

North Pacific Fishery Management Council

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Draft MINUTES

198th Plenary Session
North Pacific Fishery Management Council
August 18-20, 2010
Captain Cook Hotel, Anchorage, Alaska

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APPROVED:  _____

DATE: October 12, 2010

Draft MINUTES

198th Plenary Session
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August 18-20, 2010
Captain Cook Hotel, Anchorage, Alaska

The North Pacific Fishery Management Council met August 18-20 at the Hotel Captain Cook, in Anchorage Alaska. The Scientific and Statistical Committee met August 16 and 17, and the Advisory Panel met August 18 and 19 at the same location. The following Council, SSC and AP members, and NPFMC staff attended the meetings.

Council Members

Eric Olson, Chair
Dave Benson, Vice Chair
Greg Balogh
Sam Cotten
Duncan Fields
Dave Hanson
John Henderschedt

Roy Hyder
Dan Hull
Cora Campbell
Jim Balsiger/
Bill Tweit
Capt. Mike Cerne

NPFMC Staff

Gail Bendixen
Jeannie Heltzel
Peggy Kircher

Chris Oliver
Maria Shawback
Dave Witherell

Scientific and Statistical Committee

Pat Livingston, Chair
Robert Clark
Sue Hills
George Hunt
Seth Macinko

Keith Criddle
Farron Wallace
Franz Mueter
Doug Woodby
Ray Webster

Robin Brown
Anne Hollowed
Kathy Kuletz
Lew Queirolo

* Absent: Gordon Kruse, Ray Webster

Advisory Panel

Joe Childers
Mark Cooper
Craig Cross
Jerry Downing
Tom Enlow

Becca Robbins Gisclair
Jan Jacobs
Simon Kinneen
Chuck McCallum
Matt Moir

Theresa Peterson
Ed Poulsen
Beth Stewart
Lori Swanson
Anne Vanderhoeven

John Crowley, Julianne Curry, Tim Evers, Jeff Farvour and Bob Jacobsen were absent.

Appendix I contains the public sign in register and a time log of Council proceedings, including those who provided reports and public comment during the meeting.

A. CALL TO ORDER

Chairman Eric Olson called the meeting to order at approximately 8:06 am on Wednesday, August 18, 2010, with a moment of silence to remember former Senator Ted Stevens.

Chairman Olson gave a brief overview of the logistics of the day, noting that the Council will break for the day at lunch, in time for Council members and the public to attend the Stevens Memorial, and briefly discussed transportation details.

OATH OF OFFICE: Dr. Jim Balsiger administered the Oath of Office for newly re-appointed Council members Sam Cotten and Duncan Fields.

AGENDA: The agenda was approved as published, noting that the Council may meet on Friday, if necessary.

Mr. Bill Tweit participated in the entire meeting in place of Phil Anderson, WDF Director. Ms. Cora Campbell participated in the entire meeting in place of Commissioner Denby Lloyd, Alaska Department of Fish and Game.

B. REPORTS

B-1 Steller Sea Lion Biological Opinion

BACKGROUND

NMFS has prepared a draft Steller Sea Lion Biological Opinion that contains the Agency's conclusions regarding the effects of the BSAI and GOA groundfish fisheries on Steller sea lions. The Biological Opinion (BiOp) concludes that the status quo groundfish fisheries jeopardize the continued existence of the endangered western Distinct Population Segment (DPS) of Steller sea lions and adversely modify its designated critical habitat. NMFS has outlined a reasonable and prudent alternative (RPA) that would modify management of the groundfish fisheries to ensure that the fisheries do not result in jeopardy or adverse modification. The RPA would revise management of the Atka mackerel and Pacific cod fisheries in the Western and Central Aleutian Islands management areas. The Executive Summary of the BiOp, which includes a description of the RPA, is attached as Item C-1(a). NMFS released the draft BiOp for public review on August 2, 2010 and is accepting public comments until August 27, 2010.

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NMFS has also prepared an initial review draft EA/RIR that evaluates the environmental, social, and economic effects of alternative Steller sea lion protection measures for the Aleutian Island Atka mackerel and Pacific cod fisheries. The Executive Summary of the EA/RIR is attached.

At this meeting, the Council, AP, and SSC are scheduled to review the draft BiOp and EA/RIR. NMFS will consider Council input and other public comments on the draft BiOp to determine whether changes can be made to the draft RPA consistent with the principles and objectives of the draft BiOp. NMFS will present the final RPA to the Council at its October 2010 meeting, as well as an updated analysis of fishery impacts associated with any revisions to the RPA. There will be no opportunity for further adjustments to the RPA at the October meeting. If the Council does not recommend or adopt the final RPA in October, NMFS intends to pursue the implementation of these mitigation measures as a Secretary of Commerce action under section 305(d) of the Magnuson-Stevens Act. The final BiOp and rulemaking to implement the management measures in the final RPA is scheduled to be completed by January 2011.

At the August meeting, the SSC will focus on reviewing the scientific information in the BiOp and the analysis in the EA/RIR, and will provide comments to the Council. The SSC's comments could help feed into the Council's discussion of the issues and questions to be addressed in an independent scientific review. NMFS has indicated that an independent scientific review by the Center for Independent Experts (CIE) will take place during the CIE's 2011 review cycle. In addition, the Council could potentially conduct a peer review process of its own.

Jeannie Heltzel, Council Staff gave a brief introduction on the agenda item and reviewed the agenda order for presentations. Dr. Doug Demaster of the AFSC, Brandee Gerke and Bill Wilson gave the presentation on the BiOp and fielded questions from the Council members. Melanie Brown and Ben Muse gave a report on the EA/RIR/IRFA, and took question from the Council. Lori Swanson gave the AP report, and Pat Livingston gave the SSC report.

Staff answered questions of clarification from the Council members. Mr. Dersham commented on how issues addressed at this meeting would affect BOF decisions, and suggested that it be discussed at the next Joint Protocol meeting.

Public comment was taken, and the Council recessed for the evening.

The Council held an executive session from 7:30 am until 8:45 am.

Upon reconvening, the Council discussed with NOAA General Counsel, John Lepore, the specifics of an emergency rule.

Ms. Cora Campbell made the following motion, which was seconded, noting the changes from the AP motion. Additions are shown underlined, and deletions in strikethrough.

The ~~Council~~ AP-recommends that NMFS consider ~~the adopt~~ the following as a ~~preferred alternative for a~~ Reasonable and Prudent Alternative (RPA).

RPA Alternative 4: SSL protection with sustainable fisheries and communities ~~reduced economic impacts on Aleutian Islands cod and mackerel fisheries.~~

Unless otherwise stated, the existing protection measures in 50 CFR 679 remain in place.

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Atka mackerel

Remove existing 'platoon' system in areas 542 and 543

Area 543:

- No fishing inside critical habitat
- Fishing outside critical habitat east of 174 degrees – 30 minutes East longitude
- TAC not to exceed 65% of ABC
- A season Jan 20 to June 10, B season June 10 to Nov 1
- No more than 50% of TAC harvested in A or B season
- No rollover between A and B seasons

Area 542:

- No fishing inside critical habitat from 178 degrees – 0 minutes East longitude to 180 degrees – 0 minutes longitude.
- TAC not to exceed 65% of ABC
- Catch inside critical habitat (outside Trawl Exclusion Zones) not to exceed 50% of TAC
- A season Jan 20 to June 10, B season June 10 to Nov 1
- No more than 50% of TAC harvested in A or B season
- No rollover between A and B seasons

Area 541:

- Status quo, except A season January 20 to June 10, B season June 10 to November 1

Pacific cod trawl

Area 543:

- No cod trawling in critical habitat east of 174 degrees 30 minutes East longitude
- Cod trawling in critical habitat west of 174 degrees 30 minutes from 10 nm and out from February 15 to March 15
- Cod trawl harvest limited to no more than 2.5% of BS/AI ABC

Area 541 and Area 542 east of 178 degrees West Longitude:

- Trawl cod fishery is A Season only (January 20 to June 10)
- Trawl cod fishery inside critical habitat is only east of 178 degrees W to 541 management border
- No inside critical habitat cod fishing west of 178 degrees W to 177 degrees E
- Increase haulout closures to 10 nm for cod trawl between 170 degrees W to 174 W
- Status quo West of 174 W to 178 W
-

Pacific cod fixed gear

No additional restrictions on vessels under 60' using fixed gear jig gear.

Area 543:

- Prohibit directed fishery for Pacific cod.

~~Areas 542 and 543:~~

- Cod fishery is limited to B season only (June 10 to November 1)
- Critical habitat open outside 3 4 nm-from rookeries and haulouts

Area 541:

- No new 541 restrictions on fixed gear cod fishing

~~The AP believes that RPA 4 allows for a more effective adaptive management opportunity. Allowing selective fisheries to occur in areas of lower concern provides the potential to contrast the effect of fishing on Steller sea lion stocks. We strongly encourage NMFS and all other sources of cooperative research to fund and develop plans~~

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~~to closely monitor and analyze changes in fisheries and sea lion stocks that may lead to better understanding of the reasons for changes in sea lion stock size throughout the range of the Western DPS.~~

The Council strongly encourages NMFS to develop a research plan which considers the SSC recommendations to address data and information gaps regarding the decline of Steller sea lions in Area 543 and the slow Steller sea lion recovery in Areas 542 and 541, and to immediately initiate budget and funding discussions within the agency to support the research plan.

The Council notes SSC concerns and recommendations for the analysis including:

- stating as fact some conclusions that still have a great deal of uncertainty about them such as past conservation methods having a “positive impact on reducing the impacts of the fishery exploitation strategy on Steller sea lions”;
- assumptions underlying the BiOp analysis including biomass projection methodology, biomass apportionment, and nutritional stress as the causal factor for low natality ;
- the global scale of the RPA relative to the current information base and conservation goal; and
- questions raised in the editorial comments of the SSC

and therefore recommends an independent review of the BiOp.

The Council recommends the agency include a 2-year sunset provision in their rule making.

Ms. Campbell spoke to her motion, first noting that the state reserves its right to address implications of this action on state water fisheries. She noted her reluctance to support some of the proposed changes. She noted that she is not convinced that available data is sufficient to make sweeping changes in fisheries management, and stated that there will be huge impacts on communities and the fishing fleets. However, the motion is an attempt to reduce these impacts in the event the agency will proceed with restrictions. Additionally, she stated that under Atka mackerel, the platoon system is removed as recommended in the agency’s RPA. This system was established to disperse effort and harvests, but the AM80 fleet results may have been counter to this objective. In Area 542, no fishing would be allowed inside critical habitat in the area around Amchitka, where studies estimate a relatively high harvest rate and possible importance of recruitment from outside to inside critical habitat. In other areas of 542 where studies have shown a high level of biomass and low harvest rate, fishing would be allowed up to 50% of the TAC. The TAC in this area overall would be reduced from status quo, and set at a level that would support harvest levels estimated to be below the 5% of biomass level found to be a concern. As with 543, the TAC would be seasonally apportioned, and in Area 541, the RPA would be equal to status quo, except with the truncated A and B season dates.

Ms. Campbell briefly outlined the restrictions on the cod fishery, noting that data of the importance of Pacific cod as a prey species for Steller sea lions is weak, making justifications for the restrictions on the Pacific cod fishery questionable.

Mr. Tweit suggested that the SSC recommended further research, and asked NMFS to provide a short version of funding needs prior to the October meeting. There was brief discussion regarding how an independent review would fit into the timeline, and its helpfulness to NMFS and the industry. Ms. Campbell noted she included the review request in her motion because of the uncertainty of the conclusions reached in the BiOp, and to have on hand to inform future Council actions.

Mr. Henderschedt reviewed clarifications of descriptions of Critical Habitat and Atka Mackerel trawl exclusion zones.

Mr. Fields moved, which was seconded, to amend area 541 under Pacific Cod Fixed Gear, to note 541/Bering Sea. Motion passed without objection.

Mr. Fields noted that the restrictions in 543/542 do not reduce TAC, but is an attempt to disperse the fishery throughout the year.

Ms. Campbell noted that the reason for the truncated timeline for Pacific cod trawl in 543 is related to the fact that cod makes up a smaller portion of biomass, and retains an opportunity for a small directed fishery. She also noted that prohibiting all fishing in area 543 for Pacific cod is severe, and more severe than justified by current available data, and stated that industry has made significant changes and adjustments in response to NMFS concerns.

There was discussion regarding timing, and concerns with the truncated timeline for the review process. Mr. Benson noted his concerns with inadequate time to read and review the BiOp, and suggested that NMFS put forward an emergency rule which will give NMFS, the Council, and the public time to go through a normal public process.

Mr. Hyder had questions concerning the two-year sunset provision, and Ms. Campbell responded that the Council will still go through a process to examine what they would want to include, and make recommendations. Ms. Campbell noted that the motion was in response to the current projected timeline and in October the Council can have careful consideration of recommendations. If the two year sunset is not adopted, then the Council would be able to have a clear rationalization as to why NMFS has not accepted certain recommendations. It would also provide clarifications to help with future decisions.

Mr. Oliver stated that this motion is the Council's opportunity for suggestions. The final decision is NMFS's. The Agency would report to the Council at the October Council meeting, but there would be no further suggestions or input. The Council would be able to discuss how to engage in the two year plan and sunset provision at the October meeting.

Mr. Henderschedt noted he appreciates the time and effort that went into drafting the motion, and notes that his responses are specifically to the RPA and not the BiOp. He notes that as specific and precise as the Council may be in its recommendations, and the processes to follow the recommendations, it may have consequences that are unpredictable at this time. He noted that these restrictions constitute a conservative approach. The seasons are designed to allow the mackerel fishery to be spread out over time and under coop efforts, fishing efforts can further be distributed over time. This addresses a concern raised by the Agency about a higher harvest in the "B" season. Mr. Henderschedt briefly discussed the FIT study, and noted in area 542 a fixed area fishery in critical habitat is low impact, and in 541, Mr. Henderschedt concurred with Ms. Campbell agreeing that there is no need for draconian measures.

Mr. Fields made his final remarks on the motion, stating he shares similar concerns and reservations as the maker of the motion. He noted the inability to weigh the information and review documents and have significant input. He would like to presume that the research portion of the motion can be expanded, and either fully supports the thesis, or moves toward other reasons for the decline of the Steller sea lion. He also noted that participation in this process is in no way a directive of what the Council will do later when addressing concerns and direction in the future.

Mr. Fields highlighted that the proposed alternative RPA is more sensitive to areas and fishing dynamics, gear types being used, seasons and quotas. He emphasized that the EA/RIR clearly underestimates economic harm – specifically to the western Alaskan communities. **Mr. Fields moved to amend the motion by adding a final statement: Further, the Council notes the SSC's concerns and**

recommendations regarding the EA/RIR, and requests strengthening and expanding the document. The amendment was seconded, and the motion passed without objection.

Mr. Dersham noted his agreement with Ms. Campbell and Mr. Fields, and noted that this meeting was an excellent example of public comment, industry, staff, and Council working together over the last few days. He noted that there has been a good exchange all the way around.

Mr. Tweit hoped that the Council's advice fits in the proposed timeframe because it highlights the SSC's minutes and lessens dramatic fishery consequences and management measures, unexpected negative biological impacts and well as unexpected economic risk. He hopes the Agency will continue to work with the Council for a much more meaningful public process.

Mr. Cotten noted his concerns for the fishing communities and the unique plight that fishing vessels will have.

Mr. Henderschedt noted that the Agency needs to make clarifications and assumptions as to the effort, and this will change Ianelli projections.

Mr. Hull noted he will vote in favor of the motion, and concurs with the SSC comments. He remarked that the proposed RPA is more surgical than the SSC recommended, and is appropriate. He noted the success of this Council is based on best available science and taking action that is science based and continuing to take public comment from people that are affected in communities. Regardless of determination, Mr. Hull noted that he is glad to see high standards kept, and encourages the Agency to maintain standards.

Mr. Balsiger noted that he understood and supports the motion, while realizing NMFS may not be able to implement or adopt all of the Council's recommendations. He noted that it is important for the Agency to work with the Council and that the goal is sustainable fisheries, sustainable marine mammals. He will incorporate the Council's recommendations, and noted his appreciation for the work everyone has done.

Mr. Olson noted his reluctance to support the motion, and that there was a very short time for review. He noted significant concerns raised by the SSC and public over the adequacy of the science in the draft RPA and BiOp. He stated that overall in the BiOp there was a tone of certainty and advocacy. Additionally, Mr. Olson noted that the alternative RPA in the motion does its best to mitigate the impacts to the industry, but that it was created in distress and under duress. Through this motion the Council is signifying its ability to roll up its sleeves and proposed the best it can do in this timeframe.

Given all of this, Mr. Olson continued, he will support the motion and future effort that the Council works towards to protect communities and fleets, while protecting Steller sea lions, and he looks forward to hearing from the Agency in October.

Motion passed unanimously by roll call vote.

Chairman Olson thanked everyone for their time, and the Council adjourned at 10:43 am on August 20, 2010.