

FINAL Council Motion
C-5 BSAI Pacific cod Trawl Catcher Vessel LAPP
December 9, 2020

The Council recommends releasing the analysis for another initial review after making the following revisions to the purpose and need, elements, and analysis. Additions are shown in underline and deletions are shown in ~~strikethrough~~.

Purpose and Need:

Over the last several years, total allowable catch for Pacific cod in the Bering Sea-Aleutian Island has steadily decreased. The pace of the fishery has contributed to an increasingly compressed season, resulting in decreased ability to maximize the value of the fishery, and negatively impacting all fishery participants (catcher vessels, motherships, shoreside processors, and communities). This race for fish also discourages fishing practices that can minimize bycatch and threatens the sustained viability of the fishery. The Council is considering the development of a cooperative-based program to improve the prosecution of the fishery, with the intent of promoting safety and stability in the harvesting and processing sectors, increasing the value of the fishery, minimizing bycatch to the extent practicable, providing for the sustained participation of fishery dependent communities, and ensuring the sustainability and viability of the resource.

Element 1. Cooperative Style Systems

~~Option 1.1: One cooperative will be formed for AFA vessels and one cooperative will be formed for non-AFA vessels.~~

~~Each eligible license will be eligible for one cooperative and must join that cooperative to participate in the Pacific cod cooperative fishery.~~

~~Cooperative requires membership of 80% of the eligible catch history for that cooperative.~~

~~Vessels and LLP licenses that do not join a cooperative would be eligible to fish in a limited access fishery. Harvest and PSC in the limited access fishery would be limited to the Pacific cod and halibut and crab PSC that would have been issued to cooperatives had the eligible LLP licenses joined a cooperative.~~

~~Suboption 1.1.1: Reduce halibut and crab PSC apportionment to the BSAI trawl CV limited access fishery by 25% to 40%.~~

~~Option 1.2: Voluntary harvester cooperatives with no minimum number of licenses required.~~

Holdings of qualified LLP licenses must join a cooperative annually in association with an eligible licensed processor (FFP or FPP) to harvest allocations of Pacific cod. Harvesters may change cooperatives and cooperative associations may change annually without penalty.

No limitation on the number of LLP licenses holders or eligible catch history needed to form a cooperative.

No limitation on the number of cooperatives that may form.

Inter-cooperative formation is allowed.

~~SubOption 1.2.1: A minimum of three unique LLP license holders are needed to form a cooperative, using the 10% ownership rule.~~

~~Suboption (applicable to Options 1.1 and 1.2): inter-cooperative formation is allowed.~~

Element 2: Allocation to LLP Licenses

Catch history to determine allocations under this management action will not be considered beyond December 31, 2019.

2.1. Eligibility – Any LLP license assigned to a vessel that ~~authorized that vessel's~~ made legal landings of targeted trawl catcher vessel BSAI cod during the qualifying years (or an LLP license as of December 31, 2019 assigned to an AFA trawl CV that had BSAI Pacific cod catch in 1997)¹ is eligible to receive harvest shares.

Option: Establish a minimum threshold percentage range of 0.25%-1% by LLP holder for eligibility to receive harvest shares. Does not apply to those 8 licenses with a transferable AI endorsement.

2.2. Harvester Allocations – Eligible LLP licenses must be assigned to a cooperative to receive annual Pacific cod quota. The sector's harvest shares will be allocated to eligible LLP licenses or transferable AI endorsements, with each LLP license's or transferable AI endorsement's allocation based on the Pacific cod catch history (legal landings) of targeted BSAI cod authorized by that LLP license or a transferable AI endorsement during the following qualifying years:

Option 2.2.1: 2014 - 2019

Option 2.2.2: 2009 –2019

Option 2.2.3: 2004 –2019

Option 2.2.4: Allocations based on a blend of catch history and AFA sideboard history²

Suboptions to credit catch history/sideboard at:

Suboption 2.2.1: 50%/50%

Suboption 2.2.2: 80%/20%

Suboption 2.2.3: 20%/80%

Suboptions (applicable to Options 2.2.1 – 2.2.4):

Suboption 2.2.1. Drop 1 Year

Suboption 2.2.2. Drop 2 Years

2.3. Catch history is attached to the LLP license at the time of harvest. If multiple licenses authorized catch by a vessel, in the absence of agreement of the license holders at the time of application, history will be:

Option 2.3.1: divided equally between those licenses.

Option 2.3.2: assigned to an LLP license by the owner of the vessel that made the catch.

¹ The latter criteria (LLP assigned to an AFA trawl CV that had BSAI Pacific cod catch in 1997) is only applicable if one of the blend options is selected under Option 2.2.4.

² Using staff approach of blending 1997 sideboard history with qualifying year option catch history attached to the eligible LLP license at the time of implementation of the trawl CV LAPP.

2.4. Annual quota will be issued to each license based on its share of the total qualifying BSAI trawl catcher vessel catch history. Allocations will not be designated for harvest in a management area (i.e., BS or AI) but may be harvested from either area.

2.5. Option to allocate A and B season BSAI trawl CV Pacific cod only:

A and B season TACs (after deduction of the ICAs) will be allocated to cooperatives as annual cooperative quota (and to seasonal limited access fisheries, if applicable). Annual cooperative allocations (and seasonal limited access allocations, if applicable) attributable to each LLP license will be that LLP license's proportional share of the total qualifying Pacific cod history.

~~Staff should analyze distributional impacts of this option based on differential catch histories in the A and B season.~~

The C season allocation will remain 15 percent and remain a limited access fishery to any vessel with an eligible groundfish LLP license with an applicable area endorsement. The C season limited access fishery will be managed as currently by NMFS, including management of incidental catches of Pacific cod in other directed fisheries. C season TAC (and A and B season ICAs and cooperative quota) that NMFS projects to go unused are subject to reallocation to other sectors under current reallocation rules.

2.6. All species not allocated to cooperatives will be managed by maximum retainable amounts (MRAs), as under current management.

Element 3. Prohibited Species Catch Limits

The annual crab and halibut PSC available to the BSAI trawl catcher vessel Pacific cod sector will be as follows:

~~Option 3.1: Status quo methodology~~

~~Suboption 3.1.1: Establish trawl CV Pacific cod crab and halibut PSC apportionment based on historic use (using qualifying years selected under Element 2) between the trawl CV sector and the AFA C/P sector.~~

Option 3.1: Crab PSC will be maintained at the BSAI trawl limited access sector level.

Option 3.2: Establish separate PSC limits for the BSAI trawl CV Pacific cod sector. Reduce (Suboption 1: halibut and crab PSC Suboption 2: halibut PSC) apportionment to BSAI trawl CV Pacific cod sector that would be harvested under a status quo methodology by 10% to 2535%.

Each cooperative will receive annual cooperative quota allocations of Pacific cod and apportionments of PSC based on members' qualifying catch histories (and processing histories, if applicable) to be harvested in accordance with the harvest cooperative agreement. The sector's PSC will be apportioned to cooperatives in proportion to their members' Pacific cod qualifying catch histories (and processing histories, if applicable).

Element 4: Gulf of Alaska (GOA) Sideboards

Option 4.1: All AFA non-GOA exempt CVs and AFA LLP licenses or CVs will be sideboarded as to all Gulf of Alaska (GOA) fishing activity, except for the CGOA Rockfish Program, based on their Gulf catch history during the BSAI Pacific cod qualifying period.

Option 4.2: AFA GOA-Exempt and non-AFA CVs and LLP licenses will not be permitted to lease transfer their BSAI Pacific cod cooperative quota cod history on their respective LLP license as a condition of continuing to benefiting from its-an AFA GOA sideboard exemption. Cooperatives will be required to monitor GOA AFA and non-AFA exempt vessels to ensure they do not lease their BSAI Pacific cod CQ and implement a penalty structure for violations. Cooperatives will be required to report leasing activities and penalties issued in the annual report.

Suboption 4.2.1: AFA GOA Exempt and non-AFA CVs with LLP licenses of less than a threshold amount 200 mt, 400 mt, or 600 mt of qualifying BSAI cod history may lease transfer their BSAI cod history and continue to benefit from the AFA GOA sideboard exemption.

~~Option 4.3: Non-AFA LLP licenses would be sideboarded in the GOA (with the exception of the CGOA Rockfish Program) based on their GOA catch history during the qualifying years with the exception that those non-AFA CVs with less than a threshold amount of qualifying BSAI cod history, which would be exempt from the sideboard limitation.~~

~~Suboption: Any eligible CV LLP license that opts out of the BSAI Pacific cod program at implementation of the program will be exempt from GOA sideboards created by this program (one-time option).~~

Element 5: Processor and Community Provisions

5.1. No closed class of processors; all processors with an eligible FPP or FFP are eligible to process BSAI Pacific cod under this program (subject to eligibility requirements under the April 2019 Council action to limit catcher processors acting as motherships).

5.2. Limit (sideboard) on directed BSAI Pacific cod that can be delivered by trawl CVs to eligible C/Ps acting as motherships. The sideboard would be based on BSAI Pacific cod processing history by eligible C/Ps during qualifying years under Element 2.

Option 5.2.1: Each eligible CP acting as a mothership may process up to the higher of 1) the processor's history (percentage based on qualifying years selected in Element 2.2); or 2) the history (percentage based on qualifying years selected under Element 2.2) from LLP licenses that are owned (in excess of 75%) directly or indirectly by the owner of a catcher processor LLP eligible for the offshore sector of the target non-CDQ BSAI Pacific cod trawl CV fishery (as of December 31, 2019).

5.3. Limit number of trawl CVs in the directed BSAI Pacific cod fishery that can deliver to eligible CPs acting as motherships. Trawl CVs can qualify for the offshore sector in one of two ways:

- 1) An LLP license that is owned (in excess of 75%) directly or indirectly by the owner of a catcher processor LLP eligible for the offshore sector of the target non-CDQ BSAI Pacific cod fishery (as of December 31, 2019)
- 2) Council will develop other eligibility thresholds for LLPs on trawl catcher vessels

Only quota arising from the history of an LLP license qualifying for the offshore sector will be permitted to be delivered offshore. Only vessels that are assigned LLP licenses that qualify for the offshore will be permitted to make offshore deliveries. Vessels using LLP licenses that are permitted to deliver offshore

may also deliver any or all of the quota derived from the LLP license to shore based or floating processors.

5.43. Allocation of harvest shares to processors (~~option: only this option is only~~ applicable to Bering Sea processors and eligible C/Ps if ~~different AI shoreside protections~~ if AI allocations are selected under element 6):

Onshore and offshore processors (~~Option:~~ subject to eligibility requirements under the April 2019 Council action to limit catcher processors acting as motherships) that have history of processing in the federal BSAI Pacific cod trawl CV fishery will be eligible to receive a percentage of total harvesting shares based on each onshore processor's and offshore processor's processing history. To be used, the processor's harvest shares would be transferred to the CV cooperative. ~~Additional restrictions on use of this quota must be developed through further analysis.~~

Option: A cooperative cannot assign a greater proportion of the harvest shares allocated to a processor to a vessel owned by that processor than the vessel brought into the cooperative absent any processor held shares. The cooperative will monitor this provision and include reporting on allocation of processor held shares in their report to the Council.

Percent of harvest shares and PSC to be allocated to eligible processors:

- Option 5.43.1: 5%
- Option 5.43.2: 10%
- Option 5.43.3: 15%
- Option 5.43.4: 25%
- Option 5.43.5: 30%

~~Suboption: Harvest shares only~~

Processing history years to receive harvest shares are the same as harvester years in Element 2.

Element 6: Aleutian Islands Processor Provisions

Options 6.1 and 6.2 are mutually exclusive.

Option 6.1: In any year when the community of Adak and/or Atka files a notice of intent to process, require the cooperative(s) to reserve a set-aside for delivery to a shoreplant, as defined in Amendment 113 regulations, in the Aleutian Island management region. The amount of the set-aside will be 10% to 25% of the BSAI CV trawl directed A season harvest amount. Adak or Atka may withdraw its intent to operate notice during the season if necessary; if so, the set aside requirement is removed.

~~Suboption 6.1.1: The set-aside will be reduced by any amount Adak/Atka processors receive as a direct allocation of harvesting shares pursuant to this LAPP Program, regulation or legislation.~~

Option 6.2: In any year when the community of Adak and/or Atka files a notice of intent to process, annual harvest quota shall be issued to the plant operator designated in that notice of intent. In the event, one community issues a notice, the lesser of 5,000 mt or (option 1: 5.5%, option 2: 10%) of the total BSAI trawl catcher vessel Pacific cod quota (prior to allocations based on harvesting or processing histories) ~~(1,961 mt in 2019)~~ shall be issued to the plant. In the event both communities issue a notice the allocation shall be divided equally between two plants. Adak or Atka may withdraw its intent to

operate notice during the season if necessary. In that case, the unharvested portion of the allocation will be reissued to the other AI shoreplant if it is operating.

Suboption 6.2.1: If no AI shoreplants are operating, the amount of annual quota equivalent to unharvested portion will be reissued to cooperatives (holders of LLP licenses with BS and/or AI harvest history in proportion to their annual allocations).

~~Suboption 6.2.1: Allocations are transferable between qualified entities.~~

Annual Aleutian Islands community shore plant allocations shall be transferable to any cooperative(s) (and between cooperatives) for harvest by member vessels that are assigned an AI trawl CV LLP license eligible under this program. Quota shall be harvestable exclusively in the AI and ~~any catch must be landed to the shore plant operated by the annual quota recipient (i.e., plant operator)~~ landed in the AI management region.

~~In the event any Aleutians community shore plant allocation is not fully harvested by March 21, that unharvested allocation will expire and an amount of annual quota equivalent to the unharvested portion will be reissued to cooperatives (holders of LLP licenses with BS and AI harvest history in proportion to their annual allocations).~~

Suboption 6.2.2: If the community of Adak and/or Atka files a notice of intent to process, annual harvest quota should be issued to an entity representing the community designated in the notice of intent.

Suboption 6.2.3: AI trawl vessels less than 60' LLP will be eligible under the program to receive and harvest option 1: 50%, option 2: 25%, or option 3: 10% of the Annual Aleutian Islands community shore-plant allocation of which must be harvested by these vessels. These vessels will be eligible to join a cooperative annually in association with the Adak and/or Atka plant regardless of whether they otherwise qualify for the program.

Element 7. Transferability

7.1. Catch histories are attached to LLP licenses and are non-severable from the LLP. Transfer of an LLP license eligible for this program results in the transfer of any program eligibility and catch history/harvest shares associated with the LLP license.

Suboption: For the LLPs associated with the non-exempt AFA vessels, within ninety (90) days of publishing the Final Rule of this program, the owners of the LLP licenses that are associated with AFA non-exempt catcher vessels that had engaged in fish transfer agreements during the qualifying periods will be allowed to transfer the quota shares between other LLPs associated with AFA non-exempt vessels. Upon redistribution of the initial allocation to the designated LLP license, the BSAI P. Cod harvest quota shares will no longer be severable from its applicable LLP license to which it was reassigned.

7.2. Allocations based on processing history are issued as separate permits, and the permit is only transferable to another processor. Permits issued to shoreside processors can only be transferred to other shoreside processors that hold an FPP. The history is non-severable from the permit except in the case that transfer of the permit to another eligible processor would result in exceeding the use cap under Option 8.3. In that case, the portion of the history over the cap is allowed to be severed from the permit and transferred to another eligible processor permit. ~~To be analyzed: Use and transfer~~

~~restrictions on processor cooperative shares if selected (e.g., options for restrictions on use on company-owned vessels, transferability restrictions).~~

7.3. Annual allocations of Pacific cod and PSC (whether derived from harvesting or processing histories) are transferable between cooperatives.

7.4. Post-delivery transfers of cooperative quota are permitted, but must be completed by December 31 (i.e., prior to annual cooperative quota expiring).

Element 8: Ownership and Use Caps

8.1. Harvester-issued cooperative shares. Processor-issued cooperative shares do not count toward this use cap. No person may hold or use more than option: 5%- 10% percent of the Pacific cod cooperative quota ~~or PSC apportionment~~ issued:

Option 8.1.1: using the individual and collective rule or

Option 8.1.2: using 10% ownership threshold or management and control for assigning quota to a holder's/entity's cap.

Suboption 8.1: Persons over the cap at the time of implementation are grandfathered.

8.2. No vessel may harvest more than option: 3% - 5% percent of the annual Pacific cod cooperative quota ~~or PSC apportionment~~ issued in the fishery.

Option 8.2.1: Vessels over the cap at the time of implementation are grandfathered.

8.3. Processor-issued cooperative shares³: No person may hold or use more than option: 15% - 20% percent of the Pacific cod cooperative quota ~~or PSC apportionment~~:

Option 8.3.1: using the individual and collective rule or

Option 8.3.2: using 10% ownership threshold or management and control for assigning quota to a holder's/entity's cap.

Suboption 8.3: Persons over the cap at the time of implementation are grandfathered.

8.4. No processing facility may process more than 20%-30% percent of the Pacific cod cooperative quota.

~~Sub~~Option 8.4.1: Processing facilities over the cap are grandfathered.

Element 9. Cooperative Provisions

Annual cooperative applications must be filed on or before November 1 of the preceding year.

Cooperatives shall be formed by qualified LLP licenses with trawl CV Pacific cod history. Each LLP license is eligible to join one cooperative. A vessel assigned a qualified LLP license is a member of that LLP license's cooperative. A vessel may join a single cooperative. Vessels that are not designated on a trawl CV qualified LLP license are not eligible to join a cooperative unless participating under Element 14.

³This cap refers to any harvest shares initially issued to processors on a processor permit under Element 5.3.

Cooperatives are intended only to conduct and coordinate harvest activities of members and are not Fishermen's Collective Marketing Act (FCMA) cooperatives.

Membership agreements will specify that processor affiliated members cannot participate in any price setting negotiations, except as permitted by antitrust laws.

~~Each cooperative will receive annual cooperative quota allocations of Pacific cod and apportionments of halibut and crab PSC based on members' qualifying catch histories (and processing histories, if applicable) to be harvested in accordance with the harvest cooperative agreement. The sector's halibut and crab PSC will be apportioned to cooperatives in proportion to their members' Pacific cod qualifying catch histories (and processing histories, if applicable).~~

~~Option: Maintain crab PSC limits at the sector level.~~

Element 10. Share duration

All allocations and allowances under this program are revocable privileges that 1) may be revoked, limited or modified at any time; 2) shall not confer any right of compensation to the holder, if they are revoked limited, or modified, and; 3) shall not create or be construed to create any right, title or interest in or to any fish before the fish is harvested by the holder.

The duration of all harvest shares and associated PSC apportionments is 10 years. These permits will be renewed before their expiration, unless revoked, limited, or modified.

Element 11. Monitoring

All vessels in the program will be in the full coverage program (100% observer or electronic monitoring coverage category, if applicable). This element is not intended to modify the observer coverage exception provided for CVs delivering unsorted codends to a mothership. NMFS will develop monitoring and enforcement provisions necessary to track quota, harvest, PSC, and use caps. The Council authorizes NMFS to report weekly vessel-level bycatch information as authorized under MSA Sec 402(b)(2)(A).

Element 12. Reporting and Program Review

Each cooperative shall annually produce a report for the Council describing its performance in the preceding year.

Per the Magnuson Stevens Act, a formal detailed review of the program shall be undertaken 5 years after implementation, with additional reviews, at a minimum, each seven years thereafter.

Element 13. Cost recovery

A fee, not to exceed 3% of the ex-vessel value, will be charged on all program landings to cover the actual costs directly related to the management, data collection, and enforcement of the program.

Element 14. Gear Conversion

Pacific cod allocations/quota associated with trawl CV licenses may be fished annually with pot CV gear, by vessels that are a member of the trawl CV cooperative. A pot endorsement is not necessary, but the LLP license must have the appropriate area endorsement. Harvest would continue to be deducted from the annual trawl cooperative quota account to which the LLP is assigned and will not affect sector

allocations. Quota derived from this program is not permanently designated as pot CV quota. If Option 2.5 is selected, gear conversion only applies to the A and B seasons based on the start and end dates for the trawl fishery. PSC use would be deducted from the PSC allocated to the cooperative. NMFS will develop monitoring and enforcement provisions necessary to track quota, harvest, PSC, and use caps.

In addition to the motion changes above, the Council requests the following in the next analysis:

- Provide quantification and analysis of the history of reallocations from trawl CV to other sectors, specifically data on amounts transferred, percentage of sector's final allocation, transfer timing and season origination of the reallocation (A, B, or C). Include secondary reallocations. Include a description of how reallocation decisions are made, including factors that result in unharvested quota, which influence timing and determine reallocation recipients.
- The analysis should consider impacts to TLAS fishery participants if trawl CVs who secure quota in the cod fishery increase their participation in the TLAS fishery and whether sideboards are necessary to protect the other participants of the TLAS fishery.