

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

GOLDEN CRAB COMMITTEE

**Key West Marriott Beachside Hotel
Key West, Florida**

June 13, 2011

SUMMARY MINUTES

Golden Crab Committee

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Mark Robson

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Charlie Phillips
Tom Swatzel

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Other Participants Attached

The Golden Crab Committee of the South Atlantic Fishery Management Council convened in the Flagler Ballroom of the Key West Marriott Beachside Hotel, Key West Florida, June 13, 2011, and was called to order at 2:35 o'clock p.m. by Chairman David Cupka.

MR. CUPKA: I would like to convene the meeting of the Golden Crab Committee. The first order of business will be approval of the agenda. Are there any changes to the agenda? One thing I would like to do, with your indulgence, is under other business we were going to just briefly touch on the Jones Amendment.

I would like to do that before we get into Amendment 6 just to kind of bring everybody up to date on where we think we are relative to that. If we can make that one change I would appreciate it. Any other changes? Seeing none, then the agenda is approved. The next order of business will be approval of our March 11, 2011, committee minutes. Are there any changes, corrections or additions to the minutes? Seeing none, then those minutes are approved. That takes us down to Item 3, status of the commercial catches.

DR. McGOVERN: Mike just sent out an e-mail to all the committee member that shows golden crab landings back to 1996. In 2010 the landings were 623,555; about 765,000 pounds in 2009; and 544,000 in 2008.

MR. CUPKA: Questions for Jack or comments? Seeing none, then we'll move ahead. Like I say, I did want to have a brief discussion on the Jones Amendment. I don't know if Monica is going to want to make some comments or not, but as I understand it the latest interpretation from NOAA General Counsel is that Jones Amendment does not preclude development of catch share programs or LAP programs. It does allow you to develop them.

It just says that they can't be approved. Of course, the Secretary is the only one that has the ability to approve plans. The councils don't do that but the councils obviously develop plans. I think we can move ahead on developing this amendment. Now, I think there is some other verbiage in there if it were to be submitted to the Secretary, he would be obligated to do something.

If he didn't take any action, it would go into effect without his approval; is that correct, Monica? Maybe not but it sounds like we can't submit anything but we can certainly develop it, and we have no idea whether this amendment or something similar will be extended or whether it will die next year or whether they may extend it with some kind of exception.

I'll say I was disappointed that they didn't put some kind of exception in there for groups like our golden crab fishermen who are very interested in doing a limited entry program or a catch share program, but in their wisdom they didn't put that in there. I think before it was approved in its final form, it was watered down somewhat from the original amendment they were talking about where you wouldn't even have been able to develop an amendment. I will ask Monica to comment on that if she wants to. That's my understanding and obviously I'm not a lawyer, but that's what I got out of reading the legal opinion from NOAA.

MS. SMIT-BRUNELLO: You've done a good job, counselor. I believe it's Attachment 3 under golden crab. There is a memo from Lois Fischer, who is the NOAA General Counsel, to Eric Schwaab interpreting the Jones Amendment. It really just talks about the Jones Amendment and the use of 2011 appropriated funds.

David, I agree with everything you've said. This council can continue to work on those kinds of programs, the LAPPs, just like the golden crab, so I think it's only an issue arguably if the Secretary would try to approve a LAPP in this fiscal year. Since that's not likely with the one we're working on right now, I think you can go ahead and then we'll see what happens with the next fiscal year and appropriated money.

MR. CUPKA: Comments or questions? Seeing none, then we'll go ahead and start on Draft Amendment 6. The first thing you'll notice is that it has been renumbered. I'll let Kari comment on that. My intent at this time would be to go through Amendment 6 and let Kari go over the work that has been done on it.

As I've stated before, it seems to me there are an awful lot of actions and options in there and we ought to be able to pare those down some. I know the fishermen wanted to see some analysis done before they started commenting on things they would like to see changed. It would be my intent before our next meeting to convene a meeting of the AP and have them work on this and go over it and then in September we would go over the revised draft and go on from there.

Hopefully, we could get some preferreds picked and start moving ahead. We do have time and obviously we can't move ahead this fiscal year and we don't know what is going to happen the next fiscal year. We're going to move ahead and just assume that at some point in time and hopefully not before too long that we'll be able to complete this amendment and be able to submit it to the Secretary. Bob, you had something?

MR. MAHOOD: Yes, just to clear up a little confusion, Kate is here in her new capacity. Somebody asked me, well, I thought Kate wasn't with us anymore? Unfortunately Kate is not with us anymore, but she is here in her new capacity. If you're wondering why she is sitting in the audience instead of presenting the golden crab stuff, that's why. Kari has stepped in and now has that responsibility.

MR. CUPKA: And I apologize; I saw Kate come in earlier and I just assumed everybody realized by now that Kate was no longer with the council, but hopefully we'll be seeing her at our meetings. We certainly appreciate all the work she has done on this so far. She has worked very closely with the industry to get this amendment to where it is at, and she and Kari have a good working relationship, so we'll hope to move ahead. Kari, it's all yours.

MS. MACLAUHLIN: Okay, the first thing I wanted to go over was the information from the comments on the control rule. On March 21, 2011, NMFS published the Federal Register Notice to establish a control date of December 7, 2010, to control future access to the golden crab fishery and to promote awareness of the potential eligibility criteria for future access to the fishery.

The Department of Interior submitted a written comment that they had no comment on the control date. Food and Water Watch submitted written comments with their primary concerns outlined as follows. Food and Water Watch is concerned that the control date will lead to development of a catch share program; and if it is, then that should be made explicit in the Federal Register Notice.

A catch share program for the golden crab fishery is privatization of the public resource. There are other options that would address speculative entry, provide flexibility to active fishermen and address underutilization of the golden crab market such as auctions, direct marketing and branding and seafood promotion campaigns. Those complete comments are in your briefing book.

MR. CUPKA: Any questions of comments on the comments? Well, why don't we go ahead and start going through the amendment, which is now Amendment 6.

MS. MACLAUHLIN: Well, first of all, the Golden Crab Shares Program is now Amendment 6. It had been called Amendment 5 for a while. This is the same thing, but Amendment 4 was in CE-BA 1 and Amendment 5 is in the Comprehensive ACL, so this one will now be known as Amendment 6.

There is a draft of this in the briefing book. It's Attachment 2 and all the new text is highlighted in the document. There has been analysis in Chapter 4. Everything that's yellow in there is new. I did a powerpoint to go through this because it is a big document. We can stop along the way and talk about things and David can take over. At the bottom I have the PDF Page. If you have a hard copy of it, I don't have that but you have your Attachment 2 open you can look at this.

The purpose and need; Amendment 6 is going to implement a catch share program for the golden crab fishery. This is a limited entry fishery and it has a low level of participation. The fishery operates near the deepwater coral habitats of particular concern. These were developed to protect the sensitive corals there, and there is level of experience that's needed for this fishery to fish near but not on the deepwater coral reefs.

The catch share program is expected to limit that participation just to those that have experience fishing near the corals. These are all the actions that are in this. There are 24 actions in the document right now. Some of them are part of the catch share program like allocation eligibility, transferability, et cetera, and then some of them are specific to the golden crab fishery such as the fishing zones that this fishery works in and the quota.

Some things we may be able to remove from the document because we don't need to put them in the amendment. They're either in the MSA or NMFS will handle them. Some of them we maybe can combine and things like that. The first action is implement a catch program for the golden crab fishery and it's just yes or no, basically. I'm not positive that we need this action in here and we can discuss this because all the actions in the document will implement a catch share program.

DR. CRABTREE: Well, I think the purpose and need section still needs quite a bit of work. As best I can tell the two problems we're trying to address is we want to limit participation to those with a high level of experience and then we want to enhance at-sea storage systems and develop new markets, but it's not entirely clear to me how does the catch share program do that and are there different things that would do that.

I think really what you need to look at here is what are the problems you're trying to fix, and then, okay, a catch share program is one way potentially to do that but are there other ways to do it, too. I think you need to spend some more time on the purpose and need to really make it clear what the problems of the fishery are and why is this the best way to address it. The way the amendment is laid out it appears to be the only way to address it, and I don't really think that has been demonstrated yet.

MR. CUPKA: Other comments? I was going to ask if there were any comments on that before we got into the actions, but we appreciate that. All right, Action 1 is whether or not we want to implement a catch share program; and, again, whether or not that's needed. Obviously, that's what this amendment does so it's almost like the decision has already been made. That's one action we might be able to take out. Go ahead, Kari.

MS. MACLAUHLIN: Action 2 defines substantial participants in the golden crab fishery. There are different alternatives based on landings within a qualifying period or all the permit holders or captains and crew, two, three and four; and then also dealers. The next action is Action 3 and that's eligibility criteria for initial allocation. We maybe can take 2 out; is that redundant?

MR. CUPKA: I think that would be the best way since we really haven't looked at this in a while.

DR. CRABTREE: On Action 2 why are we defining substantial participants?

MS. MACLAUHLIN: I don't know; I don't have the history with that, but I think we could take that out because the eligibility criteria kind of defines who the council is deciding is a substantial participant.

MR. CURRIN: David, if you need a motion to – I had some of the same questions that Roy did about Action 2. It wasn't clear to me why we were defining substantial participants. I didn't see anywhere else in the document that we based any other actions or alternatives on whether you were or were not a substantial participant. If it's appropriate, I would move that we remove Action 2 from the document.

MR. CUPKA: Okay, we have a motion by Mac; second by Charlie Phillips. The motion is to remove Action 2 from the golden crab draft amendment. Is there any discussion on the motion? Roy.

DR. CRABTREE: Well, the substantial participant language is in the statute relative to the referendum requirements in the Gulf and New England, but I assume you're not planning to do a referendum in this fishery so I can't think of where else that language could come from.

MR. CUPKA: Yes, we've stated publicly in some instances that even though this council is not required to do a referendum unlike I think the Gulf is when they move ahead, that in cases where it wasn't clear that we would do some sort of referendum.

At least to date it seems pretty clear that this fishery wants to move ahead with this, so I don't see any problem with removing that. All right, any further discussion on the motion? **Is there any objection? Seeing none, then that motion is approved.** Kari.

MS. MACLAUHLIN: Okay, Action 3 is to establish the eligibility criteria for initial allocation. I think we should add that text in there to distinguish Action 3 from another one that is the eligibility to harvest. Alternatives 2, 3 and 4, I have highlighted and underlined the qualifying periods for those; for 2, 2001-2009; and for Alternative 3 is 2005-2009; and Alternative 4 is all valid golden crab permit holders.

We do have 5, 6 and 7 which also consider captains and crew and dealers. This is not included in the analysis because we don't have the information on the crew and captains, and you maybe could remove these alternatives.

MR. CUPKA: Discussion on the action? Is there any desire to remove any of these until we hear from the AP? Mac.

MR. CURRIN: David, I have a desire to remove as many of these alternatives and any actions that we can from here. The one thing that impressed me in going through this document, as I think you made the comment earlier, there are a tremendous number of alternatives and probably too many actions as well.

In fact I made the comment tongue in cheek to George that we've got probably ten times to maybe fifty times as many alternatives in here as we do players in the fishery. Yes, if there are any suggestions, Kari, where we can safely remove alternatives and/or actions, then please give us a heads-up.

I don't think any of us have heard serious discussion around the table, among the committee or the council, about including dealers and crew members in this fishery. If that remains our intent, then I think we can safely remove Alternatives 5, 6 and 7 from this action as well as other – I guess we can deal with those where they come. I would move that we move Alternatives 5, 6 and 7 to the considered but rejected appendix.

MR. CUPKA: We have a motion; second by Charlie. Discussion on the motion?

MR. HARTIG: Just a question, David. Roy, how has the Gulf handled things with dealers and captain and crew? They haven't really allowed those people to get shares in each of the grouper or the –

MR. STEELE: Well, also in our IFQ programs some of the dealers own the vessels and they are allowed to participate in the program.

MR. HARTIG: But that's specifically through a vessel? Okay.

MR. CUPKA: I guess a question for Kari and maybe it isn't fair to ask her this, but some of these alternatives are put here or suggested by the AP in meetings with them, and I am not sure which if any of these were suggested by the AP. I do know they were interested in looking at the analysis that was run on these alternatives before they wanted to give us recommendations on which ones should be there and which ones shouldn't.

Mac, I agree with you, there is an awful lot of alternatives and options and everything else in there, but a lot of them I think were suggested by the AP and they kind of wanted to see what the impact of those various options or alternatives would be I think before they gave us their input. That's kind of where we are in this process.

MR. HARTIG: Well, David, to that point, do we have the AP's thoughts on the document currently now after they've been able to see the analyses?

MR. CUPKA: No, we don't and that's why I was saying earlier the next step in this process I would envision would be convening a meeting of the AP for them to go over this and provide input to us at our September meeting. They really haven't had an opportunity.

MR. HARTIG: I'm not a member of your committee, but is there a problem going through the document and removing things potentially that the AP would leave in?

MR. CUPKA: Well, that's what I'm saying, I'm not sure – and maybe Kate could address this or maybe Kari. I know a lot of the alternatives and options did come from the AP. I don't think we've actually indicated in this document which ones was a staff recommendation versus an AP recommendation. At least I don't think we can; is that correct, Kari?

MS. MACLAUHLIN: On some of them there is a note that it is the preferred alternative of the AP when they met the last time. At the top, all of the alternatives were suggested by the Golden Crab AP. For this one, with 5, 6 and 7, with crew and captain, we don't have that information, so I don't think we could do a very good analysis of it.

MR. CUPKA: Okay, so we have a motion on the floor, and you'll note there is a note in there that said all alternatives were proposed by the AP; but if we don't have the data to do the analysis. Wilson.

DR. LANEY: Mr. Chairman, I am on your committee actually, and I was going to ask the same question Ben did is whether or not the AP has had an opportunity to weigh in on these yet. I certainly appreciate the concern about the number of alternatives and the amount of analysis that has to be done.

It seems to me in this case if the AP asked for these to be put in here – and maybe I can direct a question to Kari – I’m assuming that we could get the information about how many permit holders – well, I know we have permit holders but how many crew members are involved, how detailed an analysis is going to be required to give us the information that we need for the AP to be able to make a preferred and then for us to be able to decide whether some of these could be eliminated or not. I’m reluctant to vote and kick a bunch out until they’ve had an opportunity to look at them and weigh in on them.

MS. MACLAUHLIN: So when you bring in captain and crew particularly and then you have initial allocation scenarios that require a catch history and a minimum catch history, then that’s automatically going to knock them out, anyway, because they won’t have their own catch history. The only scenario that the captain or crew that did not have a permit and did not have landings with that permit would be an equal allocation; the one equal allocation scenario that just split it up among all eligible participants.

MR. CUPKA: And, again, my intent today was not to try and throw a bunch of these out or keep them or whatever. It was more to have Kari tell us what had been done in terms of the analysis and if there were any obvious ones that we could go ahead and do it. I really would like to get the input of the AP before we go too far with this. Mac.

MR. CURRIN: Mr. Chairman, I withdraw the motion. I understand the intent. I just would also encourage – and I know a few of them are here today – I hope the AP, when they meet, will give very, very serious consideration to what they see as viable alternatives in this amendment and try to help the council out with some recommendations about things that in their mind are realistic and conceivable and possible so that we can pare this document down. It’s just huge for what we’re trying to accomplish for a very small number of individuals.

MR. CUPKA: And I agree with you and that’s why at the next AP meeting we were going to really consider their input before we go with that. There are a number of them now that the analyses have been done. I’m sure they’ll be able to – I won’t say throw out, but they’ll have a lot less interest in some than they will have in others and see what the impacts are.

That’s the main thing they wanted to do, see what the impacts of these various alternatives and options would be, but I think they understand the same as we do that there is too much in there really and we need to pare it down and hopefully the document that we see in September will be pared down considerably. Roy.

DR. CRABTREE: Well, in the purpose and need it says that one of the purposes of a catch share program is to limit participation to those with a high level of experience. So then you come to the eligibility and you’re going to let anyone in who has landings of one pound and then you have alternatives to let the crew in, but I don’t see anything here that indicates to me you’re only going to let the people in with a high level of experience.

When I read the purpose and need, my expectation is I’m going to get down here and you’ve got to have a substantial amount of landings over a period of time to qualify because that means you have the experience that we’re saying we’re needing. I don’t see how these alternatives that you

have as criteria for eligibility are consistent with what you've laid as the purpose of the catch share program. I think you need to add some additional alternatives in here that would essentially only allow people in who have a high level of experience in the fishery.

MR. CUPKA: Of course, then the question comes how do you get the experience if you aren't allowed to participate in the fishery. The people that are in there now have done a lot of it and they know what they're doing and they want to protect that. I understand that but we're going to discuss about new entrants and things like that. There has got to be a way for new entrants to get involved in the fishery as well.

DR. CRABTREE: Maybe so but the implication of your purpose and need is that there are people in this fishery now who you don't think have a sufficiently high level of experience to remain in it. Otherwise, you don't have a purpose and need anymore.

MR. CUPKA: Well, I agree with you that the purpose and need statement needs a lot of work done on it. Charlie.

MR. PHILLIPS: Mr. Chairman, I'd just like to make sure that the staff is not going to spend a lot of time trying to analyze things like 5, 6 and 7 before September. If they are, I think I may want to see a vote on that. Because, then they've who is the crew, did they make a trip; who is the captain, did he make a trip. We get into the weeds and I wouldn't want to see the staff spend a lot of time trying to do analyses on stuff that they really can't do an analysis on.

MR. CUPKA: Well, maybe Kari can take a minute to tell us a little bit about the analysis. Some of these alternatives they weren't able to analyze, is that correct, so it's going to be hard to do anything with those, but they have done a fair amount of analysis already. That's my understanding.

MS. MACLAUHLIN: If you look at Attachment 2 and you go to I think it's about Page 60 and you go through Page 106, and so altogether we have – just taking Alternative 2, 3 and 4 from the eligibility action and analyzing all 23 of the initial allocation alternatives, you get 69 different outputs that you guys have to decide which one you like the best and you think is going to achieve your management objectives.

This is already a lot of information and a lot of different ways to do this. In this powerpoint I've tried to a little bit condense it into what is basically happening without being very specific just so you get an idea and then you all can go through the document and look at all the pie charts and think about how you want to do initial allocation. This is one of the most important parts.

For Action 3 I did put in – I'm going to show you the analyses kind of together so I'm just going to go ahead and talk about Action 4. Instead of putting up on the screen all 23 alternatives because there are 11 alternatives and lots of subalternatives in there, this is what is basically happening. Two and three are based on catch history with different qualifying periods.

Four through seven are based on catch history with different qualifying periods plus bonuses for individuals who get small allocations. Alternative 8 is a 50 percent catch history and 50 percent

equal allocation with different qualifying periods and minimum criteria. Alternative 9 is 75 percent and 25 percent. Alternative 10 is equal allocation to everybody that you define as eligible, and then Alternative 11 takes the best three years' average for all your eligible participants.

I already said this comes up with 69 different scenarios when you put these together. This is a table that is on Page 70 and 71 in your Attachment 2. The first column shows you Alternative 2 in the eligibility action and then the second column is initial allocation. Those numbers are the different alternatives.

And then that last column is the number of permits that would receive shares so we have 11 permits in this fishery. If everyone with landings between 2001-2009 is eligible, then mostly you're going to have 8 permits that receive shares. This is the same thing so this is a qualifying period of 2005-2009 and most of the initial allocation scenarios are going to result in seven of the permits receiving shares.

This is if all valid permit holders are eligible, about seven for a lot of the initial allocation. I'm not going to show all the pie charts, but I just pulled this from the analysis – the text and economic impact analysis for all the initial allocation, and I've underlined the basic gist of what happens. So in Alternatives 2 and 3, these are the ones that are based on catch history with different qualifying periods. These alternatives are going to favor those who participate in the fishery over a consistent number of years.

Four through seven, these are the ones where it is based on catch history but there is also a bonus in there for people who get a small allocation. These will disadvantage the fishermen with the highest landings and benefit those with a minimal amount of landings. Eight and nine are the 50/50 catch history and equal allocation and 75 catch history and 25 equal allocation.

In general, because this is based on catch history, it will favor those high landings. This is the approach that was used in the wreckfish ITQ initial allocation. Alternative 10 is the equal allocation at the same for everybody and it favors the people with low historic landings. Eleven is your three best years' average and it favors people with at least three high years of landings within those qualifying periods. That's the general overview of the outcomes of these different initial allocation scenarios. Any questions?

DR. McGOVERN: Is the catch history the logbook or trip ticket and why use 2008 and why not 2009 as the terminal year since that was the last year for eligibility?

MS. MACLAUHLIN: Because from what I understand – and we may need Kate, honestly, to come answer this because she does have the background on it – it's logbook landings; and then also with the 2008/2009, it was because to cut it off at 2008 because some people started ramping up to fishing for quota basically; that they knew this was coming along and if you used catch history into 2009, then it will skew it a little bit more than their historic catch and that's why the cutoff. The AP suggested all of the alternatives that are in this document and not staff and so that's why the cutoff is at 2008.

DR. CRABTREE: Do we have control date for back then or what do we have for a control date?

MS. MACLAUHLIN: The only control date is December 7, 2010.

DR. CRABTREE: Well, just bear in mind that the statute requires that you consider past and present participation; and by the time this is implemented, I suspect there will be – or even approved by the council we're certainly going to be well into 2012 if not 2013, and 2008 is getting pretty far back at that point.

MR. CUPKA: Okay, Kate has very graciously joined us here and she has a lot more of the background on some of this. Kate, anything you want to add on this?

MS. QUIGLEY: I was just going to say that the dates 2008 and 2009 were chosen because that's when the Golden Crab AP met and put together this options paper and every single action and every single alternative in this options paper was devised by the AP and not by staff although the staff were the ones who were typing while they were talking and walking them through. This is what typically is done in a catch share type program, et cetera, but they used 2008 and 2009 because that was the year that we had met.

I think it was August of 2009 or August of 2008, and at the time only up to 2008 data was available. They felt at that time that in the next year or two it was really going to start ramping up. People were getting very interested in the golden crab as a product and they wanted to maintain the fishery as it was to the extent possible.

MR. CUPKA: I think were correct in that because we're seeing a lot more activity now than what we had back in this time period. There are a lot of people who apparently are using their permits now that weren't using them before to try and get some catch history established before this went into place. Kari.

MS. MACLAUHLIN: Okay, moving on to Action 5, which is establish eligibility to harvest, and this would restrict harvest to anyone with a permit and eligible zone and they can participate in the catch share program, including purchasing annual pounds and purchasing or leasing a permit.

MR. PHILLIPS: Mr. Chairman, could somebody refresh my memory – I'm sure there is a control date and what that was or when it was?

MR. CUPKA: It was December 7, 2010.

MR. PHILLIPS: Well, I guess if anybody was in it before that control date, theoretically they could argue that they should have a share of the fishery, I suppose, so maybe we want to set up stuff according to that and get some more input from the AP.

MS. QUIGLEY: I was just going to say the Golden Crab AP had met and they had requested a control date back in 2008. It just didn't happen until 2010.

MS. MACLAUHLIN: Action 6 is for the appeals process, and this includes an alternative that sets aside part of the ACL for the appeals process so that people – after initial allocation if they feel like they should have more based on their landings and their qualifying period, they can go and appeal it.

MR. CUPKA: Any questions or comments; that's pretty standard in a number of our plans.

MS. MACLAUHLIN: Number 7 is establish criteria for program duration, and the IPT recommends that these alternatives do not need to be analyzed in this document and included in this document because the council can do this at any time. This one could be removed.

MR. CUPKA: Is there any desire on the part of the committee for a motion on Action 7?

DR. LANEY: Mr. Chairman, I'll move that we remove Action 7 from the document.

MR. CUPKA: We have motion; second by Mr. Currin. Any discussion on the motion? The motion is to remove Action 7 from Golden Crab Amendment 6. Any discussion? Any objection? Seeing none, then that motion is approved.

MS. MACLAUHLIN: Action 8 establishes criteria for program review and the IPT also recommends that these alternatives do not need to be included in the document because MSA mandates that the program be reviewed every five to seven years.

MR. CUPKA: Any questions or comments on Action 8 or anyone wishing to make a motion?

MR. CURRIN: I would move that we remove Action 8 from the document.

MR. CUPKA: Second by Mr. Phillips. Discussion on the motion? The motion is to remove Action 8 from the document referring to Golden Crab Amendment 6. Is there any objection to the motion? Did you have something, Ben?

MR. HARTIG: The only question I have is the five to seven, and it came up in the Gulf. Does anything preclude you from doing it any earlier from what Magnuson says?

MS. SMIT-BRUNELLO: Are you asking whether the council has the authority to change the program before a certain time period?

MR. HARTIG: Yes, would they have to stay with what – the Magnuson mandates the program is reviewed every five to seven years; could the council come in one, two, three, four years down the line and readdress it?

MS. SMIT-BRUNELLO: Sure.

MR. CUPKA: But I think we would want to let it be in place a little while before we came in to review it. Any further discussion? Any objection? Seeing none, then that motion is approved.

MS. MACLAUHLIN: Action 9 establishes the criteria for transferability and there are a couple of different alternatives here. We do have one that when the AP met they recommended, which is Alternative 2 which allows for all or a portion of your quota share, which is your permanent share, and your temporary, which is your annual pounds, transferred among all the permit holders or anyone leasing a permit.

And then also in three, the shares or the pounds can be transferred only to permit holders and not those leasing; and then four, they can be transferred during the first five years of the program. Monica, on three and four where it talks about the eligible individuals as U.S. citizens and permanent resident aliens; isn't that in 3 or 3A that defines who can hold it?

MS. SMIT-BRUNELLO: I believe so; let me check.

DR. McGOVERN: What would be the portion in Alternative 2 or how would that be determined?

MS. MACLAUHLIN: Well, if they wanted to sell 50 percent of their shares. They don't have to sell all of their shares at a time. They could sell 10 percent or half.

MS. SMIT-BRUNELLO: Yes, the Magnuson spells out persons eligible so I think that you don't have to put that here.

MR. CUPKA: The question I had for you, Monica, for example, in Alternative 3 it said either shares or the poundage associated with those shares can be transferred to golden crab permit holders. If somebody is leasing a permit, would they be considered a golden crab permit holder or would they have to be referred to as a lessee or however?

MS. SMIT-BRUNELLO: I will check with the permits office, but I believe they probably would consider them to be a permit holder.

MS. MACLAUHLIN: Would that make two and three the same, then, because two is transfer among all permit holders and those leasing a permit and three is all permit holders? I think that three was meant for just people who owned the permit and not people leasing.

MS. SMIT-BRUNELLO: At this point, until we get definite clarification, why don't you just leave both of those in? If the council will give the staff latitude, we can come back and once we've figured that out the IPT can recommend that it be removed, but why don't we leave it in at this point. I'll talk with the permits office and see how they determine who is a permit holder. I'll talk with the enforcement attorneys as well because I think that they have a pretty broad view of permit holders.

MR. CUPKA: Yes, I know what the intent is; I'm just not sure how to word it so you can carry through that intent.

MS. SMIT-BRUNELLO: And I can go back with both of those groups and ask them their suggestion on the wording and that would probably help us.

MS. MACLAUHLIN: Okay, the next two actions deal with excessive shares, which is the cap on the number of shares or pounds that one person or entity can own. The MSA requires the council to define excessive shares. There are two types. One is objective based; so, for example, if one of your management objectives is equity and fairness in the fishery, then you want to have a more restrictive cap so that one person doesn't get too many shares.

If you want to maximize efficiency, it would be beneficial for it to be less restrictive so that the most efficient person can hold as many shares as possible. For this, there are no clear objectives about how much golden crab one entity can harvest that the council would want, and so maybe some social objectives such as maintaining the historic distribution of the fishery, something like that.

Another way to define excessive shares is within the economic-based approach, which is the amount that allows for one entity to control the market for golden crab, but from an economic standpoint none of the eligibility and initial allocation scenarios would allow that kind of excessive share ownership to happen.

MR. PHILLIPS: Mr. Chairman, it seems like if one entity can have even 55 percent of the quota, they pretty much control the market. It seems like we should have some lower numbers in there or is it just me?

MR. CUPKA: I think Kate at one time was going to look into this situation in some other fisheries and see what constituted an excessive share, and I'm sure whether she found an example in a particular fishery where it was as much as 55 percent. She is coming up and maybe could shed some light on this.

MS. QUIGLEY: Yes, in the Mid-Atlantic the golden tilefish catch share program that they have there, the ownership is somewhere between 50 and 55 percent. That was the cap because one person did happen to own that much, and so that person was grandfathered in. The cap was 50 to 55 percent.

In this fishery, if you take a look at the initial allocation scenarios, especially Alternatives 2 and 3, you see that it's somewhere between 60 and 70 percent is what is already being harvested by a single permit. And then if you look at by a single person – because these guys all own multiple permits, if you look at that, then you're looking at something like 80 percent, which is currently happening right now and has been happening for many years.

The table that Kari has up there right now, the first column is, of course, the eligibility criteria, so we've got eligibility alternatives two, three and four. And then you've got allocation; that's the alternative – I'm sorry, the eligibility alternatives, let's see, allocation – right, that is the alternative, the allocation alternative. Then Column 3 is the maximum shares to a single permit.

These guys own different permits for different zones, so several of these guys own middle zone permits and northern zone permits or southern zone permits and middle zone permits. And then the fourth column shows the maximum shares to a single entity, so one entity can own three different permits; one for each zone. What you see is that under Allocation Alternative 2 you've

got one permit owns 61 percent; but if you add together the multiple permits that they own, you get up to like 84 percent, and that's pure catch history so that's what people are harvesting from year to year right now.

MR. CUPKA: And that's the historical situation as far as we know – as far back as the data that we have so it's pretty high already, Charlie.

MS. MACLAUHLIN: I have all three tables from the PDF that show the maximum shares to a single permit and to a single entity; and actually for the eligibility Alternatives 3 and 4 come out to be the same. Some of these are for a single entity would be, as Kate said, over 80 percent, 85 percent. This is based on their catch history so this is what is happening in the fishery now.

MR. PHILLIPS: Well, I understand that is what is happening now. What happens when we do some kind of assessment of some sort, shape or kind we decide that the TAC is going to be bigger and we stay on these allocations when we should have room to let other people get in, and then you've one or two or three people that has got so much of the shares – do you see what I'm saying? If you double the TAC, then you're going to double their catch. Something doesn't feel right in here. I'm not sure how to fix it but something doesn't feel right.

MR. CUPKA: Well, correct me if I'm wrong, but I think there are some alternatives in there where some of that, if not a large part of it, could be set aside for new entrants rather than just distributing it based on the percentages held. I think there are ways to address some of that and allow some new entry into the fishery if that were to happen.

MS. SMIT-BRUNELLO: Before we leave Action 10, I guess you have to decide whether this is a reasonable range or whether just because this is the way it exists now would you like to see a smaller percentage. I mean, 55 to 75; there could be other percentages that you might want to look at.

DR. LANEY: I had the same question that Charlie did. I think I would be a little bit more comfortable with some lower percentages below 55 in there; maybe at least 45.

MR. CUPKA: We could certainly add something along those lines. Roy.

DR. CRABTREE: If you think about it, with that range of alternatives and if you allow unlimited transfers of shares among the initial people, this fishery could consolidate to two vessels under all of them. Maybe that's okay but –

MR. CURRIN: I just would like to say that I had the same concern in preparation for the committee meeting that Wilson and Charlie have expressed. If you need a motion, Wilson threw out 45 percent. As long as we're below 50 I think that makes the range of alternatives a little bit more reasonable. I would move that we add an alternative for consideration of capping the ownership at 45 percent.

MR. CUPKA: We have a motion; second by Wilson. Discussion? Charlie.

MR. PHILLIPS: I'm not so sure I wouldn't drop it down as low as 25 or at least have it in there to look at. We can always split the difference; but if we set it at 45 we can't go below that. I would make that as a friendly amendment.

MR. CUPKA: Is that acceptable to the maker of the motion and the second? Okay. Let me ask Mac; you see the motion up there and that's not quite the motion you made, but –

MR. CURRIN: It's not but it's a very good suggestion. I think with Charlie's suggestion that we take it down 25; there is a lot of space between 25 and 55, so I think having a couple of points in between – so upon the suggestion, **the motion would now read to consider additional alternatives for Action 10 that would cap ownership at 25, 35 and 45 percent.**

MR. CUPKA: Any further discussion on the motion? Is there any objection to the motion? Seeing none, that motion is approved. Kate.

MS. QUIGLEY: I was just going to answer a question from before. Charlie had brought up the question about market share, if someone has 50 percent wouldn't they control the market: And the answer from an economic perspective, the answer is no because golden crab right now is a substitute for Dungeness crab and for snowy crab; and so when they enter that market – golden crab enters that market, they're sold as a substitute for Dungeness crab or snowy crab, so therefore they can't control the market.

Now, if golden crab obtains its on market and people recognize the product name of golden crab and they're selling it and everyone all over the world wants it, then, yes, they could possibly control the market although golden crab are harvested in other areas of the United States and in the world. Right now they're very far from being able to control the market because they are a substitute species.

MS. MACLAUHLIN: So in these tables here, this is what initial allocation would look like, so automatically with any of these scenarios a lot of people would be way over their cap. I don't know how you want to adjust that; in the initial allocations or – like if this is what they get initially allocated, do you take that back or do you put a cap on what they can be allocated at the beginning? Just some things to think about.

MR. PHILLIPS: Well, one way of doing it might be cap the percentage or the pounds and if TAC goes up, then their pounds may not go up or they go up proportionally and some of the other pounds go into new entrants. I think there are a lot of ways to do that, providing, of course, the TAC goes up.

MR. CUPKA: I think Action 11 speaks to annual pounds or ownership cap.

MS. MACLAUHLIN: So Action 11 is similar; it's just how many pounds can you hold in one year. Some of these, especially for Alternative 3 is that it's based on what you decide for Action 10.

MR. CUPKA: Does that take care of some of your concerns, Charlie? Ben.

MR. HARTIG: This is a tough one because it is so different than anything that we would deal with otherwise. I'm not on your committee, by the way. I mean, in reality couldn't you grandfather in the initial people at where they are and then allow this fishery to change with time?

MR. CUPKA: I think you could and certainly I think that's what they did in the Mid-Atlantic with the golden tile. They grandfathered in a highliner and then went from there. That is another alternative, yes.

MS. MACLAUHLIN: Action 12, halfway through, is a provision put in, the use it or lose it policy that requires – the alternatives have different requirements for a percentage of your shares that have to be used within one year or three years and otherwise they would be defined as inactive and could be revoked and redistributed among the active participants.

MR. CUPKA: Comments? I'll tell you as an aside I remember when they were working on the wreckfish allocations and all, Dr. Joseph, who was on the council at that time, lobbied very hard for them to include a use it or lose it provision in the wreckfish; and for whatever reason he lost out on that and now we probably wouldn't be faced with some of the problems we've got today if we would have had that in there at the time. I think it's a good thing to consider. Monica.

MS. SMIT-BRUNELLO: Well, remember there was a use it or lose it in the Golden Crab FMP. You had to have a certain number of pounds landed by a certain point in time and then the council did away with that, so that has existed in this fishery before.

MR. CUPKA: Yes, you're correct, it has. Brian.

DR. CHEUVRONT: Mr. Chairman, I'm not part of your committee, but in looking at these alternatives, it looks like Alternative 2 is significantly different than Alternatives 3 and 4 in terms of the redistribution of the shares.

Alternative 2, I'm not quite sure if that means that if somebody doesn't use it; does that mean that those shares would be permanent retired? My concern would be then could somebody – for example, a group that wants to end the golden crab fishery; could they come in and start buying up shares and then not fish them and start retiring that part of the fishery? I would be concerned about such an action occurring.

MR. CUPKA: Well, part of that I think gets at the issue of somehow they have to use it, and there are ways that you could consider it active other than them fishing it; if they leased it or whatever.

DR. CHEUVRONT: Yes, but what I'm saying is that it looks like to me here it doesn't say that they would be redistributed among the other shareholders if they became inactive, and that's the part that makes Alternative 2 different from Alternatives 3 and 4. Without that provision about the unused shares being redistributed among the other shareholders, I think that scenario I described could occur.

MR. CUPKA: I've got you; I'm sorry, I misunderstood. Bob.

MR. MAHOOD: Back when we were doing wreckfish, I think I was actually a council member back then. One of the scenarios then was that anything that was lost due to use it or lose it would go into a pool for new entrants. That was another option that we looked at back then.

MS. MACLAUHLIN: And we have that action in here; something similar to where the new entrants' pool comes from anything reverted, so we could just clarify the language that these go into a pool and then another action that decides if it's redistributed among active participants or new entrants.

DR. CHEUVRONT: I was just concerned because Alternative 2 was different than 3 and 4, and I just wanted to make sure that we were clear on what was meant by that.

MS. MACLAUHLIN: Action 13 is the cost recovery plan. This is required by MSA for LAP programs. There are a couple of alternatives in here about how the fees would be paid and everything. One thing that we would need is to get the status quo cost for management of the golden crab and then calculate how much it would cost to implement the catch share program, because it's the incremental costs that the cost recovery is required for.

MR. CUPKA: I had a question I guess for Monica or Kari or anybody. The Magnuson Act allows a collection of that. It can't exceed 3 percent but is it mandatory that you have to have a cost recovery provision in there; or is it just if you have one, you can't exceed 3 percent?

MS. SMIT-BRUNELLO: The council shall so you must have one.

MS. MACLAUHLIN: The Mid-Atlantic, the surf clam and ocean quahog, right now are talking about in their new amendment that they have calculated that the cost of the ITQ program is actually less than the costs without it, and that's going to be their justification for not having cost recovery at all; so it is just up to 3 percent but it can be anywhere in between.

Action 14 is establish a boat length limit rule, and this is from some existing regulations about your vessel limit in the middle and southern zones. At the last meeting of the Golden Crab AP their preferred was the Alternative 2, which was to eliminate this boat length from the rule because they're going to need larger boats for the implementation of the new system and a larger boat is more efficient. We do have some Golden Crab AP members if anybody has any questions specifically about this.

MR. PHILLIPS: Just why can they use a smaller boat in the northern zone; what sets that apart?

MS. QUIGLEY: I think we need an AP member to come forward and explain some of this. I'm not remembering the exact language, so I think that would probably be most beneficial. From what I understood, there is a certain area in the southern zone that was quartered off specifically for smaller vessels.

This was a decade or a decade and a half ago, and now it's no longer relevant because you don't have a lot of smaller vessels participating and so that area is closed off to all vessels that are

participating because they're not small enough to go into that area. I believe that's why, but you may want an AP member to come forward and explain that.

MR. CUPKA: As I recall, there was a gear conflict in that area. One of the larger boats came down and setting over other people's gear and everything, and so the only way that we could eliminate that was to set a size limit in that zone. If Bill or Howard want to comment on that, but I know it was a gear conflict issue that started the boat length rule down in that southern zone. They don't have that problem anymore and they do want to fish that area now with larger boats. I suspect they would prefer Alternative 2, but we'll wait and see.

MS. MACLAUHLIN: Action 15 is address quota share allocation among the golden crab fishing zones. There are three zones for this fishery and you have a permit and you can only fish in that zone. Alternative 2 would be that any quota that you have you can fish in the zone that you have a permit for; so for people who own more than one permit, maybe they have a middle and a southern, they can fish any of their quota in either of those zones.

And then Alternative 3, which is also preferred by the Golden Crab AP at their last meeting, was to eliminate the box in the southern zone. This is a subzone for vessels less than 65 feet. Alternative 3 would allow the bigger boats to go into the subzone that was originally set up because of some gear conflicts but is not used as much anymore.

Action 16 would establish criteria for permit stacking. It would let one vessel have up to three permits, so that would be one permit in each zone, so that the vessel can fish all three zones in one trip, and that's preferred by the Golden Crab AP at their last meeting.

MS. SMIT-BRUNELLO: I would just think you'd want – if you give the IPT some leeway – some clarification that you're allowing a vessel to have a southern zone, a middle zone and a northern zone permit. You're not allowing them to stack three middle zone permits on one vessel, right? Okay.

MS. MACLAUHLIN: Well, right now you don't have a quota. You only need the permit to fish in the zone, so they would only have permits for access.

MS. QUIGLEY: From what I understand, right now there are people who own a middle zone permit and a northern zone permit and maybe a southern zone permit that would like to go between zones on a single ten-day trip. They are not able to do that because you have to have one permit per vessel, so they're looking to stack permits so that they can go from the middle zone to the northern zone on one seven- to ten-day trip instead of having to go into port, call the permits office, switch the permits.

If they have quota they would like to stay out there a little longer perhaps and they'd like to have that flexibility, which they don't have right now. Maybe permit stacking isn't the right term. Permit stacking is usually used in a trip limit situation where you have a certain trip limit per permit, but they would like to stack those permits on one vessel so they can to multiple zones within one trip.

MR. CUPKA: I'm not sure either that permit stacking is the right term. I know what they're trying to do, but that to me has a little different connotation, but maybe we can come up with another term or it. Monica.

MS. SMIT-BRUNELLO: Kate, since you're up there, I'd like to ask you a question. If the council goes toward this IFQ program or this LAP program; is there a need to retain zones anymore?

MS. QUIGLEY: I don't know if there is a need or not, but the fishermen on the AP expressed that they like the zones because they can keep off of each other's gears. One thing to remember is that they were putting out traps, sometimes fifty at a time on a line or a hundred at a time, and crossing lines is a big problem for them.

That has happened in the past when you have fishermen that know where another fisherman has laid down his line. You have to have fishermen who know where other fishermen are fishing in order to avoid gear conflicts. They actually at this point in time like the zones and like to have permits for different zones because they stay out of each other's way and they know who else is within that zone and they can avoid gear conflicts.

If they don't have a close working relationship with people who are in their zone, which right now they do, but if you got rid of the zones completely you'd have other people coming, a lot of people coming into the middle zones, that they've had trouble in the past with laying gear on top of each other and it has been a major problem.

MS. MACLAUHLIN: Seventeen is monitoring and enforcement and it has several different electronic monitoring and reporting, VMS requirements, and then who would pay those costs in Alternative 3 and the subalternatives, and then a hail-in requirement that the Golden Crab AP preferred; along with Alternative 2, which is electronic monitoring. Maybe this one does not need to be in the amendment because it can be handled by NMFS.

MR. CUPKA: Questions on Action 16, monitoring and enforcement? Phil.

MR. STEELE: Mr. Chairman, I'm not on your committee but I would suggest that Action 1 and Action 2 are really unnecessary. We're going to monitor this thing. If it's set up in most instances as other IFQ programs are, that this probably would be a real-time online reporting system when the crabber came into the dock, landed at the dealer, go online and report his landings and his whole IFQ program would be there, so I wouldn't think that would be necessary.

The Hail In also is probably something that it's just administrative that we require on all of our other IFQs. If the council certainly wants to take action on it, it's certainly your purview but I don't find it to be necessary. You may want to think more about this being a VMS issue if that's where you want to go; and some of the alternatives for VMS we can certainly develop.

As far as enforcement, it's going to be enforced. Real-time reporting is going to be done on the IFQ Online System if it's set up like the rest of the ones are. The Hail In is just something that

we do. One thing we may want to add on here is like certified landing locations, where you can land these things.

It may not be much of a problem with golden crab, there are probably only a few dealers there, but like for red snapper in the Gulf we had to specify areas where fishermen could land their catch so in fact if law enforcement wanted to show up at those areas they would know where it was at versus being in someone's backyard and behind a gate with a bulldog. There are the kinds of things the council may want to consider. Like I said, one and two probably are unnecessary. Certainly, Alternative 3, if you want to go with VMS, would be something you'd want to consider. Thank you, sir.

MR. CUPKA: I suspect we'll have a lot further discussion on this because this fishery is a little different from a lot of the other ones that we deal with where you're not really dealing with an iced product, you're dealing with a live product and sometimes you can put requirements on them that may interfere with their ability to get that product to market in a live condition. I'm sure we'll be hearing more about that as we go along.

MS. MACLAUHLIN: Action 18 is the criteria for a new entrants program. Alternative 2 is the set-aside for a pool for the new entrants that are annual pounds that come from a violation or lost quota from the use it or lose it or a higher ACL. And then 3, 4 and 5 are different set-aside percentages of the ACL, and they can auctioned off to permit holders that do not have shares.

MR. CUPKA: Questions or comments on the new entrants? Charlie, I think this addresses some of the concerns or questions you had earlier.

MR. PHILLIPS: Well, Alternative 2 talks about a TAC of 3 million pounds. I'm guessing there is no TAC right now because there is no assessment.

MS. MACLAUHLIN: It's 2 million pounds.

MR. CUPKA: Yes, that's the new ACL that hasn't been approved yet but it's part of the Comprehensive ACL. Other questions or comments? Okay, Kari.

MS. MACLAUHLIN: Action 19 are provisions for bank and borrowing, and this would set up a 20,000 pound borrowing allowance each year. I wasn't sure exactly what this was, and Kate was telling me about it would be for an individual who had an overage; that they could pull from this 20,000 pounds that are set aside specifically for overages. We do have an action that addresses individual overages, and those maybe could be combined as well.

MR. CUPKA: And I had asked Monica once before I guess if this was even possible or allowable. Since we will have an ACL, this would allow the ACL to be exceeded perhaps? I know they do it in other fisheries.

MS. SMIT-BRUNELLO: Would it allow the ACL to be exceeded or would it allow that individual to exceed their allocation?

MR. CUPKA: I'm not sure they would exceed – if you look at it on a multi-year basis, then they probably wouldn't exceed their allocation, but it seems to me you could exceed an ACL. Say you're at 2 million pounds and somebody decides to borrow 20,000 next year and bring it into that year, you would be over your ACL for that year.

MS. SMIT-BRUNELLO: I guess I would like to see this explained maybe more and discussed, because I don't think you want to set up something that allows an ACL to be exceeded. Administratively you've set up something allowing it to be exceeded; it's one thing if it gets exceeded because of a variety of fishing reasons, but I don't know. I'll think about it.

MR. CUPKA: I know they've done this in other fisheries but I think a lot of them were set up before ACL came along, but I'm not sure how that will work or whether it would impact it or not. Kate, do you have any thoughts on that?

MS. QUIGLEY: Well, Action 19 was established before implementation of ACLs by the Golden Crab AP; and then Action 21, which is called the annual pounds overage, was placed in there and copied from some of the Gulf ITQ documents. I think what you want to do is either choose Action 19 or Action 21, but they're talking here about exceeding an individual's allocation and not the ACL for the entire fishery but an individual's allocation.

I think Action 21 explains things a little bit better than Action 19. However, the Golden Crab AP, when we asked them, oh, you know, are you interested in something like an annual pounds overage; that has that in some fisheries, they said, oh, well, 20,000 pounds would be really good because they couldn't name a percentage because they didn't know what the ACL was going to be because they don't have a TAC or an ACL at this point in time. I think Action 21 is probably more accurate than Action 19, which was kind of preliminary wording.

MS. MACLAUHLIN: To have a bank of 20,000 pounds, where would that come from; would that be a set-aside or would it be an overage and then you take it off your next year's or a rollover from the year before? I guess that's what I don't understand about 19 is where the 20,000 pounds comes from.

MS. QUIGLEY: They were thinking that it would be taken off of the next year; that they would go over and then it would be taken off of the next year, their individual allocation from next year. It's the same thing that's done in some other fisheries. I know they have it in the British Columbia fishery. I don't know if they have it in the Gulf at all. No, they don't; Phil is shaking his head no.

MS. MACLAUHLIN: So every individual could go over by 20,000 in a year?

MS. QUIGLEY: Yes, and that has been the problem that has been pointed out in the past is that then you could exceed your ACL possibly, and so that's why in the U.S. that has not been used. It has been used in other countries; I don't think it has been used here.

MS. SMIT-BRUNELLO: And Jack had mentioned if you go over your ACL, then it usually triggers accountability measures, which could apply to the whole fishery and not just an individual.

MR. HARTIG: In the evolution of this process we're going to be getting to that. You may want to set ACLs down the line for multi-years where this could work. You set up whatever your ACL would be for two years, you combine it, and then you could borrow – I mean, you could borrow from that year or for a two-year ACL. In other fisheries that sounds like a good way to go in the future but we'll have to see.

MR. PHILLIPS: Yes, I would like to see them have that flexibility. It worries me a little bit. Like Kari said, you've got seven boats, everybody going over, but your accountability measure is all seven boats have to give it back the next year. I don't think it would hurt the crab in the long run.

DR. LANEY: Mr. Chairman, I guess I just concur with what Monica said. I don't think it's very clear right now, so I would like to see some more explanation in the document for exactly how this applies to the fishery.

MR. CUPKA: Okay, Kari is making a note on that and we'll see what we can do.

MR. CURRIN: If you look at the current landings, they're well less than a million pounds and we've got an ACL of 2 million pounds. I don't know what to expect as far as ginning up participation. We're talking in the amendment about reducing potential participation. I guess that being said there is another way you could do this is just not allocate X-amount to the fishery and have that as a bank essentially that could be drawn upon.

Until things start getting tight and they're pushing their harvest up against the ACL, then that's a non-issue. There are a lot of ways you can go about it. They can borrow, as they do, or buy from other participants in the fishery. It doesn't look like at least under a current scenario everybody has got much of a likelihood of going over every year.

MR. CUPKA: I agree with you, Mac. I guess one of the things that really appeals in terms of this is that it is a very flexible system. You can set it up in virtually an infinite number of ways, and I think we've seen some of that in the number actions and alternatives that we're trying to deal with or alternatives and options. It's a very powerful tool, really. Kari.

MS. MACLAUHLIN: Action 20 is collection of royalties for resource use. There are different ways for profits from the fishery to come back to the public. Basically the super-profits or anything that exceeds a normal profit or some kind of royalty on their – by using auctions. This is not required by MSA but required for councils to consider.

MR. CUPKA: Any comments? Seeing none, then we'll proceed on, Kari.

MS. MACLAUHLIN: This is Action 21. This is the overage that Kate talked about where that we could maybe combine with the banking and borrowing where an individual can go over by 5 percent on their last fishing trip or 10 percent in Alternative 3.

MR. CUPKA: I guess the only question I would have would if they did that what would be the consequences? I assume they'd have to take it off their next year's if they exceed their share.

MS. MACLAUHLIN: I guess that would be something that would need to be added to it; do you take it off their next year's or can they –

MR. CUPKA: I'm just thinking if you set an individual cap on the number of pounds and they're pretty close to that cap and they could go over that, it seems like there ought to be some provision for payback if that were to happen. It may not happen, I don't know. Phil.

MR. STEELE: Well, we normally do it in the IFQ programs that we have now. We allow 10 percent on their last trip. OLE wanted that 10 percent because they didn't want to mess with the numbers lower than that for prosecutorial reasons, but they have to pay it back. It comes out of their allocation for the next year.

MR. CUPKA: I assumed they did; it just wasn't clear from this. Monica, you had something?

MS. SMIT-BRUNELLO: I would think you'd want that in there, that clarification language, absolutely.

MS. MACLAUHLIN: Another way would be you have a certain period of time after the season closes to buy those pounds from someone else to make up for whatever you went over, like 30 days or something.

MR. STEELE: Well, in response to that, we have it now, just for a lot of reasons, that you've got to have it in the bank before you land it is basically how it is. You can buy it at sea if you can get it; but before you hit the dock you've got to have those pounds in your account.

MS. SMIT-BRUNELLO: And then I believe, Phil, too – you can correct if this has changed – for the last month of the fishing season I think there is very little allowance for buying someone else's shares or allocation or whatever so that the Fisheries Service then can get ready for the start of the next fishing year to issue the allocation that goes out, so there is some period of time in which it's frozen and you can't transfer and you can't buy, you can't do anything; so you're kind of stuck if it's your last trip and it happens to be the last month of the fishing season, so you're not allowed to purchase other.

MR. CUPKA: Well, as Kari said, we'll certainly get some AP input on this once all the participants kind of get a better feel for what is possible or what they want to do.

MS. MACLAUHLIN: Okay, almost there, 22 is the approved landing sites, which we had talked about before to help with enforcement. These would establish certain sites that they would have to land at and different subalternatives for how these are defined and identified.

MR. CUPKA: Okay, comments on this issue? And, again, I know we're going to get a lot of input on these as we go along. This is kind of a first cut at it. Kari.

MS. MACLAUHLIN: Twenty-three is a loan program which would use 15 percent of the cost recovery fees or 25 percent of the cost recovery fees. These is also we could request a loan program for the small boats which the council would define and new entrants which the council would have to define from NOAA through the Fisheries Finance Program specifically to buy shares for new entrants and smaller operations. Actually, Action 23 we could remove and just do that through the NOAA FFP.

MR. CUPKA: Anyone wish to take any action? Bob.

MR. GILL: Mr. Chairman, the Gulf Council just made application for a loan program for new entrants and small fishermen, and the program has been modified I believe with the Bering Sea Alaskan Crab where you don't have to put any money in. It's a relationship between the fishermen and NMFS on a financial basis but does not require the establishment of any of the cost recovery fees.

MR. CUPKA: Thank you. Any other comments? Mac.

MR. CURRIN: Well, if we don't need it let's get it out of there. **I'd move that we move Action 23 to the considered but rejected file, whatever is appropriate.**

MR. CUPKA: Okay, we have a motion; Mr. Phillips seconds it. Kari.

MS. MACLAUHLIN: I'd really encourage you to put in an application for the Fisheries Finance Program through NOAA for the golden crab fishery down the road.

MR. CUPKA: We have a motion on the table then to move Action 23 to the considered but rejected appendix or section. Bob, do you have something.

MR. GILL: Mr. Chairman, perhaps I didn't make myself clear. I wasn't arguing that you should eliminate the action but consider an alternative that establishes a program but it doesn't require the establishment of part of the cost recovery fee, which is a different position, and I hope I didn't mislead anybody, Mac.

MR. CUPKA: Do you want to still get rid of it, Mac?

MR. CURRIN: Mr. Chairman, I thought that was the recommendation from staff that we didn't need this action. If we do need this action or can replace it with a different one – I heard your suggestion, Kari, that the council apply for some other program. If we do that, then I don't see a need for this. I'm content to leave it the way – let my motion stay where it is and vote on it; and if we need to keep it, then vote it down.

MR. CUPKA: There is another program. I think at one time I had asked Kate to look into that.

MS. QUIGLEY: It used to be called Guaranteed Loan Program and now it has a new name; is that the Fisheries Finance Program, Kari?

MS. MACLAUHLIN: Yes, I actually got in touch with Mark Holliday at the Policy Office about this specifically, and he was the one who said that he highly recommended that we not try to take 15 or 25 percent out of our cost recovery and that we apply for the FFP and that Gary Reisner would come down. I know that at one point the councils did get a letter from Gary encouraging for the catch share programs to ask for these loan programs because it gives NOAA authority to make the loans. That's why I'm recommending it.

MS. QUIGLEY: Yes, from what I understand, the cost recovery money goes to a general fund that can be used anywhere in NOAA, but if you make this request it could be used in this region; is that correct or am I misunderstanding? I think the Fisheries Finance Program allows you to use the money in this region specifically.

MR. CUPKA: Monica, can you shed some light on that?

MS. SMIT-BRUNELLO: Well, I can't answer that question, but I'd love to ask another question; and that is, is the Guaranteed Loan Program; is that the same as the Limited Access Privilege Assisted Purchase Program, because that's a provision in the LAPP Section of the Magnuson Act.?

I don't know where the Guaranteed Loan Program, those words came from; but under the Assisted Purchase Program they talk about the council may submit and the Secretary may approve a program which reserves up to 25 percent of any fees collected under this program for the purchase of privileges by fishermen who fish from small vessels and first-time purchase of limited access privileges in that fishery by entry level fishermen. I don't know if that's the same as the Guaranteed Loan Program or not.

MR. CUPKA: What I would suggest is that we pass this motion and get rid of the Guaranteed Loan Program and instruct staff to look into the other program or maybe add it in with the particulars on it but get away from this wording.

MS. MACLAUHLIN: The Fisheries Finance Program was originally set up to help fishermen buy boats and it was meant for economic development in fisheries, which is not necessarily what we want now.

We're trying to limit participation, and so what they were trying to do by encouraging the councils to apply for it because it can be used to purchase ITQs and catch shares; that because this money is not – you cannot use if it's going to lead to overcapitalization of the fishery.

So to give loans to fishermen to buy bigger boats, they're not using the money for that really, so they were trying to encourage councils to take advantage of this money for their catch share programs to set up new entrant loans and loans for their smaller operations that may not have access to that money.

MS. SMIT-BRUNELLO: So that's a different situation than what is suggested here under the Assisted Purchase Program.

MS. MACLAUHLIN: Yes, I think it is. This the guidance that I got; the council needs to request a loan program be set up by NOAA, define what is small vessel and first-time purchasers and NOAA needs to request loan authority or ceiling from congress. Gary Reisner and his FFP staff can be asked to present to the council on this issue for perfect clarity. As far as the set-aside from the cost recovery, this could be used if the FFP staff concludes that a subsidy rate is needed but this is not very common.

MR. CUPKA: I want to ask Bob; I seem to recall at one of the Gulf Council meetings that there is a pot of money and it was several million dollars I think that is available for people to buy catch shares who want to get in the fishery. Did I imagine that or you know if there is anything like that?

MR. GILL: No, you're accurate, Mr. Chairman. It has been exclusively Alaska thus far. We applied for it at the beginning of this year and it will publish later this fall to participate in that fund. The \$16 million has not been utilized fully by Alaska, and that is subject to authorization from congress.

That pot of money is available and there is likely to be more applicants to participate in that program because you don't have to have anything down like we used to have, and that was because nobody in Alaska has ever defaulted. The rationale for the deposit disappeared because that was why you needed to make one, so they now allow you to participate on no funds being obligated by the council.

MR. GEIGER: Bob, help me remember, when we talked about – when we were on this catch share policy program, they talked about cost recovery monies being put in a pot pursuant to the fishery from which it is recovered. The big argument was against putting it in the general fund, and those monies were supposed to be captured for the fishery from which the money was collected for use for enforcement and research and all those types of activities or whatever, but within the fishery from which the money was collected; am I wrong?

MR. GILL: No, I think you're right, but I think we're mixing a number of different –

MR. GEIGER: I understand that but a statement – I think the statement was made that the cost recovery program monies go into a general fund and I don't think that's the case.

MR. GILL: Yes, this is not part of the maximum of the 3 percent cost recovery fee to help pay for the administration of the program. It's a separate fund from that.

MR. CUPKA: Well, regardless, it sounds like this is not the correct thing in here now and we want to do away with that and ask staff to get the right information on the right program that we can consider as we move through this. Charlie.

MR. PHILLIPS: Well, just a quick question; if by chance we decided to leave it in and let the golden crab fishery basically finance themselves and not depend on anybody else; does it add a lot of work or any work to what you're doing or have to do?

MS. MACLAUHLIN: I can't answer that right now.

MR. CUPKA: Okay, we have a motion on the floor; any further discussion on this motion? Is there any objection? **Seeing none, that motion has passed and I don't think we need a motion just to instruct staff to get us the right information on this aspect of a program.**

MS. MACLAUHLIN: Last one, this is for adjustments in the annual allocations of the commercial ACL or commercial TAC. This talks about Alternative 2 is when and if the ACL changes, a permit holders annual pounds will change based on the percentage of the commercial quota that the individual holds at the time of the adjustment or that allocate adjustments through an auction system.

MR. CUPKA: Comments or questions? This is another one we will be looking for input back from the AP on this. Okay, Kari, do you have anything else on Amendment 6? All right, again, my intent would be to ask staff to convene a meeting of the AP and to go back through these now there has been some analyses done, get us their input on what they think and whether there is any that should be deleted or added now that we've had a chance to become familiar with this to some extent and then to try and bring this back to the September meeting with the AP recommendations. Other comments?

Seeing none, that brings us to other business. Is there any other business to come before the committee? Seeing none, then we are adjourned.

(Whereupon, the meeting was adjourned at 4:22 o'clock p.m., June 13, 2011.)

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