

Community Protection in the Gulf of Alaska Trawl Bycatch Management Program

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Introduction

We submit this proposal to the North Pacific Fishery Management Council for inclusion in their Gulf of Alaska bycatch management motion. The current Council motion offers many programmatic benefits including 100% observer coverage and bycatch reduction goals. Nevertheless, the motion's structure allocating transferable quota shares and using co-operatives to manage the GOA trawl pollock and cod fisheries is likely to rearrange the fisheries' relationship to Alaska's coastal communities.

We commend the Council for including several components in the motion specifically addressing possible community impacts. However, these provisions, at best, only address a subset of expected impacts. We believe that an allocation of quota to fishing communities via a Community Fishing Association (CFA) provides additional community protections that are unique and broader than those currently in the motion. Specifically, a Community Fishing Association offers an opportunity to strengthen the relationship of captain, vessel, vessel owner and crew to the community, to address transitional entrance into the trawl fisheries and provide opportunity for future generations, and to encourage equitable crew compensation. In addition, a community that owns quota is likely to remain an active stakeholder in the management and prosecution of the fishery itself. None of these critical community impacts are sufficiently addressed by current components of the motion, and a Community Fishing Association can provide an accessible and flexible way to address these community concerns.

Recent NOAA guidance as well as independent legal analysis confirm that the Magnuson-Stevens Fisheries Conservation and Management Act (MSA) authorizes allocations to fishing communities.¹ In addition, National Standard 8 of the MSA specifically requires that management measures provide for the sustained participation of communities and that adverse impacts on communities are minimized.² The Gulf of Alaska trawl bycatch management program provides an opportunity for this Council to lead the nation in developing a new method for providing for a full suite of protections for fishing communities. **We urge you to take up this challenge and include the following proposal for a Community Fishing Association in the Gulf of Alaska trawl bycatch reduction package.**

¹ See Josh S. Stoll & Mark C. Holliday, U.S. Dept. of Commerce, NOAA, *The Design and Use of Fishing Community and Regional Fishery Association Entities in Limited Access Privilege Programs*, NOAA Technical Memorandum NMFS-F/SPO-138 (2014); 16 USC § 1853a(c)(3). See also George J. Mannina, Jr., *Allocation of Harvest Rights*, Memorandum to the Gulf of Alaska Coastal Communities Coalition and Alaska Marine Conservation Council (Sept. 24, 2013)(submitted to the North Pacific Fishery Management Council for the Oct. 2013 meeting).

² 16 USC § 1851(a)(8).

Proposal for a Community Fishing Association

I. Structure

The Community Fishing Association (CFA) entity must be a non-profit entity qualified by NMFS, with a community sustainability plan approved by the Secretary as specified in the MSA.³ The Council can establish set requirements for the Community Fishing Association entity to be approved, possibly mirroring many of the CQE requirements. The Community Fishing Association could be a single Gulf-wide administrative entity, or a single entity with two divisions, one for the Central Gulf and one for the Western Gulf.

The entity will be governed by a Board of Directors. The Board of Directors will include balanced representation from fishing and community interests, including the cities and boroughs, trawl co-op representatives (note that co-op representatives would not need to be community residents), non-trawl fishermen and conservation interests. Municipalities (city/borough) could appoint their own designees, as well as the non-trawl seats. Co-ops could appoint their own representatives, and the board itself could appoint a conservation seat. The goal for the Board of Directors is to ensure that board composition is broad enough to ensure both fishery and community interests are represented, but small enough to function efficiently.

The specific composition of the Board of Directors will be set in regulation to ensure that all interest groups are represented.

II. Community Eligibility

The MSA defines a fishing community generally as “a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and United States fish processors that are based in such community.”⁴ Specifically in regards to allocations to fishing communities in the context of Limited Access Privilege Programs (LAPPs), a community must be “located within the management area of the relevant Council,” meet criteria developed by the Council and established by the Secretary and “consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council’s management area.”⁵ Under both of these definitions, a community need only be engaged in fishing or processing within the management area. There is no requirement that they specifically engage in the target species fishery, or in a particular fishery. In fact, in developing participation for a fishing community under the LAPP provisions, Councils are required to consider “economic barriers to access to the fishery,” and “the potential for improving economic conditions in

³ 16 USC § 1853a(c)(3)(A)(i)(IV).

⁴ 16 USC § 1802(17).

⁵ 16 USC § 1853a(c)(3)(A)(i)(I-III).

remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.”⁶ These considerations, particularly the latter, specifically support the inclusion of communities in the management area which do not currently participate in the trawl fishery in particular. Under the LAPP definition, a fishing community may even consist of residents who conduct fishery-dependent support businesses, harvesting and processing activity is not required.

Under this program we propose fishing community criteria⁷ to include communities within the Central and Western Gulf of Alaska management areas which have:

1. Traditional fishing or processing practices in, and dependence on, fisheries in the management area;
2. Cultural and social ties to fisheries in the management area;
3. Economic barriers to access to the fishery;
4. A high potential for economic and social impacts associated with a LAPP program on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery;
5. There will be no more than two Community Fishing Associations, one for the Western and one for the Central Gulf of Alaska.

III. Allocation

The Community Fishing Association would be allocated fishing quota for all CV target and PSC species allocated under the program. For analysis, the Council should consider an allocation range of 10-20%.

Quota allocated to the Community Fishing Association may not be sold.

IV. Quota Distribution

- Quota will be leased on an annual (option: every 3 years) basis according to allocation criteria established by the Board which meet the goals and objectives for the Community Fishing Association established by the Council in regulation.
- To ensure that quota leased from the Community Fishing Association achieves the goals and objectives established by the Council, quota will be leased subject to specific contract terms which meet the goals and objectives adopted by the Council, and referenced below in Section VII.

⁶ 16 USC § 1853a(c)(3)(B)(iii,vi).

⁷ Note that under the MSA provisions, eligibility criteria must be developed by the Council, approved by the Secretary, and published in the Federal Register. These eligibility criteria are therefore submitted as recommendations, but further refinement should be developed by the Council.

V. Lease Fees

- Lease fees will be used only to directly support the Community Fishing Association's operational and administrative costs and will not exceed reasonable costs as audited by NMFS.

VI. How the CFA Intersects with the Overall Program

- The Community Fishing Association will operate within the co-op structure. Quota leased from the Community Fishing Association must be utilized through a cooperative.
- Community Fishing Association quota will be subject to the same set of rules as other quota in the program in terms of bycatch management, observer coverage, sector allocations, cooperative structure, regionalization, and gear conversion.
- Any vessel and owner consolidation limits established under the overall program will also apply to quota leased by the Community Fishing Association, e.g. the consolidation limit will apply to quota directly owned or fished by a vessel and any quota leased from the Community Fishing Association.
- A participant who leases quota from the Community Fishing Association will be required to fish at least that amount of fish within their co-op (e.g. a vessel may not lease quota from the CFA, then have that quota fished by another vessel in the co-op since the contract terms would not apply to a vessel which had not leased quota from the CFA).

VII. Reporting, Accountability and Transparency

- The Council would set goals and objectives for the CFA (as per Amendment 91 requirements for the Incentive Plan Agreements) and allow the CFA board to adopt CFA policies and operational guidelines to meet those goals and objectives.
- To be eligible to participate in the program, the CFA must "develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register."⁸
- The Council would receive an annual report from the CFA and evaluate its progress toward meeting the Council's policy goals.
- The annual report must also be distributed to all communities in the relevant management area.
- The Council would also review the CFA as part of the review process of the catch share program overall.

⁸ 16 USC § 1853a(c)(3)(A)(i)(IV).

- The Council could initiate action at any time to modify the catch share program, including modifying or eliminating the CFA if it is not meeting the Council's goals and objectives.

VIII. Goals and Objectives of the Community Fishing Association

- A. Council-established Goals and Objectives for the CFA (in regulation and/or the FMP):
 1. Provide for the sustained (current and historical) participation of fishing communities (MSA National Standard 8).
 2. Minimize adverse economic impacts on fishing communities (MSA National Standard 8).
 3. Assist entry-level and small vessel owner-operators, captains and crew and fishing communities (MSA §303A(c)(5)(C)).
- B. The CFA responds to several of the Council's established Goals and Objectives for the program (numbers refer to Council Goals and Objectives):
 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.
 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.
 13. Minimize adverse impacts on sectors and areas not included in the program.
 14. Promote active participation by owners of harvest vessels and fishing privileges.
- C. Possible CFA goals and objectives adopted by the CFA within Council objectives:
 1. Maintain the historical number of active trawl vessels home-ported in CFA communities.
 2. Maintain the historical number of active trawl skippers that are resident in CFA communities.
 3. Maintain the historical number of GOA trawl vessel crewpersons that are resident in CFA communities.
 4. Maintain the amount of quota owned and/or operated by CFA community residents.
 5. Maintain crew compensation at levels established prior to the rationalization program.
 6. Enable fishermen to transition into the GOA trawl fishery under the new management program.
 7. Facilitate gear conversion within provisions of main program.
 8. Incentivize additional bycatch savings beyond standard requirements by rewarding those willing to adopt additional measures to reduce bycatch with access to additional CFA quota.

Rationale for a Community Fishing Association

I. Why a Community Fishing Association?

A catch share program in the Gulf of Alaska trawl fishery has the ability to provide management benefits by ending the “race for fish” and providing the trawl fleet with a tool to reduce bycatch. In addition, this program will provide the added benefit of 100% observer coverage. However, nearly twenty years of direct experience with catch share programs in Alaska, as well as experience around the world, demonstrates clearly how catch share programs can adversely impact fishing dependent coastal communities. Coastal communities suffer when catch share programs result in absentee ownership of quota, fewer locally based vessels, high leasing fees, short term and long term vessel consolidation and consolidation of quota ownership, lower crew pay and job loss. The lessening of the relationships between fishing communities and those owning and fishing the resource as well as the out-migration of fisheries-based wealth and fishery access opportunities from the communities in proximity to the fishery resources is the most enduring impact on communities.

A Community Fishing Association provides an opportunity to expand coastal community protections by allocating a portion of the quota directly to a community entity. According to a recently published NOAA Guidance, “These entities [Fishing Communities and RFAs] represent one way to anchor limited access privileges in place-based and interest-based communities to help maintain their long-term access to federal fisheries.”⁹ 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. A Community Fishing Association also provides a mechanism for maintaining equitable crew compensation and maintaining local crew hire. Because the community owns the quota in a Community Fishing Association, they have the ability to set rules on how that quota is used, much as an individual quota owner does.

Impacts from catch share programs are difficult to predict. A Community Fishing Association, managing quota, will have the ability to adaptively respond to unexpected programmatic community impacts. Nothing in the current motion provides this flexibility to address unexpected or unanticipated community impacts. This ability to adapt and address impacts as they arise is critical - experience in the North Pacific shows that once quota is allocated it is very difficult if not impossible for the Council to address these impacts (see, for example, ROFRs in the crab program).

⁹ Stoll & Holliday, U.S. Dept. of Commerce, NOAA, *supra* note 1, at iv.

II. What added benefits does a Community Fishing Association provide beyond the current program options?

The Council's October 2013 motion includes several community protection provisions, such as limited duration of quota shares, community sign-ons on co-op contracts and regionalization. These provisions are significant and potentially address a number of community concerns. A Community Fishing Association, however, addresses issues and community impacts beyond those provided by the current community protection provisions. Specifically, none of the community protections contained in the current motion provide a mechanism for ensuring that some portion of quota remains anchored in the community, and that the economic wealth of quota ownership (not just the landings) does not all migrate away from local fishing communities. The provisions in the motion do not maintain or strengthen ties of skippers, crew, vessel owners or vessels to the fishery dependent community. In addition, the motion does not contain a mechanism for entry/transition into the fishery. A Community Fishing Association provides a mechanism for entry into the fishery addressing the substantial barriers to entry posed by the added cost of acquiring quota. By providing quota to new quota owners, a Community Fishing Association can facilitate transition into the fishery in a manner which allows for access to the fishery and ensures that a path is available for new participants who do not have the capital to purchase quota. Finally, a Community Fishing Association is the only construct that may help to mitigate crew compensation changes. Crew face impacts as a catch share program shifts ownership, increases leasing and changes fishing practices. The Council has struggled with how to maintain equitable crew compensation within a catch share program. A Community Fishing Association may provide unique crew equity constructs within a flexible co-op framework.

In summary, the Community Fishing Association is another "tool in the toolbox" as the Council develops a new management program. At this stage, it is important to have a full range of alternatives and options analyzed. A complete set of community protections is critical to the success of a new management program. A Community Fishing Association, as described in this document, provides unique and additional benefits beyond those contained in the current program framework and should be included as an option within the program design.

III. Why is an initial allocation required?

Our experience in Alaska provides ample examples of why an initial allocation of quota is needed to create a successful community protection entity. The Community Quota Entity (CQE) program in the Halibut and Sablefish IFQ fishery was created to provide community access to the resource and to reverse the impacts of quota and access migrating away from rural fishing communities. However, the CQE program was not provided with an allocation of quota, rather, communities are required to buy quota. As a result, while many communities have formed CQEs, only two have actually acquired quota and the amount purchased is de minimus. While the structure of the trawl bycatch management program is significantly different from the Halibut/Sablefish IFQ program, the dynamics of leasing, consolidation, and inactive participation and how these impact a

community are the same. In contrast to the CQE program, a Community Fishing Association which is allocated quota at the outset can immediately, in the first year of the program, plan mitigation strategies as well as plan for more long term protections for crew and for transitional fishing opportunities.

Providing an initial allocation to a Community Fishing Association is critical to the success of the Association, and to ensuring that community protection goals are met. Direct allocations to fishing communities are well established as a matter of law and policy. The Magnuson-Stevens Act requires that “in developing a limited access privilege program to harvest fish a Council or the Secretary shall...include measures to assist, when necessary and appropriate, entry-level and small vessel owner-operators, captains, crew and fishing communities *through set-asides of harvesting allocations, including providing privileges, which may include set-asides of allocations of harvesting privileges or economic assistance in the purchase of limited access privileges (emphasis added).*”¹⁰ In addition, a recent NOAA Guidance clearly indicates that an allocation to a fishing community is an option for Councils to use to address the types of concerns raised in this situation: “Fishing community allocations (e.g., FC, RFA, Community Fishing Association, etc.) represent an alternative to individual allocations...in instances where small-scale and rural fishing communities exist and/or quota consolidation is a real or perceived concern, they represent a reasonable option for Councils to analyze.”¹¹

Providing an allocation of harvesting allocations to a fishing community to meet the needs of the community, including maintaining community ties with skippers, crew, owners and vessels has been anticipated by those crafting the governance documents for our federal fisheries and is well within the Council’s authority. The ability to allocate directly to fishing communities was provided as a matter of public policy specifically to address these types of challenges, and we urge the Council to take full advantage of the tools provided within the MSA in this regard.

Recommendations for Community Protections in the Current Motion

I. Duration of shares (Element (1)(b))

Limiting the duration of quota shares, or some portion of quota shares, is an important program element. The provision’s impact is primarily on the economic value of the quota which an individual holds/takes to the co-op. This provision could reduce quota value but the cost of entry is likely to remain high. Consequently, limited duration of shares alone is unlikely to provide opportunity for entry into the fishery. More importantly, limited duration of shares will not impact migration of quota and/or skippers, crew and owners away from the community. In addition, the April 2013 discussion paper highlights some significant administrative barriers to implementing a limited duration construct. A Community Fishing Association may be able to achieve the benefits of

¹⁰ 16 USC §1853a(c)(5)(C).

¹¹ Stoll & Holliday, U.S. Dept. of Commerce, NOAA, *supra* note 1, at 29.

a limited duration quota with less administrative burden. Therefore, we support continued development of a limited duration concept, and careful examination of how this concept and a CFA may work in tandem or separately.

II. Community sign-off on co-op agreements

One of the most significant community protection measures included in the current program design framework is the option for requiring community sign-off on contracts. This could also be a powerful mechanism for a community to weigh in on issues of community concern but it is unlikely to address the broader community concerns outlined herein. For this provision to be effective, the community would have to have full signatory (veto) power over the contract. In addition, a community structure would need to be developed to ensure that the “community’s” opinion is not simply the opinion of one single designated community representative. For this to work, co-ops would have to agree to waive confidentiality rights and essentially open up their contracts for public review. It would not be sufficient for the co-ops to waive confidentiality rights only for a single designated community representative. A broader community group would have to be provided with access to co-op contracts to ensure adequate community participation. We support continued development and refinement of this option, with particular attention to the issues raised above.

III. Consolidation limits

Consolidation limits are critical and should be included in the program design. Limits must be placed on both individual quota ownership and vessel quota use. Vessel use limits should not be erased when vessels join co-ops (unlike crab rationalization). Further, the extent of vertical integration of the fishery should be analyzed and better understood.

IV. Regionalized delivery requirements

Regionalization is another consideration in the current program framework. However, regionalization only addresses landings. Landings are important to community sustainability, but there is much more to a healthy fishing community. In addition, regionalization applied too strictly necessarily limits other fishery dependent communities from participation and may inhibit innovation, new product forms, changes in transportation and increase inefficiencies. Also, regionalization does not address maintaining or strengthening ties between community and skippers, crew, owners and vessels, transitional fishing opportunities and equitable crew compensation—all of which can be addressed through the CFA. Nonetheless, landings clearly represent a critical source of community stability, and the Council should continue to consider regionalized delivery requirements.