harvesters. Harvesters may voluntarily join co-ops in association with shorebased processors.

☐I particularly support allocation of pollock and cod to eligible trawl catcher vessel LLP's based on historical participation as well as Chinook and Halibut PSC as outlined in the October 2014 Council motion Alternative 2. I also very much support changing the present GOA pollock seasons to Jan 20 – June 10/June 10 – Nov 1 (as in the BSAI) and changing the pollock trip limit from 136 mt to 159 mt if pollock is allocated to the coops as a target species. I do not support individual or co-op bycatch quotas (IBQ's) which would not stop the race for fish in those fisheries that are fully prosecuted.

☐I do not support any reduction in Chinook or Halibut PSC limits at this time. We need to test any new management program prior to any additional cap reductions.

☐Alternative 3 allocates a portion of the groundfish quota to Community Fishing Association or an Adaptive management Program. I would like to see a comparison of how the community is protected via CFA versus the community protection elements in Alternative 2. A Right of First of Offer (ROFO) of quota share for sale and/or lease would also be worth analyzing as a means of entry into the fishery.

Sincerely,

Bert Ashley

Comment by Bill Connor

Chairman Hull
Council Members

My name is Bill Connor.
I am an owner of a 58 foot trawl vessel that trawls both WG and CG of Alaska, and has since 1992. The trawl fisheries provide 42% of our annual gross stock. It supports 4 working crew members and their family's, who have wives and children that depened on this income for food and shelter. It keeps the doors of my business open.

The present form of the fishery does not work. The new Chinook limits and lower halibut PSC caps will impact our survivability. We need new tools to survive.

Closing the fishery on May 3rd of this year caused grave uncertainty within me, my business, and the jobs of the crew. It caused uncertainty in our ability to provide food, cover mortgage payments and monthly bills.

We also need new tools to stop the race for fish. With the tools to stop the race for fish we can reduce byctach and PSC discards. We have all seen the success that the Halibut and Sablefish IFQ fishery has had with eliminating the race for fish.

I support most of alternative 2 and urge the council to support it also.

As for qualifying years, the council needs to use the most recent available data to stay in concert with their previous ruling on eligibility for recency ruling on the elimination of LLPs in the pot, trawl and long line ruling.
I support the qualifiying years 2003 to 2014.

I strongly support gear conversion.

I strongly oppose CFAs in any form.
CFAs will only create un-needed bureaucracy.

I am from Petersburg, Alaska, and I have been participating as a trawler in WG and CG for 23 years. How will a CFA help my community? What chance would I have of leasing quota from a WG or CG community? What provisions will you provide me for a fair chance at CFA quota lease?

How will CFA employees be paid? What is their salary cap? What is their bonus caps? What if there is left over funds from CFA management expenses, were does this go? Haven't we had enough czars the last 6 years?

WG has averaged 21000 tons of p-cod from 2011 to 2014 and of that, roughly 8000 tons is annually trawl sector quota.

At .27 cents a pound average that = 4.8 million dollars. Divide that by the 23 WG trawl vessels = 209,000.00 average income, and that's if they catch the quota, which has not happened for years.

Then from that gross---before a crewman or boat gets paid there is a 4% state and borough tax = 8,000.00, a new cost recovery tax of 3% = 6,000.00, plus
a new 100% observer coverage fee (projected at 666.00 a day) for 30 days, which would be 20,000.00. Typical fuel used for the season = 31,000.00 which leaves 144,000.00.

So after 2 to 3 months of hard dangerous work, a crewmen makes 10% or 14,400.00, and the vessel makes 86,400.00, not deducting insurance or maintenance, AND we want to take 5 to 15% more for a CFA? WHY?

CFAs will force consolidation of jobs and vessels.

It will not provide for new entrants, it will eliminate existing participants simply because this is not a low cost fishery.

Lease fees were not even provided in the above expense figures.

WILL THE CFAs ALSO WANT QUOTA FROM THE POT SECTOR?

If the average gross for WG trawl sector is 4.8 million dollars and 10% is the figure the CFA gets, and they lease the quota amount for half the dock price, that is only 240,000.00 dollars to them. That money gets eaten up in administration fees, offices, salary's etc...which leaves nothing for the community.

CFAs only create a new bureaucracy and another tax on small business.

I would ask who on the council would want to give up 10% of their take home pay!

Vote no on CFAs.

Thank you for your time.
Bill Connor, F/V Cape Reliant

Comment by Chandler Johnson

My name is Chandler Johnson and I run a Kodiak-based, family owned trawler. I have been running the boat for 24 years and have a good idea of what problems our fishery faces. We fish both the Bering Sea, and Gulf of Alaska, so I see the difference in fishing under a rationalized fishery versus a non-rationalized one. The race for fish in the Gulf of Alaska is very wasteful. The industry is under-fire to reduce bycatch, but it is next to impossible under a race for fish. The last few years, the fleet has agreed to split the quota during pollock seasons, which allows us to control bycatch better. However, one boat not signing up for our catch share agreements can cancel the whole thing, and send us back to the race for fish. Also, as we voluntarily agree to these "catch shares", more and more vessels want in on it, further dividing the pot. We are forced to include them, or go back to the race for fish, and higher bycatch. When we race for fish, then the fleet targets on the most valuable, or most profitable fish first (usually pollock and cod). Then seasons for those species close. The fleet moves on to target other species, but cod fish and pollock are still caught in numbers that are greater than Maximum Retainable Allowances, and are discarded. This is terribly wasteful! With rationalization, we would be able to keep what we caught. If we wanted to pursue flatfish, then we would make sure we had enough pollock and cod fish quota to cover our bycatch. We could keep it all! Rationalization also gives us flexibility in what we do with our boats. Currently, there are a number of trawlers tendering salmon as it is a very big salmon year. However, the trawlers need to have their tendering contracts up by August 25th, as that is when pollock season opens. The cannery would prefer to wait until the salmon gets slow before buying pollock. If one plant decides to buy pollock, then the others will be forced to do so since they are competing for pollock market share, or lose out on their portion of the pie. In order to do this, they need to quit buying salmon. This essentially shuts the salmon fishery down. I support alternative 2 for a trawl bycatch management program.. This alternative is a co-op fishery structure similar to AFA which in my experience works really well. It is a history based program with both target and PSC allocations that takes into account historical dependency of harvesters, processors and communities. Please give us the means to control bycatch. I also support changing the pollock seasons to: January 20th - June 10th, June 10th - November 1st. This allows much greater flexibility, and allows us to keep the canneries in fish when they need fish. Thank you, Chandler Johnson

August 27, 2015

Mr. Glenn Merrill
Assistant Regional Administrator
Sustainable Fisheries Division, Alaska region NMFS
Re: NOAA-NMFS-2014-0150, Notice of Intent to prepare an EIS for any Gulf of Alaska trawl bycatch management program

Dear Mr. Merrill,

I am writing on behalf of Groundfish Forum to provide comments on the proposed Environmental Impact Statement (EIS) for Gulf of Alaska (GOA) bycatch management. Groundfish Forum is a consortium of 5 companies that operate trawl catcher-processors in the Amendment 80 sector of the Bering Sea/Aleutian Islands (BSAI) as well as in Gulf of Alaska trawl fisheries. Our companies have a long history of participation in, and dependence on, Gulf of Alaska fisheries.

Our comments are based in large part on our experience with Amendment 80, which was implemented in 2008 to, among other things, control bycatch and discards in non-pollock trawl fisheries. That program has been extremely successful, and can serve as a reference when determining what actions are appropriate in the GOA.

One of the reasons Amendment 80 has worked so well is that it allocates both prohibited species and target species, and allows vessels to form cooperatives to manage their allocations. This comprehensive design allows vessels to work together and has shown to reduce bycatch and increase utilization of the resource. A program that allocates just bycatch (IBQs) will result in a race for target species if the fishery is high value or TAC-limited, and continuing the race for fish will compromise the bycatch reduction goals.

The importance of history in the fishery and dependence on the resource cannot be overstated. Many of our member vessels were pioneers in Gulf of Alaska fisheries before shoreside markets developed. They have made significant investments in the fishery, and several spend a significant part of the year in the Gulf. Those most dependent on the Gulf of Alaska received lower Amendment 80 (BSAI) allocations because of time spent in the GOA. Our sector's ability to participate in GOA fisheries at the current level must be preserved.

We look forward to working with you and with the North Pacific Fishery Management Council to craft a fair and effective bycatch management program in the GOA.

Sincerely,

Chris Woodley
Executive Director

Kodiak Island Borough
710 Mill Bay Road, Rm. 101
Kodiak, AK 99615
907.486.9310

City of Kodiak
710 Mill Bay Road, Rm. 216
Kodiak, AK 99615
907.486.8636

August 28, 2015

Glenn Merrill
Assistant Regional Administrator, Sustainable Fisheries Division
Alaska Region NMFS
Attn: Ellen Sebastian

Re: NOAA—NMFS—2014—0150
Comments submitted electronically

Gulf of Alaska Trawl Bycatch Management

Representing the communities of the Kodiak region with direct involvement in the groundfish fisheries of the Gulf of Alaska, the City of Kodiak and Kodiak Island Borough have been active participants in the Gulf Trawl Bycatch Management (GTBM) development process. We have provided the North Pacific Fishery Management Council (NPFMC) with the views of our community as a whole.

The Kodiak Fisheries Work Group (KFWG) has discussed the GTBM action at monthly public meetings since 2012, understanding that the outcome of this Council action will have profound effects on our community as well as on harvesters and processors. Kodiak municipal leaders consider the community to be the necessary "third leg of the stool." The welfare of all three of these sectors will continue to be our focus as the Council moves forward.

Through resolutions (attached), the City and Borough identified ten community goals, which continue to guide the community in discussing the proposed management program. First on this list is to provide effective controls of prohibited species catch and other bycatch, while providing for balanced and sustainable fisheries and healthy harvesting and processing sectors.

The community of Kodiak has recently experienced the negative effects of a fishery closure as a result of bycatch exceeding Prohibited Species Catch (PSC) hard caps placed on a traditional, non-rationalized fishery. Processors and their employees, fishermen and their crews, multiple Kodiak families, support businesses, and the community's tax revenues all suffered substantial losses as a result of the current lack of bycatch management tools.

We continue to strongly support the Council's initiative to reduce bycatch, and have encouraged Council progress in advancing a cooperative management program as a tool in this effort.

While we recognize that harvesting groundfish through cooperatives is a powerful method for controlling bycatch, the community has not yet arrived at positions about all the aspects of allocating harvest, or catch shares, to individuals and/or other entities. As well as considering the effects of a catch share program on harvesters and processors, the community is seeking to understand and analyze the overall social and economic impacts of catch shares, allocation schemes, and other important aspects of cooperative management.

The City and Borough's KFWG is sponsoring a community roundtable discussion in September on the key aspects of catch shares and cooperatives. In addition, the City and Borough are currently considering proposals in response to an RFP to provide information that should help in analyzing the economic effects on the community of key aspects of fishery management programs. This study should provide a baseline profile of the community's direct involvement in the fishing and processing industries; information on the support business sectors; contributions to the industry through municipal infrastructure; and estimates of the economic effect of seafood and support industries on the community economy.

In short, the community is focused on understanding what an eventual management program should include to ensure the continued economic and social health of the community as a whole.

It is clear the Kodiak community is in the midst of considering the essential elements of a new groundfish management system. Likewise, the Council may be closer to the middle of this process than the end. The current alternatives provide a range of choices for allocation and use of harvest privileges. The community supports retaining the current Alternative 2 and 3 for further analysis. However, while the current GTBM motion and alternatives before the Council are the focus of this EIS scoping exercise, we are aware that the alternatives in the current motion may be changed or added to by subsequent Council decisions. As the State of Alaska asked for a ten-month delay in GTBM discussions in order to review the issues, we recognize that the resumption of this action in October may see a change in direction.

Specific comments on the current alternatives:

The following points are based on the most recent comment letter from the City and Borough to the Council, in October 2014, modified to reflect action taken at the October Council meeting. They refer to components of the current alternatives, as well as to additional aspects of a management program that could address community concerns, based on the ten goals and subsequent discussions.

1. Consolidation: Quota consolidation limits (quota control caps and vessel use caps) and processing caps for processors.

Consolidation of licenses on fewer trawl vessels does not affect the total amount of harvest or the associated landing taxes/processing revenues and processing employment opportunities (assuming historic community delivery patterns are maintained), but it can impact the number of available crew jobs, shares paid to crew, and the amount of demand for shore-based support services.

The community recognizes avoiding all consolidation could reduce the management efficiencies that are the heart of a cooperative structure, and supports further analysis of a range of consolidation limits for both harvesters and processors.

In addition, the community supports further analysis of grandfathering in quota control and processing levels in excess of the caps, including analysis of the concept of specifying a time period after which quota control in excess of the cap must be divested (sunset provision).

The community also recognizes the importance of further analyzing vessel use caps that are applicable within cooperatives.

2. Regionalization: Regionalization of quota based on historical delivery patterns.

Regionalization applies to target species only and is a measure to preserve historical delivery levels to shore-side processors in each management area. As the regional landing requirement would specify landings only as Central Gulf (CG) or Western Gulf (WG), the motion also contains an option that would require target species CG quota historically landed in the port of Kodiak to continue to be landed in the port of Kodiak.

The intent of regionalization (and port of landing requirement) is to maintain processing levels and the associated employment opportunities at or near historical levels. At this time, the community supports further analysis of both the regional and the port delivery requirements.

3. Fishery participation criteria: Participation criteria thresholds that define eligibility for the purchase of trawl licenses and/or history/quota.

Currently persons (the definition of which includes individuals, corporate entities and government and community entities) must be able to document a fishing vessel to hold and purchase an LLP, and to purchase and hold quota. There is support for further analysis of participation criteria for the applicable fisheries, including the ability for communities to hold quota in the program.

4. Community participation in cooperative: An option where the community in which the processor is located would also be required to sign the cooperative contract, potentially allowing the community to support cooperative practices that meet community goals and objectives.

There are two levels at which the community can play an active role in the contract development process – the regulatory level and the cooperative management level. At the first level, the community believes that the cooperative contracts should embody the goals of the community, which should be built into the contract requirements by regulation.

Regarding the cooperative management level, the community supports further analysis of the concept of community participation and approval at the inter-cooperative level.

In addition, the community supports cooperatives providing quarterly performance reports to the community.

5. Ability to sever target quota from a license: The ability to sever target species history from a license and transfer it to another license.

This element would allow for a smaller piece of target species history to be severed from a trawl license (as opposed to purchasing the entire license), and used on a latent trawl license,

allowing for new entry at lower cost. The community supports this concept for further analysis, including the concept of providing for a maximum amount of history that could be severed from each license.

6. CFAs: An alternative to provide for formation and operation of Community Fishing Associations, as described in the Magnuson Stevens Act.

The community supports further analysis of the CFA alternative. We would like to see a side-by-side analysis of the proposed management program's potential attainment of the Council's goals and objectives both with a CFA, and without a CFA.

7. Additional comments on proposed management design:

The community recognizes the potential difficulties in opening a limited access fishery with a small amount of quota, and supports continued analysis on this aspect of the proposed program.

Sincerely,

Jerrol Friend, Mayor
Kodiak Island Borough

Pat Branson, Mayor
City of Kodiak

CITY OF KODIAK
RESOLUTION NUMBER 2012–31

A JOINT RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK AND THE KODIAK ISLAND BOROUGH ASSEMBLY SUPPORTING COMMENTS TO THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL ON PENDING ACTIONS REGARDING COMPREHENSIVE MANAGEMENT OF PROHIBITED SPECIES CATCH 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 City of Kodiak and the Kodiak Island Borough represent the communities of the Kodiak region, rather than individual user groups or fishing interests; and

WHEREAS, the City of Kodiak and the Kodiak Island Borough have begun a program to participate directly in public processes for fishery policy decision-making as outlined in Resolution No. 2012–30 of the City of Kodiak.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Kodiak and the Assembly of the Kodiak Island Borough 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.

BE IT FURTHER RESOLVED by the Council of the City of Kodiak and the Assembly of the Kodiak Island Borough 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 processers 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.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

Adopted: September 27, 2012

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.

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 processers 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

Comment by Cory Whiteley

I am not in favor of a derby-style system, as it currently stands. A harvest privilege system, as proposed by Alt. 1 and 2 seems to be capable of alleviating some of the fisheries' current issues. Though, I am concerned about the process and effect of allocation on ownership and participation. Stated in the Registrar: "..the Council and NMFS have determined that allocating exclusive harvest privileges of target and bycatch species creates a structure for fishery participants to efficiently manage harvesting and processing activities that can result in reduced bycatch and improved utilization of groundfish fisheries (page 2, middle column)." I do not contest that Alt.1 or 2 could promote fishermen choices of "fishing in a slower and more efficient fashion, using modified gear with a lower harvest rate but which reduces bycatch, coordinating with other vessel operators to avoid areas of high bycatch, and processing fish in ways that yield increased value but which are possible (page 2, middle column)," all of which will most likely benefit the fisheries. I would argue, that such a system may not benefit Alaska and Alaska communities in the most preferred way. Alaska's fisheries have a long standing history of non-resident ownership. I would like any EIS to consider the likely development of ownership and participation in a system of harvest privilege. To be clear; the inefficiencies sought by a harvest privilege (slower fishing, lower harvest rate, modifying gear) has the potential of creating high barriers of entry for fishermen whom may not be able to afford such choices. For instance, if a smaller scale fishermen incurs costs greater than the potential revenue of his/her quota before reaching his/her quota (in an effort to fish, effectively, less efficiently), then he or she may not be able to afford fishing in the future. This would result in the transference of ownership to one more likely to withstand such uncertainty and adversity. Other fishery systems like this have seen the consolidation of opportunity (quota) into the hands of fishermen who are more apt to withstand one, two, three, etc. years of high costs. And in the case of Alaska, this type of consolidation has typically lead to greater ownership and participation of non-residents and less ownership by Alaskans. Whether or not the proposed Alt. 1/2 cooperatives can protect against this event is debatable, and a point of consideration I would like to see included.

Dave Smith
F/V Lisa Melinda
Newport, OR

Glenn Merrill
Sustainable Fisheries Division
National Marine Fisheries Service
PO Box 21668
Juneau, AK 99802

August 27, 2015

Dear Mr. Merrill

Please accept these comments on behalf of the f/v Lisa Melinda in response to your request for feedback on the "notice of intent" to draft an EIS for the trawl bycatch program for groundfish fisheries in the Gulf of Alaska. As the owner and part-time operator of the f/v Lisa Melinda, my business is directly impacted by any decision made to rationalize these fisheries as we have a long history of participation in the region. To that end I recommend that Alternative 2 (as described in the proposed rule) move forward in the analysis for further consideration.

I have been involved in a number of different rationalized programs in Alaska and on the west coast. Rationalization provides the tools necessary to achieve optimum yield in target fisheries while reducing bycatch without having to race your colleagues. If prohibited species catch is ratcheted down (which it has already been and will, in all likelihood, continue to be) then a race for fish will ensue. Racing for fish results in economic and conservation loses, not gains. Providing fishermen with the tools they need to successfully reduce bycatch while still being able to fully harvest and deliver their target species is critical to success for this region. The recent closure in the GOA due to a salmon hard cap attainment is a prime example of why rationalization is needed.

Some suggest a simple IBQ to solve the problem. This will not work and only exacerbates the race for fish. In order to create a win-win for the resource and stakeholders then a rationalization program described in Alternative 2 is the way to go. The Council was on the precipice of moving forward with Alternative 2 in October 2014 when the carpet was suddenly pulled out from under everyone as the new Alaska Fish and Game Commissioner requested that the Council take a hiatus from the process. Alternative 2 was developed by multiple stakeholders representing various viewpoints (harvesters, processors, communities, conservation, and decision-makers) and over several meetings. It strikes the balance between conservation and economics and most importantly, if structured properly, will end the race for fish and bring stability back to the region. Please analyze Alternative 2 in the EIS process – it must be included if a reasonable range is to be examined.

Thank you for your consideration.

Dave Smith
Owner - F/V Lisa Melinda

Don Ashley,
F/V Gold Rush Fisheries LLC
PO Box 425
Kodiak, Alaska 99615

Mr. Glenn Merrill,
Asst. Reg'l Administrator,
Sustainable Fisheries Division,
National Marine Fisheries Service
PO Box 21668
Juneau, AK 99802

August 28, 2015

RE: EIS for Gulf of Alaska Trawl By-catch Management Program.

I partner with my brother in the F/V Gold Rush, a Kodiak based AFA Exempt trawler, operating in the Bering Sea and the Gulf of Alaska.
We fish for Pollock, Cod and Rockfish and are dependent on Gulf of Alaska groundfish fisheries to maintain a viable fishing business.

We have significant positive experience with cooperative management structures in the BSAI AFA Pollock fishery and the CGOA Rockfish fishery, where we have successfully managed our by-catch, created efficiencies, enhanced safety at sea and maximized yield of target species.

I strongly advocate for the Council Motion Alternative 2 to be analyzed in the EIS with cooperative management structures.

I also strongly advocate for a streamlined and expedient forward movement of the trawl by-catch management program through the Council process. I believe failure to do so will have serious negative impacts on our fleet, our processing partners, our community and our fishery resource.

Thank you for attention to this most serious matter.

Respectfully,

Don Ashley,
F/V Gold Rush Fisheries LLC

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August 28, 2016

Glenn Merrill
Assistant Regional Administrator, SFD
Alaska Region NMFS
P.O. Box 21668
Juneau, AK 99802-1668

Re: Notice of Intent to prepare an Environmental Impact Statement for a proposed Gulf of Alaska trawl bycatch management program

Dear Mr. Merrill,

On behalf of our 1,000,000 members and supporters, we are submitting comments on the proposed action to create a new management program for trawl groundfish fisheries in the Gulf of Alaska (GOA). We believe it is vitally important to end the "race for fish" derby-style fishery that currently occurs in GOA trawl fisheries, and provide fishermen with the tools to effectively reduce prohibited species catch (PSC) and other bycatch. Based on our experience in many regions of the United States and in countries around the world, we believe that the best way to do that is by coupling exclusive harvest privileges (i.e. cooperatives, individual fishing quotas (IFQs), territorial use rights for fishing (TURFs) and other catch share type management systems) with strong accountability. We believe the current range of alternatives includes options that would achieve the goal of effectively reducing bycatch while fostering profitable trawl fisheries that continue to provide economic benefits to fishermen, processors, and fishing communities.

Race-for-fish-style fisheries like the trawl fisheries in the GOA fail to provide the conditions in which fishermen are able to effectively act to avoid bycatch. For example, fishermen who voluntarily avoid fishing in certain areas or certain times, or employ excluder devices or similar selective gear modifications, are at a disadvantage and effectively subsidize those who seek to maximize landings despite bycatch. And, as additional permit holders enter the active fishery, which appears to be the case in GOA trawl fisheries in recent years, a race for fish can actually exacerbate the problem with more vessels racing to harvest as much groundfish as possible before the PSC is fully utilized. In fact, earlier this year, we saw the attainment of the PSC for chinook salmon forcing the closure of a portion of the non-rockfish program catcher-vessel

sector, which, without emergency action, would have resulted in significant and avoidable loss of revenue for the industry and fishery dependent communities.

In contrast, carefully designed exclusive harvest privilege programs create strong incentives for fishermen to avoid bycatch. Those strong incentives typically lead to a variety of selectivity improvements including:

- Geographic selectivity
- Temporal selectivity
- Gear modifications
- Better communication about areas to avoid because of high bycatch (this is particularly true in co-op systems where participants seek to optimize value for the co-op)

Furthermore, there are often ancillary benefits to this kind of more flexible management system including the potential to extend the season providing opportunities to extract additional value from the resource, and safety improvements stemming from the fact that fishermen have more options regarding when to fish without having to worry about losing access to the resource.

We laud the alternative development that stakeholders, the North Pacific Fishery Management Council (NPFMC), the Agency and State have done to date, and we believe that a strong foundation has been laid for a program that facilitates bycatch reduction, and creates opportunities for additional revenue to be generated in the fishery. We offer a few specific comments below.

- Given the number of species involved in GOA trawl fisheries, a co-op system may prove more able to utilize target species quota than might be the case under individual allocation. Specifically, with quota for many species divided amongst many permit-holders, it is possible that under an individual allocation some quota might be stranded reducing overall fishery value. For that reason, the co-op structure envisioned in the alternatives seems like a wise choice. And, as mentioned above, a co-op system can also bring a structure to bycatch management and avoidance which has proven extremely effective in many fisheries.

- Consolidation limits, area and port specific landing requirements, community fishing associations (CFAs), and an adaptive management program (AMP) are all important tools to consider when seeking to maintain fishery revenue and community stability in fishery dependent communities. Regarding CFAs, we recommend consideration of the amount of quota to allocate to CFAs, how that quota will move from the CFA to a co-op to actually be fished, and what purposes the CFA should seek to achieve. For example, in

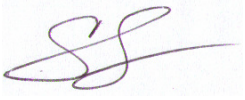
addition to anchoring quota in a community, CFAs have also been established for the purposes of facilitating new entrants (e.g. skippers working to move into ownership positions), educating consumers about seafood resources, and linking harvesters with markets. Regarding the AMP, we recommend considering a formulaic approach whereby use of the quota would be triggered by specific occurrences in the fishery. The other possible approach, in which a group of people or an elected board would allocate quota based on program goals, is likely to result in significant administrative burden, delay in quota use on the water, and might need oversight to ensure that quota is being allocated fairly.

- While not present in the current range of alternatives, we understand that Individual Bycatch Quota (IBQ) has been discussed as one potential way to solve bycatch challenges in the Gulf. In our view, without addressing the underlying race for fish, IBQ alone is unlikely to create the right incentives nor provide fishermen with the tools to reduce bycatch. Despite individual bycatch allocations, fishermen will still be compelled to participate in the race for fish for target species and will be unwilling to take actions to reduce bycatch where those actions might reduce overall groundfish catch. Allocating target and bycatch species would end the race for fish and make the program much more likely to be effective. Likewise, IBQ programs are unlikely to capture the ancillary benefits often seen under exclusive harvest privilege programs like cooperatives, IFQs and TURFs. These benefits can include increased economic profitability of the fishery, improved safety and working conditions, and ability for effective management of overfished species. Furthermore, the performance of IBQ programs is unknown and untested.

In conclusion, it's clear that the current range of alternatives contains viable options for a new management system that will create incentives to encourage fishermen to avoid bycatch, while fostering GOA trawl fisheries that continue to provide economic benefits to fishermen, processors, and fishing communities.

Thank you for the opportunity to comment on this important issue. We look forward to providing additional comments as the process unfolds.

Sincerely,



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ICICLE®

August 27, 2015

Glenn Merrill
Assistant Regional Administrator for Sustainable Fisheries NMFS, Alaska Region
NOAA-NMFS-2014-0150

RE: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for any Gulf of Alaska (GOA) Trawl Bycatch Management Program

Icicle Seafoods, Inc. is the owner of five vessels with historical participation in the GOA groundfish trawl fisheries. As participants in these open access fisheries, we recognize the need for tools to help the industry manage bycatch. At the same time, a well-designed management structure can facilitate the improved safety of our fishermen and women, increase efficiencies at vessels and plants, and improve utilization of the resource by harvesters and processors.

For these reasons, we support the continued analysis of Alternative 2, with the following additional elements:

1. ***Analyze the ramifications of eliminating Pollock trip limits under a new management program.***

Trip limits are a management tool used to slow the pace of an open access fishery. In a rationalized fishery, there should be no need for trip limits. Elimination of trip limits would improve the safety of harvesters and reduce their overall carbon footprint by reducing the number of trips needed to fully execute the fishery.

2. ***Analyze the effects of changing the trawl cod directed fishery season to Jan 20 – June 10 and June 10 – Nov 1, with no change to the A and B seasonal allocations.***

Providing a longer horizon to allow for the harvest of trawl cod would allow operators to choose when to deploy for directed cod trips. This could coincide with periods of higher aggregations of cod and commensurately lower rates of bycatch. Additionally, this could reduce gear conflicts between the trawl sector and pot and HAL sectors, as the trawl sector could fish their allocations throughout the year.

3. ***Analyze the effects of port of landing requirements on vessel safety and bycatch reduction goals.***

Port-of-landing requirements and regionalization of landings have been used in other rationalized fisheries with mixed results. Instituting a port-of-landing requirement for the GOA trawl fisheries runs counter to the goals of making these fisheries safer, reducing bycatch, and optimizing yield. Fish do not abide by borders, and an abundance of groundfish may be found far from traditional landing ports. Fish may relocate from year to year or after a number of years depending on water temperatures and a host of other environmental factors. Harvesting patterns may change over time due to other regulations that might then be in effect, e.g. Stellar Sea Lion restrictions.

ICICLE SEAFOODS, INC.
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Requiring deliveries to be taken to certain ports may increase a vessel operator's risk, whether due to longer run times from the fishing grounds to port, or to inclement weather between the fishing grounds and the required port of delivery. Safety concerns related to regional delivery landing requirements have been well documented in the BSAI Crab Rationalization Program, resulting in amendments to the program to allow exemptions from regional delivery requirements. Longer run times to required ports also results in unnecessary fuel consumption.

Currently underutilized fishing areas may have lower bycatch rates but cannot be effectively harvested under a race for fish program. The analysis should focus on how to best reduce bycatch, and harvesters should be given greater, not less, flexibility to minimize bycatch.

4. Analyze the effects of port of landing requirements and regionalization for fisheries that are not currently or historically fully utilized.

Port-of-landing requirements may provide a windfall to communities in the event of a groundfish fishery that has not been fully utilized in the past. For example, the 610 and 640 Pollock fisheries have historically been underutilized, along with many CGOA flatfish fisheries. If these were fully tied to a particular community or set of communities, the additional harvest occurring under a rationalized program would not appropriately fall within the umbrella of community protection.

We appreciate the work that NMFS and the Council are doing on this important issue, and believe that a well-constructed EIS is required. We support the continued analysis of Alternative 2 with the additional elements described above. Thank you for the opportunity to comment.

Regards,

Hunter Berns
Icicle Seafoods, Inc.
Fishing Vessel Operations Manager

Glenn Merrill
Assistant Regional Administrator for Sustainable Fisheries NMFS, Alaska Region
NOAA-NMFS-2014-0150

Re: Notice of Intent to prepare an EIS for any GOA trawl bycatch management program

My name is Jason Chandler, I am an owner/operator of the F/V Topaz, a family owned trawler that has fished in the Gulf of Alaska for over 30 years. I am writing to support the advancement of alternative 2 in the council motion on GOA trawl bycatch management dated 10/12/14. It is imperative that this option continue to be analyzed.

My family and many members of the trawl fleet have been asking for and working towards a new management structure in the GOA since 2001, with a major and collaborative effort in the last 4 years. With the introduction of the motion in October 2014, we felt that a rational, cooperative management program would finally be put in place to help the GOA trawl fleet reduce bycatch and live within the hard caps recently applied to our fisheries. These hopes were dashed when, in December 2014, the new Alaska state administration decided to sideline the program for 10 months while they examined other possible alternatives.

The trawl fisheries in the GOA are one of the last in Alaska or US west coast to operate under a derby style "race for fish". This style of management is wasteful and unsustainable. It offers little incentive or opportunity to reduce bycatch and creates many regulatory discards. We desperately need a management plan that allocates quota of target and PSC, to end this race. I have seen what can be accomplished under allocative cooperative management through my participation in the GOA rockfish program and Bering Sea AFA pollock fishery. Given the time to operate safely and thoughtfully we, the trawl fleet, can make great strides in reducing PSC bycatch and all but eliminate discards of target species. To accomplish this, we must end the race. This means allocating not only PSC, but also target species. Only when fishermen have security in their quota, can they slow the pace and do the best job possible in reducing bycatch as well as environmental impact.

I believe that this alternative also does a good job of protecting the communities that have historically been involved in the GOA groundfish fisheries. Through vessel use and ownership caps, they are protected from excessive consolidation of the fishing fleet. This will help to maintain the traditional number of fishing jobs available to local residents. It also includes regionalization of target quota, as well as a port of landing requirement for the community of Kodiak, my home town. I feel it is very important to protect Kodiak, as it has been the major recipient of central gulf trawl deliveries. I do not think that a CFA is necessary to accomplish this. A CFA, in my mind, will only add another unnecessary level of bureaucracy, putting more strain on fishermen and overly complicating an already complicated fishery.

I urge you to keep this motion alive in the EIS. Cooperative style fishery management has been proven to work, with many examples. The Gulf of Alaska trawl groundfish fisheries need reform now. No more band aids or restrictions, give fishermen the incentive and ability to do our best.

Thank you,

Jason Chandler

Glenn Merrill
Assistant Regional Administrator for Sustainable Fisheries NMFS, Alaska Region
NOAA-NMFS-2014-0150

Re: Notice of Intent to prepare an EIS for any GOA trawl bycatch management program

My name is Jason Chandler, I am an owner/operator of the F/V Topaz, a family owned trawler that has fished in the Gulf of Alaska for over 30 years. I am writing to support the advancement of alternative 2 in the council motion on GOA trawl bycatch management dated 10/12/14. It is imperative that this option continue to be analyzed.

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Thank you,

Jason Chandler

Comment by Jean Publi

CUT ALL QUOTAS BY 50%. NO TRAWLING SHOULD B ALLOWED AT ANY SITE. TRAWLING DESROYS THE BOTTOM FOR 50 OR MORE YEARS. THIS COUNTRY CANNOT AFFORD THAT KIND OF ENVIRONMENTAL DESTRUCTION. UNLESS RESTRAINED THE COMMERCIAL FISH PROFITEERS WILL DESTROY ALASKA SOON. THEY NEED RESTRAINT ON WHAT THEY TAKE. NOAA SEEMS TO INSTEAD BE IN THEIR BACK POCKET.

Attn: Glenn Merrill, Assistant Regional Administrator for Sustainable Fisheries NMFS, Alaska Region NOAA - NMFS - 2014 - 0150

Re: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for a Gulf of Alaska (GOA) trawl bycatch management program.

Dear Mr. Merrill,

My name is Jody Cook. I am 55 years old and have been involved in the Gulf of Alaska cod and pollock trawl fisheries for over 30 years. I own and operate the 58' combination pot and trawl vessel Cape Reliant. The vessel is home ported in Petersburg, Alaska. Most of the recent trawling that we have done has been based out of Sand Point, Alaska. I am a member of the Alaska Groundfish Data Bank , trawlers association, out of Central Gulf and Kodiak, and also a member of the Peninsula Fishermans Coalition, a trawlers association representing most of the local Western Gulf trawlers.

I am writing to give my support for Alternative 2 of the current Council motion from October 2014 regarding a Trawl bycatch management program, to be considered for analysis in the related EIS that was developed thru the council process.

In regards to the GOA trawl fisheries, I believe that there has been extensive effort by the council, by the state of Alaska, by all stakeholders and even by many uninvolved parties,.. to develop some sort of program that will take into account the measures and standards set forth by the Magnuson Stevens Act. I have been involved with the council process for some years now and have been impressed by the pains that were taken to make sure that every voice was heard. The October motion was drafted through a long process of testimony, economic studies, discussion paper drafts, more testimony and more discussion papers and research. There were proposals from Western Gulf fishers, from conservation groups, from Central Gulf fishers, from processors, from other gear groups, and from communities, and others. I believe it is past time to take the next step.

The council has moved forward and finalized action on reduced caps for halibut and salmon bycatch, for the trawl fleet. The council has also moved forward and finalized action on increased observer coverage for the trawl fleet.

I feel that with the current move toward more observer coverage and the financial burden it will impose upon the industry, that it is imperative that the trawl fleet be given the tools to develop their fishery in the most efficient manner possible. I feel that with the current reduced caps and the current "race for fish" status of the fishery, that the fleet will see similar shutdowns like the 2015 closure for cod from salmon bycatch. I strongly urge the Council to follow up and move forward on Alternative 2 of the October 2014 motion.

It has been proposed that 100% observer coverage be fast tracked for the Gulf trawl fleet. This proposal came by the same source that proposed delaying progress on the October motion. I appeal to the council to take into consideration the financial hardship this will impose upon a relatively small boat operation that most of the Sand Point and King Cove trawlers are. At least 22 of the fishing vessels are 58' vessels. In 2013 the Cape Reliant burned $30,350 worth of fuel, between January 6 , when we left Petersburg, to February 16, when the A season ended for cod, in Western Gulf. We burn more fuel fishing for Pollock. In 2015, I believe there was 7004 tons of cod harvested by the trawl fleet in Western Alaska. There was about 22 vessels fishing. That is an average of 636,727 lbs per boat. At .26/lb that is $165,549 gross stock,

before fuel or any expenses. Fuel is the biggest operating cost, but maintaining equipment for trawling is very expensive. In the race for fish it is very important to have the latest electronics, the latest developments in nets, the latest doors. There are expenses with VMS requirements and upgrades. Each vessel needs at least two bottom trawls and two midwater trawls. A relatively basic Marport electronic net and door monitoring system cost the Cape Reliant $30,000, 4 years ago. There needs to be a bottom mapping system that is a complex network of gps, depth sounder and computer program. There needs to be a communication system to log observer trips, (a new expense that will probably lead to needing the latest developments for internet connections.)

I mention these details, just to point out that there is already a large expense load and a not so large gross stock. The looming expense of full observer coverage is a scary prospect. I hope that some sort of alternative that may involve electronic monitoring may help to some degree. Also, Alternative 2, proposes cooperatives that would end the “race for fish”. This would change many things for the better. Fishers could choose to fish later when the cod are schooled for spawning. The yield per effort would be greater and would lead to significant fuel savings. At the same time, bycatch is generally much less when the cod are schooled for spawning.

In Western Gulf there has been no success at harvesting cod with a trawl in the B season. The cod are dispersed and on grounds that are impossible to trawl. In 2015 this leaves over 2500 tons of cod stranded from the trawl fleet. Alternative 2 of the October motion addresses this issue by proposing that this portion of the trawl quota could be fished with pots.

In regards to Alternative 3, Community Fishing Associations: I do not support this alternative at all. I believe that the key to a healthy fishing community is a healthy fishing fleet. If there is any allocation of catch shares, I believe that the fisherman that have been the most involved with effort and investment in developing the trawl fishery should be the ones that are enabled to continue under any new program. Alternative 2 proposes measures that will protect community interests. As I have mentioned, to maintain and operate a trawl vessel is a complex and expensive process. It has taken many years to get to the point where we are with the Cape Reliant. There just isn’t any “extra” money floating around in the Western Gulf that could support some experiment of administration.

A Co-operative fishing program , similar to that which is proposed in Alternative 2 has been successfully administered in Kodiak, for Central Gulf fishermen. It has been voluntary and has been successful at controlling bycatch. There was an attempt to have a co-operative stand down from fishing, in Western Gulf, to avoid a high salmon bycatch, in January of this year. It was not completely successful, as there was not 100% compliance. This resulted in a proposal to the council to have a regulation adopted to change the Western Gulf start date to a later date. It was contested by Central Gulf fishermen and some Western gulf fishermen and did not get far in the process. Alternative 2 would lay the foundation for a comprehensive plan that has been successfully administered in Kodiak and in Bering Sea fisheries and on the Washington/Oregon coast. It is a program that has already been practiced and proven. There is still flexibility given in a number of options in most of the proposed measures.

I believe that Alternative 2 would finally bring the Gulf of Alaska trawl fisheries up to date with many of the other developed fisheries. I believe that measures to protect communities, to reduce bycatch and discards exist in this part of the motion. I believe that the end of a “race for fish” will mean safer conditions. I believe it would mean less time for trawls to be on bottom, as fishers could choose to wait until the cod are the most concentrated, to target them. I believe

that it could increase market conditions as processors could work with fishermen to avoid fish backing up at the plant and compromising quality. I believe that measures to require historical delivery to be made to the same community will protect communities. That vessel caps will limit consolidation.

Thanks for your consideration,..

Sincerely,

Jody Cook

TRIDENT SEAFOODS CORPORATION
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Export Sales: (206) 783-3818 • Fax: (206) 782-7195

August 28, 2015

Glenn Merrill
Assistant Regional Administrator
Sustainable Fisheries Division
Alaska Region NMFS
PO Box 21668
Juneau, AK 99802-1668

Attn: Ellen Sebastian

Dear Mr. Merrill:

I am submitting documents in response to the NOAA's request for written comments regarding the preparation of the Environmental Impact Statement on a new management program for the trawl groundfish fisheries in the Gulf of Alaska. The proposed action would potentially allocate allowable harvest to individuals, cooperatives, and other entities that participate in the GOA trawl groundfish fisheries. Most of the documents I am submitting have been previously been submitted to the North Pacific Fishery Management Council.

The first document is entitled "Considerations for Rationalizing the Trawl Groundfish Fisheries in the Central Gulf of Alaska". The paper notes that owners of non-malleable capital invested in the open access groundfish fisheries will have the value of their investments expropriated when the fishery is rationalized and transferred to the recipients of the initial allocation of harvesting rights. The paper specifically notes that on-shore processors have the greatest amount of non-malleable capital in these fisheries and therefore should participate in the initial allocation.

The second document is a cover letter dated September 22, 2014, to a legal opinion I wrote and submitted to the North Pacific Council.

The third document is that legal opinion. The opinion describes in detail how the Magnuson-Stevens Act authorizes regulation of on shore activities if such action is necessary and appropriate for the conservation and management of a fishery and specifically why the Magnuson-Stevens Act would authorize cooperatives with "linkage" between vessels and those vessels' historical on-shore processor.

The fourth document is a transcript of NOAA counsel's oral presentation to the North Pacific Council in which the agency claims the Magnuson-Stevens Act does not authorize such linkage between vessels and on-shore processing facilities because there is no authority to regulate activities on-shore for conservation and management purposes.

NOAA has been less than candid on this issue. In essence, NOAA's position is as follows: (1) NOAA has previously stated that the Magnuson-Stevens Act does not authorize regulation of on-shore activities. (2) The Magnuson-Stevens Act has not been amended to specifically address this issue. (3) Therefore, NOAA is not changing its position. That is hardly a careful legal analysis.

The issue of whether the Magnuson-Stevens Act is authorizes regulation of activities on-shore, and therefore linkage between vessels and on-shore processing plants, is of some importance. One of the alternatives for including on-shore processors in the rationalization of the trawl groundfish fisheries is through linking vessels to their historical on-shore processor.

A true legal analysis would show that NOAA has routinely regulates on-shore activities under the Magnuson-Stevens Act when it is necessary and appropriate for the conservation and management of the fisheries. The attached legal opinion cites numerous instances where on-shore activities, including on-shore processors, have been regulated under the Magnuson-Stevens Act. When these regulations have been challenged, NOAA cites its authority under the Magnuson-Stevens Act to regulate these on-shore activities because it is necessary and appropriate for the conservation and management of the fisheries. In the instances when the issue has been litigated, NOAA's authority to regulate on-shore activities under the Magnuson-Stevens Act for conservation and management purposes has always been upheld.

I appreciate your consideration of these comments.

Sincerely,

Joseph T. Plesha
Trident Seafoods Corporation

Considerations for Rationalizing the Trawl Groundfish Fisheries in the Central Gulf of Alaska

By Christopher C. Riley and Joseph T. Plesha

June 8, 2013

I. Introduction

This paper is focused on the trawl groundfish fisheries in the Central Gulf of Alaska. It discusses issues that are essential to rationalizing these fisheries while achieving three specific goals. Those specific goals are:

- Protect investments in the fishery made by both owners of processing plants and harvesting vessels, but do not create a windfall for either sector.
- Incentivize the avoidance of Prohibited Species Catch (PSC), in particular, the bycatch of Chinook salmon and halibut.
- Promote economic growth in Kodiak, while protecting community stability and the social values associated with both a healthy fishing industry and a working waterfront.

At its October 2012 meeting, the North Pacific Fishery Management Council adopted a "Purpose and Need" statement indicating its intention to consider rationalization of the trawl groundfish fisheries in the Central Gulf of Alaska.[1] The Council's motion expressly defined the action's purpose as the creation of a new management structure "which allocates allowable harvest to individuals, cooperatives, or other entities, which will eliminate the derby-style race for fish." The trawl fleets' lack of tools in a derby fishery to avoid bycatch was the primary concern expressed by many Council members. The Council's motion also mentioned the goals of improving stock conservation, eliminating

[1] Council Motion — GOA Trawl PSC Tools, Oct. 9, 2012. The Council's motion was amended at its February meeting to focus on incentives to avoid bycatch. The amended motion still notes that: "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 mitigate the impacts of a 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."

wasteful fishing practices, creating accountability measures, and improving safety at sea. The focus of the Council's motion, however, is to incentivize bycatch avoidance.

It is widely understood that open access fisheries underperform rationalized fisheries in every relevant criterion by which performance can be measured. These include: conservation of the resource, efficient bycatch avoidance, safety at sea, gross value of products produced from the resource, and the cost of harvesting and processing the resource. Open access fisheries systematically destroy the ability of society to collect net benefits from the fisheries.

This dissipation of benefits in open access fisheries occurs because uncontrolled entry into the fishery results in overcapitalization. A simple example of overcapitalization is as follows: Imagine a fishery that is fished at the maximum sustainable yield, and produces a million dollars worth of fish per year with the services of five boats, at a total cost per boat of one hundred thousand dollars per year per boat. This results in a private and societal profit of five hundred thousand dollars per year. In this case each boat is earning one hundred thousand dollars of revenue above its total cost which includes a return on invested capital. These excess profits (rent) induce entry into the fishery despite the fact that the new capital investments do not add anything to the total catch. Entry continues until all the rent is dissipated. This occurs when the fishery contains ten boats for a total cost that exactly equals the value of the catch. If the price of fish doubled this would attract ten additional boats. The open access fishery thus squanders whatever societal benefits a fishery is otherwise biologically and technically capable of providing. If the cost of managing the fishery is not totally borne by the industry, then any fishery managed under open access becomes a net cost to society.

The purpose of this paper is to draw upon the experience gained over the past twenty-five years to highlight how the Central Gulf of Alaska trawl fisheries can be rationalized such that these fisheries can become a net benefit to society as a whole, while achieving the goals outlined in the first paragraph of this introduction.

II. Background

1. *Does it matter who receives allocations in rationalization programs?*

The benefits attributed to rationalized fisheries occur regardless of whom receives allocations of the privilege to utilize the fish. Furthermore, rationalized fisheries will be used by the same participants regardless of who receives allocations of quota. These propositions stem from the famous "Coase Theorem."[2] From the standpoint of efficient

[2] Coase, Ronald, *The Problem of Social Cost*, Journal of Law and Economics (University of Chicago Press) 3 (October 1960):1-44. Before Coase, economists of all political persuasions had accepted the idea that if, say, a cattle rancher's cows destroy his neighboring farmer's crops, the government should stop the rancher from letting his cattle roam free. Otherwise, believed economists, the cattle would continue to destroy crops because the rancher would have no incentive to stop them. Coase used a picturesque example to explain why that belief was incorrect. To summarize, imagine a cattle rancher who lives next to a grain farmer, and occasionally the cattle of the rancher invade the grain fields and damage the grain of the farmer. Does it make

utilization of the resource, it is unimportant who receives allocations of quota. When a vessel owner or processor claims to need an allocation of quota to remain in business, that claim is incorrect. Whether or not a plant owner or vessel owner ultimately receives allocations of quota does not determine whether it remains in the fishery. No matter whether initial allocations are granted exclusively to the owners of harvesting vessels, the owners of processing plants, fishermen (i.e., "crew"), processor workers, or taxi cab drivers in Anchorage, Alaska, the rationalized fisheries will be utilized by the most efficient industry participants. The less efficient entities will leave the fishery after rationalization, even if they receive allocations of quota.

As an example, the Bering Sea crab harvesting fleet shrunk from approximately 240 vessels pre-rationalization to sixty or so after rationalization, despite most all vessel owners' sincere intentions to remain in the fisheries after they were rationalized. As another example, the pollock Community Development Quota (CDQ) program allocates ten percent of the Bering Sea pollock Total Allowable Catch (TAC) to villages in Western Alaska. When the CDQ program was initially implemented in 1991, the CDQ communities had no involvement in the pollock industry whatsoever. The pollock resource was already being completely, but inefficiently, utilized by the existing industry. The pollock quota allocated to CDQ communities was simply leased by those communities to companies already involved in the pollock fishery. It was very similar to an auction, as the CDQ communities generally leased their pollock quotas to the highest bidder. Because the fishery was rationalized—albeit into the hands of entities that were complete outsiders to the fishery—the harvesting and processing of CDQ pollock was as efficient as if the a pollock company itself owned the quota.

This point cannot be overemphasized: From the standpoint of both the utilization of the resource and economic efficiency, it does not matter who receives allocations of quota.

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any difference in the number of cattle maintained and the amount of grain grown, whether the cattle rancher is responsible for the damage to the grain or the grain farmer responsible? Coase answered "no" and asked what would happen if both the grain farm and the cattle ranch are owned by the same person? That single owner should combine the two operations to achieve the largest profit. If adding another head of cattle raises cattle profits by $100 but lowers grain profits by $120, he will not add that head of cattle. Similarly, he will decide on building a fence only if the savings over the years fully compensate for the cost of the fence. But separate owners of the grain farm and the cattle ranch can achieve exactly this same best solution by contract, and they will be led to do so because then they will then have a larger pie to divide. The example concludes with the proposition that the *assignment of legal liability for the grain damage will determine who pays whom, but it will not affect the best way to conduct grain farming or cattle ranching.*

Coase's insight was stunning. It meant that the case for government intervention was far weaker than economists had previously thought. The Coase Theorem has important implications for regulatory policy in general. It gave rise to the field called "law and economics" and resulted in Ronald Coase receiving the Nobel Prize in 1991.

2. Why not auction the privilege to utilize fishery resources?

If allocations of the privilege to utilize fish are unimportant in determining who within the industry utilizes those fish, why not just auction the privilege to the highest bidder? At first blush, there appear to be good reasons to do so. Our nation's fishery resources belong to the general public.[3] It would be very simple to allocate all the benefits of rationalized fisheries to the general public through an auction of quota. The federal treasury can certainly use the revenue. If auctioned by the federal government, the fisheries will be utilized just as efficiently as if the privileges were instead allocated directly to industry participants.

Looked at another way, if a large unexploited stock of cod were suddenly discovered off a remote U.S.-owned island in the Pacific ocean, for example, and fishery managers wanted to rationalize it prior to the resource being exploited, the federal government would likely auction the privileges to this undeveloped resource rather than allocate the privileges to utilize the fishery to processing plant owners or fishing vessel owners based in Alaska, Washington State or Oregon.

The typical progression of fisheries, however, is that we tend to wait until a fishery is overcapitalized through the uncontrolled entry process inherent in an open access fishery before attempting to rationalize the fishery. The fact that we tend to wait until a fishery is overcapitalized complicates the initial allocation process enormously.

3. The reason to include fishing vessel owners and processing plant owners in rationalized fisheries.

In a fully capitalized, open-access fishery, where the harvest is controlled by a single quota (TAC) that the participants race to exploit, the investments in fishing vessels and processing plants that are specific to the fishery being rationalized (and that are also relatively durable and non-malleable) will be lost as a result of rationalization. This lost investment value reappears in the value of the quota. Wealth is unavoidably transferred from the fixed capital of processing plants and fishing vessels to the holders of quota.[4] In other words, after an open access fishery is rationalized, fishing vessels and processing plants subject to rationalization have little value, potentially even negative value, especially in Alaska where these assets may have no other productive uses.

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[3] The United States claims sovereign rights over all fish within the United States Exclusive Economic Zone. 16 U.S.C §1853a.

[4] Plesha, Joseph T., and Riley, Christopher C., *The Allocation of Individual Transferable Quotas to Investors in the Seafood Industry of the North Pacific* (Jan. 1992). (Attachment One.) See also, Matulich, S.C., Mittelhammer, and Reberte, *Toward a More Complete Model of Individual Transferrable Fishing Quotas: Implications of Incorporating the Processing Sector,* Journal of Environmental Economics and Management 31,1 (1996): 112-28.

When such fisheries are rationalized, owners of fishing vessels and processing plants can suffer enormous financial losses. The amount of the loss depends upon three factors: (1) The extent the fishery is overcapitalized; (2) the durability (or how long it lasts with routine maintenance) of the physical capital in harvesting and processing; and (3) the degree to which the capital is non-malleable (or has no alternative uses of near or equal financial benefit to the owner).

4. How do these post-rationalization losses to the value of vessels and plants occur?

The mechanism at work that causes investors in fishing and processing capacity to lose the value of their capital investments is that, by definition, the overcapitalized fishery has much more capital, and hence daily harvesting and processing capacity, than is necessary to prosecute the fishery once it is rationalized. A quota holder would not need to own a boat or a processing plant in order to participate in a fishery. When a quota holder decides to participate in the fishery, he or she could simply hold a reverse auction[5] among fishing vessel owners. The vessel owners would bid down to the point where the winning boat just covered its variable costs. The quota holders would then proceed to secure processing services with the same result. The winning bid for processing services would cover only the variable costs[6] of production.

As long as the price under discussion between vessel and plant owners allows for any return above variable costs, processing and vessel owning companies have an incentive to make a more competitive offer until they cover only their variable costs of operation and make no return on their capital investments.

This is a difficult concept for many to appreciate. Why would any rational businessman invest tens or hundreds of millions of dollars into an industry and later allow others to make use of that investment for free? When an overcapitalized, open access fishery is rationalized there is far more harvesting and processing capital than is necessary. Instead of the fishery lasting, for example, one month in an open access race, under rationalization it can be efficiently utilized in six months; meaning there is six times more existing harvesting and processing capacity than necessary. Not all of this physical capital can remain busy during the newly lengthened six-month fishery, but its owners will all have an incentive to keep the physical capital operating throughout this period. If this millions of dollars of excess physical capital earns one penny above the variable costs of its operation, its owner is better off than under the alternative of earning nothing. Thus starved for production through their facilities, vessel and plant owners bid for product until the price reaches a level at which they no longer can cover their variable cost.

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[5] In a reverse auction, the sellers compete to obtain business from the buyer and prices will typically decrease as the sellers undercut each other.

[6] Variable costs are those expenses that increase with production. For processors, variable costs would include expenses such as direct processing labor, packaging, and increased utility charges. For vessel owners, variable costs would include things like fuel.

The holders of quota thereby will effectively own not only the fish in the fishery, but also the usufructuary[7] rights to all the non-malleable physical capital used to harvest and process those fish. This situation, where the quota holders enjoy free-of-charge use of physical capital, continues until the capital stock wears out to the point where only the appropriate amount remains.

Immediately upon beginning operations under a rationalized fishery, therefore, owners of fishery-related capital will see the return on their investment fall to zero. This cannot be avoided and is, in fact, *absolutely necessary* in order to decapitalize an overcapitalized industry. The owners of this physical capital cannot expect to realize any return on their investment until the excess capital stock leaves the industry to the point where it is at the optimal level for the rationalized fishery.

In industrial fisheries such as the groundfish fisheries off Alaska, the financial losses described above are suffered by *owners* of fishing vessels and processing plants. Virtually every vessel and plant owner is a corporation; an entity invented by lawyers with the purpose of accumulating and investing capital for the financial benefit of its shareholders.[8] These corporations are not "fishermen." The corporate owners of fishing vessels and processing plants do not themselves fish or process. These corporations are not crew aboard fishing vessels or workers in processing plants. They do not own Commercial Fisheries Entry Commission's licenses. These corporations are the owners of the physical capital involved in harvesting and processing fish.

The allocation of quota to vessel and plant owners in industrial, fully capitalized open access fisheries is essential to compensate those owners for the losses they unavoidably suffer in the value of their vessels and plants as a result of rationalization.

Some vessel owners may lament the fact that processing plant owners seek to be part of rationalized fisheries, but the rationale for including processing plant owners in the allocation of quota is also the *only* rationale for including vessel owners in the allocation of quota. If a corporation that owns a fishing vessel does not suffer losses in the value of its boat as a result of rationalization, there is no rational basis upon which it can be allocated quota.

5. Allocations to fishermen and processors.

In industrial fisheries the question of whether those who work as fishermen or processors should also receive allocations is, from an economic perspective, the same as whether investors in vessels and processing plants should receive allocations. Do those who work in plants or on boats have "human capital" that is devalued by rationalization?

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[7] A usufructuary right is the right of enjoyment, enabling a holder of the right to derive profit from property which is owned by another person.

[8] Micklethwait, John and Wooldridge, Adrian, *The Company: A Short History of a Revolutionary Idea* (New York, Modern Library, 2003).

Human capital is a specialized skill that is unique to a specific profession earning the individual far more than that person could make in another available occupation. An example of those with substantial human capital would be major league baseball players. Felix Hernandez, a gifted pitcher for the Seattle Mariners, would certainly not be receiving a salary of *$25 million a year* if the rules of Major League Baseball had been somehow changed so that all batters hit off of a tee, like a six-year old's "tee ball" game.

Those individuals who work in processing plants are paid at levels that would not indicate they have human capital that is devalued should their existing job disappear through rationalization. It is not as clear with those who work aboard fishing vessels. Fishermen, especially skippers, may have specialized skills that earn them more than the next best alternative. Such skills might include: safely operating and maintaining a boat, staying awake long hours, locating schools of fish, or managing a crew. It is not clear how difficult these skills are to find, but they are not particularly unique. Most of these skills would be required of fishermen after rationalization and these skills are indeed transferable to other occupations. On the surface it does not appear fishermen have obvious human capital that would be devalued by rationalization. Rationalization will result in consolidation of the fishing fleet, however, it is not clear that the total weeks worked in fishing and processing by the labor force will decrease at all. The peak number of people working will certainly decrease but the average time worked per worker will increase. Despite this, we believe that it might be worthwhile for the Council to consider whether fishermen have human capital that should also receive compensation for the impacts that rationalization will have for them.

6. *Allocations to the community of Kodiak.*

The community of Kodiak has seven plants that process trawl-caught groundfish. In addition, some of the trawl groundfish harvesting fleet is based in Kodiak and therefore uses support services located in Kodiak and hires crew from Kodiak.

The community of Kodiak has made non-malleable, durable capital investments in the existing race-for-fish that characterizes the open access trawl groundfish fisheries. These investments might include things such as excess electricity generation and increased water capacity for the peak processing periods.

Basically, the rationalization of the trawl groundfish fisheries in the Central Gulf of Alaska will cause the harvesting season to lengthen substantially and result in consolidation of the harvesting and processing sectors that participate in these fisheries.

Kodiak will be impacted in various ways by rationalization. Some impacts will undoubtedly be positive. If, for example, rationalization allows for groundfish to be processed throughout the year instead of during intensive peak periods, resident process workers will be able to work for longer periods and the use of non-resident labor should sharply decrease. But non-malleable capital investments made to handle the peak production seasons will become worthless and if there is significant consolidation, there could be fewer jobs for residents in vessel crewing and support service sectors.

III. Central Gulf of Alaska Trawl Groundfish Fisheries

1. The Central Gulf of Alaska trawl groundfish resources.

The Gulf of Alaska trawl fisheries are characterized by relatively small TACs for the primary species and extreme overcapitalization in the utilization of those species. The level of overcapitalization in the harvesting and processing sectors is on par with the halibut and Bering Sea crab fisheries prior to rationalization.

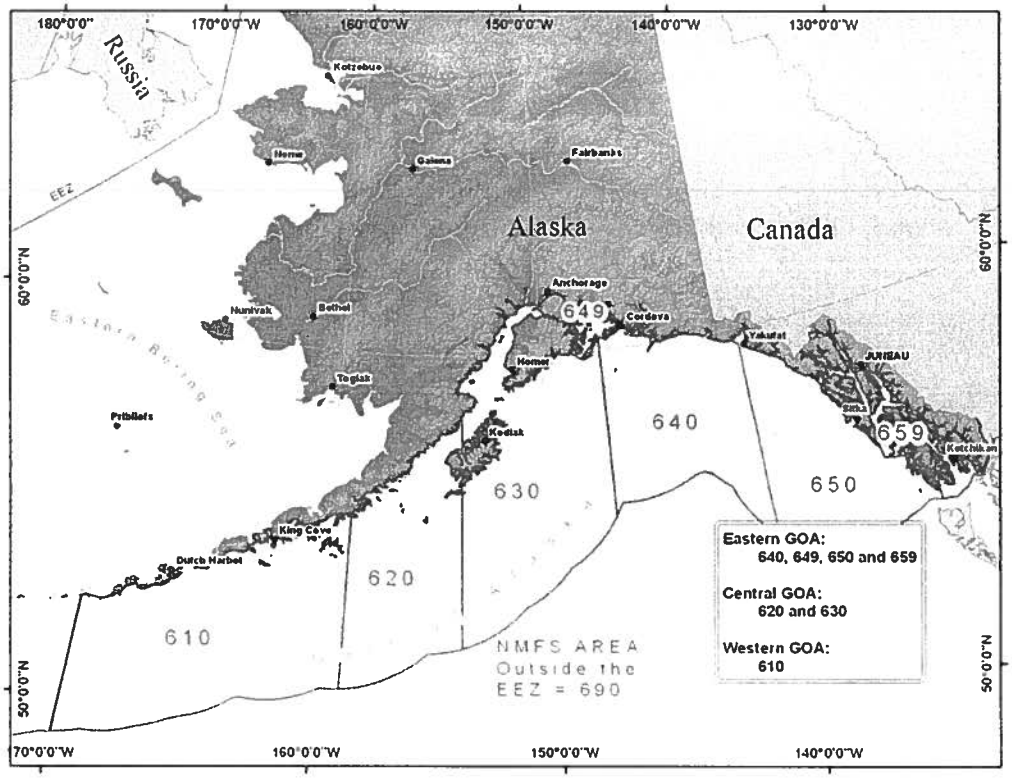

Figure 1. Federal Management Fishery Areas in the Gulf of Alaska

a. <u>Pollock</u>

The largest trawl fishery in the Central Gulf is pollock. Kodiak processes virtually all of the area 630 trawl pollock harvest and historically processes ninety-five percent or more of the area 620 harvest. On average, the annual harvest has been just over 45,000 MT. (See fig. 2, below.)

Pollock TAC in the GOA			
	610	620	630
2008	17,602	19,181	13,640
2009	15,249	14,098	11,058
2010	26,256	28,095	19,118
2011	27,031	37,365	20,235
2012	30,270	45,808	26,348
5-year Ave.=	23,282	28,909	18,080
Delivered to			
Kodiak =	0	27,464	18,080
Ave. Del.			
to Kodiak =			45,544

Figure 2. Average Pollock Harvest Delivered to Kodiak

Directed fishing for pollock is divided into four quarters with twenty-five percent of the total Gulf-wide pollock TAC allocated to each of the four "seasons":

- "A" season begins January 20th, until the quota is taken;
- "B" begins on March 10th;
- "C" season begins August 25th; and
- "D" season on October 1st.

Pollock trawl fishing in the Gulf of Alaska is closed after November 1st. Allocations to management areas 610, 620 and 630 are based on the seasonal biomass distribution as estimated by groundfish surveys.

The pollock fishery is short and intensive. There is a voluntary catch share program that effectively lengthens the season somewhat.[9] Without such a voluntary system, however,

[9] Federal and state antitrust laws apply to the fishing industry, including fishing vessel owners. Agreements between vessel owners to limit production or allocate harvest market shares are *per se* violations of the Sherman Act. (United States v. Topco Associates, Inc., 405 U.S. 596 [1972].) Per se violations of antitrust laws are illegal even if such activities are otherwise reasonable, well intended, or even encouraged by government regulators. It is a violation of the Sherman Act, therefore, for private parties to allocate harvests among individual vessels, regardless of whether the National Marine Fisheries Service supports such behavior and would otherwise not open the fishery for fear that the TAC will be exceeded.

A formal agreement between each vessel owner is not necessary to show an antitrust violation. A conspiracy among competitors can be proven even if there is no formal agreement, but merely a tacit understanding.

each of the four pollock harvest seasons in the Central Gulf fishery last only a few days. Taken as a whole, the "A," "B," "C" and "D" pollock seasons would remain open a month or less, but for the voluntary catch share program.

Kodiak was the first Alaska community to process pollock harvested in the Gulf of Alaska through the Alaska Fisheries Development Foundation's surimi project in 1984. At that time, the pollock fishery lasted year-round and pollock was efficiently utilized in all but post-spawn periods during portions of April and May.[10] Because the Central Gulf pollock fishery is currently utilized in a month or less and it can be efficiently utilized for approximately eight months (from January 20th through October 31st, when the fishery is closed by regulation, and except for the post-spawn periods of April and May), there is about eight times more harvesting and processing capacity in the open access fishery than would be necessary if the Central Gulf of Alaska fishery were rationalized. The level of overcapitalization in the Central Gulf of Alaska pollock fishery appears greater than that of the Bering Sea crab fisheries prior to rationalization of the crab fisheries in 2005.

b. Pacific Cod

The Pacific cod fishery is another large and valuable trawl groundfish fishery. The five-year historical average cod TAC harvested in the Central[11] Gulf of Alaska is about 36,000 MT. (See fig. 3, below.)

The Supreme Court has held "[w]here the circumstances are such as to warrant a jury in finding that the conspirators had a unity of purpose or a common design and understanding, or a meeting of minds in an unlawful arrangement, the conclusion that a conspiracy is established is justified." (American Tobacco Co. v. U.S., 328 U.S. 781, 810 [1946].)

The Fishermen's Collective Marketing Act (FCMA) [15 U.S.C. § 522] provides a limited exemption to the antitrust laws. The FCMA allows fishing vessel owners, who are members of an eligible association, to allocating harvesting market shares among members of the association. This FCMA exemption, however, is strictly limited to members of the association. (United States v. Borden Co., 308 U.S. 188 [1939]. See also, the settlement in United States v. All Coast Fishermen's Marketing Association, Fed. Reg. Vol. 47, No. 146 at 32814, where the defendant FCMA cooperative engaged with non-members in the negotiation of fish prices. The government specifically alleged "non-members attended meetings of the defendant at which the price per pound of seafood to be offered processors [the ex-vessel price] was discussed." Further, "during periods when the members were refusing to fish because the defendant was not able to obtain an agreement with processors on ex-vessel prices, employees of the defendant secured agreements from non-members not to fish until the defendant had reached an agreement on ex-vessel prices with the processors.")

Not every trawl vessel owner eligible to fish in the Gulf of Alaska is a member of an FCMA coop. Those who are not members of FCMA cooperatives cannot participate in voluntary catch share programs without violating the antitrust laws. Members of FCMA cooperatives can be prosecuted for encouraging non-members to participate.

[10] Co-author of this paper, Chris Riley, was responsible for implementing the AFDF shorebased pollock project in 1984. Mr. Riley noted that they voluntarily stopped processing pollock in Kodiak during portions of April and May because of the post-spawn condition of the fish. Otherwise, the pollock fishery in the Central Gulf of Alaska was a year-round fishery.

[11] The Central Gulf of Alaska includes areas 630 and 620.

Pacific Cod TAC in GOA		
	Western	Central
2008	25,932	37,901
2009	16,175	23,641
2010	20,764	36,782
2011	22,785	40,362
2012	21,024	42,705
5-year Ave.=	21,336	36,278

Figure 3. Average CGOA Pacific Cod Harvest

The Gulf of Alaska cod resource is currently allocated among the various harvesting sectors. The trawl catcher vessel sector's allocation is 41.6 percent of the non-jig TAC. The average Central Gulf Pacific cod allocated to the trawl catcher vessel fleet is therefore around 15,000 MT.[12]

The trawl cod fishery has two seasons, the "A" season beginning on January 20th and the "B" season beginning on September 1st. Historically cod were fished in the summer, so the period when cod are available to the trawl fishery is much greater than the current harvest period. Depending on the catch per unit of effort, the cod fishery is actively fished for approximately a couple of weeks each season to a month or more. Often trawl catcher vessels will switch between harvesting pollock and cod in the Central Gulf of Alaska. There is certainly far more harvesting and processing capacity in the open access cod fishery than would be necessary if the fishery were rationalized. The level of overcapitalization in the trawl cod fisheries is likely similar to pollock, but the level of overcapitalization is difficult to estimate precisely because there are times when the fishery is open and cod are difficult to find.

c. <u>The flatfish fisheries</u>

The potentially largest trawl fishery in the Central Gulf of Alaska is the flatfish complex, especially Arrowtooth flounder. (See fig. 4, below.)

[12] 41.6% of 36,278 is 15,091 metric tons.

Deepwater Flatfish in the CGOA

Year	ABC	TAC	Harvest
2008	6,721	6,721	543
2009	6,927	6,927	428
2010	2,865	2,865	490
2011	2,919	2,919	246
2012	2,308	2,308	246
5 Year Ave:	4,348	4,348	391
Harvest as Percent of ABC & TAC			8.98%

Shallow-water Flatfish in the CGOA

Year	ABC	TAC	Harvest
2008	29,873	13,000	8,135
2009	29,873	13,000	8,195
2010	29,999	13,000	5,333
2011	29,999	13,000	3,819
2012	22,910	18,000	3,322
5 Year Ave:	28,531	14,000	5,761
Harvest as Percent of ABC			20.19%

Rex Sole in the CGOA

Year	ABC	TAC	Harvest
2008	6,713	6,713	2,517
2009	6,630	6,630	4,162
2010	6,403	6,403	3,284
2011	6,293	6,294	2,721
2012	6,412	6,412	1,972
5 Year Ave:	6,490	6,490	2,931
Harvest as Percent of ABC & TAC			45.16%

Arrowtooth flounder in the CGOA

Year	ABC	TAC	Harvest
2008	167,936	30,000	25,928
2009	164,251	30,000	22,813
2010	146,407	30,000	20,532
2011	144,559	30,000	27,787
2012	143,162	75,000	18,213
5 Hear Ave:	153,263	39,000	23,055
Harvest as Percent of ABC			15.04%

Figure 4. Flatfish harvests in the Central Gulf of Alaska.

Trawl fishing on these fisheries opens on January 20th and continues throughout the year (even after November 1st). They are limited by the quarterly release of halibut Prohibited Species Allocation PSA), however.

2. The Central Gulf of Alaska trawl groundfish industry.

There are seven shorebased groundfish processors in Kodiak that are consistently supplied by about thirty-eight trawl vessels. The Alaska Groundfish Data Bank listed the plants and the trawl fleet that typically delivers to those plants (as of March 2012) as follows:

Trident Seafoods
1. Alaska Beauty
2. Cape Kiwanda
3. Excalibur II
4. Hazel Lorraine
5. Lisa Melinda
6. Lone Star
7. Marcy J
8. Michelle Renee
9. Miss Sarah
10. Pacific Ram

Westward Seafoods
11. Collier Bros
12. Elizabeth F
13. Gold Rush
14. Hickory Wind
15. Mar Pacifico
16. Progress
17. Vanguard
18. Walter N

International Seafoods of Alaska
19. Chellissa
20. Dawn
21. Laura
22. Marathon
23. Mar Del Norte

North Pacific Seafoods
24. Alaskan
25. Anthem
26. Caravelle
27. Dusk
28. Sea Mac
29. Topaz

Ocean Beauty Seafoods
30. Bay Islander
31. Icy Mist
32. New Life
33. Pac Star

Global Seafoods
34. Leslie Lee
35. Pacific Storm
36. Windjammer

Pacific Seafoods
37. Grumpy J
38. Stella

3. The estimated value of vessels and plants in the Central Gulf of Alaska trawl groundfish industry.

It is important to emphasize that this paper is only making gross estimates of the value of the assets in harvesting and processing Central Gulf of Alaska groundfish. It is difficult to

find data on asset values, particularly the value of processing plants. The paper presents these estimates to give an appropriate ballpark of the asset values that the Council might consider. It is anticipated that the *actual* values will be analyzed in greater detail as the issue progresses through the Council process.

The value of a typical Gulf of Alaska trawl vessel depends upon the earnings the vessel makes in the Gulf fisheries. Estimating the value of vessels is complicated by the fact that many Central Gulf of Alaska trawl vessels participate in other fisheries in other regions. Also, the value of those vessels with pollock allocations from the American Fisheries Act is dependent upon how much Bering Sea pollock quota is associated with the vessel. In the mid-1990s, prior to the time when serious discussion of groundfish rationalization in the Gulf of Alaska began, the price of Gulf-style trawlers appears to have been a modest half million dollars or less. (See Attachment Two.)

Another way to estimate a vessel's value is with a recent vessel survey. A vessel survey is typically undertaken by the owner, but surveys at least provide documentation of the surveyor's estimate of the value of the physical vessel itself. We have had the opportunity to examine a number of Central Gulf trawl vessels with recent surveys. The higher quality Gulf trawl vessels typically have a survey value of right around $1,500,000. (See Attachment Three.) The only way to accurately determine a vessel's value, however, is to know the profits that vessel earns in the existing Gulf groundfish fisheries. Even the vessel survey does not show the profits currently produced from the Gulf. The survey, therefore, is an imperfect estimate.

Assuming that the "average" Central Gulf of Alaska vessel has a value of $1,500,000, the large bulk of the trawl groundfish harvested in the Central Gulf is taken by thirty-five to thirty-eight vessels, depending upon the year,[13] therefore the total value of the Central Gulf of Alaska trawl fleet can be estimated to be something in the range of $52.5 to $57 million.

Estimating the value of the shorebased processors in Kodiak is also difficult. It is complicated by the fact that many of the plants also process salmon. Salmon, however, is a small component of the major groundfish plant's financial viability and it is possible to isolate the revenue stream generated by groundfish. But there are no survey values to examine for the processing plants, and the earnings from each plant are confidential, so providing documentation of the basis of any estimate is problematic.

Trident does have information on its operations in Kodiak, however. Understanding that this estimate lacks any authentication, working with Trident's current accounting department and its now retired former Chief Financial Officer, we estimated that the value of groundfish processing plants in Kodiak was in the neighborhood of $72 million.

4. The estimated value of groundfish quota after rationalization.

[13] Personal discussion with Julie Bonney by co-author Joe Plesha.

It is again important to note that the assumed value of groundfish quota in the Central Gulf given in this paper are only estimates. Reasonable people can debate what the value of quota in these fisheries will be after rationalization.

Catcher vessel pollock quota in the Bering Sea for the inshore industry is currently selling for approximately $1,950 per metric ton. That price, however, includes only the vessel owners' rents earned in the pollock fishery under the American Fisheries Act. It is less clear what the processor's rents might be. Mothership catcher vessel quota in the Bering Sea reportedly sells for about $2,150 per metric ton. Mothership catcher vessels have nearly an unencumbered IFQ in the pollock fishery, so that might approximate the value of both the harvesting and processing rents earned in the fishery. Shorebased processors should be able to extract slightly greater value from the resource because of greater space for product diversity and recovery. Therefore, to estimate the value of utilization quota for pollock in the Central Gulf of Alaska, a figure of $2,200 per metric ton seems reasonable.

Pacific cod quota value is estimated based on the authors' understanding of the value of quota in the freezer-longline sector. Freezer-longline cod quota is valued at something like $5,000 per metric ton. There is a premium paid for longline cod over trawl-caught cod and frozen at sea cod compared to cod processed on shore. That is offset by the flexibility that shorebased plants have in greater recovery of cod byproducts and higher valued-added primary products, such as fillets and even cod for fresh fish markets. A reasonable estimate of the value of cod quota in the Central Gulf of Alaska trawl fishery would be $5,000 per metric ton.

Given that the five year average pollock TAC delivered to Kodiak from the Central Gulf of Alaska is just a bit over 45,500 metric tons, and assuming that pollock quota would be worth about $2,200 per metric ton, a reasonable estimate of the total value of Central Gulf pollock quota would be just over $100,000,000.[14]

The trawl apportionment of the Central Gulf Pacific cod TAC averages about 15,000 metric tons, so assuming trawl-caught cod quota would be worth $5,000 per metric ton, the total value of the Central Gulf cod quota would be $75,000,000. Combined, the pollock and cod might be worth about $175,000,000.

IV. Rationalization Considerations

The components listed below are designed to achieve the goals listed in the introduction: (1) Protect existing investments in the fisheries without creating a windfall; (2) Incentivizing bycatch avoidance of PSC; and, (3) Promoting the economy of Kodiak.

[14] 45,500 multiplied by $2,200 equals $100,100,000.

1. *Compensation to vessel and plant owners for the losses to the value of specialized capital caused by rationalization.*

There are only two rationales for allocating quota to private entities. The first is in exchange for the socially desirable development work that is both costly and inherently non-proprietary. The pollock and cod fisheries in the Central Gulf began in the mid-nineteen eighties. The business entities involved in the development are much the same as those operating today. We do not believe that it is possible to credibly measure the relative contribution of current participants to the development process. We therefore do not believe it is appropriate to allocate any of the cod or pollock quota on the basis of the positive externalities associated with fishery development.

The second, and in fact the only rationale for allocating quota to private entities in the Central Gulf cod and pollock fisheries is the fact that the value of those investments is expropriated from its current owners and added to the value of the quota that is established by the implementation of rationalization. This seizure is similar to a Fifth Amendment "taking," but made worse by the fact that typically it is not the general public who receives the expropriated property —as in the case of a Fifth Amendment taking — but instead other private entities who receive allocations of quota to utilize the fish.

Owners of processing plants and fishing vessels in the industrial, capital-intensive fisheries like the Central Gulf of Alaska groundfish fisheries are examples of investors who will suffer large devaluation of their investments through rationalization, depending only upon the durability, malleability and level of overcapitalization in the rationalized fisheries.

The estimates given above regarding the existing value of investments made by owners of processing plants and harvesting vessels, and the value of potential quota, is too speculative to provide a precise "range" of what that allocation to compensate each sector of investors might be. But it appears that forty percent or less of the pollock and cod quota, allocated to both the owners of harvesting vessels and processing plants, may adequately compensate each sector.

To avoid expropriation of wealth, the analysis of any rationalization proposal should carefully examine the value of the current harvesting and processing investments in the groundfish fisheries being rationalized, and estimate the value of the quota that will be created. Allocations of quota that are of a substantially greater value than the amount vessel and plant owners' investments suffer as a result of allocation creates a windfall for the owners of those assets.

a. <u>Malleability of capital investments</u>

As mentioned above, the level of overcapitalization in the Central Gulf of Alaska is very large. Arguably there is close to eight times more harvesting and processing capacity then necessary in a rationalized fishery. Both the vessels and plants are extremely durable. With routine maintenance, the physical capital used in harvesting and processing groundfish can last nearly indefinitely. There is an issue, however, concerning the malleability of the capital used in harvesting and processing groundfish in the Central Gulf.

There are alternative uses for some of this physical capital and this should be taken into account in the allocation process.

Many of the groundfish shorebased processors in Kodiak also process salmon. We have not examined in this paper the degree to which the capital used in processing groundfish is also used for processing salmon. Our understanding, however, is that the degree groundfish processing equipment is used for salmon is small, both in terms of the relative volume of salmon compared to groundfish and the relative financial importance of salmon compared to groundfish. This is something that should be examined in greater detail, however, in the analysis of any potential rationalization program.

Trawl vessels fishing in the Central Gulf of Alaska appear to be relatively malleable, in that many operate in other fisheries. If you look at the thirty trawl vessels that have fished in the Central Gulf for at least each of the past five years—the vessels that would likely receive the lion's share of any allocation—these thirty vessels have already received an estimated quota value of over $125,000,000 in other fisheries. (See Attachment Four.) In other words, these vessels have, on average, already received over four million dollars in quota per vessel.

An argument can be made that many of these vessel owners have already been fully compensated for the devaluation in the value of their vessels caused by rationalization. If, for example, a car was totaled in an accident its owner subsequently received the full value of the car from insurance proceeds, but if the totaled car later caught fire and was further damaged, its owner would find great difficulty in collecting a second payment for the damage caused by the fire. The second payment for the fire damage to the car would result in an obvious windfall to the car's owner. It might appear to be a windfall for a vessel owner who has already received quota from other fisheries of a value as great, or greater than, the value of its vessel, to now receive additional quota under a rationalization program.

The other side of that argument is that the Magnuson-Stevens Act requires consideration of investments in, and dependence upon, the fishery.[15] If some Central Gulf trawl vessels were to receive no allocations of quota because of the quota value they had already received in other fisheries, these corporations would be uncompensated for the impacts of rationalization on their investments in the Gulf of Alaska trawl groundfish fisheries. Thus, it could be said, that their investments in, and dependence upon, those Gulf fisheries are being ignored.

b. Allocations through cooperatives or directly to both vessel and plant owners?
Fishing in cooperatives will be essential for bycatch avoidance programs because the government cannot reward industry participants on a timely basis for the avoidance of bycatch. (See Memorandum from Lisa Lindeman to the NPFMC, Feb. 24, 1995, Attachment Five.)

[15] Manguson-Stevens Act §303A(5).

There is a debate however, whether (for allocation purposes), if it is best to allocate quota directly to both vessel and plant owners, or whether it is preferable to allocate quota to cooperatives in which vessels are somehow linked to an affiliated processor. From an economic perspective, the issue is whether cooperatives with vessel and plant linkage can effectively allocate the appropriate rents between vessel and plant owners so that each sector is compensated for the impacts of rationalization as efficiently as direct allocations of quota to each sector.

There are three basic cooperative structures with linkage between vessels and processing plants which attempt to maintain economic balance between the two sector of investors—vessel and plant owners—after rationalization. These three structures are: cooperatives with permanent linkage, such as the Rockfish Pilot Program; cooperatives where vessels can move after a period of time in open access, such as the American Fisheries Act; and a new concept where a vessel owner must "leave behind" with the processor some of the quota assigned to the vessel if the vessel moves to a new cooperative. Each such cooperative structure complicates the issue of assuring both vessel and plant owners are fully compensated for the impacts that rationalization will have on the value of their investments.

A cooperative like that of the Rockfish Pilot Program, with permanent linkage, creates the problem of bilateral monopolies. A bilaterally monopoly arises when a monopolistic seller[16] deals exclusively with a monopsonistic buyer. Bilateral monopolies are very rare because the price, and thus the sharing of rents, under a bilaterally monopoly, is indeterminate. A seller will not sell for less than its variable costs of production and a buyer will not purchase at a price below its variable costs of production. Within that limitation, however, there is no way to determine what the price will be. In a bilateral monopoly the price that is established must be determined outside of the traditional method of supply and demand.

As Nobel-prize winning economist George Stigler noted, in a bilaterally monopoly price will be determined by such things as "*skill in negotiation; public opinion; coin flipping; a wise marriage. The difficulty in naming interesting examples of bilateral monopoly arises because it is such an unstable form of organization; only the trading between a monopsonist employer and an all inclusive labor organization is likely to survive as an example.*"[17]

Because of the bilateral monopoly problem, cooperatives with permanent linkage do not necessarily compensate the impact of rationalization for either vessel or plant owners. The value either sector will receive under such a program is unpredictable.

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[16] But for the fact they are established by government action, the creation of an individual fishing quota system that awards an exclusive "privilege" to utilize a specific percentage of the available harvest of a fishery is a clear violation of antitrust laws. Even under the antitrust exemption created by the Fishermen's Collective Bargaining Act (FCMA) of 1936, members of a FCMA cooperative would be in violation of antitrust laws if they attempted to exclude non-members from a particular fishery.

[17] George Stigler, *The Theory of Price*, 4th Edition, (Macmillan, 1987) p. 215.

Cooperatives that allow for a vessel owner to leave after first spending a period of time in open access create additional problems. There are a relatively small number of trawl vessels in the Central Gulf groundfish fisheries. Vessels that want to move to a new processor-affiliated cooperative could easily form a separate cooperative under the Fishermen's Collective Marketing Act (FCMA) of 1936 while in open access and retain their historical quota and thereby not have any additional costs for being in open access. It would allow a vessel to move from processor to processor without costs.

Even if a vessel were to be required to be in open access for a period of time without participating in a FCMA cooperative, the cost of doing so is quite low. After all, vessels currently have no option but to fish in open access and continue to do so.

If the cost of moving to a new cooperative is equal to the division of rent that is intended between vessels and plants, the cooperative with linkage would seem to achieve its purpose of compensating both sectors at a specific value. For example, if the intention was an equal division of the rents of a fishery between vessels and plants, and the cost of a vessel moving to a different cooperative was half of the value of the existing fishery, then it could be assumed that the rents from the fishery would be equally shared between plants and vessels.

Developing rules which control the movement of vessels between coops that are so precise so as to cause a specific division of rents between vessels and plants is impossible. Even if it were possible, the value of a fishery changes over time, so the costs of changing cooperatives relative to the value of a fishery would always be in flux. In short, it would not be possible to develop a cooperative structure with linkage that accurately divided the value of the fishery between vessels and plants without requiring a vessel that was moving cooperatives to "leave behind" with the processor a specific percentage of the quota associated with that vessel. If, for example, it was intended that vessels and plants share rents equally from the fishery, a cooperative structure that left behind fifty percent of the quota with the processor associated with a vessel (after that harvester switched cooperatives) would achieve this goal. It must be said, however, such a "leave behind" program is essentially the same as allocating quota directly and equally to both harvesters and processors.

2. Compensation to the community of Kodiak caused by rationalization.

a. <u>Allocations directly to the community</u>

Substantial capital investments in support of the existing derby fishery have been made by both the public and private sectors in Kodiak. These investments, in a process identical to that which causes devaluation of harvesting and processing physical capital, will lose value as a result of rationalization. No measurement has been made in the value of such affected investments. This is not an excuse to treat these losses as if they did not exist. Kodiak should be compensated. We believe the best way to do this is through a direct allocation of quota to the community.

b. Impacts caused by consolidation

The potential for consolidation in the Central Gulf pollock and cod fisheries is extreme. There must be caps placed on vessel and plant consolidation or the fishery could constrict to a handful of vessels and one or two processors.

Within those caps there will be consolidation, however. Even with expansion of the flatfish fisheries, the community of Kodiak will be impacted in ways difficult to precisely predict. The Council might consider a program which gives to Kodiak ten percent of the quota that is utilized by entities (vessels or plants) that were not initial recipients of that quota. If, for example, a vessel received an allocation of quota but sold that quota to another entity, ten percent of that quota would be given to Kodiak in a one-time transfer. If the initial quota recipient leased its quota for a year, the community of Kodiak would get ten percent of that leased quota for a year.

The impact of such a program would be to dampen consolidation as a buyer would pay for 100 percent of the quota but receive only ninety percent. In addition, it would compensate for costs the community would face as a result of consolidation.

3. Reduction of bycatch

a. Chinook salmon

Chinook salmon bycatch in the Central Gulf is a serious problem. Approximately 13,000 Chinook are taken annually. Because bycatch rates of chinook are about three times higher in the pollock than in the cod fishery, and because these fisheries are prosecuted by essentially the same participants, we recommend that the bycatch reduction program targets only the pollock fishery. The program we recommend would be based upon the 2009 FIP proposal for the Bering Sea.[18] This program would differ from the FIP in that it would use pollock quota, rather than an annual financial commitment from the industry.

We suggest that an amount of pollock TAC that is sufficient to reduce chinook bycatch in the cod and pollock fisheries by fifty percent, be allocated on an annual basis to pollock quota holders on the basis of their relative success at avoiding chinook. On the basis of data from an eight year program where one catcher-processor was incentivized to avoid chinook, *relative* to the rest of the fleet, we estimate that this could be accomplished with a Chinook Avoidance Quota (CAQ) of between ten percent and twenty percent of the pollock TAC. (See Attachment Six). This will impose significant costs on the industry. The reasonable assumption of a linear avoidance opportunity marginal cost function indicates that annual avoidance costs would be one half of the annual rental value of the CAQ. At the $100,000,000 estimate of the total value of the pollock quota, and an eight percent discount rate, we would expect that a ten percent CAQ would result in annual chinook avoidance expenditures of four hundred thousand dollars. Because half of the value of the CAQ will be

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[18] *Analysis of an Incentive-Based Chinook Salmon Bycatch Avoidance Proposal for the Bering Sea Pollock Fishery,* Kochin, Levis A., Riley, Christopher C., Kujundzic, Ana, Plesha, Joseph T., (2009). http://www.fakr.noaa.gov/npfmc/PDFdocuments/bycatch/SalmonAvoidProposal209.pdf

expended in Chinook avoidance, only half of the total amount of CAQ would be relevant in any calculation of compensatory allocations to the owners of fishing vessels.

b. Halibut

The anticipated issuance of a TBA that would occur in the rationalization process will reduce the bycatch rate of halibut and pollock fisheries.

4. Flatfish.

The flatfish fishery is not yet fully developed in that the harvests total a small fraction of the ABC. This fishery is constrained by halibut bycatch, not TAC. The rationale given in the case of the cod and pollock fisheries (lost in the value of capital), cannot be used to justify a transfer of quota to private entities. A fishery that is not more than about twenty percent developed is not, by definition, overcapitalized. The capital losses that are compensated under reactive rationalization cannot exist without overcapitalization.

There is no principle of economics or law that says that we must wait for a fishery to be overcapitalized before we can consider rationalization. Our convention of allowing fisheries to become overcapitalized prior to rationalization has cost society billions of dollars. We suggest that the council act to rationalize this fishery proactively by allocating quota to the entities that developed this fishery. The rationale for this allocation is the first once mentioned above. This is in exchange for the positive externalities generated in the development process. The development of the flatfish fishery consists of coming up with ways to catch this species while greatly reducing halibut bycatch rates. This will involve considerable investments in gear and experimental operational techniques. We propose that history would begin in the first year after council action on rationalization and end either the year before the first year the TAC is fully harvested in the individual species group, or 2020, whichever comes first. In a proactive rationalization, the distribution of quota should be specified in the final council action. We propose that forty percent of the utilization quota be allocated to both the harvesting and process sectors. The remaining twenty percent would be allocated to CAQ as chinook bycatch rates in the flatfish industry must be significantly reduced. The rationale for including processors as well as harvesters is that bycatch reduction is costly and a proactive rationalization of the fishery would cause a reduction in the ex-vessel price of fish, as a supply of flatfish would remain static. A processing sector that was competing for quota as well as ex-vessel fish would pay more, and would therefore share in the very real costs of developing the techniques and gear that will allow the industry to reduce bycatch rates and utilize this resource to its potential.

The Allocation of Individual Transferable Quotas to Investors in the Seafood Industry of the North Pacific

By Joseph T. Plesha & Christopher C. Riley

A. IMPACT OF PRIVATIZATION OF FISHERY RESOURCES ON INVESTORS IN THE INDUSTRY

1. Investments Made in the Open Access Fishery

During the 1980's the domestic seafood industry was strongly encouraged to invest in the groundfish fisheries of the North Pacific. Promotion of "Americanization" was accomplished through the Magnuson Act's preferential fishery allocation to the domestic industry, the "fish and chips" policy of fishery allocations to foreign nations, Federal government guaranteed loans and tax deferrals, and State of Alaska raw fish tax rebates. With this impetus, investments were made in an open access fishery management regime and the major groundfish species became fully utilized by the domestic seafood industry. The North Pacific Fishery Management Council is now considering privatizing the fishery resources off Alaska with implementation of an Individual Transferable Quota ("ITQ") system.

There are two basic types of investments made in the primary production of seafood; investments in harvesting capacity and investments in processing capacity.[1] To follow is a hypothetical example to help demonstrate some of the impacts an ITQ system will have on the existing investors in the open access fishery.

The first chart is a basic industry profile showing the hypothetical operating characteristics of each sector and the characteristics of the fishery they prosecute.

[1] Fish are highly perishable before being processed into a primary product. Investors in fishing vessels and primary processing capacity have made those investments based on the requirement that fish be handled quickly, i.e. these investors have invested in the "race to fish" caused by the open access fishery management regime. Investors in secondary processing of seafood, on the other hand, have not made their investments based upon the "race to fish" caused by open access. Secondary processors have not overcapitalized as a result of the existing management regime and will not be adversely impacted, therefore, by the privatization of fishery resources. Being that secondary processors are consumers of processed seafood, their investments may benefit if the utilization of fishery resources is increased through privatization.

Basic Production Profile

1.	*Fishing Vessels*	
	Vessel Cost	$5,000,000
	Annual Capital Cost	$500,000
	Annual Depreciation	$500,000
	Variable Cost ($/mt)	100
	Catch Rate (mt/day)	68.5
2.	*Processing Plants*	
	Plant Cost	$50,000,000
	Annual Capital Cost	$5,000,000
	Annual Depreciation	$5,000,000
	Variable Cost ($/round mt)	$100 (Excluding fish cost)
	Processing Rate (mt/round weight)	685
	Product value ($/round weight equivalent mt)	$400
3.	*Annual Harvest (mt)*	1,000,000

The fishing and processing operations shown above would reach an open access equilibrium in a 1,000,000 mt a year fishery with 100 fishing vessels delivering to 10 processing plants in a 146 day per year fishing season. The following table shows the operating characteristics of that open access fishery in an equilibrium condition.

Open Access Equilibrium Condition

1.	*Fishing Vessels — 100*	
	Income	
	1,000,000 mt harvest @ $200/mt	$200,000,000
	Costs	
	Variable Costs	$100,000,000
	Capital Cost	$50,000,000
	Depreciation	$50,000,000
	Total Cost	$200,000,000
	Net Revenue	$0
2.	*Processing Plants — 10*	
	Income	
	1,000,000 mt harvest @ $400/mt (round weight equivalent)	$400,000,000
	Costs	
	Fish Cost	$200,000,000
	Variable Processing Cost	$100,000,000
	Capital Costs	$50,000,000
	Depreciation	$50,000,000
	Total Cost	$400,000,000
	Net Revenue	$0

2. *Benefits of Privatizing Fishery Resources*

Under open access equilibrium, shown above, both sectors are covering all costs, yet neither sector is earning economic rent from the resource. (Note: Individual operators may, of course, be receiving quasi-rents because of their fishing skills, plant locations or marketing skills, etc..) From the viewpoint of society as a whole, the fishery may be utilized just as effectively by 40 vessels delivering to 4 processing plants, 365 days of the year. This would result in the elimination of 60% of the capital and depreciation costs, for an annual savings (over the open access equilibrium) of $120,000,000. The 1,000,000 metric ton fishery would generate, then, $120 per metric ton of economic rent.

Private Property Equilibrium Condition

1.	*Fishing Vessels — 40*	
	Income	
	1,000,000 mt harvest @ $140/mt	$140,000,000
	Costs	
	Variable Costs	$100,000,000
	Capital Cost	$20,000,000
	Depreciation	$20,000,000
	Total Cost	$140,000,000
	Net Revenue	$0
2.	*Processing Plants — 4*	
	Income	Income
	1,000,000 mt harvest @ $400/mt (round weight equivalent)	$400,000,000
	Costs	
	Fishing Rights	$120,000,000
	Fish Cost	$140,000,000
	Variable Processing Cost	$100,000,000
	Capital Costs	$20,000,000
	Depreciation	$20,000,000
	Total Cost	$400,000,000
	Net Revenue	$0
3	*Quota Holder Income*	$120,000,00

A comparison between open access equilibrium and private property equilibrium conditions show the benefit that is expected from fishery privatization. In an open access fishery, society receives $400,000,000 worth of fishery products in exchange for $400,000,000 worth of resources. In a private property fishery, society receives $400,000,000 worth of fishery products in exchange for $280,000,000 worth of resources. In the example above, all of the societal benefits are captured by the ITQ quota holders. (In reality, the government would impose a tax on at least a portion of those rents.)

3. *Impacts of Privatization on Existing Investments.*

The potential benefits of privatized fisheries have been frequently studied. There has been little serious examination, however, of the economic impacts on existing investments in the industry during the transition between open access and privatized fisheries. In a heavily overcapitalized fishery that is capital intensive, and where that capital is both relatively durable and specific to the fishery involved, the owners of that capital should expect significant losses during the transition between the open access and privatized fishery equilibrium conditions.

In this hypothetical example, I have assumed that the quota holders neither harvest nor process fish, but instead contract for these services separately. (The results would be the same, however, no matter which group held quota.) I also assume that there are no alternative uses for either the fishing vessels or the processing plants. While this may be very nearly true for pollock processing plants, fishing vessels may have some alternative uses, such that their opportunity cost more closely approaches the actual earnings they receive from fishing pollock.

A holder of quota would have to contract with a fishing vessel owner to have that quota harvested. Under open access equilibrium 100 boats delivered to 10 plants 1,000,000 mt of fish in a 146 day season. This would mean that immediately after the fishery is privatized, the fleet would be capable of harvesting at 2.5 times the rate necessary to harvest the quota. Under the initial privatization of the fishery, there would be two and one half boats competing for one fishing position. The fishing fleet would likely bid the price down from the average costs ($200/mt) to something very close to the variable cost ($100/mt).

The same is true for processing services. The oversupply of processing plants will cause this group to bid up the price of delivered fish to the point where it equals the value of the finished product minus the variable processing costs ($400 - $100 = $300/mt). The quota holder is therefore able to generate $200 in net revenue from each metric ton of fish, or approximately $80 per metric ton more than the quota holder will be able to generate when the fishery reaches the private property equilibrium state.

This $80 per metric ton is a transfer from the owners of the capital investments in the vessels and plants to the quota holders. In effect, immediately after the ITQ system is in place, the owners of quota receive, along with the fishing rights and the corresponding economic rent from the fishery, the right to use other people's property for free!

Open Access to Private Property Transition Period Disequilibrium

1.	*Fishing Vessels — 100 (Initially)*	
	Income	
	1,000,000 mt harvest @ $100/mt	$100,000,000
	Costs	
	Variable Costs	$100,000,000
	Capital Cost	$50,000,000
	Depreciation	$50,000,000
	Total Cost	$200,000,000
	Net Revenue	($100,000,000)
2.	*Processing Plants — 10 (Initially)*	
	Income	
	1,000,000 mt harvest @ $400/mt (round weight equivalent)	$400,000,000
	Costs	
	Fish Cost @ $100/mt	$100,000,000
	Fishing Rights @ $200/mt	$200,000,000
	Variable Processing Cost	$100,000,000
	Capital Costs	$50,000,000
	Depreciation	$50,000,000
	Total Cost	$500,000,000
	Net Revenue	($100,000,000)
3.	*Quota Holder Income*	$200,000,000

Investors in processing plants and fishing vessels will suffer enormous losses during the transition between open access and private property fisheries. These losses reflect the fact that they can no longer expect to receive any return on that portion of capital in excess of the amount "appropriate" for the fishery in question. They also cannot expect to receive any return on that portion of capital that is appropriate until such time as all the "excess" capital has either left the fishery for other employment or simply becomes worn out.

I have tried to quantify the loss that may be suffered by investors of capital in our hypothetical example. The loss to investors as a result of the change from an open access to a privatized fishery is estimated by taking the initial (open access) investment value, the portion of the capital that is appropriate for a privatized fishery and the point in time when the owners of the capital can expect to begin to receive a return on the "appropriate" portion of capital.

In the hypothetical example, the total value of investments under open access is assumed to be $1,000,000,000, and the portion of the capital that is appropriate to prosecute the resource in a private property fishery was assumed to be 40%. In order to estimate the time period after which investors can expect to begin to receive a return on the appropriate portion of capital, I assume that none of the capital leaves the fishery for other employment and that 10% of the original

capital is consumed each year. In that 60% of the capital is in "excess" of the appropriate amount needed to efficiently utilize the resource, the transition period from an open access equilibrium to a private property equilibrium is six years (if you assume 10% of the capital wearing out each year).

At a ten percent discount rate the $1,000,000,000 initial capital that vessel and plant owners invested in the open access fishery will have a net present value of only $225,789,972 when the fishery is privatized.[2]

B. NEED FOR ALLOCATIONS OF ITQ TO BOTH SECTORS OF THE INDUSTRY.

1. Rationale for Allocations to Investments Made in the Seafood Industry

The only reason for giving allocations of ITQ to participants in the seafood industry at all (as opposed to the general public) is as a reward for prior investments of capital in the open access fishery, or as compensation for the decreased value that capital investments will suffer when the fishery is privatized. With either rationale, however, there is no basis for awarding allocations of ITQ to investments in the harvesting sector and not the processing sector.[3]

In the above hypothetical example, investors of capital in an open access fishery lose over 75% of the value of their investments. Under the current proposals being examined by the North Pacific Council, investors in fishing vessels are compensated for this enormous loss by the receipt of ITQs. There is no reason why investors in processing capacity should not also be compensated for the loss in value of their investments.

2. Legal Considerations

The Magnuson Act states that in establishing a system for limiting access to the fishery the council and the Secretary must take into account the "present participation in the fishery" (16 USC §1853(b)(6)(A)). It is clear that this provision would require that the impact of any ITQ allocation on the processing sector also be considered before initial allocations are made. Congress would otherwise have stated that establishment of a limited access system need only consider participation by "fishing vessels" in the fishery, or some other more narrowly drawn requirement.

The Secretary of Commerce cannot be arbitrary and capricious in the awarding of ITQs. There is no rationale for allocating ITQs to investors in fishing capacity and not processing capacity. The one reason that has been expressed for allocating ITQs to only fishing vessel owners is that, under an open access system, the fish become "privatized" when they are first harvested. Therefore, the argument goes, ITQs should be initially allocated to the fishing vessel. This

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[2] NPV after privatization = $1,000,000,000 x 40% x $[1/(1+10\%)^6]$ = $225,789,972.

[3] Even an auction of the resource to the highest bidder would not compensate those who have invested capital in an open access fishery only to have the value of that investment greatly decreased through privatization.

argument is nonsense. Nothing further need be said than that the fishing vessel (or its owner) does not own the fish when they are harvested—the fishery permit holder owns the fish. Even in the case of factory trawlers, who process their own catch, technically the permit holder transfers ownership of the harvested fish to the vessel for processing. The permit holder typically has no ownership interest in the vessel, but instead is an employee of the owners of the vessel. Further, the initial distribution of ITQs allocate the economic rent from the fishery resources, not just fish. There is no argument which rationally would allow allocations of rent to one segment of capital investment in the industry, but exclude another sector of capital investment in the industry. It would be just as rational to give the allocation of ITQs to owners of red painted vessels only, instead of the owners of vessels painted any other color.

It has also been said that allocations of ITQ have been made only to fishing vessel owners because of political expediency or, more appropriately stated, because of some social benefits. There may arguably be social benefits from lifestyle fisheries where the vessel owner is the master of the vessel and there is a community infrastructure built around the skipper/owner returning home to his family after each fishing trip. But the groundfish fisheries of the North Pacific are different. The vast majority of the investments in groundfish fishing vessels (whether it be a factory trawler or inshore harvester) have been made by individuals who do not work on the vessels. Most of the capital that was invested in these fishing vessels was for the purpose of securing a potential return and was not invested as a means of assuring employment or a specific fishing lifestyle.

There is also a Fifth Amendment "taking" issue if the allocation of ITQs is given only to the owners of fishing vessels. It may seem odd to allege a taking when the government is creating private property from a common property resource; however, taking may result from non-acquisitive regulations. The State and Federal governments strongly encouraged investment in the processing sector, even to the extent of guaranteeing loans to build processing facilities. Clearly the economic impact of ITQs being allocated only to owners of fishing assets will be devastating to the value of processing plants in Alaska. Not only would the value of capital investments be diminished under an ITQ system, but a portion of the economic rent from that capital is appropriated by the recipients of the fishing quotas. There is not a wide variety of the public benefitted by the adoption of an ITQ system and, in fact, the beneficiaries are easily identified as the quota holders. The public good is not served in any apparent reason by giving the economic value of the resource to one sector while excluding another.

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92' trawler. 800 hp. Turn key. Cond. New survey. Too many extras to list. Ak drag. Serious buyers. PRICE REDUCED TO $195,000. (360)289-2050.

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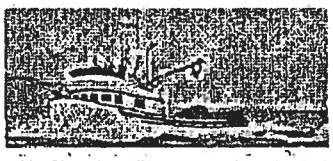
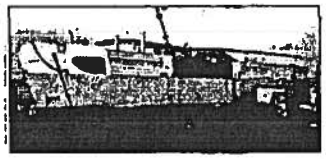


42' LeClerq 1979 fiberglass seiner, light colored interior, 6,000 hrs on GM871, excellent condition, roll chaulks, vang, stables, sea 222, 2 VHF, 2 CB, plotter, 2 depth, 36 Furuno, holds 45,000 lbs. $139,000 or trade. (360)375-6035.

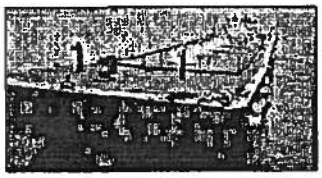
01-01-1996 BS JFXO22-1

LARGE REDUCTIONS

208' Ship Conversion. Out of service for 15 yrs however steel in excellent condition and engine preserved. Needs work to make sea ready or use as floating hotel, camp, etc. We will tow anywhere in the world at a reduced price. Over 300,000 spent! Sell now at scrap price! **Only $75000** Send $20 for video or call for brochure.



200' Fisherest processing plant. Over 3 million invested! Sell well below scrap. **$95,000 FIRM.** Call for brochure.



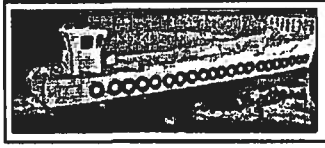
BUNKER "BARGE 11" 165'x40'x12'. Certified and just out of drydock! 10,722 bbls. fuel oil, 3335 bbls. clean diesel, (3) 10" Kenny Gear Pumps on 6-71 Detroits. Newly painted bottom, topsides, piping, everything! All valves rebuilt, PV valves rebuilt. New plating and framing installed. Market value $350,000. **Reduced to $245,000**

152'x25' Chinese Longline Packer. U.S. Marshall Seizage. 6 cylinder diesel Hanshin, 165 KW Yanmar, 165 KW Kubota. Needs cosmetic work and conversion but priced to sell! **Only $28,000**

40' x 90' Flexifloat Barge

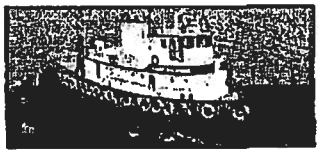
Heavy duty S-50 series. Newly painted & ready to ship. (5) 10x40, (3) 10x20, (4) 10x20 rakes. All refurbished & like new. Reduced from $175,000 to only $95,000 for quick sale.

32' x 110' Deck barge w/building. All steel in perfect condition! Complete interior and exterior sandblasted to white metal and epoxy coated approx. 4 yrs ago! Inside white and like new! (Navy spent over $200,000!) 3 available and priced to sell quickly. **Only $75,000 ea!**



56' LCM-8. Landing Craft. Refurbished w/new steel work. Twin 6-71's. Lots of extras! Reduced from 79,500 to only **$49,500!**

101'X28'X13' 1300 HP Ocean Tug "Marine Discoverer" Extensive $150,000 refit in 93! 6T hyd crane, 2nd winch added. 35,000 gal fuel, 2500 gal water. Too many upgrades to mention! Turnkey, ready to sail! Possible tow available with sale. Quick Sale! Reduced from $320,000 to $220,000!

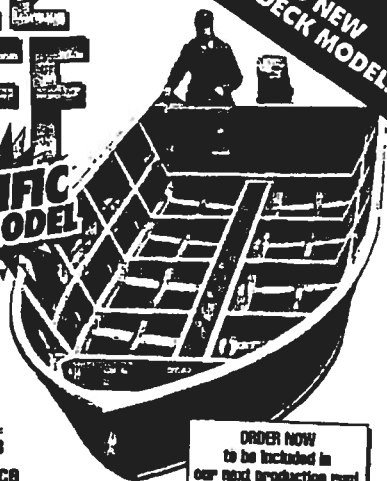


- 36' LCM-6 Pushboat Conversion. Hull only. With rubber. (Eng's available) .....ONLY $ 2,500 FIRM
- 40' F/G PL BOAT HULL ONLY (POWER AVAILABLE).....$ 2,500
- 40' Ex-Navy Utility Boat. 6-71 Detroit, Turnkey.....$ 12,500
- Refurbished Double Drum HT Winch. 4-71 Detroit 25000 SLP was $25K .....ONLY $ 17,500

WESTCOAST MARINE
PO Box 6170
Chula Vista, CA 91909
619-423-8379

NOW AVAILABLE IN A BRAND NEW SELF-BAILING DECK MODEL!

20'-22' SKIFF



- 7'6" beam
- All welded
- Inside tie rail
- 8' wide bottom
- 32" side height
- Tow pocket in bow
- Full height slopwell
- Binned compartments
- BIG 2 3/4" dia. gunwale
- Flotation compartments
- Interior non-skid surface
- .190 / 3/16" aluminum throughout

PACIFIC DS MODEL

ORDER NOW to be included in our next production run!

22' $5,995 • 20' $5,695

Steering Console Complete with Steering: add $385 • Self-Bailing Deck: add $1,800

QUALITY COMMERCIAL SKIFFS!

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PACIFIC SKIFFS, INC
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2423 N Street
Eureka, California 95501

CAPTAIN B.T. BESSELLIEU

REPORT OF SURVEY

Phone: (707) 442-4927

Date of inspection: August 26, 2008

Vessel [redacted] Construction steel

Home Port [redacted] Official No. [redacted] Tonnage, Gross 192 Net 131

Owner [redacted] Address [redacted]

HULL. TYPE oil screw/raked stem/square ster SERVICE crab/shrimp/mid-water/bottom fishing

Dimensions: Length 94.1' Beam 27.0' Depth 13.2' Mast/Boom steel kingpost mast/tri-stepped boom

Year Built 1987 at Bayou La Batre, Alabama Builder Johnson Shpyd Last Drydocked Aug. 2006

Description 104' LOA- after 2004 fire boat converted to a Whale Back design all welded steel hull with a single hard chine and full keel commercial fishing troller/trawler. Equipped with a 60 hp "Bow Thruster" tube mounted through fore/foot stem. The propeller is fitted with a "Kort Nozzle". Has a raised foredeck to back approximately one half length of boat. Has 31½"high double rung handrails both sides from stem to aft corner upper deck. Port-side has a five feet high by twelve feet long shelter deck equipped with 31½"high double rung handrails. Boat is equipped with 11"x 21"freeing ports commencing from aft house to stern. The forward fish hold has a 6"high steel coaming and a 88"x 92"opening with a fitted steel bolt down cover. Second fish hold further aft has same measurements with both having a Baier 17"x 26" deckplate built into centerline existing covers. There are twelve 17½"dia. Baier flush deckplates each side fish holds and one center-line aft. One 26"dia. Baier deckplate portside aft leading into lazaret.

Planking 5/16" steel bottom 3/8"steel Frames ½"x3"x4"steel angle Spaced 18"centers average

Deck 5/16"steel Beams ½"x3"x4"steel angle Spaced 18"centers average

Cabins and how ventilated aluminum dutch doors each side pilothouse facing aft-several 13"dia. four dog portholes about house-steel W'D aft maindeck house portside

Cabins/Pilot House: Location: FWD X Aft Amidships Material 3/16"steel

Deck House Layout one main deckhouse with enclosed pilothouse above-no flying bridge-central passageway with galley aft across-one single berth stateroom portside amidship-four berth stateroom stbd.side amidship-forecastle area cabin- stbd.side toilet/shower-

Galley Kenmore Classic electric grill/two burners oven stove-Kenmore upright 20 cu.ft. ref/freezer-large formica counter with nemerous builtin drawers/ cabinets etc.-large table with padded bench seats

No. berths in Forecastle 1 No. Berths in MAIN DECK House 5 Marine Toilet toilet/shower basin

FIRE EXTINGUISHERS: 5 lb Halon and 5 lb ABC pilothouse-10 lb ABC forcastle-10 lb ABC galley-10 lb ABC engine room-10 lb ABC in passageway-15 lb ABC engine room-20 lb CO2 and Fireboy automatic release/manual engine room

ENGINE ROOMS & PROPULSION MACHINERY: Main Engines Cummins V12-KTAL138 turbo H.P. 1200

Manufactured by: Cummins Engine Co. Fuel diesel Last Overhauled 2005

Age of Engine 10~~18~~ yrs Engine Cooling System keel coolers Engine Alarm yes

Engine Foundation ½" steel frame Fuel Consumption Per Hour est. 60 gals

Fuel Capacity 38,000 gals No. Tanks 4 Location two wngs/two stern Material steel

Fill Lines through deck fitting Vented to atmosp Shut Off Valves at tanks/manifold Fuel Lines steel to flex

Fresh Water Tanks one forepeak Capacity 428l gal Bilge Alarm yes Fire Alarm atomatic extinguishing

PUMPS: Manual Bilge Pumps - No. - Size - Electric Bilge Pumps - No. 4 Size see engine room

Power Bilge/Wash Down Pumps - No. Size see engine room

Auxiliary two John Deere 6 cyl TC diesel-one Cummins 6B drives Lima 40 KW gen.

Tail Shaft 6" SS Propellers: four blade bronze-72" Kaplan(Kort Nozzle) Rudder steel Speed in Miles 12 K

ELECTRICAL SYSTEM: 12/24/110/220V-three8V/4D-four 12V/8D batteries all stowed in acid proof trays well above bilge Overload Protection circuit breakers with dial master shut off's

Wiring Type plastic marine insulated in conduit all circuits equipped with breaker panels Exhaust Stack & Stove Pipe Clear of wood work? insulation wrapped-all auxiliary's piped out main exhaust

PAGE 2

ELECTRONICS & SPECIAL EQUIPMENT:

Auto Pilot: Two-Simrad's AP50's
Fathometer: Furuno 1200 Video Sounder
Loran: Furuno LC 90
Direction Finder: Two-Furuno GPS GP 30
Radio: Two-Furuno 1408 SSB
Gurdies: none
Radar: Furuno 2117/96 mile range
Power Block: yes/hyd.-not onboard time of survey
C.B. Radio: Ranger 1510 MK 3
Refrigeration: Chill Sea Water
Anchor Gear/Deck Machinery hyd. anchor winch-1,000 lb. anchor-20 fm. 1"chain-100 fms. 1"wire-steel anchor fairlead/roller stem

Person Representing vessel during survey: [redacted]
Engine running during survey no
Engine Hours 10,600
Vessels cruising range relative to fuel capacity estimated 26 days
Were recommendations explained to owner/representative? none required
Vessels running lights - comply with USCG Regulations? yes
Time limit for compliance with recommendations none required
Was owner/representative given copy of recommendations? none required
Fire fighting equipment comply with N.F.P.A. 302 standards? yes
No. Crew [redacted]
Requested by owner
Surveyed afloat
at [redacted].
Waters navigated Pacific Coast/Alaska out 250 miles
Operator's Experience [redacted]
Estimated Replacement Value $ 2,200,000/2,400,000
Estimated Present Market Value $ $ 1,450,000/1,550,000

Remarks, Defects or Recommendations are listed on attached sheet if required.

ADDITIONAL ELECTRONICS

1-Second Radar-Furuno 2117/96 mile range
2-Motorola Cellular Telephone
3-VHF radio-Ross DSC 500 transceiver
4-VHF radio-ICOM IC 228H "
5-VHF radio-ICOM IC 229H "
6-Two-RDI Bridge Watch
7-Furuno 1100 Video Sounder
8-Two Furuno Simrad FS 20 Net Sounders
9-Two-Sonars-one CH 250 and CH 37
10-Two-Dell Computers drives LC wind Plot Simrad Olex
11-Furuno Weather Fax 208
12-Mitsubishi Tag Satellite Phone

Surveyor

PILOTHOUSE LAYOUT: formica console across forward with center section running aft 44"-entire counter console has electronics mounted atop with storage cabinets beneath-padded captain swivel chair each side-8"dia. Ritchie dome liquid compass-20"dia. wood spoked steering wheel-Morse shift/speed controls-Simrad lever steering-Bow Thruster lever control portside console-large console across aft with cabinets beneath-overhead chart desk starboard side and chart storage bin overhead portside-Morse speed/shift controls portside-access to galley centerline aft-entire area finished in white formica and composition covering deck

FISH HOLDS: both rigged for Chill Sea Water-also both holds fully insulated covered with fiberglas-steel stanchions and aluminum bin boards-both have screened sumps

STEERING: double ram hydraulic steering with backup electric

HEATING: several wall heaters throughout deckhouse made by Dayton

ELECTRICAL PANELS: all are either General Electric/AB or Cutler Hammer

EXTERIOR WORK LIGHTS: four 1,000W Quartz mounted gantry with two facing aft and two facing forward
three 1,500W Sodium Vapor mounted booms facing deck
four 1,500W Sodium Vapor mounted crosstree facing forward
two 1,500W Sodium Vapor mounted crosstree facing aft

k. 15hp AC hydraulic steering unit
l. hot water heater
m. 1½ hp air compressor - hand and power tools
n. pilothouse has one bunk
o. lazaret has foam insulation withe side and bottom fiberglassed
p. access to forecastle cabin is through raised aluminum WTD
q. day tank alarms and Video Monitor System

COMMENTS

This examination has been made without making removals or opening up to expose parts ordinarily concealed, or testing for tightness and is subject to any conditions which would have been revealed, if such procedures had been accomplished further, no determination of stability characteristics or inherent structural integrity has been made, and no opinion is expressed with respect thereto. General maintenance and upkeep is considered well above average. Survey was made without prejudice and for the benefit of whom it may concern.

RECOMMENDATIONS
none at this time

SAFETY EQUIPMENT: Elliot 6 man canister liferaft mounted atop house clear of rigging- (next repack date Nov. 2008)- Koden EPIRB 406 mounted atop house-(battery expires Nov. 2008)-(hydrostatic release expires Nov. 2008)- hand held locate/alert flares all expire 2011- five Imperial exposure suits all have lights and reflector tape-four 24"dia. liferings with two having 90 feet line attached-ample First Aid Kit and manual- four lifejackets-Todd Whaley has a CPR/FIRST AID/ SAFETY Certificate

SPECIAL NOTE: reported that the boat will be going on drydock in [redacted].
A diver recently checked the bottom and found all zincs over 80% good.

SIMRAD E-S-60 COST W/INSTALLATION 70,000.00
AUG OF 2010
ALL DECK EQUIPMENT SETTING ON 3/4 PLATE
LAST 20 FT OF BULLWARKS 1/2 PLATE IN STERN

MAINDECK HOUSE LAYOUT: central passageway-galley forward across with cooking center starboard side-seating/large table portside-directly aft seating is a athartship storage locker-furter aft is a single berth stateroom-well aft is a alcove into access ladder into engine room and afterdeck-Kenmore 23 cu. ft.chest freezer setting in alcove-starboard side amidship is a four berth stateroom-well aft is a wood door leading into toilet/shower/wash basin- all rooms off passageway have wood doors-area finished in white formica-deck composition covering- en-tire deckhouse is said to have from 2 to 4" foam insulation-stowed in toilet area is a Westinghouse Washer/Dryer stacked

AFTERDECK DECK LAYOUT: from even aft corner house house to stern the solid steel bulwarks is 38"high with partway across stern is a 8 foot wide stern ramp-two independant hydraulic net reels mounted over stern ramp-12"x12" tri-steelstanchions and a 12"x 12" boxed steel gantry across top with one 18"dia. steel block shackled each wing of gantry so as to suspend the steel drag doors-a third hydraulic net reel mounted centerline maindeck-one hydraulic drag winch mounted atop upper deck each side with each containing 1200fms of 7/8"wire-four hydraulic lift winches mounted upper deck- two 25,0001b Pullmaster and two 12,000 Pulmaster- Hydro Star Piston motors-Spinbord motor-6"high wood deck gradings and 22"high wood checkers set in steel stanchions welded to deck evenly spaced- steel outriggers

ENGINE ROOM:
a. Twin Disc 540/5:1 hydraulic reduction gear main engine
b. cooling water tank with a Murphy low level water alarm
c. Lewco 12V Constavolt and a Lewco 24V Constavolt
d. two 6"dia. centrifugal bilge pumps driven by a Baldor 15hp electric motors-connected to Thermolmatic Marine Refrigeration Chill Sea Water Thermal-Tec unit with a 95hp Compresser and Teco 3 phrase 60hp electric motor this unit chills sea water 28 degrees F (2 degrees C) or brine to 0 degrees F (18 degrees C)-high flow rate and rapid heat transfer Chills Sea Water quickly-there arethree 12"dia. by 8 feet long pipes mounted aft engine room across bulkhead plus additional piping
e. two Flomax 1 3/4"bilg pumps driven by two Baldor electric motors
f. one 2" centrifugal pump driven by a Baldor 3hp motor
g. one 3" Flomax pump driven by a 7½hp motor
h. Con Tech Power System panel 208 volts
i. Twin Disc Power Take Off forward engine drives three 60 gal each Vickers pumps
j. one steel hydraulic reserve tank 754 gals
k. one steel lube oil reserve tank 260 gals
l. Grunfos fresh water pump
m. 1½"x2" condenser pump with spare
n. engine room vented doors
o. Racor fuel filter system

AUXLIARY'S: John Deere 5.9 drives 90 KW 3 phrase 120/208 generator
John Deere 6.8 drives 112Kw 3 phrase 120/208 generator
Cummins 6B drives 60Kw 3 phrase 120/208 generator

MISCELLANEOUS:
a. 25hp electric motor drives third winch
b. 60hp AC poweredCarrier refrigeration compressor
c. boat has a "STABILITY REPORT" by Bruce Colver dated 2004
d. Wesfalia fuel/water Separator mounted portside engine room
e. all auxiliary's are equipped with cooling water tanks and Murphy low level water alarms
f. boat equipped with a 100 gal holding tank
g. equipped with alarms on all four water tight compart- ments
h. two each 6hp air compressor's-vice and drill press
i. AC gas welding equipment
j. 25hp outboard engine and inflatable boat

	Vessel Name	MLOA	Vessel Owner	AFA IFQ Shorebased (MT)	AFA IFQ Shorebased Value	AFA IFQ Mothership (MT)	AFA IFQ Mothership Value	Bering Sea R. King Crab Pounds	Bering Sea R. King Crab Value	Bering Sea Snow Crab (Lbs)	Bering Sea Snow Crab Value	Rockfish IFQ Shorebased (Lbs)	Rockfish IFQ Shorebased Value	Whiting IFQ Shorebased (MT)	Whiting IFQ Shorebased Value	Whiting IFQ Mothership (MT)	Whiting IFQ Mothership Value	Non-Whiting Groundfish (Lbs)	Non-Whiting Groundfish IFQ Value	Total Quota Value	
1	Bay Islander	92	Bay Islander Fisheries, Inc.	0	$0	0	$0	0	$0	0	$0	321,371	$429,350	2,060	$1,930,158	198	$196,566	320,660	$566,952	$3,123,025	1
2	Cape Kiwanda	91	B&N Fisheries, Inc.	1,239	$2,353,872	0	$0	0	$0	0	$0	923,168	$1,233,351	0	$0	0	$0	0	$0	$3,587,222	2
3	Caravelle	102	Golden West Fisheries, Inc.	0	$0	0	$0	0	$0	0	$0	1,011,365	$1,351,181	0	$0	0	$0	0	$0	$1,351,181	3
4	Chelilssa	116	Chelissa Fisheries, LLC	0	$0	0	$0	0	$0	0	$0	334,555	$446,964	1,190	$1,114,888	0	$0	419,522	$702,725	$2,264,577	4
5	Collier Brothers	108	James Schones	642	$1,219,701	0	$0	0	$0	0	$0	792,233	$1,058,422	1,032	$967,008	0	$0	259,083	$404,921	$3,650,052	5
6	Dawn	103	Burch Brothers Fishing, LLC	0	$0	0	$0	0	$0	0	$0	699,767	$934,887	0	$0	0	$0	0	$0	$934,887	6
7	Dusk	103	Burch Brothers Fishing, LLC	0	$0	0	$0	0	$0	0	$0	1,088,852	$1,454,704	0	$0	0	$0	0	$0	$1,454,704	7
8	Elizabeth F	108	Elizabeth F, Inc.	1,684	$3,200,261	0	$0	18,014	$705,518	0	$0	1,038,001	$1,386,767	0	$0	0	$0	0	$0	$5,292,547	8
9	Excalibur II	92	Excalibur II, LLC	2,922	$5,551,840	0	$0	0	$0	0	$0	1,067,019	$1,425,534	0	$0	0	$0	0	$0	$6,977,375	9
10	Gold Rush	112	F/V Gold Rush Fisheries LLC	2,222	$4,221,493	0	$0	0	$0	0	$0	1,278,803	$1,708,478	0	$0	0	$0	0	$0	$5,929,971	10
11	Hazel Lorraine	107	Trident Seafoods Corp.	2,098	$3,985,792	0	$0	0	$0	0	$0	592,753	$791,917	0	$0	0	$0	0	$0	$4,777,709	11
12	Hickory Wind	109	Evening Star, Inc.	1,500	$2,849,867	0	$0	0	$0	0	$0	1,174,146	$1,568,657	0	$0	0	$0	0	$0	$4,418,524	12
13	Laura	112	Laura Fisheries Joint Venture	0	$0	0	$0	0	$0	0	$0	1,682,432	$2,247,725	0	$0	0	$0	0	$0	$2,247,725	13
14	Leslie Lee	108	Leslie Lee, Inc.	0	$0	0	$0	0	$0	0	$0	771,035	$1,030,101	47	$43,721	1,614	$1,600,939	884,036	$1,236,438	$3,911,198	14
15	Lisa Melinda	97	Lisa Melinda Fisheries, Inc.	1,158	$2,199,286	0	$0	0	$0	0	$0	0	$0	2,413	$2,261,281	1,775	$1,760,526	272,299	$407,188	$6,628,282	15
16	Mar Del Norte	103	Mar Del Norte, Inc	0	$0	0	$0	0	$0	0	$0	985,559	$1,316,704	0	$0	0	$0	0	$0	$1,316,704	16
17	Mar Pacifico	115	Mar Pacifico, Inc	0	$0	0	$0	0	$0	0	$0	1,472,621	$1,967,418	0	$0	0	$0	0	$0	$1,967,418	17
18	Marathon	92	Marathon Fisheries, Inc.	0	$0	0	$0	0	$0	0	$0	1,343,298	$1,794,643	522	$489,290	1,924	$1,908,437	254,149	$397,690	$4,590,061	18
19	Marcy J	116	Marcy J, Inc	971	$1,845,427	0	$0	13,913	$544,903	98,654	$1,066,704	1,327,135	$1,773,049	0	$0	0	$0	0	$0	$5,230,083	19
20	Michelle Renee	114	Black Sea Fisheries, Inc.	0	$0	0	$0	0	$0	0	$0	2,952,496	$3,944,527	0	$0	0	$0	0	$0	$3,944,527	20
21	Miss Sarah	124	Todd Whaley	0	$0	0	$0	0	$0	0	$0	0	$0	2,523	$2,363,511	408	$404,808	279,744	$839,232	$3,607,551	21
22	New Life	82	New Life Fisheries, Inc	0	$0	0	$0	0	$0	0	$0	729,273	$974,307	699	$655,173	59	$58,775	283,099	$504,062	$2,192,318	22
23	Pacific Ram	92	Trident Seafoods Corp.	1,098	$2,086,740	0	$0	0	$0	0	$0	112,224	$149,931	2,082	$1,950,732	474	$469,811	241,132	$366,198	$5,023,412	23
24	Peggy Jo	119	B&N Fisheries Company	1,793	$3,406,510	0	$0	0	$0	0	$0	2,402,994	$3,210,394	0	$0	0	$0	0	$0	$6,616,904	24
25	Progress	124	Progress Fishing LLC et al	5,464	$10,381,040	0	$0	0	$0	0	$0	651,370	$870,229	0	$0	0	$0	0	$0	$11,251,268	25
26	Sea Mac	96	Sea Mac Seafoods LLC	0	$0	0	$0	0	$0	0	$0	334,555	$446,964	0	$0	0	$0	0	$0	$446,964	26
27	Stella	72	Loughberg Fisheries, Inc.	0	$0	0	$0	0	$0	0	$0	1,003,659	$1,340,887	0	$0	0	$0	0	$0	$1,340,887	27
28	Topaz	96	Chandler Fisheries, Inc.	361	$686,286	0	$0	0	$0	0	$0	1,611,693	$2,153,218	0	$0	0	$0	0	$0	$2,839,504	28
29	Vanguard	113	Futura Fisheries, Inc.	305	$579,997	5,778	$12,422,700	0	$0	0	$0	988,217	$1,320,255	0	$0	0	$0	0	$0	$14,322,952	29
30	Walter N	114	Elizabeth F, Inc	1,762	$3,347,151	0	$0	0	$0	0	$0	770,322	$1,029,149	0	$0	0	$0	0	$0	$4,376,300	30

Ave. Length = 104

Total $125,615,831

Average $4,187,194

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic & Atmospheric Administration
Office of General Counsel
P.O. Box - 21109
Juneau, Alaska 99802-1109
Telephone (907) 586-7414

EIS/RIR/IRFA Comments DECEMBER 2016

DATE: February 24, 1995

MEMORANDUM FOR: North Pacific Fishery Management Council

FROM: Lisa L. Lindeman
Alaska Regional Counsel

SUBJECT: Due Process and the Harvest Priority Proposal

This responds to the North Pacific Fishery Management Council's request for a legal review of the due process aspects of the Harvest Priority Proposal (HPP) currently under consideration.

Under the HPP, the total allowable catch (TAC) in certain fisheries would be initially allocated between an open access TAC and a TAC that could be harvested only by vessels participating in a limited entry program. The HPP would set maximum acceptable bycatch rates for the open entry fisheries. The eligibility criteria for participation in the limited entry program would be a vessel's bycatch performance in the previous open entry fishery. A vessel failing to meet the bycatch standards would be excluded from the follow-up "reward" fishery either in the same or following year. Specifically, you have asked whether a vessel receiving an adverse initial determination, and whose owner administratively appeals that determination, can be excluded from a "reward" fishery prior to completion of an administrative hearing.

Summary

It is clear that a vessel that fails to meet bycatch standards cannot be excluded from any subsequent "reward" fishery until the vessel owner has first been given the right to an administrative hearing. As cases involving bycatch standards inevitably involve complex factual determinations, the hearings that will be required will just as inevitably be adversarial in which the appellants will have the right to dispute the government's case through presentation of their own evidence and arguments, and the right to confront and cross-examine adverse witnesses. The period of time

between the date of violation and final agency action can be best estimated by reference to the agency's experience under the existing Vessel Incentive Program (VIP). The most optimistic estimate that can be made is that the process will take approximately two to three years; in some cases, longer.

Discussion

Procedural Due Process

"Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." Mathews v. Eldridge, 424 U.S. 319, 332 (1976). See also, Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 538 n. 3 (1985); Cassim v. Bowen, 824 F.2d 791, 796 (9th Cir. 1987). Licenses to pursue one's livelihood are clearly a "property" interest within the meaning of due process. See e.g., Barry v. Barchi, 443 U.S. 55, 64 (1979); Chalkboard, Inc. v. Brandt, 902 F.2d 1375, 1380 (9th Cir. 1989); Atlantic Richfield v. U.S., 774 F.2d 1193, 1202-1203 n. 39 (DC Cir. 1985). Although the legislative act of creating such a right is a matter of legislative grace, once created, it becomes a "property" interest protected by procedural due process. Cleveland Bd. of Educ. v. Loudermill, supra at 538; Hornsby v. Allen, 326 F.2d 605, 608 (5th Cir. 1964). The fact that the statutory right thus created can be termed a "privilege" is irrelevant. Goldberg v. Kelly, 397 U.S. 254, 262 (1970); Hornsby v. Allen, supra at 609. The protections of procedural due process are not only applicable to existing licenses (Chalkboard, Inc. v. Brandt, supra; Atlantic Richfield v. U.S., supra), but to the adjudication of initial eligibility for such licenses as well. Hornsby v. Allen, supra at 610.

The courts are unequivocal about the right to a hearing of some sort prior to adverse government action affecting a "property right" (such as the ability to pursue one's occupation). Cleveland Bd. of Educ. v. Loudermill, supra at 542; Mathews v. Eldridge, supra at 333; Goldberg v. Kelly, supra at 267; Goldsmith v. U.S. Bd. of Tax Appeals, 270 U.S. 117, 123 (1926); Lipke v. Lederer, 259 U.S. 557, 562 (1922); Chalkboard, Inc. v. Brandt, supra at 1380; Cassim v. Bowen, supra at 797; Hornsby v. Allen, supra at 608. The absolute right to a hearing is in no way dependent upon a showing of probable success. Cleveland Bd. of Educ. v. Loudermill, supra at 544.

Procedural due process is a flexible concept (Mathews v. Eldridge, supra at 334; Goldberg v. Kelly, supra at 262-263), and has been described as follows:

> An essential principle of due process is that a deprivation of life, liberty, or property 'be preceded by notice and opportunity for hearing appropriate to the nature of the case.'

Chalkboard, Inc. v. Brandt, supra at 1380. See also, Cleveland Bd. of Educ. v. Loudermill, supra at 546; Cassim v. Bowen, supra at 797. The only issue, therefore, is the sort of pre-deprivation hearing that will be deemed appropriate in any given situation. At a minimum, procedural due process requires a pre-deprivation procedure that involves notice of the evidence that forms the basis of the government's case against the individual and an opportunity for that individual to respond in a meaningful way to that evidence (e.g., in person or by written submission). Cleveland Bd. of Educ. v. Loudermill, supra at 546; Goldberg v. Kelly, supra at 268 n. 15. In some circumstances, depending upon the nature of the inquiry at hand, the right to respond to the evidence will include a right to refute the government's evidence by oral presentation of the appellant's own arguments and evidence and to confront and cross-examine adverse witnesses at a pre-deprivation adversarial hearing. Goldberg v. Kelly, supra at 267-268.

The Supreme Court has developed a three-part test to determine the nature of the pre-deprivation hearing that will be deemed appropriate in any given situation.

> [O]ur prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. Eldridge, supra at 334-335. See also, Cleveland Bd. of Educ. v. Loudermill, supra at 542-543; Chalkboard, Inc. v. Brandt, supra at 1380; Cassim v. Bowen, supra at 797.

The private interest discussed in most of the cases cited above involved the individual appellant's interest in a continuing source of income during the pendency of the appeal.

> "[T]he significance of the private interest in retaining employment cannot be gainsaid. We have frequently recognized the severity of depriving a person of the means of livelihood.

Cleveland Bd. of Educ. v. Loudermill, supra at 543. See also, Mathews v. Eldridge, supra at 341; Chalkboard, Inc. v. Brandt, supra at 1381. In only one case, that of welfare recipients, was this sort of private interest deemed to be so compelling as to require a full pre-deprivation adversarial hearing. Goldberg v. Kelly, supra. For our purposes, however, it is important to note that in each of the cases that allowed something less than a pre-deprivation adversarial hearing, the agency had the ability to fully compensate any appellant who was ultimately successful - usually through back payments. Thus, the private interest involved was never the risk of a potential loss of benefits altogether, but merely that of going without such benefits during the pendency of the appeal. In the HPP, loss of participation in the "reward" fishery cannot be recouped at some later date should an appeal of the agency's initial determination prove successful. Compensation cannot be made for the lost fishing opportunities in a fishery from which a vessel has been wrongfully excluded. It seems likely, therefore, that the private interest involved under the HPP will require a pre-deprivation adversarial hearing.

The second element of the Mathews test, that of the risk of erroneous deprivation, is of great concern under the HPP. This risk is clearly to be measured in the context of the nature of the evidence under consideration by the agency. Mathews v. Eldridge, supra at 345. It has been analyzed as whether the agency can establish probable cause under the procedures in use. Barry v. Barchi, supra at 66; Bell v. Burson, 402 U.S. 535, 540 (1971). In cases in which the courts have upheld agency procedures that provided something less than a pre-deprivation adversarial hearing, there has either been no factual dispute at all (Codd v. Velger, 429 U.S. 624, 627 (1977); Atlantic Richfield Co. v. U.S., supra at 1203), or the "factual issue to be determined was susceptible of reasonably precise measurement by external standards" (Chalkboard, Inc. v. Brandt, supra at 1381) such as the findings of medical experts. Barry v. Barchi, supra at 65; Cassim v. Bowen, supra at 798 n. 3. Where factual disputes are not susceptible to reasonably precise measurement by external standards, especially where the factual disputes involve "issues of witness credibility and veracity," the risk of erroneous deprivation of constitutionally protected property interests is deemed too high and a pre-

deprivation adversarial hearing is required. Chalkboard, Inc. v. Brandt, supra at 1381. Given the fact that the HPP is based upon factual determinations made by at-sea observers, the accuracy and competence of which will inevitably be the central issue in any appeal of adverse determinations, it seems very likely that the courts will require an adversarial hearing prior to exclusion from any "reward" fishery.

Finally, it is doubtful that the government's interest in avoiding the fiscal and administrative burdens involved in providing appellants under the HPP with adversarial hearings prior to their exclusion from any subsequent "reward" fishery will outweigh either the private interests of the appellants or the risk of erroneous deprivation of those interests, as discussed above. This is especially true in light of the fact that under the existing VIP, this is precisely what the agency is now providing.

Penal Aspects of the HPP

Under the VIP, owners/operators of offending vessels have been subject to substantial civil penalties pursuant to section 308 of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1858. Under the HPP, vessels failing to meet the bycatch standards would be excluded from participating in the follow-up "reward" fishery, either in the same or following year. Much has been made of the supposed difference between the HPP and VIP; that is, that unlike the VIP, the HPP is not "penal" because it does not seek to penalize those who do not meet the bycatch standards, but rather, seeks to "reward" those who do. From a due process/Administrative Procedure Act (APA) perspective, this is a distinction without a difference. The due process/APA rights to a prior hearing at issue in such a program are not the rights of those who get to participate in the "reward" fishery, but are, rather, the rights of those who are excluded from the fishery. For those excluded, the follow-up fishery is not a "reward:" it is a "sanction."[1] Their exclusion from it based upon an agency determination that they have not met the bycatch standards applicable in a previous fishery is

[1] The APA definition of "sanction' provides in pertinent part that a "'sanction' includes the whole or part of an agency--...(F) requirement, revocation, or suspension of a license; or (G) taking other compulsory or restrictive action." 5 U.S.C. 551(10).

just as "penal"[2] as the imposition of civil penalties for the same transgressions under the VIP.

A clear understanding that the "reward" fishery provisions of the HPP are in fact "penal" and constitute a "sanction" leads to certain inevitable results under due process, the APA, and the Magnuson Act (and its implementing regulations).

Procedural Due Process As Applied

There is a further constitutional problem with excluding appellants from participation in a "reward" fishery under the HPP prior to opportunity for an adversarial hearing. Even when the courts uphold an agency procedure providing something less than a full pre-deprivation adversarial hearing as facially valid, that same procedure can be violative of procedural due process as applied to the individual facts of the case if the agency does not provide a prompt post-deprivation hearing.

> The Due Process Clause requires provision of a hearing 'at a meaningful time.' At some point, a delay in the post-termination hearing would become a constitutional violation.

Cleveland Bd. of Educ. v. Loudermill, supra at 547.

> The general rule is that the less the predeprivation process, the greater must be the post-deprivation process.

Cassim v. Bowen, supra at 798.

In situations where imposition of a "penalty" is involved, the issue of a prompt post-deprivation hearing can be of particular importance. The leading case in this area is Barry v. Barchi, supra, which stands for the proposition that if the post-deprivation hearing does not occur before the appellant suffers a "penalty" in its entirety, the procedure is violative of due process. In Barry, even though the State held its post-deprivation hearings fairly promptly, because the penalty imposed (suspension of horse trainer for 15 days) was so short,

> ...it is as likely as not that Barchi and others

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[2] It has been asked how the HPP differs from the appeals process for the halibut and sablefish ITQ program. The answer is that the latter is not "penal."

> subject to relatively brief suspensions would have no opportunity to put the State to its proof until they have suffered the full penalty imposed.

Barry v. Barchi, supra at 66. See also, Lipke v. Lederer, supra at 561-62. Given the agency's experience under the existing VIP, it will almost certainly prove impossible to provide appellants a post-deprivation hearing within a year of the violation (i.e., prior to completion of the follow-up "reward" fishery). Thus, even in the unlikely event that the practice of excluding offending vessels from a "reward" fishery held the same or next year survives facial due process examination, it probably will be held violative of due process as applied.

Administrative Procedure Act

Because the "reward" fishery exclusion provision of the HPP will almost certainly be viewed as a "sanction" of an existing fishing license, provisions of the APA also will require an administrative hearing prior to such exclusion.

Section 9(b) of the APA, provides in pertinent part:

> ...Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given --
>
> > (1) notice by the agency in writing of the facts or conduct which may warrant the action; and
> >
> > (2) opportunity to demonstrate or achieve compliance with all lawful requirements.

5 U.S.C. 558(c) (emphasis added). It seems clear that a fishing permit issued pursuant to the Magnuson Act is a "license," and that its suspension or revocation under the HPP with regard to the "reward" fishery is both an act of "licensing" by the agency and a "sanction" within the meaning of the APA. See definitions at 5 U.S.C. 551(8), (9), and (10).[3] The courts have interpreted the

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[3] 5 U.S.C. 551(8) provides that a "'license' includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other

definition of license included in the APA very broadly. Pan-Atlantic Steamship Corp. v. ATL Coast Line, 353 U.S. 436, 438-439 (1957); Air North America v. DOT, 937 F.2d 1427, 1437 (9th Cir. 1991); Atlantic Richfield Co. v. U.S., supra at 1200. The courts also have construed the prior hearing exceptions very narrowly, and have confined their application to "...unusual, emergency, situations." Air North America v. DOT, supra at 1437, n. 8. In considering the provisions discussed, above, one court has stated:

> A paraphrase of the provision taken as a whole might read 'before an agency can institute proceedings to withdraw, revoke, etc., an existing license, it must provide the licensee with notice in writing of the offending conduct and a hearing at which the licensee can refute the charges.'

Bankers Life & Cas. Co. v. Callaway, 530 F.2d 625, 635 (5th Cir. 1976), reh. den. 536 F.2d 1387, cert. den. 429 U.S. 1073.

Magnuson Act/Regulations

Finally, the Magnuson Act, and the agency's existing procedural regulations, also will require that an administrative hearing be provided prior to exclusion from any "reward" fishery held pursuant to the HPP.

Under the provisions of the Magnuson Act, those who commit acts prohibited by the Act or its implementing regulations (see 16 U.S.C. 1857) can be subjected to any of four sanctions: 1) civil penalties pursuant to section 308 (16 U.S.C. 1858); 2) permit sanctions, also under section 308; 3) criminal prosecutions pursuant to section 309 (16 U.S.C. 1859); and 4) civil forfeitures pursuant to section 310 (16 U.S.C. 1860). These are the only sanctions expressly provided by the language of the Act.

The Supreme Court has held that "'...penal statutes are to be construed strictly'... and that one 'is not to be subjected to a

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form of permission."

5 U.S.C. 551(9) provides that "'licensing' includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license." (Emphasis added).

See note 1, supra, for definition of "sanction."

penalty unless the words of the statute plainly impose it'" [citations omitted]. I.R.S. v. Acker, 361 U.S. 87, 91 (1959). See also, Key Bank of Washington v. Concepcion, 847 F. Supp. 844, 848 (W.D. Wash 1994); section 9(a) of the APA, 5 U.S.C. 558(b).

Applying this rule of statutory construction to an analysis of the sanction proposed in the HPP, it seems clear that unless the exclusion of a vessel from the "reward" fishery can be termed a permit sanction, any attempt to enact the HPP pursuant to the Magnuson Act will be ultra vires and thus illegal.

Assuming, therefore, that the sanction proposed in the HPP is in fact in the nature of a permit sanction, existing agency regulations very clearly lay out the procedural requirements that must be met before such a sanction can be made effective. See 15 CFR 904, Subpart D. The individual against whom a permit sanction is sought has a right to a hearing before an Administrative Law Judge (ALJ). 15 CFR 904.304(a). Although upon application to the ALJ, the agency may seek to have the permit sanction effective on an interim basis during the pendency of the litigation, the standards to be met for such an action are very stringent and are not likely to be met in the context of the HPP. 15 CFR 904.322.[4]

Thus, one cannot assume that the agency will be able to exclude an individual vessel from any subsequent fishery until the offense has been investigated by the National Marine Fisheries Service (NMFS) Enforcement Division, then prosecuted by NOAA General Counsel. Such prosecution will not be final, and the permit sanction thus not effective, until "final agency action;" that is (assuming that the agency's determination is appealed), until the ALJ has rendered his decision.[5] Under present staffing levels, the most optimistic

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[4] In order to have such a request for interim effect granted by the ALJ, the Agency must make a showing that there is probable cause to believe that the offense has in fact occurred, and that the offense was "willful" or that making the permit sanction effective immediately (before final agency action) is required in the interest of public health, welfare, or safety. Id. To my knowledge, such an agency request has never been granted by the ALJ.

[5] It must be noted that the decision of the ALJ is subject to a discretionary appeal to the Administrator of NOAA, which would further delay the effective date of any permit sanction imposed by the ALJ. 15 CFR 904.273. In addition, such a "final agency decision" would be subject to an appeal to the United States District Court. Whether the court also would stay the effect of the agency's decision to exclude the appellant from any "reward"

estimate would be that an offending vessel could be excluded from a subsequent "reward" fishery no earlier than approximately two to three years from the date of violation.[6]

cc: Jay S. Johnson
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fishery held during the pendency of the District Court appeal is within the discretion of the court.

[6] The experience under the VIP program has been even more protracted. The program is slightly more than three years old. To date, 4 prosecutions have been brought, one has settled, the other three have gone to hearing and are still pending before the ALJs. In short, only one prosecution has resulted in "final agency action."

Levis A Kochin, Chris Riley

Dr. James Wilen

Dr. Wilen

We received your analysis of the Chinook bycatch incentive plans. The primary purpose of this letter is to answer some of the questions raised in that document. The central issue is the following:
"*The extent to which incentives bycatch can actually be reduced by behavioral and technological means.*" (Wilen p.2).

We have a quantitative estimate of the effect of the Financial Incentive Plan (FIP) derived from the experience of one vessel in the Catcher-Processor (CP) fleet which made a systematic effort to avoid Chinook bycatch. We also would like to bring you up to date with the changes made since the November draft you reviewed. We are taking this opportunity to better explain some of the aspects of the FIP that may have not changed since the November draft, but were inadequately described in the November paper. We comment as well on document "Financial Incentive Plan" (At Sea Processors, March 13, 2009) which was released after the date of your analysis.

We hope to communicate with you further on this matter. Our contact numbers are at the end of the letter. We appreciate the difficulty of your assignment, due to the very short time available. Your market -oriented perspective on fishery management comes as no surprise to us but we are gratified that it has not blown away in this year's zeitgeist.

This letter also provides an opportunity to comment on the decision of the Department of Agricultural and Resource Economics at the University of California, Davis to admit our co-author Ana, and to give her financial support. Ana became involved in this process only a couple of days after the conception of the central idea. Initially it was thought that Ana's contribution would be limited to statistical analysis and modeling. Although Ana had absolutely no qualifying experience beyond her studies at the University of Washington when the project began, within weeks she was a 100% contributing partner who materially influenced the design of the plan and in all phases of the analysis. Congratulations.

The FIP was designed to present all the pollock harvesters with the same marginal incentive to avoid salmon. This maximizes the number of salmon avoided at any given cost or minimizes the cost of any given reduction in bycatch.

Similarly, we have left Transferable Bycatch Allocations (TBA) perfectly tradable. Note that the FIP was designed to make the incentive to avoid Chinook bycatch highest in the years of lowest Chinook abundance which reflects the higher biological value of each Chinook when Chinook abundance is low.

Comments on the Efficacy of Incentives

Can Chinook Bycatch Incentives be Effective?

Our first comment will hopefully shed some light on a fundamental question that is central to any incentive-based attempt to reduce Chinook bycatch in the pollock fishery, which include FIP and SSIP, and any modifications that may be made to these programs.

You state (correctly in our view) that "*A significant unknown is the extent to which bycatch can actually be reduced by behavioral or technological means*". (Wilen p.3).

This is a serious issue. If bycatch is a" *rare and random event* ", any program of bycatch incentives would be no more effective than jailing TV weathermen as a disincentive for inclement weather. We provided no quantification of expected reductions in bycatch in the November paper because at that time we had no evidence regarding the slope of the marginal cost of avoidance curve. We have since uncovered evidence that allows for an estimate of the cost of avoiding Chinook. This is derived from the activities of a single vessel in the factory trawler fleet.

A total of seventeen catcher processor vessels participated in the pollock fishery during the years 2000-2007. These vessels are all of similar size, produce the same finished products, use the same type of fishing and electronic gear, and operate on the same grounds. Fourteen of these ships participated in all years. We constructed a table that included only those fourteen vessels along with their harvests of pollock and Chinook. This allowed us to express the history in units of relative bycatch (Vessel BCR / Mean BCR).

Table 1. Relative Bycatch Rates in the Catcher Processor Fleet, 2000 – 2007.

Year	2000	2001	2002	2003	2004	2005	2006	2007	Vessel Mean	St. Error of Vessel
BCR (n / 100 mt)	**0.7**	**3.4**	**1.7**	**2.9**	**2.1**	**2.7**	**3.2**	**6.3**		
Vessel										
Highland Light	0.62	0.52	0.45	0.84	0.59	0.39	0.47	0.53	0.55	0.049
Arctic Fjord	0.37	2.34	1.31	1.16	1.42	0.91	0.81	0.97	1.16	0.204
Arctic Storm	0.31	0.59	1.00	0.65	1.13	0.79	0.99	1.28	0.84	0.113
American Triumph	1.94	0.45	0.31	1.02	1.64	1.68	1.18	1.10	1.17	0.205
Northern Eagle	1.08	0.60	0.87	0.95	0.61	0.95	1.22	0.92	0.90	0.074
Northern Hawk	1.30	0.75	0.59	1.10	1.38	1.50	0.71	0.87	1.03	0.121
Northern Jaeger	1.27	0.64	0.51	0.92	0.54	0.81	1.29	0.87	0.86	0.106
Ocean Rover	0.40	0.41	1.01	0.63	0.77	0.74	0.70	0.72	0.67	0.070
Alaska Ocean	1.52	0.57	2.37	0.95	0.93	0.38	0.54	0.84	1.01	0.230
Northern Glacier	2.45	0.58	0.62	1.17	0.93	1.04	1.03	1.59	1.18	0.214
Pacific Glacier	1.62	0.54	0.86	1.01	0.85	0.72	0.84	0.94	0.92	0.112
Starbound	0.40	1.38	1.25	0.96	0.85	1.18	1.40	1.25	1.08	0.119
Island Enterprise	0.62	2.22	0.90	1.66	1.54	1.53	2.10	1.17	1.47	0.196
Kodiak Enterprise	0.59	2.29	2.13	1.29	0.75	1.28	0.95	1.40	1.34	0.216
								Mean	1.01	0.145
								St.dev.	0.25	

Overall Standard Deviation	0.48
A = Standard Deviation of Vessel means	0.25
B = Overall Standard Deviation with CLT adj (n = 8)	0.17
Ratio A/B	1.45

In the years 2000 – 2007, the vessel Highland Light had the lowest relative Chinook bycatch rate (BCR). In a personal conversation (March 19, 2009) with Michael Coleman, the General Manager of the Highland Light, Mr. Coleman said that the corporation made Chinook bycatch minimization a primary operational objective in all

years. The principle techniques used to reduce bycatch were choosing clean fishing grounds, moving away from areas where bycatch was high, and avoiding October fishing. The Highland Light's eight year average relative BCR was 55% of the 14 vessel CP fleet average. This is 2.6 (Central Limit Theorem) standard deviations below the fleet mean. This vessel had relative BCR below the fleet average in all eight years. This implies that there is a 1/256 chance that the Highland Light's performance resulted from luck, leaving a 255/256 chance that the vessel's superior performance was a result of a successfully executed operational plan.

Mr. Coleman kept no accounting records regarding the vessel's avoidance costs, but said that he was sure that those have never exceeded $100,000 in any given year. If the Highland Light had fished at a BCR equal to that of the fourteen vessel fleet in all of these eight years, it would have bycaught an additional 2,925 Chinook. This, along with Mr. Coleman's estimate of avoidance, allows a conclusion that the average cost of avoiding Chinook was less than or equal to $273.50 / Chinook. Assuming that the marginal cost of avoidance is linear and that $100,000 was spent, we estimated the average marginal cost of avoidance faced by the Highland Light at $547 per Chinook. The vessel's actual reduction in the relative BCR was
45%. We are aware of plenty of reasons for the reduction in BCR could be expected to be greater if the fleet as a whole was provided with a simple fixed $547 per Chinook incentive and some reasons for supposing that it would be less.

In 2004, the Highland Light had a BCR which was 41% below the 14 vessel mean BCR. As a result, the Highland Light caught 268 Chinook fewer than if it had had a BCR equal to the average catcher processor. Assuming that the Highland Light spent $100,000 to avoid salmon, each salmon avoided cost on average $373. If the marginal cost was twice the average cost, then the marginal cost of each avoided salmon was $746. There was no FIP in 2004, but the desires of the Highland Light's management made it expend significant resources to avoid salmon. If there had been a FIP in 2004 with $22 ante per ton of pollock ($0.01 / lb of pollock), the marginal incentive provided by the FIP for a catcher processor to avoid Chinook would have been $858. A $746 marginal incentive to avoid Chinook salmon could have been provided by an ante of $19 per ton of pollock.

The experience of the Highland Light indicates that an ante of $0.01 per pound of pollock would reduce Chinook bycatch substantially, perhaps by about half, so long as fishing companies are profit maximizing enterprises.

Over what Range of Bycatch can Incentives be Effective?

There has been some discussion during this process of the existence of a bycatch boundary, below which Chinook encounters are entirely random events. It has been asserted that the FIP, when applied to a fleet that is operating below this boundary, is reduced to a system of forced gambling, with no impact whatsoever on actual bycatch. "*When salmon abundance on the grounds is at very low levels, incentive based programs to avoid salmon bycatch can become little more than programs which assess a per-salmon fee for random salmon bycatch.*" (Chinook PPA Inter-Coop Agreement, p.A13).

A variety of "solutions" have been proposed for this problem which include canceling the FIP and returning antes when bycatch falls below a certain level. These solutions are not part of any currently active proposal, however the assertion the FIP does nothing at very low abundance levels is serious enough that we believe that the data should be examined for supporting evidence.

"When salmon abundance is less than two salmon per 100 tons of pollock, it becomes doubtful that current technologies and methods available to discover and avoid salmon concentrations continue to work well. This places a practical limit on the ability of the pollock industry to avoid salmon when their abundance is very low." (Chinook PPA Inter-Coop Agreement, p.A13).

Looking at Table 1 above, we notice that the Highland Light managed to have a low relative BCR both when average BCRs were high and when they were low. In fact, in 2000, 2002, and 2004 when the average BCR was lowest, ranging from 0.7 to 2.1, the relative BCR of the Highland Light was almost exactly the same as in the other five years when BCRs were higher, ranging from 2.7 to 6.3. In fact, there is a smidgen of evidence for deterioration in the ability of a vessel to avoid bycatch in years of low Chinook abundance. The relative BCR of the Highland Light in the three low bycatch years was 0.55442. In the high bycatch years the relative BCR of the Highland Light was 0.55264. The ratio of the relative BCR between the two sets of years is 99.7%. This is strong evidence that using historical data on the location and timing of bycatch vessels can avoid large percentages of Chinook bycatch even in years of low Chinook abundance.

The Role of the TBA in the FIP

The FIP was conceived of and designed specifically to provide an incentive that would act in concert with a TBA. The FIP is a complement to, not a supplement or substitute for, the TBA. We assume the existence of a TBA that allocates to the vessel level, and that these allocations are fully transferable between vessels, sectors and seasons without restrictions of any kind. We did not include a section describing the benefits of TBA in our paper because it was our impression as early as last May that both the industry and the regulatory community were in near-consensus that this was the efficient way to limit the maximum bycatch in years when bycatch is relatively high. It was evident even before the statistical analysis provided in the November draft that the TBA would not provide significant incentives for the avoidance of Chinook bycatch in years of low abundance. It was our impression that the Council, biologists, and those interested in Chinook conservation were looking for a program that would provide significant incentives when salmon abundance and hence bycatch was low.

In our scheme, the TBA provides the great majority of the incentive when bycatch is high. The FIP provides the incentive when bycatch is low. (See Kochin et.al., pp.15-20, Appendix pp. 59-78).
In common usage the term TBA has come to include a wide variety of Hard-Cap systems. As it is used by us, it means Fully Transferable and Allocated to the vessel level. Efficiency requires equalization of marginal costs. Impediments to transfer and central control impede marginal cost equalization and so are enemies of efficiency.

The PPA required a comparative analysis of:

1. A 47,591 Chinook hard cap (which we assumed would be a TBA) against
2. A 68,392 Chinook hard cap (which we again assumed to be a TBA) along with an incentive program.

The first step in that analysis was a quantitative comparison of the incentives provided by the 68,392 cap versus the 47,591 cap across the range of bycatch rates that could be anticipated. We approached this from the demand side, by modeling expectations as to the probability that TBA would have *any* value at the end of the fishing period along with the probable value of TBA *if* it had any value at all. This value was set at the lease value of the amount of pollock that would most likely be harvested as a result of purchasing the right to bycatch one additional Chinook

when the hard cap was limiting the pollock harvest. We chose the demand side approach over the supply side approach because we had access to pollock quota lease prices. The conclusions are presented graphically in the November draft on pp. 15-20. The model is described in Appendices C-F.

Not surprisingly, this analysis shows that the incentives induced by the TBA declined significantly with declining bycatch rates. Figure 3 on page 16 in the November draft shows that there is very little difference in the predicted incentive at bycatch rates below 20% of the mean BCR experienced over the last 8 years, as even a cap of 32,482 Chinook induces a marginal value approaching zero in this range.

We believe that figure 3 accurately depicts the marginal values induced by TBA. This is not to say that it accurately depicts the ability of the TBA to discourage bycatch at Chinook abundance levels significantly below the maximum bycatch level that is possible under the hard cap. We contend that the ability of the TBA is much weaker than marginal values depicted here alone indicate. We will show later that the marginal costs of avoidance are rising hyperbolically as the marginal value of avoided fish declines in response to decreasing abundance under TBA alone.

We believe that the lesson to be drawn from figure 3 is that a TBA, by itself, even without taking into account the increased avoidance costs at low abundance levels that we claim, cannot discourage the bycatch of Chinook when their abundance is at run-threateningly low levels, without imposing enormous pollock stranding losses on the industry in years of normal Chinook abundance. Conversely, a TBA that does not impose significant stranding losses on the industry in years of normal Chinook abundance cannot, by itself, protect the Chinook resource during times of maximum vulnerability.

The Marginal Value of Bycatch Avoidance over Different Bycatch Conditions under the FIP

*"As a result, the **FIP prize structure generates a marginal value of bycatch avoidance that is constant (once the ante structure is determined) over all different bycatch conditions**. Thus there is always a consistent inducement to avoid bycatch under both high and low abundance conditions with FIP."* [Emphasis added]. (Wilen, p.16).

We respectfully disagree. It is our contention that the marginal value of an avoided salmon is a function of the inverse of the prevailing bycatch rate and therefore rises hyperbolically as the bycatch of a fleet operating under the FIP approaches zero. We believe that it is this characteristic that makes the FIP an effective complement to a TBA.

The average value of an uncaught fish (UCF)[1] is the total ante divided by the number of UCF. The ante is independent of the bycatch rate as it is based on pollock quota. Holding pollock quota constant, the average value

[1] The number of uncaught fish is determined by the difference between the mean fleet bycatch rate (MBCR) and the reference bycatch rate (RBCR) (the BCR formerly established by Dirty Harry). This undercatch rate (UCR), when multiplied by the pollock harvest, yields the number of uncaught fish. The number of UCF can be calculated as follows:

UCF = CF X (RBCR / MBCR) - 1

is entirely dependent upon how many (or few) uncaught fish there are. The ratio of UCF to bycatch is relatively constant across the range of bycatch experienced, so the average cost is a function of the inverse of the bycatch rate, causing the average cost to double along with each halving of the bycatch rate, thereby tracing a hyperbolic curve that approaches infinity as BCR approaches zero.

The marginal value of an UCF is equal to its average value for participants holding small shares of the total UCF. For participants holding large shares of the total UCF, marginal values of UCF are lower than average values. A discussion of the effects of market share of UCF is done just the way we would say it in Section V, pp.A7 - A10 of Chinook PPA Inter-Coop Agreement. A mean-bycatch based reference would be ideal for a fishery where no one firm had any market share. Unfortunately, in the CP sector there are only 5 firms, and one of those firms holds nearly 50% of the pollock quota. That large firm would have 50% control of the reference point and so would face marginal incentives very different from other firms even if the market share adjustment discussed in the Chinook Inter-Coop Agreement is implemented. The use of the average as a base for the reference BCR provides an incentive for gaming for a firm with significant pollock market share. Because of this, we elected to use another measure of central tendency - the median vessel bycatch rate at the end of the season - as the basis for the reference point. The reference BCR is set equal to 2.5 times the vessel median BCR. The disadvantage of this is that the median BCR is not a perfect proxy for the mean BCR. The ratio median / mean of relative bycatch rates in the years 2000-2007 is 0.88, with a standard deviation of 0.12. We believe this is sufficiently stable for the purposes at hand.

On the basis of the above, we believe that the number of uncaught Chinook is a nearly constant multiple of the number of bycaught Chinook. The marginal value of avoidance is essentially equal to the average value of avoidance once the market share adjustments are implemented. So the marginal value of avoidance increases hyperbolically with reductions in bycatch. If bycatch is reduced by incentives, that will result in an increase in the marginal value of avoidance incentives provided by the FIP and a fall in the marginal value of avoidance incentives provided by the TBA.

The Marginal Cost of Bycatch Avoidance over Different Bycatch Conditions under the FIP

"When salmon abundance is low, there is the simultaneous coincidence of low encounter rates with high vulnerability for Salmon populations. ***Low encounter rates make it easier to avoid salmon,*** *but those that are caught may have a higher impact on population viability."* (Wilen, p.6).

We contend that the marginal cost of avoidance rises as a function of the inverse of the bycatch rate, which is to say, like the marginal incentive under the FIP, the cost of avoiding a salmon rises hyperbolically along with decreasing salmon abundance.

For example, when RBCR =MBCR, UCF = 0 as there are as many negative uncaught fish as caught fish when RBCR = 2 X MBCR, UCF = CF. If the reference point could be set as a multiple of the MBCR, the marginal value of an UCF could be predicted perfectly by the bycatch rate, the pollock harvest, and the total ante. Under such an arrangement, the marginal value would obviously increase hyperbolically as bycatch approaches zero.

All Chinook avoidance methods can be classified into three categories:

1. *Changing where fishing occurs*

In the November paper, we showed that the cost per avoided fish of moving a vessel between different grounds to avoid Chinook rises as abundance falls. Examples 1-5 in the November paper (pp. 20, 24) illustrate the relationship between the marginal cost of avoiding Chinook, bycatch rate, and choice of fishing location.

2. *Changing when fishing occurs*

The decision on when to fish has a large impact on bycatch. The "B" season fishery occurs from June through October. June bycatch rates are consistently less than 10% of October bycatch rates. Because of physiological changes that occur on an annual cycle, pollock are more valuable in October. Pollock contain more roe, more oil, and more muscle per metric ton of catch in October than in June. From factory production reports from Trident's Akutan plant, the value of these increases is $132/mt. If during June, a vessel can earn more than $132/mt from incentives related to salmon avoidance it will be inclined to shift fishing effort from October to June.

If the bycatch rate in October is 80 Chinook/100 mt of Pollock (as in 2007, see Figure 2, p.9 of the November paper) and the bycatch rate in June is 8 Chinook/100 mt of pollock, then the differential is 72 Chinook/100 mt of Pollock. The cost of avoiding 72 Chinook using this method is $13,200. The cost of avoiding one Chinook is $183.

If the bycatch rate in October is 10 Chinook per 100 mt of Pollock (as in 2003) and the bycatch rate in June is 1 Chinook per 100 mt, the differential is 9 Chinook / 100 mt. The cost of avoiding 9 Chinook using this method is 100 mt x 132 $/mt = $13,200. The cost of avoiding one Chinook is $1,466.

In the examples above, Chinook bycatch fell by a factor of eight. The cost per avoided Chinook rose by a factor of eight.

3. *Changing fishing techniques*

The capital costs associated with a salmon excluder are about $10,000, trivial compared to the magnitude of incentives being discussed here. The salmon excluder is really a fish excluder that is more effective in excluding salmon than pollock. The vast majority of the costs are operational and associated with reduced pollock harvest per unit of time. This results from pollock escaping through the tunnels or flaps along with the salmon, as well as reduced pollock capture rate during periods when the towing speed is reduced to allow the salmon the opportunity to escape. The costs of this lost pollock harvest are the fuel, vessel and gear wear etc., that are needed to replace the lost pollock harvest. The loss of pollock-harvest effectiveness is unrelated to the number of Chinook that are in the net. The hourly operating costs are constant with respect to bycatch rate; the hourly salmon avoided are directly proportional to the generally prevalent bycatch conditions. The cost of avoiding a salmon doubles when the encounter rate is cut in half so the cost of avoiding a Chinook with an excluder is inversely proportional to the bycatch rate that is prevalent at the time, and so will follow the hyperbolic path described above. See Examples 8-1, pp. 26-28 of the November paper.

A quantitative estimate of the effect of the FIP:

"*The FIP pins down prices with certainty (and hence the magnitude of the incentives that will be created)—but bycatch quantities are hard to predict.*" (Wilen, p.15).

In our November paper we made no effort to provide a quantitative estimate of the magnitude of the *effect* of the incentives provided by the FIP. In order to provide such a quantitative estimate we would have to have had *either* the results of a prior incentive program or systematically compiled data on the cost of avoidance. We had neither. Recently, we received information on a large scale bycatch reduction "experiment" provided by the Highland Light operating from 2000 to 2007. The Highland Light management emphasized Chinook bycatch avoidance. They informed us that they spent a substantial sum, but not more than $100,000 per year, avoiding Chinook bycatch. The Highland Light had a BCR of 52% of the BCR of the other vessels in the CP fleet which operated in all eight years. These two bits of data enable us to estimate the average cost of avoiding Chinook bycatch.
Our estimates of bycatch reduction are based on the activities of one vessel. However, this is a very large scale experiment done over a long period of time:

- Eight years of fishing (2000-2007), 16 fishing seasons
- 222,475 tons of pollock harvested
- Over 2,500 tows
- 3,548 Chinook bycaught
- 3,275 Chinook avoided that would have been caught at the BCR of the rest of the CP fleet
- Below average BCR in all eight years
- 48% reduction in bycatch over eight years
- Greater than 99% confidence that the Highland Light's expected annual BCR was below that of the other vessels

In order to estimate the average cost of salmon avoided in 2004, we subtracted the Highland Light's BCR in 2004 from the BCR of the other vessels in 2004 and multiplied that by the Highland Light's Pollock catch in 2004. This gave us the number of Chinook avoided by the Highland Light in 2004 (namely 271). Dividing $100,000 by 271 gives us the average cost per Chinook avoided in 2004 (namely $370).

This average cost differs sharply by year. In 2000, when bycatch was the lowest, our estimate of the average cost of avoiding a Chinook is more than three times as high as in 2004 when the bycatch was somewhat lower than average. In 2007, when bycatch was the highest, our estimate of the average cost of avoiding a Chinook is more than two times as low as in 2004 when the bycatch was somewhat lower than average.

If the marginal cost increases linearly with the percentage of bycatch avoided then the marginal cost of avoidance will equal twice the average cost of avoidance. Using this assumption, the marginal cost of the Highland Light in avoiding Chinook in 2004 was $740.Our estimate of the marginal value to avoiding salmon under the FIP program given the bycatch in 2004 was $910. However with incentives provided bycatch would have been considerably lower and therefore the marginal value provided by the FIP would have been considerably higher. Such increases in the marginal value would have taken us too far out of the observed range of the marginal cost. So we will use an estimate which is 23% higher than the observed avoidance of the Highland Light.

Our point estimate is that in 2004 the Highland Light avoided 271 Chinook salmon which is 45% of the Chinook it would have been expected to catch if its BCR was equal to the BCR of the CP fleet. However, this estimate is subject to sampling error. As we showed in Table 1, the uncertainty about the average relative BCR estimate is 0.049. Therefore, the uncertainty about the number of Chinook avoided is also 0.049 times the average BCR. There is a 95% chance that the expected percentage of bycatch avoided by the Highland Light was higher than 35% and lower than 55%. So there is a 5% chance that the expected number of Chinook avoided by the Highland Light in 2004 was lower than 210 or higher than 329. Since the FIP, under the conservative conversion assumption made

earlier, would have led to 23% more avoidance of Chinook than was achieved by the Highland Light, the expected number of Chinook avoided by a vessel with the quota of the Highland Light is 333. There is a 95% chance that the FIP would have induced the avoidance of at least 258 Chinook by a vessel with the quota of the Highland Light. Since the total CP sector had a pollock quota 22.6 times as large as the Highland Light's quota, the number of Chinook avoided by the sector would have been at least 5,830.

In Table 2, we show the effects of incentives provided by the FIP on Chinook bycatch. These estimates of bycatch reduction are conservative because we have not included any increase in incentives provided by industry bycatch reduction and have used a low estimate of the percentage bycatch reduction achieved by the Highland Light. No allowance is made for any incentives provided by TBA.

Table 2. Estimate of Chinook Saved Under the FIP for the CP Fleet, 2000 – 2007.

Year	Pollock Harvest (1000 mt)	Chinook Bycatch Actual	Chinook Bycatch High Estimate	Chinook Saved Low Estimate	Percent Reduction
2000	491	3,093	1,790	1,303	42%
2001	604	**18,127***	10,488	7,639	42%
2002	644	10,867	6,288	4,579	42%
2003	694	**18,472**	10,688	7,784	42%
2004	677	13,781	7,951	5,830	42%
2005	678	15,764	9,121	6,643	42%
2006	680	**18,857**	10,911	7,946	42%
2007	630	**35,091**	**20,304**	14,787	42%
Total		115,925	77,541	56,511	
Avg.					42%

*Chinook bycatch in excess of CP share of 47,591 Chinook

The CP and CDQ share of TBA is 34.3%. For the CP and CDQ sectors this gives a hard cap of 16,326 Chinook with a 47,591 overall hard cap. Only in 2007 would the FIP alone have failed to keep Chinook bycatch below 16,326 even under these very conservative estimates of the effects of the FIP. With an overall hard cap of 68,392 Chinook, the CP and CDQ sectors share of TBA is 23,458. The FIP alone would have sufficed to keep Chinook bycatch below the hard cap. However, the shadow of the hard cap would probably provide substantial additional incentives to avoid bycatch in a year with a natural bycatch rate equal to that in 2007.

We conclude that at a minimum, the FIP will reduce Chinook bycatch across the entire range of abundance seen in the years 2000-2007 by 42%.

Short Comments

Wilen, p.7. *"The FIP most closely resembles what economists have called 'tournaments'."*
Under the revised FIP with the revision in reference point, the market share adjustment, and the penalty for being above the reference point, all participants face essentially equal marginal values for avoiding Chinook.

Wilen, p.16. *"The FIP prize structure generates a marginal value of bycatch avoidance that is constant."*
As discussed above, the FIP generates much greater incentives at low levels of Chinook abundance.

Wilen, p.17. *"Both programs will (ultimately) bring bycatch down to 47,000 on average."*
55,828 was the average bycatch in the past eight years without any incentives in place. Our high estimate for the average bycatch in the CP sector is 9,692 Chinook. For the whole Bering Sea pollock, Fishery our high bycatch estimate is 28,256 Chinook assuming that the FIP is applied to and has equal effects on all sectors.

Additional Research Needs

1. Using existing data to gather information on the relationship between Chinook abundance and Chinook bycatch rates.
2. Finding which additional data if collected could significantly improve estimates of the biological, subsistence, recreational, and commercial fishing value of Chinook salmon over time and over bycatch location.
3. With estimates of abundance apart from bycatch rates the effectiveness of incentive programs could be tracked.

Offer of Further Discussion

We would be happy to discuss this letter with you further individually or preferably in a conference call. Our contact numbers are:

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September 22, 2014

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

Dear Chris:

At the North Pacific Fishery Management Council's April meeting, counsel for NOAA questioned whether the Magnuson-Stevens Act authorized the Council's proposed Gulf Trawl Bycatch Management structure. The issue is whether the proposal linkage between harvesting vessels and processing plants is authorized under the MSA. In response to that question I have drafted the attached memo.

The memo describes in detail the NOAA legal opinions on this issue. NOAA expressly acknowledges that the interests of on-shore processors can be protected within the term "conservation and management." NOAA has questioned whether the MSA provides the authority to regulate activities on-shore, however, including implementation of delivery requirements on harvesters to protect on-shore processors' interests.

The memo mentions three separate ways in which the Council's proposed Gulf Trawl Bycatch measure can be authorized. NOAA's 1989 Roe Stripping Opinion noted that the Council could prohibit the harvesting of pollock that would later be used for roe stripping on-shore (even though the opinion stated there is no authority to prohibit on-shore processors from stripping roe.) Presumably, then, the Council could prohibit the harvest of groundfish that were delivered to a processor with whom the vessel did not have a cooperative contract. The memo also notes that section 303(a)(9) of the MSA requires possible mitigation measures for "fishing communities" (defined to include on-shore processors) which are affected by a plan. These required mitigation measures would authorize linkage between vessels and processors.

The memo's focus is the so-called "Basket Clause" found at section 303(b)(14) of the Act. The Basket Clause authorizes the councils and Secretary to "*prescribe such other measures, requirements, conditions, and restrictions as are determined necessary and appropriate for the conservation and management of the fishery.*" The

memo describes a number of regulations promulgated under the MSA regulating on-shore activities, including many that specifically regulate on-shore processing. When challenged, NOAA has consistently cited the authority provided in Basket Clause to regulate activities on-shore, including the regulation of on-shore processors in the North Pacific, and courts have unanimously upheld these regulations under the Basket Clause.

In summary, the memo describes how the Basket Clause of the MSA provides clear authority to regulate on-shore processing given a legitimate conservation and management purpose.

Sincerely,

Joseph T. Plesha
Chief Legal and Regulatory Officer

MEMO

SEPTEMBER 4, 2014

TO: FILE

FROM: JOE PLESHA

RE: AUTHORITY TO REGULATE ON-SHORE ACTIVITIES UNDER THE MAGNUSON-STEVENS ACT

I. Introduction.

The North Pacific Fishery Management Council is considering trawl bycatch management measures in the Gulf of Alaska. The management measures under consideration include rationalization of the trawl sector through an inshore cooperative structure that has "linkage" between vessels and the plants to which those vessels historically delivered.

Under the Council's proposal, this linkage comes in three forms: (1) Vessels cannot join a cooperative unless they have a contractual agreement with the on-shore processor to whom they delivered a majority of their catch during a historical period of time; (2) there is a prohibition against the vessel leaving its original cooperative during an initial two-year period; and (3) cooperative agreement must contain clear provisions for how a harvester and processor may dissolve their contract after the cooling off period off period of two years.

At the Council's April 2014 meeting, NOAA regional counsel questioned whether the Magnuson-Stevens Act authorized adoption of plans with this type of linkage between harvesters and processors.

Section 303 of the Magnuson-Stevens Act outlines the provisions that the councils and the Secretary may use to manage a fishery. There are required provisions listed in section 303(a) and discretionary provisions that are listed in section 303(b). The list of discretionary management measures includes the so-called "Basket Clause"[1] now found at section 303(b)(14) of the Act, which authorizes the councils and Secretary to "*prescribe such other measures, requirements, conditions, and restrictions as are determined necessary and appropriate for the conservation and management of the fishery.*"

[1] The citation for this provision has at times been in the Magnuson-Stevens Act at §303(b)(8), §303(b)(10), and is now is found at §303(b)(14). To avoid confusion, hereafter this memo refers to the provision as the "Basket Clause" without reference to a specific section of the Act.

This memo discusses the legal issue of whether fishery management plans that include cooperatives with linkage between harvesting vessels and shore-based processing plants can be authorized under the Basket Clause in section 303(b) of the Magnuson-Stevens Act.

II. Background.

The issue of whether the Magnuson-Stevens Act authorizes regulation of on-shore activities has a long history. To answer the question of whether the Basket Clause in section 303(b) of the Magnuson-Stevens Act authorizes cooperatives with linkage between vessels and on-shore processors, it is important to understand that history in detail.

1. 1978 NOAA General Counsel's Legal Opinion No. 61.

In the early days of the implementation of the Magnuson-Stevens Act, NOAA's office of General Counsel issued a number of formal legal opinions discussing the operation of the Act. In 1978, the NOAA General Counsel's office wrote a legal opinion on the issue of whether processors interests can be considered as part of "conservation and management" of the fisheries under the Act. ("Opinion No. 61").[2]

The issue arose because in 1977 the Secretary of Commerce received applications for permits to operate foreign-flag vessels to process and transport fish harvested by U.S. fishermen. In June of that year, the National Marine Fisheries Service published an Advance Notice of Proposed Rulemaking and in July through August, held eighteen public hearings on the issue. In February of 1978 a proposed interim policy was published in the Federal Register for review and comment. The proposed policy stated that permit applications for foreign processing ships would be granted only if the U.S. harvesting capacity for the proposed species to be processed exceeded the domestic processing capacity for that species. Comments received by NMFS questioned whether the Magnuson-Stevens Act gave the Secretary authority to regulate foreign processing ships except for reasons concerning "conservation and management."

The matter addressed in Opinion No. 61 was whether the Secretary had the authority under the Magnuson-Stevens Act to deny the application of foreign processing ships because domestic on-shore processors (there was no domestic at-sea processing at that time) had the capacity and intent to process the same resource.

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[2] General Counsel Opinion No. 61 (1978).

Opinion No. 61 noted that the Secretary could deny the permits to foreign vessels if the proposed foreign at-sea processing operation did not meet the requirements of the Act. One of those requirements was "any other condition and restriction related to fishery *conservation and management* the Secretary prescribes as necessary and appropriate."[3] It is under this provision of the Magnuson-Stevens Act that Opinion No. 61 addresses the issue of whether the economic interests of on-shore processors lie within the definition of "conservation and management" and are therefore protectable.

Opinion No. 61 recites the Act's definition of "conservation and management" and then claims that the term does not appear to take into account the interests of on-shore processors. "The failure of this definition to refer to fish processors suggests that the effect which approving a permit application may have on domestic fish processors is not relevant to whether the decision is consistent with the 'conservation and management' of the fishery concerned."[4]

After determining that the definition of "conservation and management" does not appear to address the on-shore processors, Opinion No. 61 rhetorically asks whether "one might argue, through references to several other definitions in the [Magnuson-Stevens Act], *that the interests of on-shore processors are among the interests to be protected by 'conservation and management' considerations.*"[5]

Opinion No. 61 goes on to state that the term "conservation and management" refers to "fishery resources" which is defined as "any *fishery*, any stock of fish, any species of fish, and any habitat of fish."[6] "Fishery" is defined as "one-or more stocks of fish... and any *fishing* for such stocks."[7] Thus, *if* the term "fishing" is defined to include on-shore processing, *then* on-shore processors interests might be protected under the definition of "conservation and management."

Opinion No. 61 expresses the view that the definition of "fishing" under the Magnuson-Stevens Act does not include on-shore processing and thus, "[i]t follows from the foregoing discussion of the phrase "conservation and management" and the definition of this term in section 3(2) that the Secretary is not required under [the Magnuson-Stevens Act] to protect domestic processors in granting or denying the applications in question."[8]

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[3] Magnuson-Stevens Act §204(b)(7)(D). Now found at §204(b)(7)(F).

[4] Opinion No. 61, p. 6.

[5] Id.

[6] Magnuson-Stevens Act §3(9). Now found at §3(15).

[7] Magnuson-Stevens Act §3(7). Now found at §3(13).

[8] Opinion No. 61, p. 7.

The ultimate holding of Opinion No. 61, is that on-shore processors interests are not among those interests that can be taken into consideration under the Magnuson-Stevens Act's definition of "conservation and management" and therefore protection of domestic on-shore processors was not justification for the Secretary to deny a permit application to operate foreign processing vessels.

2. The 1978 "Processor Preference Amendment."

Opinion No. 61 resulted in foreign factory ships having the right to purchase fish harvested by U. S. vessels from the United States Exclusive Economic Zone, even if domestic on-shore processors wanted to utilize those same resources. Within a few months of Opinion No. 61's publication, Congress passed an amendment to the Magnuson-Stevens Act giving preference to U.S. processors.[9]

As the final version of the legislation was enacted by the House, a discussion occurred regarding the intent of the legislation. The Chairman of the House of Representatives Merchant Marine and Fisheries Committee, Congressman John Murphy, described the legislation's intent:

> Mr. Speaker, since the 18th of last month (June of 1978) the staffs of the House Committee on Merchant Marine and Fisheries and the Senate Committee on Commerce, Science and Transportation have been working toward resolving the differences between the two versions of this provision. ...
>
> Briefly explained, the compromise language makes it clear that it is the intent of Congress to encourage the development by the U.S. fishing industry, in particular by U.S. fishermen and U.S. fish processors, of the currently underutilized fisheries off the United States. ... In addition, the compromise language would give a preference to U.S. fish processors of U.S harvested fish and it would authorize the Secretary to allow U.S. fishermen to transfer at sea to foreign fishing vessels only the excess of such fish that the Secretary has determined that would not be utilized by U.S. fish processors.[10]

Chairman Murphy also discussed the issue of the definition of "fishing."

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[9] The amendment provides that if U.S. processors have the capacity and intent to utilize fishery resources, they have first preference to those resources. P.L. 95-354 (1978).

[10] Statement of Congressman John Murphy, 124 Cong. Rec. H8266, Aug. 10, 1978.

> In the course of our discussions of the bill, some question was raised about whether the definition of "fishing" under section 3 of the [Magnuson-Stevens Act] includes "processing." ... In the end, we decided to leave the [Magnuson-Stevens Act's] definitions unchanged on this point while, at the same time, making clear the Act was intended to benefit the entire fishing industry. ... [I]t is the understanding of the House that "fishing" in section 3 of the [Magnuson-Stevens Act] does include "processing" and that, for that reason, the proposed clarification is unnecessary.[11]

Congressman Murphy's floor statement regarding the importance of "processing" being included within the definition of "fishing" is a statement of Congressional intent and should guide interpretation of this provision in the Magnuson-Stevens Act. Whether the definition of "fishing" includes "processing", however, soon became irrelevant to whether on-shore processors interests could be considered under the term "conservation and management."

3. 1979 NOAA General Counsel's Legal Opinion No. 80.

In 1979 NOAA General Council reviewed the issue of whether the Magnuson-Stevens Act authorizes the Secretary to implement Fishery Management Plan recommendations designed to promote interests beyond protection of the resource, such as public health and safety ("Opinion No. 80"). The examples of the promotion of interest beyond protection of fish stocks are numerous. The Mid-Atlantic Council closed areas over ocean dumpsites for mackerel, squid and butterfish to avoid the harvest of contaminated or poor-quality fish. The Gulf of Mexico Council prohibited fishing for shrimp in crab grounds to avoid gear conflict and the resulting potential for violence between fishermen. The New England Council developed a no discard rule to prevent the waste of protein. The Pacific Council allowed fishing on anchovies only when the yield of oil is highest and the catch therefore most valuable. The North Pacific Council allowed fishing for Tanner crab only well after molting season to avoid poor-quality meat and processors rejecting dead crabs.

Opinion No. 80 held that interests of public health and safety could be included in the definition of "conservation and management." The opinion noted that "[t]he expansive scope of sections 2 [Findings, purposes, and policies], 3(18) [definition of "optimum yield"], and 301 [National Standards] and their legislative history suggest that section 2(3) [definition of "conservation and management"] should be read broadly to achieve the greatest overall benefit to the nation."[12]

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[11] Statement of Congressman John Murphy, 124 Cong. Rec. H8266, Aug. 10, 1978.

[12] Opinion No. 80, p. 6.

The opinion concluded by saying that because protection of health and safety are valid conservation and management issues, the only remaining issue is whether the proposed regulation to protect health and safety is "necessary and appropriate." The Opinion ended by saying, "[a] case-by-case analysis and consultation with other agency [sic][13] should establish whether the proposed public-health regulation is 'necessary and appropriate' for the conservation and management of the fishery."[14]

In holding that the interests to be considered by "conservation and management" measures included concerns beyond fish stocks, Opinion No. 80 overturned Opinion No. 61's holding that "conservation and management" did not include the interests of on-shore processors. Opinion No. 80, however, included one short paragraph that said all "necessary and appropriate" measures were limited to activities at sea. That paragraph stated:

> Section 303(a)(1) limits conservation and management measures in an FMP to measures which are "applicable to foreign fishing and fishing by vessels of the United States". This limitation applies to *all* conservation and management measures, because section 303(b) merely lists the provisions which may be selected under section 303(a)(1) as "necessary and appropriate." Thus an FMP may contain only those conservation and management measures which pertain to fishing or to fishing vessels.[15]

This paragraph in Opinion No. 80 argues that, regardless of the conservation and management purpose, "necessary and appropriate" measures may only regulate operations at sea because all of section 303 is limited to measures that pertain to fishing or fishing vessels. Opinion No. 80 stands for the proposition that on-shore processors interest can be considered in the conservation and management of the fishery, but all "necessary and appropriate" measures to deal with on-shore processors' interest are limited to activities at sea.

4. 1988 NOAA General Counsel Memo Regarding Limited Entry.

In the late 1980s, both the Pacific and North Pacific councils began considering fishery rationalization programs. In 1987 the North Pacific Council established the Future of Groundfish Committee ("FOG Committee"). The FOG Committee began discussing rationalization of all of the groundfish fisheries off Alaska and seriously

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[13] So in original.

[14] Opinion No. 80, p. 9.

[15] Id., p. 4.

considered the inclusion of processors in rationalization, perhaps for the first time.[16]

The General Counsel for NOAA Fisheries provided a memo on the authority of the Magnuson-Stevens Act to implement various rationalization measures in response to questions from the Alaska and Northwest regions.[17] Below is the response given to the question of whether the Act authorized rationalizing processors:

> Question: Could an IFQ system be applied to processors, including floating processors at sea, floating shoreside processors, or shore-based processing plants?
>
> Answer: Possibly. Assuming the Councils could establish a rational connection to the conservation and management of fish within the EEZ, I believe, in theory, they could regulate access to the fishery indirectly by *regulating the right to process fish*. Obviously, the Councils cannot regulate fishing in state waters in this manner, but the Magnuson Act does not explicitly preclude them from regulating processors that receive fish from the EEZ.
>
> On the east coast, the Secretary will soon be asked to approve a five-Council plan that will allocate billfish exclusively to recreational users by prohibiting the sale of billfish taken from the Atlantic stock. Most likely, approval of this plan would result in regulation of processors and dealers as well as fishermen because trade in billfish from the Pacific would be permitted. Arguably, a restriction on authorized buyers of EEZ fish may not even constitute a system for limited access since anyone could participate in the fishery if they had a purchase contract.
>
> The Councils should proceed with caution, however, to break this new ground. Dick Gutting[18], speaking for the National Fisheries Institute, has stated that the Councils and the Secretary may only regulate fishing, not trade in fishery products, and we expect litigation over the billfish plan.

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[16] The Future of Groundfish Committee final report to the North Pacific Council suggested alternatives for trawl groundfish rationalization that included allocating harvesting quota to both vessel owners (specifically excluding crew) and processors. FOG Committee Report to the Council, p. 13 and 19, (June 1988).

[17] Memo from Jay S. Johnson, General Counsel for NOAA Fisheries to Doug Ancona, General Counsel Northwest Region and Jon Pollard, General Counsel Alaska Region, Mar. 1, 1988.

[18] Richard "Dick" Gutting, then a vice president of the National Fisheries Institute, was formerly in the NOAA General Counsel's office and Mr. Gutting was the lead author of Opinion No. 61.

> There are some practical-legal problems in using a processor-based limited access system due to the proximity of Canada and the positions the U.S. has taken with respect to that nation's restrictive fish export laws. While it is possible that the Magnuson Act could be used to limit the rights of U.S. firms to purchase EEZ fish, it probably could not be used so as to restrict Canadian firms without violating the free trade principles of this Administration. As a result, a processor-based limited access system would not work if fishermen used the opportunity to sell fish to Canada to evade the market controls.

This memo expressed the National Marine Fisheries Service General Counsel's opinion that on-shore processors could be regulated, even limited, as part of conservation and management measures that were necessary and appropriate to protect the interests of the on-shore processing sector. At that time authority under the Magnuson-Stevens Act to regulate on-shore activities seemed resolved.

5. 1989 Memo on the Authority to Prohibit Pollock Roe Stripping.

In early 1989 factory trawler[19] vessels fishing for pollock in both the Gulf of Alaska and Bering Sea engaged in pollock roe stripping, removing the roe from female pollock while discarding male pollock and the flesh from female pollock.[20] The legal issue before the Council was whether regulatory measures could be implemented prohibiting roe stripping.

NOAA General Counsel's office offered its opinion on whether the Council and Secretary can take measures to prevent wasteful practices by domestic processors (Roe Stripping Opinion).[21]

The Roe Stripping Opinion noted that:

> Not since 1978 has the definition of "conservation and management" stood in the way of Secretarial action under the Magnuson-Stevens Act. In fact, the definition was broadly construed in General Counsel Opinion No. 80 (1979), which addressed public health and safety measures, to allow any purpose that can be inferred from the Act as the basis of an FMP provision. Strict application of a narrow

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[19] Now referred to as "catcher/processor" vessels.

[20] See, Fleet dumps thousands of tons of fish, Anch. Daily News, Mar. 24, 1989, p.1.

[21] Memo from Margaret H. Frailey, Assistant General Counsel for Fisheries, to the North Pacific Fishery Management Council, Dec. 1, 1989.

> interpretation of the term would eliminate probably half the FMP measures currently in place. ...
>
> We believe a strict reading of the definition of "conservation and management" is inconsistent with the Act's many expressions of permissible economic and social goals. Optimum yield cannot be achieved if FMPs can only address the restoration or maintenance of stocks of fish. Many purposes of the Act cannot be fulfilled if the Councils and the Secretary are so limited.[22]

The 1989 Roe Stripping Opinion specifically *rejected* Opinion No. 61's conclusion that on-shore processors' interests were not included within the definition of "conservation and management."

> This ["conservation and management"] is one of the provisions that was narrowly interpreted in General Counsel Opinion No. 61 (1978), which concluded that the Act did not authorize the Secretary to deny applications for joint-venture permits on the basis that U.S. processors could process the fish. This ruling resulted in the processor-preference amendment, P.L. 95-354. *The implication of Opinion No. 61, that "conservation and management" does not encompass consideration of the economic interests of on-shore processors, is inconsistent with Opinion 80 and subsequent practice of the agency.*[23]

The Roe Stripping Opinion therefore concluded that the Magnuson-Stevens Act definition of "conservation of management" included the potential to limit wasteful practices by processors.

The next issue addressed by the Roe Stripping Opinion was what measures could be used to implement the conservation and management concern of wasteful discards by processors? Like Opinion No. 80, the Roe Stripping Opinion[24] cited section 303 as being limited to "only conservation and management measures 'applicable to foreign fishing and fishing by vessels of the United States.'"[25] Although roe stripping

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[22] Roe Stripping Opinion, p. 7.

[23] Id., p. 6. The fact that on-shore processors interests can be considered in conservation and management measures is now beyond dispute. Specifically regarding fishery rationalization, Pub. L. 109-479 (2006) amended the Magnuson-Stevens Act to require allocations include consideration of "employment in the harvesting and *processing* sectors", "*investments* in, and *dependence* upon, the fishery", and "the current and historical and historical participation of *fishing communities*" (which is defined to specifically include processors). Magnuson-Stevens Act §303A(c)(5)(A).

[24] The same NOAA lawyer authored both the Roe Stripping Opinion and Opinion No. 80.

[25] Roe Stripping Opinion, p. 12.

could be prohibited, it could only be prohibited on at-sea processing operations and not by processors located on-shore.[26]

6. Status of NOAA's Opinion of the Authority to Regulate On-Shore Activities After the 1989 Roe Stripping Opinion.

There have been at least six additional written opinions by NOAA lawyers since the Roe Stripping Opinion discussing whether on-shore activities can be regulated under section 303 of the Act.[27] The formal view of NOAA on this issue has not changed since the Roe Stripping Opinion in 1989.

The opinion of NOAA regarding the ability of the councils and Secretary to regulate activities on-shore can be summarized as follows:

* Given an appropriate administrative record justifying the action, the councils and Secretary can protect the interest of on-shore processors as part of "conservation and management" of the fishery. The North Pacific Council, for example, would recommend allocations of pollock and cod between the inshore and offshore processing sectors to protect Alaska shore-based processors in 1991.

* *Necessary and appropriate* management measures to implement conservation and management of the fisheries are limited to activities at sea because section 303(a)(1) of the Magnuson-Stevens Act "limits conservation

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[26] During the Roe Stripping debate at the North Pacific Fishery Management Council meetings, NOAA's Alaska regional counsel proposed a ban on harvesting fish that would later be used in roe stripping on-shore. Some members of the North Pacific Council were uncomfortable with restricting fishing for purposes of roe stripping because the vessel delivering the pollock to an on-shore processor would be responsible for a practice over which it had no control. The Roe Stripping Opinion claimed, however, that this type of plan would be authorized under the Act. (See, Roe Stripping Opinion, p. 11.)

An analogy to this proposal for purposes of harvester-processor linkage would be that no fish could be harvested (regulating an activity at sea) which was not delivered to a processor with whom the vessel had a cooperative contact as specified in the regulations.

[27] The six written opinions are: (1) Memo from Lisa L. Lindeman, NOAA General Counsel – Alaska Region, to the North Pacific Fishery Management Council, Sept. 20, 1993, (1993 Processor Privileges Opinion); (2) Memo from Lisa L. Lindeman, Alaska Regional Counsel to Stephanie Madsen, Chair, North Pacific Fishery Management Council, Feb 3, 2005; (3) Letter from Eileen M. Cooney, NW Regional Counsel to Donald K. Hansen, Chairman, Pacific Fishery Management Council, June 10, 2005; (4) Letter from Eileen M. Cooney, NW Regional Counsel to Donald K. Hansen, Chairman, Pacific Fishery Management Council, Oct. 30, 2007; (5) Memo from Lisa L. Lindeman, Regional Council NOAA General Counsel, Alaska Region, to the North Pacific Fishery Management Council, Sept. 30, 2009; and, (6) Memo from Lisa Lindeman, Chief, Alaska Section to Glenn Merrill, Assistant Regional Administrator for Sustainable Fisheries, NOAA Fisheries, Alaska Region, Dec. 16, 2011 (2011 On-Shore Processing Privileges Opinion).

and management measures in an FMP to measures which are 'applicable to foreign fishing and fishing by vessels of the United States.'"[28]

III. Analysis of Authority to Regulate On-Shore Processing Under the Magnuson-Stevens Act.

1. NOAA's Rationale for Limiting "Necessary and Appropriate" Management Measures to At-Sea Activities.

The rationale NOAA has given why management measures outlined in the Basket Clause of section 303(b) are limited exclusively to activities at sea was articulated by one paragraph in Opinion No. 80.[29] That paragraph reads as follows:

> Section 303(a)(1) limits conservation and management measures in an FMP to measures which are "applicable to foreign fishing and fishing by vessels of the United States". This limitation applies to *all* conservation and management measures, because section 303(b) merely lists the provisions which may be selected under section 303(a)(1) as "necessary and appropriate." Thus an FMP may contain only those conservation and management measures which pertain to fishing or to fishing vessels.[30]

Section 303(a)(1) of the Magnuson-Stevens Act reads as follows:

> 303(a) Required Provisions.—
> Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—
> (1) contain the conservation and management measures, applicable to foreign *fishing* and *fishing by vessels of the United States*, which are—
> (A) *necessary and appropriate* for the conservation and

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[28] Opinion No. 80, p. 4.

[29] Only two other NOAA opinions have even touched upon the reason that the Basket Clause of section 303(b) is limited to at sea activities. The 1993 Processing Privileges Opinion focuses on the definition of "fishing" noting that the Magnuson-Stevens Act's definition of "fishing" did not include on-shore processing and therefore the Councils do not have the authority to create and allocate on-shore processing privileges. Regarding the Basket Clause of section 303(b), the 1993 Processing Privileges Opinion stated that, "there is nothing within [the Basket Clause] to expand the definition of fishing." The 2011 On-Shore Processing Privileges Opinion again notes that the definition of "fishing" under the Act does not include on-shore processing. The opinion summarily states that section 303 of the Magnuson-Stevens Act "consistently refers throughout to the Agency's authority as focused on 'fishing' which is most reasonably read as referring to multiple different activities at sea, but not on-shore."

[30] Opinion No. 80, p 4.

management of the fishery;

(B) *described in this subsection or subsection (b), or both*; and

(C) consistent with the national standards, the other provisions of this Act, and any other applicable law;

Section 303(a)(1) states that a required provision in a fishery management plan shall contain conservation and management measures, applicable to fishing by vessels of the United States, which are *"necessary and appropriate for the conservation and management of the fishery,"* and *"described in this subsection or subsection (b), or both."*[31]

Section 303(a)(1) is arguably limited to management measures applicable to foreign fishing and fishing by vessels of the United States. But nowhere else in section 303 is the same limitation expressed. Just because section 303(a)(1) is limited to measures that occur at sea does not limit other sections of 303 to that requirement.

For section 303(a)(1) to restrict all of section 303 to at sea activities, no provision "described in subsection (a) or subsection 303(b), or both" can include management of activities on-shore. Opinion No. 80's position restricting all "necessary and appropriate" measures to fishing and fishing vessels only makes sense if every provision of section 303(a) and (b) is limited to management measures that regulate only at sea activities. The argument that every section 303(a) and (b) is limited to management of activities that occur at sea is not possible. Provisions of the Magnuson-Stevens Act have been amended so that section 303 specifically includes management measures relating to on-shore processors. Currently section 303 provides:

Any fishery management plan with to respect to any fishery —

* Must assess and specify the capacity and extent to which *United States fish processors*, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States.[32]

* Must specify the pertinent data which shall be submitted to the Secretary with respect to ...*fish processing* in the fishery, including... the estimated processing capacity of, and the actual *processing* capacity utilized by, *United States fish processors*.[33]

* Must include a fishery impact statement for the plan or amendment which shall assess, specify and analyze the likely effects ...of the conservation and

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[31] Magnuson-Stevens Act §303(a)(1)(B).

[32] Magnuson-Stevens Act §303(a)(4)(C).

[33] Magnuson-Stevens Act §303(a)(5).

management measures on, and possible mitigation measures for *participants* in the fisheries and *fishing communities*[34] affected by the plan or amendment.[35]

* May require *fish processors* who first receive fish that are subject to the plan to submit data which are necessary for the conservation and management of the fishery.[36]

* May require a permit to be obtained from, and fees to be paid to, the Secretary with respect to any *United States fish processor* who first receives fish that are subject to the plan.[37]

Opinion No. 80's argument that the management measures in section 303 of the Act are all restricted to "fishing by vessels of the United States," just because section 303(a)(1) is arguably so limited, is patently wrong. Other provisions in section 303(a) and section 303(b) expressly authorize regulation of on-shore activities and specifically on-shore processing.

2. Agency Practice of Regulating On-Shore Activities Under the Magnuson-Stevens Act.

Regional fishery management councils, including the North Pacific Council, and the Secretary have frequently used the broad discretion provided in the Basket Clause in section 303(b) — *other measures, requirements, or condition and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery* — to regulate activities on-shore and on-shore processors.

The Roe Stripping Opinion contains a footnote acknowledging that regulation of on-shore processors has "long been *accepted* under the Magnuson Act as a *necessary concomitant* of the regulation of harvesting activities."[38] This is an acknowledgement by NOAA that the Magnuson-Stevens Act *does* provide authority to regulate on-shore activities. When regulation of an on-shore activity is

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[34] Processors are "participants" in the fisheries, and the definition of "fishing community" specifically includes "United States fish processors." Magnuson-Stevens Act §3(17). This section 303(a) alone provides authority for linkage between vessels and onshore processing plants as a method to mitigate the negative impacts of rationalization to on-shore processors.

[35] Magnuson-Stevens Act §303(a)(9).

[36] Magnuson-Stevens Act §303(b)(7).

[37] Magnuson-Stevens Act §303(b)(1)(C).

[38] Roe Stripping Opinion, p. 12.

challenged, however, the defense given by the agency is *not* that the activity is a "necessary concomitant" to harvesting activities, but instead the defense is that the regulation is "necessary and appropriate" to conservation and management of a fishery and thereby authorized under the Basket Clause of section 303(b) in the Magnuson-Stevens Act. The phrase "necessary concomitant" is not found in the Magnuson-Stevens Act, any federal register notice supporting the Act's authority to regulate on-shore activities, or any cases interpreting the Magnuson-Stevens Act's authority to regulate on-shore activities. The authority for the councils and Secretary to regulate on-shore processors is always found under the Basket Clause in section 303(b) of the Magnuson-Stevens Act and not because the regulation is a "necessary concomitant" to harvesting activities.

If *some* on-shore activities can be regulated under the Basket Clause, then *all* on-shore activities can be regulated under the Basket Clause as long as there is a legitimate conservation and management purpose. There is no distinction in the Magnuson-Stevens Act for activities that are a "necessary concomitant" to harvesting. The issue is whether the conservation and management rationale is legitimate. Opinion No. 80 was correct when it noted that "[a] case-by-case analysis and consultation with other agency should establish whether the proposed public-health regulation is 'necessary and appropriate' for the conservation and management of the fishery."[39]

To follow is just a small sample of regulation of on-shore activities promulgated under the Magnuson-Stevens Act:

a. The North Pacific Observer Program. Amendment 18 to the Gulf of Alaska FMP[40] and Amendment 13 to the Bering Sea Aleutian Islands FMP[41] amended groundfish plans off Alaska to establish mandatory observer coverage for both fishing vessels and on-shore processing plants. The observer program imposed significant costs and regulatory burdens to shore-based processors as they were required to hire and pay for observers certified by NOAA.

Comments were submitted to the Secretary opposed to the plans, arguing that observers at shore-plants were redundant to observers on fishing vessels, the costs imposed exceeded the benefits and mandatory observer coverage was not authorized by the Magnuson-Stevens Act. Nowhere in section 303, or elsewhere in the Magnuson-Stevens Act, was there express authority for management measures to require fishing vessels, or on-shore plants, to hire observers. The Secretary, however, had no difficulty approving the plan amendments, specifically citing the conservation and management purpose of reliable information and the authority of

[39] Opinion No. 80, p. 9.

[40] 54 Fed. Reg. 50386, Dec. 6, 1989.

[41] 55 Fed. Reg. 4839, Feb. 12, 1990.

the Basket Clause in section 303(b) to "prescribe measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery."[42]

b. The Multi-Region Billfish plan. The five region Billfish Fishery Management Plan was approved in September of 1988.[43] The plan eliminated the existing commercial fishery for Atlantic billfish. It prohibited the sale of any Atlantic billfish — even legally harvested billfish — *anywhere* in the United States, it prohibited the importation of Atlantic billfish, and the plan required that any billfish outside of Pacific coast states have documentation showing it was taken from the Pacific Ocean.

The Billfish plan was extremely controversial and 413 comments were submitted to the Secretary on the draft plan. Both the Office of Management and Budget and the Small Business Administration recommended disapproval of the plan. The Small Business Administration noted that the Regulatory Impact Review document accompanying the plan "shows significant societal losses for the no sale provision." The scope of the Secretary's authority to implement the plan was among the issues raised by the plan's opponents.

Despite the controversial nature of the plan, and the fact it regulated activities on-shore, the agency rather summarily found that the Secretary had authority to approve and implement the plan. "NOAA believes that the provisions of the rule contribute to conservation of the resource, are necessary to the effectiveness of the FMP, and are within the authority of the Magnuson Act."[44]

c. Haddock Bycatch in the Atlantic Herring Fishery. On-shore processors of Atlantic herring must separate out and retain all haddock offloaded from a vessel. The haddock may not be sold, purchased, traded, bartered, or transferred, and must be retained, after having been separated from the herring, for at least twelve

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[42] 54 Fed. Reg. 50391 (1989). Mandatory observer coverage for on-shore processors in the North Pacific was specifically implemented under the authority of the Basket Clause in section 303(b) of the Magnuson-Stevens Act. Later, Pub. L. 101-627 amended section 303(b) to provide that management measures may "require that observers be carried on board a vessel of the United States engaged in fishing..." [Now found at section 303(b)(8) of the Magnuson-Stevens Act]. There is no similar provision in section 303(b) of the Magnuson-Stevens Act to authorize observers to be hired to work in on-shore processing plants. Pub. L. 101-627 also contained the North Pacific Research Plan that authorized placing observers at processing plants in Alaska. This legislation was not signed into law until November 28, 1990, however, well after publication of the regulations mandated observers at shore-based processing plants, and regulations implementing observer coverage under the North Pacific Research Plan were not promulgated until April of 1994.

[43] 53 Fed. Reg. 37765 (1988).

[44] 53 Fed. Reg. 37767 (1988).

hours.[45]

d. On-shore Processor Privileges. A surprisingly large number of fishery management plans give on-shore processors the right to sell fish when others cannot. Thus, the Gulf of Mexico Council's prohibition against the sale of reef fish during a fishery closure does not apply to fish landed ashore, held in cold storage and sold by a processor.[46] The prohibition against the sale of Royal red shrimp during a closure does not apply to shrimp landed ashore and sold by a processor.[47] The prohibition in the South Atlantic against sale of wreckfish during a closed season does not apply to fish landed ashore prior to the closure and held in cold storage by a processor.[48] The prohibition against the possession and sale of shark during a closed season does not apply to a processor with a valid permit that off-loaded and purchased the fish prior to the closure.[49] There are many other similar regulations granting processors an exclusive privilege to sell fish during periods of time when non-processors cannot.

In summary, it is NOAA's well-established practice to regulate on-shore processing when it is considered "necessary and appropriate" to help achieve conservation and management of the fisheries. The agency has repeatedly relied on the Basket Clause in section 303(b) to regulate shore-based processors.

3. Judicial Review of Magnuson-Stevens Act Regulation of On-Shore Activities.

There have been three published judicial challenges to fishery management measures that regulate on-shore activities. In every reported case, those necessary and appropriate regulations have been upheld under the authority of the "Basket Clause" of section 303(b) in the Magnuson-Stevens Act. The three cases challenging regulation of on-shore activities are summarized below:

a. Stinson Canning Co. v. Robert Mosbacher.[50]

In October of 1987 the Stinson Canning Company challenged regulations which prohibited the *importation* or *possession* of otherwise legally harvested, but

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[45] 50 CFR §648.15(d).

[46] 50 CFR §622.39(b)(1).

[47] 50 CFR §622.57(a)(1).

[48] 50 CFR § 622.183(b)(2).

[49] 50 CFR §635.28(b)(5).

[50] Stinson Canning Co., Inc. v. Robert A. Mosbacher, *et al*, No. C 87-0328 B (Dist. of Maine, Feb, 5. 1990).

undersized (by U.S. standards), groundfish. These are fish that were harvested legally by Canadian fishing vessels in Canadian waters, but importing, or possessing, those fish in the United States was illegal under this regulation.

This "no importation or possession" rule clearly regulates on-shore activities and the Stinson Canning was concerned that this rule would hurt its ability to purchase fish at reasonable prices. The rule even regulates foreign commerce such that the Canadian government commented in opposition to the plan. The plaintiff in this case specifically alleged that the Secretary had exceeded his statutory authority under the Magnuson-Stevens Act by approving the rule.

The Secretary defended the rule as necessary and appropriate for the conservation and management of the fishery as it aided enforcement efforts because "officers will not have the burden of proving where undersized groundfish were taken."[51]

Specifically citing and quoting the Basket Clause of section 303(b), the court held that the Magnuson-Stevens Act authorized promulgation of the rule. The fact that the activity was on-shore did not stop the court from holding that the Basket Clause of the section 303(b) authorized the plan. The court stated:

> Here, as noted above, there has been a broad delegation of authority to the Secretary and regional councils to take whatever measures are "necessary and appropriate for the conservation and management of the fishery". [52]

b. National Fisheries Institute, Inc. v. Robert Mosbacher.[53]

As mentioned in the 1988 NMFS General Counsel's memo regarding Limited Entry, the National Fisheries Institute (NFI) challenged the five-council plan which set aside billfish exclusively for recreational users. One of the specific provisions challenged was the prohibition against the purchase, barter, trade or sale in any state of an otherwise legally harvested billfish (the "no sale" provision).

The NFI also challenged the provision that billfish possessed by a seafood processor will be presumed to have been harvested from the Atlantic Ocean unless it is accompanied by documentation that it was harvested from the Pacific Ocean (the "paper trail" provision). "When combined with the no sale provision discussed previously, the paper trail provision forces seafood dealers and processors, in most

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[51] Stinson, p. 10.

[52] Stinson, p. 9.

[53] National Fisheries Institute, Inc. *et al*, v. Robert A. Mosbacher and Coastal Conservation Assoc., No. C 88-3103 (Dist. Of Col. Mar.12, 1990).

instances, to either forego selling any billfish whatsoever or document that each billfish they possess was harvested from somewhere other than its management unit in the Atlantic Ocean."[54]

The NFI argued that nowhere in the Magnuson Act or its legislative history did Congress indicate that the Secretary can regulate the sale of legally-caught fish.

Again, this prohibition regulated on-shore activities, even activities occurring in States beyond those represented by the five management councils. The court easily upheld the "no sale" and "paper trail" provisions: With regard to the No Sale provision the court noted: "The Magnuson Act vests broad authority in the Secretary to promulgate such regulations as are necessary to carry out the conservation and management measures of an approved FMP." ..... Merely because Congress chose to also specify certain actions as unlawful per se in section 1957(1)(B)-(I) does not mean that it intended those prohibitions to be the boundaries of the Secretary's broad rulemaking authority."[55]

Ultimately, the conservation and management rationale allowed regulations to take action the Secretary thought necessary and appropriate, despite the fact they regulated on-shore activities. "Both provisions are designed to avoid a problematic scenario: in their absence a commercial market for Atlantic billfish may develop and anybody selling a billfish could baldy assert that it was harvested from the Atlantic Ocean beyond the EEZ, or, in the alternative, from the Pacific Ocean."[56]

c. Byrne v. Lovgren.[57]

Saving the best for last, *Byrne v. Lovgren* is a fishery enforcement case worthy of telling in some detail. On an early spring morning in 1983, Mr. Gösta ("Swede") Lovgren was working on the dock of his fish processing plant when agents of the National Marine Fisheries Service arrived and asked permission to climb onto a platform at his dock to inspect fish that recently had been landed. It was a routine inspection. There was no suspected violation. Using rather colorful and forceful language, however, Mr. Lovgren denied the agents' request.

Mr. Lovgren later admitted that he tends to be "volatile" and he was upset at the time, but he should have known that it is never wise to shout obscenities at enforcement officers. For refusing to allow the inspection and forcefully resisting

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[54] NFI, p. 15.

[55] NFI, p. 14.

[56] NFI, p. 17.

[57] John Byrne v. Gösta ("Swede") Lovgren, 787 F.2d 857 (3rd Cir. 1986).

the inspection, the temperamental Mr. Lovgren was charged with violating two regulations issued pursuant to the Magnuson-Stevens Act. The Administrative Law Judge found him guilty on both counts. Lovgren's petition to the Administrator of NOAA for review of his case was denied, and he filed a suit challenging the violations in U.S. District Court for the District of New Jersey. The district court upheld the civil penalties. Mr. Lovgren next appealed the district court's decision to the Third Circuit of United States Court of Appeals. By now Mr. Lovgren's legal fees far exceeded the government's proposed fine of $5,000.[58]

The issue before the court was whether the warrantless search was legally authorized. The Magnuson-Stevens Act specifically authorizes searches of fishing vessels without a warrant.[59] There is no similar provision in the Act for inspections on-shore. The Secretary promulgated regulations under the Magnuson-Stevens Act extending the authority for warrantless searches to various on-shore facilities, including buildings and docks, "where groundfish may be found" in the Mid-Atlantic region.[60] Lovgren challenged the authority of the Secretary to establish this regulation.

The court had no difficulty upholding the regulation, even though it authorized warrantless searches on-shore! Noting that the conservation and management purpose of the regulation was to "monitor compliance with the plan" the court specifically cited the Basket Clause of section 303(b) in ruling the regulations were authorized. "A plan may 'prescribe' all 'measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.'"[61]

The fact that activities on-shore were being regulated under the Magnuson-Stevens Act, and the fact that these regulations allowed warrantless searches of buildings, did not deter the court because of the legitimate conservation and management purpose served by the regulation.

> If inspecting officials were able only to observe fish remaining on board a vessel, the agency's efforts to gather accurate information would be substantially frustrated. Those wishing to evade inspection would be aware that once the fish have reached the dock, they are safe from inspection unless the official has previously obtained a search

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[58] The government asked for a fine of $5,000, but Mr. Lovgren so impressed the Administrative Law Judge that he fined Mr. Lovgren $50,000, of which all but $10,000 was suspended upon the condition Mr. Lovgren's cooperate with the government during the pendency of any appeal.

[59] Magnuson-Stevens Act §311(b)(1)(A)(ii).

[60] Lovgren, p. 863.

[61] Lovgren, p. 863.

warrant, a difficult task where the fishermen keep to no prearranged schedule.[62]

Gösta Lovgren is currently living in Lavallette, New Jersey, and publishing a blog entitled "Swede's Dock." (See Figure One, below.) For those wondering if Mr. Lovgren has mellowed over the years, he can be contacted at his email address: NMFS_Bites_Big_Time@SwedesDock.com.[63]

Figure One. From "Swede" Lovgren's Blog.

[62] Byrne v. Lovgren, p. 864.

[63] Mr. Lovgren's email address can be accessed at the bottom of the left hand column of Swede's Dock blog by selecting the "Write Me" icon.

IV. Conclusion

If the Magnuson-Stevens Act provides authority to regulate on-shore activities, then the Act provides authority to include "linkage" between vessels and shore-based processing plants. Since 1979 NOAA has acknowledged that interests beyond simple protection of the resource are incorporated within the term "conservation and management" as defined under the Magnuson-Stevens Act. NOAA specifically stated that the economic interests of on-shore processors can be considered as part of "conservation and management" in its 1989 Roe Stripping Opinion. Given a legitimate conservation and management rationale to regulate on-shore activities, the only remaining issue NOAA has raised concerning "linkage" between harvesters and processors is whether "necessary and appropriate" measures under the Basket Clause of section 303(b) of the Act allow regulation of on-shore activities.

The rationale given by NOAA for limiting the Basket Clause to authorizing regulation only of activities at sea — that all of section 303 [Contents of Fishery Management Plans] is limited to at sea activities — is not valid. Regulating processing by on-shore facilities is specifically referenced throughout various sub-sections of section 303.

Furthermore, on-shore activities, including on-shore processing, have been frequently regulated under the Basket Clause of section 303(b) in the Magnuson-Stevens Act. Given a legitimate conservation and management purpose, it has been NOAA's longstanding practice to regulate on-shore processors under the Basket Clause. NOAA cannot logically claim the Basket Clause authorizes regulations that require shore-based processors to hire observers but not regulations that require "linkage" between harvesters and on-shore processors. Courts reviewing the issue have unanimously upheld regulation of on-shore activities under the Basket Clause in section 303(b).

There are ample conservation and management reasons that linkage between harvesters and on-shore processors may be appropriate if the trawl groundfish fisheries are rationalized in the Gulf of Alaska. Those conservation and management interests include the economic considerations of both on-shore processors and trawl vessels delivering to on-shore plants; preserving historical fishing practices; protecting those dependent upon the fishery; protect employment in the processing sector; protect investments in the fisheries; and protecting the current and historical participation of fishing communities, among other reasons. Given these legitimate conservation and management rationales, it is irrelevant that the "necessary and appropriate measures" happen to regulate on-shore activities by linking harvesting vessels to processing plants because the Magnuson-Stevens Act authorizes regulation of on-shore activities under the Basket Clause of section 303(b).

Sam Cunningham: So from that point I want to shift to the discussion of how these coops form. And again, the proposal that we looked at describes the assignment of harvesters to a cooperative in which a processor is a member and that assignment for the initial two years of the program would be based on criteria, observable behavior from the past. So a distinction between just having processors in a coop but in addition to that membership in the coop, which processor it is, which harvester it is, is based on a set of criteria. And this is something that since the Council gave us this motion in April we've been discussing with our counsel and with general counsel and they have had an opportunity provide us some initial input on that so we've spoken to general counsel and they feel comfortable addressing that here. So if that's alright, I'll look to them to speak to it.

Chairman Dan Hull: Ms. Smoker.

Ms. Lauren Smoker: Thank you Mr. Chairman. Thank you Sam. So as Sam noted, in April the Council's motion included provision 7(d), which he just explained. And then at the time I believe I was here and said that that was a provision that we kind of wanted to take some time to take a look at because it raised a few questions in my mind. And over the summer we did that as an agency, as an office through NOAA General Counsel and our findings were that this provision that the Council's currently considering is substantively identical to the requirement for inshore coop formation that was included in the Central Gulf of Alaska Rockfish Pilot Program. In the Pilot Program each harvester was able to join a single coop that was associated with the processor to which the harvester delivered the most pounds of rockfish during the statutorily designated processor participation period. The terms of cooperative association between harvesters and the processor were not regulated. Such terms were subject to private negotiations between the members of the coop. However, because the coop agreement was required, required the approval of the associated processor, the Council generally expected that the agreement would include obligations for the harvesters to deliver certain catches to the processor.

At that time the Agency determined that the Pilot Program coop formation requirement was an allocation of on-shore processing privileges because the requirement of the establishment a fixed linkage between those harvesters and the specific shore-based processor to which they made historical deliveries. However, specific legislation included in the consolidated appropriations of 2004 authorized the Council and NMFS to make such allocations of processing privileges.[1] As the Council is aware this legislation expired at the end of 2011.

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[1] NOAA's statement is incorrect on this point. The Rockfish Pilot Program legislation did *not* authorize "linkage" between harvesters and a specific processor. Section 802 of the Consolidated Appropriations Act of 2004 contained only a short paragraph directing the Secretary, in consultation with the Council, to establish a "pilot program that recognizes the historic participation of fishing vessels... and fish

NOAA longstanding position has been that the with the exception of the crab rationalization program, the Magnuson-Stevens Act does not authorize the Agency to allocation onshore processing privileges which include provisions that establish fixed linkages between harvesters and a specific shore-based processor. This position was most recently reiterated in 2011 with the rulemaking for Amendment 88 to the Gulf FMP which implemented the Central Gulf of Alaska Rockfish Program that replaced the Pilot Program. It was also reiterated and defended in the Agency's — or articulated in the Agency's defense of Amendment 88 before the district court for the Western District of Washington.

Since that time no new legislation, either amending the MSA or creating a special authority which provides the councils or NMFS the authority to allocate onshore processing privileges, has been enacted. So, given this, our office determined that the provision the Council's currently considering would allocate onshore processing privileges and is not authorized under the current language of the Magnuson Act. Absent legislation authorizing this allocation — this type of allocation — processing privileges — the Agency would not be able to approve this provision if the Council would submit it for Secretarial review. But we're not at that point yet. So given this determination the Council can still continue to include this provision in its suite of alternatives if the Council thinks it is an approach that addresses the Council's operating goals and objectives for the Gulf of Alaska bycatch management program.[2]

That's my talking points so far and I'll stop and discuss it if you would like.

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processors for pacific ocean perch, northern rockfish, and pelagic shelf rockfish harvested in the Central Gulf of Alaska." NOAA used comments made by the legislation's sponsor in a floor statement as "authority" of this linkage. Senator Stevens noted in his floor statement, "the historic participation of fish processors under this pilot program should be considered pursuant to the cooperative model under the American Fisheries Act, *or any other manner the North Pacific Council determines is appropriate.*" (Congressional Record Online, Jan. 22, 2004, p. S152.) Senator Stevens would have included specific authority within the statutory language of the Rockfish Pilot Program if he believed the Magnuson-Stevens Act did not contain authority for linkage. If Senator Stevens' recommendation to the Council in his statement is deemed new statutory authorization, then "any other manner the North Pacific Council determines is appropriate" provides authority for management measures limited only by the Commerce Clause of the United States Constitution.

[2] In summary, NOAA's position is as follows: We have claimed that the Magnuson-Stevens Act does not authorize regulating on-shore activities since at least 2009. The Magnuson-Stevens Act has not been amended to specifically address this issue. Therefore, NOAA is not going to change its opinion, regardless of whether the agency's original position was wrong.

Chairman Hull: Thank you Counselor. I have Mr. Henderschedt.

John Henderschedt: Thank you Mr. Chairman. Lauren, does the Agency still believe that onshore processors interests can be considered in our decision making as part of conservation and management of the resource? In other words, so you've referred specifically to processing privileges but more generally speaking the Council can consider processors in terms of conservation and management.

Ms. Smoker: Mr. Chairman. Mr. Henderschedt, section 303(A) which is the Limited Access Privileges Program section, and the section that the Council will be operating under for implementing this program does talk about consideration of fishing communities, processing sector, so yes you consider the processing sector. But that section does not talk about individual processors. This provision is processing privileges which is something separate than considering processing sector as a whole.

Mr. Henderschedt: Lauren, then when it comes to criteria for necessary and appropriate management measures, are those things limited to at-sea fishing activities?

[Pause]

Chairman Hull: Counselor.

Ms. Smoker: Thank you Mr. Chairman. I think that Mr. Henderschedt is making some of the points that have been made by ... [pause] well, Mr. Plesha. We had a conversation with Mr. Plesha this summer and he provided me, and also provided the Council, with his memorandum arguing his position as to why he thinkgs the Magnuson-Stevens Act provides the Council and the Agency with the authority to do these kinds of fixed linkages, these processor privileges. And while I certainly appreciate the memo the Agency, my office NOAA General Council at various levels within our office in Alaska talking with other offices around the country considered Mr. Plesha's memo and we also looked at the other provisions and we felt that our legal position and the proposal that the Council's looking at is not authorized under the Magnuson-Act.[3]

Chairman Hull: I have Mr. Fields and then Mr. Tweit

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[3] Mr. Henderschedt's question — are all "necessary and appropriate" management measures limited to at-sea activities? — is not addressed, nor even discussed, in this response. Perhaps Mr. Henderschedt's question was sidestepped because it is clear that "necessary and appropriate" management measures under the Magnuson-Stevens Act have included on-shore activities and thus NOAA's entire rationale (that all "necessary and appropriate" measures are limited to activities at sea) for claiming the Magnuson-Stevens Act does not authorize "linkage" between on-shore plants and harvesting vessels is invalid.

Duncan Fields: Thank you Mr. Chairman. Lauren, I appreciate the memo and the clarity of the memo, but I was confused at the end about if you've made a determination about the current provision in our proposed action, that you could not approve it without authority, that you would send it back co the Council, in terms of NOAA GC's review, why then did you say but you can go ahead and keep it in the package? I didn't understand that.

Ms. Smoker: Thank you Mr. Chairman. Thank you Mr. Fields. So as the Council has heard many times, probably form the person sitting in this chair, but also from different NEPA discussions, and also from an Administrative Procedures Act position, the Council is to consider reasonable alternatives. Under NEPA, for example, a reasonable alternative is something that fits within the scope, the purpose and need of the action. And NEPA case law talks about the fact that agencies can consider alternatives that might meet the purpose and need but at the particular point in time that they are being examined are not authorized. Are not necessarily legally viable.

The Council has done this before. At the time the Council considered the crab rationalization program that was under a direction of Congress and Congress articulated the types of measures that Congress wanted the Council to consider. But when the Council took action for the program that ended up being the crab rationalization program, we did not have authority in any law at that point for processor quota share, the binding arbitration system. There were a few other things that came along with that Congress did give us, did amend the Magnuson Act actually needed to provide us with that authority. So that's why I say that this time if the Council thinks that this approach meets some of the goals and objectives it can certainly consider to consider it. I would advocate that I think given the determination that I am providing the Council now it behooves the Council to think of some other alternatives as well if you'd like to kept this. And I think the Council has identified it in its preliminary structure as a way to achieve some of its goals and objectives that you have articulated so, I, at this point in time we're not advocating that you remove it. It's your choice.

Chairman Hull: Okay. Mr. Tweit.

Bill Tweit: Thanks Mr. Chair. I have a follow-up to both Mr. Henderschedt's and Mr. Field's questions. Ms. Smoker, back to your answer to Mr. Henderschedt. I guess what continues to puzzle me — and yes I have looked at the full scope of things that have been provided in writing on this — but NOAA has defended plans that allowed warrantless searches on-shore. NOAA has defended the prohibition against the possession of billfish onshore. And NOAA has even granted shore-based processors the ability to sell fish where non-processors are unable to. Again, onshore. All under the necessary and appropriate [clause]. And even here we've got the requirement from onshore processors that they have to have observers; they have to hire observers. We require the shore-based processors to collect the groundfish

observer fees. And all those things seem to have held, so why are those okay but this one may not be? I still don't understand where that distinction lies.

[Pause]

Chairman Hull: Counselor.

Ms. Smoker: Thank you Mr. Chairman. I'll turn the Council to previous legal advice that we have provided, that was provided at the time all of those measures you have referenced, Mr. Tweit, were also in place. Some of those measures were taken under specific authority of the Magnuson Act; requiring permitting, record keeping and reporting.[4] Some of them were not specifically identified in the Magnuson Act. One of the measures that has been brought to our attention is a measure called the "basket clause". That is a provision in the Magnuson Act, discretionary section for FMPs. And since the original memo on the scope of the Magnuson Act in terms of processing privileges was written back in 1993, the Council, excuse me, the Agency and our office was aware of that "basket clause." That provision has been around for a long time. And we opined at the time that you can't interpret the basket clause in a way that would completely consume the rest of the Magnuson Act. You can't say, well alright, here's Congress' construct for the Magnuson Act, but its provided this provision that allows us to implement some things that Congress might not have been able to articulate, so that means we can pretty much do whatever we want. That interpretation we considered but decided that that could not be how you interpret that provision. So, for affecting the fishery management scheme the Agency has, at times, implemented actions that fulfill the monitoring, enforcement aspects of that fishery management regime.[5]

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[4] NOAA's response is incorrect on this point. Although there is specific authority under the Magnuson-Stevens Act to collect data from on-shore processors, there was *no* specific authority in the Magnuson-Stevens Act to regulate the on-shore activities cited by Mr. Tweit. All of the management measures referred to by Mr. Tweit were implemented under the section 303(b)(14) of the Act, the so-called "Basket Clause."

[5] Again the response does not answer Mr. Tweit's question: "How can NOAA justify all the regulations of on-shore activities under the Magnuson-Act's Basket Clause if it claims that the Magnuson-Stevens Act's Basket Clause does not authorize the regulation of on-shore activities?" The last sentence of NOAA's response does perhaps imply that the Magnuson-Stevens Act authorizes regulation of on-shore activities if the conservation and management purpose is monitoring or fishery enforcement. The Magnuson-Stevens Act, however, makes no such distinction. Given *any* valid "conservation and management" purpose, section 303(b)(14) authorizes "such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate" for the conservation and management of the fishery." Furthermore, the Agency has also used the Basket Clause of section 303(b)(14) of the Magnusson-Stevens Act to implement

Mr. Tweit: My follow-up to Mr. Fields' question is, I guess, you think, let me suggest a hypothetical scenario leading out Mr. Fields question and your answer. So as we move forward through our analysis we determine that the kind of processor linkage we are looking at right now is the only tool out of all the tools we've looked at, that meets the problem and needs statement that we've outlined. So at the end of the day as part of our final motion, we incorporate that tool. We create a supporting record for it. The Secretary reviews and approves the plan. The plan is implemented. Again, all hypothetical scenario. And then its challenged in court. In particular relevant to that linkage. I understand I am laying out a hypothetical here. Do you think if it got to that point — and obviously your job is to defend it — do you think you'd be upheld in court.

[Pause]

Chairman Hull: Counselor.

Ms. Smoker: Thank you Mr. Chairman. I... that is a whoppin' hypothetical. [Laughter]

Mr. Tweit: I'm good at that.

Ms. Smoker: Yeah. I think one time my husband was before the Advisory Panel and thought something they were doing was psychedelic. So I didn't use that term.

Mr. Tweit: I wore my conservative tie, though. I have a psychedelic one I could wear that.

Ms. Smoker: Yeah. So I think that I actually, it its impossible for me to respond directly to your question. But the one comment I will make is that the Department of Justice does defend us in court when we are litigated. And it would be, at that time, it would be, we'd have to see if we had a case to defend. And we would work with the Department of Justice with that. The Agency as well as the Department of Justice.

Mr. Tweit: I understand but the point of my hypothetical in a way was at least what I have seen, and I am sure I have not seen the whole body of discussion about this, but it certainly looks like the basket case, which I still don't fully understand, but

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regulations protecting purely economic interests of on-shore processors, such as allowing shore-based processors to sell species of fish during closed seasons when non-processors are prohibited from selling those same fish. So to the degree NOAA's response tries to imply that the Basket Clause can be used to regulate on-shore activities for some "conservation and management" purposes, but not for others, the response does not conform to the Magnuson-Stevens Act (which does not contain such distinction) nor Agency practice.

that has been upheld pretty regularly, pretty consistently, in the courts, the use of the basket case clause, [Laughter] and so I guess that is what I am really pushing on. Yeah, I know. Speaking as one Council member who may be a basket case.

[Pause]

Chairman Hull: Counselor do you wish to respond? I guess I will let this go on a little bit but we're I think you, you're, the purpose of providing us with the information was to indicate that you would suggest that the Council consider other alternatives. And I don't know which way the Council wants to go. I understand the direction of the questioning. But I am just not sure where it ends and we get back to the presentations. Counselor.

Ms. Smoker: Thank you Mr. Chairman and I appreciate your comments. I'll just make maybe two quick points. In a slight response, maybe not a direct response to Mr. Tweit. I'll let him decide that, but I will reiterate that we, that the Amendment 88 litigation was challenging the decision to not include the type of processor linkage that we had had in the Pilot Program and Department of Justice defended us in that position that we felt it was not authorized under the Magnuson Act.

And I'll just conclude maybe to sum up points that I made is that while we are, I am here to tell you that our position is that at this time given the current language of the Magnuson Act the provision is not authorized. That you certainly can continue to consider it. We are not asking you at this time to remove it. But that it also, not only for this reason, but also for other reasons, it would behoove the Council to consider additional or other alternatives. At your choice.

Chairman Hull: Okay. Thank you Counselor. Mr. Fields.

Mr. Fields: Thank you Mr. Chairman. Lauren, just for clarity nothing in your opinion calls into question or challenges the coop structure as we currently have in our rockfish program? In other words its not about the coops, its about the linkage. Is that correct?

Ms. Smoker: Mr. Chairman, that is correct. As the Council probably remembers the coop provision in the current rockfish had harvesters associating with a processor but there was no requirement that it be the processor to whom they had historically delivered a particular amount of catch during a certain time. Or that there be future deliveries to that processor. We made this quite specific saying that the program is not requiring future deliveries to the processor.

Mr. Fields: And related that the provision that your rockfish quota can only be accessed through a quota, or through a coop, that's not being called into question either. Is that correct?

Ms. Smoker: That's correct.

Mr. Fields: Thank you.

Chairman Hull: Okay, so thank you.

August 19, 2015

Mr. Glenn Merrill
Assistant Regional Administrator
Sustainable Fisheries Division
NOAA Fisheries Alaska Region
Juneau, Alaska

Re: Notice of Intent to Prepare Environmental Impact Statement for the Trawl Groundfish Fisheries in the Gulf of Alaska

Dear Mr. Merrill,

I am writing to provide comment on the scope of Alternatives for the Environmental Impact Statement for the proposed fisheries management program for bycatch in the Gulf of Alaska (GOA) trawl groundfish fisheries as outlined in the Notice of Intent (NOI) posted in the Federal Register (NOAA-NMFS-2014-0150).

The NOI outlines two substantive Alternatives for the EIS; in both cases these options lead to the creation of a catch share system for bycatch in the groundfish fisheries in the GOA. Moving towards a market-based approach may solve the bycatch problem by creating individual- or cooperative-level accountability. However, it will also likely change the composition of the fishing fleet in the process. Indeed, the history of catch share programs in the US is one of fleet consolidation. The size and geographic distribution of fishing fleets have been reduced in most (if not all) federal fisheries that are managed under these systems, including those in the Northeast, Mid-Atlantic, Gulf of Mexico, West Coast, and Alaska. The point of flagging this pattern is not to question the appropriateness of a catch share program in this situation. Rather, I intend to encourage the Council to be explicit about the objective(s) of the proposed bycatch program and develop Alternatives to match these goals. As written in the NOI, the expressed purpose of the proposed action is to "improve stock conservation by imposing accountability measures for utilizing target, incidental, and prohibited species catch, creating incentives to eliminate wasteful fishing practices, providing mechanisms for participants to control and reduce bycatch in the trawl groundfish fisheries, and to improve safety of life at sea and operational efficiencies." If the Council does not also intend for the bycatch program to reduce the size of the fleet and/or shift the geographic distribution of the industry, then each Alternative should be explicit in outlining the mechanisms that will be put in place to maintain the existing composition of the fleet and anchor fishing quota in communities. Alternative 3 does this with the establishment of Section 303A(c)(3) Community Fishing Associations, but Alternative 2 is overly vague in this respect ["a number of elements that are intended to provide for fishery dependent community stability"] and could be refined further.

Being explicit about these provisions will help to ensure that they are not treated as secondary considerations or trailing amendments. This should be viewed as a real concern because there are several cases in other regions where this dynamic has played out. In the Northeast Multispecies Sector Program, for example, the New England Council is embroiled in a highly polemic debate about fleet diversity and allocation limits because a cap was not created in 2010 when the program was established. Frustration has also been voiced in the Pacific Trawl Rationalization Program where efforts to create Community Fishing Associations and reallocation set-aside quota after the initial program was established have continued to be put off into the future. These suggest that if safeguards are not established at the outset they will be more difficult to create in the future.

Thank you,

Joshua S. Stoll
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Glenn Merrill
Assistant Regional Administrator for Sustainable Fisheries NMFS, Alaska Region
NOAA–NMFS–2014–0150
Re: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for any Gulf of Alaska (GOA) trawl bycatch management program

My name is Keith Cochran and I skipper the F/V Bay Islander in Kodiak. I am relatively young in this business, but I do believe I have seen enough to know that we operate in a broken system regarding GOA groundfish management. I grew up fishing with my father in Kodiak, and hope that we can soon see change to sustainable management that will ensure a healthy fishery for my kids someday.

The present fishery environment simply does not work. A great example is the closure of the groundfish fishery this past spring. The Bay Islander alone supports seven families who were all greatly impacted when we had to tie up our boat and quit fishing.

Effective bycatch reduction in a trawl fishery requires effort from all parties involved. This includes fisherman, processors, and governing bodies including NMFS, NOAA, and the NPFMC.

I can tell you that the trawl fisherman of Kodiak have been earnestly seeking ways to improve bycatch reduction, this being done through gear modification, excluder research, voluntary catch share agreements, better fleet communication, among other things. All of this does help to some extent to avoid bycatch, but without the help from the council, in the form of proper management tools, we will continue to fail without doubt.

I write all this to say that I am in support of Alternative 2 for consideration in the EIS. I believe a co-op management system is the best possible way to manage a fishery as it benefits all stakeholders, not just one particular group. I have seen much success with co-op management in both the GOA rockfish program and the West Coast Whiting fishery, of which I have participated in both. These programs have greatly reduced bycatch, reduced at-sea discards, and increased the value of the fish.

Two other issues I believe need to be addressed in the EIS are, GOA Pollock trip limits, and the GOA Chinook PSC cap.

I would like to see the Pollock trip limit increased somewhere between 50,000lbs and 100,000lbs. I believe the Kodiak fleet has outgrown the current trip limit and the increase would help improve operating efficiencies without negating the benefits of a limit. I also believe this small increase would decrease at-sea discards as more boats holding capacities would comply with regulation.

The Chinook PSC cap in the GOA also needs to be seriously considered. I suggest increasing the hard cap would have no adverse affect on stock levels while allowing trawlers to prosecute groundfish quotas effectively.

Again, I ask that you would consider alternative 2 within the EIS while also identifying the impacts of increasing GOA Pollock trip limits and the Chinook PSC cap.

Thank you for your consideration,

Keith Cochran
F/V Bay Islander
keith@bayislander.net

Kent Leslie
F/V Excalibur II
PO Box 69
Kodiak, AK 99615

August 28, 2015

Glenn Merrill
Sustainable Fisheries Division
Alaska Region NMFS
PO Box 21668
Juneau, AK 99802

Re: NOAA-NMFS-2014-0150

Dear Mr. Merrill,

Thank you for accepting my comments regarding the Environmental Impact Statement for a management program for Gulf of Alaska trawl groundfish fisheries.

I am the owner and operator of the Excalibur II, a trawler that has fished in the Gulf of Alaska and Bering Sea for over 30 years. We spend the bulk of each year delivering pollock, cod, rockfish, and flatfish to processors in Kodiak.

The groundfish fisheries in the GOA have been held together the last few years by very tenuous threads. Allowable bycatch levels are becoming ever more restrictive and have only been achieved by voluntary cooperative plans from the fleet. These plans can be jettisoned by any one individual vessel. This arrangement has also encouraged more vessels to join and receive a share of the fishery, even though it may not have been a significant portion of their annual catch in the past. Finally, this year, our best efforts were not able to prevent a closure of the non-pollock, non-rockfish fisheries after hitting our limit of Chinook salmon. Emergency measures from the Council were required just to give us an opportunity to target cod and flatfish this fall.

This is a sad excuse for managing a fishery, particularly when very successful alternatives are currently in use in Alaska and the West Coast. I fish AFA pollock in the Bering Sea and GOA rockfish, both of which allow the fleet to maximize target species and truly minimize bycatch. Alternative 2 in the Council's proposed management plan would extend those opportunities to the Gulf of Alaska. Besides improving the utilization of our resources in the Gulf, it would protect local communities by imposing limits on consolidation, and requiring delivery of fish to historical ports of landing. This would preserve the diverse fleet that targets groundfish and the processors and services that support them.

Other alternatives that would allocate bycatch to individual boats, but not the target species, will not stop the race for fish that is creating the instability in the fishery now. Likewise, I feel that a Community Fisheries Association would just be an additional level of bureaucracy that could do nothing to improve the protection of communities beyond what would be provided by the aforementioned limits on consolidation and port of landing.

I strongly support Alternative 2 as a template for a rational management program, and encourage its continued analysis and development going forward.

Thank you for your consideration.

Kent Leslie

Mr. Glenn Merrill
National Marine Fisheries Service
PO Box 21668
Juneau, AK 99802

August 28, 2015

RE: Proposed Rule on the Intent to Prepare an Environmental Impact Statement for the Gulf of Alaska Bycatch Management Plan

Dear Mr. Merrill,

My name is Kurt Cochran and I own and operate three trawl catcher vessels in the Gulf of Alaska: the F/V Marathon, F/V Bay Islander, and the F/V New Life. I participate in pollock, cod and other groundfish fisheries and have been delivering fish into Kodiak for over 22 years. I am also serving my second term representing the state of Oregon on the North Pacific Fishery Management Council's (NPFMC) Advisory Panel. These comments are submitted as a response to the Proposed Rule seeking input on NMFS' intent to develop an EIS for the GOA trawl bycatch management program.

In recent years the NPFMC has recommended and NMFS has implemented strict reductions in salmon and halibut prohibited species catch (PSC) without implementing the tools necessary for the fleet to successfully prosecute their target fisheries while avoiding PSC. Implementing the reductions without the associated tools have made the trawl industry unstable. The instability and uncertainty of the trawl fisheries makes it difficult for catcher vessel businesses to sustain operations, pay the bills, maintain vessels, keep good crew members, and keep a steady stream of product supplying the plants and their workforce. The recent closure of the non-pollock, non-rockfish groundfish trawl fishery is a great example of the dire consequences of implementing PSC reductions without providing the fleet with the flexibility and tools that they need to operate under those reductions. Millions of dollars would have been lost to the community of Kodiak without the emergency action taken by NMFS to reopen this important fishery. As it was the fishery was closed for 3.5 months and the harvesters, processors and community of Kodiak all experienced economic loss.

I would like the NPFMC and NMFS to consider their responsibility to not just reduce bycatch (which I believe is very important) but also to achieve optimum yield for target fisheries and the sound management of ***all*** federal fisheries in the Gulf of Alaska. They can do this by introducing some stability back into the trawl groundfish fisheries in that area. This stability is critical for the day-to-day operations and over the long-term. I believe that the Council was well on its way to advancing Alternative 2 following the October 2014 meeting. Alternative 2 was developed over a several-year multi-stakeholder process and many others and I were dismayed when it appeared Alternative 2 was to be abandoned when the new state administration took leadership earlier this year.

I have been fishing since I was a kid. I come from a multi-generational fishing family. My dad fished, my son is currently a skipper on one of my boats. I have been involved with all different types of management programs from before the Magnuson Act was first passed (when the states were managers and the fisheries were wide open) to open access, limited

entry, cooperatives and individual transferable quota fisheries. In the case of the groundfish fisheries in the GOA, Alternative 2 is the best approach in my mind and based on my vast experience. There are some key elements from Alternative 2 that will make a bycatch reduction program a success. Without these key elements, the program is all stick but no carrot. In other words, it is akin to implementing additional PSC cuts but not providing flexibility or tools to be successful in target fisheries at the same time that bycatch is reduced.

The cooperative component of Alternative 2 is crucial. Cooperative management is expensive for fishermen compared to a straight IFQ program. Cooperative management is also less efficient at getting fish out of the water then an IFQ program; in spite of this and the costs of participating it is the successful way forward. Because a cooperative is managed by a group of fishermen versus one individual who controls quota, the cooperative can collectively alter fishing strategies and behavior and slow down (or virtually eliminate) the race for fish. It's a win-win for the resource and the fishermen.

Another meaningful piece of Alternative 2 is the allocation of target species. Allocating the key species will stabilize the fishery and help improve the raw fish value, which will help offset the costs of the program. In the Gulf I suggest the following should be allocated in the following order:

- Halibut based on all groundfish landed
- Salmon based on pollock and non-pollock landings
- Rex sole based on historical landings
- Black cod based on historical landings
- Pacific cod based on historical landings
- Pollock based on historical landings

A straight Individual Bycatch Quota (IBQ) fishery that does not allocate these species does not solve the problem. It is all stick and no carrot. The race for fish still exists. The value for the raw fish is still low. The costs for participation are still higher (monitoring costs alone increase). The closures and their devastating economic consequences to Alaskan communities will still occur even under an IBQ cooperative system. By allocating all of these species you reintroduce stability into the trawl groundfish sector. Businesses can make solid fishing plans and the community can prosper. This is a win-win for the resource, the fishermen and the communities that depend on fish coming across the dock.

I strongly advocate that Alternative 2 as developed by the NPFMC at the October 2014 meeting is contained in the analysis that moves forward.

Thank you for your consideration.

Sincerely

Kurt Cochran

Comment by Lee L. Woodard II

My name is Lee Laurence Woodard II. I am an individual heavily invested in trawling in the G.O.A. My history as a harvester spans back to the winter of 1980. I have purposely and with diligent effort worked in the harvesting sector in these waters for 35 years now. The proposed action and the options within the proposed action will effectively bankrupt my vessel the "Pacific Storm". I built this vessel with a purchased and valid LLP in hand before one minute of work began. This LLP was in no way limited, restricted, or within any action at that time to be restricted in the near future. It survived the "Recency Reduction Action" completed in August of 2008. I invested nearly 3 million dollars connected to this LLP and the vessel it resides with. Now This council and some very pointed effort wish to use 2012 as a final time frame for acceptance of history or dependence on the trawl fishery. This has effectively set a course for disaster for my future. Any LLP that is/was valid and intact after August 2008 and invested and utilized before the action to rationalize the trawl fisheries in the GOA is completed by this council should in no way sustain damage either physically or financially. This time period is roughly from August 2008 until final action occurs. I implore those persons who are aware of this issue and have the structured obligation and ability to mitigate damage to affected LLP holders to include a provision or provisions to allow these LLP holders actively dependent on harvesting in the trawl sector of the GOA to survive intact and without damage. Lives, jobs, families and years of dependence harvesting are at stake.

This is Lee L. Woodard II again. I felt it necessary to suggest a few potential solutions to the problem as the control date of 12/31/2012 causes for the few LLPs involved. One fair approach would be to provide an exemption for these effected LLPs to use similar options of "sweet years" beyond 12/31/2012. Another possible solution might be to use 1 year of 1 if said LLP holder has one complete year of operation prior to 12/31/2012. The attempt here is to hold the LLP intact as it is completely reliant upon it's use for income. So, being completely dependent on my vessels right to fish, I ask you consider one of my suggestions, or utilize another that protects without harm these few LLPs, Lee.

Page Count: 0

Submitter Info

Comment:

Glen Merrill, Assistant Regional Administrator for Sustainable Fisheries, NMFS, Alaska Region NOAA-NMFS-2014-0150 RE: Notice of intent to prepare an EIS for GOA trawl bycatch management I am Mark Chandler, owner of the F/V Topaz, a family owned and operated trawler that has been participating in GOA groundfish for 33 years. We and our crew of 5 and their families are completely dependent on the Gulf of Alaska trawl groundfish fishery for our livelihood. The economic success of our fishery and to a large extent the community of Kodiak is increasingly driven by effective bycatch management. Unfortunately, the current management structure precludes the needed effective bycatch controls. The NPFMC Alternative 2, cooperative fishery management, would provide the tools we need as an industry to manage our fishery for economic success and biological sustainability. I support Alternative 2, a cooperative management structure with allocations to coops based on vessel landing histories. This includes directed fishery allocations for pollack and cod and PSC allocations for the flatfish fishery. This type of management improves the safety of the fishery, incentivizes operators to fish cleanly, and creates a successful business environment for vessels and for the community as a whole. I have experience with cooperative management as my vessel has operated in an AFA pollack coop and in the GOA cooperative rockfish program, as well as the voluntary cooperative pollack fisheries in the GOA. The Alternative 2 proposal provides good community protection with processor associated coops including a regionalization or port landing requirement. Also consolidation limits on ownership, vessel use and processing help to maintain community stability. Alternative 3, allocations to Community Fishing Associations or an Adaptive Management program would add unneeded complexity and burdens to the fishery with no clear benefit. A carefully crafted cooperative management structure will provide adequate community protection and will also undoubtedly come with additional costs to industry in any case. One shortcoming of the current Alternative 2 is that while the suites of qualifying years do a good job of capturing the participation of vessel in recent years; I would like to see a more inclusive range for vessels that have participated for many years. This would apply only for vessels that are still in the fishery and participated before the years in the current proposal which only goes back to 2003. Many of the current vessels pioneered this fishery in the early 1980's and remain in the fishery. The early years were difficult with little reward; but they did establish an industry that is now a mainstay for the community of Kodiak. GOA rationalization has been bounced around in the North Pacific Fishery Management Council since the mid 1990's with 2 separate programs getting well developed before being sidetracked. The economics of the fishery as well as the biological concerns continue to get more complex and difficult to successfully manage. The NPFMC Alternative 2 with some fine tuning needs to move forward in an expeditious manner. Sincerely Mark Chandler 240 Rhododendron Dr. Florence, OR 97439

Comment by Mike Alfieri

I am the owner and full time operator of a 58' trawler that fishes for Pollock and Cod in the Central and Western Gulf of Alaska. I began trawling with my vessel in 1993. My vessel also seines for Salmon but trawling has always been responsible for the majority of my income throughout the years.
I've been involved in the Council process since 2001 trying to implement some sort of rationalized fishery in the Gulf of Alaska. We were close to final action in 2006. Then there was a new governor elected in Alaska and that administration was not in favor of a rationalized Gulf. So with a new governor and new Council appointments the Gulf Rationalization process was stopped. Then in 2008, a new Alaska governor and new Council appointments and a new Gulf Rationalization package is again proposed at the NPFMC. The package is moving along fine through the Council process and, here we go again. A new governor is elected in 2014, new council appointments and the first order of business is to table the Gulf Rationalization package until October 2015 and the rumor mill has it that the package will be stopped at the October meeting. So the Gulf of Alaska trawl fishery doesn't seem to be about the best way to manage and harvest the resource, it's about the political climate at the time.
I've witnessed firsthand the benefits of rationalized fisheries. Let's face it the Bering Sea would not have a chance to catch their Pollock quota, with the current Chinook and Chum restrictions, if it were not for AFA. Also the West Coast Hake fishery has flourished since the implementation of a rationalized fishery.
I was at the NPFMC meeting in Nome in 2011 when the Council passed the motion creating the Chinook cap in the Gulf Pollock trawl fishery. While creating the 25000 fish Chinook cap the council also PROMISED to provide the fleet with the tools needed to prosecute the Pollock fishery. To me meaning the Gulf Rationalization package already moving through the Council process. Now, without the necessary tools, and the implementation of a Chinook cap in the non Pollock fisheries, the entire Gulf of Alaska was closed to bottom trawling in May of this year. It was only recently opened with an emergency order allocating 1600 more Chinook. So it's obvious to me status quo, or Alternative 1 in the Council motion will not work.
When I listen to arguments against Rationalization I hear a lot about consolidation, like in the Bering Sea crab fleet. First off I don't believe there will be a lot of consolidation because the majority of the trawl fleet, especially in the Western Gulf is locally owned and/or operated. But after the recent events I don't know what would be better, a little consolidation or no trawling at all. Maybe all the processors and crew that would usually have been busy processing and catching trawl caught bottom fish the past 3 months would have a better answer to that question.
I am totally in favor of moving forward with the Gulf Rationalization package and strongly support Alternative 2. I could go through and point out which Options in the Alternative I am in favor of, but it's to early for that, as the EIS and further Council Staff studies will be produced.
I do believe that trawl fishing in the Gulf, under the present race for fish, will become prohibitive for the local small boat owner to compete. At the present time there are major fish processing companies purchasing trawl vessels that fish primarily in the Gulf of Alaska. Under the present scenario, racing for fish with the by catch limits for Halibut being reduced and the current Chinook caps. Those company owned boats will eventually be the majority of the vessels trawling for fish in the Gulf because they will be the only ones able to afford to fish there. Mainly because they can do other fisheries with the vessels that I can't do. Like fish in the Bering Sea or Whiting off the West Coast. Under the present scenario of Chinook caps and the closure of the non Pollock fisheries I, and other small boat owner operators, are currently looking for other opportunities for our vessels. To me it seems like the small boat owner operator is being phased out of the Gulf and our only salvation is to implement Rationalization in the Gulf.
If you would have asked me 5 years ago I would have favored getting rid of all Rationalized fisheries but with the current climate of bycatch caps and reducing those caps Rationalization is the only way the Pollock and Cod trawl fisheries can be successfully prosecuted in the Gulf of Alaska.

MIDWATER TRAWLERS COOPERATIVE

PO Box 2352, Newport, Oregon • 97365 • 541.272.4544

Mr. Glenn Merrill, Assistant Administrator
Sustainable Fisheries Division
National Marine Fisheries Service
PO Box 21668
Juneau, AK 98802

RE: Notice of intent to prepare an EIS for the Gulf of Alaska Trawl Bycatch Management Program

August 28, 2015

Dear Mr. Merrill:
Thank you for the opportunity to provide comments on behalf of the Midwater Trawlers Cooperative (MTC) regarding the National Marine Fisheries Service's (NMFS) "notice of intent" to publish an environmental impact statement (EIS) for pending action in the Gulf of Alaska trawl groundfish fisheries.

MTC represents twenty-three midwater trawl catcher vessels that participate in groundfish fisheries in the Gulf of Alaska, Bering Sea and off the west coast. MTC member vessels have a long history of participation in fisheries in the Gulf of Alaska and are directly impacted by the decisions made regarding the management of these fisheries. To that end, MTC and its members have participated fully in the Council process to design a cooperative approach to rationalized management of the Gulf of Alaska groundfish fisheries.

MTC strongly supports the inclusion of Alternative 2 in the EIS analysis. The National Environmental Policy Act (NEPA) requires that the Councils and NMFS review and analyze a reasonable range of alternatives when contemplating a management action such as this. Alternative 2 was developed over several public council meetings with significant input from participants, communities and fisheries managers. The Council process is a transparent stakeholder-driven process that encourages public involvement from all impacted sectors.

Until October 2014 the NPFMC was diligent in its responsibility and obligation to move forward with a bycatch management strategy for the Gulf of Alaska. Unfortunately that forward momentum was halted abruptly when the administration in the state of Alaska changed and a hiatus in the program development subsequently requested. During the hiatus a damaging closure to the non-rockfish, non-pollock groundfish fishery occurred in the Gulf of Alaska as the result of the attainment of a Chinook salmon hard-cap. This 3 ½ month closure resulted in dire economic impacts to harvesters, processors, and the community of Kodiak. This closure could have been avoided if the proper tools were previously provided to the fleet to avoid and reduce bycatch while still successfully achieving the harvest of target

species. This closure demonstrates just how important it is to have a well-structured rationalized management program in place. Alternative 2, which incorporates a cooperative approach to management coupled with allocations of target and bycatch species provides the necessary tools to meet the bycatch reduction goals of the Council and state of Alaska while still providing the opportunities to achieve optimum yield of target species as required by the Magnuson Stevens Act. It is a win-win approach for the resource, participants and communities.

Rumors run rampant in fisheries – both throughout management and on the dock. At present, participants are fearful that the state of Alaska will return to the Council in October recommending that the previously designed, broadly supported and mostly scoped Alternative 2 should be replaced by a simple Individual Bycatch Quota (IBQ) program. An IBQ program will do nothing to eliminate the race for fish and it provides zero tools to the fleet to achieve OY while reducing bycatch. In other IBQ fisheries participants' horde the IBQ and instead of successful facilitation of fisheries, target species are stranded in the water. Costs increase with an IBQ fishery – for monitoring, purchasing IBQ, even cooperative management costs the industry. Without the other incentives and tools that come with a fully rationalized fishery, the IBQ program meets less than half the goals of the Council, and poorly at that.

A lot of great work has been done developing the foundation of Alternative 2 by the North Pacific Council, the Council staff, NMFS, Alaska Department of Fish and Game staff and countless stakeholders representing harvesters, processors, communities and conservation groups. Of all the management measures considered to-date, Alternative 2 has the best chance of providing a successful management program for the Gulf of Alaska. Eliminating Alternative 2 from analysis is counter to the desires of the majority of stakeholders, but more importantly it erodes the confidence that the public and stakeholders have in the Council process.

MTC strongly advocates that Alternative 2 with the cooperative management structure and allocation of target and bycatch species be included in the range of alternatives for analysis. NEPA requires a reasonable range and the stakeholders and public have spent considerable time developing this option. It is the smartest and most appropriate approach to reduce bycatch to the extent practicable and still meet the MSA requirements to achieve optimum yield in target fisheries.

Thank you for your consideration.

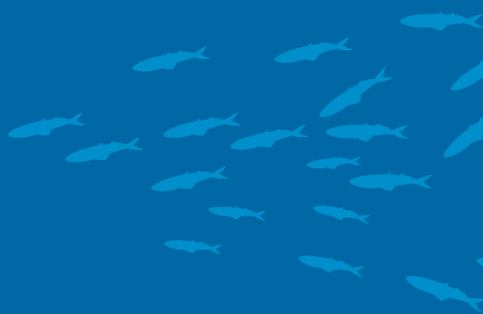
Heather Mann

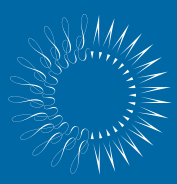
Heather Mann
Midwater Trawlers Cooperative

C10 EIS Scoping Public Comments, DECEMBER 2016

DESIGN MATTERS

Making Catch Shares Work





THE PEW ENVIRONMENT GROUP

DESIGN MATTERS

Making Catch Shares Work

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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]

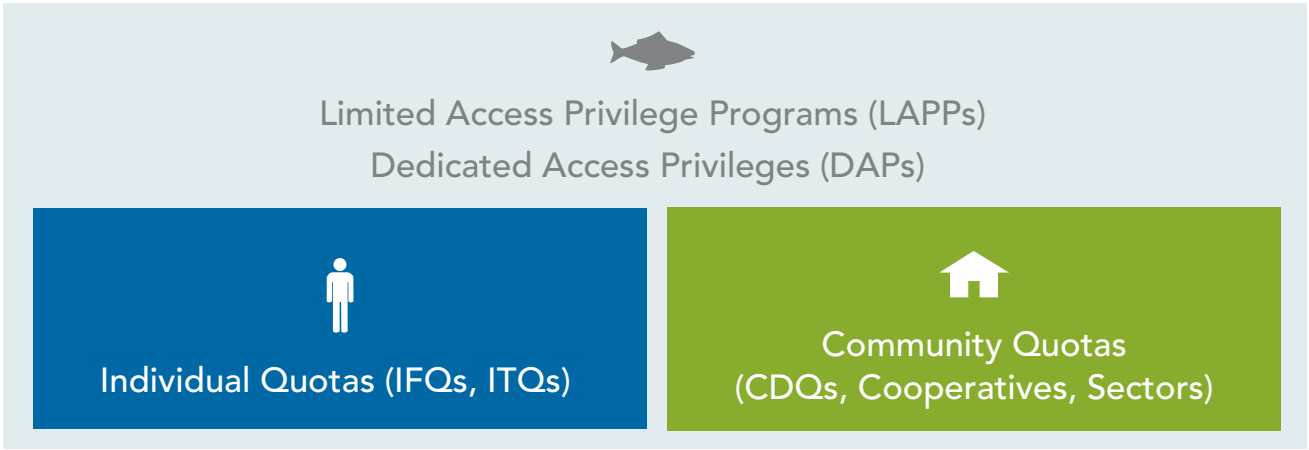
In theory, fishing privileges and exclusive access to a portion of the catch give fishermen an incentive for economic efficiency and prudent stewardship of the resource. Economic theory also suggests, however, that for market forces to work effectively, the privileges need to be permanent, secure, restricted 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



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 MSA[12] 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.

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 a 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:

- **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
- **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.

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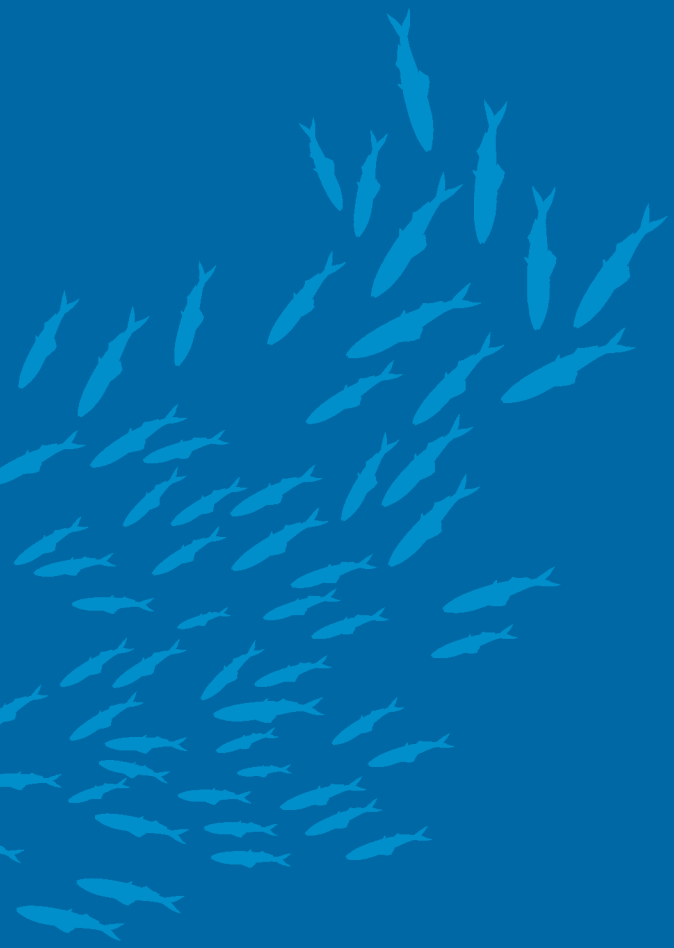

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August 28, 2015

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RE: NOAA-NMFS-2014-0150, Gulf of Alaska Trawl Management EIS

Dear Mr. Merrill:

We appreciate your continued commitment to reduce bycatch in the groundfish fisheries in the Gulf of Alaska and commend the National Marine Fisheries Service and the North Pacific Fishery Management Council (NPFMC) for taking some steps to cap and reduce Pacific halibut and Chinook salmon bycatch in the Gulf of Alaska trawl fisheries. While this reactionary approach to management has been necessary to respond quickly to severe bycatch concerns, there is a clear need for comprehensive, proactive management that will reduce bycatch, protect habitat, increase the ecological sustainability of the fisheries, and provide stability to coastal communities.

A new program should be focused on progress towards ecosystem-based fishery management and ecologically sustainable fisheries (which includes reducing bycatch), and it should not simply allocate harvest privileges or divide up current or historic trawl bycatch among participants. As part of developing this program, NMFS and the NPFMC should consider, at a minimum:

- Requirements to reduce bycatch, including bycatch of prohibited species;
- Clear annual catch limits, overfishing limits, and bycatch caps for all marine life;
- 100% observer coverage and estimation of the catch and bycatch of all species, including benthic invertebrates;
- Incentives for one-way transfer of quota to lower impact gears;
- A timeline to achieve zero discards of edible fish;
- Protection of important ecological areas and sensitive habitats;
- Mitigation of any cumulative impacts on areas supporting remaining open-access fisheries, including fisheries in Alaska state waters;
- Cost recovery to pay for monitoring, research, and management of the fishery;
- An expiration date for any exclusive fishing privileges granted, with option to renew contingent on meeting program goals and individual performance measures;
- Adaptive management that involves review and evaluation of program performance with opportunities to modify and improve the program; and

We note that the two 'strawman' Alternatives described in the Federal Register Notice[1] are focused on improving operational efficiency of the trawl fleet and stability to fish processors and communities. Those goals are important and laudable, but they are not sufficient. The issues outlined above should be

[1] http://www.regulations.gov/#!documentDetail;D=NOAA-NMFS-2014-0150-0001

considered as you develop a reasonable range of alternatives that will move us forward toward healthy ocean ecosystems and ecologically sustainable fisheries.

We will continue to work with you to find ways to protect the health, productivity, and biodiversity of the North Pacific marine ecosystem while maintaining fishing opportunities and vibrant coastal communities.

Sincerely,

Jon Warrenchuk
Senior Scientist and Campaign Manager
Oceana

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Pacific Cold Storage, Woodland WA
Bandon Pacific Seafood, Charleston OR
Pacific Smoking, Clackamas OR
Pacific Coast Seafoods, Garibaldi OR
Pacific Shrimp, Newport OR
Live Seafood, Portland OR
Pacific Choice Seafood, Eureka CA

Aquaculture
Pacific Aquaculture, Nespelem WA
Pacific Oyster, Bay City OR
Pacific Oyster, Coos Bay OR

Distribution
Pacific Seafood of WA, Mukilteo WA
Pacific Seafood of WA, Spokane WA
Pacific Seafood of OR, Clackamas OR
Pacific Fish & Oyster, Portland OR
Pacific Fresh Seafood, Sacramento CA
Pacific Seafood LA, Wilmington CA
Pacific Seafood UT, Salt Lake City UT
Pacific Seafood LV, Las Vegas NV
East Coast Seafood, Phoenix AZ
Seacliff Seafoods, San Antonio TX
Jake's Famous Crawfish & Seafoods, Clackamas OR

Transportation
Pacific Group Transport

08/28/2015

Glenn Merrill
Assistant Regional Administrator for Sustainable Fisheries NMFS, Alaska Region
NOAA–NMFS–2014–0150
Re: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for any Gulf of Alaska (GOA) trawl bycatch management program:

Thank you for an opportunity to comment on the NOI to prepare an EIS for any GOA trawl bycatch management program. Pacific Seafood is seafood company that offers a diverse number of seafood items to its customers. Our customer base is both domestic and international and our production includes wild caught and aquaculture products that are produced in the US, Canada, and internationally.

The core of our business is wild caught seafood from the United States. Alaska has become much more important in our sales and marketing strategy in the last decade.

As our business has expanded and we have matured we are now more focused on policy issues including sustainability, healthy ecosystems, bycatch and best management practices that protect our ocean resources for the future of our nation and the future of our business.

Pacific Seafood is a member of the Alaska Groundfish Data Bank (AGDB). We very much support AGDB's comments and outlined ideas as it relates to a trawl bycatch management program.

Several points in the AGDB comments we would highlight and offer a slightly different characterization: In our view it will be extremely difficult to manage bycatch when there is still a "race" for the target species. If there is quota system for *bycatch only* we believe the race for the target species may actually intensify resulting in a "collateral damage" effect to the bycatch we intend to protect.

The best tools a fishery and management system can provide to effectively avoid bycatch are tools that allow for temporal, spatial, and collective decision making at the harvester level. In our opinion this involves collective and personal ability to control harvest timing, and the geographical harvest grounds, coupled with a Cooperative harvest system that employs personal and collective accountability to avoid bycatch and areas known to be prime habitat of bycatch. This simply will not occur when fishermen are in a race for the target species and the clock is ticking until closure.

We believe a fair and equitable, "rights based" Coop management structure, that protects the harvesters, the processors, and the community interests and their investments, while conserving our natural resources and habitat for the future offers the best opportunity for bycatch reduction and a robust trawl fishery in the GOA.
Again we support the comments and ideas put forward by ADGB. We believe the time has come to move forward on this important issue.

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Sincerely,
Mike Okoniewski

Alaska Operations Manager/Fisheries Management & Policy Advisor
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C.c. Dan Occhipinti
General Counsel & Director of Government Affairs
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Wild & Natural – Fresh, Healthy & Sustainable

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August 28, 2015

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Re: NOAA-NMFS-2014-0150

Dear Mr. Merrill:

Thank you for the opportunity to comment on the proposal to implement a new management program for Gulf of Alaska (GOA) groundfish fisheries. I submit the following comments on behalf of The Boat Company (TBC). TBC is a tax exempt, charitable, education foundation with a long history of operating in southeast Alaska. TBC conducts multi-day conservation and wilderness tours in southeast Alaska aboard its two larger vessels, the 145' M/V Liseron and the 157' M/V Mist Cove. TBC's clients fish for halibut and Chinook salmon populations affected by trawl bycatch in the Gulf of Alaska (GOA). Additionally, TBC's charitable programs support southeast Alaska communities that depend on access to Chinook salmon and halibut for commercial and guided sport fishing, unguided sport fishing and subsistence.

The Notice of Intent (NOI) includes the worthy goals and objectives of reducing and avoiding the waste of Chinook and halibut taken as prohibited species catch (PSC). Alaska's fishery resources, including those taken as PSC, are a public trust resource and a new management regime will have consequences for every port along the Alaska coast and adjacent fisheries. Bycatch control measures will affect coastal community residents for decades and the adequacy of control measures to a large extent will determine whether conservation, recreation, targeted commercial and subsistence interests will continue to have adequate access to public marine resources affected by bycatch in the federal groundfish fisheries.

As explained in the following comments, TBC urges NMFS to prepare a DEIS that fully considers the broader interests of non-trawl users of fishery resources, including recreational, commercial, subsistence and conservation interests in bycatch reduction. The need to minimize adverse impacts on sectors and areas not included in the program is a significant issue and should be an explicit and driving component of the purpose and need for a new management regime for GOA groundfish fisheries. It is not appropriate to proceed with a program to privatize public fishery resources, even on a temporary basis, unless it includes significant and meaningful conservation benefits, including significant PSC limit reductions, effective incentives for gear conversion and spatial and temporal measures to address halibut PSC in the flatfish trawl fisheries and Chinook PSC in the pollock trawl fisheries.

Introduction: The range of alternatives needs to include a broader range of PSC limit reductions

The NOI requested comments to assist in determining the appropriate range of management alternatives for the EIS. [80 Fed. Reg. 40988]. The NOI's description of Alternative 2 mentions "PSC species to be allocated" but does not address how PSC will actually be reduced. TBC submits that the DEIS needs to include alternatives that provide for significant PSC limit reductions in order to reflect significant resource uncertainties and to address the ongoing inequity caused by placing the conservation burden primarily on directed fishery user groups. A reasonable range of alternatives should include options well beyond those approved in the Council's October 2014 motion, which proposes to reduce halibut PSC by 10% (1,364 mt), 15% (1,288 mt), or even not at all (maintaining the 1,515 mt limit implemented by Amendment 95), and reduce the Chinook salmon PSC limit of 25,000 by 25% (18,750), or possibly not even at all. [40 C.F.R. § 1501.14].

The existing halibut and Chinook PSC limits reflect outdated programmatic analyses that preceded the recent population declines, and assumed that PSC species were either stable, or that groundfish fishery impacts to them were insignificant. [NMFS. 2004 at 2-54, 4.7-164, 4.9-163, 4.9-171 (Groundfish PSEIS); NMFS. 2007 at 7-5 – 7-15, 12-29 (Harvest Specifications EIS]. The changed condition of the halibut and Chinook stocks warrants the development of a more precautionary approach. For example, the Amendment 95 EA identified significant environmental changes and resource depletion, as well as significant uncertainties regarding the impacts of PSC on the halibut resource related to the high level of juvenile halibut mortality in the trawl fisheries and depressed halibut growth rate. [NMFS 2012 at 25, 80 – 81 (Amendment 95 EA/RIR/IRFA)]. Similarly, data showed significant declines in Chinook productivity, abundance and harvest throughout the state that first became evident in 2007 and eventually became a federal fisheries disaster in 2012.[1] TBC believes that NMFS needs to respond to declines in PSC species with a more highly precautionary approach via PSC limit reductions of 50% which could later be modified as additional scientific information becomes available. [NMFS. 2004 at 2-57, 4.8-158].

SIGNIFICANT ISSUES

The DEIS needs to consider equity among fishery resource users as a significant issue[2]

One of the main components of the GOA bycatch management program will involve allocating halibut and Chinook PSC. TBC requests that you consider equity among halibut resource users as an alternative driving, significant issue in the DEIS . Over the past decade, the combined catch limit for directed commercial fisheries in the GOA (Areas 2C, 3A and 3B) declined from 46.7 million pounds in 2006 to 17 million pounds in 2015 – a reduction of roughly 64%. The 2014 guided sport halibut allocation under the Pacific halibut Catch Sharing Plan (CSP) was less than half of the 3A Guideline Harvest Level in 2011. Area 2C guided sport allocations have also dropped by nearly 50% since 2007. While the resource finally may have stabilized at near historically low harvest levels, the low abundance

[1] ADF & G Chinook Research Team. 2013. Chinook salmon stock assessment and research plan. ADF & G Special Pub. No. 13-01: Anchorage, Alaska.

[2] Data sources for this section are Tables 2.6A-G in the 2015 IPHC Annual Meeting Briefing Book and NMFS Final Rules implementing the Pacific halibut Catch Sharing Plan for Areas 2C & 3A.

trend is likely to continue in the near future.[3] Yet during this period of substantial declines in abundance and directed fishery harvests, NMFS has reduced the halibut PSC limits for the GOA groundfish fisheries by a mere 15%. [78 Fed. Reg. at 53419-20].[4]

In 2013, NMFS and the Council addressed a similar scenario – the problem of a fixed limit for a declining resource - in the Pacific halibut Catch Sharing Plan for Guided Sport and Commercial Fisheries in Areas 2C and 3A. The commercial halibut fisheries experienced larger poundage and proportional reductions relative to the charter fishery as the Total Constant Exploitable Yield (TCEY) declined because the commercial quota declined along with halibut abundance, but charter fishery allocations were not directly tied to fishery abundance. [78 Fed. Reg. 75844-75845]. NMFS noted that as the resource declined, the commercial share of the TCEY declined by more than 15% in Areas 2C and 3A, while the charter sector increased its share by 1.6% in Area 2C and 3.1% in Area 3A. [*Id.* at 73583]. According to NMFS, that allocation system caused negative economic impacts to the commercial sector from reduced catch limits. [*Id*].

Halibut PSC limits in the GOA also have no direct relationship to fishery abundance, causing an adverse economic impact to directed fisheries. Indeed, halibut PSC has a much more significant impact on resource availability to other halibut users – both proportionally and in terms of overall volume. From 2006 – 2010, the Area 3A and 3B TCEY began to decrease slightly per year, but averaged over 40 million pounds. The all-gear PSC limit was 3.8 million pounds - always less than 10% of the TCEY during that time period. But beginning in 2011, the TCEY began to decline substantially, dropping nearly in half to 21.3 million pounds by 2013. The amount of the TCEY allocated to the PSC limit *nearly doubled over a three year period* – to 17.8%. In 2014, the TCEY declined yet again, to 15.9 million pounds. The 3.5 million pound PSC limit in 2014 under the staggered "reduction" implemented by Amendment 95 was the highest allocation of the resource yet to the groundfish fisheries - *22% of the TCEY*.

TBC believes that the additional and maximum 15% halibut PSC limit reduction in Council's October 2014 motion is inadequate to address the inequity between resource users. Unless there is an unanticipated sudden recovery of the resource, the Council's motion will give more fish to PSC users, causing further economic harm to commercial and guided sport halibut fisheries. TBC thus requests the DEIS consider adverse impacts to Alaska's halibut fishermen under the bycatch management program as a significant issue and recognize that alternatives currently under consideration are not adequate to reduce those impacts.

The DEIS needs to provide a full economic analysis of impacts to directed fisheries and halibut dependent communities

The DEIS needs to comprehensively evaluate the adverse economic impacts of PSC to communities that depend on the halibut resource for commercial and recreational fishing. Sitka and Homer, for example, each have substantial numbers of IFQ holders and charter halibut permittees. Alternatives that fail to adequately limit trawl PSC, particularly over the long-term, may impede the recovery of fishery resources and add to existing economic losses in the commercial sector and perpetuate or exacerbate the current restrictive daily bag and size limits imposed on the charter sector. The DEIS should provide information on how

[3] Stewart, I. J. & S. Martell. 2015. Assessment of the Pacific halibut stock at the end of 2014. Pp. 121-140

[4] Fisheries of the Exclusive Economic Zone Off Alaska; Amendment 95 to the Fishery Management Plan for Groundfish, 78 Fed. Reg. 53419 at 53420. (August 29, 2013).

different charter management measures and IFQ quota reductions have affected GOA communities that share substantial dependence on the halibut resource. In particular, the DEIS needs to update and improve previous methodologies for measuring impacts to directed fishery users. The Amendment 95 EA, for example, underestimated economic impacts to directed commercial fisheries by using outdated pricing information and by excluding the long-term value of reduced juvenile halibut mortality from its quantitative analysis.[5]

There is also a critical need to utilize and/or develop a methodology that provides a reasonable evaluation of economic impacts to recreational fisheries.[6] The 2013 analysis for the Halibut Catch Share Plan indicated that NMFS lacked updated information on charter sector costs, consumer demand and angler willingness to pay, thus limiting your ability to assess the economic impacts of shifts in utilization of the halibut resource.[7] The Amendment 95 EA used an average daily client cost metric that underestimated economic impacts in part because it utilized outdated and minimum client day values - the average value of a charter caught halibut was approximately $136 per fish – an absurdly low estimate.

But at the same time, NMFS and the NPFMC have contracted repeatedly with Northern Economics to develop models that provide worst case economic scenarios for the groundfish fisheries. In other words, the inability to fully evaluate directed fishery losses is a problem of priority rather than impossibility. The DEIS should consider and utilize multi-use fisheries models that are available.[8] The guided saltwater sport fisheries make critical economic contributions to coastal communities throughout the Gulf of Alaska through direct spending on charter fishing trips and through additional visitor expenditures.[9] Several studies have explored the relationship between bag limits, angler decisions and economic outputs and determined that a bag limit reduction of one halibut resulted in an angler expenditure reduction of $13.5 million.[10] These foregone revenues have a real impact in coastal communities that are dependent on economic activity associated with recreational saltwater angling. A more regionalized model therefore needs to be developed to analyze local effects. [*Id.*]. NEPA requires NMFS to make this effort to develop the information needed to assess adverse economic impacts to guided sport fisheries. [40 C.F.R. § 1502.22].

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[5] Specifically, the Amendment 95 EA used wholesale values from 2003 – 2010 to quantitatively measure impacts even though those wholesale values similar to or lower than the ex-vessel value at the time of the analysis (depending on the port of delivery).

[6] *See* Plummer, M.L., W. Morrison and E.Steiner. 2012. Allocation of fishery harvests under the Magnuson-Stevens Fishery Conservation and Management Act: Principles and practice at 8. U.S. Dept. of Commer., NOAA Tech. Memo. NMFS-NWFSC-115, 84 pp.

[7] NPFMC. 2013. Regulatory Amendment for a Pacific Halibut Catch Sharing Plan for the Charter Sector and Commercial Setline Sector in International Pacific Halibut Commission Regulatory Area 2C and Area 3A, Draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis. Anchorage, AK: June 2013.

[8] *See, e.g.* Criddle, K. et al. 2002. Property Rights and the Management of Multiple-Use Fisheries Working Paper 2002-04. Utah State University Economics Research Institute Study Papers, Paper 36.

[9] *See* Fay, G. et al. 2007. Testing a Methodology for Estimating the Economic Significance of Saltwater Charter Fishing in Southeast Alaska at 8. Institute of Social and Economic Research, University of Alaska Anchorage: May 2007 (finding that the gross saltwater charter fishing revenue in southeast Alaska in 2005 was $73.5 million – or equal to the wholesale value generated by the GOA trawl catcher fleet in 2009(Amendment 95 EA at 179)); Criddle, K. et al. 2003. Participation Decisions, Angler Welfare and the Regional Impact of Sportfishing. Marine Resource Economics, Vol. 188, pp. 291-312 (finding that visitors spent an additional $16 million in the Cook Inlet area beyond the client day costs of halibut and salmon sport fishing trips).

[10] *Id.*; Lew, D.K. & C. K. Seong. 2010. The economic impact of saltwater sport fishing harvest restrictions in Alaska: an empirical analysis of non-resident anglers. In: N. Am. Journal of Fisheries Management 30: pp. 538-551.

The DEIS needs to address halibut PSC in the Flatfish Fisheries

TBC requests that NMFS consider halibut PSC in the trawl flatfish fisheries as a significant issue for in-depth analysis in the DEIS. [40 C.F.R. §§ 1501.7(a); 1508.25]. Over the past six years, all GOA trawl fisheries have accounted for between 75% and 87% of the total GOA halibut PSC and the flatfish fisheries have taken more than half of the trawl PSC each of these years.[11] In 2011 and 2014 the arrowtooth flounder fishery alone took over a million pounds of halibut – more than half of the total GOA trawl halibut PSC:

TABLE: Halibut PSC in GOA Flatfish Fisheries (thousands of pounds, net weight)[12]

	Arrowtooth Flounder	Flathead Sole	Rex Sole	Shallow Water Flats	Total GOA Flatfish Fisheries
2009	286	44	267	788	1,385
2010	674	203	403	714	1,994
2011	1,225	99	182	401	1,907
2012	591	123	78	258	1,050
2013	478	47	246	228	999
2014	1,145	4	91	259	1,499

Notably, the 2010 and 2011 combined ex-vessel value of the halibut taken as PSC (3.9 million pounds) in the trawl flatfish fisheries would have been generated $21.5 million had those fish been harvested in the IFQ fisheries and delivered to GOA processors.[13] In contrast, the total ex-vessel value of the flatfish fisheries in 2010 and 2011 was $14.5 million – roughly 2/3 of the value of the halibut wasted as PSC.[14] TBC believes that the DEIS needs to consider more narrowly tailored management measures such as area closures as authorized by the GOA FMP to reduce PSC in these fisheries. Finally, the cost-benefit analysis in the DEIS needs to clearly address the value of halibut taken in these fisheries in way that allows for meaningful consideration of the trade-offs between alternatives. [40 C.F.R. § 1502.24].

[11] Williams, G. 2015. Incidental catch and mortality of Pacific Halibut. Int. Pac. Halibut Comm. Report and Research Activities 2014. Pp. 313-336; Williams, G. 2015. Incidental catch and mortality of Pacific Halibut. Int. Pac. Halibut Comm. Report and Research Activities 2014. Pp. 313-336; Williams, G. 2014. Incidental catch and mortality of Pacific Halibut. Int. Pac. Halibut Comm. Report and Research Activities 2013. Pp. 289-310.; Williams, G. 2013. Incidental catch and mortality of Pacific Halibut. Int. Pac. Halibut Comm. Report and Research Activities 2012. Pp. 315-336; Williams, G. 2012. Incidental catch and mortality of Pacific Halibut. Int. Pac. Halibut Comm. Report and Research Activities 2011. Pp. 381-396; Williams, G. 2011. Incidental catch and mortality of Pacific Halibut. Int. Pac. Halibut Comm. Report and Research Activities 2010. Pp. 281-298; Williams, G. 2010. Incidental catch and mortality of Pacific Halibut. Int. Pac. Halibut Comm. Report and Research Activities 2009. Pp. 389-404.

[12] Data Source: *see id.*

[13] Fissel, B. et al. 2014. Stock Assessment and Fishery Evaluation Report for the Groundfish Fisheries of the Gulf of Alaska and Bering Sea/Aleutian Islands Area; Economic Status of the Groundfish Fisheries of Alaska 2013. Seattle, WA: November 2014. Table H54A (halibut ex-vessel prices used to calculate value of PSC). (November 2014 Council Draft).

[14] *Id.* at Table 19.

Gear Conversion and Spatial Management Alternatives

The NOI states that the EIS will consider "alternative ways … to manage bycatch species." [80 Fed. Reg. at 40990]. TBC supports the Council's October 2014 decision to allow using pot gear to fish trawl Pacific cod quota and requests that the DEIS provide a comprehensive analysis of ways to further incentivize gear conversion in order to create conservation benefits across the Gulf of Alaska and beyond through a shift to gear types with lower bycatch levels and mortality rates and greatly reduced habitat impacts. The 2004 PSEIS provided for a broad range of practicable management tools to encourage the use of more selective harvesting methods, such as closing areas to trawl gear. [*See, e.g.* NMFS 2004 at 2-54 - 2-60].

Incentivizing PSC reduction through gear conversion should be a critical component of the bycatch management program. The halibut PSC rate in the Bering Sea Aleutian Islands (BSAI) trawl cod fisheries has generally been double the rate in the BSAI longline fisheries.[15] Also, the longline fisheries consistently generate twice as much economic value relative to their take of halibut PSC. [*Id.* at 29, Table 15]. The cod pot fishery has a "very low" bycatch rate which is "generally at least an order of magnitude lower than any of the other sectors." [*Id.* at 25]. As a result, the pot fishery generates "extremely high" economic value per unit of halibut take relative to other gear types. [*Id.* at 26]. Notably, the GOA halibut PSC rate in the trawl cod fisheries is considerably higher than the BSAI PSC rate. [Fissel, B. et al. 2013, Tables 14, 15].

The DEIS should include a section reviewing the effectiveness of catch share programs in terms of realizing ecological and socio-economic benefits

TBC requests that the DEIS review the relationship between catch share programs for target species and broader conservation benefits. In the past few years, more than 30 published articles have addressed the socio-economic and environmental effects of catch share programs in a way that would help to inform the analysis in the DEIS.[16] Target species catch share programs are not bycatch reduction measures by themselves but rather primarily aim towards improving the economics of target fishery harvests.[17] Catch share proponents characterize privatization as an incentive for resource stewardship.[18] But this incentive does not necessarily extend to the larger ecosystem; it addresses fishery practices in order to maintain consistent and predictable harvests.[19] If PSC allocations are not reduced relative to the status quo, the program may achieve more economic utilization of

[15] Northern Economics. 2014. A quantitative examination of halibut mortality in BSAI Groundfish fisheries. P. 24, Table 14.
[16] *See, e.g.* http://www.seaweb.org/science/MSRnewsletters/MSR_FA_FisheriesManagement_4-2013.php
[17] *See e.g.* Hannesson, R. Norway's Experience with ITQs. Marine Policy 38: 45-53, 2013; Rieser, A., Watling, L. and Guinotte, J. Trawl fisheries, catch shares and the protection of benthic marine ecosystems: Has ownership generated incentives for seafloor stewardship? Marine Policy 40: 75-83, 2013; Emery, T.J., Green, B.S., Gardner, C. and Tisdell, J. Are input controls required in individual transferable quota fisheries to address ecosystem based fisheries management objectives? Marine Policy 36(1): 122-131, 2012; Nowlis, J. and Van Benthem, A.A. Do property rights lead to sustainable catch increases? Marine Resource Economics 27(1): 89-105 (2012).
[18] Nowlis, J. and Van Benthem, A.A. 2012.
[19] Rieser, A., Watling, L., and Guinotte, J. Trawl fisheries, catch shares and the protection of benthic marine ecosystems: Has ownership generated incentives for seafloor stewardship? Marine Policy 40: 75-83, 2013.

PSC species and even reduce PSC rates yet fail to achieve any meaningful reduction in the amount of PSC mortality.

The relationship between privatization and conservation is frequently assumed, but the scientific literature does not document a clear relationship, warranting caution "before broad generalizations about ITQs and resource outcomes are made."[20] Two recent reviews of catch share system trends indicated that a more plausible hypothesis is that other components of the new programs – particularly improved catch monitoring and reporting – are the key to achieving conservation benefits.[21] Also, management measures that regulate fisheries in terms of the timing and location of bycatch are more important than economic efficiency measures.[22]

The amount of additional management control needed to achieve ecosystem objectives in catch share fisheries can vary by fishery, and non-selective fishing methods require more intensive spatial and temporal management because of habitat effects and non-target species interactions.[23] According to a 2012 review of catch share systems and ecosystem effects, "[i]ndustrial scale fishing methods and oversized and heavy fishing gear can result in high levels of mortality to pelagic marine life caught in or encountering the fishing gear, as well as extensive damage to the seafloor environment" and "[m]arket based instruments such as catch share arrangements are not designed to address these ecological costs."[24] Thus, "[e]cological losses … are not diminished unless additional regulations are imposed upon the owners of the fishing quotas."[25]

In other words, the DEIS should address the uncertainty surrounding the ability of catch share programs by themselves in achieving ecological objectives, and evaluate the role of other management components in ensuring that the bycatch management program is also a bycatch reduction program. TBC believes that an allocation of PSC species as proposed in the action alternatives may have some merit relative to the status quo, but only if those allocations reflect a meaningful reduction in PSC limits and are accompanied by additional management measures.

Sincerely,

Paul Olson

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[20] Carothers, C., and Chambers, C. Fisheries privatization and the remaking of fishery systems. Environment and Society 3: 39-59, 2012 (explaining that catch share proponents overlook how the conservation goal is created by limits on overall harvests, which exist independently of ITQs, which simply divide up the overall harvest among individuals, and thus, where there is a conservation benefit, it results from the presence of a total quota than the division of that quota into shares).
[21] Essington, T.C., Melnychuk, M.C., Branch, T.A., Heppell, S.S., Jensen, O.P. Link, J.S., Martel, S.J.D., Parma, A.M., Pope, J.G., and Smith, A.D.M. Catch shares, fisheries and ecological stewardship: a comparative analysis of resource responses to a rights-based policy instrument. Conservation Letters 5(3): 186-195 (2012); Nowlis, J. et al. 2012.
[22] Emery, T.J. et al. 2012.
[23] *Id.*.
[24] Rieser, A. et al 2012.
[25] *Id.*

ALASKA WHITEFISH TRAWLERS

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8/26/2015

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NOAA–NMFS–2014–0150
Re: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for any Gulf of Alaska (GOA) trawl bycatch management program

AWTA supports Alternative 2 from the October 12th, 2014 North Pacific Fisheries Management Council's GOA Trawl Bycatch Motion.

If additional elements and options are considered for inclusion in the Gulf of Alaska Trawl Bycatch package, Alternative 2 in the existing council motion must remain as the analysis is developed

AWTA members feel that the following measures are especially important:

Cooperative Style Management Program - We have experience with the Central Gulf of Alaska Rockfish fishery and the Bering Sea AFA Pollock fishery which are cooperative style programs both of which have proven to be very successful.

Allocation of Primary and Secondary species - It is very important to stop the race-for-fish in the GOA. This will allow time for the fisheries to be prosecuted more thoughtfully and carefully. Allocating target (Pollock and Pacific Cod) and some secondary species in a CO-OP style management program will accomplish this goal.

Allocation of PSC – Allocation of Halibut and Chinook salmon PSC pro-rate based on groundfish harvests will insure individual accountability and reduce the likelihood that poor PSC performance by one vessel will adversely impact other vessels with good PSC performance.

- Halibut There should be no additional Halibut PSC reduction. The trawl fleet is already subject to Halibut PSC reductions from a previous NPFMC action. Pollock quotas are at historical highs now and the fleet spends the majority of its effort catching them. As the abundance of Pollock cycles back down in the future Pacific Cod and flatfish target fisheries will increase and having adequate Halibut PSC available is necessary
- Chinook salmon - The analysis should look at allocating additional Chinook salmon PSC to the trawl fisheries in the GOA and consider the ESA limit of

> 40,000 Chinook as the upper bounds instead of the current 32,500 Chinook. Genetic analysis is showing that bycaught Chinook salmon in the GOA are coming from hatcheries and Alaskan river systems of concern are not being impacted. Hatcheries continue to release hundreds of millions of Chinook every year and more, small hatchery fish are being seen on the fishing grounds. Environmental conditions are resulting in increased survival rates and presently we are already seeing increasing returns of Chinook to Alaskan river systems.

Allocation to historic, dependent stakeholders – Access privileges should be granted to harvesters that demonstrate long term involvement and dependence on the GOA trawl fisheries.

AWTA members **do not** support Community Fishing Associations (CFA). We are concerned by the additional regulatory burden and inevitable costs associated with having another government regulatory authority involved in fisheries management.

The Alaska Whitefish Trawlers Association (AWTA) is located in Kodiak, Alaska, and has been in existence for over 40 years. A not-for-profit industry trade association, AWTA represents 22 trawl vessels that are independent family-owned businesses. AWTA members harvest pollock, cod and other groundfish in the Gulf of Alaska, as well as the Bering Sea and off the West Coast. AWTA vessels contribute to the economies in the state of Alaska as well as Washington and Oregon and fishery management issues that occur within the North Pacific Fishery Management Council (NPFMC) directly affect AWTA businesses.

The trawl groundfish industry in the Gulf of Alaska has been fully engaged in the Council process and has been asking for a new fisheries management structure for over 14 years. In 2001 congress directed the North Pacific Fishery Management Council to examine fisheries under its jurisdiction to determine whether rationalization is needed—

> "*The North Pacific Fishery Management Council shall examine the fisheries under its jurisdiction, particularly the Gulf of Alaska groundfish and Bering Sea crab fisheries, to determine whether rationalization is needed. In particular, the North Pacific Council shall analyze individual fishing quotas, processor quotas, cooperatives, and quotas held by communities. The analysis should include an economic analysis of the impact of all options on communities and processors as well as the fishing fleets. The North Pacific Council shall present its analysis to the appropriations and authorizing committees of the Senate and House of Representatives in a timely manner.*"

The Council did create a new management program for the Bering Sea Crab fishery but has not complied with the congressional direction for the Gulf of Alaska. The groundfish trawl fisheries in the Gulf of Alaska remain one of the last major fisheries in Alaska that is still operates under an antiquated management style. The needs for a comprehensive new management program have time and time again been side-tracked due to political maneuvering rather than concern for the GOA groundfish resources and the stakeholders that are dependent on them. Good progress

on a new management program was being made until Sarah Palin was elected governor in 2006 when her administration stopped further work on this program. After a number of years progress was again being made until recently Bill Walker was elected governor and again the administration has sought to stop moving forward on a new management program. These decisions were made without regard to the impacts on the resource and dependent stakeholders. It is critically important that the new trawl bycatch management program in the Gulf of Alaska stop being subjected to the political whims that result from changes in administration and actually move forward for development and implementation.

It is assumed that the trawl sector in the Gulf of Alaska can continue to operate successfully under the current management structure but the industry is being set up to fail. The recent May 3 closure of the non-Pollock, non-Rockfish fisheries due to the Chinook salmon hard cap being exceeded is a dramatic example of what the industry will likely see in the future.

This rationalization plan was promised to participants as a way to provide the necessary tools and incentives to harvest healthy target species while significantly reducing bycatch of salmon and halibut by ending the race for fish. The fleet is in the untenable situation of meeting the burden of reduced bycatch allowances and facing the increased costs of avoiding that bycatch without any of the tools that can help us achieve that goal and keep expenses in check. As requirements to significantly reduce bycatch in other areas continue to be implemented, particularly in the Bering Sea, we will see increased and unsustainable fishing pressure occur in the unprotected Gulf of Alaska which only exacerbates the underlying race for fish and its associated problems.

Sincerely,

Robert L. Krueger

Robert L. Krueger, Executive Director
Alaska Whitefish Trawlers Association

August 27, 2015

Glenn Merrill
Assistant Regional Administrator for Sustainable Fisheries
NMFS Alaska Region

Re: NOAA-NMFS-2014-0150

Dear Mr. Merrill,

With my brother, I own and operate a trawler based in Sand Point. Over the last 25 years, cod and pollock have contributed to over half of our annual income.

The current "race for fish" structure is not compatible with the by-catch limits which are in place for salmon and halibut. Co-ops are the tool that is needed to reduce by-catch. That is the primary reason I support catch share plan, alternate 2. Also, this plan is history based, which will reward investments of time, money, and effort.

Linking catch history to specific processors will support local communities. I strongly oppose Alternative 3, community shares. I can imagine nothing more destabilizing to the industry than having a quota controlled by communities.

Sincerely,

Robert Puratich
FV Marauder

Page Count: 0

Submitter Info

Comment: Dear Mr. Merrill Thank you for the opportunity to submit scoping comments on the proposed bycatch management program in the Gulf of Alaska ("GOA"). As an Alaskan that cares about the health of our fisheries and is adversely affected by declines in Chinook salmon and halibut populations in the GOA, I recognize the importance of bycatch reduction in the GOA trawl groundfish fisheries. The North Pacific Fishery Management Council ("Council") initiated the proposed GOA bycatch management program specifically to reduce bycatch. Bycatch in the GOA has a significant impact on the communities of Alaska that depend on Chinook salmon and halibut fisheries. For example, over the past decade, commercial halibut catch limits in the GOA have been reduced 73%, and halibut charter bag limits have been reduced in Southeast and Southcentral Alaska. Similarly, Chinook salmon returns throughout Alaska have been poor, resulting in economic and social disruption to the individuals, businesses, and communities that are dependent on the fishery. The negative impacts of bycatch have not been distributed evenly: the Council has not reduced trawl bycatch by nearly the same level as the directed salmon and halibut fisheries have been affected. To rebuild stocks everyone must do their part to support conservation. Moving forward, the Council's bycatch management program must achieve additional bycatch reductions beyond existing levels. Importantly, catch share programs, such as those being considered in the range of alternatives, do not guarantee bycatch reduction; rather, bycatch reduction must be included as key part of the program design. Thus, in order to meaningfully evaluate both the potential impacts of the bycatch management program, and a reasonable range of alternatives, bycatch reductions beyond the status quo must represent the core component of the proposed action. The time is now to take meaningful action to reduce bycatch in the Gulf of Alaska. Thank you again for the opportunity to comment on this important issue. Sincerely, Sarah Brooks *

First Name: Sarah *

Middle Name:

Last Name: Brooks *

Mailing Address:

Mailing Address 2:

City:

Country: United States

State or Province:

ZIP/Postal Code:

Email Address:

Comment by Stephen Mallison

My name is Stephen Mallinson and I am writing to you in regards to the rationalization of the Gulf of Alaska trawl fisheries. I have been a trawl skipper for several decades. I started fishing here in Kodiak, Alaska in 1979 and have fished from San Francisco to ST. Paul. Over the years I've seen all sorts of attempts to manage fish stocks and none of them have been successful, they try surveys, observers, raise and lower quotas the list goes on. The truth is that no one can really predict with 100% accuracy what is going on in our oceans. All I know is what goes on around me, the longer I fish the more I realize the ocean is a complex place that continues to change. I see people comment on trawling but they have limited knowledge of the reality, i.e. we are destroying the oceans eco system, yet i return year after year to the same grounds and i am still catching fish. No fishery is perfect yet some would have you believe otherwise. The issues of by-catch has been front and center in our fishery, we have attempted to work together to reduce this problem but is it really a problem or the politics of fishing. Rather than by -catch why is it not My-catch, I caught them why shouldn't i be allowed to keep and sell them. Someone long ago decided that trawling for halibut or salmon shouldn't be allowed, why? Fish share the ocean and don't live in segregated areas, i don't target these fish but I do catch them, with the use of modified gear these incidents are being reduced but they will never be 100% effective. Help me to mitigate these occurrences by giving me the tools to accomplish this end. My career in fishing is coming to an end soon but not for the young men and women that follow like my son and son in-law. Don't be swayed by the other user groups that have their own agendas, everyone has bycatch. Please follow the other areas of the USA that have rationalized fisheries and don't be swayed by the politics of governors, senators, and council members that only speak to get themselves reelected. I therefore support Alternative 2 for the EIS at this time as it seems to support my efforts over the span of my career. Thank you Stephen Mallinson

To: Glenn Merrrill Assistant Regional Administrator for Sustainable Fisheries NMFS, Alaska Region NOAA-NMFS-2014-0150 Re: Notice of Intent to prepare an EIS for any GOA trawl bycatch management program

My name is Stoian Iankov. I am writing this letter on behalf my wife and our son Stefan Iankov who lives in Kodiak and is the captain and part owner of the vessel Michelle Renee. In addition to the captain we employ 3 to 4 crewmen. The vessel is based in Kodiak, AK. and is dependent on the GOA trawl fisheries. Pollock, P Cod, Rock fish and Sole fish. Throughout the years we have seen the change of management in the Bering Sea fisheries, Rock Fish in the GOA and recently off the West Coast (Washington, Oregon & California) to Catch Shares. Allocating the target species and bycatch. These programs have been great SUCCESS STORIES for everyone to see. Our vessel is involved in the GOA rock fish Catch Share program. Right away we experienced a reduction in halibut bycatch and the fishery also answers the concerns in the National Standard Guidelines. I do not know of any other way to manage a trawl fishery then through a CO-OP. The GOA trawl fisheries are under tremendous scrutiny from NPFMC. Reducing bycatch without a CO-OP style Catch Share program constrains our ability to produce and deliver fish to the communities that we so much want to protect. Like we saw this last spring, with the closure of the non-pollock, non-rockfish fisheries due to a very low Chinook salmon cap. We also have reduced halibut PSC cap. The impact of this action we will not know until the Pollock TACs start going down and the GOA dependent vessels have to rely on P Cod and Sole fish to make up for revenue. We support Alternative 2 from October 12th. 2014 Council's GOA Trawl Bycatch Motion. By allocating target species, some secondary and PSC species in a CO-OP style management, all concerns from the Communities will be addressed. We will see Sustainable Fisheries and Healthy Communities. We DO NOT support CFAs. Another bureaucracy will only add to the cost of doing business. IBQ will not solve anything. The race for fish will still remain. Lets model the GOA trawl fisheries on a proven program and save the GOA dependent vessels. In addition , there is a mandate from Congress. "Congress has recognized the importance of rationalization for the Gulf of Alaska ground fish fisheries. As part of the Consolidated Appropriations Act of 2001 (Public Law 106-554)" "The North Pacific Fishery Management Council shall examine the fisheries under its jurisdiction, particularly the Gulf of Alaska ground fish and Bering Sea crab fisheries, to determine whether rationalization is needed. In particular, the North Pacific Council shall analyze individual fishing quotas, processor quotas, cooperatives, and quotas held by communities. The analysis should include an economic analysis of the impact of all options on communities and processors as well as the fishing fleets. The North Pacific Council shall present its analysis to the appropriations and authorizing committees of the Senate and House of Representatives in a timely manner." Sincerely Stoian Iankov

August 14, 2015

Mr. Glenn Merrill
Assistant Regional Administrator
Sustainable Fisheries Division, Alaska Region, NMFS
P.O. Box 21668,
Juneau, AK 99802-1668.

Attn: Ellen Sebastian

Subject: Comment on Draft "Fisheries of the Exclusive Economic Zone off Alaska; Groundfish Fisheries in the Gulf of Alaska (NOAA–NMFS–2014–0150, billing code: 3510–22–P)"

Dear Sir or Madam,

Thank you for your time and consideration of our comments on the management program for trawl groundfish fisheries in the Gulf of Alaska (GOA). We, the authors of this letter, are five marine (social and natural) scientists currently working for different American research institutions. This letter, however, is written from our personal perspectives, as individuals and seafood consumers interested in the value and protection of the groundfish fishery. The goal of the National Marine Fisheries Service (NMFS) and the North Pacific Fishery Management Council (hereafter "The Council") in developing a new management plan for GOA Groundfish is to enhance the status of the marine ecosystem and the economic development of the region. With the wish of contributing to this relevant goal, and given our knowledge about the functioning of social-ecological systems like fisheries, we find ourselves obligated to transfer to you our thoughts about the proposed plan.

Despite the groundfish fishery is currently considered well-managed and sustainable (North Pacific Fishery Management Council 2015), the bycatch rates are outrageously high and they

must be reduced (National Standard 9 in Magnuson-Stevens Fishery Conservation and Management Act). Bycatch directly impacts on the ecosystem status and the economy of the fishing communities, as well as it creates conflicts between fleets because it includes the target species of other fisheries in the area, such as halibut or Chinook salmon. Additionally, bycatch makes the fishery inefficient since the trawlers often fish the prohibited species catch (PSC) before achieving the total allowable catch (TAC). Consequently the fishery is closed despite the groundfish stock being underexploited.

In order to address the bycatch problem, the proposed rule, for which comments were solicited, includes three alternatives. 1) No action; 2) Allocate exclusive harvest privileges to participants who join a cooperative; 3) Allocate exclusive harvest privileges to participants who join a cooperative and either a Community Fishing Association or an Adaptive Management Program.

We strongly support either Alternative 2 or 3 over Alternative 1, since there is evidence that the implementation of catch share programs leads to reduced by-catch rate and interannual variability in landings and exploitation rate, making fisheries more predictable (Essington 2010). However, we are unable to select between Alternatives 2 and 3 because key information to understand what option is more practicable and fair is missing from the bill. In this regard, the rights and responsibilities of the members of a community fishing association or a cooperative, the economic cost to join them, as well as the responsibilities of the fishermen participating in an adaptive management program, must be well explained so that stakeholders, the public, NMFS and the Council can analyze the pros and cons of both alternatives.

Additionally, we want to emphasize the Environmental Impact Statement (EIS) should assess not only the impact of the new management program on the biophysical system, but also on the fishing communities. Although it is not specified in this proposal, a Social Impact Assessment should be undertaken as part of the EIS process required under the National Environmental Policy Act (NEPA; 42 U.S.C. § 4321) in order to understand how these alternatives would impact the social system (as required by law under the Magnuson-Stevens Fishery Conservation and Management Act [sec.303]). In addition, climate change and other external factors can influence the outcomes of these alternatives, so they should be addressed in the EIS as well.

Opposition to Alternative 1

We oppose Alternative 1 because it supports a derby fishery, a fishery of brief duration where fishermen race to catch as much fish as they can before the fishery closes. Derby fisheries have been used globally, but in recent years, many fisheries have been converting from derby fisheries to an allocated quota, such as an Individual Fishing Quota (IFQ) system (National Research Council 1999). While derby fisheries allow many fishermen to simultaneously participate, they can create problems based on the common property nature of the fishery resource, such as when a given resource is accessible to multiple users, the result is a free-for-all competition for the greatest share of the resource to the detriment of themselves, the resource, and society as a whole (Ciriacy-Wantrup). Because an allocated quota system promotes safer working conditions for fishermen, is preferred by fishermen, and reduces bycatch we support Alternative 2 or 3, which eliminates the derby fishery. We oppose Alternative 1, the status quo.

Derby fisheries promote more dangerous working conditions for fisherman, as there is reward for working in risky and adverse conditions, promoted by the "race to fish" (Dewees 1998). Switching to an allocated quota system, either Alternative 2 or 3, would secure each vessel's share of the groundfish and eliminate the need to work in adverse, dangerous conditions. Furthermore, allocated quota systems are supported by fishermen. An extensive survey conducted of GOA fisherman concluded that the perceived positive impacts of eliminating derby fishery include: improved safety, improved price, market stability, improved management, consumer benefits, environmental benefits, longer fishing season, and professionalization and stability of the fishing fleet (Carothers 2013). Another study, Anderson et al (2014), conducted a novel, quasi-continuous time experimental environment to explore the effort timing behavior of harvesters managed under common pool (derby) and individual fishing quotas. After experiencing both management systems, subjects choose to be in a group with Individual Fishing Quotas (IFQs) by a 3:1 margin.

A positive environmental outcome of moving away from a derby fishery is reduced bycatch, as fishermen can afford time to strategically fish different areas. The current GOA Groundfish management program aims to improve management of all species caught in the GOA trawl groundfish, even if the total allowable catch limit for that species has not been harvested. Catching legal limits of any bycatch would close down the groundfish

fishery. Already this year an Emergency Rule has been instituted to keep the groundfish fishery open in the face of Chinook salmon bycatch limits being reached earlier than expected. Reducing bycatch by switching to an allocated quota system would be positive for both the environment and the fisherman by promoting longer fishing seasons of the target species.

Key considerations for the EIS

Climate change is and will continue to be a huge challenge for managing natural resources. There is clear evidence that the GOA is experiencing, and will continue to see, changes in ocean temperature and pH that can lead to changes in primary and secondary productivity, with ramifications to target stocks, their essential habitats and ecosystems in which they play an important role (Pinsky et al, 2013, Peterson et al 2015, Mathis et al 2015). Because of this, a precautionary approach to management of fisheries is increasingly important for target and bycatch species, the ecosystems they are a part of and socio-economic considerations.

The long-term sustainability of the GOA Groundfish management plan is dependent upon incorporating climate change contingencies and continuing to build the social and ecological framework for adaptive and dynamic management of these resources (*e.g*. Maxwell et al, 2015). We would like to stress the need for creative, forward thinking, inexpensive, and targeted monitoring methods that will allow the fishery to adapt to environmental changes such as species' range shifts, shifts in species' preferred depths, and changes to community composition, including important species interactions that can influence availability of commercial species, (Pinsky et al, 2013). As the GOA Groundfish fishery is comprised of 141 species (NPFMC 2015), this is particularly important. The currently proposed management plan includes monitoring efforts to specifically ensure that bycatch regulations are met (Goal 10, Section 2.6, Table 13); however, some of these same tools (Observers, Vessel Monitoring Systems, electronic logbooks, and video monitoring) can be and should be used to collect information to develop the tools to adaptively manage the GOA Groundfish fishery. Real-time information sharing from these methods can be employed to directly reduce bycatch and adaptively manage. We would like to see these methods directly addressed in the EIS. We feel that spatially explicit (in three dimensions) fisheries-based monitoring of both physical and biological components is crucial to

reducing bycatch and discards, adapting to changing environmental conditions, and to the continued labeling of this fishery as sustainable (Driscoll, 2014; seafoodwatch.org). Finally, we note that the review process (a five year review, Discussion Paper, Section 10, pp 131), and a continued structure for review and adaptation is key to the continued sustainability of this fishery.

Addressing the Human Environment

We are unable to choose between Alternatives 2 and 3 until a better understanding of the fishing communities' perceptions and potential participation in both a community fishing association and adaptive management plan is reached. Furthermore, it is unclear what the criteria are for establishing an adaptive management plan; this should be explicit when considering management alternatives. We would like to provide the following considerations: (1) Collection of fishing profiles to update current ones (Himes-Cornell, 2011); (2) using profiles to understand perceptions of proposed rule and participation within cooperatives, CFAs, or adaptive management plans; (3) and how these alternatives will lead to changes in participation and impact people.

In order to achieve the Council's operating goals and objectives in addressing the human environment (Discussion Paper, section 1.4, page 6) it is required that a Social Impact Assessment (SIA) be conducted to understand how best to allocate quota and ensure "fair and equitable access privileges" (Goal 4, page 7), "limit consolidation and provide entry opportunities" (Goal 6, page 7), and "promote active participation by owners of harvest vessels and fishing privileges" (Goal 14, page 7) (North Pacific Fishery Management Council, 2014).

Port profiles used to inform SIA have already been completed in Alaska in addition to 136 community short-form profiles (Sepez, J., et al. 2005). To ensure the validity of these data it is important to have social scientists from the Alaska Fisheries Science Center (AFSC) undertake an additional study to document current social trends and changes over time (Abbott-Jamieson and Clay 2010). There are numerous studies conducted by social scientists that indicate the importance of assessing vulnerability of human populations to specific management actions (e.g., Pollnac et al. 2006; Clay and Olson 2008; Johnson, T. et al. 2014). Information regarding current and/or potential participation in cooperatives, community fishing associations, or adaptive

management plans for the GOA Groundfish trawl fishery can be derived from these port profiles and additional social impact analysis. We recognize that sociocultural analysis is equally intensive and costly as stock assessments or economic analyses (Pollnac et al. 2006), which will require substantial investment from NMFS. However, to ensure sustainability of this fishery a thorough assessment is needed.

Many important considerations of impacts on the human environment have been addressed as priorities by the North Pacific Council, one key priority of the Council on the human environment is to support the continued participation of coastal communities that are dependent on the fisheries, which is mandated by National Standard 8 in the MSA (16 U.S.C. §1851(2)(8)). It is imperative that there are mechanisms for new participants to enter the fishery. One of the more recent issues in coastal fisheries, especially along the west coast of North America, is the aging of the fleet, which some social scientists at NOAA are currently addressing (Pollnac et al. 2006; Russell et al. 2014). This issue has been attributed to catch share programs like IFQ management programs becoming too costly to enter the fishery. Alternatives 2 and 3 *may* be potential solutions to address this critical issue, but to evaluate this, we think the EIS should include information about the mechanisms that will address allocation and new participant entry.

We agree with the GOA FMP that data collection via observer coverage is a priority to contribute to data availability and understanding of bycatch distribution. However, it is unclear how observer expenses will be covered. Will the expenses be covered by NMFS, through cooperatives, or by individuals (vessels or otherwise)? How will the GOA fishermen be impacted by different alternatives? This is an issue that needs to be addressed prior to choosing a management alternative and moving forward with implementation of a new FMP that requires 100-200% observer coverage. If industry ceases to cover observer expenses, there are other options that could be considered, such as the use of a NOAA intern program, trained volunteer efforts, and/or the continued and expanded use of electronic reporting and vessel monitoring systems.

Thank you again for the opportunity to comment on this issue. We hope you find our comments helpful to improve the proposed EIS and address the sustainability of this new management program.

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August 28, 2015

Glenn Merrill, Assistant Regional Administrator for Sustainable Fisheries NMFS, Alaska Region
NOAA–NMFS–2014–0150

Re: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for any Gulf of Alaska (GOA) trawl bycatch management program

I am Ted Kishimoto, president of International Seafoods of Alaska, Inc., which operates a full service fish processing plant in Kodiak, Alaska with approximately 350 employees.

Approximately 50% of the whole round fish we purchase come from our trawl fleet. It cannot be overstated that we rely on the GOA trawl Groundfish fisheries. We believe that the present fishery environment does not work. The Council has put restrictions on the trawl industry – new Chinook salmon limits and reduced halibut PSC caps. There is so much uncertainty in the fishery my company is concerned about our business staying profitable. In fact the company posted a net loss in the month of May 2015 because we just did not have enough fish in plant due to the non-pollock non-rockfish program fishery closure on May 3rd when the Chinook cap was reached. This affected our employee's income and Kodiak Island Borough's tax revenues.

We have positive experiences with cooperative fishery management (rockfish, AFA pollock, etc.). The cooperative management works for bycatch management (salmon bycatch in AFA, halibut bycatch in Rockfish, and little discards in these fisheries) and improving utilization of groundfish fisheries. The cooperative fishery management enables us to make our production plan and marketing easier as we can see how much fish will be harvested and processed and available for the market place.

We support the present Council motion (alternative 2) for analysis in the EIS that was developed within the Council process. Alternative 2 is a cooperative program that allocates cod and pollock and halibut and Chinook salmon PSC to harvesters. We do not suppert Alternative 3 because the extra cost will be impose on historical stakeholders.

Sincerely,

Ted Kishimoto
President
International Seafoods of Alaska, Inc.

August 26, 2015

Glenn Merrill
Assistant Regional Administrator, Sustainable Fisheries Division
Alaska Region NMFS
P.O. Box 21668
Juneau, AK 99802-1668

Docket ID: NOAA-NMFS-2014-0150

Dear Mr. Merrill,
I am writing in response to the request by NOAA to comment on the proposed management change for the G.O.A. ground fish. I own and operate a boat based in Sand Point, Alaska and predominantly fish in the Western gulf with some time spent in the Central gulf. At the N.P.F.M.C. meeting, Oct. 2014 the state of Alaska put forth a catch-share plan to give the trawl fleet the "tools" to control and reduce by-catch. I liked the plan, testified this to the council, and asked that they move forward.

I have read the six points that the program intends to accomplish, and I agree with all of them. I wish there would have been a seventh point, and that would be to save the financial well being of the fishing vessels.

There have been fifteen years of different plans and/or discussions on G.O.A rationalization. The second time around there was much concern for the crew members. This last time all we heard was about protecting the communities. At some point, someone ought to be concerned with the financial well being of the boats and the owners. Without a healthy business environment for boat owners, eventually crew jobs will go elsewhere. My boat is based in Sand Point, a small community which the core of its economy is fishing based. G.O.A. ground fish is important to Sand Point, and without some stability soon for the local fleet, fishing businesses will go elsewhere. There was one "local" boat sold this spring and it was not sold to another Sand Point resident. It was sold to a Seattle resident that has money made from the American fisheries act. Another sale pending is also not being sold to a local resident, but to a person who owns a Bering Sea crab boat. Does this give you any idea of where money is actually generated in this business? In the last four years an average 71% of my boat's gross income has been from a combination of trawl cod and pollock.

With all the restrictions and by-catch quotas placed on the trawl fleet it is becoming more and more difficult to remain profitable and make a living for myself and my crew. In June of 2014 I listened to Nicole Kimball tell the council, and B.O.F. members present, that the trawl fleet would be fishing under a catch-share plan by 2017. You cannot reduce, or in many cases control by-catch while racing for fish. The mind set is to get as much target species on the boat before the next guy does.

The trawl fleet has never been given the opportunity to prove just how clean we can fish if we are not racing for fish. When at a council meeting, all the focus is on reducing by-catch so that's all we talk about. In reality, when I haul back, what I am focused on is how much target species we have. I'm trying to make money for the boat. I've got three guys behind me that are depending on me to make them a living, so I'm doing whatever I can to put as much fish on the boat, before the next boat does. Some of us know you can clean up fishing by investments in gear. When the consensus was that we were going to be fishing under a catch share plan I spent, in the last three years, over thirty thousand dollars on excluders, gear to make the excluder work better, freight, and excluder modifications, for both the pollock and the cod trawl. At this point I feel foolish for spending that money, because I am just lumped in with a fleet that hasn't made the same investments. Of the small boat fleet there are only two of us that are using salmon excluders on our pollock nets, but my investment does absolutely no good if everyone else who is trying to catch the same quota does not comply to measures that have been proven to reduce salmon by-catch.

As with the processors, these businesses need to show a profit. Starting with sea lion restrictions placed on the trawl fleet 15 years ago and now the by-catch quotas, it has resulted in more and more uncertainly with the business. All those protections come with a cost. Cod and pollock are both a commodity that have to compete on the world market. All the protections that we have to live with make my fish more expensive than that same fish coming from another country.

Cod and pollock are worth what they are worth on the world market. When it is sold all the costs from area restrictions, from having the quotas divided up, from observers, from "stand downs" (where the majority of the fleet believe it is a good idea not to fish when one vessel has a bad observed tow), and now having to try and control by-catch by "committee", ultimately comes out of the price of fish.

The last goal is continued support of the coastal communities. I couldn't agree more. If you have a healthy, profitable fishing fleet and local processor, the community should also do well. I have no problem linking my catch history to the processor to whom I have historically sold. That will then tie me to that same community or town. (In my case, Sand Point, Kodiak, and a little of it delivered into Akutan).

I support catch share plan (alternate 2). I like the plan because it was based on history which represents a person's investment and time in the fishery. All catch share plans, to this point, have been history based. Fishing history reflects investment, risk of money, time and hard work. You would be responsible for controlling your own by-catch. I like that if a boat owner wished to participate, that person could then organize with a co-op. That co-op would then provide protection for both the processors and the communities where those processors were based. I like the solution to the parallel fishery that we depend on in the Western gulf.

The only concept that under no circumstance could I support, in fact the thought of makes my blood run cold, is "community shares" aka CFA (alternative 3). One could only imagine the corruption bred from placing control of quota in the hands of the community. I have been advocating rationalization for fifteen years now, but given the choice of any community shares or status quo, I would choose status quo.

It was discouraging when the state delayed the package that was moving forward. We have been trying since 2000 to rationalize the G.O.A. groundfish fisheries. I support Alternative 2 in the October 2014 Council motion which calls for a cooperative management structure with target species pollock and cod allocated to the coops based on history (investment) as well as PSC allocations. I strongly believe that the status quo (Alternative 1) is not working and that alternative 2 is the way to move forward and should be analyzed in the EIS.

Sincerely,

Tom Evich
owner/operator
F/V Karen Evich

POLAR EQUIPMENT, INC.

dba

Polar Seafoods

August 26, 2015

Glenn Merrill
Assistant Regional Administrator for
Sustainable Fisheries
NMFS, Alaska Region
NOAA-NMFS-201-0150

Re: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for any Gulf of Alaska (GOA) trawl bycatch management program

Polar Seafoods is in favor of trawl bycatch reduction, and appreciates the effort put forth by everyone involved to make that goal a reality.

However, we do oppose any part of the plan that would require the fish to be delivered to only one port in the Gulf of Alaska – Kodiak.

Polar Seafoods has a history of processing Pollock and Cod and would suffer economically, and by extension the economy of the City of Seward where Polar is located, if the fish are forced to be delivered to Kodiak.

William C. Fejes,
General Manager
Polar Equipment, Inc. dba
Polar Seafoods

1035 W. Northern Lights Blvd. • Anchorage, AK 99503
Ph (907) 272-0404 • Fax (907) 272-8542

RECEIVED
AUG 31 2015
NMFS SMALL ROOM

Date: September 25, 2016

Glenn Merrill, Assistant Regional Administrator for Sustainable Fisheries
NMFS Alaska Region

Dan Hull, Chair
North Pacific Fishery Management Council

Re: Notice of Intent to Prepare and Environmental Impact Statement: reopening public comment for scoping. NOAA-NMFS-2014-0150.

My name is Keith Cochran and I skipper the F/V Bay Islander in Kodiak. I am relatively young in this business, but I have seen enough to know that we operate in a broken system under current GOA groundfish management. I grew up fishing with my father in Kodiak, and hope that we can soon see change to sustainable management that will ensure a healthy fishery for my kids someday.

The present environment of our fishery simply does not work. We have come to expect early closures of fishing season as the norm. We are not able to take full advantage of the resources, and this underutilization not only hurts the fisherman and the cannery workers, but it also affects the local community. The Bay Islander alone supports seven families who are all greatly impacted when we have to tie our boat up and quit fishing. And in most cases these premature shutdowns are due to poor observer data.

Effective bycatch reduction in a trawl fishery requires effort from all parties involved. This includes fisherman, processors, and governing bodies including NMFS, NOAA, and the NPFMC.

I can tell you that the trawl fisherman of Kodiak have been earnestly seeking ways to improve bycatch reduction through gear modification, excluder research, voluntary catch share agreements, better fleet communication, and many other things. All of this does help to some extent in reducing bycatch, but without the help from the council in the form of proper management tools, we will continue to fail without doubt.

I write all this to say that I support Alternative 2 for consideration in the EIS. I believe a co-op management system is the best possible way to manage a fishery as it benefits all stakeholders, not just one particular group. I have seen much success with co-op management in both the GOA rockfish program and the West Coast Whiting fishery, of which I participate in both. These programs have greatly reduced bycatch, reduced at-sea discards, and increased the value of the fish.

Two other issues I believe need to be addressed in the EIS are, GOA Pollock trip limits, and the GOA Chinook PSC cap.

I would like to see the Pollock trip limit increased somewhere between 50,000lbs and 100,000lbs. I believe the Kodiak fleet has outgrown the current trip limit and the increase would help improve operating efficiencies without negating the benefits of a limit. I also believe this small increase would decrease at-sea discards as more boats holding capacities would comply with regulation.

The Chinook PSC cap in the GOA also needs to be seriously considered. I suggest increasing the hard cap would have no adverse affect on stock levels while allowing trawlers to prosecute groundfish quotas effectively.

Again, I ask that you would consider Alternative 2 within the EIS while also identifying the impacts of increasing GOA Pollock trip limits and the Chinook PSC cap.

Thank you for your consideration,

Keith Cochran
F/V Bay Islander
keith@bayislander.net

Attn: Glenn Merrill, Assistant Regional Administrator for Sustainable Fisheries NMFS, Alaska Region NOAA - NMFS - 2014 - 0150

Re: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for a Gulf of Alaska (GOA) trawl bycatch management program.

Dear Mr. Merrill,

My name is Jody Cook. I am 57 years old and have been involved in the Gulf of Alaska cod and pollock trawl fisheries for over 30 years. I own and operate the 58' combination pot and trawl vessel Cape Reliant. The vessel is home ported in Petersburg, Alaska. Most of the recent trawling that we have done has been based out of Sand Point, Alaska. I am a member of the Alaska Groundfish Data Bank , trawlers association, out of Central Gulf and Kodiak, and also a member of the Peninsula Fishermans Coalition, a trawlers association representing most of the local Western Gulf trawlers.

I previously submitted a letter to give my support for Alternative 2 of the Council motion from October 2014 regarding a Trawl bycatch management program. This program was to be considered for analysis in the related EIS that was developed thru the council process. Now,.. there is another scoping process, for the EIS. I am guessing that this could go on until the new Commissioner has things fashioned exactly to his own ideals. Or, everything falls apart. He has pretty much stated that he would not be compromising, in regards to catch shares. That unless the trawl fleet changed there would be a stale mate. The stake holders that are involved with the trawl fishery know that to make any significant progress towards stabilizing, protecting, and improving the fishery, around the by catch issue, the **race for fish** must end.

The State Commissioner of Fish and Game , Sam Cotten, has claimed that stakeholders have not supported or helped to develop Alternative 3, because they are so focused upon the "prize" of catch shares. He refuses to admit that Alt. 3 is a flawed and unworkable alternative, compared to Alternative 2. He continues to blame the stakeholders for being too unwilling to compromise and try and work with Alt. 3. In reality, the stakeholders and many many non-stakeholders have worked for years exchanging views and opinions through the council process. No interest group was completely happy. Trawlers were stuck with lower unjustified caps. The anti-trawl lobby groups were stuck with the idea that trawlers may still survive and have some control of their destiny. The idea of PSC Shares was introduced in testimony before, and had no significant support. I want to remind the council and all those involved in this process of scoping,.. This Alternative 3 was introduced because someone did not get 100% of their desired result through the due process of council action. This repeated scoping process is the result of the anti-trawl lobby not getting 100% of their desired result through the due process of the council action. So,..now,. with a change in administration and position and power,.. the process was manipulated and a new Alternative was introduced that would do very little or nothing to end the race for fish. The progress was stalled in the Gulf Trawl Bycatch Management agenda. I believe that Alt 3 never had merit from the beginning. I believe it was just thrown in as a "monkey wrench" to either force industry to "try" and make it work,.. or to break the whole Agenda, to get a "restart"…

A big focus of the scoping process should involve examining the positive versus the negative of programs that are working. The Commissioner and other "anti-trawl" proponents, keep pointing out the negatives of the Crab Rationalization and IFQ programs, as reasons against trawl catch

shares. The reality is, that these programs are working and have brought stability to fisheries that were self- destructing. The consolidation and the end of the “race for fish” did what regulators and stake holders hoped for. Better quality, better marketing ability and options. Less impact on habitat. Safer working conditions. More stability for stakeholders.

When the conditions for a business becomes more stable and favorable for profitability, then it is normal that the business becomes more valuable. When fishing businesses become healthier, and more stable, then fishing communities become healthier and more economically stable. This is a good thing and I believe it is an over arching concept contained in many of the National Standards of the Magnuson-Stevens Act.

Another item that scoping should do is clearly define what the “anti- trawl” lobby means when they use the term “new entrant”, as it applies to this issue. It has been used in a very vague and undefined manner. And yet this whole new scoping re-run is based on this “New Entry” buzz phrase. And, while the analysts are defining this, they can also define the term “stakeholder”. The so called stakeholders that testified that catch shares could reduce new entry opportunities, were really not actually stakeholders,.. in my view. As I understand it, they are individuals who **are not** currently involved or invested in the trawl fishery. In my view the definition of a Trawl stakeholder, is: “ An individual or entity that **“is”** involved or invested in the Trawl fishery.”

I have lived in Petersburg for over 20 years and the IFQ program has been a huge success story there. Sure, there were folks who lost their jobs and were angry with consolidation. Sure there were folks complaining that a public resource should not be privatized. But, this is always the case, in these transitions. If a guy was a hard worker and applied himself, he could get another job on a long liner and it was a better paying job after IFQ’s. There are plenty of skippers under 40, in Petersburg. Many of them from family connections. Or from crew that have worked their way up and finally took over as Skipper as the Owner got older. Coming out of college or just showing up in town and deciding to be a boat owner and skipper does not happen on a 58’ seiner. It doesn't happen on a 58’ Longliner with IFQ. It doesn't happen on a Sitka Sound Sac Roe seiner. It doesn't happen on a Chatham Strait Black cod fishery.

Often, when I try to compare some of the positive aspects of the IFQ system to a trawl catch share program, I am told by the anti-trawl folks that they can’t be compared. But, when it comes to any negative aspects, the “anti-trawl” proponents are quick to compare the two.

Unlike IFQ’s, with the longline fleet, the trawling is already limited. Plus, there also was council action that eliminated many latent LLPs,(recency). So,.. there should already have been the big value increase that happens with limiting access to a fishery. For example, the State of Alaska has many limited entry permit programs. In the Sitka Sac Roe seine fishery there is between 50 and 60 permits. The new entry price tag is $325,000, according to “permit masters” in Pacific Fishing magazine. That is without a boat and net and skiff. Bristol Bay has a asking price of $140,000 for a permit.

Why is so important to come up with some socialistic “new entry” scheme for the Federal Trawl fishery, when the State has a pile of “limited access, privileged” programs they have endorsed. If this warm fuzzy hand out is going to be given to folks who haven't dedicated a significant part of their life to the fishery, then I believe that the trawl industry should not be the only fishery donating jobs, in this action. We need an over arching concept to arch over the existing over arching concept, to include and apply to all fisheries conducted in Alaska, that have limited

access privileges. Our trawl fishery should not become the only dumping grounds for inexperienced folks looking for a short cut to getting into the fishery.

I propose that any process that attempts to enhance the ability to enter any fishery , does not pass over the guys and gals that have invested a good part of their lives and finances on the decks and on the docks involved in these fisheries. I believe that time spent and investments made in the fishery, should put guys and gals at the front of the line in any program that may be developed.

In Western Gulf we included in our first proposal, long ago, to include skipper shares. To recognize and add value to their time and involvement in the fishery. We recognized that this was a natural progression into ownership, in the fishery.

In regards to consolidation.,.. there already is consolidation occurring at status quo. The gulf is not the big money maker, that many of the anti-trawl lobby proponents try to portray it as. Right now we are getting paid 8 cents per pound at Trident, Sand Point. There are lots of pollock right now, but it won't always be this way. With bycatch reductions there is potential to be shut down in the middle of a season. There are voluntary co-ops , with voluntary catch shares, that have been very successful in managing by catch. But these co-ops are voluntary and hang by the shoestring of full compliance. The State has voted against the trawl industry for some time now. In my view the current Commissioner is “anti-trawl”, and his appointments on the council are beholden to him. So,.. it is not a comfortable time as a trawler, in regards to the council and the States control of the regulatory process.

I believe that one of the most affective ways to enhance the way for new entrants is to make the fishery stable. Something that a hired skipper can take to the bank and get financing on. The new “over arching” goal of the Commissioner and other “anti-trawl” proponents attempts to blatantly cripple efficiency and profitability of the Gulf Trawl Fishery, going forward. This is in direct contradiction of National Standard #5: **Where practicable , promote efficiency, except that no such measure shall have economic allocation as its sole purpose.**

The main **purpose** of the Trawl Bycatch Management action was to help the trawl fleet have tools to manage by catch. The Anti-trawl lobby had succeeded in persuading the council to lower salmon and halibut caps. These lower caps have already resulted in premature closure of the trawl fishery. Through genetic analysis it has been found that a large amount of the salmon that are caught are hatchery fish. National Standard #2 **Conservation and Management measures shall be based on the best scientific information available.**

The reduced Chinook caps were justified with focus on struggling Gulf of Alaska Stocks. The scientific analysis shows that these are not the fish that are being caught. That the fish that are being caught are from healthy stocks and hatchery releases in SE Alaska, Canada, and Washington, and Oregon.

The scoping process needs to apply this science and re-evaluate the salmon caps. The hatchery salmon need to “not” be a prohibited species. They give a distorted perspective of the actual impact that Gulf trawling has on the natural chinook stocks of concern.

The observer program was also added to the Gulf Trawl Fishery and brings with it related expenses.

So,.. the idea behind this program was to give the trawlers more options, to enable them to survive under the new restrictions. Alternative 3 is an untested, undeveloped, unknown train wreck, that does not end the race for fish.. The new “over arching” addition by the Commissioner and fellow conspirators contradicts the main focus of the original idea behind Trawl Bycatch Management.

I believe the new “over arching goal” that was added to the Gulf of Alaska Trawl Bycatch Management program, was more of the Commissioners strong-arm tactics of manipulating the process to match his ideals of life. It has absolutely nothing to do with Trawl bycatch. I believe that it moves in a direction away from National Standards, by intentionally crippling the industry. Provisions to limit are already in Alternative 2. They are clear and tested. Catch Share Caps and incentives to fish in a cooperative, with dis incentives to not be in a cooperative. Again , regional delivery requirements limit the fisher and protect communities. Skipper shares , as I have mentioned , could be added back in, for new entry opportunity.

Catch Shares are the obvious solution to ending the race for fish. If a person has catch shares with relative psc attached, then there is personal accountability for by catch. A person could choose when and where to fish without worrying about losing their share of the quota. As long as there is a race for fish, many negative issues thrive in the fishery. Bycatch, quality, and safety are some of them. The Commissioner continues to be willing to sacrifice potential gains in many areas of the fishery for the sake of a socialist agenda that will be warm and fuzzy for everyone but the current stakeholders. The same Pacific Fishing issue that introduced the new Commissioner had a lengthy article on the development of the halibut IFQ program. The same fears that the Commissioner raises, were very prevalent in the argument against IFQ’s. In the end, the consensus was that the positive benefits of quality, consolidation, safety and many other positive things, out weighed the uncertainty and instability that the race for fish brought. In short,.. privatizing the fishery was the best thing for it. Recently, the Crab rationalization plan was up for review. I don't believe there were many significant changes made. Again,.. the positives out weighed the negative.

I disagree with the idea that there will be a significant transfer of wealth. There are controls embedded within Alternative 2 that address community protections and new entrants. There are provisions for catch share caps, to avoid over consolidation. There are Regional delivery requirements to make sure that communities and processors have the same amount of fish coming back to them.

In the new “over arching goal, I believe that “promote increased utilization” and “limiting harvesting privileges” are contradictory. Again,.. I believe it is this attempt to make things all warm and fuzzy and protect the Alaska world from the Oligarchs of the Gulf trawl industry,(which don’t actually exist). I believe that it is too confusing and vague, and continues to cripple the process.

The council has moved forward and finalized action on reduced caps for halibut and salmon bycatch, for the trawl fleet. The council has also moved forward and finalized action on increased observer coverage for the trawl fleet.

I feel that with the current move toward more observer coverage and the financial burden it will impose upon the industry, that it is imperative that the trawl fleet be given the tools to develop their fishery in the most efficient manner possible. I feel that with the current reduced caps and the current "race for fish" status of the fishery, that the fleet will see similar shutdowns like the 2015 closure. I strongly urge the Council to follow up and move forward on Alternative 2.

It has been proposed that 100% observer coverage be fast tracked for the Gulf trawl fleet. This proposal came by the same source that proposed delaying progress on the October motion. I appeal to the council to take into consideration the financial hardship this will impose upon a relatively small boat operation that most of the Sand Point and King Cove trawlers are. At least 22 of the fishing vessels are 58' vessels. In 2013 the Cape Reliant burned $30,350 worth of fuel, between January 6 , when we left Petersburg, to February 16, when the A season ended for cod, in Western Gulf. We burn more fuel fishing for Pollock. In 2015, I believe there was 7004 tons of cod harvested by the trawl fleet in Western Alaska. There was about 22 vessels fishing. That is an average of 636,727 lbs per boat. At .26/lb that is $165,549 gross stock, before fuel or any expenses. Fuel is the biggest operating cost, but maintaining equipment for trawling is very expensive. In the race for fish it is very important to have the latest electronics, the latest developments in nets, the latest doors. There are expenses with VMS requirements and upgrades. Each vessel needs at least two bottom trawls and two midwater trawls. A relatively basic Marport electronic net and door monitoring system cost the Cape Reliant $30,000, 4 years ago. There needs to be a bottom mapping system that is a complex network of gps, depth sounder and computer program. There needs to be a communication system to log observer trips, (a new expense that will probably lead to needing the latest developments for internet connections.)

I mention these details, just to point out that there is already a large expense load and a not so large gross stock. The looming expense of full observer coverage is a scary prospect. I hope that some sort of alternative that may involve electronic monitoring may help to some degree. Also, Alternative 2, proposes cooperatives that would end the "race for fish". This would change many things for the better. Fishers could choose to fish later when the cod are schooled for spawning. The yield per effort would be greater and would lead to significant fuel savings. At the same time, bycatch is generally much less when the cod are schooled for spawning.

In regards to Alternative 4, Community Fishing Associations: I do not support this alternative at all. I believe that the key to a healthy fishing community is a healthy fishing fleet. If there is any allocation of catch shares, I believe that the fisherman that have been the most involved with effort and investment in developing the trawl fishery should be the ones that are enabled to continue under any new program. Alternative 2 proposes measures that will protect community interests. As I have mentioned, to maintain and operate a trawl vessel is a complex and expensive process. It has taken many years to get to the point where we are with the Cape Reliant. There just isn't any "extra" money floating around in the Western Gulf that could support some experiment of administration.

A Co-operative fishing program , similar to that which is proposed in Alternative 2 has been successfully administered in Kodiak, for Central Gulf fishermen. It has been voluntary and has been successful at controlling bycatch. Alternative 2 would lay the foundation for a comprehensive plan that has been successfully administered in Kodiak and in Bering Sea

fisheries and on the Washington/Oregon coast. It is a program that has already been practiced and proven. There is still flexibility given in a number of options in most of the proposed measures.

I believe that Alternative 2 would finally bring the Gulf of Alaska trawl fisheries up to date with many of the other developed fisheries. I believe that measures to protect communities, to reduce bycatch and discards exist in this part of the motion. I believe that the end of a “race for fish” will mean safer conditions. I believe it would mean less time for trawls to be on bottom, as fishers could choose to wait until the cod are the most concentrated, to target them. I believe that it could increase market conditions as processors could work with fishermen to avoid fish backing up at the plant and compromising quality. I believe that measures to require historical delivery to be made to the same community will protect communities. That vessel caps will limit consolidation.

Thanks for your consideration,..

Sincerely,

Jody Cook

September 24, 2016

Glenn Merrill
Assistant Regional Administrator, Sustainable Fisheries Division
Alaska Region NMFS
Attn: Ellen Sebastian
P.O. Box 21668
Juneau, AK 99802-1668

RE: NOAA-NMFS-2014-0150 Gulf of Alaska Trawl Bycatch Management

Dear Mr. Merrill:

The Alaska Marine Conservation Council (AMCC) appreciates the opportunity to comment on the Gulf of Alaska (GOA) Trawl Bycatch Management program. AMCC is a non-profit organization committed to the long-term ecological, social, and economic well-being of Alaskan communities. Our members include fishermen, subsistence harvesters, marine scientists, small business owners, and families.

AMCC has been engaged on this issue through the many iterations of this program's development. We previously submitted comments during the October 2015 scoping report and ask that those comments, along with our attached comments from the June 2015 North Pacific Fishery Management Council (Council) meeting be incorporated into the record.

The long-term health of coastal communities in the GOA depends on a Trawl Bycatch Management Program that protects the role of independent, community-based fishermen. To that end, the program should provide for viable entry opportunities, community stability protections, robust accountability measures, and meaningful reductions to bycatch. Additionally, the program must account for the well-documented fact that individual fisheries do not occur in a vacuum—consolidation on both the harvesting and processing side, increased barriers to entry, and bycatch limits all have direct and indirect effects on other fisheries and fishing communities throughout the region.

In addition to the comments contained within the attached letters, we make the following recommendations.

1. Evaluation of the current alternatives in the context of the overarching goal and objective for the program.

As noted in the Notice of Intent, the Council adopted an overarching goal and objective for the proposed program. The overarching goal and objective, which in part seeks to minimize economic barriers for new participants and to maintain opportunity for entry into the GOA trawl fisheries, reflects significant concerns expressed from stakeholders during the June 2016 Council

meeting. It is also reflective of the Council's obligations under section 303a(5) of the Magnuson-Stevens Act.

More broadly, the overarching goal and objective is a response to more than twenty years of experience with catch share programs. This experience, which is well-documented in both academic and Council literature and analysis, has demonstrated that catch share programs will change the composition of the fishing fleet, alter the relationship of historical fishing communities to that fleet, and cause adverse impacts to historical fishing communities and fishermen. These effects are not solely limited to direct participants in the fishery; downstream effects from catch share programs impact opportunities for fishermen in other fisheries, affect the health of community businesses, and create a precedent for other management programs. While the degree to which these effects occur differs in every program, analysis should explicitly highlight anticipated affects from the proposed alternatives.

With respect to mitigating these anticipated effects, the existing alternatives have attempted to address many of these concerns and, indeed, may already be sufficient to meet the new overarching goal and objective. As such, the EIS should continue to analyze the current range of alternatives with explicit consideration as to how each alternative fulfills the proposed program's overarching goal and objective. Further analysis in this context will inform both the Council and public as to how these alternatives align with the overarching goal and objective and identify any gaps that may need to be addressed through further refinement to the alternatives.

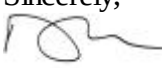
2. Economic and social impacts analysis of Alternative 4.

In June 2016, the Council further refined Alternative 4, adopting additional language related to the Community Fishing Association (CFA) option. Included in this action, was the adopted definition of communities eligible for participation in the CFA program, as well as the addition of an option that would allow the CFA to use lease proceeds to directly support community-based fisheries and enhance entry level opportunities within eligible communities.

With respect to the community eligibility criteria, the EIS analysis should evaluate how this definition is consistent with section 303a(3) of the Magnuson-Stevens Act, as well as how it meets the goals and objectives of the proposed program. Regarding the expanded use of lease proceeds, the EIS should analyze the economic viability of such an option. Council analysis has indicated that the size of the GOA trawl fishery is small relative to Bering Sea; in light of this, the Council should consider whether the scale and economics of the fishery are sufficient to further the goals and objectives of the proposed program. Likewise, the EIS should consider how this option fits in with the revised community eligibility criteria.

Thank you for your consideration of our comments.

Sincerely,



Shannon Carroll
Fisheries Policy Director
Alaska Marine Conservation Council

May 31, 2016

North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501

RE: Agenda item C-5 GOA Trawl Bycatch Management Program

Dear Chairman Hull and Council members:

The Alaska Marine Conservation Council (AMCC) appreciates the opportunity to comment on the Gulf of Alaska (GOA) Trawl Bycatch Management program. AMCC is a non-profit organization committed to the long-term ecological health and social and economic well-being of Gulf of Alaska communities. AMCC is dedicated to protecting the long-term health of Alaska's oceans and sustaining the working waterfronts of our coastal communities. Our members include fishermen, subsistence harvesters, marine scientists, small business owners and families.

AMCC has been engaged on this issue through the many iterations of this program's development. Broadly, we believe that the long-term health of coastal communities in the GOA depends on a Trawl Bycatch Management program that protects the role of independent, community-based fishermen. To that end, the any plan should provide for viable entry opportunities, community stability protections, and meaningful reductions to bycatch.

With those goals in mind, we support the Council's current approach of continued analysis and refinement of all four alternatives. The June discussion paper is the second paper geared towards the development and refinement of alternatives, elements, and options that will ultimately be considered as part of an Environmental Impact Statement (EIS). With the substantial differences between Alternatives 2 and 3, and the potential for Alternative 4 to be used with either alternative, the selected range of alternatives is sufficient to foster informed decision making and informed public participation. And while we offer suggestions below, we also note that both Alternative 2 and 3 provide several elements and options that we believe are essential to healthy fisheries in the GOA.

Specifically, we support continued analysis of:

- 100% observer coverage ensures accountability among harvesters.
    - Successful market design requires biologically accurate TACs as design inputs — as well as reliable reporting and enforcement of TACs.
    - Catch share fisheries that do not incorporate such provisions fail to internalize the conservation and economic externalities common in many fisheries. Such systems most often concentrate benefits without addressing the costs to the public, the resource, or stakeholders who are disenfranchised.
- Bycatch reductions

- Bycatch in the trawl fisheries affects the economic, social, and cultural framework of those that dependent on halibut or salmon fisheries. Creating a program that properly incentivizes cleaner fishing practices will allow the groundfish fishery to harvest additional fish, while ensuring that the Council continues to meet its obligations to reduce bycatch under National Standard 9.
- Must be included in program design; nothing inherent about rationalized fisheries that reduces bycatch.
    - Example: Finally, in the Bering Sea crab coop program there were no stated goals for bycatch reduction and no mechanisms to ensure that assumptions about improved fishing practices would be met. In the first year that the coop program operated discards of legal size crab increased by 800%.1 The crab fleet recognized this had to be rectified because it was simply wrong, reflected very badly on the fishery and state managers would have reduced the quota to account for the highgrading; action was taken by the fleet to fix the problem. The point is that specific features designed to meet desired conservation objectives are critical.
- Likewise, we also support elements and options that lead to a reduction in regulatory discards.

2. The Council should continue to refine the alternatives

The Council should refine the existing alternatives based on the recent analysis and stakeholder input during the meeting. For this purpose, we offer the following suggestions:

i. Ending the race for fish is necessary for a functioning fishery

The recent analysis notes on several occasions, that under Alternative 3, participants will seek to maximize their harvest of groundfish as quickly as possible before the overall TAC is reached within the constraints imposed by PSC allocations made to the cooperatives.[1] This is consistent with previous Council discussion papers analyzing similar bycatch quota programs, and we agree with the analysis.[2] Failing to slow the race for fish is counter to the Goals and Objectives of the proposed program, in that does not incentivize fishing "more slowly, strategically, and cooperatively," among other things. A continued race for fish also presents management concerns, as noted in the discussion paper.[3] These include, difficulty in reliably predicting groundfish harvests and individual vessel effort, as well as other enforcement and administrative issues.

While certainly not a panacea for all management issues, allocation, in some for (discussed in greater detail below), of target species is much more likely to incentivize bycatch avoidance measures, such as test tows, geographic and temporal selectivity, gear modifications and conversions, and communication between participants. Moreover, allocating target species would provide harvesters and processors with additional flexibility and efficiency.

[1] *See e.g.,*

[2]

[3] *See e.g.*, p49

AMCC therefore asks the Council to consider changes to Alternative 3 that would slow the race for fish.

ii. Ending the race for fish does not require permanent allocation of harvest privileges

The Council should consider annual allocations (or some form of fixed-term allocation). Permanent allocations are not necessary to curtail the race for fish. All that is needed to end the race for fish is the assignment of total allowable catch; this assignment can be fixed-term and limited in duration. While permanent allocations have the advantage of providing increased economic security to privilege holders, short-term allocations give the Council increased flexibility to meet the proposed program's Goals and Objectives over an extended period of time.[4]

Annual Allocations would be based on more factors than equal shares and GOA dependence (potential ideas: years in fishery; active participation).

iii. Communities should be recognized as stakeholders

Inter-generational equity concerns, particularly those associated with the so-called transitional gains trap (c.f., Copes, 1986). All subsequent generations face significantly heightened entry costs precisely because the original assignments are into perpetuity while at the same time the future wealth of the fishery is transferred into the hands of the recipients of the original allocation.

Intra-generational equity concerns (i.e., distributional equity concerns among the present generation) associated with the same transfer of wealth.

Concerns for the social and economic impacts on coastal fishing communities arising from permutations of all three of the above concerns coupled with concerns over "permit drain" (and permit dearth) in such communities. In particular, there is a profound fear that the form of the initial allocation will inevitably promote absentee ownership thus redefining both what it means to be a fisherman and the distinctive "way of life" in fishing communities by radically altering cherished relations of production.

Thank you for your consideration of our comments on this very important matter.

Sincerely,

[4] This is consistent with the U.S. Commission on Ocean Policy's recommendation that catch share programs "assign quota shares for a limited period of time to reduce confusion concerning public ownership of living marine resources, allow managers flexibility to manage fisheries adaptively, and provide stability to fishermen for investment decisions [USCOP 2004:290]."

Shannon Carroll
Fisheries Policy Director
Alaska Marine Conservation Council

Alaska Marine Conservation Council

August 28, 2015

Via Federal eRulemaking Portal (www.regulations.gov)
NOAA-NMFS-2014-0150

Glenn Merrill
Assistant Regional Administrator
Sustainable Fisheries Division, Alaska Region, NMFS
Attn: Ellen Sebastian
P.O. Box 21668 Juneau, AK 99802-1668

Re: NOAA-NMFS-2014-0150, Gulf of Alaska Trawl Bycatch Management Program EIS

Dear Mr. Merrill:

This letter provides the public comments of the Alaska Marine Conservation Council ("AMCC") in response to the National Marine Fisheries Service's ("NMFS") notice of intent ("NOI") to prepare an environmental impact statement ("EIS") on a new management program for trawl groundfish fisheries in the Gulf of Alaska ("GOA"). AMCC is a non-profit organization committed to the long-term ecological health and social and economic well-being of GOA communities. Our members include fishermen, subsistence harvesters, marine scientists, small business owners, and families. We applaud NMFS' willingness to implement measures to reduce bycatch in the GOA and we appreciate the Agency's consideration of these comments.

I. Objectives of the Proposed Action

The North Pacific Fishery Management Council ("Council") initiated the GOA trawl bycatch management program specifically to reduce bycatch in the GOA trawl fisheries. While providing the fleet with the "tools" necessary to reduce bycatch is an essential component of the program, the intent of the program is not merely to provide the fleet with the tools necessary to adapt to the current bycatch limits; rather, it is to reduce bycatch further. As such, any analysis of the bycatch management program must consider additional reductions to bycatch.

The need to reduce bycatch in the GOA remains critical. GOA Chinook salmon returns remain at depressed levels, despite significant sacrifices made by directed commercial, sport, and personal use fishermen. Halibut stocks have likewise declined, causing a sharp reduction in commercial and charter catch limits. In the last ten years, the commercial halibut harvest in the GOA (Areas 2C, 3A and 3B) has declined by 73% and strict bag limits have been imposed on the charter sector. The commercial Tanner crab fishery in the Kodiak Island district was closed in 2014 due to low crab abundance. Although fishermen in these fisheries collectively recognize the need to accept cuts during periods of low abundance, the responsibility of rebuilding these important stocks must fall on all users. And, while we commend the Council for setting salmon and halibut bycatch limits for the GOA trawl fisheries, these limits are far less than the reductions borne by participants directed fisheries. The bycatch management program must include meaningful bycatch reductions that will ensure that Chinook salmon, halibut, and Tanner crab—species that are an

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essential to Alaska's economy and culture—have the chance to rebuild. As NMFS moves forward with its analysis, therefore, it must consider specific bycatch reduction measures as a core component of the proposed action.

II. Range of Alternatives and Impacts Considered

Nearly twenty years of direct experience with catch share programs in Alaska has demonstrated that catch share programs will change the composition of the fishing fleet, alter the relationship of historical fishing communities to that fleet, and cause adverse impacts to historical fishing communities and fishermen. These impacts include, among others, absentee ownership, loss of locally-based vessels, rapid vessel consolidation, consolidation of quota ownership, lower crew pay and fewer crew jobs, out-migration of fisheries based wealth, and declining access opportunities. Given the foreseeability of these impacts, any analysis of a catch share program must consider the degree to which coastal communities and individuals will be adversely affected by these impacts. NMFS must not only consider the immediate and near-term impacts of any new management program, but must also consider the foreseeable impacts on future generations of fishermen and fishing-dependent communities. Finally, NMFS should consider these impacts in the context of its responsibility under National Standard 8 of the Magnuson-Stevens Fisheries Conservation and Management Act ("MSA"), which requires that management measures provide for the sustained participation of communities and the minimization of adverse impacts on communities. *See* 16 U.S.C. § 1851(a)(8).

It is important to note that bycatch management does not necessitate a "traditional" catch share program, nor does bycatch management preclude community protections. In that context, NMFS should consider whether a Community Fishing Association ("CFA"), as defined in section 303A(c)(3) of the MSA, can mitigate some of the negative impacts associated with traditional catch share programs. Among other things, NMFS should: consider the degree to which CFAs strengthen the relationship of captain, vessel, vessel owner, and crew to the community; address transitional entrance into the trawl fisheries; provide opportunity for future generations; and encourage equitable crew compensation. In its analysis of foreseeable impacts, NMFS should consider the benefits that CFAs provide by directly anchoring fishing quota to fishing communities, and it should explicitly address whether ensuring community access to the fishery into the future is a primary goal of the bycatch management program.

The EIS should also analyze how community protections will be provided for during allocation of quota. For example, NMFS and the Council crafted the Community Quota Entity ("CQE") program in the Halibut/Sablefish IFQ fishery to provide for community access to the resource and to reverse some of the negative community impacts experienced as part of rationalization of the fishery. However, NMFS and the Council did not provide the CQEs with an initial allocation of quota, instead requiring communities to independently secure funding to purchase quota. Consequently, only two CQEs have acquired quota, and that amount is insufficient to mitigate many of the adverse community impacts associated with rationalization. While the structure of the trawl bycatch management program is significantly different than the Halibut/Sablefish IFQ program, the dynamics of leasing, consolidation, inactive participation, and wealth migration are the same. The EIS should therefore consider whether and to what extent providing an initial allocation to a CFA is critical to the success of the CFA and the broader goals of the bycatch management program.[1]

[1] For example, the Council Goals and Objectives related to the program include authorizing fair and equitable access privileges that take into consideration the value of assets and investments in the fishery and dependency on the fishery harvesters,

NMFS should also analyze the need for flexibility in the bycatch management program. Although we know many of the impacts associated with catch share programs, some impacts are difficult to predict. Because CFAs provide communities with the ability to manage quota and respond without the time constraints of the Council and NMFS rulemaking process, CFAs will have the ability to adaptively respond to unexpected programmatic community impacts. This ability to adapt and address impacts as they arise is critical—experience from other catch share programs shows that once quota is allocated it is very difficult if not impossible for the Council to address these impacts (see, for example, Rights of First Refusal in the crab program). CFAs can provide an accessible and flexible way to address community concerns. Anchoring a portion of quota in the community ensures that the community—and community residents—retain access to some portion of the fishery over the long-term. The community can use this quota to maintain a local fleet, provide opportunities for transition and entry into the fishery (for example, by serving as a stepping stone for residents to transition into quota ownership), and ensure access to the resource for future generations. CFAs also provides a mechanism for maintaining equitable crew compensation and maintaining local crew hire. Because the community owns the quota in a CFA, they have the ability to set rules on how that quota is used, much as an individual quota owner does.

In addition to a CFAs, NMFS should consider other mechanisms for community protections including active participation requirements, requiring a community sign-on on co-op contracts and meaningful consolidation limits. More specifically, NMFS should analyze options for requiring active participation to acquire quota, as well as the need for ongoing active participation (with the exception of community entities such as CQEs and CFAs). In addition, NMFS should consider the benefits of reserving some portion of quota share for active crew and skippers-for-hire. The EIS should also analyze whether community sign-ons on co-op contracts, as well as meaningful consolidation limits, will advance the Council's of ensuring community protections.

Thank you for your consideration of our comments on this very important matter.

Sincerely,

Shannon Carroll
Fisheries Policy Director
Alaska Marine Conservation Council

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processors, and communities; promoting community stability and minimizing adverse economic impacts by limiting consolidation, providing employment and entry opportunities, and increasing the economic viability of the groundfish harvesters, processors, and support industries; and, minimizing adverse impacts on sectors and areas not included in the program.

Glenn Merrill
Assistant Regional Administrator, Sustainable Fisheries Division
Alaska Region NMFS

Attn: Ellen Sebastian
P.O. Box 21668
Juneau, AK 99802-1668

RE: NOAA-NMFS-2014-0150 – Gulf of Alaska Trawl Bycatch Management Program

Dear Mr. Merrill,

I appreciate the opportunity to comment on the EIS scoping process for the Gulf of Alaska Trawl Bycatch Management Program. I have been commercial halibut fishing in the waters around Kodiak Island with my own vessels for 39 years. I have been a resident of Kodiak for 39 years. I raised three children built 3 houses and have been actively involved in the Kodiak community. Halibut has been my main source of income, Often subsidizing the low price salmon seine fishery I participate in. I have worked as Miller Freeman trawl deckhand net specialist 1976. ADF&g groundfish observer 1978, Trawl deckhand 1979-1981. chartered my boat for noaa doing rov tanner crab aggregation research with Brad Stevens 1999-2005.

I think allot could be done to reduce bycatch. We have trawl fisheries that occur (fall) when large amounts of halibut gather with the cod. Changing dates to avoid bycatch. Closing areas to allow halibut spawning. The trawl fleet voluntarily avoided the chiniak gully for years (sea lion mitigation) resulting increased number of halibut and tanner crab. manditory use of excluder nets. they are greatly improved. A pain to use. but so was the loss of 100's of millions of halibut. Instead of reducing bycatch trawlers are being repowered and widened towing bigger nets faster. Every year for the past 8 the percentage of the Kodiak halibut quota allocated to the trawl sector increases while the commercial halibut percentage of the quota decreases. I am down 70 percent. This is how we encourage waste. I also have to throw back all the skates i catch because a few investors send their boats to Kodiak to fish flats catch the entire quota. Tanner crab rearing spawning areas remain open to trawling. we have not had a season for 3 years.

The critical need for 100 percent observer coverage and bycatch reductions

How much halibut is taken as trawl bycatch? With the observer system we have now its only an approximation. could be 50 million lb a year could be much less. certainly with all the gaming of the observer program and my conversation with observers bycatch is much more than reported. I would say halibut is one of the most important fish in Alaska. thousands employed in sport and commercial halibut fishing. Kodiak, PWS, Southeast had a disaster salmon season. Many of these salmon fishermen including myself are going to make it through the year because of Halibut. But the halibut quota keeps going toward the levels when unrestricted foreign fishing was allowed 12 miles out.

Local fishing access

- Coastal residents depend on local fishing access to sustain their economies and culture; loss of access causes economic, cultural, and social ills.
- Commoditizing harvest privileges creates a greater economic barrier to entry for new and current participants.
- Local fishing access helps to ensure that the benefits of this public resource stay rooted in coastal communities.

I agree with the above. but at a community quota discussion meeting I cynically mentioned that a entity like Lion Capital would end up owning all the trawl rights. I was accused of being a "dragger basher" by an angry trawler captain. Later when I mentioned what happed at the meeting to then Senator Mark Begich. He told me " it's all about the money Dan". Trident and Icicle might own the trawl fisheries today but some other rich and more powerful entity will own the fisheries in the future. Thank you for your consideration of these comments.

Sincerely,

Daniel R. Miller
F/V Anna D
Box 2865
Kodiak, Ak 99615
9/25/2016

Silver Bay SEAFOODS

208 Lake St. Suite 2E Sitka, Alaska

Phone: 907.966.3110
Fax: 907.966.3115

Sitka✦ *Craig* ✦ Valdez ✦
Naknek✦ *Metlakatla*

September 21, 2016

NMFS Alaska Region
Sustainable Fisheries Division
Attn: Glenn Merrill, Administrator
P.O. Box 21668
Juneau, AK 99802-1668

By Mail & Electronic Submission

RE: EIS for GOA Bycatch Management, NOAA-NMFS-2014-0150

Dear Mr. Merrill:

We are an Alaska based seafood processing company with majority ownership held by over 375 commercial fishermen currently operating throughout Alaska, including the Gulf of Alaska (GOA) groundfisheries. We have purchased land and buildings in Kodiak, Alaska for the construction and operation of a year-round processing facility.

We applaud the Council's October 2015 decision to include a new alternative, which considers and addresses the very real economic barriers for new processors under any GOA trawl bycatch management program that would have the practical effect of allocating long-term, exclusive processing privileges through cooperatives.

We recognize that cooperatives provide a means to improve fishing practices and reduce bycatch in the GOA trawl fishery. Alternatives 2, 3 and 4 provide for voluntary cooperatives. However, both Alternatives 2 and 4 require historical eligibility requirements for processors to receive primary or secondary species harvested by cooperatives. Our company would not be eligible to participate in such cooperatives, and instead relegated to receiving trawl caught groundfish from what would become a suspect or non-existent limited access sector.

There is no rational basis to restrict our company or other processors from forming or participating in any cooperatives that could be authorized under any new bycatch management program. Moreover, it's NOAA's well established opinion that there is no legal authority to establish shorebased processing privileges, absent Congress passing specific legislation. This includes any "fixed linkages" between fishermen and a specific shore-based processor as would occur under the Alternative 2 and 4 cooperative structures.

Like-minded people can debate the wisdom of previously established shorebased processing privileges, and the resulting industry consolidation and absolute barriers to new processor entrants. The Council can develop an effective bycatch management program without placing barriers to entry by new processors. To do otherwise would place our company at an extreme economic advantage and works against maintaining independent and vibrant fishing fleets and their communities.

Sincerely,

Troy Denkinger
President

September 20, 2016

Glenn Merrill
Assistant Regional Administrator, Sustainable Fisheries Division
Alaska Region NMFS

Attn: Ellen Sebastian
P.O. Box 21668
Juneau, AK 99802-1668

RE: NOAA-NMFS-2014-0150 – Gulf of Alaska Trawl Bycatch Management Program

Dear Mr. Merrill,
I appreciate the opportunity to comment on the EIS scoping process for the Gulf of Alaska Trawl Bycatch Management Program. As you know, I sit on the State of Alaska Board of Fisheries. However, my comments solely reflect my own opinions, which are based on 44 years living in Kodiak and my continuous involvement in Alaska's fisheries as a cannery worker, fisherman, boat owner, fisheries journalist, and elected official on the Kodiak Island Borough Assembly.

As a Kodiak resident these past 40-some years, I certainly recognize the importance of groundfish to Kodiak and to the State of Alaska and am not "against trawlers." So, like many of us in Kodiak, I have been thinking about what a workable trawl bycatch management program should look like, one that reduces bycatch without unduly harming the coastal communities dependent on the Gulf of Alaska fisheries.

If only there was a management program somewhere in the world that could be adapted to the GOA! But apparently there is not.

As I said, I am not against trawlers but I do strongly oppose a management plan that would permanently allocate the GOA groundfish fisheries to a handful of individuals in the industry. I believe that this is a prime example of wrongful public policy. It would benefit a privileged few while ignoring the cost to potential new entrants to the fishery and would be a detriment to GOA residents and to every Alaskan and American who presently have a stake in these publicly held fishery resources.

I understand that something needs to be done; that doing nothing would be harmful to all involved in GOA fisheries. However, rather than advocate for a specific alternative, I think a bycatch management program that incorporates the tools listed below would address the stated goals and objectives:

- *100 percent observer coverage* on every tow to reduce bycatch
- *Sideboards on Bering Sea boats* with GOA LLPs to prevent fishing both in the GOA and the Bering Sea
- *A sunset clause* that automatically ends the bycatch management program in 5 years unless the Council votes to extend the program after fixing any unforeseeable outcomes or unintended consequences that arose during program implementation
- *An annual allocation of non-transferrable target species and respective bycatch shares* to LLP holders to stop the "race for fish." This would put into regulation a program similar to the pre-assigned trip limit system the trawl fleet voluntarily used recently that allowed the trawl fleet to slow down fishing to *avoid bycatch*. Below is

a description of how a bycatch management program that annually allocates *fair shares* could work:

Fair Share Bycatch Management Program

After the TAC is set for the upcoming year, LLP holders who want to participate would need to register to fish by November 1.

Among those who register to fish, NMFS would divide the target species TAC based on historic criteria following broad guidelines. For example:

Divide 1% of GOA TAC for target species among registered LLP holders who have not fished the GOA in the last 10 years

Divide 3% of GOA TAC for target species among registered LLP holders who have fished the GOA in any of the last 5-10 years

Divide 6% of GOA TAC for target species among registered LLP holders who have fished the GOA in any of the last 0-5 years

Divide 90% of GOA TAC for target species among registered LLP holders who have fished the GOA *all* of the past 10 years

Annual shares are *non-transferable*

If an LLP holder who registered to fish but did not fish in that registered year, the holder will receive *half of the annual shares* due him/her the following year

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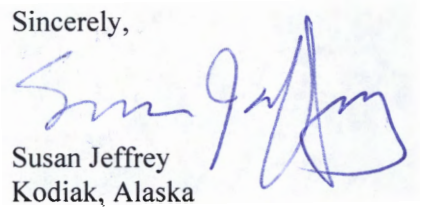
Implementation of a *fair share* bycatch management program would allow trawlers to fish slowly and avoid bycatch. And, rather than permanently allocate catch shares, a fair share bycatch management program would annually allocate shares, which would avoid consolidation of wealth, maintain jobs on deck and onshore, and ultimately protect and enhance Alaska's GOA fisheries and coastal communities.

Thank you for your time and attention to this weighty matter.

Sincerely,



Susan Jeffrey
Kodiak, Alaska

Submitter Information

Name: Bill Connor

General Comment

Glenn Merrill,

I have trawled since 1992 on my 58 foot vessel Cape Reliant.
I am for alternative 2.
This is not an entry level fishery.
In 1992 it cost me in the neighborhood of 60 to 70000.00 dollars to rig my vessel to trawl. This is before it became a competitive fishery, with bycatch friendly nets and electronics.
That was 24 years ago. Imagine the cost to gear up today and include the cost of electronics, salmon excluder, halibut excluder, competitive nets, trawl winches, gantry reel, and more.
And now restrictions on bycatch.
This is a fully developed fishery, and needs to be treated that way.
My crew all involved for more than 10 years need stability in this fishery, and we especially need the tools to provide this.
I also participate in the halibut ifq and Sablefish ifq fishery. I started long lining in 1975 and watched these fisheries deteriorate to a few days a year. When we were given the tools to slow the race and become environmently conservative, stability followed. Now our fishery is 8 months long and our business is stable. Crews can buy ifq , homes, and save.
Let's move forward with alternative 2.

Bill Connor

Submitter Information

Name: Leigh Gorman Thomet

General Comment

September 24, 2016

Glenn Merrill
Assistant Regional Administrator, Sustainable Fisheries Division
Alaska Region NMFS
Attn: Ellen Sebastian
P.O. Box 21668
Juneau, AK 99802-1668

RE: NOAA-NMFS-2014-0150 Gulf of Alaska Trawl Bycatch Management

Dear Mr. Merrill:

My name is Leigh Gorman Thomet and as a commercial fisherman in Kodiak I have ongoing concerns about the state of our oceans and fisheries. Clean water and healthy fish stocks - I rely on them. They're necessary for running my family business. I love seafood and 5 times a week it is the main course on my family's table. I love fishing with my family and it is my hope the next generation of all fishermen that inherit the consequences of what we users, managers and decision makers have left for them will be clean and maintained.

It is time to build a new management program in the Gulf of Alaska for the trawl sector which reduces bycatch of important species to the ecosystem and other user groups such as halibut, salmon and crab. We can and should do better in the Gulf of Alaska, waters which are the lifeblood for many coastal communities. There needs to be 100% observer coverage and means to further reduce bycatch from the current limits.

Any new management program should take into account experiences from past catch share programs and be structured to provide a cooperative structure for the trawl fleet to address bycatch and regulatory discards without monetizing the resource. I do not support another privatized management system and encourage the Council to provide the tools without giving away the farm.

Thank you for the opportunity to comment.

Sincerely,

Leigh Gorman Thomet

Submitter Information

Name: Kurt Cochran

General Comment

Glenn Merrill, Assistant Regional Administrator
Sustainable Fisheries Division, Alaska Region NMFS
Attn: Ellen Sebastian
PO Box 21668
Juneau, AK. 99802-1668

Mr Glen Merrill,

I started fishing POP in the Bering Sea in 1985 when there was no boxes, restrictions,or barriers to fish. In 1993 I started trawling out of Kodiak. Then came LLP's.
the years picked I had to buy an LLP at that time. This was the first barrier for new owners getting into trawling that the council put in place and it is still in place today. I know a LLP that sold for 600,000 dollars a few years ago.
Not to mention the price of a boat that can fish in today's environment with low PSC catch requirements.
Then area endorsements and gear endorsements which put up more barriers and more boxes. You were either in or out. Then LLP reduction which created even more barriers for new trawl ownership.
AFA pollock and the west coast catch share made more boxes.
Trawling today is not a entry level fishery for new owners you need skin in the game, experience coming up through the ranks to start trawling.
Having to run from areas with high PSC to area with low PSC or fish in areas with low catch rates to stay away from PSC really increase the operating coast. Nets,elevated sweeps, doors, excluders, to specialize in different target spices is a big change that is expensive. Electronics that it takes to know where your gear is what it is doing is a lot compared to a few years a go. The point is there has always been barriers for new boat owners to over come with no stability.
Under a new fishery management-catch share program if we keep the same small business ownership structure that we have in the gulf I believe the same opportunity will still exist with the stability needed. Start working on deck,work your way to the wheel house, create a production record,buy into a boat and work from there.
Trawling is different from all the other fisheries in Alaska: it is high volume low profit year around fishery with steady crews,not seasonal employment. That's why closures in the seasons that we have had every year since the salmon and halibut reduction went into place hurts so bad.
I have had crews quit in the last two years because I can't make them a steady income to survive on under status quo. This has never happen before now.
This is why we are asking for the tools so we can survive and even grow the trawl industry.
With new costs of a new program we will need to increase the value of the fishery to pay for them.
I believe alternative 2 does the best job at doing this.
The one thing that both sides agree with is slowing the fishery down and personal accountably can

reduce bycatch.
Alternative 3 does not promote accountably to each other, slow down or do a better job to increase the value of the fish. The race is still on to catch what you can and move to the next fishery.
Alternative 4 doesn't work, it does nothing to protect the historical community and the new entrants nor creat new entry opportunities. It is a net take away from historical stakeholders.
I believe alt 2 takes care of all of the concerns. Community,historical stakeholders and New entrants.
The bottom line is that a healthy fishery makes for a healthy community.
Important things are
1)Slow the race for fish
2)allocate fish to co-op's
3)Accountability of what you catch to a group
4)Allocation to historical participants
Alternative 2 has all these and if it can ever get analyzed they will come out.
I believe that the trawl industry has done a good job looking at the good and bad of other catch share programs and have discussed them .

Bad things
AFA pollock ties quota to the steel
IFQ halibut flight of fish from historical community and processors
IFQ halibut no accountability of where or how you fish
BS Crab rapid consolidation
Rock fish pilot program - boats couldn't move to another plant
Rock fish pilot program - boats were linked back to old plants they no longer fish for. Made for poor cooperation in Co-op's
Rock fish catch share - plants don't like that movement is easy

Good things
AFA - Movement of boats from one plant to another
AFA - how co-op's can work
AFA - better observers, monitoring
Rock fish - kept fish in the community
Rock fish - has had very little to no consolidation
IFQ - better price for fish
BS Crab - stable jobs , longer employment
Amendment 80 - how you can manage a multi species fishery
West Coast ground fish - ownership and use caps to control how many participants are in the fishery, stop consolidation
West Coast ground fish- 2 year freeze on the fishery,no selling or buying quota or boats. So people could figure out how to operate in the new catch share, in case of lawsuit or if a big change had to be made.
These are just some of the things we look at and believe alternative 2 takes these into consideration best.

Thanks
Kurt Cochran

Owner:
FV Marathon

Submitter Information

Name: Darius Kasprzak
Organization: Alaska Jig Association

General Comment

September 25, 2016
Glenn Merrill
Assistant Regional Administrator, Sustainable Fisheries Division
Alaska Region NMFS

Attn: Ellen Sebastian
P.O. Box 21668
Juneau, AK 99802-1668

RE: NOAA-NMFS-2014-0150 - Gulf of Alaska Trawl Bycatch Management Program

Dear Mr. Merrill,

The Alaska Jig Association is a Kodiak based group made up of owner operator jig fishermen, who fish throughout Alaska.

We do not support any new management program in the Gulf of Alaska Trawl sector which monetizes the fishery resource. A new fisheries management program to control bycatch does not require privatizing the resource. The Council can develop a program which provides the tools to the fleet, without implementing another privatized rights based program. We stand opposed to Alternative 2 which monetizes the fishing rights.

We support entry level opportunity. The future of our fishing community depends on access to the fishery resource - maintain opportunity for the next generation of fishermen in all groundfish sectors. Consider that to privatize the trawl sector, would indeed set a dangerous precedent, as to regarding potential future privatization of the other remaining groundfish sectors.

As community stakeholders participating in the jig fishery, this action will affect our sector in both markets and pricing. The large volume trawl fishery impacts all waterfront prices and additional processor control will further impact our sector. Coastal communities must maintain open and competitive markets. Any new management program must maintain open markets for all fishermen.

We support 100% observer coverage resulting in full time coverage, in all trawl fisheries in the Gulf of Alaska. We support the use of electronic monitoring and measures to reduce the cost to the fleet.

We respectfully request that you keep this action focused on bycatch. Any new management system must include means to further reduce bycatch of halibut, salmon and crab.

Sincerely,

Darius Kasprzak
President, Alaska Jig Association

Submitter Information

Name: Randal Moseman

General Comment

Glenn Merrill
Assistant Regional Administrator, Sustainable Fisheries Division
Alaska Region NMFS

Attn: Ellen Sebastian
P.O. Box 21668
Juneau, AK 99802-1668

RE: NOAA-NMFS-2014-0150 - Gulf of Alaska Trawl Bycatch Management Program

Dear Mr. Merrill,

I appreciate the opportunity to comment on the EIS scoping process for the Gulf of Alaska Trawl Bycatch Management Program. I am a recreational sport fisherman living in Anchorage. I spend time fishing in PWS, Homer, and Seward.

Any plan designed to manage fisheries in the Gulf should allow for community protections, viable entry opportunities, and meaningful reductions to bycatch. As a resident recreational sport fisherman I feel that there is a need for meaningful bycatch reductions such as:

Bycatch in the trawl fisheries affects the sustainability and economic viability of other commercial, recreational, and subsistence fisheries, while also affecting the economic, social, and cultural framework of those that dependent on halibut or salmon fisheries.
All new management options should include bycatch reductions that go beyond status quo.
100% observer coverage is necessary to accurately monitor bycatch.

Thank you for your consideration of these comments.

Sincerely,

Randy Moseman

Submitter Information

Name: Darren Platt

General Comment

Thank you for the opportunity to comment here. I am commercial fisherman, and owner operator of a commercial fishing vessel in Kodiak, Alaska. I am writing out of concern for the fishing community of Kodiak and the overall health of our local fisheries. I believe that in order for a bycatch management program to be successful, it must ensure that fishermen still have a reasonable opportunity to be invested in the fishery. It is clear that a catch share program is the primary tool being considered to reduce bycatch. These programs have universally resulted in fleet consolidation, reduced crewshares, and loss of local fishery access opportunities. By creating insurmountable barriers of entry to fisheries, catch share programs typically result in active fishermen NOT owning their own access rights, and thus they are no longer maintain capital investments in their respective fisheries. Additionally, the typical non-local ownership of vessels and quota that accompanies these programs can easily exacerbate bycatch and other environmental problems, as for-hire harvesters, and profit seeking quota owners may not be willing to operate in ways that ensure the long-term sustainability of our local resources. If a catch share program is to be employed in the gulf, then it is imperative that it not be evaluated based on the immediate outcomes, but instead how the program is expected to perform once the initial quota recipients are no longer active in the fishery - which usually takes decades. In other words - the program should be evaluated based NOT on how fishing efforts will change with the original gifting of quota to current acitve LLP owners, but instead on the expected changes that would effect the fishery once all of the quota has to be leased or purchased. Quota lease and purchase fees are often the highest costs that fishermen incur, and these costs reduce fishing businesses to marginal profitability. Absentee ownership of quota, coupled with marginal fishing businesses operated by fishermen who are not invested in the fishery would make it unlikely that fishermen are going to choose more sustainable fishing practices if those practices cut into their already marginal profits. Therefore, though the program may exhibit immediate successes in bycatch reduction, the longterm results could be much different depending on how the quota market evolves for subsequent generations of fishermen.

With this in mind, and further considering the detrimental social impacts that accompanied catch share programs in the Alaska, it is important that the gulf trawl program incorporate devices that keep the fishery accessible. Programs such as community fishing associations can be helpful towards achieving these goals, but only if they receive substantial initial allocations. Other design features such a short-term allocations (1-5 years), and mandatory re-allocation based on environmental and social performance standards should also be considered. Owner-on-board requirements, consolidation limits, and other features can help, but have proven ineffective and supporting new-entrants to the fisheries.

In order to maximize the environmental benefits while sustaining the social health of our fishing community in Kodiak, the Gulf Trawl Program should:

- Keep fisheries accessible to new entrants

- Support an owner operator fleet
- Minimize regulatory costs
- minimize if not entirely avoid fleet consolidation
- minimize, if not entirely avoid absentee quota ownership
- avoid leasing costs
- sustain crew share rates
- provide harvesters with a direct incentive to fish sustainably
- encourage gear conversions of technological innovations to minimize bycatch

Sincerely,
Darren Platt F/V Agnes Sabine

Submitter Information

Name: Matt Kopec

General Comment

RE: NOAA-NMFS-2014-0150 - Gulf of Alaska Trawl Bycatch Management Program

Dear Mr. Merrill

As a fisherman who depends on healty Alaskan stocks, I urge you to consider leading the way in bycatch reduction.
In these times, there is no place for unnecessary waste of any valuable species. Although those who share my sentiment
are in the minority of letter writers, we are the majority of the population in general. Our resource potential without the current waste far
exceeds the value of continuing on with business as usual. Please consider all options which work toward that goal.
Thank you for your time.

Matt Kopec

Kodiak Island Borough
710 Mill Bay Road, Rm. 234
Kodiak, AK 99615
907.486.9310

City of Kodiak
710 Mill Bay Road, Rm. 219
Kodiak, AK 99615
907.486.8636

November 10, 2016

Glenn Merrill
Assistant Regional Administrator, Sustainable Fisheries Division
Alaska Region NMFS Attn: Ellen Sebastian
P.O. Box 21668
Juneau, AK 99802-1668

Re: Scoping Comments on EIS for GTBM

Dear Mr. Merrill:

The City of Kodiak and Kodiak Island Borough have been active participants in the Gulf of Alaska Trawl Bycatch Management (GTBM) development process since 2012. At every opportunity, we have shared our perspectives with the North Pacific Fishery Management Council, based on the ten goals identified by the community.

We welcome the opportunity to participate in the new EIS Scoping process on the current proposed GTBM motion. The proposed action now includes a new Alternative, designated as Alternative 3, added in October 2015. The community has focused its most recent Council comments on how elements of Alternatives 2, 3 and 4 relate to the goals and objectives of the community, rather than taking a position on any one Alternative. We are providing those comments as an attachment to this letter.

Other substantive changes to the motion since the previous scoping process include Council additions in June 2016. We provide here comments and requests for clarification on three of those additions.

Comments specific to June 2016 additions:

A. A major addition to the motion was the insertion of the following "Overarching Goal and Objective," after the Purpose and Need Statement:

"The overarching goal of the Gulf of Alaska Trawl Bycatch Management program is to provide the fleet tools for the effective management and reduction of PSC and bycatch, and promote increased utilization of both target and secondary species while minimizing economic barriers for new participants by limiting harvest privileges that may be allocated (target species and/or prohibited species) in order to maintain opportunity for entry into the GOA trawl fisheries."

This addition seems to indicate that the Council's final action will be designed to provide not only effective bycatch management tools, and increased utilization of target and secondary species (both of which have been goals since the beginning of the action), but also to "minimize economic barriers" to new entry. The language seems to say the third goal may be achieved by limiting the allocation of harvest privileges for target and prohibited species.

The community needs to better understand the Council's intent in adding an overarching goal to the proposed action. The community will request the Council to provide further clarity as to the intended effect of this addition on the purpose and need statement and the existing goals and objectives.

B. An addition was made (underlined) to #4 of the 14 Goals and Objectives previously listed in the motion:

"4. Authorize fair and equitable access privileges that take into consideration the value of assets and investments in the fishery and dependency on and participation in the fishery for harvesters, processors, and communities."

This added language appears to define more specifically the conditions for allocation of access privileges. Again, the community would like to have clarification from the Council on what their intent was in adding this language. Specifically, the community needs to know whether the addition of the language changes the intent of the goal.

C. The Council replaced the original CFA language in Alternative 4 with the stakeholder document presented by CFA proponents, providing a more detailed description of a possible CFA program for analysis.

The community plans to request that the Council analysis include a discussion of the financial viability of a CFA that is supported by leasing fishing quota, and that requires a prescribed level of crew payments by those harvesters leasing CFA quota. This analysis should consider a range of ex-vessel prices.

Kodiak municipal leaders consider the community to be a stakeholder with equal weight and importance to all harvesting and processing interests affected by a new trawl management program. The welfare of all stakeholder groups will continue to be our focus as the Council moves forward. We believe it is imperative to let the Council know that the whole Kodiak Island Borough – the health and strength and culture of the communities – is dependent on fisheries. This community will continue to be at the table in the ongoing management of the program, to be a part of how fishery management evolves over time.

We attach here the final draft of a McDowell economic study commissioned by the City and Borough to gather information and help analyze the economic effects of fisheries on the community. This study provides a baseline profile of the community's direct involvement in the fishing and processing sectors; estimates economic effects on support businesses; catalogues

municipal infrastructure and utilities' relationship to the industry, and clarifies the enormous contributions of the seafood and support industries to the community economy.
Through joint resolutions, the City and Borough identified ten community goals (attached), which continue to guide the community in evaluating the proposed management program. Numerous public meetings have been devoted to discussions of these goals, analyzing how each goal might be furthered by specific elements in the GTBM program alternatives. We invited individual sector representatives to the table, and opened the floor to public dialogue and involvement in the discussions.

Thus far, the community has focused on those proposed program elements that relate to community stability, and noted where community protection aspects were the strongest, as well as where they might be lacking. In short, we are dedicated to understanding and communicating what an eventual management program should include in order to ensure the continued economic and social health of the community as a whole.

Thank you for your inclusion of our comments in the EIS scoping report. As entities representing the City of Kodiak and the entire Kodiak Island Borough, we remain focused on achieving the best for the whole community. The eventual action on Gulf Trawl Bycatch Management will have lasting, multi-generational impacts on our community.

Best regards,

Dan Rohrer, Mayor
Kodiak Island Borough

Pat Branson, Mayor
City of Kodiak

Attached:
McDowell Economic Study
KIB and City Resolutions
KIB and City Letter to NPFMC dated May 31, 2016

September 26, 2016

Glenn Merrill
Alaska Regional Office – Sustainable Fisheries
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

Re: Notice of Intent to prepare an Environmental Impact Statement (EIS) for any Gulf of Alaska Trawl Bycatch Management Program. NOAA–NMFS–2014–0150

Dear Mr. Merrill,

F/V GOLDEN FLEECE (Federal Fisheries Permit number 367) is a small catcher processor solely dependent on the Central Gulf of Alaska (CGOA) flatfish trawl fisheries. As a small entity and family owned business we are writing because the uniqueness of our vessel must be included in the Environment Impact Statement (EIS) regarding any Gulf of Alaska Trawl Bycatch Management Program. Also very important to us is that the EIS must evaluate and include catcher processor LLP allocations based on both total catch and retained catch to understand the allocation differences across historical catcher processor (CP) participants, as well as its effect on the F/V GOLDEN FLEECE.

F/V GOLDEN FLEECE has been operating in the GOA since 1994 and exclusively in the GOA since 2006, as the Bering Sea Aleutian Islands (BSAI) Amendment 80 (A80) quota allocated to the vessel was not sufficient for ongoing business operations. F/V ALLIANCE and F/V OCEAN ALASKA are two examples of small A80 vessels less than 110 feet no longer operating in the A80 BSAI fisheries. Quota assigned to them, similar to the F/V GOLDEN FLEECE, was not sufficient, especially given the increased costs to comply with the new A80 monitoring requirements and new groundfish retention standards. Furthermore, these vessels were not originally built as catcher processors (CPs); F/V ALLIANCE was originally a joint venture catcher vessel (CV) and before that an East Coast scallop boat; F/V OCEAN ALASKA (renamed from F/V BEAGLE and before that F/V BARBARA LEE) was a joint venture CV and East Coast scallop boat as well. Regardless of their efforts to help establish and pioneer the BSAI fisheries, smaller boats have been phased out and their quota consolidated on other A80 vessels. F/V ALLIANCE is the most recent example. Regarding F/V GOLDEN FLEECE, the vessel layout and space limitations must be included in the EIS regarding any Gulf of Alaska Trawl Bycatch Management Program as we too are a converted vessel (originally built as a CV) and the last A80 vessel smaller than 110 feet.

In addition to fishing exclusively in the GOA, the F/V GOLDEN FLEECE has opted out of the Rockfish Program (RP) (because, like A80, the quota assigned to our LLP would not have been economically viable)

and is prohibited by regulation to fish directly for northern rockfish, pelagic shelf rockfish, pollock, Pacific cod and Pacific ocean perch in the GOA and are only permitted to retain up to the allowable bycatch limits of the aforementioned species (50 CFR 679.92). The only directed fishery the F/V GOLDEN FLEECE participates in is the CGOA flatfish trawl fishery. Despite the quota F/V GOLDEN FLEECE was assigned during A80 rationalization we have not once leased out the quota, and during GOA trawl fishery shutdowns due to halibut bycatch we have tied the vessel to the dock, choosing not to leave the GOA. Since 2006 we have been 100% dependent on the CGOA flatfish trawl fisheries.

Given the small platform and the F/V GOLDEN FLEECE dependence on the GOA flatfish trawl fisheries, any new increase in monitoring requirements would be prohibitively expensive and could well force us out of business, especially when coupled with the expected LAPP cost recovery fee and gear/operational costs to reduce/manage PSC. As such, the EIS should evaluate the monitoring and compliance costs for the F/V GOLDEN FLEECE under all alternatives in addition to potential mechanisms to mitigate the impacts.

Under Alternative 2, NMFS has stated its intent to extend the monitoring tools currently in place for CPs fishing under a GOA Rockfish Program permit to all CP vessels under this program that would allocate groundfish and PSC to the CP sector. These tools include:

- 200% coverage, which enables every haul to be sampled by an observer;
- Requirement to weigh catch on a NMFS-approved flow scale; and,
- Prohibition on deck sorting.

Increasing observer coverage to 200% under any alternative would be expensive not only for the vessel but for our crewmen and vessel ergonomics as well; reducing space for crew on an already small CP could affect production and vessel output.

Regarding the flow scale and prohibition on deck sorting, F/V GOLDEN FLEECE does not have the vessel layout and the space that would be needed for a NMFS-approved flow scale and does not have a below-deck holding space to presort vessel catch; currently catch is sorted on deck after observer samples are taken. Before purchasing and installing a NMFS-approved flow scale for example, the F/V GOLDEN FLEECE would have to redesign its factory including its basic layout and processing tables, conveyor belts and plate freezers and associated wiring including its R22 Highland refer system to cool the fish hold and plate freezers.

Additional tools would be required if salmon PSC is based on a census:

- All salmon PSC of any species must be retained until it is counted by an observer;
- Vessel crew must transport all salmon PSC from each haul to an approved storage location adjacent to the observer sampling station so that the observer has free and unobstructed access to the salmon, and the salmon must remain within view of the observer from the observer sampling station at all times;
- The observer must be given the opportunity to count the salmon and take biological samples, even if this requires the vessel crew to stop sorting or processing catch until the counting and sampling is complete;
- The vessel owner must install a video system with a monitor in the observer sample station that provides views of all areas where salmon could be sorted from the catch and the secure location where salmon are stored;
- No salmon PSC of any species may pass the last point where sorting occurs in the factory; and
- Operators of CPs must report the count of salmon by species in each haul to NMFS using an electronic logbook.

We understand the importance of collecting quality observer data when a management program includes transferable quota and accountability measures. We also understand the benefit of a salmon census in that it does not rely on the species composition sample for a rare species, so sample extrapolation to the rest of the haul is not required. To ensure every fish is counted and no salmon are missed this monitoring census is

acutely labor and capital intensive. We would like the costs of this census analyzed, specifically for CP's not already equipped for monitoring in the A80 and RP fisheries, as well as suggestions for less costly census options for small CPs.

Under Alternative 2, PSC allocations of halibut would be monitored the same as it is today based on species composition samples. Currently, an exempted fishing permit (EFP) is underway in the BSAI to determine the feasibility of sorting halibut on deck with the goal of decreasing halibut mortality by returning them to the sea more quickly. If proven to be successful in the BSAI we would like to know what the vessel-specific requirements would be to implement it in any Gulf Trawl Bycatch Management Program as well as all the associated costs.

Most importantly we would like to see analyzed total catch versus retained catch in regards to allocations of PSC to individual CP LLP's and how exactly total (retained plus discarded) catch is determined. Amendment 80 used total catch when allocating PSC species to individual vessels, based on the vessel's percentage of the sector's target species total catch (see table 1-98 page 223 of the final EA/RIR/FRFA reproduced below and found at https://alaskafisheries.noaa.gov/sites/default/files/analyses/earirfrfa0907.pdf).

Table 1-98 Average percent of catch retained by vessels, grouped by like percentages

BSAI Groundfish Amendment 80 *Regulatory Impact Review*

Number of Vessels	Average Vessel Length in Feet (LOA)	Average Percentage of catch Retained (1995-2003)
5	126	43%
6	130	55%
4	144	63%
6	184	74%
7	222	87%
28 H&G trawl CP	165	66%

Source: NPFMC Gulf of Alaska Rationalization and IR/IU database.

The analysis notes:

Vessel length appears to be the most important factor in determining whether the allotment associated with a vessel would be increased or decreased, based on using retained or total catch. In almost every case, vessels that are longer than 200' LOA would be credited with a larger percentage of the sector allocation when catch history is based on retained catch. In almost every instance, vessels less than 200' LOA have their allocation reduced. It is likely that larger vessels have retained more of their catch because they have more capacity to store and process fish that are not their primary target…Information in this table further indicates that smaller vessels will be issued a smaller percentage of the H&G trawl CP allocation, if retained catch instead of total catch is used to calculate the distribution.

Once halibut PSC is apportioned between the CP and CV sectors based on each sector's use, allocations within sector (CP, CV) can be done differently (i.e. retained catch for CV's and total catch for CP's). Each sector is operationally different and different allocation methods within each sector may very well be warranted. The EIS should at least look at the difference in the allocation formula to understand the effects across different participants. Clearly, a small vessel such as the F/V GOLDEN FLEECE could be significantly harmed should retained catch be used instead of total catch.

Lastly, the A80 vessel rebuild action passed by the NPFMC in 2012 (Amendment 97) allows companies to rebuild or replace their boat up to 295 ft MLOA regardless of vessel length restrictions on their LLP. But there was an exception for the F/V GOLDEN FLEECE:

If the replacement vessel for the Golden Fleece is greater than the MLOA of the license that was originally assigned to the Golden Fleece, then that replacement vessel will be subject to all sideboards that apply to other Amendment 80 vessels, with the catch and PSC use of the Golden Fleece added to the existing GOA sideboards. If the Golden Fleece replacement vessel is less than or equal to the MLOA of the license that was originally assigned to the Golden Fleece, then the Golden Fleece sideboards would apply (see 50 CFR 679.92).

We ask Council staff to clarify what would happen to our vessel regarding A80 sideboards under any of the alternatives if we replace it with a platform <124 MLOA or >124 ft MLOA. With a Gulf of Alaska Trawl Bycatch Management Program that allocates individual histories to LLPs, any rebuild restriction for the F/V GOLDEN FLEECE makes no sense since the catch will be constrained by its PSC allocations.

Thank you considering our proposal and this request.

Sincerely,

William M. Bisbee "Wig"

William Bisbee
Owner/ Golden Fleece Inc.

Sept 22, 2016

Glenn Merrill
Assistant Regional Administrator, Sustainable Fisheries Division
Alaska Region NMFS

Attn: Ellen Sebastian
P.O. Box 21668
Juneau, AK 99802-1668

RE: NOAA-NMFS-2014-0150 – Gulf of Alaska Trawl Bycatch Management Program

Dear Mr. Merrill,

We sincerely appreciate the opportunity to comment on the EIS scoping process for the Gulf of Alaska Trawl Bycatch Management Program and the following comments expose our thoughts on alternatives that the North Pacific Fisheries Management Council have under their consideration. We both have made Kodiak our home for over 40 years, our families have been involved with commercial fishing and processing in Alaska since the 1950s. We are the owner/operators of a salmon seiner/cod jigging/tanner crab vessel. Our family DEPENDS on sustainable fisheries management (both environmentally and economically). Although we do not own halibut IFQs, all of Kodiak and the Gulf of Alaska communities are affected by any bycatch allocation whether halibut, cod or crab. We strongly believe that any plan designed to manage fisheries in the Gulf of Alaska should:

- **institute meaningful reductions to bycatch, (that go beyond status quo) instituted in a timely fashion**

- **allow for community protections and viable entry opportunities.**

We firmly believe that our **fisheries resources are a public resource**, but realize that the issues of managing a common resource are complicated at best. With that said, we believe that any fisheries management decision must **protect the role of independent, community-based fishermen**, as we are the life blood of our respective communities. We live here, our children go to school here, we pay property taxes here. Any plan designed to manage fisheries in the Gulf should not only be the most environmentally viable path but allow for community protections, realistic entry opportunities for our young fishermen and meaningful reductions to bycatch.

Having attended Kodiak fisheries work group meetings and 'combed' through documents that compare the 4 alternatives (#1 being status quo) that have been considered by the council, we believe that **Alternative #4 or some form of it provides the tools necessary to support Kodiak's local fleet and community as well as other GOA coastal communities.** **We support the concept of a Community Fishing Association (CFA)**, Having witnessed over the past 40 years the distancing of the fisheries economic compensation from the communities they should support (examples: absentee ownership of quota, fewer locally based vessels, excessive consolidation) we believe that **any new program must ensure that the economic value of Alaska's fisheries benefits local economies in rural coastal communities** and believe that CFAs would be a the strongest tool.

We realize that fleshing out and instituting Alternative #4 would require a lot more work from the council and the respective communities affected, but the effort will be worth obtaining the main goal of supporting the long term health of our coastal communities.

Respectfully submitted,

Bob Bowhay, Jane Eisemann
F/V Moondance
P.O. Box 192
Kodiak, Alaska 99615

Date: September 22, 2016

Glenn Merrill, Assistant Regional Administrator for Sustainable Fisheries
NMFS Alaska Region

Dan Hull, Chair
North Pacific Fishery Management Council

Re: Notice of Intent to Prepare and Environmental Impact Statement: reopening public comment for scoping. NOAA-NMFS-2014-0150.

This letter is in response to the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for a new bycatch management program for Gulf of Alaska (GOA) trawl fisheries (the action), published in the Federal Register on July 28, 2016.

Our organizations represent the majority of fishery participants, harvesters, and processors in the inshore sector of the Gulf of Alaska trawl fisheries. We have previously submitted comments for scoping on the proposed action that were incorporated into the October 2015 scoping report. Comments have also been submitted by our individual groups and other trawl participants such as Groundfish Forum and United Catcher Boats. We respectfully request that those comments, and the October 2015 scoping report in its entirety, be fully incorporated into the record for purposes of this NOI.

In addition, our organizations have submitted both oral testimony and written comment to the Council and the agency on this proposed action subsequent to the initial scoping report. This includes oral testimony at the December 2015, February 2016, and June 2016 meetings of the North Pacific Fishery Management Council (Council), as well as written comment on the proposed action including:

1. Letter to the Council April 1, 2014 (Attachment 1)
2. Letter to the Council October 8, 2014 (Attachment 2)
3. Letter to the Council December 11, 2015 (Attachment 3)
4. Letter to the Council January 29, 2016 (Attachment 4)
5. Letter to the Council May 31, 2016 (Attachment 5)

We respectfully request that our oral testimony and these written communications, and the issues raised therein, be incorporated into the record for this reopened scoping process and be fully described and addressed in any subsequent scoping report and the EIS analysis.

<u>Notice of Intent and EIS development</u>

On July 28, 2016, the National Marine Fisheries Service published this NOI to prepare an EIS for a new bycatch management program for Gulf of Alaska trawl fisheries, announcing a

reopening of public comment for scoping to identify an appropriate range of alternatives to be analyzed and to identify the environmental, social, and economic issues to be considered in the analysis. This follows on the July 14, 2015, NOI to prepare an EIS, and the scoping report provided to the North Pacific Fishery Management Council in October 2015.

Our organizations are concerned that this NOI vaguely describes some of the main reasons for reopening scoping, and the issues at hand that need to be addressed in the EIS and attendant analyses. Since October 2015, the Council has engaged in a process that has introduced new alternatives with little or no opportunity for public comment and virtually no analysis, prior to their inclusion, and that clearly do not match up with the Council's stated purpose and need statement and objectives.

From October 2012 through October 2014, the Council made significant progress. They refined the objectives, purpose and need, and alternatives to be considered for this action. Over the course of six meetings the Council received public comment and proposals for a program design to meet a specified problem. Preliminary analysis was undertaken throughout this process to refine provisions to be considered in a program design. Most of the issues to be addressed in the analysis had been identified through this process, and the alternatives adopted by the Council in 2014 were designed to address the major issues. The 2015 NOI and subsequent scoping report was a result of this deliberative process.

In October 2015, the State of Alaska introduced a new alternative at the end of the GOA agenda item with no opportunity for review or public comment by the affected fishery participants or groundfish dependent communities prior to it being adopted by the Council. The State of Alaska's new Alternative 3 was not developed in response to the previous scoping process, as it was introduced at the same time as the scoping report was first released and ignored many of the management issues and concerns identified in the scoping report.

At the Council's February 2016 meeting in Portland, Oregon, the affected fishery participants and public had their first opportunity to provide the Council with public comment on this new Alternative 3. Public comment from the fishery participants who would be directly affected by this proposal were overwhelmingly opposed to it. In fact, the concern was so high that the entire GOA trawl sector stopped fishing and processing so that participants could travel thousands of miles to attend the Council meeting in Portland to express their concern with Alternative 3. Nonetheless, the Council, at the behest of the State of Alaska and in contrast to public comment, proceeded with several modifications to Alternative 3 that exacerbated many of the problems identified by fishery participants. We request that all of the public testimony on this agenda item, including that of the February 2016 Council meeting, be incorporated into the record for this EIS and addressed in both the scoping report and the EIS analysis.

The next opportunity for public review and comment on this proposed action came during the June 2016 Council meeting in Kodiak, Alaska. At this meeting an expanded Alternative 4 was adopted, as well as an overarching goal and objective for the proposed program and modification

of an existing objective (#4). This overarching goal was proposed by the State of Alaska during the meeting, largely in order to drive future, as yet undescribed, changes to Alternative 2 or to provide justification for Alternative 3 which it had introduced six months previously.

It was after this protracted process of creating new alternatives, and subsequent goals and objectives to justify those alternatives, that this NOI was published, per Council direction. The NOI states that the need to reopen scoping is due to stakeholder comments requesting the Council consider measures to reduce value in the trawl fishery and minimize economic barriers to for new entrants. These comments came from individuals and organizations that do not represent participants in the GOA trawl fisheries. These interests are seemingly driving this process instead of those individuals impacted by the management decisions. Ironically, the basis for comments made by these non-trawl stakeholders comes from their experiences in non-trawl fisheries in which they participate, not the GOA trawl fisheries. Their comments fail to take into consideration the numerous elements and options the Council specifically incorporated into Alternative 2 that address the potential or perceived economic effects of this program on fishery dependent communities and potential new entrants into the GOA trawl fisheries. Yet the rationale presented in the NOI relies almost solely on the comments made by non-trawl stakeholders that will not be regulated by the proposed action and do not have experience in, or dependence on, the GOA trawl fisheries.

The NOI does not identify the many issues and concerns raised by our organizations and the participants in the GOA trawl fisheries to-date. We want to ensure that the agency and the Council understand and acknowledge the concerns and issues raised by those that will be most directly affected by the proposed action, including those comments since October 2015. The Council and the agency should be clear in that the motivation for reopening scoping is mainly to address shortcomings with the process from October 2015 to present. The manner in which these proposals were developed and adopted run counter to the Magnuson Stevens Act procedures for public engagement and were outside the bounds of the original scoping report.

Note that immediately following the June Council meeting our organizations made a concerted effort by requesting to meet with the State of Alaska leadership to discuss the GOA trawl bycatch management issue. This was an attempt to be responsive to overtures made by Commissioner Cotten during the June 2016 Council meeting, offering to conduct outreach on this issue with trawl sector participants regarding the alternatives, changes needed to achieve the new overarching goal, and a path forward. Several trawl sector representatives met with Lieutenant Governor Mallott and Commissioner Cotten on August 15. Our intent was to explore opportunities for working together to address trawl sector management needs and State of Alaska concerns. We believed that the first issue at hand was for fishery participants to get a better sense of the issues and concerns important to the state and how they intended to address those concerns. We provided some questions and background materials to the state well in advance of the meeting in the hope of focusing the discussion. Neither the Lt. Governor or the Commissioner were prepared to discuss the issues or the state's view of the role the trawl fishery should play in the economy of GOA coastal communities. As follow-up to this meeting, we sent

an email to the Lt. Governor and Commissioner discussing how we might move forward. Over a month later, we are still awaiting a response to our questions.

Additional detail and specific issues to be addressed in the EIS are provided below, including comments on the purpose and need statement, the alternatives, and general comments regarding the content of the EIS analysis.

Purpose and need statement

The purpose and need statement and objectives were approved by the Council in October 2012 to guide development of a new program following extensive public comment and have been modified only slightly up until June 2016. It is a requirement of the Magnuson Stevens Act to specify goals and objectives for major management programs such as this, and through October 2014 the Council used its approved purpose and need statement and objectives to focus the development of alternatives.

The Council engaged in a long public process to develop alternatives through October 2014. The Council made a call for public proposals, which were reviewed in June 2013.With one exception, all proposals received recommended forming a catch share program that allocates the most important target species and prohibited species catch (PSC) species in the Gulf of Alaska trawl fisheries. Most proposals recommended program elements that recognizes the historical dependence on and participation in the groundfish trawl fisheries by current harvesters, processors, and communities, as required by the MSA, and provided incentives to reduce bycatch and improve utilization of catch.

Beginning in 2012 and in response to requests from the Council, our organizations worked with a large group of Gulf trawl harvesters, inshore processors, catcher processors, and others to provide comments and concepts on the purpose and need for action, program objectives, and management structure. One of the consistent goals of our proposals was to strike a fair balance between the interests of industry participants while protecting the interests of trawl groundfish dependent Gulf communities.

Early on, our organizations agreed that any new management program for the inshore sector should be based on historical participation, should not result in the devaluation of one sector's capital assets to benefit a different sector, and should foster cooperation between harvesters and processors to balance the interests of both sectors. We recognized the significant investments by trawl groundfish dependent communities and looked for ways to provide similar opportunities for increased value to harvesters, processors, and these communities. We also sought to minimize allocation disputes between the inshore and offshore trawl sectors.

Our proposals used the purpose and need statement as a guide, recognizing that a properly structured management program could not only meet the Council's goals for improved management of target and secondary species while complying with newly imposed bycatch restrictions, but could also meet the goals of increasing the economic viability of groundfish

harvesters, processors and support sectors that are the foundation of the economies of Gulf coastal communities.

Using concepts from several public proposals, the Council developed a fishery cooperative alternative over the next year and a half (Alternative 2, adopted in October 2014), as well as an alternative for a community fisheries association (CFA). Alternative 2 was also developed in such a way that it minimized the adverse impacts experienced with other catch share programs.

The Council's purpose and need statement is still relevant and appropriate and broadly supported by active trawl fishery participants and fishery dependent communities. The purpose and need statement identifies the primary management problems in the GOA trawl groundfish fisheries as stemming from the race for fish, coupled with new bycatch restrictions. Since 2011, the Council has adopted a number of actions to reduce PSC in the Gulf of Alaska trawl fisheries:

1. GOA Amendment 93 (effective August 2012) imposed a hard cap of 25,000 Chinook salmon in the Gulf pollock fishery by area (6,684 in Area 610; 18,316 in Areas 620/630
2. Amendment 95 (effective January 2014) reduced the GOA trawl halibut PSC by 15 percent, phased in fully by 2016
3. Amendment 97 (effective January 2015) imposed a hard cap of 7,500 Chinook in the GOA non-pollock trawl groundfish fisheries as follows:
   Central GOA Rockfish Program catcher vessel sector: 1,200
   Central and Western GOA non-pollock/non-rockfish CV sector: 2,700
   Central and Western GOA non-pollock fisheries, catcher processor sector: 3,600

The Council made clear to fishery participants that they were creating significant operational challenges with some of these limits under a race for fish system, and intended to follow up with actions to provide management tools to make these limits practicable. The race for fish management structure layered with these additional bycatch amendments has destabilized the trawl fishery, and a management system that mitigates the race for fish could serve to avoid these situations. These problems have been recently demonstrated through fishery closures, the impacts of which the EIS should analyze, specifically:

- Groundfish fishery closure in May 2015 due to reaching the non-pollock/non-rockfish Chinook salmon PSC cap. An emergency rule was issued by NMFS that allowed the fisheries to re-open on Aug 10. The emergency rule analysis estimated that the early trawl groundfish closure would have resulted in foregone revenues of approximately $4.6 million in ex-vessel value and $11.3 million in first wholesale value.
- Groundfish (deep water complex) closures in March, April, and August 2016 due to reaching the seasonal halibut PSC cap. This resulted in a total of 73 lost fishing days for the deep fishery complex in 2016.
- Groundfish (shallow water and deep water complex) closure on May 20, 2016 due to reaching the seasonal halibut PSC cap. This resulted in a total of 41 lost fishing days for the combined deep/shallow complex in 2016.

The Council's stated purpose is to create a new management structure which allocates harvest privileges in order to mitigate the impacts of the race for fish. It states that the intent is to minimize bycatch to the extent practicable, promote increased utilization, and increase the flexibility and economic efficiency of the GOA groundfish fisheries. These remain the primary goals in the purpose and need statement approved by the Council.

Attachment 5 is provided as part of our scoping comments, which details the ways in which Alternative 2 meets the fundamental elements of the purpose and need statement and original objectives prior to Council action in June 2016. Attachment 5 also demonstrates how Alternative 3 does not meet the purpose and need statement or objectives in the most essential ways, as it does not provide the tools necessary for the fleet to control and reduce bycatch. In effect, Alternative 3 establishes a framework that creates incentives to race for higher value species and disincentives for harvesters and/or cooperatives to plan and execute slower and more strategic operations to minimize bycatch and discards. There is no reasonable interpretation of this alternative that would meet the Council's purpose and need. Given public input since February 2016 and the analytical work already completed, Alternative 3 should be removed from further consideration.

<u>June 2016 Council overarching goal</u>

The NOI notes that from October 2012 to October 2014, the Council received some testimony that the allocation of long-term exclusive harvest privileges can reduce opportunities for new entrants, and implied that this prompted the Council to approve both Alternative 3 in October 2015 for analysis, and an overarching goal and objective in June 2016. Rather than clarifying Council intent, this new overarching goal and the debate during Council deliberations further clouded the record and created confusion about the direction the Council is taking with this program.

The new overarching goal for the proposed bycatch management program is "to provide the fleet tools for the effective management and reduction of PSC and bycatch, and promote increased utilization of both target and secondary species while minimizing economic barriers for new participants by limiting harvest privileges that may be allocated in order to maintain opportunity for entry into the GOA trawl fisheries".

This raises the question, does this overarching goal shift the primary purpose of the program from providing tools to the trawl fisheries to improve target catch utilization and better manage the fisheries under the strict bycatch controls already adopted by the Council, to a new focus that emphasizes maintaining opportunity for new entrants, no matter how disruptive to the fishery, or how much it may undermine the ability for fishery participants to meet the bycatch objectives of the Council?

A brief look at the original motion proposed by the State of Alaska, prior to being amended and approved by the Council might shed some light on this issue. The original motion read:

> "The overarching goal of the Gulf of Alaska Trawl Bycatch Management program is to provide the fleet tools for the effective management and reduction of PSC and bycatch, and promote increased utilization of both target and secondary species *while avoiding creation of new economic assets*, and limiting the duration of harvest privileges that may be allocated (target species and/or prohibited species) in order to maintain opportunity for entry into the GOA trawl fisheries." (emphasis added).

This motion elicited considerable discussion during Council deliberations, most of which focused on understanding the intent behind the highlighted language. And while the motion was amended and this language removed, the intent on behalf of the State of Alaska remains the same. This raises several issues for the EIS analysis and eventually for the Council.

First, the State of Alaska's resistance to the notion that a new management regime could develop increased value in a capital intensive fishery such as GOA trawl is unprecedented. Certainly, the Council has sought to address and mitigate the impacts of catch share programs in other fisheries on the affected harvesters, processors, and fishery dependent communities, but only as part of a comprehensive approach that would also improve bycatch management, recognize investments by current participants, promote increased utilization of target catch, and otherwise increase value in the fishery. For the forty years the Council process has been in place the State of Alaska has never, to our knowledge, adopted as its primary and overarching policy objective to prevent or avoid creation of new economic assets or value in federal fisheries off its shores. This new approach runs counter to roughly forty years of exemplary fishery management that is the foundation of this Council's reputation.

Secondly, the Council needs to clarify what it intended by adopting the "overarching goal" in order to better inform the EIS analysis. The purpose and need statement that was in place prior to the adoption of this new overarching goal provides a reasonable and objective basis for considering alternatives for this action. The Council and the EIS need to recognize that the Council's list of objectives prior to June 2016 addresses the issue of barriers to new entry. Objective 6, adopted in 2013, is *to 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*.

Several questions remain regarding the meaning of the overarching goal; specifically, how it fits with the existing purpose and need statement and how/if the Council envisions modifying the alternatives due to its inclusion. It is not the job of the EIS or the analysts to decide how to interpret or implement the overarching goal. This is the responsibility of the Council, and how the analysis is to proceed remains complicated by the fact that the Council did not clearly describe its intent (i.e., the types of management changes it envisions to implement the overarching goal) at the time it was approved. This leaves the public and the analytical process in the dark about additional future changes to the alternatives. It is not possible to comment on the specific issues the EIS must address with regard to the overarching goal, because there are numerous ways it could be realized and no new management options were described in the Council deliberations prior to it being adopted, yet the record indicates that the current set of alternatives is not sufficient.

It is expected that the EIS will undertake a comprehensive evaluation of how each proposed alternative meets, or does not meet, the purpose and need statement and objectives, including those that address future opportunity in the fisheries. This has not been undertaken in any substantive way to-date in Council discussion papers and will be a critical part of any EIS supporting this action. The EIS should also recognize and evaluate the effects of the provisions in the current proposed alternatives that serve to limit the value and flexibility of the harvest privilege (regional or port landing requirements, limits on the amount that can be held and used by one person, active participation requirements, and transferability limitations), which appear to be at the core of the overarching goal. The Council record to date seems to ignore the details of the provisions in the current Alternative 2, for example – the only alternative that ends the race for fish – and incorrectly assumes that any new harvest privileges would be unrestricted and create a closed class of harvesters and processors. This is not the case.

Note that the public record in June 2016 supporting the overarching goal said the state does not intend to lock out our next generation's opportunity to participate by awarding permanent ownership of the GOA trawl fishery to current participants. Aside from the fact that the MSA prohibits a Council from awarding permanent ownership, and the action clearly does not create a closed class of participants (harvesters or processors), the MSA has a 10-year duration on Limited Access Privilege Programs and the Council has the ability to modify a program at any time. The Council needs to identify what further limitations on duration it is seeking to consider, beyond those mandated by the MSA, for this process to move forward.

Further, the EIS record should recognize that the Council previously included and evaluated an option for limited duration quotas up until April 2014, which proposed reallocating harvest privileges annually based on performance standards. Public testimony and preliminary analysis presented by Council staff in April 2014[1] outlined several relatively significant challenges to both the administration of such a measure and the potential for creating outcomes that are inconsistent with the objectives the Council is trying to meet. Of greatest concern was the negative potential impact on information sharing among vessels and cooperatives, which is the core of a catch share program with the primary purpose of minimizing bycatch. The Council paper was also very clear that a provision that weakens harvest privilege security may also reduce the incentive to invest in bycatch controls and technology, and that is not something the Council wanted to inhibit. Finally, the paper was also clear that the direction of the effect on the quota market is not certain and such a provision did not necessarily translate to greater availability or lower cost for GOA trawl licenses. This is why the Council approved other options (severing catch history from a license) to reduce the economic burden of entering the fishery under a new program. This is how the Council process was intended to work and should be careful not to stray from – iterative, responsive, transparent, and informed decision-making using the best available information.

[1] Discussion Paper - Gulf of Alaska Trawl Bycatch Management, agenda item C-2, April 2014.

The June 2016 Council record also said that the next generation need not be burdened with the additional expense of quota purchase in order to have a successful program. Recall that Alternative 2 is based on a harvest privilege derived from *licenses* with historical participation in the GOA trawl groundfish fisheries, which serves as a basis for cooperative quota when entering into a cooperative contract with a processor and other vessels. Without further explanation, it is not possible to tell whether the Council means there is no support for *any* program that creates cooperative quota based on a license's historical landings. A harvest privilege that is exclusive to some entity (in this case, cooperatives and potentially, communities under Alternative 4) for a specified duration is the core part of any LAPP – it is what allows a fishery to realize all the conservation and economic benefits of a fishery managed under a rational, cooperative system. Are the Council and NMFS willing to forgo all the potential benefits of a program in the GOA because they do not want to create a harvest privilege with any value? There is already a cost to entry under status quo – the value associated with a Gulf license and the access it provides to the limited access fisheries. Any time a management change is made that makes the fishery more stable, secure, and economically viable, the harvest privilege value increases.

There are multiple ways to accommodate new entrants, several of which are included in Alternative 2, but there are other options that could be developed by the Council that do not completely undermine the dependency of and investments by current participants. However, any program that destabilizes the fishery through equal shares or annual reallocation of harvest privileges as suggested under Alternative 3 (e.g., significant uncertainty around the cooperative allocations each year) will severely undermine the benefits of cooperative structure and behavior. Given the North Pacific Council's experience with the benefits of replacing a rigid management structure with a flexible program that provides vessel and cooperative level accountability for harvest and PSC, as well outlined in the NOI, it is unclear why the Council seems unable to improve the management of this fishery.

In addition, the Council record supporting the overarching goal stated that the intent is to ensure future participants have a similar pathway to entry that currently exists. It is expected that the EIS will describe the current pathway to entering the GOA trawl groundfish fisheries under status quo and how it is estimated to change under the proposed alternatives. Substantial public testimony has been provided already to the Council describing the current opportunity, costs, and mechanisms to become a crew, captain, or owner of a vessel in the fishery, including through generations of family fishermen, by people with extensive experience in the fisheries. Fishermen have testified that they see a very similar pathway to entering this high investment fishery as exists today – working hard, moving from crew to captain and/or partial owner, and/or taking over a family business as people retire. If this is an overarching issue, the EIS needs to treat it as comprehensively as possible, rely on those with actual experience in the fisheries to groundtruth current mechanisms and future potential mechanisms under a new management structure, and recognize that people will only move into a fishery that is stable and economically viable.

The Council and the EIS should also explicitly recognize that focusing only on ensuring that future participants have no different opportunity than they have under status quo ignores the fact

that unrestricted access (use of a license in a limited access fishery) is the primary problem that the Council originally wanted to address – one cannot end the race for fish and solve bycatch issues and improve utilization by having a fishery that mirrors today's management.

As the Council considers the issue of new entrants, the Council and EIS should take a broader view in describing the problem, and explore practical solutions to this question on a more comprehensive basis. This broader evaluation is necessary to fully understand environmental, social, and economic issues surrounding the question of barriers to new entrants, and whether specific management measures in the GOA trawl bycatch management program are an effective and appropriate response to issues and concerns arising in other fisheries.

For example, most of the concerns voiced by the State of Alaska and stakeholders have to do with economic barriers that have come about due to state of Alaska salmon limited entry, the BSAI crab rationalization program, and the halibut/sablefish IFQ program. The Council recently reviewed a 10-year evaluation of the crab program where many of these issues were discussed. This provided the Council with the opportunity to make course corrections in the program to address such concerns, which was the original intent at the time the program was adopted. Yet the Council chose to take no action, leading the public to the conclusion that these concerns are overstated. Otherwise the Council would have initiated action to remedy them.

Similarly, the Council has the opportunity to address the question of new entrants in the halibut/sablefish IFQ fishery. The halibut longline fishery was traditionally the entry level fishery for individuals seeking to build equity and get into the broader commercial fishing industry. This is especially true for small coastal communities where concerns about the cost and availability of quota have been repeatedly identified as one of the largest barriers to new entrants. The Council will receive a program review in October 2016 and has an excellent opportunity to develop program modifications to reduce these barriers and promote new entrants into the halibut fishery. This could be a more effective way to address the concerns raised by stakeholders regarding the need to provide a career path for young fishers to build equity and establish their businesses in commercial fishing.

<u>Comments on the scope of the alternatives</u>

Our organizations have commented multiple times on the suite of Alternatives 1 through 4, to-date, most recently through our January 29, 2016 and May 31, 2016 letters to the Council (see Attachment 4 and 5). We have continued to try to highlight the importance of these fisheries to Alaska and the communities of Kodiak, King Cove and Sand Point, and the harvesting and processing sectors that support these economies.

Alternative 2

Our organizations continue to support development of Alternative 2 to meet the Council's purpose and need statement. The core elements provide an effective management structure for

the Gulf trawl fisheries to mitigate the impacts of the race for fish, provide mechanisms to control and reduce bycatch, better manage target and secondary species harvest, minimize discards and improve utilization, and provide for future economic opportunity for Gulf coastal communities. These are all part of the Council and NMFS's stated objectives, and are reiterated in the NOI as common outcomes with programs that allocate exclusive harvest privileges, based on extensive experience in the North Pacific (p. 49615).

We continue to support Alternative 2 because it establishes a cooperative system for catcher vessels, processors, and communities based on historical participation. The cooperative structure would balance the interests of the sectors, and allow them to work cooperatively to plan fishing operations to reduce PSC and facilitate use of all species more efficiently as a result of vessels fishing more slowly, strategically, and cooperatively. It also allows vessels that do not want to participate in a cooperative an option to fish in a limited access fishery. Selection of specific elements and options will affect whether those goals are achieved, but the overall structure includes provisions that can provide a stable and effective operating environment for harvesters, processors, communities, and support industries. Importantly, it allows the Council to recognize the investment in and dependence on the resource by all affected sectors, *if developed appropriately*. Alternative 2 provides a strong starting point for the Council and NMFS to consider how to effectively resolve the management problem at issue.

Alternative 3

EIS scoping has been re-opened in part because of a new alternative (Alternative 3) proposed by the State of Alaska and approved by the Council in October 2015, after the original EIS scoping period closed. This new alternative does not meet the Council's purpose and need statement and objectives for this action in the most essential ways. Therefore, it is not supported by current participants in the fishery, and an extensive record already exists through written and oral public testimony that should be included as part of the EIS scoping record. Alternative 3 also does not meet MSA practicability requirements for bycatch reduction measures and ignores the considerations under Section 303(b)(6) for limited access programs. It does not appear operationally feasible for many reasons supported in our previous public comment and would harm the Gulf groundfish fisheries and the communities that depend on these fisheries.

Our organizations continue to have significant concerns with Alternative 3, not the least of which is that Council analysis and public comment from all trawl fishery participants to-date clearly indicate that this approach will not solve the management problem at hand, as discussed above. The June 2016 Council discussion paper was clear in its assessment that Alternative 3 is similar to status quo, in which less than 100% agreement of all fishery participants to voluntarily organize defaults to a race for fish, with the attendant negative effects on bycatch (p. 52); and there are limited incentives for the fleet to organize and communicate on the fishing grounds (p. 51).

Another significant issue includes the allocation mechanisms proposed under Alternative 3 (i.e., dependency criteria and equal shares). Previous comment and staff analysis have identified significant shortcomings, in terms of implementation complexity, the inadequate metric for vessel dependency, and the likelihood to encourage the influx of capital by vessels from outside the area that have little to no history in the GOA trawl fishery but have fishery revenue from other fisheries. The concept of recognizing dependency on a fishery is so important that the Magnuson Stevens Act requires that Councils authorize privileges to harvest fish to persons who substantially participate in the fishery; Councils must consider current and historical participation in the development of any limited access program under sec. 303(b) or LAPP under section 303A. Specifically, under Sec 303A(c)(5)(A), MSA requires that in developing a limited access privilege program to harvest fish, a Council or the Secretary shall 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;

In contrast, Alternative 3 continues to appear more focused on redistribution of fishery benefits from current participants and mitigating perceived impacts of other catch share programs whether applicable or not to Gulf trawl fisheries. In addition, Council staff have requested multiple clarifications on Alternative 3 in order to proceed with the EIS, to which the Council has not responded. Please see Attachment 5, which further details our concerns with Alternative 3.

Alternative 4

There are several outstanding questions relative to Alternative 4, which were not addressed in the most recent Council motion (June 2016) amending this alternative. Alternative 4 currently includes two options: a Community Fisheries Association (CFA) and an Adaptive Management Program. There has been little interest in developing the Adaptive Management Program since it was introduced, and because it cannot be analyzed in the EIS without significant further development, the Council and NMFS should consider removing it from Alternative 4.

Regarding the CFA option of Alternative 4, there continues to be confusion regarding the impacts the Council is trying to mitigate, not the least in part because while the stated intent is to mitigate the potential economic impacts of a new trawl bycatch management program on GOA communities, the eligibility criteria do not match that intent. It is clear that community allocations are authorized through the MSA LAPP provisions in 303A in order to mitigate potential negative impacts of a LAPP. If the intent of the CFA is to mitigate potential impacts from a new Gulf trawl bycatch management program, as stated, then the communities with potential to experience impacts from the program are those that substantially participate or are engaged in the Gulf trawl fisheries. Thus, in this case, the Council's criteria need to specify that

CFA eligible communities are those with current or historical participation in Gulf trawl groundfish fisheries.

Alternative 4, as revised in June, would reallocate trawl groundfish access from trawl groundfish-dependent communities like Kodiak, Sand Point, and King Cove, to those communities not dependent on trawl groundfish (see the 23 additional communities eligible under Alternative 4, Option 1, Element 4); this is entirely inconsistent with the rationale for creating a CFA and protecting communities in the first place. If the Council is going to adopt a policy of reallocating access from groundfish dependent communities to communities that are not historically or currently dependent on GOA trawl fisheries, then it needs to be more explicit in describing the problem it is trying to address, and lay out a compelling case for disadvantaging one set of Gulf communities to benefit a different set of Gulf communities.

Second, NMFS and the Council should acknowledge that the CFA is not only currently structured to reallocate access among GOA communities, but to reallocate trawl groundfish to non-trawl groundfish license holders (see Option 1, Element 5b). Alternative 4 states that eligibility to receive CFA quota is tied to owning a qualified LLP/vessel or fishing on a qualified LLP/vessel. The option specifies that this could be any GOA-endorsed groundfish LLP, and does not need to be a trawl license/vessel, which ties into the eligibility criteria that includes communities not currently active in (and almost all without the infrastructure to support) the trawl fisheries.

In effect, the Council's first goal with this action is to end the race for fish and provide tools for the trawl fleet to manage PSC and bycatch within its overall trawl allocation. In order to mitigate potential negative effects on communities that could occur by participants having more time and flexibility to harvest groundfish, the Council has included consolidation limits, active participation requirements, port of landing and regional delivery requirements for consideration under Alternative 2 only. The Council then wanted to evaluate whether a CFA is warranted over and above those provisions, to provide a set-aside for community residents and/or new entrants in the trawl fishery.

Given this process and intent, there is absolutely no logic in evaluating a CFA alternative that reallocates trawl groundfish to non-trawl license holders (and to potentially 23 communities not dependent on trawl groundfish). The Council and NMFS need to think through what they want to accomplish with a CFA and if it is retained, must revise Alternative 4 to fit the original intent, as described by the Council in 2014 and supported by the MSA for consideration. Alternative 4 as it stands is not supportable; it will not protect Gulf trawl groundfish dependent communities and in fact will divert landings, jobs, and revenue away from those communities.

If the Council's intent is not actually focused on access to the trawl fishery by community residents as stated and is instead to provide a revenue stream for GOA communities that do not have historical or current participation in the GOA trawl fisheries, the Council needs to consider the CFA program in light of the scale of the fisheries involved. The trawl groundfish harvest in

the Gulf is less than 12% of the Bering Sea harvest over the past eight years (see Fig 18, p. 168 of the Council's June 2016 discussion paper). The analysis needs to look carefully at the resource that would be available in the Gulf and what economic benefits can reasonably be expected to flow from a CFA allocation beyond access for selected vessels into the fishery. Please see p. 17-18 of Attachment 5 for a list of questions pertaining to the Alternative 4, as revised in June 2016.

Finally, the Council should consider how Alternative 4 matches up with the public comment it received in June 2016 raising concerns about "monetizing" GOA trawl fisheries, and the State of Alaska's policy objective to avoid creating new economic assets. In almost any form, the CFA will create some form of new economic asset. It seems there is an internal inconsistency with these policies and clarifying intent prior to engaging in the EIS analysis seems prudent.

Comments on the EIS workplan

In December 2015 our organizations provided comments on the EIS workplan (see Attachment 3). Not all of those comments are germane given the changes to the alternatives and the overarching goal that have surfaced since then, but many of them still apply. We therefore request that these comments be included in the record for this NOI.

In addition to those comments we offer the following for consideration. Given the changes that have occurred over the past year, we encourage the Council and NMFS to take a hard look at the schedule for preparation of the analysis to ensure that analysts have the time necessary to do a quality job and provide the Council and agency with a comprehensive and well-reasoned analysis.

We note that the workplan supports relying on qualitative analysis rather than quantitative analysis in many instances. While we recognize that there are limitations on the kind of analysis that can be performed in some areas due to data limitations we encourage the Council to seek quantitative analyses of crucial aspects of the alternatives. For example, it is not sufficient to qualitatively estimate the effects of provisions such as annual or equal share allocations of harvest privileges. Nor is it sufficient to qualitatively describe the impacts to groundfish dependent communities if landing requirements are not included, or if the Council is considering reallocating landings away from such communities to other communities with no dependency on the GOA trawl fisheries. Such provisions will have profound economic impacts on current participants as well as operational consequences that jeopardize the conservation benefits of the proposed management regime.

We note that obtaining a thoughtful analysis of the effects of the alternatives on the capital investments made by harvesters, processors, and groundfish dependent communities is a high priority. A quantitative analysis of the effects of the alternatives on those investments is necessary to ensure an informed decision.

In addition, an issue that has not been addressed for some time is the relationship of any program to the management of parallel groundfish fisheries in state waters. An understanding of how the Alaska Board of Fisheries and State of Alaska management will respond to the Council's proposed action is necessary to ensure it can be implemented as intended.

Thank you for the opportunity to comment.

SIGNATURES

Glenn Reed
Pacific Seafood Processors Association

Robert Krueger
Alaska Whitefish Trawlers Association

Julie Bonney
Alaska Groundfish Data Bank

Heather Mann
Midwater Trawlers Cooperative

Attachment 1

Eric Olson, Chair
North Pacific fishery management Council
605 W 4th Avenue, Suite 306
Anchorage, AK 99501

Re: Agenda Item C-2: GOA Trawl Bycatch Management

April 1, 2014

Chairman Olson:

This letter is in regards to agenda item C 2 for the April 2014 meeting of the North Pacific Fishery Management Council. The undersigned organizations and companies represent a significant portion of the harvesters and processors participating in the Gulf of Alaska trawl fisheries.

Over the past few years the Council has adopted a number of actions to reduce prohibited species bycatch in the Bering Sea/Aleutian Islands (BSAI) and Gulf of Alaska (GOA) fisheries. The Council recently introduced Chinook salmon PSC limits in the GOA pollock and non-pollock fisheries, and adopted measures for reducing halibut PSC caps in the trawl and catcher-vessel fixed gear fisheries in the GOA by 15%. The groundfish trawl fisheries in the Gulf of Alaska do not have the management structure or the tools to fully adapt to these new PSC reductions.

The Council has recognized that there is a need to develop a new management structure whereby fishery participants are able to work cooperatively to adapt fishing practices to accommodate reduced PSC allocations. Such a structure needs to balance the interests of the catcher processors, harvesters and inshore processors in these fisheries while meeting conservation objectives and preventing harm to communities dependent on the fisheries.

At its June, 2013 meeting the Council received proposals from several different interest groups for developing a GOA trawl bycatch management program. At its October 2013 meeting the Council developed a proposed program structure and requested staff to further develop a discussion paper identifying key issues.

The Council's proposed program structure and accompanying discussion paper raise a number of significant issues and concerns for us, some of which could have profound impacts on our fisheries and the communities that our businesses support. These include species allocations, criteria for cooperatives, the duration of shares, community protections, and measures for further bycatch reduction. We would like to comment on each of these issues below:

1. <u>Allocation of target, secondary, and PSC species.</u>

We believe that the new management program must be designed to minimize allocation disputes between the trawl catcher-processor and inshore trawl sectors. Allocations between the inshore and catcher-processor sectors should be based on historical participation by each sector. For underutilized species, we believe the intent should be to develop measures to fairly allocate future opportunities between the sectors while addressing bycatch usage.

The program structure adopted in October by the Council in its motion on agenda item C-5(a) contemplates allocating halibut and Chinook salmon PSC between the sectors, and then including only pollock and cod as target species allocations for the inshore voluntary cooperative program. We support analyzing an alternative with those allocations, but also believe that the Council should consider other alternatives with additional suites of target and secondary species.

Specifically, to better address PSC bycatch usage the Council should consider developing a program whereby management of any species that could be constraining is addressed. There is high potential for constraining species to induce a race for fish, diminishing the likelihood for improved bycatch control and reduction. Allocation of constraining target species should be considered and alternatives developed to assist analysis of this potential. Allocation or revision of management measures for constraining non-target species should also be considered in these alternatives. Failing to include management modifications for constraining species is likely to constrain harvests of other species and diminish benefits that will be realized under the program.

2. Development of Cooperatives

We agree with the Council's statement that a system of cooperative management is best suited to managing and reducing bycatch while maximizing the value of available target species. Cooperatives should be developed with the intent to facilitate a flexible, responsive, and coordinated effort among vessels and processors to avoid bycatch through information sharing and formal participation in bycatch avoidance programs.

Program structure is a central issue for a successful cooperative program in both the inshore and catcher-processor sectors. Providing a voluntary cooperative structure to both sectors can greatly aid in fishery conservation and management. But the Council also needs to carefully consider the allocative implications of various measures, especially within each sector, and the unintended consequences that can arise.

With regard to the Council framework for a voluntary cooperative program for the inshore sector, we believe the program should recognize and be founded on historical participation and investments by both harvesters and processors in these fisheries. The analysis of elements and options should address the principle that the new management structure should not result in devaluation of one sector's investments or capital assets to benefit a different sector. From our perspective, the overall objective should be to develop a program that balances the interests of both sectors, does not erode the assets of either sector, and provides similar opportunities for increased benefits to all participants in these fisheries while meeting conservation goals and community needs.

With regard to the catcher-processor sector, we support developing a cooperative program building off proposals from the catcher-processors for a cooperative program for their fisheries, including additional elements and options to more fully develop such a program. As with the inshore sector, such a program should be founded on historical participation and investments by the participants.

We ask that the Council specifically direct the analysts to address these considerations as they evaluate different elements and options for these programs.

3. Limited duration of shares

The Council's motion of October 5, 2013 provides:

> Duration of shares. A portion of the target species share allocations (maximum25%) will be evaluated for retention based on achievement of performance targets relative to bycatch and other Council objectives after a set period of time (3 – 10 years). The time period and the criteria used to evaluate performance will be established in regulation.

And

> Cooperative management. A system of cooperative management is best suited to managing and reducing bycatch (such as, hotspot program, gear modifications, excluder use, incentive plan agreements) while maximizing the value of available target species. Cooperatives are intended to facilitate a flexible, responsive, and coordinated effort among vessels and processors to avoid bycatch through information sharing and formal participation in a bycatch avoidance program.

Throughout its consideration of this action, the Council has stressed the importance of performance-based bycatch reduction measures that create incentives for PSC avoidance at the vessel level. The development of a share reallocation initiative under the 'duration of shares' component is an effort to advance such a measure. The suggested measure would reallocate target allocations under Council identified criteria, which would be implemented by NMFS. Several aspects of the measure proposed in this motion raise several concerns in achieving the Council's overall goal for this action of PSC avoidance.

Size of the reallocation

Under the proposed measure, up to 25 percent of the target species allocations could be reapportioned. A reallocation of this magnitude creates a strong incentive to outperform others in the fishery. As recognized by the Council through its creation of a cooperative program, coordinated efforts can best achieve PSC goals. Since actions to avoid PSC may change over time with fishing conditions (such as hotspots and target concentrations), it is important that a fleet develop a system of timely information sharing. A measure that creates a strong incentive to outperform others is likely to also create an incentive to withhold bycatch information from others, which is very likely to lead to overall poorer bycatch performance. While performance-based measures can lead to improved PSC performance, in some cases individual competition arising from those measures can impede the development of PSC improvements leading to poorer overall PSC performance. Similarly, measures should create an incentive for development of technologies (such as excluders) for PSC avoidance. Past practices have demonstrated that the development of new technologies are most likely if undertaken at the fleet level where costs can be dispersed across several vessels. Strong individual incentives could create a deterrent for these cost sharing arrangements. Lastly, at times, cooperative members may choose to engage in exploratory fishing to determine whether certain times or areas could have desirable PSC rates. The most cautionary way to pursue these explorations is with a single vessel sharing information. The creation of a strong individual incentive through large share reallocations is likely to deter these coordinated efforts, either preventing the effort altogether or reducing the overall benefit by deterring information sharing. Given the potential for individual performance based measures to lessen incentives for sharing costs and information to avoid PSC, the Council should consider other types of measures to achieve its PSC objectives.

Regulatory criteria for reallocation

Gulf fisheries are currently a series of overlapping target fisheries. Under a new cooperative structure, it is anticipated that target fishery seasons will be extended, with more overlaps. In addition, PSC avoidance capability is likely to change under the revised program. In addition, individuals are likely to have very different share allocations, weighted toward different targets. Drawing PSC performance comparisons across these targets could be complicated. Given the lack of experience administering individual performance measures, it is possible that any effort to define such a regulatory PSC performance standard could prove ineffective, particularly over time. In addition, PSC rates in the different targets could vary over time with conditions in the fisheries and stocks. With these changes, acceptable performance in a fishery one year, may be wholly inadequate the following year. In these circumstances, a rigidly defined regulatory standard could lead to little PSC avoidance, if the standard is one target is viewed as beyond reach and the performance in another requires little PSC avoidance effort. Due to changing conditions, weighting any PSC performance standards across different targets is likely to be complicated and may require modifications over time. As a result, using specific regulatory criteria for implementing share redistribution could result in a restrictive structure that fails to achieve the greatest PSC avoidance.

In addition, the program is likely to need to strike a balance of a number of competing objectives, including 1) achieving desirable PSC rates, 2) efficiently harvesting the available TAC, and 3) leaving a portion of the available PSC in the water. These objectives will often compete with one another and may vary in importance over time. A more flexible mechanism than a regulatory formula may be desirable.

An alternative to a regulatory standard is to rely on cooperatives to set and administer individual incentive provisions. The cooperative could adapt its incentive structure efficiently based on its experience and conditions in the fisheries without regulatory action. Allowing a cooperative to negotiate and administer the structure would allow for rapid correction and modification to address any shortcomings and achieve reasonable PSC avoidance incentives across all fisheries. Annual reporting to the Council provides oversight needed to ensure that the system functions as intended and creates meaningful incentives for PSC avoidance.

Cooperative administration also can encourage experimentation needed for PSC avoidance developments. PSC avoidance often requires some triaal-and-error. At the simplest level, a vessel may do a single tow to determine PSC rates at a particular time and location. Exempting this experimentation from a reward system (or at least establishing a system that does not discourage it) is a necessary component of any effective reward system. Regulations establishing penalties and rewards cannot possibly identify this type of experimentation and address the disincentive for their use that may arise from general rules that reward performance.

Cooperative administration also has the advantage of avoiding some of the problematic administrative aspects of any share duration provision. Since agency administration would not be needed, the program could efficiently make redistributions without a protracted administrative process.

The complexity of administering individual incentives within a cooperative is also likely to be very challenging for the agency, since they do not typically oversee the distribution and use of shares within a cooperative. This could be addressed by simply tying shares to a vessel, which removes all the benefits of the cooperative or alternatively tracking quota distributions within a cooperative, essentially requiring the agency to administer an IFQ program. In either case, a substantial benefit of cooperative management is

lost. Because of these limitations, the Council should consider a requirement that cooperatives address its PSC objectives and annually report on the types of measures employed and their effects.

4. Community protections

Industry believes that any new GOA management program needs to consider and address historical community involvement in GOA trawl fisheries, including employment in the harvesting and processing sectors as well as the effects of management measures on community infrastructure, services, and support businesses.

There is extensive community involvement in the GOA trawl fisheries, and the harvesters and processors involved in these fisheries are the backbone for many of the GOA communities. Maintaining healthy harvesting and processing sectors should be a foundation for any Council action to protect community interests. To derive the greatest community benefits, the Council should actively mitigate potential harms to communities that could arise from the program, while maintaining historical participants.

In devising GOA community protections, the Council should be very explicit in regards to its objectives and the measures it develops. Proposals to include community approval of cooperative contracts could have the unintended consequence that no cooperatives form. Community politics should not be inserted into what are fundamentally business decisions about the daily operation of private companies and individual fishing operations.

On the other hand, carefully crafted measures such as landings requirements, caps on use, or limits to consolidation of ownership of fishing rights can protect community investments and address community concerns. The Council should be skeptical of proposals that simply transfer quota from one group to another unless there is a clear community interest that cannot be addressed through the proper design of the cooperative program.

5. Gear Conversion

The Council motion suggests that the program could be adapted to permit gear conversion allowing Pacific cod allocations to be harvested with fixed gear. Such a provision could be used to address some bycatch issues; however, the complexity of such a provision could require substantial Council and staff resources jeopardizing development of the program as a whole. For this reason, the Council should consider delaying development of any gear conversion provision to a trailing amendment.

Several issues arise under any gear conversion provision.

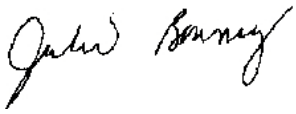
- Bycatch composition varies across the different gear types. Trawl vessel bycatch is typically smaller fish, than longline bycatch. It is possible that biological management issues may arise from differences in bycatch that result from transfer of shares from trawl vessels to longline vessels. Most importantly, halibut bycatch management and stock assessment issues might need to be addressed.
- Fixed gear fisheries for Pacific cod are current subject to limited access management. The interaction of any quota-based fisheries with the existing limited access fisheries would need to be considered. Catch accounting, in-season management, and quota management systems would

all need to be modified to include both a fixed gear limited access component and a fixed gear quota program.

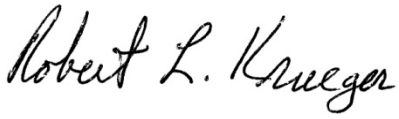
- The elements of a transfer program would need to be developed, if the Council elects to advance a gear conversion program. These elements could define the terms for annual and permanent transfers, as well as provision for transfers of allocations back to the trawl sector.
- Transfers to the fixed gear sector will require the development of a fixed gear quota program. Such a system could include cooperatives (or IFQs), community and processor protections, transfer provisions, and other elements typically included in catch share management programs.
- Oversight of catches would need to be addressed for any quota fishery. This would likely require revisiting observer requirements on fixed gear vessels fishing quota allocations, which could include consideration of interactions with the existing observer program.
- While federal limited access management interactions may be the primary consideration for addressing any quota management system interactions, it is also possible that State Water Fishery interactions could need to be addressed.

The industry workgroup developed the attached updated and revised framework of elements and options for a GOA wide trawl bycatch management plan. The framework is intended to be responsive to the Council October motion. The appropriate program structure is critical to industry so that we can continue to provide current or expanded harvest levels into the global fish market. Creating limiting species where there were none before risks stranding fish and risks our market share where market demands will fill in with other fish products as substitutes if we fail to meet the market needs. Allowing our industry to be competitive in a global market place is the key to a successful program along with meeting Council objectives for a GOA trawl bycatch management program.

Thank you for your consideration of our comments.

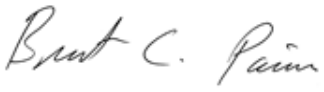


Julie Bonney
Alaska Groundfish Data Bank

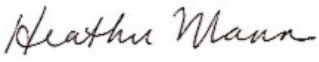


Robert Krueger
Alaska Whitefish Trawlers Association

Lori Swanson
Groundfish Forum



Brent C. Paine
United Catcher Boats



Heather Mann
Midwater Trawlers Cooperative

Dan Hull, Chair
North Pacific fishery management Council
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Anchorage, AK 99501

Re: Agenda Item C-7: GOA Trawl Bycatch Management

October 8, 2014

Chairman Hull:

This letter is in regards to agenda item C 7 for the October 2014 meeting of the North Pacific Fishery Management Council. The undersigned organizations and companies represent a significant portion of the harvesters and processors participating in the Gulf of Alaska trawl fisheries.

Over the past few years the Council has adopted a number of actions to reduce prohibited species bycatch in the Bering Sea/Aleutian Islands (BSAI) and Gulf of Alaska (GOA) fisheries. The Council recently introduced Chinook salmon PSC limits in the GOA pollock and non-pollock fisheries, and adopted measures for reducing halibut PSC caps in the trawl and catcher-vessel fixed gear fisheries in the GOA by 15%. The groundfish trawl fisheries in the Gulf of Alaska do not have the management structure or the tools to fully adapt to these new PSC reductions.

The Council has recognized that there is a need to develop a new management structure whereby fishery participants are able to work cooperatively to adapt fishing practices to accommodate these reduced PSC allocations. Such a structure needs to balance the interests of the catcher processors, catcher vessels, and inshore processors in these fisheries while meeting conservation objectives and preventing harm to communities dependent on the fisheries.

Alaska's trawl industry participants strongly support the Council's continuing effort to design a cooperative management program as described in the Council's April 2014 motion. We believe that the cooperative program is necessary and appropriate for the conservation and management of the fishery, and will provide industry with the tools and management structure necessary to better manage and control bycatch, achieve OY, and provide greater economic stability and opportunity for harvesters, processors, and communities.

SUGGESTIONS FOR THE PRESENT COUNCIL MOTION

There are multiple sections of the discussion document that ask for input with regards to the council motion for a new trawl cooperative program. We offer industry input on selected issues. Our recommendations are incorporated in the April Council motion as amended (see attachment 1).

4. Sector Eligibility

Discussion document (page 31 – 32): If the Council intends that Amendment 80 vessels without a GOA trawl endorsed LLP can participant in the program (i.e. join a cooperative) only by acquiring an eligible license, then the language in Part 4 of the April motion could be revised by inserting "GOA trawl".

Industry response: **The program should only permit vessels with Gulf endorsed licenses to participate in the program.**

In addition, the current eligibility language should be clarified to provide that offshore eligible vessels should be Amendment 80 vessels (as listed in Table 31 CFR Part 679); their replacement vessels; and the current GOA trawl LLP's for the Amendment 80 vessels and their replacement vessels.

5. Allocated species

Target Species – Discussion document (page 76 – 81 in document).

Industry response: To determine which target species should be allocated, additional information and analysis should be sought. Clearly, pollock and Pacific cod should be allocated to the inshore sector. Neither of the species should be allocated to the offshore sector, but they should continue to be managed under MRAs.

Other target species allocations should be decided on a case-by-case basis considering historical harvests and dependence on those targets and potential for the TAC to be fully utilized in the near future. Fisheries that historically closed on TAC, such as the Western Gulf rockfish fishery and West Yakutat Pacific ocean perch, should be analyzed as an additional allocation option in recognition of dependence of historical participants on those fisheries. The analysis should explore and identify likely management complications that would arise in the absence of an allocation in these fisheries.

Fisheries with substantial unharvested TAC or ABC tonnages may not be appropriate for allocation, as leaving those fisheries unallocated may increase incentives for PSC avoidance. In addition, making allocations substantially greater than historical harvest amounts will unjustly reward participants based on relatively small harvest histories. On the other hand, if the future TAC of a species is likely to be fully harvested under the new management program, allocations could be important in preventing a race for that TAC that results in excessive PSC usage. Balancing these various factors will require some consideration of both extended catch histories and historical TACs, as well as some discussion of changes likely to arise under the new management program.

An additional consideration is whether only a portion of a TAC should be allocated for any species. **We do not support such a "hybrid" approach where a portion of the TAC is allocated to historical participants and a portion remains open to any trawl participant.** Such a partial allocation could be intended to provide historical participants with a share of the allocation that represents and acknowledges their historical dependence without over-crediting that dependence, while preserving opportunities for others to build history in the fishery by accessing the share of the fishery that was historically unutilized. Although this approach has some conceptual appeal, whether such allocations can be made in a manner that truly achieves its intended goals is uncertain. First, it is unclear how allocations and the unallocated portions of the fishery would be managed. If historical participants are forced to use their shares prior to fishing the unallocated fishery, those participants may gain nothing but a possible future allocation should the fishery's TAC ever become binding. In addition, if there is potential for the Council to allocate the unallocated portion in the future based on its harvest, the holder of an allocation may perceive a need to race to fish its allocation and a share of the unallocated fish to potentially gain a share of that allocation in the future. Attempting to account for harvests of allocations and unallocated portions of the fishery will be complicated by the cooperative structure. If some members of a cooperative hold allocations and others do not, should cooperative harvests be debited against the allocation or the unallocated share of the fishery?

A possible approach is to allocate few species and plan to revisit the issue of making allocations of other species in the 5 year review. This approach could create a substantial incentive for clean fishing. If TACs appear to be problematic for unallocated species, the Council could decide to make allocations or other program changes at that time.

Based on these criteria the options for species grouping would be as follows for analysis:

Table 1. Target species that meet the available TACs and should be considered for allocation to historical participants or managed under MRA's:

Regulatory Area	Species	Sector	Management
GOA wide	Pollock	inshore	Co-op Allocation
GOA wide	Pollock	Offshore	MRAs
CGOA	Pacific cod	Inshore	Co-op Allocation
CGOA	Pacific cod	offshore	MRAs
WGOA	Pacific cod	inshore	Co-op Allocation
WGOA	Pacific cod	offshore	MRAs
WYAK	Pacific Ocean Perch	inshore	Co-op Allocation or MRAs
WYAK	Pacific Ocean Perch	offshore	Co-op Allocation
WGOA	Pacific Ocean Perch	inshore	MRAs
WGOA	Pacific Ocean Perch	offshore	Co-op Allocation
WGOA	Northern Rockfish	inshore	MRAs
WGOA	Northern Rockfish	offshore	Co-op Allocation

MRAs would be the management choice if co-op allocations are too small to manage along with co-op accountability measures and NMFS management tools. The analysis should also consider whether an ICA should be set aside for rockfish target fisheries to support expanded flatfish harvests in both the WGOA and WYAK areas for both those co-ops that receive a rockfish allocations and those co-ops that do not. Under this approach (modeled after the Bering Sea), a vessel would choose its target fishery within a set time of completing the haul, after which catches would be accounted for out of the rockfish allocation or MRA associated with the flatfish target, depending on the choice of target fishery.

Table 2. Target species with substantial unharvested TAC or ABC; **Options for analysis should include sector allocations or no allocations.**

Regulatory Area	Species
CGOA	Arrowtooth Flounder
WGOA	Arrowtooth Flounder
CGOA	Flathead Sole
WGOA	Flathead Sole
CGOA	Shallow water flats
WGOA	Shallow water flats

Table 3. Target species that may likely be fully harvested under the new management regime for which a race for TAC could occur that would result in excessive PSC usage.

Regulatory Area	Species
CGOA	Rex sole
WGOA	Rex sole
CGOA	Deep Water Flatfish
WGOA	Deep Water Flatfish
WYAK	Dusky Rockfish
WGOA	Dusky Rockfish

Careful consideration and further analysis needs to be performed for these target fisheries to determine the correct treatment.

Rex sole is the most valuable flatfish species in the GOA. In the CGOA there has been increased participation by the inshore sector where catches have increased from 27% of the trawl landings in 2010 to 48% in 2013. Allocating to historical participants only may be perceived as unfair since on average 60 to 70% of the TAC has been harvested. Exclusively allocating to this subset of trawl participants may be perceived as unfair. Leaving a portion of the TAC unallocated most likely will create a race for fish suggesting that the entire TAC needs to be controlled by the co-ops. The analyst should consider these effects to inform treatment of this species and possible allocation methods that balance historical participants and incentives for other participants to prosecute other underutilized species. Analysts could also consider the potential for sector allocations to prevent excessive behavior in one sector from infringing on the other sector.

The Deep Water Flatfish TAC in the WGOA is small (129 mt to 529 mt) while in the CGOA it is more substantial (2,308 mt to 3,919 mt). In both cases little of the available quota has been harvested. Dover sole is the main species in this group and can be effectively targeted if ex-vessel price and markets create a demand. In the early 1990's the inshore sector harvested a substantial portion of Dover sole. There is concern that if the Deep Water flatfish species group is not controlled via the co-ops that a race for fish could occur with the TAC being exceeded and bycatch performance diminished. The analysis should consider whether these concerns are warranted to determine if this species should be allocated or if other management measures may effectively address a potential race for fish or other constraints that could arise from this species. This discussion should balance the objectives of meeting OY and bycatch management.

Dusky rockfish in both the WGOA and WYAK is the final species group that needs special consideration. It is unclear if the species should be fully allocated to historical participants with or without some MRA management measure can address management concerns. The analysis should consider the tradeoffs for the different management options for the objectives of the overall program.

Secondary Species – Discussion document (page 81 –82 in document).

Industry response: Secondary species considered for MRA management, allocation, or cooperative management include sablefish, skates, thornyhead rockfish, shortraker rockfish, rougheye/blackspotted rockfish and other rockfish. Management decisions for these species will require additional analysis. **In all cases, options for analysis should be for management under 1) Current MRA, 2) reduced MRA to control harvests, 3) allocations, and 4) required cooperative measures to control harvests.** If a

secondary species is allocated to historical participants and made available via the cooperative formation structures, directed harvests of these species would be allowed (similar to the CGOA rockfish program) since the co-ops will be held to these species allocations. In addition, the Council should consider whether for certain species where MRA management is maintained and with a history of TAC overages each cooperative would be required to adopt measures to ensure that ICAs are not exceeded, as a prerequisite for cooperative formation.

In general, allocations may be the most limiting because of the constraint arising from overharvest and may not allow for achieving OY.

Future analysis should consider incidental catch rates of these species.

6. Sector allocation of target species, secondary species and PSC

Sector allocations of target species and secondary species (discussion document page 11): "The Council's motion states that sector allocations of target and secondary species will be based on each sector's harvest share during the qualifying period selected. Harvest is defined in regulations as the catching and retaining of any fish. Staff assumes that, as written, this means that at-sea discards will not count toward the percentage of a species that was harvested in each of the two sectors."

Industry Response: **For allocations of target species the analysis should evaluate allocations for each target based on total catch, retained catch with meal, or retained catch without meal should be analyzed.**

In determining the basis for making secondary species allocations, total catch, retained catch with meal, or retained catch without meal should be analyzed. Species that are caught in quantity by multiple gear types must be carefully considered. Species that are managed by MRAs can change management status over the calendar year from bycatch status to PSC status so retained catch may not be a good metric for the needs of the different sectors. In these cases, total catch may be a better metric. For sablefish allocated to the trawl sector, both retained catch and total catch should be considered for possible allocation and management complications arising from allocation of the species should also be considered. Additional information will be required for making these determinations, including incidental catch rates, MRA percentages, maximum retainable tonnages based on catches of basis species and catch status of the fishery. Well-structured analysis of each species may be used to prevent this analysis from becoming excessive.

PCS sector allocations (discussion page 12 – 15): The analysts have approached allocation at the species level rather than at the complex level (deep-water and shallow-water) for two reasons: (1) PSC rates vary by target within each complex, and (2) rollovers to the fifth halibut PSC season (from the CGOA Rockfish Program and from other halibut PSC not used in the previous seasons) – which is not divided between the deep and shallow-water complexes- would need to be assigned to some target fishery. A species-by-species approach makes the allocation of PSC limits more straight forward.

Industry response: **Figure 1 on page 15 shows a division of PSC that recognizes the relative PSC needs of the different sectors in their respective fisheries.** We support this approach for initial allocation understanding that PSC restrictions by area, season and fishery complex are removed and that a

cooperative's PSC apportionment could be used to support harvests in any target fishery in any Gulf area.

At the sector level, Chinook PSC currently apportioned for multispecies groundfish (i.e., non-pollock) is divided based on the recently decided apportionments. In the catcher vessel sector, a set aside is made to the CG Rockfish program based on potential needs of that fishery. The catcher processor apportionment and the remaining catcher vessel apportionments are then divided by area based on the relative PSC usage across areas. Within each area, these apportionments would then be divided based on NMFS target designations further recognizing the different PSC demands in the different target fisheries and of their participants. Use of this methodology will maintain allocations based on historical participation patterns and PSC demands of the different fisheries and their participants

Similarly, halibut PSC would be first apportioned by sector based on relative PSC usage by the sectors. This distribution recognizes current participation patterns and historical demands of the sectors. As with Chinook PSC, within each sector distributions would be made to each management area and then to each target fishery based on historical usage. These distributions recognize historical usage.

The proposed distributions recognize historical PSC demands and usage of current participants in the fisheries. These patterns of usage are consistent with prior distributions of the Council throughout its management programs. Differentiating PSC distributions by sector and management area are important to recognizing not only the different distribution of PSC in those areas and in the different fisheries of the sectors, but also the different distribution of effort by the sectors.

WYAK Chinook allocation: In developing the sector allocations of Chinook salmon for the non-pollock and pollock fisheries, the Council failed to include any limit for Chinook salmon catch for WYAK fisheries. **Since WY catches of Chinook are currently unlimited, industry supports the development of Chinook limit in WYAK trawl fisheries based on historical Chinook catches in the fisheries; This Chinook limit should be apportioned to licenses in the same manner as the prescribed for other PSC limits in figure 1 on page 15.**

Rockfish program rollovers for Halibut and Chinook PSC (page 85): "NMFS in-season will need clear protocols defining to whom unused Rockfish Program PSC is rolled over. The Council could to choose divide all rolled over halibut PSC equally among cooperatives (perhaps accounting for CV and CP cooperatives separately), or it could link the rolled-over halibut PSC to groundfish cooperatives on the basis of whether their member LLPs fished in the Rockfish Program. The latter option would enhance the incentive of vessels fishing under the Rockfish Program to minimize halibut PSC, since their groundfish cooperatives would directly benefit from the rollover."

Industry response: **The rockfish cooperatives will designate which groundfish co-ops shall receive the remaining halibut PSC and Chinook salmon PSC.** Use of this approach will ensure that members who avoid halibut receive any benefit from the rollover.

7. Voluntary Inshore Cooperative structure

With regard to the Council framework for a voluntary cooperative program for the inshore sector, we continue to believe the program should recognize and be founded on historical participation and investments by both harvesters and processors in these fisheries. The analysis of elements and options

should address the principle that the new management structure should not result in devaluation of one sector's investments or capital assets to benefit a different sector. From our perspective, the overall objective should be to develop a program that balances the interests of both sectors, does not erode the assets of either sector, and provides similar opportunities for increased benefits to all participants in these fisheries while meeting conservation goals and community needs.

a. Catcher vessel intra sectoral histories: **In considering qualifying year options in the inshore sector, the Council should consider drop zero year for each set of qualifying years along with drop 1 year for each set.**

Multiple cooperatives associate with the same processor - Discussion document (page 35 – 36): "Though it has not developed a full legal opinion on the matter, NOAA GC suggested that the Council might need to consider whether a single processor could be in more than one cooperative. If a processor is limited to one cooperative, then all eligible CVs whose licenses have that plant as the majority of delivery processor (MDP) could choose only that cooperative and limited access. This could force together CV license holders (harvesters) who would prefer not to be associated with one another. The Council could still choose to limit processors to forming one cooperative, but it would eventually need to state why that is the best way to accomplish the overall goals of the program."

Industry response: **Besides having one co-op associated with a processor analyzed, the analysis should evaluate options for multiple cooperatives to associate with the same processor.** The option that would allow for multiple co-ops should include a minimum threshold of LLPs to form a cooperative to prevent multiple one LLP cooperatives associated with the same processor. The effect of multiple cooperatives versus single cooperatives associated with a processor should be evaluated in comparison to the Council's purpose and need statement including the overall bycatch management objectives. The analysis should also consider the effects of the two options on the relationship between harvesters as well as between harvesters and the associated processor.

Harvesters in separate co-ops by region - Discussion document (page 36): "The Council may wish to consider the implications of including a quota "regionalization" measure if a single license cannot be enrolled in more than one cooperative. If a portion of the catch history on a license with a CGOA MDP is regionalized for the WGOA, then the vessel using that license will have to deliver some of its catch to a processor outside of its cooperative. This requirement might weaken the operational relationship between the harvesting vessel and its cooperative processor, which is key to the improved management goals of the program."

Industry response: **LLPs should be allowed to join a cooperative in any region where the LLP has an appropriate area endorsement and qualifying catch history.** The co-op and the associated processor will be working together to meet the objectives of the new fishery management structure. Being segregated from the other harvesters fishing for that processor within the region by belonging to a different co-op (in the other region) could create two different sets of rules for vessel behaviors fishing for the same processor since the co-op membership agreements and fishing plans may vary by co-op.

e. CV cooperative formation threshold: The inshore sectors supports expanding the co-op formation threshold range from the current range of 51 percent to 80 percent of the LLPs associated with a processor. **The cooperative formation threshold range for analysis should be increased to include up**

to 90 percent of the LLPs associated with a processor. The Council could consider requiring that any LLP have associated Gulf QS to be counted toward meeting the threshold.

e. Community sign off: **We do not believe Community representation is necessary in the co-op contracting negotiations and that sufficient community protections are already incorporated into the proposed program.**

8. Voluntary catcher processor Cooperative structure

a. Catcher processor intra sectoral histories: **In the offshore sector the Council should add qualifying year options to drop 1 year for all year sets, drop 2 years for the 2007-2012 and 2003-2012 year sets, and drop 3 years for the 2003-2012 year set**. These options would provide for contingencies and other disruptions that may have prevented a vessel from participating in fisheries during some of the qualifying years.

b. CP history assignment: **CP history should attach to the LLP assigned to the vessel at the time of implementation of the program. CP allocations should be based on Amendment 80 vessel CP trawl landings during the qualifying years that were both harvested and processed aboard the same Amendment 80 vessel.**

c. Number of entities/LLPs to form a CP cooperative (page 38): The Council motion includes cooperative formation threshold options requiring 2 entities and between 2 and4 LLPs. While these are adequate, **the Council could consider requiring that any LLP have associated Gulf QS to be counted toward meeting the threshold.**

9. Fishery dependent community stability (applies to inshore cooperatives)

a. QS or CQ basis for use caps – Discussion document (page 90 - 91): "Part 9 of the Council's motion provides additional resolution on how CV quota control and use limits – caps on quota holdings and vessel caps are currently envisioned. Given that these measures are part of the Council's approach to fishery dependent community stability, they apply exclusively to inshore sector of the proposed program. The Council's motion is not clear on the units by which quota control, use, and processing caps would be monitored."

Industry Response: Applying caps on quota share holdings and vessel harvests in a multispecies fishery is complicated by the variety of allocations. As noted in the discussion paper, **basing share holdings caps on QS units will simplify the application of caps by removing the potential for TAC changes resulting in a shareholder inadvertently exceeding a cap.**

Vessel harvest caps, likewise, could be set as a share of the available QS then applied to annual harvests based on the tonnage of allocations that are yielded by the QS limit. Applying limits in this manner would similarly prevent a vessel cap from becoming overly constraining or liberal because of changes in the relative TACs of species.

a. Processing caps - Discussion document (page 99): "The Council may wish to consider whether setting processor use caps at the aggregate level, as opposed to the allocated species level, might allow a facility to "corner the market" for a valuable species." (Footnote 52 – page 99) "Secondary species will be regionalized indirectly, since the target species they are harvested in association with may be regionalized."

Industry response: Pollock is the dominant landed species for the trawl industry. Setting caps based on aggregated groundfish could potentially lead to a facility "cornering the market for a valuable species" since other species may be landed in minor amounts compared to pollock. For the CGOA rockfish program, separate processing caps are set for (1) aggregated rockfish species; (2) secondary species Pacific cod; and (3) secondary species sablefish. If the Council chooses to allocate secondary species managed under a cooperative structure and remove the MRA regulations, these species may or may not be delivered in a mixed load as suggested by Council staff. The Council should include the following options for analysis:

1) **Processor caps set based on aggregate groundfish (Council Motion)**
2) **Separate caps for Pollock and cod.**
3) **A cap for all allocated secondary species in the aggregate, with a sub-option for a separate cap for sablefish.**

We do not believe a cap is necessary for flatfish species. **If processors have control of some portion of the PSC then options should be analyzed that include caps on processor controlled PSC as well as no cap on processor controlled PSC.**

b. Regionalization - deliveries requirements - in and out of Kodiak - Discussion document (page 101):
"The Council may want to consider whether quota that is regionalized for the CG (but does not have a port landing requirement, if that option is selected) may be delivered to Kodiak, or whether it must be delivered to CG processors outside of the city of Kodiak".

Industry response: For Pollock and Pacific cod quota that does not carry a Kodiak City port of landing requirement and this quota is regionalized for the CG, **this regionalized (but non-Kodiak City) quota may need to be required to be delivered to the community where that quota was originally delivered if a processor is available to accept these deliveries.** If no processor in that community wants to accept these deliveries, then the quota could be delivered to processors within the region including the city of Kodiak. For other target species that may be allocated, the Council should require a port of Kodiak landing requirement for only that percentage of the 1) ABC or 2) TAC that has been harvested.

<u>10. Transferability</u>

a. (Annual) Full transferability for annual use within the cooperative. Cooperatives can engage in inter-cooperative agreements on an annual basis (page 106) - PSC severability:

The Council's motion could be read to permit annual transfers of PSC, but the discussion paper suggests that question has not been fully decided. **To be clear, annual transfers of PSC are important to ensuring that incentives for improvements in PSC usage are greatest and should be permitted**. These annual transfers are important in any structure that has several cooperatives (as is contemplated by the current structure) to ensure that participants can efficiently distribute efforts in the various target fisheries and realize benefits from PSC allocations. Transferable PSC may also be important to addressing variability in PSC rates in the different target fisheries. In the absence of transferability, substantial declines in PSC rates in one fishery may lead to a substantial decrease in PSC avoidance incentives if participants are unable to transfer PSC to others, particularly if the cooperative has little access to other target species.

b. Long term The LLP is transferrable, with the associated history of the target species: Target species history is severable from a CV trawl license.

Non-severability of CP QS: **CP QS should not be severable from licenses**. Limiting this flexibility is important to maintaining fleet composition.

Use caps for CP sector: With non-severable Gulf CP QS, caps in the GOA may not be necessary and could wind up impeding transfer of Amendment 80 QS in the future.

Further analysis of the interaction of the allocations under this program with those in the Amendment 80 program should reveal that **caps are not needed for the catcher processor sector.**

Program Cooling off period - Discussion document (page 107): "If quota is severable from a license, the Council may wish to consider whether the transfers should be limited to members of the same cooperative for the first two years of the program. The proposed inshore cooperative structure would require that, for the first two years of the program, any license holder that joins a cooperative must be in the cooperative associated with the shoreside processor to which the vessel named on that license delivered a majority of its catch during the qualifying period. If inter-year quota transfers between cooperatives are disallowed during the first two years, sales between members of the same cooperative could be allowed. Alternatively, the Council could only allow intra-year transfers during the first two years."

Industry response: **The inshore sector supports a two year cooling off period before long term transfers of QS can occur for the sector.** This allows time for the historical participants to understand the new management structure versus selling out upon implementation due to concerns about the uncertainty of the new program.

For the offshore sector different rules should apply. Any offshore consolidation will likely occur in a more holistic manner that considers activities in both the Bering Sea/Aleutian Islands and Gulf of Alaska. While the Gulf is important to sector participants, Bering Sea/Aleutian Island interests will have a dominant role in these decisions. Since Amendment 80 has been in effect for several years, it is unlikely that the implementation of this program in the Gulf will stimulate any radical change in ownership interests. Consequently, **no limitation on transferability of QS in the CP sector is merited at the implementation of the program.**

<u>13. Sideboards</u>

Non-exempt AFA CV sideboards limits: Discussion document (page 119): "NMFS AKRO SF staff supports eliminating non-exempt AFA CV sideboards for the target and secondary species considered/chosen by the Council for inclusion in the GOA trawl bycatch management plan. The non-exempt AFA fleet will be distributed across 9 co-ops which will make sideboard management complicated. The AFA sideboard restrictions are vessel based while the proposed new program is licensed based. Implementing caps on quota holdings and use in the new program could be an equally effective means to accomplishing the Council objectives."

Industry response: **Removing the Non-exempt AFA GOA sideboard limits for both the allocated and non-allocated species** is appropriate.

GOA Non-AFA Crab Vessel groundfish Harvest sideboards (page 121): "NMFS AKRO SF staff supports eliminating non-AFA Crab Vessel harvest sideboards for the target and secondary species considered/chosen by the Council for inclusion in the GOA trawl bycatch management plan. The Council could consider retaining the sideboards for pot catcher vessel, as these have historically been the only non-AFA vessel sideboards that are large enough to support a directed fishery. There is only one license trawl that is also endorsed for non-trawl gear with a Pacific cod endorsement for both the WGOA and CGOA."

Industry response: **Removing the Non-AFA crab vessel groundfish harvest sideboards limits for both the allocated and non-allocated species is appropriate.** If the Council is concerned about the one trawl license that can participate in the GOA pot cod fishery then **the Council could consider retaining the sideboards that are applicable to the pot catcher vessel sectors in both the Central and Western GOA.**

*Amendment 80 Sideboard Limits (page 122): "*NMFS AK RO SF staff supports removing/eliminating Amendment 80 sideboards if the Council includes the species subject to Amendment 80 sideboards in the GOA trawl bycatch management program. These species include Pacific cod, Pollock, WGOA POP, WGOA northern rockfish, WGOA dusky rockfish, WYAK POP and WYAK dusky rockfish fisheries. In addition, seasonal halibut PSC limits are established for the deep-water and shallow-water complexes. Amendment 80 GOA flatfish eligibility should be maintained."

Industry response: **Removing/eliminating Amendment 80 sideboards and maintaining Amendment 80 GOA flatfish eligibility is appropriate.**

Central GOA Rockfish Program GOA Sideboards Limits (page 123): "NMFS AKRO SF staff supports removing/eliminating RP restrictions and sideboards if the Council includes the Rockfish Program in the GOA trawl LAPP. Allocating the rockfish species currently subject to either restrictions or sideboards to GOA trawl bycatch management program cooperatives would eliminate the need for such sideboards."

Industry response: **The CGOA Rockfish Program sideboards should be removed even if the Rockfish Program LAPP is not rolled into the GOA trawl bycatch management program, except for West Yakutat where removal of sideboards is contingent on whether WYAK rockfish is allocated. All halibut PSC will be allocated to historical participants so halibut PSC exclusive seasonal sideboards that address halibut PSC usage should be removed for both the CP and CV sector.**

CV Pacific cod / pollock – BSAI/GOA exclusivity/time Stand downs: "Vessels leaving the BSAI to fish in the GOA, and vice versa, are required to offload all fish caught before deploying trawl gear in the other regulatory areas of the GOA. Operators of vessels may not deploy trawl gear until the third day after the date that offloading was completed. Vessels transiting from the Western Regulatory Area to the BSAI are also subject to a 3-day stand down requirement. Vessels transiting for the Central Regulatory Area to the BSAI are subject to a 2-day stand down. Stand down regulations were initially implemented to better manage the fisheries, so TACs were not exceeded."

Industry response: **Stand downs should be removed between oceans to allow for harvest efficiencies for both the GOA and BSAI** since cooperatives will have exclusive harvesting privileges a portion of the TAC for the trawl fisheries across the North Pacific.

Halibut management (page 61): "Many potentially adverse impacts of the present GOA trawl halibut PSC management framework could be avoided or reduced if the PSC limit were apportioned between

trawl cooperatives. Allocating trawl PSC could reduce or eliminate the need for halibut PSC to be divided between vessels targeting species in the shallow-water species complex and those targeting species in the deep water species complex."

Industry response: **All complex and seasonal apportions of halibut PSC should be removed.** The current fishery complex and seasonal apportions of halibut PSC are intended to balance effort and maintain a fair distribution of PSC to participants in the different targets. In a fishery with cooperative allocations, there is no need for maintaining these distributions. With each cooperative receiving both target allocations and PSC apportionments, the participants will have an incentive to preserve PSC for use in the various target fisheries (allocated and unallocated) available to its members.

WYAK Pacific cod sideboards: The Council's April motion directs staff to "consider sideboards for prohibition of directed fishing for Pacific cod in the West Yakutat area with trawl gear". NMFS AKRO SF staff does not support this proposal.

Industry response: **No new sideboards are needed for the WYAK Pacific cod fishery.** The TAC has never been reached in this area and one of the goals of the action is to meet OY.

<u>New Section 16. Maximized retention</u>

Full retention - Discussion document (page 49 – 50): "Retention of all primary, secondary, and salmon PSC would be required for CVs fishing under this program. To ensure that all allocated species make it to the plant, NMFS is considering prohibitions on sorting and discarding groundfish while at sea. However, a broad prohibition on sorting and discarding would necessitate changes to regulations regarding MRAs and would have to incorporate provisions for regulatory discards such as halibut PSC and lingcod during certain times of year."

Industry response: Full retention of all *allocated* primary and secondary species and salmon PSC is a reasonable goal depending on the species allocated and also the ability to modify some of the present SSL restrictions. Full retention of all groundfish catches is not practical. While this section of the document suggests full retention conflicts with current MRA regulations, there are also conflicts with Stellar Sea Lion regulations (retention limits for pollock and cod within haul outs, retention limits after Nov 1st, discard requirements for trip limit and retention limits for both pollock and cod due to directed fishery seasonal structures). Arrowtooth flounder degrades quickly and is unmarketable after 24 to 36 hours; requiring full retention of Arrowtooth could require vessels to deliver large amounts of unmarketable fish.

Allocated target rockfish: **Full retention of all allocated target rockfish should be required for those sectors that receive an allocation.**

WY salmon retention (page 60): **The Council should consider requiring retention of salmon caught in West Yakutat trawl fisheries.** This requirement would mirror regulations in the Central and Western GOA and thus remove confusion for fishermen. The present motion requires any Chinook caught to come off the cooperative Chinook PSC cap so retention would allow for the appropriate monitoring via census accountings.

To accomplish **<u>maximized</u> retention of Pacific cod and Pollock** the following modifications to the present regulations should be considered:

Trip limits (page 59): Consider the effects of revising the trip limits – both the prohibition on landing more than 136 mt during a calendar day and landing more than 136 mt in a fishing trip. To balance the concerns of excessive fleet consolidation, efficiencies and retention requirements, **the analysis should consider revising the trip limit from 136 mt to 159 mt and removing the calendar day landing restriction.** The higher amounts recommended reflect many of the present fleet's tanking capacities. **The analysis should also consider declassifying trip limit violations as SSL violations to a regulatory violation under which violations are more likely to result in the vessel surrendering the excessive catch instead of the large fines currently imposed for SSL violations.**

Seasonal Pollock structure (page 61): **Change the pollock fishery structure from the present four seasons to two seasons: Jan 20 to June 10 and June 10 to Nov 1 with 50% of the pollock allocated to the first season and 50% to the second season for the Central/Western stock.** The allocation of pollock for the first half of the year and second half of the year would not change from current GOA-wide percentages.

Seasonal Pacific cod structure (not discussed in the document): The present Pacific cod A and B seasons are defined as Jan 20 to June 10 and June 10 to Nov 1, with historical catch percentages allowed by season, sector, and regulatory area. Directed fishing for the B season opens on Sept 1. **Change the Pacific cod fishery structure to allow B season directed fishing from June 10 to Nov 1.** The present catch limit for the A and B season would not change and would remain as specified in A83 (GOA sector split).

Nov 1 to Dec 31 prohibition of targeting Pacific cod and Pollock: **Allow directed fishing of pollock and cod from Nov 1 to Dec 31 but require that the co-ops continue to limit each species to their seasonal allocations: for Pollock -- 50% first season / 50% second season for the Central/Western stock and for cod the A/B season split as described in A83.**

Prohibition of directed fishing for both Pacific cod and Pollock within haul outs: (not discussed in the document): We suggest **modifying the current regulations to match those for the modified non-pelagic trawl gear requirements: a trip is considered in the flatfish target is if more than 50% of the landed catch (round pounds) is flatfish (shallow water flatfish, deep water flatfish, arrowtooth, flathead sole, and rex sole in the aggregate).** Retained catch in this instance is what is kept after the vessel has sorted the catch at sea. This standard is more lenient than the present MRA standard for retention for cod and pollock in the flatfish target: 20% or less for the flatfish basis species on a tow-by-tow basis. Additionally, **changing the MRA enforcement period for all fisheries in the GOA to an offload-to-offload basis** will help maximize retention as well (council discussion document to change to "MRA Enforcement Period").

INDUSTRY COMMENTS ON OTHER RECOMMENDATIONS IN THE DISCUSSION DOCUMENT

<u>Inshore Monitoring:</u>

ATLAS requirement - Discussion document (page 50): "The CVs participating in the CGOA Rockfish Program are currently required to provide the computer for the ATLAS software but are not required to provide the ability to transmit data while at sea. Under these regulations, observers enter all their data into the ATLAS software that is installed on a computer provided by the vessel. Once the vessel returns to port to offload catch, the observer downloads their data to a memory stick and transmits the data

from a shore-based computer with internet access at the processing plant. However there can be delays in the availability of the observer data if the observer was unable to get access to a computer. One way to avoid these problems and to increase the timeliness of the data while still minimizing costs to the vessel might be to require processing plants to provide wireless access to the internet at the dock." Industry response: Both transmission options should be available with the processor being allowed to choose between the two options; memory stick with transmission from a shorebased computer or wireless transmission at the dock. Allowing the processor to choose the most reliable transmission method for their facility will improve observer data delivery timelines. While virtually all the processors have wireless access at the dock, in many cases it is not dependable and the ability to connect is influenced by which portion of the dock the vessel is positioned as well as high/low tides.

Processor 200% observer coverage - Discussion document (page 51 – 52): "Additional tools would be needed if the Council recommends transferrable allocations of Chinook salmon PSC that are based on a census count at the processing plant. To support A91 in the Bering Sea, shoreside processors are also required to have 200% observer coverage so that all deliveries can be monitored and that the entire offload for each delivery can be monitored to sort and sample salmon. The same provision would apply in order to implement transferable salmon PSC in the GOA that is based on a census."

Industry response: The GOA processors are not of the same size and scale as in the Bering Sea and the expense of 200% observer coverage along with other costs of processor monitoring would be excessive. The costs of monitoring could prevent new processors from entering the fishery or cause consolidation of the present processor participants. The Council should explore a different combination of monitoring tools for GOA processors that include expanding the shorebased Catch Monitoring and Control Plan (CMCP) specialist role, vessel observers that monitor vessel offloads as currently occurs in the GOA pollock fisheries, expanded CMCP requirements for processors versus just repeating what is presently in place in the Bering Sea for A91 and requiring 200% observer coverage.

<u>CGOA Rockfish program:</u>

Merging the Rockfish Program with the new program (page 56 -58): "The Council may wish to consider whether the CGOA Rockfish Program could be integrated with the proposed GOA Trawl LAPP. NMFS has contributed a recommendation for the incorporation of the Central GOA Rockfish Program into the proposed GOA trawl LAPP."

Industry response: Rolling the rockfish program into the main program will add a layer of complexity that will delay the main program. The rockfish program is required to be reauthorized once it sunsets in 2022 which is the appropriate timeline to consider whether it is appropriate to merge the two programs. The different target fishery allocations and MRA structures will complicate any effort to merge the programs. If not carefully considered, a merged program could prevent Council objectives from being met in either the rockfish fishery or other Gulf fisheries, or both. **The position of the industry is not to merge the two programs at this time.**

CONCLUSION

The industry workgroup developed the attached revised Council motion for development of elements and options for an alternative (Attachment 1) for analysis for a GOA wide trawl bycatch management

plan. We have provided options to assist the analysts, and specific and final design elements will be refined based on this analysis.

The appropriate program structure is critical to industry so that we can continue to provide current or expanded harvest levels into the global fish market. Allowing our industry to be competitive in a global market place is the key to a successful program along with meeting Council objectives for a GOA trawl bycatch management program.

Thank you for your consideration of our comments.

Julie Bonney
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Heather Mann
Mid-water Trawlers Cooperative

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Alaska Whitefish Trawlers Association

Brent Paine
United Catcher Vessels

Lori Swanson (for Chris Woodley)
Groundfish Forum

Glenn Reed
Pacific Seafood Processors Association

Attachment 1 to October 2014 letter to the Council

(additions in **bold**, deletions in ~~strikeout~~)

___ C-2 GOA Trawl Bycatch Management
Council motion April 11, 2014 **with industry recommendations**

The Council requests that staff provide a paper reviewing the expanded program structure described below and a preliminary evaluation of the combined effects of several primary elements. The paper should continue to evaluate whether and how the elements of this design address the objectives in the Council's purpose and need statement. The intent is to receive feedback characterizing: 1) how the fishery would operate under the new design; 2) how well it may meet the Council's stated objectives; and 3) which decision points are necessary to transform the program structure into alternatives for analysis.

GOA Trawl Bycatch Management Program

1. Bycatch management

The primary objective of this action is to improve incentives for PSC reduction and PSC management, achieved in several ways through this program design.

a. Reduced PSC: The Council intends to adopt a program to: (1) minimize Chinook salmon bycatch, and (2) achieve more efficient use of halibut PSC, allowing some efficiency gains to provide additional target fishery opportunity while leaving some halibut PSC savings in the water for conservation and contribution to exploitable biomass.

b. Cooperative management: A system of cooperative management is best suited to managing and reducing bycatch (such as, hotspot program, gear modifications, excluder use, incentive plan agreements) while maximizing the value of available target species. Cooperatives are intended to facilitate a flexible, responsive, and coordinated effort among vessels and processors to avoid bycatch through information sharing and formal participation in a bycatch avoidance program.

c. Gear modification. Option: gear modifications for crab protection.

2. Observer Coverage

All trawl catcher vessels in the GOA will be in the 100% observer coverage category, whether they participate in the voluntary cooperative structure or the limited access fishery with trawl gear. NMFS will develop monitoring and enforcement provisions necessary to track quota, harvests, and use caps for catcher vessels and catcher processors.

3. Areas

Western Gulf, Central Gulf, West Yakutat

4. Sector eligibility

Inshore sector: Shoreside processors and harvesters that meet the qualifications under the cooperative program. Allocations are based on trawl landings during the qualifying years with a CV trawl LLP or a CP trawl LLP that did not process catch onboard. Any CP LLP not used to process catch offshore during the qualifying years will be converted to a CV LLPs at the time of implementation.

Offshore sector: ~~Am 80 vessels, and their replacement vessels, defined in Table 31 CFR Part 679, and their current LLPs. Allocations are based on trawl landings during the qualifying years with a CP trawl LLP that processed catch onboard.~~

Offshore eligible vessels should be Amendment 80 vessels (as listed in Table 31 CFR Part 679); their replacement vessels; and the current GOA trawl LLPs on the Amendment 80 vessels and their replacement vessels.

5. Allocated species

Target species:

Pollock (610/620/630/640) **– inshore sector allocations/offshore sector MRA**
Pacific cod (WG/CG) – **inshore sector allocations/offshore sector MRA**
WGOA Pacific Ocean Perch – inshore sector MRA/offshore sector allocations
WGOA Northern Rockfish – inshore sector MRA/offshore sector allocations
WYAK Pacific Ocean Perch – inshore sector MRA or allocations/offshore sector allocations

CGOA Arrowtooth flounder – no allocation or sector split
WGOA Arrowtooth flounder – no allocation or sector split
CGOA Flathead sole – no allocation or sector split
WGOA Flathead sole – no allocation or sector split
CGOA Shallow water flatfish – no allocation or sector split
WGOA Shallow water flatfish – no allocation or sector split
~~Additional target species for consideration include:~~
~~CGOA flatfish: Rex sole, arrowtooth flounder, and/or deep water flatfish~~
~~WGOA rockfish and WY Pacific ocean perch~~

For the following species, additional analysis should be done to determine the correct management measures:
WGOA Dusky rockfish
WYAK Dusky rockfish
CGOA Rex sole
WGOA Rex sole
CGOA deep water flatfish
WGOA deep water flatfish

Secondary species **management**:

For each of the following species, options should be for management that should be considered are 1) Current MRA, 2) reduced MRA to control harvests, 3) allocations, and 4) required cooperative measures to control harvests.

Sablefish (that not allocated under the CG Rockfish Program)
~~CG~~Skates (big and longnose)
Thornyhead rockfish **(that are not allocated under the CG Rockfish Program)**
Shortraker rockfish **(that are not allocated under the CG Rockfish Program)**
Rougheye/blackspotted rockfish **(that are not allocated under the CG Rockfish Program)**
Other rockfish
Consider whether **continued maximum retainable amounts (MRA) management at present levels/reduced levels or** cooperative measures would be an effective approach to managing secondary species, as opposed to cooperative allocations.

For all allocated target species, the analysis should consider the feasibility of using management options under which non-directed catches of allocated species would be deducted from an ICA, rather than a cooperative allocation.

PSC species: Halibut and Chinook salmon

6. Sector allocations of target species, secondary species, and PSC

Allocations to the trawl CV sector for WG and CG Pacific cod (Am 83), CGOA rockfish program (Am 88), and GOA pollock (Am 23) are maintained. Allocations to the trawl CP sector for the CGOA rockfish program are maintained. GOA flatfish eligibility for the trawl CP sector under Am 80 is maintained.

Pollock and Pacific cod:
Pollock and Pacific cod TACs would be allocated to the inshore sector; the offshore sector would receive an incidental catch allowance (ICA) for Pacific cod and pollock and be managed under ~~maximum retainable amounts (~~MRAs~~)~~.

Other target species and secondary species: If other target and/or secondary species are allocated under the program, sector allocations would be based on each sector's ~~harvest share~~ **retained catch (with or without fish meal) or total catch** from:

Option 1. 2008 – 2012
Option 2. 2007 – 2012
Option 3. 2003 - 2012

In addition to the options based on catch history above, options for establishing WG and WY rockfish sector allocations include:

Option 1. Allocate based on Am 80 sideboards (dusky rockfish would be recalculated based on dusky rockfish harvest only)
Option 2. Allocate to the CP sector only. The CV sector is prohibited from directed fishing and managed under MRAs.

PSC sector allocations:
Chinook salmon PSC apportionments to support the non-pollock trawl CV and CP sectors (excluding CG rockfish program for the CV sector) are based on GOA Amendment 97. The Chinook salmon PSC limit to support the pollock trawl fisheries **(Amendment 93)** is a CV allocation only. ~~Any Chinook salmon PSC caught in WY comes off the cooperative's Chinook salmon PSC limit.~~

Since WY catches of Chinook are currently unlimited, a Chinook limit in WYAK trawl fisheries should be developed based on historical Chinook catches in the fisheries. This Chinook limit should be apportioned to licenses in the same manner as the prescribed for other PSC limits

Halibut PSC apportionment between the CP and CV sectors will be based on halibut PSC use during:

Option 1. 2008 - 2012
Option 2. 2007 – 2012
Option 3. 2003 - 2012

Rockfish program PSC

Any rockfish program PSC that would rollover for use in other fisheries under the current rules (i.e., after the set aside for halibut savings) will be rolled over for use by the sector of the rockfish cooperative that has remaining halibut PSC. Remaining halibut and chinook PSC will be distributed to Gulf program cooperatives as directed by the rockfish program cooperative with unutilized PSC.

7. Voluntary inshore cooperative structure

    a. Annually allocate target species at the cooperative level, based on aggregate retained catch histories associated with member vessels' LLPs:

        Option 1. 2008 – 2012 **(no drop year or 1 drop year)**
        Option 2. 2007 – 2012 **(no drop year or 1 drop year)**
        Option 3. 2003 - 2012 **(no drop year or 1 drop year)**

b. Apportion halibut PSC and Chinook salmon PSC limits to each cooperative on a pro rata basis relative to target fisheries of GOA trawl vessels in the cooperative [such as, pollock Chinook salmon PSC cap divided based on pollock landings; non-pollock Chinook salmon cap divided based on non-pollock landings (excluding rockfish); halibut PSC apportioned in proportion to target groundfish landings associated with cooperative members' LLPs.] PSC ~~could~~ **would** be further divided based on use in target fisheries or fisheries groupings, prior to being allocated to each cooperative on a pro rata basis. Once in the cooperative, PSC **restrictions by area, season and fishery complex are removed and** can be used to support any target fisheries within the cooperative.

   Option: Each processor controls a portion of PSC within a cooperative and negotiates terms of access through private agreement. The processor would activate the incremental PSC through NMFS, making it accessible to the cooperative. PSC made available by these agreements cannot be used by processor-owned vessels.

c. Participants can choose to either join a cooperative or operate in a limited access fishery [sector-level, non-transferable target allocations and PSC]. Harvesters would need to be in a cooperative with a processor by November 1 of the previous season to access a transferable allocation.

d. Initial (2 years) cooperative formation (suboption: in the first two years of each harvester's participation in a cooperative) would be based on the majority of each license's historical landings (aggregate trawl groundfish deliveries, excluding Central GOA rockfish harvested under a rockfish cooperative quota allocation) to a processor during:
   Option 1. The qualifying years for determining target species allocations
   Option 2. 2011 – 2012, or the two most recent qualifying years they fished

e. LLP licenses will be allowed to form one cooperative based on the QS of the license for each region (CGOA/WYAK and WGOA). If they have qualifying history for each region then the LLP can be in a cooperative in each region. Initial formation of the cooperative would require a cooperative contract with their affiliated processors signed by (options: 51% - 90%) of the license holders eligible for the cooperative and the processor. Cooperative members shall internally allocate and manage the cooperative's allocation per the cooperative contract.

Option: Multiple cooperatives would be allowed to form with a processor within a region. A minimum of 2 or 3 (range for analysis) LLPs are required to form a cooperative.

An LLP is eligible for cooperative membership in any area in which it carries an area endorsement.

~~f. Each cooperative would be required to have an annual cooperative contract filed with NMFS. Initial formation of the cooperative would require a cooperative contract signed by (options: 51% - 80%) of the license holders eligible for the cooperative and the processor (option: and community in which the processor is located). Cooperative members shall internally allocate and manage the cooperative's allocation per the cooperative contract.~~

f. The annual cooperative contract must include:

- Bylaws and rules for the operation of the cooperative
- Annual fishing plan
- Operational plan for monitoring and minimizing PSC, with vessel-level accountability, as part of the annual fishing plan
- Clear provisions for how a harvester and processor may dissolve their contract after the cooling off period of two years. If a harvester wants to leave that cooperative and join another cooperative or the limited access sector, they could do so if they meet the requirements of the contract.

- Specification that processor affiliated harvesters cannot participate in price-setting negotiations except as permitted by general anti-trust law.

g. Additional contract elements (such as, bycatch management, active participation, mechanism to facilitate entry, community provisions) may be required to ensure the program is consistent with Council objectives.

h. Full transferability for annual use by other harvesters within the cooperative. Cooperatives can engage in inter-cooperative transfers of annual allocations **(including PSC)** to other cooperatives on an annual basis. Inter-cooperative transfers must be processed and approved by NMFS. Inshore allocations can only be transferred to and used by inshore cooperatives.

i. Cooperative members are jointly and severally responsible for cooperative vessels harvesting in the aggregate no more than their cooperative's allocation of target species and PSC allowances, as may be adjusted by annual inter-cooperative transfers.

j. Cooperatives will submit a written report annually to the Council and NMFS. Specific criteria for reporting shall be developed by the Council and specified by NMFS as part of the program implementing regulations.

k. Permit post-delivery transfers of annual allocations among cooperatives. All post-delivery transfers must be completed by December 31.

8. Voluntary catcher processor cooperative structure

a. ~~Annually allocate target species at the cooperative level, based on aggregate total catch histories associated with member vessels' LLPs~~**CP history should attach to the LLP assigned to the vessel at the time of implementation of the program. CP allocations should be based on Amendment 80 vessel CP trawl landings during the qualifying years that were both harvested and processed aboard the same Amendment 80 vessel. Qualifying years:**

Option 1. 2008 – 2012 **(drop 1 year)**
Option 2. 2007 – 2012 **(drop 1 or 2 years)**
Option 3. 2003 – 2012 **(drop 1 year, 2 years or three years)**

b. Apportion halibut PSC and Chinook salmon PSC limits to each cooperative on a pro rata basis relative to target fisheries of vessels in the cooperative [such as, non-pollock Chinook salmon cap divided based on non-pollock landings; halibut PSC apportioned in proportion to target groundfish landings associated with cooperative members' LLPs.] PSC ~~could~~ **would** be further divided based on use in target fisheries or fisheries groupings, prior to being allocated to each cooperative on a pro rata basis. Once in the cooperative, PSC **restrictions by area, season and fishery complex are removed and** can be used to support any target fisheries within the cooperative.

c. Participants can choose to either join a cooperative or operate in a limited access fishery [sector-level, non-transferable target allocations and PSC]. No later than November 1 of each year, an application must be filed with NMFS by the cooperative with a membership list for the year. In order to operate as a cooperative, membership must be comprised of:

Option: at least 2 separate entities (using the 10% individual and collective rule) and/or
Option: at least [2 – 4] eligible LLP licenses
Suboption: an LLP must have associated QS to count toward the threshold.

d. Cooperative members shall internally allocate and manage the cooperative's allocation per the cooperative contract. Cooperatives are intended only to conduct and coordinate harvest activities of the members and are not FCMA cooperatives.

e. The contract would require signatures of all LLP holders in the cooperative. The annual cooperative contract must include:
   - Bylaws and rules for the operation of the cooperative
   - Annual fishing plan
   - An operational plan for monitoring and minimizing PSC, with vessel level accountability, as part of the annual fishing plan
   - ~~Specification that processor affiliated harvesters cannot participate in price setting negotiations except as permitted by general anti-trust law.~~
   - A cooperative may adopt and enforce fishing practice codes of conduct as part of their membership agreement.

f. Full transferability for annual use by other harvesters within the cooperative. Cooperatives can engage in inter-cooperative transfers of annual allocations to other cooperatives on an annual basis. CP annual cooperative allocations may be transferred to inshore cooperatives; inshore annual cooperative allocations cannot be transferred to CP cooperatives. Inter-cooperative transfers must be processed and approved by NMFS.

g. Cooperative members are jointly and severally responsible for cooperative vessels harvesting in the aggregate no more than their cooperative's allocation of target species, secondary species, and PSC, as may be adjusted by annual inter-cooperative transfers.

h. Cooperatives will submit a written report annually to the Council and NMFS. Specific criteria for reporting shall be developed by the Council and specified by NMFS as part of the program implementing regulations.

i. Permit post-delivery transfers of annual allocations among cooperatives. All post-delivery transfers must be completed by December 31.

9. Fishery dependent community stability (applies to inshore cooperatives)
   a. Consolidation limits
      - Vessel **and individual use** caps and limits**.** ~~on the percentage of the total allocation that a person can hold (accessible only through a cooperative).~~

      Harvester use caps in each region (WG and CG/WY). **Individual use caps define the percentage of quota share units that a person can hold (accessible only through a cooperative).** Harvesters that exceed these percentages **on initial allocation** are grandfathered into the program. No person may hold or use more than the following percentage of target species CV shares **of 1) pollock, 2) Pacific cod, and 3) sablefish (if allocated)**, using the individual and collective rule:
      Option 1. 3%
      Option 2. 5%
      Option 3. 7%

      Vessel use caps are applicable within the cooperative. **Vessel use caps define the portion of the total allocation that may be harvested by a vessel (based on the tonnage of annual quota derived from a specified percentage of the quota share pool).** A vessel may not be used to harvest more than the following percentages of target species cooperative quota issued to the CV sector:
      Option 1. 3%
      Option 2. 10%
      Option 3. 15%

      - Processor use caps **in quota share units**

      Processor use caps (facility-based) in each region (WG and CG/WY). Processors that **historically** exceed**ed** these percentages **in the qualifying years** are grandfathered into the program. No

processor shall receive or process more than the ~~following~~**processing cap limit. Options for analysis include**~~percentage of~~ **1) aggregate groundfish;** ~~aggregate~~ **2) pollock and cod** target species cooperative quota**; and 3) allocated secondary species (with a suboption to define a separate limit for sablefish)** issued to the CV sector.

Processing cap percentage options:

Option 1. 10%
Option 2. 20%
Option 3. 30%

Suboption: If processors control a portion of PSC within a cooperative the Council should analyze options that include 1) setting an appropriate cap limiting the portion of the processor controlled halibut and Chinook PSC ; and 2) no cap.

b. Target species quota would be required to be landed in the region in which it is designated (WG or CG/WY designation) based on historical delivery patterns during the following years:
   Option 1. The qualifying years for determining target species allocations
   Option 2. 2011 - 2012
   Option 3. Target species CG quota that has historically been landed in **the City of** Kodiak would have a port of landing requirement to be delivered ~~to~~ **in the City of** Kodiak; CG quota not historically landed in **the City of** Kodiak would be regionalized (WG or WY/CG)~~.~~ **and be required to be delivered to the community in which the qualifying landing was historically processed, if a processor is available to process those landings. If no processor in that community wants to accept these deliveries, then the quota could be delivered to processors within the region including the City of Kodiak.**

c. Require individuals or entities to meet fishery participation criteria in order to be eligible to purchase an eligible trawl license with associated history.

10. Transferability
    a. (Annually) Full transferability for annual use within the cooperative. Cooperatives can engage in inter-cooperative agreements on an annual basis~~.~~ **of any allocations including target species, secondary species, and PSC.**

    b. (Long-term) The LLP is transferable, with the associated history of the target species (which, when entered into a cooperative, brings with it a pro rata share of PSC.)

    Target species history is severable from a CV trawl license and transferable to another eligible CV trawl license (which, when entered into a cooperative, brings with it a pro rata share of PSC). Transferred history retains the regional delivery designation. **A two year cooling off period for long-term transfers of CV QS is required.**

    QS is non-severable from the associated CP trawl license and no two year cooling off period applies.

11. Gear conversion

Upon further development, the Council could include gear conversion provisions that allow Pacific cod trawl CV allocations to be fished with pot gear, although any harvest would continue to be deducted from the vessel's annual trawl quota account and would not affect the pot gear Pacific cod sector allocations.

12. Limited access trawl fisheries (CV and CP)

If a license holder chooses not to join a cooperative, it may fish in the limited access fishery. Under the limited access fishery, the LLP's historic share of (non-transferable) target species will be fished in a competitive fishery open to all trawl vessels in the sector who are not members of a cooperative. The catcher vessel limited access fishery will be subject to all current regulations and restrictions of the LLP and MRAs.

PSC limits in the limited access fishery will retain status quo apportionments by area, season, and/or fishery. Halibut and Chinook salmon PSC limits are annually apportioned to the limited access fishery on a pro rata basis relative to groundfish catch histories associated with LLPs that are not assigned to a cooperative, as reduced by [options: 10% - 30%].

13. Sideboards

~~Consider whether~~ **Remove 1)** sideboards **in the GOA** that apply under the Rockfish Program for the CV and CP sectors, **2) Gulf sideboards on** non-exempt AFA CV ~~sideboard limit~~s, **3) Gulf groundfish sideboards on** non-AFA crab vessel**s** ~~groundfish sideboards,~~ **(except for sideboards applicable to pot fishing), 4)** ~~and~~ Amendment 80 groundfish and halibut PSC sideboard limits ~~in the GOA should be removed~~ **and 5) CV Pacific cod/pollock – BSAI/GOA exclusivity/time stand downs.**

The removal of West Yakutat rockfish program sideboards is contingent on whether WYAK rockfish is allocated.

~~Consider sideboards for or prohibition of directed fishing for Pacific cod in the West Yakutat area with trawl gear.~~ Consider sideboards on directed fishing for Pacific cod with pot gear in the WG and CG (harvest that accrues to the Pacific cod pot sector allocations).

14. Program review

Per the Magnuson Stevens Act, a program review would be conducted five years after implementation and every seven years thereafter.

15. Cost recovery and loan program

Per the Magnuson Stevens Act, a cost recovery program would be implemented to recover the incremental agency costs of the program related to data collection, analysis, and enforcement, up to a maximum of 3% of the ex-vessel value from landings of species allocated under the program. Up to 25% of cost recovery fees may be set aside to support a loan program for purchase of shares by fishermen who fish from small vessels and first-time purchases of shares under the program. Loan qualification criteria would need to be defined.

~~The Council also requests further information on latent trawl licenses and their effect on the proposed cooperative program, to evaluate the need for further recency criteria in the WG and CG trawl CV sectors.~~

16. Maximize Retention

Full retention of allocated target rockfish, pollock, Pacific cod and any allocated secondary species as allowed by regulation.

Consider modifying SSL regulations as follows:

Trip Limits: Remove daily landing limit and revise the fishing trip limit to 159 mt. Declassify the trip limit violation from a SSL violation to a regulatory violation.

Pollock Seasonal Structure: Change the pollock fishery structure to two season: Jan 20 to June 10 and June 10 to Nov 1. The allocation of pollock for the first half of the year and second half of the year would not change from current GOA-wide percentages.

Pacific cod Seasonal Structure: Change the Pacific cod fishery structure to allow B season directed fishing from June 10 to Nov 1.

Nov 1 to Dec 31 prohibition of targeting Pacific cod and Pollock: Allow directed fishing of pollock and cod from Nov 1 to Dec 31 but require that the co-ops continue to limit each species to their seasonal allocations.

Prohibition of directed fishing for both Pacific cod and Pollock within haul outs: Revise the flatfish trip target definition where a trip is considered in the flatfish target if more than 50% of the landed catch is flatfish.

Change the MRA enforcement period for all fisheries in the GOA to an offload-to-offload basis.

December 11, 2015

Dan Hull, Chair
North Pacific Fishery Management Council

Dr. Jim Balsiger Regional Director
Alaska Region, National Marine Fisheries Service

Re: Comments related to Council Agenda Item D 1 for the December 2015 meeting of the North Pacific Fishery Management Council and the preparation of a Draft Environmental Impact Statement and associated staff workplan.

Gentlemen:

These comments are provided in regard to Agenda item D1 for the December meeting, and as scoping comments pursuant to the National Environmental Protection Act (NEPA). NEPA requires that environmental analyses be informed by a thorough scoping of relevant issues to be analyzed and addressed in any associated Environmental Impact Statement. On July 14, 2015 NMFS announced its intention to prepare an EIS on this action due to significant impacts on the human environment. Although the official scoping period is past, we understand additional scoping and opportunities for public comment are ongoing on the range of issues that need to be evaluated as the Council considers developing a Gulf of Alaska Trawl Bycatch Management Program.

At the Council's October 2015 meeting, a new alternative was added to the suite of alternatives already under consideration. Alternative 2 has been the subject of numerous meetings and opportunities for public comment over the past 2-3 years. Despite the long record on this Alternative, a significant analytical workload remains. The new Alternative 3 (using staff proposed re-numbering) was presented at the end of the October meeting with no provision for the public to review and comment on the proposal. It was not available for public comment at the meeting, nor in scoping the comments NMFS collected prior to the October Council meeting. To our knowledge, there's no management structure globally like Alternative 3 for us to look to assess and understand likely impacts.

At the December meeting the Council is only considering the staff workplan for preparation of the Draft Environmental Impact Statement (DEIS). Review and public comment on Alternative 3 is again reserved for a future meeting.

The workplan reflects Council direction to use a "build up" approach rather than providing a complete analysis after an extended period. We urge the Council and the agency to follow the proven process for shaping significant amendment packages, through multiple iterations of alternatives based on comprehensive preliminary analyses. The staged approach outlined in the workplan appears to envision a process that would focus on different sets of issues each meeting rather than an iterative approach to refine alternatives. We are concerned the current schedule for this action will not provide sufficient opportunities for the affected industry and fishery dependent communities to fully evaluate and provide thoughtful comment on all the Alternatives under consideration. This action will be far reaching, and each of the Alternatives could have significant effects on harvesters, processors, and fishery dependent communities.

Below, we have identified major topics which we believe need to be addressed by staff analyses prior to the Council's next review of this agenda item. If this is not possible to do in a thoughtful and reasonably complete manner by February, then we suggest the proposed schedule be adjusted accordingly. Failing to offer a full preliminary analysis, with ample time for review by all stakeholders prior to the Council meeting where these analyses will be discussed shortchanges the public process and increases the possibility of unintended consequences of Council action. The intent and requirements of NEPA must be met, and we urge the Council take advantage of the information a NEPA analysis will generate rather than make decisions that leave NMFS with the responsibility of meeting the analytical and public process requirements after Council action.

The issues outlined in this letter pertain primarily to the inshore sector, and include the following:

1. Alternative 4 - CFA development. Staff have based their workplan and proposed schedule on the desire to have community issues discussed at the June 2016 meeting in Kodiak, emphasizing that Kodiak is one of the main communities this action will affect. In order for the preliminary analysis to provide useful information regarding the effects of Alternative 4, and to provide a meaningful comparison between all the Alternatives, Alternative 4 must be more fully developed. Otherwise, the analysis will simply be speculative and of little value. It is a requirement of NEPA to fully consider all reasonable alternatives, so in order to ensure compliance with NEPA we support full analysis of Alternative 4. We believe that the Council should strongly encourage proponents of this Alternative to provide the needed additional detail for Alternative 4 at the next meeting where this agenda item is scheduled (currently February 2016) so it can be fully analyzed along with the other Alternatives and provide a basis for a thoughtful discussion at the June meeting in Kodiak. We believe that it is incumbent on the proponents of Alternative 4 to provide additional detail to what is currently before the Council in order for a meaningful analysis to be conducted, and reasonable opportunity

for public comment on this Alternative to occur. We understand the staff's desire to have discussion of community issues be a centerpiece in Kodiak and we concur with their approach. If time is limited, we urge the Council to prioritize review of Alternative 4 at the June 2016 meeting in Kodiak and reschedule review of the broader package for a later meeting.

2. Coop formation and linkages. The staff workplan describes several aspects of co-op formation (Alternative 2 and Alternative 3) that would be reviewed and discussed at the February meeting. Under the heading *Discussion Paper on cooperative formation* the staff workplan speaks solely of effects on harvesters. Both Alternative 2 and Alternative 3 have consequences for processors which need to be thoroughly reviewed and analyzed.

   The staff paper also focuses on "fixed linkages" vs. "free association". We are concerned that these are not accurate descriptions of what is before the Council and that these terms may unduly bias the analysis. For example, from a practical standpoint Alternative 3 is a "no linkage" alternative and should be analyzed in that context. How would control of PSC by a discreet number of harvesting vessels affect the interests of other harvesters as well as processors and fishery dependent communities?

   Fixed linkages would be permanent linkages such as in the initial GOA Rockfish Pilot program. Alternative 2 has criteria for initial voluntary co-op formation and then explicitly allows for subsequent movement by harvesters from one co-op to another, or to a limited access fishery outside the co-op system. There are no permanent linkages under consideration under Alternative 2 or for that matter in any of the Alternatives or their various options. The analysis needs to be clear in this regard.

3. Co-op formation and incentive to participate. The staff workplan intends to explore what incentives may exist under each Alternative for harvesters to join co-ops. What is missing is analysis regarding what incentives there might be for processors to participate in the co-op program under each Alternative. It is clear that Alternative 2 envisions cooperative behavior between harvesters and processors to better manage bycatch and target species harvest. The intent is to provide incentive and opportunity for adding value to the fishery as well as to control bycatch. The Council recognized the benefits of cooperation between harvesters and processors as a way to provide opportunity for all parties: harvesters, processors, and fishery dependent communities. This was front and center when the

Council developed the goals and objectives for this proposed program. Alternative 2 was the result of these considerations. Alternative 3 is less clear in this regard. What needs to be fully explored for discussion in February is a clear description that compares and contrasts the incentives each Alternative provides to industry (harvesters and processors) to participate in co-ops, and how future opportunities for adding value to the fisheries can be achieved under each Alternative.

4. Co-op formation and the single co-op per region option. There are many questions about how the proposed single co-op per region structure would work and what are the potential benefits and pitfalls of such a management structure. In most other programs, co-ops are formed around a single processor. This proposal would have PSC control vested with a single co-op and allow for association with multiple processors.

   What effect would this single co-op structure have on control of target catch or PSC? How would distribution of PSC between harvesters be accomplished, and what impact could this have on individual harvesters? What effect would this have on processor investments and operations? What effect could this have on consolidation within the harvester and processor sectors? What are the effects such an arrangement could have on fishery dependent communities? Could this structure affect price formation, and what monitoring and enforcement measures would be necessary to ensure compliance with anti-trust law? Would the effects of this proposed structure be the same for each fishery in each region? Or are the significant differences between fisheries or regions that need to be considered? These are fundamental questions that need to be addressed after careful analyses in order for the affected industry and the Council can make informed decisions about the Alternatives under consideration.

5. Historical dependence on the fishery. The MSA emphasizes consideration of historical participation by harvesters and processors when developing such programs. The analysis needs to fully and carefully evaluate how each Alternative takes into account historical participation in the fishery by harvesters and processors, and the associated dependence on the fishery by harvesters, processors, and fishery dependent communities. This is fundamental to understanding the tradeoffs within and between Alternatives. Alternative 2 is designed to take into account historical participation. It is less clear how Alternative 3 considers historical participation. The analysis needs to explicitly explore the effects of each Alternative not only on catch history, but also historical landing and delivery patterns, investments by harvesters and processors in the fishery and their dependence on the fishery, employment in the processing sector and support industries, and downstream

effects on the historical pattern of operations and potential effects on non-groundfish fisheries.

6. Effects on investment, and incentive for new capital investments. What are the effects of each Alternative on the capital assets and investments of harvesters, processors, and fishery dependent communities? Throughout the process of developing alternatives for this program, the vast majority of industry participants (harvesters and processors) have agreed that the program should be designed so that the capital assets and investments of one sector would not be devalued to benefit another sector. The analysis should describe how each Alternative would address this fundamental principle. As part of this discussion the analysis should also look at and identify what incentives each Alternative provides for new capital investment by harvesters, processors, and/or fishery dependent communities.

7. Target species allocations vs. PSC only allocations. A thorough review is required for each Alternative as it affects access to major target species and/or species groupings and the costs and benefits of the various approaches to harvesters, processors, and fishery dependent communities. Alternative 2 is explicit in this regard although there are different options regarding which target species might be allocated. Alternative 3 does not anticipate such allocations. There are costs and benefits to each approach. The staff workplan focuses on performing analyses on PSC only, and apparently does not include target catch. Understanding the costs and benefits of each of the Alternatives and the effect on target species catch is fundamental to understanding the differences between each Alternative.

   For example, Alternative 3 has been described as not being a LAPP program under Section 303 (A) of the MSA because it does not specifically allocate individual quota or catch shares of target species. This interpretation of the MSA is novel and we believe the Council should request NOAA GC to provide guidance on this point. Nonetheless, the staff work plan does not speak to the question of control of target species harvest through PSC allocations. At some point control of associated PSC becomes de-facto control of access to the target catch. The analyses needs to explore under what conditions (levels of PSC allocated, number of vessels, etc) would control of PSC result in control of target species catch. The analysis should then describe the impacts such control could have on harvesters, processors, and communities on a fishery-by-fishery basis for each of the GOA regions.

8. Legal Review. Much has been made of the legal questions surrounding certain aspects of co-op formation under Alternative 2 but no comprehensive assessment has been made of other aspects of the alternatives being considered by the Council. A preliminary review of each Alternative and its relation to MSA requirements including national standards, attainment of OY, requirements for considering historical participation, and the provisions covering catch share or limited access privilege programs (LAPPs) under Section 303 (A) needs to be done. This should include an explicit analysis of how the CFA proposal fits under those provisions of Section 303 (A) regarding fishing communities.

As acknowledged in the workplan, there are many other issues and topics that the analysis will need to address. We believe that the issues identified above outline fundamental information that needs to be fully vetted and analyzed early in the process in order for the affected harvesters, processors, and fishery dependent communities (as well as other stakeholders) to understand and make meaningful comment on the various options within each Alternative as well as between Alternatives. There are complex interactions within each Alternative and between the coop alternatives and community protections that the staged or "build up" analytical approach is unlikely to adequately reveal or explain. We encourage the Council and NMFS to ensure that these analyses, and the information they will provide, will be available for public review and comment early in the process, and certainly well in advance of the Council making significant refinements to any of the Alternatives currently under consideration.

Thank you for this opportunity to comment.

Glenn Reed
Pacific Seafood Processors Association

Robert Krueger
Alaska Whitefish Trawlers Association

Julie Bonney
Alaska Groundfish Data Bank

Heather Mann
Midwater Trawlers Cooperative

Dan Hull, Chair
North Pacific Fishery Management Council January 29, 2016

Dr. Jim Balsiger Regional Director
Alaska Region, National Marine Fisheries Service

Re: Comments related to Council Agenda Item C-2 for the February 2016 meeting of the North Pacific Fishery Management Council and the preparation of a Draft Environmental Impact Statement.

Gentlemen:

The organizations listed below represent the majority of fishery participants, harvesters and processors, in the Gulf of Alaska inshore groundfish trawl industry. Our comments are provided in regard to Agenda item C-2 for the February 2016 meeting, Gulf of Alaska Trawl Bycatch Management, and as additional scoping comments pursuant to the National Environmental Protection Act (NEPA).

NEPA requires that environmental analyses be informed by a thorough scoping of relevant issues to be analyzed and addressed in any associated Environmental Impact Statement. This will be the first time that NMFS and the Council have provided an opportunity for the public and affected fishery participants to comment on Alternative 3. Alternative 3 (Alt 3) was presented at the Council's October 2015 meeting with no Council analysis or opportunity for public review or comment.

Background

In preparing these comments it became apparent that it was important to recall how we got here. Over the last few years the Council has adopted significant reductions in halibut PSC caps and established Chinook salmon bycatch caps for Gulf of Alaska (GOA) groundfish fisheries. The majority of the burden of these reductions fell on the GOA trawl sector. The Council has noted on the record that these new and dramatic bycatch reductions/caps were adopted without also providing the trawl industry with a management system that allows it to adapt to these new requirements.

In recognition of this, the Council asked industry to assist it in developing proposals for a new system for managing the GOA trawl fisheries. Industry responded by forming a workgroup and developing concepts for the Council to consider. The overarching principle guiding the industry workgroup was to develop concepts that allowed industry to adapt to these new bycatch

requirements while at the same time providing stability and an economic future for harvesters, processors and fishery dependent communities involved with the GOA trawl fisheries. After 2 years of participation at the Council by harvesters, processors, fishery dependent communities, and other stakeholders the result is the Council's statement of goals and objectives for this program, and Alternative 2 (Alt 2).

There is broad support for the Council's stated goals and objectives. And while there are many details that need to be worked out among the options currently on the table under Alternative 2, there is strong support for the Alternative 2 framework among a majority of the active participants in the fishery.

Agenda Item C-2 Analysis and Staff Discussion Paper

We concur with staff that the discussion paper for Agenda Item C-2 does not present the robust quality analyses necessary to make informed decisions regarding the alternatives. We appreciate the candor of the staff when pointing out the weaknesses with this version of their discussion paper and we look forward to the revised analysis when it is completed. It is undoubtedly a function of the time available between the December meeting and preparation of this document that many issues are either dealt with superficially or not addressed at all. For example, many of the issues identified in the December 11, 2015 industry letter to you are not addressed. We incorporate that letter here by reference, and urge the Council to ensure that the questions and issues identified in that letter are fully analyzed.

We believe a more fundamental problem is Council direction to use a "build up" approach rather than providing a more complete analysis of the alternatives. We remain concerned that this staged approach does not provide sufficient information to fully gauge the interaction of various options within alternatives, or between the various alternatives themselves.

In addition to these considerations, we have the following observations regarding the staff discussion paper. The paper:

1. Significantly underestimates the race for target species that would be fostered by Alt 3.
2. Implies that PSC allocations have no inherent value, and that they are only controlling for fisheries that are PSC limited. The analysis needs to acknowledge that all the fisheries under consideration are PSC limited and that PSC allocations have value potentially as great as the target fishery.
3. Is unrealistic in its assessment of the effects of Alt 3 on cooperation between fishery participants and how co-ops will work, and is not based on real-world experiences. Instead the discussion is mostly theoretical, and overestimates the ability of coops that are founded on Alt 3 allocation schemes to voluntarily address numerous issues.

4. Needs to more fully explore the distributional effects of Alt 3 (non-traditional equal share or capacity based allocations) versus a more traditional approach based on historical fishery participation and practices, and effects of Alt 3 allocation schemes on harvesters, processors, and fishery dependent communities.
5. There is a total lack of analysis of the impact of Alt 3 on current investments by harvesters, processors, and fishery dependent communities; and no discussion regarding differences between Alt 2 and 3 regarding incentives for new investment.
6. The paper is generally silent regarding employment in the processing sector, the role played by the processing sector in fishery dependent community economies, and potential impacts of Alt 3 on processors and the communities they support.
7. Provides minimal discussion of potential impacts on harvesters and processors (including potential anti-trust issues) of the single co-op per area proposed in Alt 3.
8. Presents a superficial analysis/comparison between Alt 2 and 3 community protection measures (port landings, excessive shares, etc).
9. Provides a minimal discussion of Alt 3 and its relationship to the MSA, especially including the LAPP provisions. The discussion regarding National Standards is often confusing and needs considerable work. There is no analysis of the relationship to this action and the MSA practicability standard for bycatch management.

The analysts acknowledge that there are many moving parts in the proposals before the Council, and understanding the consequences of choosing one alternative or option over another is difficult without a more comprehensive analysis. This action will be far reaching, and each of the alternatives could have significant effects on harvesters, processors, and fishery dependent communities.

This is particularly true for the untried approaches proposed under Alternative 3. There is a need for a comprehensive and thoughtful analysis of Alternative 3 and the potential for unintended or unforeseen consequences that may arise from this proposal. No one wants a repeat of the recent situation with GOA Chinook salmon PSC where the Council had to reverse course via an emergency rule because of poorly crafted management measures that were overly restrictive yet provided no measurable conservation benefit for Chinook salmon.

Comments on Alternatives

These comments are not exhaustive or detailed, and do not attempt to address specific options under either Alternative 2 or 3. The main focus here is on the framework under Alternative 3 for the onshore sector, recalling that this is the first time an opportunity for public comment has been provided.

Alternative 3 introduces a catch share program significantly different from those programs already implemented in other Alaska fisheries. In fact, so far as we are aware, there are no programs in any fishery worldwide similar to that proposed under Alternative 3. This has raised questions about the Council's intent. The intent of the Council in developing Alternative 2 was to provide management mechanisms to the trawl sector to meet the Council's bycatch reduction goals while fostering an economically viable fishery founded on historical participation and investment in the fishery by harvesters, processors, and fishery dependent communities. Alternative 3 appears to be focused more on redistribution of fishery benefits and mitigating perceived impacts of catch share programs whether applicable or not. With the introduction of Alternative 3 it is unclear what the Council is trying to accomplish with this program.

Based on our experience with the successful cooperative catch share programs in Alaska, and with GOA trawl fisheries specifically, we are concerned that the management system proposed under Alternative 3:

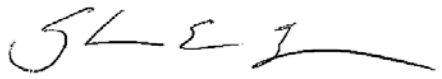
1. Does not take into account historical participation, investment, and dependence on the fishery as required by the MSA.
2. Establishes a framework that creates disincentives for harvesters and/or cooperatives to share information to minimize bycatch and discards.
3. Exacerbates the race for target species catch thus leading to increased discards, less opportunity to develop underutilized species, and undermining ability to achieve OY.
4. Could have significant redistribution impacts in both the harvesting and processing sectors with unknown consequences for current fishery participants and fishery dependent communities.
5. Introduces additional pressures and instability in the harvesting and processing sectors at a time when whitefish markets are under significant pressure globally, with attendant social and economic impacts to fishery participants and fishery dependent communities.
6. Potentially puts harvesters and processors at risk under anti-trust restrictions.
7. Does not address community protection issues such as maintaining traditional delivery patterns.
8. Creates disincentives and barriers for harvesters and processors to work cooperatively to plan and execute fisheries effectively.

With regard to Alternative 4, we remain concerned that the proponents of the CFA have not brought forth a fully developed proposal. We also note that the CFA is currently linked only to Alternative 2. While we have concerns and reservations about the CFA we believe that the concept should be a standalone alternative that could be linked to either Alt 2 or Alt 3. In the case of Alt 3 the allocation would be for PSC species, not target species, to be consistent. We do not understand the rationale for excluding it at this early stage from consideration in conjunction with Alt 3.

However, when considering the CFA proposal if one is produced, it is important to keep in mind that the GOA trawl fisheries are not classic entry level fisheries. They are capital intensive, harvesting high volumes of low per-unit value species. Measures to engineer new entrants into this fishery through a CFA may not be appropriate and may disadvantage the very interests (skippers and crew) and fishery dependent communities that such measures are intended to benefit.

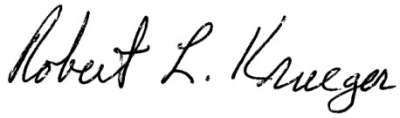
As it stands, the GOA trawl fisheries support a year round industry with a large resident workforce, which in turn provides significant benefits to other more seasonal fisheries such as salmon, and to fishery dependent communities like Kodiak, Sand Point, and King Cove. But that is only true if the fishery is allowed to succeed. It is difficult to understand why the Council would pursue management measures that hamstring the industry's ability to provide these economic benefits to Alaska's fishery dependent communities while also meeting the Council's bycatch reduction requirements.

Thank you for this opportunity to comment.



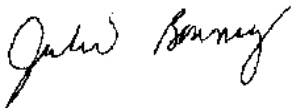
Glenn Reed

Pacific Seafood Processors Association



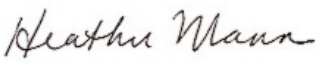
Robert Krueger

Alaska Whitefish Trawlers Association



Julie Bonney

Alaska Groundfish Data Bank



Heather Mann

Midwater Trawlers Cooperative

May 31, 2016

Dan Hull, Chair
North Pacific Fishery Management Council

Dr. Jim Balsiger Regional Director
Alaska Region, National Marine Fisheries Service

Re: Comments related to Council Agenda Item C-5 for the June 2016 meeting of the North Pacific Fishery Management Council and the preparation of a Draft Environmental Impact Statement.

Council Members:

The organizations listed below represent the majority of fishery participants, both harvesters and processors, in the Gulf of Alaska inshore groundfish trawl industry. Our comments are provided in regard to Agenda item C-5, Gulf of Alaska Trawl Bycatch Management, for the June 2016 meeting of the North Pacific Fishery Management Council (Council) and as additional scoping comments pursuant to the National Environmental Policy Act (NEPA).

At the outset we want to express our appreciation for this opportunity to comment, and to emphasize our willingness to continue to work with the Council to craft a practical and workable program. This has been and will continue to be an iterative process, and we understand that the policy choices and program details will continue to evolve as the Council proceeds with preparation of a Draft Environmental Impact Statement (DEIS).

We also want to underscore the importance of these fisheries to Alaska and the communities of Kodiak, King Cove and Sand Point. For example, the recent McDowell report (May 2016) indicates that groundfish fishing and processing has the largest economic impact of any fishery in Kodiak, accounting for about half of the seafood jobs (1,952), half of the seafood labor income ($111m), and half of the total seafood output ($187m) in the Kodiak economy in 2014. In 2014, trawl vessels delivered 361 million pounds of groundfish worth $50m in ex-vessel value and $160m in first wholesale value. Groundfish harvesting and processing accounted for almost 20% of all Kodiak employment in 2014. The choices made through this action by the Council will have far reaching impacts on the local economy and must be developed thoughtfully to ensure that it continues to provide economic benefits to these communities into the future.

Our organizations continue to support development of Alternative 2. The core elements provide an effective management structure for the Gulf trawl fisheries to mitigate the impacts of the race for fish, provide mechanisms to control and reduce bycatch, better manage target and secondary species harvest, minimize discards and improve utilization, and provide for future economic opportunity for Gulf coastal communities. These are all part of your stated objectives.

With regard to Alternative 3, our concerns have been reinforced upon review of the June staff discussion paper and the changes made by the Council at the February meeting. It is still unclear what the Council is trying to accomplish with this proposal, but it does not appear to be a fisheries management program in response to the issue at hand. Council intent under Alternative 2 was clear: provide management mechanisms to the trawl sector to meet the Council's bycatch reduction measures while fostering an economically viable fishery founded on historical participation and investment in the fishery by harvesters, processors, and communities that are dependent on Gulf trawl fisheries. Alternative 3 appears to be focused more on redistribution of fishery benefits and mitigating perceived impacts of other catch share programs whether applicable or not to Gulf trawl fisheries.

The purpose of these comments is to provide perspective on the issues and concerns posed by the different approaches and to describe how Alternative 2 and Alternative 3 match up against the Council's stated goals and objectives for the action. Our comments provide context as to how Alternative 2 is structured to better meet the goals and objectives adopted by the Council, including the community protection objectives the Council has identified. We also provide comments in response to staff issues raised in the most current discussion paper with an emphasis on necessary clarifications under Alternative 2 in preparation for the DEIS.

Many of the issues and questions raised in these comments will be the subject of the analysis that will be conducted through the DEIS. We respectfully request that these comments, and the attachments to this letter, be included in the record for the DEIS and that the issues and concerns be addressed fully in the DEIS analysis.

1. Background

Beginning in 2012, the Council adopted significant new bycatch constraints in the federal Gulf of Alaska trawl fisheries. These include a 15% cut in the halibut bycatch limit for the trawl fleet (2012), a new cap on Chinook bycatch in the pollock fishery (2013), and a new cap on Chinook bycatch in the non-pollock trawl fisheries (2015).

At the time, the Council acknowledged that current management under limited access, with its attendant race for target species and constraining PSC caps, was untenable and may not be practicable. The Council committed in late 2012 to develop a management framework with the primary objective to design a fisheries program to effectively manage and reduce bycatch while promoting increased utilization of both target and secondary species harvested in the Gulf. At the time, Council members acknowledged that significant improvements could be made in the management of the Gulf trawl groundfish fisheries.

The Council spurred action to develop this new management framework by stating on the record that these new bycatch caps/reductions were adopted without providing the groundfish trawl industry a management system that allows it to adapt to these new requirements. Without a different management system, it was expected that the fisheries would not be able to operate

cooperatively to minimize bycatch nor would they be able to fully prosecute the groundfish TACs.

Early in the process the Council encouraged the affected industry participants – harvesters, processors, and groundfish dependent communities – and other interested parties to provide concepts and proposals regarding the goals and objectives for such a program and the management structure that should be considered.

In October 2012, at the outset of this action and following extensive public comment, the Council established a purpose and need statement and objectives to guide development of a new program, and the purpose and need statement has been modified only slightly since 2013. It is a requirement of the Magnuson Stevens Act to specify goals and objectives for major management programs such as this, and the Council was well served by focusing on development of alternatives to meet its goals through 2014.

The Council also stated on the record that it was not going to develop alternatives for a new management system in the Gulf without fishery participants' active engagement in the process and support for the outcome. The Council noted that this would require some hard work by the three most affected sectors: groundfish trawl harvesters, shoreside processors, and groundfish dependent Gulf communities such as Kodiak, Sand Point, and King Cove. Representatives of these three sectors worked on various approaches over the course of almost two years, as the Council solicited public proposals, and the city and borough of Kodiak formed a fisheries working group to engage in the process.

Our organizations worked with a large group of Gulf trawl harvesters, inshore processors, catcher processors, and others to provide comments and concepts on the purpose and need for action, program objectives, and management structure.[1] One of the consistent goals of our proposals was to strike a fair balance between the interests of industry participants while protecting the interests of groundfish dependent Gulf communities. It was our belief that a properly structured management program could not only meet the Council's goals for improved management of target and secondary species while complying with newly imposed bycatch restrictions, but could also provide future opportunity for Gulf coastal communities and the seafood industry that supports their economy.

All public proposals were reviewed in June 2013, and all, with one exception, recommended forming a catch share program that allocates the most important target species and PSC species in the Gulf of Alaska trawl fisheries in a way that incentivizes bycatch avoidance and recognizes the dependence on and participation in the groundfish trawl fisheries, as required by the Magnuson Stevens Act (MSA).

[1] www.npfmc.org/wp-content/PDFdocuments/catch_shares/GOAtrawl/GOATrawlProposals613/AGDBplus.pdf

As a result of that review, the Council developed a fishery cooperative alternative over the next year and a half (Alternative 2, adopted October 2014), using concepts from several proposals. The core of the alternative is most similar to the Central Gulf of Alaska rockfish cooperative and American Fisheries Act programs, under which the total allowable catch is apportioned as shares to cooperatives comprised of both harvesters and processors, based on the catch history of the members of these cooperatives. The Council included additional elements, different from previous programs, to meet the Council's stated goals and objectives relative to processor protections, community protections, active participation, and new entry opportunities.

Development of Alternative 2 was a deliberative and iterative process, with refinement at multiple Council meetings and active engagement by trawl fishery participants, Gulf communities, and the interested public. The Council stated upon formal adoption of this alternative that there was an expectation that refinement of the alternative would continue, as the Council receives analysis and proceeds through the NEPA/MSA process.

Our organizations supported this process because we believed the Council when it stated that this program would be developed with the active engagement and support of Gulf trawl industry participants. We supported the goals, objectives and purposes articulated by the Council. And we saw a path forward whereby the Gulf trawl industry could work cooperatively to comply with the Council's bycatch reduction measures, better manage target and secondary species harvest to minimize discards and improve utilization, and provide for future economic opportunity for Gulf coastal communities and new entrants.

We continue to support refinement of Alternative 2 but this effort has been overshadowed by the need to respond to Alternative 3. Alternative 3, favored by the new State of Alaska leadership and adopted in October 2015, was developed without public input, does not appear to meet the Council's stated goals and objectives for the action, and is not supported by current participants in the fishery. Alternative 3 does not meet MSA practicability requirements for bycatch reduction measures and ignores the considerations under Section 303(b)(6) for limited access programs. It does not appear operationally feasible and would harm the Gulf groundfish fisheries and the communities that depend on these fisheries. More detail is provided below.

2. Council's Purpose and Need

There continues to be broad support for the Council's stated goals and objectives. And while there are many details that need to be worked out among the multiple options currently proposed under Alternative 2, there is strong support for the core framework of Alternative 2 among the great majority of the participants in the fishery. This support should not be (paradoxically) discounted because several of the fundamental elements of the alternative are consistent with proposals developed and submitted (at the Council's request) by active fishery participants (harvesters, shoreside processors, communities). The alternative is supported by trawl participants because it is structured to create an effective fisheries management system, with core

elements proven to work in other fisheries, and those involved in the groundfish trawl fishery can see its potential to meet the management problems at issue.

The Council has made it clear at several meetings that it intends to seriously evaluate each of the four current alternatives against its stated goals and objectives. Below is a preliminary evaluation of the current Alternative 2 and Alternative 3 against the goals stated in the Council's purpose and need statement. The points below are also depicted in table form in Attachment 1 to this letter. Attachment 1 also compares the current structure of Alternatives 2 and 3 against the 14 objectives the Council has adopted for this action. This section does not address Alternative 4 at this time, as Council direction on this alternative is yet unclear.

- **The Council's stated purpose and need is to mitigate the impacts of a race for fish and provide tools for the fishery participants to control and reduce bycatch**.

It is widely understood that open access fisheries underperform fisheries operating under a catch share program in every relevant criterion by which performance can be measured. These include: conservation of the resource, bycatch avoidance, safety at sea, value of products produced from the resource, and the cost of harvesting and processing the resource. This Council has examples in the AFA, Am 80, BSAI crab, and the GOA rockfish cooperative programs, as well as national examples. This is why the Council's purpose and need statement first highlights that the action is intended to mitigate the impacts of a race for fish. Alternative 2 creates a cooperative program to end the race for fish that is specific to the needs and scale of the Gulf. This is why Alternative 2 incorporates community protections, limits on consolidation, processor protections, and provisions to facilitate new entry and active participation, different from other programs in the North Pacific.

Alternative 2 ends the race for fish by allocating target species and bycatch limits to fishery cooperatives comprised of harvesters and processors. Target species allocations could be limited to pollock and Pacific cod, or could be expanded to include Western Gulf rockfish and/or secondary species currently managed under maximum retainable amounts. With a secure share of the harvest and bycatch limits, harvesters and processors can work cooperatively to end the race for fish, cooperatives can form, and incentives shift from maximizing volume to maximizing value.

Cooperatives facilitate a coordinated effort among vessels and processors to avoid bycatch through slower fishing, real-time information sharing, contractual agreements for bycatch avoidance, and formal participation by the entire fleet. In a system in which both target species and bycatch species are allocated upfront to cooperatives, as in Alternative 2, participants can plan harvesting and processing operations to lengthen the season, gain the flexibility to target their fishing effort and experiment with new techniques, including test tows and gear designed to exclude bycatch, and improve utilization and develop new products. Studies of fisheries with

both LAPP and non-LAPP sectors confirm this finding.[2] Under Alternative 2, bycatch may be reduced in three ways: 1) cooperative contracts that create bycatch performance rules and incentives to minimize bycatch based on actual fishing conditions; 2) incentives and time for harvesters and processors to engage in bycatch avoidance measures at a much lower cost by working together (e.g., risk-pooling; increase profitability by increasing efficiency and reducing waste); and 3) options to further reduce Chinook salmon and halibut bycatch limits by up to 25%, if practicable.

In contrast, Alternative 3 continues the race for fish. This is true in part because it only allocates bycatch limits to cooperatives and not target species, which significantly undermines the ability of a cooperative to plan and control its operations. This in turn significantly increases uncertainty and instability in fishing, processing, support businesses, and community investment.

The analyses the Council has received thus far make a strong argument that bycatch quotas alone will not help the fleet manage PSC limits. For example, fishermen would try to catch as much of the pollock as they can before Chinook salmon bycatch rates increase, and once high bycatch rates are difficult to avoid, they would race and use all remaining PSC to catch as much of the pollock as they can before the season closes. Alternative 3 would foster a similar race for higher value species such as cod before halibut bycatch becomes limiting. Bycatch and discard rates are increased as a result, and fisheries often close before all the allowable fish are harvested, in order to stay within bycatch caps. These scenarios are unnecessary and can be avoided under a different management regime.

While Alternative 3 includes the same proposed range of additional bycatch reductions as Alternative 2 (up to 25%), it does not provide the tools necessary for the fleet to control and reduce bycatch on the grounds because it is still an open access fishery for target species. In effect, it establishes a framework that creates incentives to race for higher value species and disincentives for harvesters and/or cooperatives to plan and execute slower and more strategic operations to minimize bycatch and discards. There is little to no incentive to share information, risk-pool, and engage in transfers among cooperative participants because a vessel can clearly benefit through increased opportunity to harvest more of the TAC by another vessel reaching its individual PSC limit. These are exactly the sort of disincentives cooperatives are intended to avoid.

Alternative 3 also exacerbates the current race for fish because it encourages license holders without any previous participation in the Gulf groundfish fisheries to enter the trawl fishery, by apportioning equal shares of bycatch limits to any license holder and making it much more enticing to fish those limits individually as opposed to working within a cooperative (see limited access fishery provisions). Not only does this serve to increase inefficiencies in the fishery, but it

[2] http://www.edf.org/sites/default/files/sustaining-fisheries.pdf

undermines the goals of bycatch avoidance as participants with no experience or previous investment in the Gulf trawl fisheries enter the race for fish.

- **The Council's stated purpose and need is to promote the increased utilization of fish.**

Alternative 2 allows for significantly more stability relative to the volume and timing of groundfish landings. When cooperatives comprised of both harvesters and processors understand how much fish can be harvested pre-season, they have greater opportunity to work together to plan the timing and volume of landings, reduce the amount of gear deployed, and deliver fish when the market demands, which allows for higher quality products and greater utilization of fish.

Alternative 3 continues the race for fish, and thus serves to reduce the value of Alaska fisheries by increasing the risk of early closures (foregone value), and foregoing the ability to focus on the most valuable product forms, fish quality, and increased use of currently under-utilized species. This type of early closure occurred in Kodiak in May 2015 when between 13,000 to 15,000 metric tons of groundfish would have been left unharvested in the second half of the year, had an emergency rule not made additional Chinook salmon available within the overall GOA cap. NMFS estimated approximately $4.6 million in ex-vessel value and $11.3 million in first wholesale value would have been foregone. While bycatch limits are allocated to cooperatives under Alternative 3, the race for target species catch is maintained and potentially exacerbated, leading to increased discards, less opportunity to develop underutilized species, and undermining the fleet's ability to harvest the total allowable catch.

- **The Council's stated purpose and need is to increase the flexibility and economic efficiency of the GOA groundfish trawl fisheries.**

Alternative 2 is structured to provide incentives and opportunity for all groundfish trawl participants to engage in cooperative behavior. Cooperatives would provide harvesters and processors with greater flexibility to determine the timing of harvests to maximize value and minimize costs. This means significant improvement in fisheries that are limited by bycatch, as timing, location and experience are the key factors in reducing bycatch, as well as improvement in the timing of harvest in high value fisheries.

Cooperatives with fishery allocations are proven to allow greater control of fishing decisions while remaining economically viable. Alternative 2, by providing for long term cooperative structures, provides stability to fishery participants which in turn fosters longer term planning for harvesting and processing operations. This in turn provides flexibility to manage operations to gain efficiencies in both harvesting and processing and opportunity to improve utilization and develop new fishery products.

Alternative 3, on the other hand, provides little incentive for harvesters and processors to participate in cooperatives, and offers little benefit to coastal communities that are dependent on Gulf trawl fisheries. This alternative maintains the current inefficiencies in the fishery, and will require that harvesters fish to maximize target species at the expense of other goals like bycatch avoidance and higher quality catch. There is little flexibility in a system in which target species are not allocated, primarily due to the need to race with other participants prior to the fishery closing and the inability to engage in risk-pooling or bycatch avoidance plans which slow down the fishery. In addition to the lack of ability to operate in a cooperative when target species are not allocated, Alternative 3 considers allowing vessels to use bycatch limits like individual quota, outside of a cooperative structure and potentially without further reductions in bycatch apportionments to the individual vessel due to that choice.

As a result, the benefits of cooperative management cannot be achieved under Alternative 3. The possibility of different numbers of vessels entering the fishery in any given year, coupled with the equal share distribution to any license holder that might choose to enter the fishery, will be highly destabilizing. Given the high number of latent licenses in the Gulf trawl fisheries, and the fact that each could be brought into the fishery with exclusive access to an equal share of PSC, the cooperatives cannot anticipate who will be participating in any given year, or how much PSC they might have available, until late in the game. This is a significant barrier to cooperative management, which will only serve to destabilize the Gulf trawl fishery and undermine the economic value of the fishery to Gulf groundfish dependent communities.

- **The Council's stated purpose is to support fishery-dependent coastal communities.**

Alternative 2 includes several community protection elements for consideration, including consolidation limits, provisions that preserve the historical delivery levels to the western and central Gulf regions, and port of landing requirements. These elements were added by the Council to ensure that the program design would support the sustained participation of fishery-dependent coastal communities, both in terms of future landings going to communities with high dependence on these fisheries and in terms of employment.

There has been relatively little discussion in the past year about the consolidation limits under Alternative 2 – these include vessel use caps, caps limiting the amount of cooperative quota one person could use, and processor use caps. Consolidation limits will be extremely important in determining how this program works for communities, harvesters, and processors. These sets of regulatory limits were proposed to mitigate significant and uncontrolled consolidation and thus negative impacts on crew, processing employment, and communities. For example, consolidation of licenses or quota on fewer trawl vessels directly affects the number of available crew jobs, shares paid to crew, and the amount of demand for shore-based vessel support services. The range of use caps for both harvesting and processing provided in Alternative 2 were based on data provided by Council staff that would let the Council evaluate caps that would allow for limited consolidation. These caps were also made species-specific by the Council and the

Council ensured that vessel use caps apply both *within* the cooperative and when engaging in inter-cooperative agreements. This is different from the BSAI crab program, where vessel use caps do not apply within the cooperative and this difference is intended to mitigate significant consolidation in both fishery sectors.

Regionalization is also included for consideration in Alternative 2, meaning target species quota would have a regional designation (WG or CG/WY) as a measure to preserve historical delivery levels to communities in each management area. These are not shoreplant specific designations, meaning the annual harvest allocations could be processed at any plant within the management area in which the qualifying catch history was processed. This element was part of several of the public proposals provided to the Council in 2013, and it was conveyed as an appropriate community protection under a cooperative structure that does not link a harvester to a processor in perpetuity (the current option in Alternative 2 would, for the first two years, require that those who choose to join a cooperative join with the processor to which they've delivered historically, for the purpose of processor and community stability). In addition, Alternative 2 includes caps to ensure that all processing is not consolidated into a few processors in the Gulf. This has been a critical issue to many industry participants and community advocates wanting to continue to have diverse markets in Kodiak and other coastal communities. The combination of consolidation limits and regionalization is intended to protect individual communities and the viability of the processors that those communities depend on.

The strongest community protections are inherent in a program that facilitates a stable and increased volume and value of landings in Alaska coastal communities that are clearly dependent on the trawl fishery. Such a program would provide stability and predictability to industry participants in the community, allow for expansion into new markets for these species after eliminating the race for fish, and reduce bycatch of species that are also critical to other economic interests in these communities. In effect, *the cooperative design* of Alternative 2 is intended to maintain or improve the existing operations of the fishery to the benefit of communities, and the *community protection elements* such as consolidation limits are a safeguard for communities to maintain the level of diversity in both the harvesting and processing sectors. These are issues critical to the communities under status quo, as well as a new program, and are only possible under Alternative 2.

Alternative 3 introduces levels of unnecessary and impractical instability in the trawl fisheries with attendant negative impacts on groundfish dependent Gulf communities. Alternative 3, which allocates bycatch quota to cooperatives, does not include vessel use caps (limits on the amount of bycatch that can be used on one vessel) or processing use caps. It limits the amount of PSC cooperative quota one person can use in the cooperative (up to 150% of what they brought into the cooperative) but provides no other consolidation limits relative to status quo or Alternative 2. It also does not include regionalization designations or port of landing requirements, given that there are no target species allocations.

A primary concern relative to how Alternative 3 meets the Council's goal relative to communities is that it clearly risks the ability to support year-round fishing and processing due to intermittent fishing and early closures typical in a race for fish. This directly affects thousands of Alaska residents in the harvesting and processing sectors. A year-round product flow is critical to the labor force, the ability for the plant to be open on the tail-end of seasonal fisheries such as salmon, and the processing companies' cost structure and market opportunities. Loss of year-round operations will undoubtedly impact seasonal fisheries such as salmon, weakening markets and limiting revenue streams to communities. It is difficult to see how Alternative 3 will result in positive benefits for Alaska communities, which are dependent on the groundfish trawl fisheries.

3. Clarifications regarding Alternative 2

Alternative 2 establishes a cooperative system for catcher vessels and processors based on historical participation. The cooperative structure would balance the interests of the two sectors, and allow them to work cooperatively to plan fishing operations to reduce PSC and facilitate use of all species more efficiently as a result of vessels fishing more slowly, strategically, and cooperatively. Selection of specific elements and options will affect whether those goals are achieved, but the overall structure includes provisions that can provide a stable and effective operating environment for harvesters, processors, communities, and support industries. Importantly, Alternative 2 recognizes the investment in and dependence on the resource by all affected sectors. Alternative 2 provides a strong starting point for the Council to consider how to effectively resolve the management problem at issue.

Council staff has provided several discussion papers over the course of the past year, intended to describe the elements of the alternatives and request clarification where needed to move into EIS development. While the majority of the outstanding questions lie with Alternative 3, there are several clarifications and suggestions from staff in the discussion paper under Alternative 2 that would be helpful for the Council to resolve in June. A few of those clarifications and suggested direction are provided below:

- Element 4a: Alternative 2 requires full retention of all allocated target species when those species are open to directed fishing. The discussion paper suggests that allowing directed fishing for pollock and Pacific cod from Nov 1 – December 31 may reduce discards as cooperative members could retain those species above the MRA using cooperative quota when fishing rockfish or flatfish late in the year (pp. 15 – 16). We recommend including options to extend the pollock and Pacific cod seasons through December 31 for analysis. The impacts of these changes would be addressed in the EIS and the ESA section 7 consultation necessary to revise season dates.

- Element 5b: The June discussion paper and previous papers request clarification regarding how to apportion historical halibut PSC use by sector (CP/CV) in the case that

a CV delivered offshore to a mothership or CP. The Council should clarify staff's assumption that halibut PSC use would accrue to the history of the sector in which the license holder operated (i.e., halibut PSC associated with vessels that operated as CVs would accrue to the CV sector's PSC apportionment, whether they delivered onshore or offshore).

- Element 5c: Staff requests further clarification on how PSC can be rolled from the Central Gulf Rockfish Program to other fisheries near the end of the year (after the regulated set-aside for halibut savings) (pp. 56-57). In the Rockfish Program, halibut PSC is allocated to each cooperative based on its members' rockfish quota, while Chinook salmon PSC is allocated to the CV sector (not allocated to cooperatives). This difference requires a different treatment for each PSC rollover. Unused halibut PSC (after savings) could be transferred to Gulf program CV cooperatives through inter-cooperative transfer. Unused Chinook salmon PSC could be transferred to the Gulf program CV cooperatives by NMFS in proportion to their initial annual non-pollock Chinook salmon PSC allocations. The Council could also clarify that unused PSC from the Rockfish Program is either rolled over to the Gulf program CV cooperatives or stays in the water; no rollover is provided to the limited access sector.

- Element 9: The transferability provisions include an allowance to sever allocated species catch history from a GOA CV trawl license (e.g., pollock and cod) and transfer it to another GOA CV trawl license (p. 6), the intent of which is to facilitate new entry into the fishery or allow an existing participant to build up their business without having to purchase the entire license with all associated endorsements and catch history. This element of Alternative 2 likely needs additional detail, such as options to limit the amount of catch history that could be severed from a license. If such an option was included, the Council could also include an option to allow those license holders that have very little allocated species history to transfer their entire catch history, in order to facilitate transfer to those that intend to participate in the fishery and avoid leasing, subject to the selected consolidation limits.

- Element 11: Staff suggests that those choosing to participate in the limited access trawl fisheries must also register annually by a selected deadline prior to the season, similar to the requirement for those joining a cooperative. This will allow NMFS to plan for management needs in the limited access fishery. We suggest including this registration requirement and a deadline of November 1, similar to the cooperative formation deadline.

4. <u>Comments related to Alternative 3</u>

Numerous concerns have been identified with the management scheme proposed by the State of Alaska under Alternative 3, and we previously requested a clear statement of Council intent with

regard to this proposed program (see Attachment 2). Trawl fishery participants raised similar questions and concerns in a letter sent to Governor Walker during the Council's February meeting (Attachment 3). More recently, having not received a response to-date, we raised similar questions and concerns in a letter to Governor Walker dated May 5, 2016 (Attachment 4).

While many of the issues raised in our previous comments remain to be addressed, the June staff discussion paper reveals some of the shortcomings with the approach under Alternative 3. Two of the most significant issues include: mechanisms for determining dependency on the fishery and the race for fish that will continue under Alternative 3.

Dependency. One main shortcoming with Alternative 3 is related to dependency and how to measure it. This issue has plagued the proponents of Alternative 3 since it was introduced. In earlier versions, Alternative 3 attempted to address some level of dependency using surrogates such as vessel capacity, which were found to be overly complex and administratively unworkable. New approaches for determining dependency were introduced at the Council's February meeting, absent public comment or staff evaluation.

The result is an even more complex system of allocating PSC limits to cooperatives or individual vessels based on affidavits by vessel owners stating they are dependent on a particular species and area based on having a percentage of their total trawl pounds landed in a specific GOA trawl fishery compared to BSAI trawl fisheries of that type. The staff paper points out this is a fairly narrow definition of dependency, as it excludes harvest of fixed gear, harvests from outside Alaska, or harvests in state fisheries as part of the denominator. In effect, the dependency mechanism does not treat relatively new entrants, or vessels that are more dependent on other fisheries, any differently than it treats vessels that have a long history in the GOA. As long as a vessel has at least one year of past participation in the GOA non-rockfish program fisheries, the vessel is eligible to draw from one or all dependency pools if its GOA trawl/non-GOA trawl harvest meets the selected threshold (p. 38).

This raises the question: Why is the Council taking such great efforts to ignore some of its own objectives and incorporate an inadequate measure of dependency (as opposed to catch history)? One of the Council's objectives is to "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" while balancing the interests of all sectors.

Alternative 3 does not recognize historical participation or investment in the fishery (and suppresses future investment) as it allocates bycatch based on equal shares and potentially the measure of dependency described above, which provides very little consideration for active participants. Council staff analyses show that during the most recent time period, 90 of the 124 GOA trawl catcher vessel licenses were active, leaving 34 inactive licenses (p. 79). The large number of inactive licenses that could potentially be activated on new vessels or assigned to a vessel and receive a bycatch allocation would impact active participants by promoting

overcapitalization and diluting the amount of bycatch quota that their licenses would bring to the cooperative or the limited access sector.

The concept of recognizing dependency on a fishery is so important that the Magnuson Stevens Act provisions require that Councils authorize privileges to harvest fish to persons who *substantially participate* in the fishery; Councils must consider historical participation in the development of any limited access program under sec. 303(b) or LAPP under section 303A. Dependency is typically measured through actual historical participation (landings). In effect, it does not represent whether a vessel is dependent on GOA trawl as a business, it only means that a vessel is more dependent on GOA trawl than on BSAI trawl. For example, consider a predominantly pot boat that has 5% total GOA groundfish landings with trawl gear but no BSAI trawl landings. They would receive the same bycatch allocation as someone who was 100% dependent on the GOA trawl fishery. In another example, if a vessel with a latent GOA trawl LLP wanted to establish 'dependency' and access the same amount of bycatch as a long-term participant, they would only need to have one GOA trawl landing and no BSAI landings.

The May discussion paper states on page 38 "the analysts note that the dependency mechanism does not treat relatively new entrants any differently than it treats vessels that have a long history in the GOA. As long as a vessel has at least one year of past participation in the GOA non-rockfish program fisheries, the vessel is eligible to draw from one or all dependency pools…". In other words, the mechanism in Alternative 3 is less a measure of how dependent a vessel is on the Gulf trawl fishery than an "in or out" criteria.

Proponents of Alternative 3 suggest that this will facilitate new entrants into the fishery, and staff agree that this may well be the case. On p. 46 the discussion paper states "one would expect that allocating PSC based on equal shares would entice a greater number of vessels to register for an allocation than the number that fished in 2015." Staff also note that "vessels that are most likely to enter the fishery are those that are already operational and have low entry costs. These vessels could be AFA vessels that have focused their effort in the BSAI or west coast or vessels that have a trawl endorsement for both the WG and CG but have only been fishing in one area" (p. 47). Thus one of the outcomes of the approach taken under Alternative 3 could be to encourage the influx of capital creating an overcapitalized fishery, by large vessels from outside the area that have little to no history in the fishery.

In an ironic twist, Alternative 3 would rely on self-reporting of dependency by affidavit submitted by individual participants and include a one-year lag time. There would be no audit beforehand, only an after the fact audit by NMFS. Staff note this is the strict reading of the element adopted by the Council at its last meeting. With so much of Alternative 3 devoted to restricting flexibility of current trawl fishery participants to execute the fishery, one has to question the rationale to rely on self-reporting for one of the main allocation elements of this proposed program.

Staff also noted that this raises several questions and administrative challenges including the adjudication role NMFS may play in the event one fishery participant questions the affidavit of another fishery participant (p 52). NMFS would have to adjudicate such challenges, which in turn could affect all other participants in the fishery who, under the equal shares concept, will not know their allocation until the question is settled.

Race for fish. The second main question regarding Alternative 3 is why is the Council pursuing an approach that is not responsive to the primary identified management need, and instead is pursuing an approach that adds to management problems by increasing uncertainty and instability in the fishery by promoting overcapitalization coupled with a continued race for fish?

The groundfish fisheries are the anchor for many Alaska communities in that they provide the largest volume of fish entering these ports year-round. The recent McDowell report (May 2016) indicates that from 2010 to 2014, groundfish landings (pollock, Pacific cod, rockfish and flatfish) accounted for an average of 76 percent of all seafood landed in Kodiak, with the vast majority harvested by trawl. From the standpoint of processing, the groundfish fishery is important to these communities not only in terms of tax revenue, but because year-round plants are able to hire and retain more Alaskans than plants that are only open seasonally, and a year-round supply of trawl caught fish allows processors to remain open to accept deliveries from and provide supplies to boats participating in other, more seasonal, fisheries. The processing labor force in Kodiak includes over 1,300 Kodiak residents, which is the highest resident processor workforce in the state. Year-round employment allows families to live and thrive in Kodiak. The only way to increase the economic viability of this fishery, and protect the jobs of these Kodiak residents, is to provide a more stable operating environment and this requires ending the race for fish.

The 'Management Considerations' section of the staff discussion paper provides a clear description of the additional significant challenges posed by Alternative 3, primarily due to the continued race for fish. For example:

- "NMFS anticipates that under Alternative 3, participants will seek to maximize their harvest of groundfish as quickly as possible before the overall TAC is reached within the constraints imposed by PSC allocations made to cooperatives." (p. 49)
- "Because Alternative 3 does not allocate groundfish TACs, NMFS would not be able to reliably predict the amount of groundfish harvests. This is similar to status quo management in the absence of voluntary arrangements…NMFS would anticipate using more conservative management to prevent exceeding TACs." (p. 50)
- "It is unlikely that pollock and cod fisheries will be spread out over time under Alternative 3 compared to Alternative 2. Relative to Alternative 2, Alternative 3 would not provide the fleet tools to prevent a race for fish because it does not provide secure access to a portion of the groundfish TACs. Without secure access, each individual participant has an incentive to start fishing as early as possible after the season opens." (p. 50)

- "Cooperative PSC limit allocations without cooperative groundfish allocations add multiple layers of complexity that will affect NMFS' ability to make precise fishery closure projections, primarily due to variable effort…changes in fishing patterns would be expected to reduce the ability of inseason managers to predict and manage groundfish harvests". (p. 50)
- "voluntary cooperation is also more likely when participation in the fishery is stable and the operators have established fishing patterns and working relationships." "Because Alternative 3 would continue the race for groundfish in the same manner as the status quo, it is unlikely that voluntary organization by the industry to slow the pace of pollock fisheries would occur except at low TAC levels and when participation in the fishery is stable." (p. 51)
- "the cooperative structure under Alternative 3 may provide limited incentives for the fleet to organize and communicate on the fishing grounds compared to status quo. Experience with other cooperative programs has shown that the primary benefits of cooperative membership are communication with other vessels…These benefits are possible because cooperative members collectively agree on groundfish harvest and PSC limits for individual vessels or business operations within the cooperative…Alternative 3 would not provide this specific type of cooperative structure. It likely would not be possible for cooperative members to collectively agree on groundfish harvest limits for individual vessels in the cooperative because the cooperative would not receive groundfish allocations. (p. 51)
- Alternative 3 is similar to the situation under the status quo, in which less than 100% agreement of all fishery participants to organize defaults to a race for fish. (p. 52)

From the discussion points above, it is clear that Alternative 3 includes provisions that will continue the race for fish and promote overcapitalization in Gulf trawl fisheries, which in turn will increase regulatory discards and make PSC avoidance more difficult. This approach does not address the management need identified by the Council, and is inconsistent with its stated objectives. Alternative 2 was designed to address capacity issues while also providing for reasonable opportunity for new entrants. Alternative 3 does not take into account current capacity issues or the potential for overcapacity. Instead Alternative 3 includes several elements to encourage new capital to enter the fishery. It is incumbent on the Council to clearly articulate the rationale for the management elements it is considering, and in this instance it is important to articulate the conservation and management benefits provided by a continued race for fish and increased capacity in the trawl fisheries.

5. Comments related to Alternative 4

Alternative 4 currently includes two options: a Community Fisheries Association (CFA) and an Adaptive Management Program. There has been little interest in or work put into the Adaptive Management Program since it was introduced, so we suggest that the Council consider removing

this option from Alternative 4 in June, as it cannot be further analyzed or implemented without significant additional detail provided.

With regard to the CFA, the Council has indicated an interest in further refining the current option and has requested a more detailed proposal from proponents of the concept. The most recent proposal is included as Appendix 4 to the staff discussion paper. Given the uncertainty about what direction the Council may take with Alternative 4, we offer the following general comments.

First, the Council needs to specify the purpose of the CFA program, the impacts it is trying to mitigate, and how a CFA would improve the ability of Alternative 2 to meet the Council's goals. Is the purpose of the CFA to provide fisheries access and control by GOA trawl dependent communities or is it intended as a revenue source for GOA communities? The MSA Section 303A states that qualifying communities can receive quota in a limited access privilege program, to (among other considerations) mitigate negative effects of the proposed program. In the context of this proposed action, those impacted communities would be Kodiak, King Cove, and Sand Point; previous sections of this letter address the elements included in Alternative 2 to protect the sustained participation of those trawl-dependent communities.

There is confusion regarding the impacts the Council is trying to mitigate through Alternative 4 in part because the proponents of the CFA cite examples in Appendix 4 of other limited access or catch share programs (halibut/sablefish IFQ, salmon limited entry permit migration, etc) and their effects on small, rural communities that had more prior participation in those fisheries than they do today. Those impacts are well documented, yet it is more appropriate to address those impacts in the programs and fisheries in which the impacts actually occur, and they include some fisheries in which the Council has jurisdiction. For example, the Council is undertaking its first programmatic review of the halibut/sablefish IFQ program since the program was implemented in 1995. Perhaps the concerns raised about fisheries access for small, rural communities as a result of that program should be part of that review. In addition, the Council previously acted to allocate fixed gear cod licenses to eligible small, rural GOA communities (2012). As those have not been nearly fully utilized, the Council could evaluate why and whether that action should be amended or strengthened to meet its intent. It is worth noting that trawl licenses were not allocated to those same communities at the time; the Council cited that the trawl fisheries are not entry-level fisheries and these communities were not and had not been engaged in trawl fisheries. Would not a more appropriate response to these concerns be direct allocations to a CFA in the halibut/sablefish IFQ program, or in the fixed gear cod fishery, which are more conducive to small boat operations and rural community participation than the trawl fisheries?

Second, if the Council's intent is not focused on access to the trawl fishery by community residents and is instead to provide a revenue stream for GOA communities, the Council needs to consider the CFA program in light of the scale of the fisheries involved. For example, the BSAI fisheries support a robust CDQ Program in large part because of the large volume of fish

available. The available trawl groundfish in the Gulf is far less than that in the Bering Sea (see Fig 18, p. 168 of the discussion paper). The analysis needs to look carefully at the resource that would be available in the Gulf and what benefits can reasonably be expected to flow from a CFA allocation. Note that the proposal in Appendix 4 does not appear to support that intent, as it requires that revenues generated through CFA leases can only be used to cover administrative expenses of the CFA entity and are not redistributed to eligible communities.

The proponents of Alternative 4 have provided additional detail on this option only as it applies to Alternative 2. The LAPP provisions under MSA Section 303A(c)(3) require the Council to develop criteria which must be approved by the Secretary and published in the Federal register to allow for the participation of fishing communities in any limited access privilege program. These include criteria for community eligibility and for a community sustainability plan. The proposal in Appendix 4 provides suggestions for criteria for each of these requirements, which generate several questions:

- As stated previously, the Council needs to be clear about what it is trying to accomplish through the CFA and how it is related to the trawl groundfish fisheries at issue. This should be reflected in the community eligibility criteria in Alternative 4.

- If the intent is to mitigate potential impacts from a new Gulf trawl bycatch management program, then the communities likely to experience impacts from the program are those that substantially participate or are engaged in the Gulf trawl fisheries. In this case, the Council's criteria need to specify that CFA eligible communities be those with current or historical participation in Gulf trawl fisheries.

- If the intent is to provide benefits to communities that do not have current or historical participation in Gulf trawl fisheries, then the Council needs to be clear about its goals and how success will be measured. The proposal in Appendix 4 is not a CDQ Program, it does not create a revenue stream for any eligible community; leasing fees collected by the CFA are mandated to only cover administrative costs and the benefit is directing access to this portion of the TAC. Thus, the benefit to a community that does not participate in the Gulf trawl fisheries appears to be the ability to sit on the CFA Board and direct allocations to the trawl fleet.

- Once the Council has determined its overall intent, it should consider whether a CFA is the best way to accomplish the Council's community objectives or whether it will undermine community provisions in Alternative 2. Alternative 2 includes regionalization, port of landing options, and provisions to address consolidation, active participation, and other measures designed to mitigate potential effects seen in other catch share programs. In addition, Alternative 2 includes a loan program to aid new entrants. The Council should articulate what additional benefits a CFA program brings to Gulf communities and Gulf trawl fisheries that are not already addressed in the basic program.

- If the intent is that CFA quota be distributed directly to new entrants or crew to promote their direct and active participation in the fishery, then the Council needs to determine criteria to be used in this distribution. The proposal in Appendix 4 provides suggestions for allocation criteria; the Council will need to determine whether criteria are necessary to ensure broad access to the CFQ quota and to what extent criteria need to be prescribed in regulation.

- How will the CFA contribute to the stated goals and objectives of the Gulf trawl program, particularly bycatch reduction and improved utilization of target catch?

- How will the community sustainability plan demonstrate that the CFA will address the social and economic development needs of coastal communities, per the requirements in MSA 303A?

- How will the CFA affect prospective new entrants that are not from the CFA communities? For example, individuals from other Alaska coastal communities such as Petersburg, Dillingham, or Anchorage that might want to enter the fishery. Will the CFA put them at a disadvantage?

- CFA governance is a major part of the changes included in Appendix 4. The Council should review carefully prior to adopting to ensure it is consistent with the overall intent of the program and determine how to minimize conflicts of interest.

- What mechanisms will need to be in place to ensure that benefits flow to the affected communities, and how will this be monitored? Should an annual audit of funds be required as part of the CFA report to NMFS and the Council?

- The current Council motion applies Alternative 4 to both Alternative 2 and 3, although the new proposal in Appendix 4 is only applicable under Alternative 2. The Council needs to explore through the analysis whether the concept is necessary and viable under Alternative 3.

6. <u>General NEPA comments</u>

We have previously identified issues with the analysis, and topics that need to be further considered, as the Council moves toward a full NEPA analysis. The current discussion paper refers in several sections to these previous analyses and does not provide additional information regarding many of these topics. Our comments on previous analyses remain relevant and we incorporate them here by reference. We request the Council ensure that they are fully addressed in future analyses as they are developed.

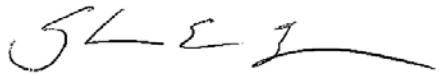
In addition, in the staff discussion papers provided to date, there has been more focus on the mechanics of the various alternatives and options, and little analysis of the effects of specific

elements. We understand that most of the analysis of impacts of various elements and options will be in the DEIS; however, that has made it difficult for the public to comment and the Council to determine the appropriateness of various elements to-date.

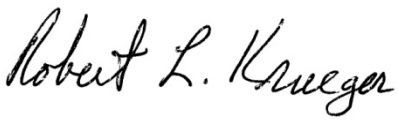
Finally, we note that staff have indicated that many issues will be dealt with through qualitative discussions and not quantitative analysis. We understand that this is permissible and sometimes necessary under NEPA, but encourage the Council to seek quantitative information to support decision-making for as many of the issues at hand as possible. Many of the provisions under consideration will have direct and measurable impacts on current participants in Gulf trawl fisheries and on communities that depend on the Gulf trawl fisheries. The Council and the public would be well served if those impacts are evaluated using hard data where possible.

In conclusion, we want to once again express our appreciation for this opportunity to comment.

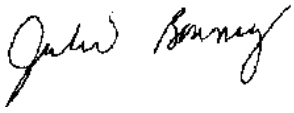
SIGNATURES



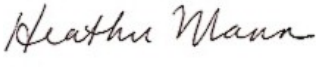
Glenn Reed
Pacific Seafood Processors Association



Robert Krueger
Alaska Whitefish Trawlers Association



Julie Bonney
Alaska Groundfish Data Bank



Heather Mann
Midwater Trawlers Cooperative

Attachment 1 to May 31, 2016 letter to the Council: Comparison of Alternatives 2 and 3 against NPFMC purpose and need statement and objectives for the GOA Trawl Bycatch Management

Elements for comparison	Alternative 2: voluntary cooperatives with target and PSC cooperative allocations based on catch history	Alternative 3: voluntary cooperative with PSC allocations based on equal shares
Process by which the alternative was developed	Developed through a transparent, two-year process of public input, after the Council established a purpose and need statement and objectives for this action and required that groundfish trawl harvesters, shoreside processors, and groundfish dependent Gulf communities all be onboard to start this process. Public proposals were reviewed in June 2013, and all, with one exception, recommended forming a catch share program that allocates the most important target species and PSC species in the Gulf trawl fisheries, in a way that incentivizes bycatch avoidance and recognizes the dependence on and participation in the groundfish trawl fisheries, as required by the Magnuson Stevens Act. Several drafts of the concept were proposed by the State of Alaska and approved by the Council for preliminary analysis, prior to Council adoption of the alternative in October 2014.	Developed without public input at the Council and not supported by participants in the GOA trawl groundfish fisheries. Proposed by the state and approved by the Council in October 2015.
Council Purpose and Need Statement		
to mitigate the impacts of a race for fish and provide tools for the fishery participants to control and reduce bycatch	Alternative 2 ends the race for fish by allocating target species and bycatch limits to fishery cooperatives comprised of harvesters and processors, with an option for community representation in the cooperative. Target species allocations could be limited to pollock and Pacific cod, or could be expanded to include Western Gulf rockfish and/or secondary species currently managed under maximum retainable amounts. With a secure share of the harvest and bycatch limits, fishermen no longer need to race, cooperatives can form, and incentives shift from maximizing volume to maximizing value. Cooperatives facilitate a coordinated effort among vessels and processors to avoid bycatch through slower fishing, real-time information sharing, contractual agreements for bycatch avoidance, and formal participation by the entire fleet.	Council analysis states that Alternative 3 continues the race for fish, because it only allocates bycatch limits to cooperatives and not target species, which significantly undermines the ability of a cooperative to plan and control its operations. This increases uncertainty and instability in fishing, processing, support businesses, and community investment. Alternative 3 also exacerbates the current race for fish because it encourages license holders without any previous participation in the Gulf groundfish fisheries to enter the trawl fishery. This undermines the goals of bycatch avoidance as participants with no experience or previous investment in the Gulf trawl fisheries enter the race for fish, and potentially fish without the structure of a cooperative to incentivize bycatch avoidance behavior. Initial analysis shows because Alternative 3

Elements for comparison	Alternative 2: voluntary cooperatives with target and PSC cooperative allocations based on catch history	Alternative 3: voluntary cooperative with PSC allocations based on equal shares
		would continue the race for fish in the same manner as the status quo, it is unlikely that voluntary organization by the industry to slow the pace of fisheries would occur.
to promote the increased utilization of fish	Alternative 2 allows for significantly more stability relative to the volume and timing of groundfish landings. When cooperatives comprised of both harvesters and processors understand how much fish can be harvested pre-season, they have greater opportunity to work together to plan the timing and volume of landings, reduce the amount of gear deployed, and deliver fish when the market demands, which allows for higher quality products and greater utilization of fish.	Alternative 3 continues the race for fish, and thus reduces the value of Alaska fisheries by increasing the risk of early closures (foregone value), and foregoing the ability to focus on the most valuable product forms, fish quality, and increased use of currently under-utilized species. This type of early closure occurred in Kodiak in May 2015 (NMFS estimated impact of approximately $4.6 million in ex-vessel value and $11.3 million in first wholesale value). Because the race for target species catch is maintained and potentially exacerbated, it leads to increased discards, less opportunity to develop underutilized species, and reduced ability to harvest the total allowable catch.
to increase the flexibility and economic efficiency of the GOA groundfish trawl fisheries	Alternative 2 provides incentive and opportunity for all groundfish trawl participants to engage in cooperative behavior. Cooperatives would provide harvesters and processors with greater flexibility to determine the timing of harvests to maximize value and minimize costs. This means significant improvement in fisheries that are limited by bycatch, as timing, location and experience are the key factors in reducing bycatch, as well as improvement in the timing of harvest in high value fisheries. Cooperatives with fishery allocations are proven to allow greater control of fishing decisions while remaining economically viable.	Alternative 3 provides little incentive for participants to engage in cooperative behavior. It maintains the current inefficiencies in the fishery, and will require that harvesters fish to maximize target species at the expense of other goals like bycatch avoidance and higher quality catch. There is little flexibility in a system in which target species are not allocated, primarily due to the need to race with other participants prior to the fishery closing and the inability to engage in risk-pooling or bycatch avoidance plans which slow down the fishery.
to support fishery-dependent coastal communities	Alternative 2 includes options for a community representative in the cooperative, consolidation limits on vessels, harvesters, and processors, provisions that preserve the historical delivery share to the western and central Gulf regions, and port of landing requirements. These elements were included by the Council to ensure that the program design would support the sustained participation of fishery-dependent coastal communities, both in	Alternative 3 does not include vessel use caps (limits on the amount of bycatch that can be used on one vessel) or processing use caps. It limits the amount of PSC cooperative quota one person can use in the cooperative (up to 150% of what they brought into the cooperative) but provides no other consolidation limits relative to status quo or Alternative 2. It also does not include regionalization designations or port of

Elements for comparison	Alternative 2: voluntary cooperatives with target and PSC cooperative allocations based on catch history	Alternative 3: voluntary cooperative with PSC allocations based on equal shares
	terms of future landings going to communities with high dependence on these fisheries and in terms of employment. These sets of regulatory limits were proposed to mitigate significant consolidation and thus negative impacts on crew, processing employment, and communities. The cooperative design of Alternative 2 is intended to maintain or improve the existing operations of the fishery to the benefit of communities, and the community protection elements such as consolidation limits are a safeguard for communities to maintain the level of diversity in both the harvesting and processing sectors. These are issues critical to the communities under the status quo, as well as a new program, and are only possible under Alternative 2.	landing requirements. Alternative 3 risks the ability to support year-round fishing and processing due to the increased risk of intermittent fishing and early closures typical in a race for fish. This directly affects hundreds of Alaska residents in the processing labor force in these three particular communities and thousands of fishermen in both trawl and non-trawl fisheries. A year-round product flow is critical to the labor force, the ability for the plant to be open on the tail-end of more seasonal fisheries such as salmon, and the processing companies' cost structure and market opportunities.
14 Council Objectives		
1. Balance the requirements of the National Standards in the Magnuson Stevens Act	The Council staff discussion paper (Feb 2016) stated that Alternative 2 and Alternative 3 can balance the National Standards in different ways, and the options selected will make a significant difference in that balance. However, Alternative 2 provides a more effective starting point for balancing the requirements of the National Standards because it ends the race for fish and provides harvesters with greater flexibility to determine the timing of harvests to avoid bycatch and maximize value. This fundamental management change, coupled with the multiple community protection elements, means it is much stronger in meeting the requirements of NS 1, NS 5, NS 8, and NS 9.	The Council staff discussion paper (Feb 2016) stated that Alternative 2 and Alternative 3 can balance the National Standards in different ways, and the options selected will make a significant difference in that balance. Alt 3 provides a weaker starting point relative to the National Standards because it does not end the race for fish.
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	Objective 2 reiterates the primary goal of the Council action, as established in the first element of the purpose and need statement (see treatment of that goal above in the purpose and need).	Objective 2 reiterates the primary goal of the Council action, as established in the first element of the purpose and need statement (see treatment of that goal above in the purpose and need).

Elements for comparison	Alternative 2: voluntary cooperatives with target and PSC cooperative allocations based on catch history	Alternative 3: voluntary cooperative with PSC allocations based on equal shares
3. Reduce bycatch and regulatory discards by groundfish trawl vessels	Objective 3 reiterates the primary goal of the Council action, as established in the first element of the purpose and need statement (see treatment of that goal above in the purpose and need).	Objective 3 reiterates the primary goal of the Council action, as established in the first element of the purpose and need statement (see treatment of that goal above in the purpose and need).
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	Alternative 2 explicitly recognizes Objectives 4 and 5, consistent with federal law, through allocations to cooperatives based on historical participation of vessels, options to protect processor investments through an allocation of bycatch limits and cooperative membership with a vessel's historical processor for the first two years, and the community protections described in detail above. The overall structure includes provisions that can provide a stable and effective operating environment for harvesters, processors, communities, and support industries, and recognizes the investment in and dependence on the resource by all sectors. There is no more direct way to recognize investment in and dependence on a fishery than by historical participation, catch history, delivery patterns, and employment in the harvesting and processing sectors.	Alternative 3 does not recognize historical participation or investment in the fishery (and suppresses future investment) as it allocates bycatch based on equal shares, despite prior participation in the fishery. The Council's current measure of dependency in Alt 3 does not represent whether a vessel is dependent on GOA trawl as a business, only whether a vessel is more dependent on GOA trawl than on BSAI trawl. Council staff analysis states that the dependency mechanism does not treat relatively new entrants any differently than it treats vessels that have a long history in the GOA. During the most recent time period, 31% of the catcher vessel GOA trawl licenses were inactive; in effect, there would be no consideration for active participants and these licenses could control an equal amount of PSC. Alternative 3 serves to significantly redistribute fishery benefits, with disregard for long-term participants that have invested in the fishery and for the communities' dependent on these fisheries.
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	See the discussion of community protections under the purpose and need above. Alternative 2 has significant and substantive community protection elements included in the context of a workable cooperative program design for the GOA groundfish trawl fisheries. The way to maintain or increase the economic viability of this fishery is to provide a more stable operating environment and this requires ending the race for fish. The groundfish fisheries provide the largest volume of fish entering many AK ports year-round. They are important to these communities in terms of tax revenue, seafood-related spending, and because year-round processing plants are able to hire and	Alternative 3 does not reflect a management program that will serve the Council's goals to mitigate the race for fish and support these year-round trawl fisheries; thus, it does not promote community stability for trawl groundfish dependent communities.

Elements for comparison	Alternative 2: voluntary cooperatives with target and PSC cooperative allocations based on catch history	Alternative 3: voluntary cooperative with PSC allocations based on equal shares
	retain more residents than plants that are only open seasonally. Refer to the previous discussion of consolidation limits (use caps) that are only proposed under Alt 2. Transferability provisions and severability of catch history from a license are also included, intended to facilitate new entry or those with low historical participation to build up a business at a lower cost.	
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	Alternative 2 meets objectives 7 and 8 because it allows for significantly more stability relative to the volume and timing of groundfish landings compared to status quo or Alt 3. When cooperatives comprised of both harvesters and processors understand how much fish can be harvested pre-season, they have greater opportunity to work together to plan the timing and volume of landings, reduce the amount of gear deployed, and deliver fish when the market demands, which allows for higher quality products and greater utilization of fish. All of these conditions improve the ability of the groundfish trawl sector to achieve optimum yield, which goes beyond simply harvesting the TAC.	Alternative 3 continues the race for fish, and thus serves to reduce the value of Alaska fisheries by increasing the risk of early closures (foregone value due to not harvesting the entire TAC), as well as foregoing the ability to focus on the most valuable product forms, fish quality, and increased use of currently under-utilized species. Alternative 3 continues a system in which participants will maximize individual vessels' harvest of target species, before PSC caps are reached or TACs are exceeded. The focus will be to maximize volume as opposed to value, with little to no positive effect on PSC rates.
9. Increase safety by allowing trawl vessels to prosecute groundfish fisheries at slower speeds and in better conditions	The MSA 303A provisions require that any new LAPP promotes safety. The ability of a vessel/cooperative to prosecute a fishery at slower speeds and in better conditions is determined by whether slowing or delaying their harvest will impact the overall catch and value they derive from the fishery (Council paper, Feb 2016). Allocations of both target and bycatch species, as proposed under Alternative 2, provide the most flexibility regarding when and where to fish and facilitate the ability of the cooperative to take stand-downs or employ harvest strategies that prolong the season under constraining limits.	Alternative 3 will not stem the race for fish. The higher value winter and spring pollock and Pacific cod fisheries are most likely to continue to have vessel operators race to catch a greater portion of the TAC while it is still available (Council staff paper, Feb 2016).
10. Include measures for improved monitoring and reporting	Both Alternative 2 and 3 include measures for improved monitoring and reporting, including 100% observer coverage. However, only Alternative 2 provides a possibility for increased value in the fishery to help offset new monitoring costs (observer coverage, CMCP in processors, cooperative	Both Alternative 2 and 3 include measures for improved monitoring and reporting, including 100% observer coverage.

Elements for comparison	Alternative 2: voluntary cooperatives with target and PSC cooperative allocations based on catch history	Alternative 3: voluntary cooperative with PSC allocations based on equal shares
	management).	
11. Increase the trawl sector's ability to adapt to applicable Federal law (i.e., Endangered Species Act)	The ability for the trawl sector to adapt to federal law, such as Steller sea lion protection measures, is related to the Council's overall goal in the purpose and need statement to increase flexibility and economic efficiency in their operations. Alternative 2 is structured to provide incentive and opportunity for all groundfish trawl participants to engage in cooperative behavior. Cooperatives would provide harvesters and processors with greater flexibility to determine the timing of harvests to maximize value and minimize costs, and to adapt to changing environmental conditions or federal requirements.	There is little flexibility in Alternative 3, primarily due to the need to race with other participants prior to the fishery closing and the inability to engage in risk-pooling or bycatch avoidance plans which slow down the fishery. This alternative introduces additional pressures and instability in the harvesting and processing sectors at a time when markets are under significant pressure globally, with attendant social and economic impacts to fishery participants and fishery dependent communities.
12. Include methods to measure the success and impacts of all program elements	Both alternatives include a program review, with the intent to evaluate the program against the purpose and need and objectives established for the action and National Standards.	Both alternatives include a program review, with the intent to evaluate the program against the purpose and need and objectives established for the action and National Standards.
13. Minimize adverse impacts on sectors and areas not included in the program	The EIS will evaluate whether each alternative needs further refinement to minimize adverse impacts on sectors and areas not included in the program, primarily in the form of sideboards.	The EIS will evaluate whether each alternative needs further refinement to minimize adverse impacts on sectors and areas not included in the program, primarily in the form of sideboards.
14. Promote active participation by owners of harvest vessels and fishing privileges	Alternative 2 includes option to require partial vessel ownership or recent participation as captain or crew in the GOA trawl groundfish fishery in order to be eligible to purchase a GOA trawl CV license or catch history severed from a license. There is also an option to require that the active participation requirements must be upheld in perpetuity in order for a person to retain catch history on their license and thus continue to participate in the fishery. This represents a significant departure from, and strengthening of, the active participation requirements in other trawl fisheries. These requirements and criteria will be evaluated for their efficacy and appropriateness in the EIS, but are intended to serve the goal of promoting and increasing active participation in these fisheries. In combination with the consolidation limits (vessel use caps), these provisions would maintain a given level of active participation in the fishery and prevent	Alternative 3 includes provisions that prohibit a license holder from receiving economic benefits from the fishery cooperative unless they have three annual deliveries per species (pollock, cod, flatfish). There are several remaining questions on the implementation of the active participation requirements under Alternative 3, and the tradeoffs in requiring vessels to make 3 trips in each fishery in order to be eligible for an equal share bycatch allocation. One issue highlighted thus far is the notion of enticing additional new effort into specific fisheries, such as flatfish, in order to receive an equal share of that fishery's PSC limit. Incentivizing entry by vessels inexperienced in avoiding bycatch in these fisheries may have the unintended result of creating higher than average bycatch rates (Council staff paper, Feb 2016).

Elements for comparison	Alternative 2: voluntary cooperatives with target and PSC cooperative allocations based on catch history	Alternative 3: voluntary cooperative with PSC allocations based on equal shares
	persons who receive an annual allocation from leasing all, or a majority, of their quota.	

December 11, 2015

Dan Hull, Chair
North Pacific Fishery Management Council

Dr. Jim Balsiger Regional Director
Alaska Region, National Marine Fisheries Service

Re: Comments related to Council Agenda Item D 1 for the December 2015 meeting of the North Pacific Fishery Management Council and the preparation of a Draft Environmental Impact Statement and associated staff workplan.

Gentlemen:

These comments are provided in regard to Agenda item D1 for the December meeting, and as scoping comments pursuant to the National Environmental Protection Act (NEPA). NEPA requires that environmental analyses be informed by a thorough scoping of relevant issues to be analyzed and addressed in any associated Environmental Impact Statement. On July 14, 2015 NMFS announced its intention to prepare an EIS on this action due to significant impacts on the human environment. Although the official scoping period is past, we understand additional scoping and opportunities for public comment are ongoing on the range of issues that need to be evaluated as the Council considers developing a Gulf of Alaska Trawl Bycatch Management Program.

At the Council's October 2015 meeting, a new alternative was added to the suite of alternatives already under consideration. Alternative 2 has been the subject of numerous meetings and opportunities for public comment over the past 2-3 years. Despite the long record on this Alternative, a significant analytical workload remains. The new Alternative 3 (using staff proposed re-numbering) was presented at the end of the October meeting with no provision for the public to review and comment on the proposal. It was not available for public comment at the meeting, nor in scoping the comments NMFS collected prior to the October Council meeting. To our knowledge, there's no management structure globally like Alternative 3 for us to look to assess and understand likely impacts.

At the December meeting the Council is only considering the staff workplan for preparation of the Draft Environmental Impact Statement (DEIS). Review and public comment on Alternative 3 is again reserved for a future meeting.

The workplan reflects Council direction to use a "build up" approach rather than providing a complete analysis after an extended period. We urge the Council and the agency to follow the proven process for shaping significant amendment packages, through multiple iterations of alternatives based on comprehensive preliminary analyses. The staged approach outlined in the workplan appears to envision a process that would focus on different sets of issues each meeting rather than an iterative approach to refine alternatives. We are concerned the current schedule for this action will not provide sufficient opportunities for the affected industry and fishery dependent communities to fully evaluate and provide thoughtful comment on all the Alternatives under consideration. This action will be far reaching, and each of the Alternatives could have significant effects on harvesters, processors, and fishery dependent communities.

Below, we have identified major topics which we believe need to be addressed by staff analyses prior to the Council's next review of this agenda item. If this is not possible to do in a thoughtful and reasonably complete manner by February, then we suggest the proposed schedule be adjusted accordingly. Failing to offer a full preliminary analysis, with ample time for review by all stakeholders prior to the Council meeting where these analyses will be discussed shortchanges the public process and increases the possibility of unintended consequences of Council action. The intent and requirements of NEPA must be met, and we urge the Council take advantage of the information a NEPA analysis will generate rather than make decisions that leave NMFS with the responsibility of meeting the analytical and public process requirements after Council action.

The issues outlined in this letter pertain primarily to the inshore sector, and include the following:

1. Alternative 4 - CFA development. Staff have based their workplan and proposed schedule on the desire to have community issues discussed at the June 2016 meeting in Kodiak, emphasizing that Kodiak is one of the main communities this action will affect. In order for the preliminary analysis to provide useful information regarding the effects of Alternative 4, and to provide a meaningful comparison between all the Alternatives, Alternative 4 must be more fully developed. Otherwise, the analysis will simply be speculative and of little value. It is a requirement of NEPA to fully consider all reasonable alternatives, so in order to ensure compliance with NEPA we support full analysis of Alternative 4. We believe that the Council should strongly encourage proponents of this Alternative to provide the needed additional detail for Alternative 4 at the next meeting where this agenda item is scheduled (currently February 2016) so it can be fully analyzed along with the other Alternatives and provide a basis for a thoughtful discussion at the June meeting in Kodiak. We believe that it is incumbent on the proponents of Alternative 4 to provide additional detail to what is currently before the Council in order for a meaningful analysis to be conducted, and reasonable opportunity

for public comment on this Alternative to occur. We understand the staff's desire to have discussion of community issues be a centerpiece in Kodiak and we concur with their approach. If time is limited, we urge the Council to prioritize review of Alternative 4 at the June 2016 meeting in Kodiak and reschedule review of the broader package for a later meeting.

2. Coop formation and linkages. The staff workplan describes several aspects of co-op formation (Alternative 2 and Alternative 3) that would be reviewed and discussed at the February meeting. Under the heading *Discussion Paper on cooperative formation* the staff workplan speaks solely of effects on harvesters. Both Alternative 2 and Alternative 3 have consequences for processors which need to be thoroughly reviewed and analyzed.

   The staff paper also focuses on "fixed linkages" vs. "free association". We are concerned that these are not accurate descriptions of what is before the Council and that these terms may unduly bias the analysis. For example, from a practical standpoint Alternative 3 is a "no linkage" alternative and should be analyzed in that context. How would control of PSC by a discreet number of harvesting vessels affect the interests of other harvesters as well as processors and fishery dependent communities?

   Fixed linkages would be permanent linkages such as in the initial GOA Rockfish Pilot program. Alternative 2 has criteria for initial voluntary co-op formation and then explicitly allows for subsequent movement by harvesters from one co-op to another, or to a limited access fishery outside the co-op system. There are no permanent linkages under consideration under Alternative 2 or for that matter in any of the Alternatives or their various options. The analysis needs to be clear in this regard.

3. Co-op formation and incentive to participate. The staff workplan intends to explore what incentives may exist under each Alternative for harvesters to join co-ops. What is missing is analysis regarding what incentives there might be for processors to participate in the co-op program under each Alternative. It is clear that Alternative 2 envisions cooperative behavior between harvesters and processors to better manage bycatch and target species harvest. The intent is to provide incentive and opportunity for adding value to the fishery as well as to control bycatch. The Council recognized the benefits of cooperation between harvesters and processors as a way to provide opportunity for all parties: harvesters, processors, and fishery dependent communities. This was front and center when the

Council developed the goals and objectives for this proposed program. Alternative 2 was the result of these considerations. Alternative 3 is less clear in this regard. What needs to be fully explored for discussion in February is a clear description that compares and contrasts the incentives each Alternative provides to industry (harvesters and processors) to participate in co-ops, and how future opportunities for adding value to the fisheries can be achieved under each Alternative.

4. Co-op formation and the single co-op per region option. There are many questions about how the proposed single co-op per region structure would work and what are the potential benefits and pitfalls of such a management structure. In most other programs, co-ops are formed around a single processor. This proposal would have PSC control vested with a single co-op and allow for association with multiple processors.

   What effect would this single co-op structure have on control of target catch or PSC? How would distribution of PSC between harvesters be accomplished, and what impact could this have on individual harvesters? What effect would this have on processor investments and operations? What effect could this have on consolidation within the harvester and processor sectors? What are the effects such an arrangement could have on fishery dependent communities? Could this structure affect price formation, and what monitoring and enforcement measures would be necessary to ensure compliance with anti-trust law? Would the effects of this proposed structure be the same for each fishery in each region? Or are the significant differences between fisheries or regions that need to be considered? These are fundamental questions that need to be addressed after careful analyses in order for the affected industry and the Council can make informed decisions about the Alternatives under consideration.

5. Historical dependence on the fishery. The MSA emphasizes consideration of historical participation by harvesters and processors when developing such programs. The analysis needs to fully and carefully evaluate how each Alternative takes into account historical participation in the fishery by harvesters and processors, and the associated dependence on the fishery by harvesters, processors, and fishery dependent communities. This is fundamental to understanding the tradeoffs within and between Alternatives. Alternative 2 is designed to take into account historical participation. It is less clear how Alternative 3 considers historical participation. The analysis needs to explicitly explore the effects of each Alternative not only on catch history, but also historical landing and delivery patterns, investments by harvesters and processors in the fishery and their dependence on the fishery, employment in the processing sector and support industries, and downstream

effects on the historical pattern of operations and potential effects on non-groundfish fisheries.

6. Effects on investment, and incentive for new capital investments. What are the effects of each Alternative on the capital assets and investments of harvesters, processors, and fishery dependent communities? Throughout the process of developing alternatives for this program, the vast majority of industry participants (harvesters and processors) have agreed that the program should be designed so that the capital assets and investments of one sector would not be devalued to benefit another sector. The analysis should describe how each Alternative would address this fundamental principle. As part of this discussion the analysis should also look at and identify what incentives each Alternative provides for new capital investment by harvesters, processors, and/or fishery dependent communities.

7. Target species allocations vs. PSC only allocations. A thorough review is required for each Alternative as it affects access to major target species and/or species groupings and the costs and benefits of the various approaches to harvesters, processors, and fishery dependent communities. Alternative 2 is explicit in this regard although there are different options regarding which target species might be allocated. Alternative 3 does not anticipate such allocations. There are costs and benefits to each approach. The staff workplan focuses on performing analyses on PSC only, and apparently does not include target catch. Understanding the costs and benefits of each of the Alternatives and the effect on target species catch is fundamental to understanding the differences between each Alternative.

   For example, Alternative 3 has been described as not being a LAPP program under Section 303 (A) of the MSA because it does not specifically allocate individual quota or catch shares of target species. This interpretation of the MSA is novel and we believe the Council should request NOAA GC to provide guidance on this point. Nonetheless, the staff work plan does not speak to the question of control of target species harvest through PSC allocations. At some point control of associated PSC becomes de-facto control of access to the target catch. The analyses needs to explore under what conditions (levels of PSC allocated, number of vessels, etc) would control of PSC result in control of target species catch. The analysis should then describe the impacts such control could have on harvesters, processors, and communities on a fishery-by-fishery basis for each of the GOA regions.

8. Legal Review. Much has been made of the legal questions surrounding certain aspects of co-op formation under Alternative 2 but no comprehensive assessment has been made of other aspects of the alternatives being considered by the Council. A preliminary review of each Alternative and its relation to MSA requirements including national standards, attainment of OY, requirements for considering historical participation, and the provisions covering catch share or limited access privilege programs (LAPPs) under Section 303 (A) needs to be done. This should include an explicit analysis of how the CFA proposal fits under those provisions of Section 303 (A) regarding fishing communities.

As acknowledged in the workplan, there are many other issues and topics that the analysis will need to address. We believe that the issues identified above outline fundamental information that needs to be fully vetted and analyzed early in the process in order for the affected harvesters, processors, and fishery dependent communities (as well as other stakeholders) to understand and make meaningful comment on the various options within each Alternative as well as between Alternatives. There are complex interactions within each Alternative and between the coop alternatives and community protections that the staged or "build up" analytical approach is unlikely to adequately reveal or explain. We encourage the Council and NMFS to ensure that these analyses, and the information they will provide, will be available for public review and comment early in the process, and certainly well in advance of the Council making significant refinements to any of the Alternatives currently under consideration.

Thank you for this opportunity to comment.

Glenn Reed
Pacific Seafood Processors Association

Robert Krueger
Alaska Whitefish Trawlers Association

Julie Bonney
Alaska Groundfish Data Bank

Heather Mann
Midwater Trawlers Cooperative

Governor Bill Walker
Office of the Governor
PO Box 110001
Juneau, AK 99811

February 5, 2016

Dear Governor Walker:

The week of February 3rd the entire inshore trawl fleet for the Gulf of Alaska stood down from fishing to allow owners, skippers, crew and their families to attend the North Pacific Fishery Management Council in Portland, Oregon. The fleet took this unprecedented step to travel thousands of miles to express concern with the fisheries management proposal put forth by your Administration for the Gulf of Alaska trawl fisheries. The proposal put forward by Commissioner Cotten on trawl bycatch management was put out at the last minute at the October 2015 Council meeting with no opportunity for the affected harvesters, processors, or fishery dependent communities to comment on it, and no analysis of its effects on current participants in the fishery or the communities our fisheries support.

The proposal coming from your Administration undermines the value of investments made by harvesters, processors and communities in Gulf of Alaska fisheries. It will make it virtually impossible for our industry to maintain the kind of economic benefits we have provided to towns like Kodiak, Sand Point and King Cove. Gulf of Alaska trawl fisheries ensure a year round fishing economy and a large resident workforce that otherwise would not be there. This benefits the communities and other more seasonal fisheries such as salmon. Your Administration's proposal jeopardizes these benefits and yet does nothing to better manage bycatch and improve conservation. There is absolutely no support for this approach by the current participants in the fishery.

Governor, our fleet is a diverse group. We have vessels from Kodiak, King Cove and Sand Point. There are vessels out of Petersburg and other Alaska towns as well as the Pacific Northwest. Many of the fishery participants have been in this fishery for decades and we are all part of the Alaska fishing economy and these communities. Especially in this time of financial distress, we do not understand why your Administration would want to hamstring our ability to provide these economic benefits to Alaskan coastal communities as we also work to meet the goal to reduce and control bycatch.

The economy of the Gulf of Alaska is in jeopardy and we sincerely ask that you take whatever steps are necessary to ensure viable fisheries in the future.

Sincerely:

Letter to Governor Walker Signature Page

Julie Bonney — Julie Bonney — Alaska Groundfish Data Bank

JASON CHANDLER — F/V TOPAZ

Vern Hall — F/V VANGUARD

Lee L. Woodard II — F/V Leslie Lee & F/V Pacific Storm

Stoian Iankov - Stoian Iankov — F/V Michelle Renee

Mark D Chandler - Mark Chandler — F/V Topaz

Bert Ashley - Bert Ashley — F/V GOLD RUSH

MARK SMITH — F/V HICKORY WIND

Dave Smith - Dave Smith — F/V LISA Melinda

Heather Mann — Midwater Trawlers Coop

JAKE EVERICH — F/V ALASKAN

mi'u Schones — F/V COLLIER BROS.

Kristin Howard — F/V Collier Brothers.

Clayton Smith — F/V Hickory Wind

Eric Tower — F/V Hickory Wind

Michael. M. Okoniewski — Pacific Seafood

Sandra Schones-Johnson — F/V Collier Brothers

KEITH COCHRAN — F/V BAY ISLANDER

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	Kurt Cochran	F/V MARATHON
	Kimberlee D Cochran	F/V NewLife
	Bob Krueger	F/V Mar del Norte
	April D. Cochran	F/V Bay Islander
	Don Ashley	F/V Gold Rush
	Melinda Ashley	F/V GOLD RUSH
	Scott Hockema	F/V Pacific Storm
	Cody Hockema	F/V Pacific Storm
	Peter Sihonberg	F/V Equinox
	LLOYD JOHANNESEN	FV ADVANCER
	Kiley Thompson	f/v Decision
	Tom Manos	F/V Cape St Elias
	Julian Manos	F/V Alaskan Lady
	DUAIN A. FOSTER SR	F/V HEATHER MARIE
	Beth Stewart	Peninsula Fishermen's Coalition
	Bill Jacobson	F/V EXCALIBUR II
	JOHN McCARTHY	FV PACIFIC STAR

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Jody R Cook	Jody R. Cook	F/V Cape Reliant
Kirk Cortez	Kirk Cortez	F/V Elizabeth F
	George Hutchins	E/Rabeth F
	Curt Waters	F/V Mar Del Norte
Roger Ovena	Roger Ovena	F/V Cameron -
	Patrick O'Donnell	F/V CARAVELLE
	Candice Rodgers	F/V Hickory Wind
Marcy D. Bisbee	M. Delany Bisbee	F/V Mau Pacifico
Marcy D. Bisbee	M. Delany Bisbee	F/V Rosella
	Marcus Sauer	F/V Leslie Lee
	Ron Keesee	F/V Excalibur II
	Juan Carlos peñaloza	F/V CARAVELLE.
	Joseph Ham	F/V Chellissa, Dawn, Nichole
	Zack Lynch	F/V nicole
	Robert Harrington	F/V DAWN
	Mike Lynch	F/V Nichole FV / DAWN
	Paul McCabe	F/V Nichole

Governor Bill Walker
Office of the Governor
PO Box 110001
Juneau, AK 99811

May 5, 2016

Dear Governor Walker:

We are writing about proposals being promoted by your administration addressing the Gulf of Alaska (GOA) trawl groundfish fisheries. Collectively, our organizations represent the vast majority of Alaskan and non-Alaskan harvesters and processors involved in the Central and Western Gulf of Alaska trawl groundfish fisheries which are directly impacted by these management decisions.

The management regime your administration is advancing last came up at the February meeting of the North Pacific Fishery Management Council (Council) held in Portland, Oregon. The February meeting was the first time the affected groundfish trawl industry participants were provided an opportunity to comment on Commissioner Cotten's proposed management scheme for the fishery. At that time the entire trawl fleet from the Central and Western GOA, both Alaskans and non-Alaskans alike, stopped fishing so that skippers and crew could leave the fishing grounds and travel to Portland to attend the meeting. This was an unprecedented action by very competitive fishermen, and they had the full support of the processors to which they deliver.

At the February Council meeting, not one participant in the GOA trawl groundfish fishery spoke in favor of the proposal put forth by Commissioner Cotten. In fact, there was widespread concern and opposition to his proposal, with strong emphasis on how the proposal would cause significant disruption in the fishery, will not solve the management problems the Council identified in the fishery, and will instead exacerbate current issues. It appears designed to do harm to current participants – harvesters, processors, and communities – that have taken the risk and made the capital investments and sacrifice necessary to develop these fisheries.

Commissioner Cotten strongly advocated for his management scheme, going so far as to amend the proposal in ways that make it even more problematic and unworkable to achieve the Council's stated purpose and need and objectives for the new management plan. At no time prior to, during, or since that meeting were the actual participants in the fishery consulted regarding the substance of your administration's proposal or the amendments put forth by Commissioner Cotten. Under all other significant management programs in the North Pacific, those who are

most affected by the proposed regulations are considered a key part of the development of those programs, such that the Council and the process benefit from their operational expertise.

On February 5th, while the Council was in session, a letter was sent to you by the fishery participants expressing their concerns about the proposal put forth by Commissioner Cotten. The letter was signed by over 50 individuals representing harvesters and processors from King Cove, Kodiak, Sand Point, Petersburg, and the Pacific Northwest. For your convenience, a copy is attached. The issues and concerns raised in that letter are still relevant regarding your administration's proposal, and we want to call attention to these concerns because there has been no response to the letter from your administration.

The Gulf of Alaska trawl bycatch issue will come up again at the Council's June meeting in Kodiak. It will undoubtedly be controversial. There is little or no support for your administration's proposal from participants in the GOA trawl groundfish fisheries. The individuals and businesses that depend on this fishery remain deeply concerned that your administration's proposal threatens their jobs and communities, and that the process used to develop and promote the proposal disenfranchises the active participants in the fishery. We remain concerned that proposals being put forward at the Council with your administration's support are being developed by individuals and organizations that have no experience, economic stake, or investment in the trawl groundfish fishery and in many cases are historically on the public record as being openly hostile to the fishery. Interestingly enough, none of the fisheries these individuals and organizations represent are being considered to be managed under the scheme put forth by Commissioner Cotten.

On a statewide basis roughly 89% of Alaska's federal fisheries are harvested using trawl gear. This is the only gear type for multiple major fisheries, including pollock. GOA trawl groundfish fisheries provide hundreds of year round harvesting, processing, and community support jobs and millions of dollars to the economies of towns like Kodiak, King Cove, and Sand Point. In these three communities alone, seafood processing employs about 1,400 Alaskans. Trawl groundfish fisheries ensure that processing plants can operate year-round on sound economic footing, which in turn benefits other important seasonal Alaska fisheries such as salmon. Given that this fishery supports year round jobs and economic activity in Alaska's coastal communities, we do not understand the purpose of putting this fishery and its success at risk.

We have also enclosed copies of two other letters to the North Pacific Fishery Management Council expressing concerns and issues with your administration's proposal. Like the letter sent to you on February 5th, the concerns and issues raised in these letters remain relevant and have not been addressed.

Governor, we are asking that you support the GOA trawl groundfish fisheries, which are critically important to Alaska, and reconsider the direction you are taking on this action. Our organizations stand ready to work with you to develop a program that protects the investments

made in the fishery by harvesters, processors, and Alaska communities that participate in this fishery, while meeting conservation goals in a practical and economically sound manner.

Glenn Reed
Pacific Seafood Processors Association

Julie Bonney
Alaska Groundfish Data Bank, Inc.

Robert Krueger
Alaska Whitefish Trawlers Association

Heather Mann
Midwater Trawlers Cooperative

cc: Lt. Governor Byron Mallott

KODIAK VESSEL OWNERS' ASSOCIATION
P. O. BOX 2684
KODIAK, ALASKA 99615
(907) 486-8824

September 15, 2016

Mr. Glenn Merrill
Assistant Regional Administrator, Sustainable Fisheries Division
Alaska Region NMFS
PO Box 21668
Juneau, Alaska 99802

Attn: Ellen Sebastian

RE: Comments on EIS Scoping Process for Gulf of Alaska trawl bycatch management

Mr. Merrill:

The vessel owners of the Kodiak Vessel Owners' Association participate in the Gulf of Alaska fixed gear fisheries with longline and pot gear. These fisheries include Pacific cod, which is currently one of those being considered for action in the GOA trawl bycatch management program development. They also fish for halibut, which is one of the trawl prohibited species under Council consideration.

As fishermen who depend on the halibut resource, the members have a significant interest in this action item as it relates to a reduction of bycatch in the trawl fisheries, as well as full accountability.

We also fully recognize the importance of creating a program that will benefit the local community and provide stability to the vessel owners and crewmembers who participate in these fisheries.

We have three primary concerns from our harvesting perspective:

1. Reduce halibut bycatch
2. Require 100% monitoring of the trawl fleet
3. When at all possible, cod should be taken with fixed gear

The North Pacific Fishery Management Council has identified a Purpose and Need Statement, as well an Overarching Goal and Objective Statement for this issue. They have also created a series of alternatives for analysis which may meet some of those goals and needs. We believe an alternative needs to be added.

While the current program development is considering a reduction in halibut bycatch, as well as 100% monitoring of the trawl fleet, one area that is lacking is that of moving Pacific cod to a gear type that does not have a halibut bycatch problem.

There is an allowance under Alternative Two for trawl designated Pacific cod to be taken with pot gear. However, this is not enough in our view.

We propose that a percentage of the trawl designated Pacific cod be required to be harvested with pots within a certain number of years after implementation.

For example, one option might be to state that within five years following implementation, that 25% (or more) of trawl designated Pacific cod would be required to be harvested with pots. If a qualified participant had a combination vessel or a pot vessel, they could easily accomplish this. If not, they would be allowed to annually lease their Pacific cod to another harvester. Another option would be to allow a pot vessel to join a cooperative for the purpose of harvesting this cod. The Pacific cod would not be reallocated to the pot gear pool, but would remain trawl designated, but with the gear stipulation.

Taking Pacific cod with pots accomplishes several objectives:

- Solves the problem of halibut bycatch in this fishery
- Provides for a quality product, which increases value
- Keeps many small boats active and in business
- Creates more crewmember jobs
- Helps to maintain community stability
- Provides opportunity for entry level harvesters to enter the fishery

As the process of analyzing this action moves forward, there needs to be a desire to view this from a long-term perspective and while shaping the program, look into the future 10-15 years. We need to not be satisfied with trying to maintain the status quo, but try to envision how the program could be designed to be the best and most effective way to harvest the species, while allowing for new entrants and a true reduction of bycatch.

Thank you for reviewing our comments.

Sincerely,

Robert J. Wurm
President

August 21, 2016

Glenn Merrill
Assistant Regional Administrator, Sustainable Fisheries Division
Alaska Region NMFS
P.O. Box 21668
Juneau, AK 99802-1668

Dear Mr. Merrill,

Again, I am writing in response to the request by NOAA fisheries to comment on the proposed management change for the Gulf of Alaska (G.O.A.) ground fish fishery regime. This is at least the third time NOAA has initiated a comment period for the fishery and this is the third time, that I can remember, I have written a letter in respond to NOAA's request. Yet nothing has changed.

As you are well aware, the council process was set up to give fishermen a voice and more control over fisheries management policies. Each year, I make myself a willing participant for the council process. I comply with NOAA fisheries' request for comment, testify at the North Pacific Management Council, and ask that the council provides more tools for fishermen to properly manage bycatch. Attending the council meetings is time consuming, emotionally draining, and expensive. This year in Kodiak, NOAA staff admitted to me at a council meeting that they had not even read the letter I submitted for the record. This begs the question: what is the point of commenting to NOAA?

In February 2015, G.O.A. fishermen initiated a voluntary stand down in order to testify and ask that the NPFMC move ahead with the rationalized fishery management program outlined as "Alternative 2". Needless to say, fish were left in the water and fishermen, communities, and processors all lost money because of the stand down. In May 2016, fishermen in Kodiak testified before the NPFMC again asking for council to move ahead with "Alternative 2". Furthermore, NOAA fisheries in May spoke favorably of Alternative 2 and spoke with concern of the state of Alaska's proposal of "Alternative 3". And yet, the Commissioner of Alaska Department of Fish and Game continues to push an agenda that does not have the backing of the fishermen of which it serves. I, again, ask: What's is the point of commenting to NOAA?

Here we are again - another year, another comment period. Please see the attached letter I submitted to NOAA fisheries in 2015. Due the council's inaction, I'm afraid the letter I wrote a year ago is still relevant today.

Sincerely,

Tom Evich
owner/operator
F/V Karen Evich

August 17, 2015

Glenn Merrill
Assistant Regional Administrator, Sustainable Fisheries Division
Alaska Region NMFS
P.O. Box 21668
Juneau, AK 99802-1668

Dear Mr. Merrill,

I am writing in response to the request by NOAA to comment on the proposed management change for the G.O.A. ground fish. I own and operate a boat based in Sand Point, Alaska and predominantly fish in the Western gulf with some time spent in the Central gulf. At the N.P.F.M.C. meeting , Oct. 2014 the state of Alaska put forth a catch-share plan to give the trawl fleet the "tools" to control and reduce by-catch. I liked the plan, testified this to the council, and asked that they move forward. I liked the plan because it was based on history, which represents a person's investment and time in the fishery. You would be responsible for controlling your own by-catch. I liked that if a boat owner wished to participate, that person could then organize with a co-op. That co-op would then provide protection for both the processors and the communities where those processors were based. I liked the solution to the parallel fishery that we depend on in the Western gulf.

It was a discouraging when the state delayed the plan that was moving forward. We have been to the water's edge 3 times now, since 2000 trying to rationalize the G.O.A. With all the restrictions and by-catch quotas placed on the trawl fleet it is becoming more and more difficult to remain profitable and make a living for my crew. In June of 2014 I listened to Nicole Kimball tell the council, and B.O.F. members present, that the trawl fleet would be fishing under a catch-share plan by 2017. Since the first by-catch quota that was placed on us, I have invested over seventeen thousand dollars in salmon and halibut excluders, modifications, and freight expenses to date. I wish I had never spent that money. What's the point of trying to reduce my by-catch when most of the fleet that I am fishing around has not made the same investments? You cannot reduce, or in many cases control by-catch while racing for fish. The mind set is to get as much target specie on the boat before the next guy does.

My hope is that the council will move forward with the plan that the state has already presented.

Sincerely,

Tom Evich
owner/operator
F/V Karen Evich

Glen Merrill

Assistant Regional Administrator for Sustainable Fisheries

NMFS, Alaska Region

I am Mark Chandler, an owner of the F/V Topaz, a family owned vessel that has been fishing in the GOA and based in Kodiak since 1979. We have been participating in the groundfish fishery since its earliest days in Alaska in the early 1980's. We and our crew of 5 and their families are completely dependent on the Gulf of Alaska trawl groundfish fishery for our livelihood. The GOA Trawl Bycatch Management Program will have profound effects on our business as well as the community of Kodiak.

Regarding the new "overarching goal" introduced in June 2016, this new addition to the development of the program muddies the waters of a process that has been underway for a number of years. The new goal appears to be an ill-conceived attempt to make up for the shortcomings of previously implemented limited access programs. It does not fit the realities of the GOA trawl fishery nor contribute to a workable bycatch reduction program. It seems the State of Alaska is more interested in re-engineering a long standing and once functional fishery to meet objectives that run counter to the stated goals of the measure. This leaves the industry reeling from a council process that seems increasingly arbitrary and capricious.

Successful resource management is all about creating incentives that align with the management goals. Alternative 3 fails to do this. Only by allocating PSC and target species can the race for fish be adequately mitigated. Allocations to entities that are not historic participants with a dependence on the fishery further destabilizes the industry and runs counter to the mandate of the MSA. This also provides perverse incentives in a fully subscribed and well capitalized fishery. This alternative has no support from the fishery participants and should be dropped in favor of a workable preferred alternative.

Alternative 2 is largely based on the very successful and well vetted GOA Rockfish Program. The cooperative management structure that would be created by Alternative 2 has been demonstrated to be a model that reduces bycatch significantly and increases the value of the resource to the industry and the community at large. This is of critical importance, as costs to industry are certain to rise under a new management program. It also provides the proper incentives by holding participants accountable for their bycatch and includes elements that protect the community that is heavily dependent on this fishery. Alternative 2 does a good job of meeting the goals and objectives and has widespread support from those most effected by the measure.

The trawl fishery has provided a living for my family as well as many crew members and benefitted the community of Kodiak for over 30 years. Repeatedly moving the goalposts is not getting us closer to bycatch management. I hope we can achieve a stable and responsible management structure as I see possible only under Alternative 2.

Respectfully,

Mark Chandler

F/V Topaz

11415 S. Russian Creek Rd.

Kodiak, AK 99615

Pacific Seafood®

Mr. Glenn Merrill, Assistant Regional Administrator
Sustainable Fisheries Division, Alaska Region NMFS
Attn: Ellen Sebastian
P.O. 21668
Juneau, AK 99802-1668

Mr. Glenn Merrill, Assistant Regional Administrator for Sustainable Fisheries
NMFS Alaska Region

Mr. Dan Hull, Chair
North Pacific Fishery Management Council

Re: Notice of Intent to Prepare an Environmental Impact Statement: reopening public comment for scoping. NOAA-NMFS-2014-0150.

This letter is in response to the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for a new bycatch management program for Gulf of Alaska (GOA) trawl fisheries (the action), published in the Federal Register on July 28, 2016.

Pacific Seafood fully supports the recent joint comments and supporting documents regarding the "Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for a new bycatch management program for Gulf of Alaska (GOA) trawl fisheries," submitted by, the Alaska Groundfish Data Bank (AGDB), Pacific Seafood Processors Association, (PSPA), Midwater Trawlers Coop (MTC), and the Whitefish Trawlers Association (AWTA). These comments and their supporting documents, provide an excellent summary and analysis of the existing issues and the long history of industry involvement in this process. These need full and due consideration in any EIS process.

Pacific Seafood has vested interests in processing plants, and trawl vessels in order to conduct business in the Gulf of Alaska (GOA). Whenever possible Pacific employs local residents to manage and operate our Alaska processing plants. We also note that we actively participate in the GOA Trawl Rationalization Industry working group, and have provided numerous written comments and verbal testimony on this issue to the Council, as well as other public forums.

At present Pacific's direct involvement in GOA trawl fishing with our own vessels is limited. This is also true for our moderately sized Kodiak processing plant. Several years ago we chose to decrease direct GOA trawl related operations, reduce staffing, in order to concentrate on non-trawl operations until we could establish a clear vison that would provide guidance on the future state of the GOA trawl fishery. We need this clarity before we choose, or not, to further invest in our Kodiak operations and properties. We are still direct buyers of GOA trawl fishery products from a number of other processers in Kodiak, These products are important to our overall sales and marketing program as they help round out the package of seafood items requested by our customer base.

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In our professional estimation the GOA trawl fishery is in a state of increasing disarray. The referenced comments provided by AGDB et al are an excellent representation of the issues and in a measured way, express the frustration the trawl fishing industry has had with this process. This frustration is a manifestation of larger issues. Those issues have a revenue cost; to our industry, our community, our employees, and the State of Alaska.

As the substance of the AGDB comments is detailed and comprehensive we have added only several points for your consideration:

1. **Community and Council fears of Industry Consolidation under a "Catch Share/Coop" program for "Target species":** In our view and experience, consolidation occurs due to economic forces. It is our opinion, that consolidation of business entities occur when businesses cannot make enough profit to justify the continuance of their operations. While this can be a malaise that impacts an entire business sector it generally will singularly eliminate the least profitable entities allowing only the strongest to continue. In this the manufacturing cost to bring fish to markets is paramount. Uncertainty and inability to make well informed business decisions exacerbate this issue.

   Regulatory management programs can aggravate a tenuous economic environment, or conversely they may allow economic and market forces to develop solutions which can stabilize and reduce negative economic impacts. If developed properly and with stakeholder collaboration, this will be an environment that has both economic and conservation benefits.

   In the wake of meaningful regulatory inaction, Kodiak is already experiencing this consolidation. At least two processors have sold their processing plants and no longer do business in Kodiak.

   As the community of Kodiak relies heavily on the trawl harvest and trawl fishery income stream to support ancillary businesses, public infrastructure, and their resident base it seems ironic that more focused analysis has not been placed on what the trajectory may be if the trawl fishery regulatory framework continues on a status quo basis, or morphs into a program that is even more challenging to business. We believe the State suggested solutions and most of the CFA concepts we have seen to date would impose those exact challenges.

   It is our view that a well-structured Catch Share/Coop program would actually stabilize the present footprint and status of the working waterfront, whereas inaction (status quo management) or suggested State or CFA proposals will destabilize the business environment and lead to further consolidation and loss of employment.

   At the least this supposition needs to be evaluated and analyzed in the EIS process. Failure to do so could lead to erroneous conclusions and a much consolidated GOA trawl fishery with enfeebled economic output. Closely related to this, and another key point for analysis is the market and the supply chain to those markets. Too often markets and supply chains are viewed as

constant and static. With the great excess in supply and growing competition of farmed whitefish products the market for GOA whitefish products is as fragile as it ever been.

2. **Managing and motivating fishing behavior to reduce bycatch:** The State and other interests from the non-trawl sector have promoted the idea that an individual quota allocation of certain bycatch species alone without an individual target species quota allocation component would provide adequate incentives for fishermen to avoid bycatch. Pacific believes the opposite.

   Fishermen make their income based on the target species they can harvest. The best proven methods to avoid bycatch are still time (timing fishing activity to periods least likely to encounter bycatch species) and geography (fishing in locations where there is less chance of encountering bycatch). Coop systems that have information sharing provisions furnish fishermen with more precise information on when and where to fish in order to avoid bycatch. However, when the harvest operations game rules are; catch your target species before your neighbor catches theirs, the race for fish begins. It is our belief, reinforced by what we have heard repeatedly in fishermen testimony to the Council, that allocation of bycatch quota without an allocation of target species will actually increase bycatch. It is the individual's and Coop's Target species control over their quota, or lack thereof that motivates behavior. In a race for target species practicing bycatch avoidance may result in an unprofitable season.

We hope you will take our comments and those from the AGDB, and other industry groups into serious consideration. It is seldom that fishermen and processors unite steadfastly on fisheries issues. If the goal is truly to reduce bycatch then you must promulgate a program that will actually do the job. Such regulations must align the economic interests of the harvesters with the bycatch reduction objective or it may not just further weaken a fishery under stress, it may move you farther away from your goal.

Thank you,
Sincerely,
Mike Okoniewski

Alaska Operations Manager: Fisheries Management & Policy Advisor
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September 26, 2016

Mr. Glenn Merrill, Assistant Regional Administrator
NOAA Fisheries, Alaska Region
709 West Ninth Street
Juneau, AK 99802

RE: Notice of intent to prepare an environmental impact statement; reopening of public comment period

Dear Mr. Merrill:

Oceana commends the National Marine Fisheries Service (NMFS) and North Pacific Fishery Management Council (NPFMC) for the ongoing efforts to reduce bycatch in the Gulf of Alaska (GOA) trawl groundfish fisheries. Oceana is fully supportive of creating a new bycatch management plan and of expanding the scope of the agency's analysis under the National Environmental Policy Act. In the Environmental Impact Statement (EIS), we encourage you to consider alternatives that reduce Chinook salmon and Pacific halibut bycatch, require 100% observer coverage, and incentivize replacing trawls with other gears that result in less bycatch and less impact to important habitat.

The bycatch management plan is intended to "provide participants with incentives to effectively manage and reduce Chinook salmon and Pacific halibut bycatch and promote increased utilization of groundfish harvested in the GOA".[1] These goals are worthy but too narrow in scope. Oceana encourages NMFS to expand its goals to include minimizing the impact of trawling on other users of the fish resources and the ecosystem. Coastal communities are dependent on, and affected by the bycatch of, Pacific halibut and Chinook salmon. Reducing bycatch in commercial trawl fisheries and minimizing the impact of trawling would benefit recreational, non-trawl commercial and subsistence fisheries throughout the GOA.

In fact, attention to this issue has been driven, in large part, by the stated desire of many user groups to see reductions in bycatch of salmon and halibut by the trawl fleet. The Council and NMFS can best achieve this goal by setting meaningful bycatch hard caps and requiring full observer coverage. Alternatives should include measures that reduce Chinook and halibut prohibited species (PSC) bycatch by 25% over a three year period. Reducing bycatch both protects bycatch species and promotes advances in industry toward cleaner, more efficient harvest of target species.

Observer coverage is a fundamental tool for effective fisheries management by helping the agency gain insights into fishing practices, stock health, and adherence to management rules. Employing 100% observer coverage is the best way to get the accurate and precise fisheries data[2] that is needed for a GOA trawl management program. In past public comments, there has been overwhelming support for 100%

[1] https://www.federalregister.gov/documents/2016/07/28/2016-17879/fisheries-of-the-exclusive-economic-zone-off-alaska-groundfish-fisheries-in-the-gulf-of-alaska

[2] Babcock, E. A., E. K. Pikitch, and C. G. Hudson. 2003. How much observer coverage is enough to adequately estimate bycatch? Report of the Pew Institute for Ocean Science, Rosentiel School of Marine and Atmospheric Science, University of Miami, Miami, FL. http://www-aws.pewtrusts.org/~/media/legacy/uploadedfiles/wwwpewtrustsorg/reports/protecting_ocean_life/oceanabycatch110403pdf.pdf

observer coverage. In the earlier public comments on this issue, [3] thirty companies, non-profits, vessel owner/operators, and Alaska citizens wrote that they support 100% coverage. Those supporters include GOA coastal city councils, fishermen, conservation groups, and Native Alaskan tribal councils (see Appendix A). We are encouraged that each of the non-status-quo draft alternatives proposed for the bycatch management plan includes a provision for 100% observer coverage.

We look forward to working with you on this and other important issues.

Sincerely,

Jon Warrenchuk
Senior Scientist and Campaign Manager
Oceana

[3] C5 GOA Trawl Bycatch Management – Discussion Paper Public Comments, June 2016 http://legistar2.granicus.com/npfmc/meetings/2016/6/939_A_North_Pacific_Council_16-06-06_Meeting_Agenda.pdf

Appendix A

From June 2016's public comments, people/organizations that support 100% observer coverage

- Alaska Jig Association (p 40)
- Kori L. Allen, bookkeeper for F/Vs Chellissa, Dawn, and Nichole (p 42)
- Alaska Marine Conservation Council (p 44)
- Robert Carter, owner/operator F/V Faith (p 50)
- City Council of the City of Port Lions (p 52)
- Port Lions Traditional Tribal Council (p 216)
- Ludger W. Dochtermann, owner/captain of F/Vs North Point and Stormbird (p 60)
- Nathaniel Rose, F/V/ Historian (p 73)
- Stephen R. Taufen, Groundswell Fisheries Movement (p 79)
- Jarl and Kathleen Gustafson, owner/operator F/V Vigor (p 87)
- Pete Hannah, commercial fisherman (p 88)
- Natasha Hayden, council member of Afognak, Kodiak (p 90)
- Seames Hayden, owner/operator F/V Clyde (p 93)
- Christopher Johnson, owner/operator F/V North Star (p 102)
- Kodiak Crab Alliance Cooperative (p 103)
- City of Kodiak (p 185)
- Kodiak Island Borough (p 185)
- George Kirk, Kodiak (p 191)
- Kodiak Archipelago Rural Regional Leadership Forum (p 192)
- Alexus Kwachka, Kodiak (p 197)
- Peter Longrich, captain F/V Shuyak (p. 200)
- North Pacific Fisheries Association (p 202)
- Randy Moseman, Alaskan (p 205)
- Danielle Ringer, Kodiak (p 220)
- Steven Mathieu, o/o F/V Kahuna (p 223)
- Southeast Alaska Guides Organization (p 224)
- Tangirnaq Native Village Tribal Council (p225)
- Peter Thompson, Kodiak (p 2229)
- Leigh Gorman Thomet, comm fisherman (p 230)
- Christian Trosvig. owner/ operator F/V Grayling (p 231)

Patrick O'Donnell
Golden West Fisheries, Inc.

September 26, 2016

Glenn Merrill
Assistant Regional Administrator,
Sustainable Fisheries Division, Alaska Region NMFS
Attn: Ellen Sebastian
P.O. Box 21668
Juneau, AK 99802-1668

Re: Notice of Intent to prepare An Environmental Impact Statement Statement: reopening public comment for scoping. NOAA-NMFS-2014-0150

My name is Patrick O'Donnell, I own the 86 foot trawler F/V Caravelle and have fished out of Kodiak since 1990 and lived in Kodiak since 1993. I started Trawling in 1990 during the last year of the foreign Joint venture fisheries, spending time between the Bering Sea, GOA and West Coast hake fishery, while still continuing with the albacore and swordfish fishery out of California

I entered the trawl fishery as a first time part-owner in a vessel in 1996 at the age of 30. I stepped into the wheelhouse on a trawler in Kodiak in January, 1994; in March, 1996 bought 5% ownership in the vessel, an additional 5% in March, 1997 and another 5% in March 1998. At that point my partner in the vessel decided that he no longer wanted to sell so I started looking for another vessel to purchase.

In 2002 I bought the F/V Caravelle, which was in poor condition at the time, and over the years I invested millions of dollars to upgrade the vessel and get to where it is at today, and as a result I have a lot of debt in the boat. I felt it was necessary to upgrade my boat because we currently operate under a race for fish, with no guarantee of anything, and I could not compete with the rest of the fleet due to the condition of the vessel. As an older vessel the Caravelle had less fish hold capacity and did not have enough beam or flotation with an allowable deck load of only 5 tons to be able to stay out in bad weather. I had to choose whether to stay in the fishery and invest in the platform or sell out, and I chose to invest. Ultimately there is a high cost to entry to get in to the trawl fishery regardless of how you get there.

Even so there are more young fellows moving up from the deck to the wheelhouse today, more than we have seen in a long time, it is encouraging to me as we have not seen this in the last ten years. We have skippers who have sons that are willing to take

the responsibility and move up and eventually they will advance to purchasing part of the vessel as I did given the opportunity and eventually leading to owning the business.

As it stands today the future of the fishery is all up in the air and the state of Alaska is driving the bus. The State stacked the deck on the Advisory Panel and made appointments that end up pitting ideologies against one another (Trawl against Anti-Trawl) to the point where you end up with an AP that cannot accomplish the job it was tasked with and has become dysfunctional. There are no Kodiak processors on the AP and I am the only GOA-dependent trawler, and I am subject to appointment every year because I don't even have a regular three year term. The Council seems to be moving the same way, and I note that there is no Trawl representation sitting on the Council at this time. I myself believe it is inappropriate to make decisions in this process based solely on philosophical values and emotions rather than what one is tasked with doing: using the best information and science available and fully considering everything before moving forward with decisions that significantly impact other peoples' livelihoods.

We have a lot of people expressing concern with allocating quota and privatizing the groundfish fishery, yet many of these same individuals already hold quota in privatized fisheries and they did not voice concerns about their own fisheries being privatized at the Council meeting in June, 2016. Catch shares are proposed in the GOA trawl fishery in order to help the fleet meet more stringent PSC limits; concerns about privatizing the fishery may have some merit but these concerns need to be weighed against the necessity of keeping the trawl fishery operational, which was the whole point of this action in the first place.

The State has not demonstrated any real knowledge or experience regarding the federally managed trawl, a fishery which requires a high skill set in order to manage and prosecute successfully, and the policies it advocates are guaranteed to shut down the fishery. The State claims to be looking out for "new entrants" but why would anyone want to enter the fishery today considering the politics and the game of Russian roulette we are playing with the State and the Council? Ultimately the way I got into the fishery is the way any newcomer in the future will get into the fishery: work your way up to the wheelhouse from the deck, from there to part owner and eventually to full ownership of the vessel. The most important part of this is the learning curve, gaining the knowledge and experience to operate a trawl vessel and understand the fishing grounds, including the operations of demersal trawl nets as well as pelagic trawl gear.

The Trawl Bycatch Management Program proposed in Alternative 2 would have less risk associated with a big investment as you will have assigned quota providing more security, making it easier to get loans through a financial institution and alleviating risk of mechanical breakdowns and bad weather. More importantly, the catch share program provides more time to catch the fish, slowing down the fishery and allowing us to fish at different times and different places, thereby avoiding PSC.

In October, 2012, the Council approved a purpose and need statement and objectives to develop a new bycatch management program that recognized the challenges to the fleet in continuing to prosecute the fishery under a 15% reduction in Halibut PSC, to be phased in over 3 years starting in 2014. In its June, 2012 meeting in Kodiak the Council, in recognition of these challenges and because of the importance of a healthy GOA trawl fishery, promised to provide tools to the fleet to help it succeed under the new limits.

Since the June, 2012 meeting the trawl industry has been hit with a hard cap of 25,000 Chinook salmon in the GOA fishery, apportioned by area, western gulf and central gulf area 610 (6,684) area 620/630 18,316. The trawl fleet is further constrained by a hard cap of 7,500 Chinook in the non-pollock trawl fishery that took effect in 2015 and which allocates 2,700 Chinook to the Central and western Gulf of Alaska to the CV's and 2,700 to the CP's. These allocations create more and more boxes and provide less flexibility rather than more flexibility, and make it extremely difficult for trawlers to successfully operate under the current regulatory requirements.

As a result of the hard cap of 2,700 chinook that went into effect in January, 2015 under Amendment 97 we saw a closure or the non-Pollock /non rockfish fishery in May, 2015 for the remainder of the year. I believe this closure, and amendment 97, resulted from a decision not based on science or adequate information. Recent genetic studies show that the chinook caught in the GOA are primary hatchery fish from the lower 48 and Canada, not from stocks of concern in Alaska. Yet a decision was made by the Council to impose lower caps, resulting in a trawl closure that had a big impact on the fleet, processors, resident cannery workers and the entire community of Kodiak. This result was entirely predictable based on current conditions and ocean temperatures, and I in fact did predict it to the Borough Assembly and Kodiak FWG in February of 2015.

While these caps may be something that the fleet can work with in a rationalized fishery it cannot be done under a race for fish. The fleet is currently working on 2016 C season pollock and decided in the best interest of the town, cannery workers and the fleet of boats to do a voluntary catch share program for the C season pollock in the GOA. While some years the fleet is able to reach agreement to do a catch share I want to emphasize that this is not the case in every year, and that the voluntary arrangement can be broken by any vessel at any time and is not a long-term solution to bycatch management in the GOA.

In October, 2015, the State of Alaska put forward Alternative 3 (a PCS-only allocation scheme) with no input from the trawl industry participants, or from anyone as far as the record shows. I have testified before the Council in opposition to Alternative 3 on multiple occasions that allocating PCS-only does not accomplish anything as it does not stop the race for fish. The fleet tried this approach a few years back on a voluntarily basis and it didn't work and certainly did not serve to reduce PSC usage within the fleet.

I have to take my hat off to the fleet in what we accomplished in February, 2016, by standing together to get the entire fleet to stand down and cease fishing in the entire

Gulf Of Alaska so that skippers and crew could come to Portland to testify at the Council meeting about our concerns regarding the direction the State of Alaska has taken. As a longtime Alaska resident I am very disappointed and frustrated that I don't feel like the State of Alaska is standing together with GOA-dependent fishermen and communities to work toward a viable solution to bycatch management. At the February meeting about 50 fishermen testified in opposition to Alternative 3 however it appears that the state of Alaska and the Council completely disregarded all of this public testimony from the affected stake holders.

Alternative 3 does not in any way meet the purpose and need established by the Council and does not provide any meaningful or effective tools to the fleet to meet bycatch limits and continue prosecuting the trawl fishery. The State of Alaska did not even try to work with industry and the fleet to utilize our expertise in developing this alternative, and has never addressed a big problem with Alternative 3 – it does nothing to slow down the fishery.

In June, 2016 the Council adopted an overarching goal and objective proposed by the State for the GOA Trawl Bycatch Management Program. However, the Council did not explain how the overarching goals function in relation to the "regular" goals and objectives. For example, is the overarching goal just a general statement, or does it actually prioritize parts and pieces of the "regular" goals and objectives over others? As it is written I don't know what it means and I ask the Council to clarify the meaning and intent of this new addition before moving forward because the public deserves a meaningful opportunity to comment and this cannot happen with the gross lack of clarify that currently exists.

Finally, I hope that after 40 years of the North Pacific Fishery Management Council doing business in the GOA and BSAI that each Council member can look me in the eye and say you are putting your best foot forward by using good data and the best available science to make decisions that can make or break my business and will have a significant impact on the community of Kodiak.

Sincerely

Patrick O'Donnell
Owner/Operator
F/V Caravelle

September 21, 2016

Glenn Merrill
Assistant Regional Administrator, Sustainable Fisheries Division
Alaska Region NMFS

Attn: Ellen Sebastian
P.O. Box 21668
Juneau, AK 99802-1668

RE: NOAA-NMFS-2014-0150 – Gulf of Alaska Trawl Bycatch Management Program Environmental Impact Statement

Dear Mr. Merrill:

The City of Sand Point is concerned with Gulf of Alaska Trawl Bycatch Management and the effects that rationalizing another Gulf fishery could have on the health and well-being of our community. Our residents benefit directly from the cod and pollock fisheries as the owners, operators and crew on the vessels that harvest these valuable resources. Although I am a commercial fisherman (salmon), I am writing this letter purely from a community and economic development standpoint as the concerned mayor of an affected community.

As I noted in previous letters to the North Pacific Fishery Management Council this past May and last November, Sand Point is proud to be the homeport to the local groundfish fleet and to vessels based in our harbor. We strive to provide professional services and be a good partner for the industry. Having that fleet located in our community is important to the city both financially and socially. The trawl fishery, in particular, provides revenues that help sustain local families. This means that our population remains stable, our school is full of children, and folks are spending money in town which helps our local businesses and our tax base.

As you deliberate the intricacies of the of the management program and the associated Environment Impact Statement, I just want to reiterate the uniqueness of this fishery to the Alaska Peninsula communities of Sand Point and King Cove, and to the obvious importance of maintaining jobs in our fishing dependent communities. The following few findings were taken from the *Western Gulf Trawl Bycatch Management Social Impact Assessment*, a 2015 report prepared by Dr. Katherine Reedy for the Aleutians East Borough:

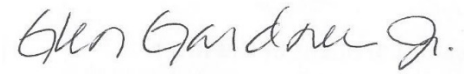
- The resident Western Gulf groundfish trawl fishermen were the first to develop the region's small vessel trawl fishery for both the Western and Central Gulfs.
- Early community-based developers of this groundfish fishery intentionally created a fishery for a multitude of local vessels in order to support more families and fish more consistently throughout the year.
- The majority of the Western Gulf Catcher Vessel fleet resides in the predominately Aleut communities of Sand Point and King Cove.
- The majority of the Western Gulf small vessel trawl fishery is Aleut vessel owners, hired skippers, and crewmen.
- Local resident Western Gulf fishermen are diversified across all state and most federal commercial fisheries available to them.
- Every fishery is important to Sand Point and King Cove, and the communities would suffer greatly with the loss of any of them.
- King Cove and Sand Point cannot be compared to Dutch Harbor and Kodiak: they are smaller, more vulnerable, locally owned and operated fishing businesses, with only two processors.
- Western Gulf communities are often lost in GOA discussions that center around the fishermen, processors, and support industry of Kodiak.
- The winter fishery for cod and pollock represents between 30% and 80% of the total annual income for hired skippers on trawl vessels. This changing percentage is largely based upon the relative success of the summer salmon fishery and the winter fishery.
- Fishing operations in Sand Point and King Cove largely consist of extended family networks. The compositions of these networks shift slightly between the summer and winter fisheries.

Sand Point is a "fish first" community that revolves solely around the commercial seafood industry, and year-round diversity is key. The same could be said of King Cove. We want to keep the local fleet healthy, in addition to all the jobs that go hand-in-hand with a productive industry. We need to retain wealth opportunities and profitable fisheries in our communities, especially as state assistance programs continue to dwindle and local revenue sources become ever more important.

Sand Point is a working town; always has been, and always will. Our people would never ask for a hand-out. All we are seeking is to keep boats active and participating in our community, which translates to supporting local businesses and donating to good causes, keeping kids in our school, and injecting local tax dollars that can further develop our town. Our hope is that families that have always lived in Sand Point, and have a desire to continue, will have the opportunity to stay here and invest in our community for generations to come.

Thank you for considering our comments.

Sincerely,



Glen Gardner, Jr.
Mayor