

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

GOLDEN CRAB COMMITTEE

**Charleston Marriott Hotel
Charleston, SC**

September 18, 2009

SUMMARY MINUTES

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Charlie Phillips

Council Members:

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Dr. Brian Chevront
George Geiger
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Dr. Jack McGovern
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Other observers attached to the end of the document.

The Golden Crab Committee of the South Atlantic Fishery Management Council met as a Committee of the Whole and was convened in the Charleston Marriott Hotel, Charleston, South Carolina, September 18, 2009, and was called to order by Chairman David Cupka.

MR. CUPKA: This is normally a small committee of about five people, but today it has swollen ranks to 13. I did want to recognize Charlie Philips who is our newest member on the committee and has also agreed to serve as vice-chair of this committee. While Kate is coming forward and getting set up, I just want to make a few comments about the golden crab fishery.

It is a unique fishery in many ways. One of the ways I think it is somewhat unique is that this fishery has had a long tradition of working very closely with this council. In fact, the individual who pretty much developed this fishery, Dick Nelson and his son Richard worked very closely with us, and a lot of the management measures that are in the FMP for golden crab today are a result of the efforts of Dick and Richard.

That's pretty amazing, really, because for those of you who weren't around then you don't realize it but Dick Nelson was a significant player in the snapper grouper fishery and was a big fish trap user. That was a long and bitter fight, believe me, for those who weren't around the council at the time trying to get that gear banned from the fishery.

It was in some ways even worse than what we're going through now on red snapper. To me I think it says a lot about the man's characters and courage that once Dick got put out of business by the council he developed this fishery and came back to the council and said, "We want to work very closely with you in developing this fishery."

The spirit of cooperation, even though Dick and Richard are no longer with us, continues today in the participation of people like Bill Whipple and Howard Rau, and they've continued this tradition of working closely with the council. The most recent example of that I guess is the extensive work that they did with us on the Comprehensive Ecosystem-Based Amendment; one which we voted yesterday to send to the Secretary of Commerce.

It's a good fishery to work with; it's a small fishery. They have expressed interest in developing a Catch Shares Program, which perhaps would be somewhat less complex in this fishery in some ways because, number one, it does involve a small number of participants; and, number two, the participants are very interested in a Catch Share Program; and, number three, it's entirely a commercial fishery, so we don't have to deal with the recreational component. I just wanted to give you a little bit of that background while Kate was getting set up. We'll go right into our committee meeting.

The first order of business will be approval of the agenda. Are there any changes to the agenda? Seeing none, then the agenda is approved. That brings us down to Golden Crab Amendment 5, and I'm going to turn it over to Kate to give us an update. Some of this you already heard I guess earlier this week if you attended the LAP Committee Meeting.

MS. QUIGLEY: There are two different things to discuss. One is the Golden Crab AP Catch Shares Report. They've put together a number of different design elements that they like about

catch shares. The question to the council is do you want to incorporate any of these into the Golden Crab Amendment? That's the first question.

The second issue to deal with is assigning a possible MSY/OFL/ABC options to the amendment. Those options are included in the amendment, and I can, of course, project those up on the screen. I'm not sure if there is a preference for one to deal with first. I was thinking perhaps you might want to deal with the Catch Shares Report first since that was discussed by the LAP Committee. They turned that over to the Golden Crab Committee to deal with.

MR. CUPKA: Yes, why don't we go ahead and do that and later on we'll get into the other criteria of the ABC/OFL and all. Unfortunately, there we're in somewhat the same situation of wreckfish and coral was in where we are pretty much limited to catch history information and some very rough estimates of biomass. There is not a stock assessment scheduled for this particular species, but we'll get to that, though, in a few minutes. If you want to go ahead with the recommendations from the AP on the Catch Share Program, we'll start with that.

MS. QUIGLEY: This is Attachment 2. There are a number of different design elements that they had identified and that they had preferred. Some were just options and some were actual preferred options. I know most of you have already seen the presentation so I won't go through it again at this time.

As you recall there was eligibility for initial allocation. This presentation that was put together by Howard and Bill and others has been forwarded to you through e-mail, but I have got it projected on the screen as well – eligibility for initial allocation; vessel catch history; initial allocation scenarios; there are several of those.

Permit catch history; initial allocation; we're still waiting for the data, and then we can do those, but they would be the same as the vessel catch share initial allocation scenario. Eligibility for harvest, appeals process, program duration, program review, transferability, quota share ownership cap, use it or lose it, provision of cost recovery, boat length limit, zone issues, and permit stacking, and then there is also monitoring and enforcement preferences. I guess the question is does the council have any interest in putting these or other actions into the Golden Crab Amendment 5?

MR. CUPKA: We are early in the process. We've had scoping on this particular amendment, so what we're going to be working on next is development of a public hearing document, I guess, and these are the items that so far the AP has discussed. They met last month and I think there is another meeting scheduled this winter or early spring to further develop these options with the Golden Crab AP. We're really just in the initial stages of preparing a public hearing document, and these are the items that are covered in there so far.

If there are any other issues that the council would like to see put in there, these are the ones that the AP have raised, but now would be the time to let Kate know. Kate, I don't know if we want to work through each one of these or go through each one. I guess we should to see if there are any comments and to discuss these particular options.

MS. QUIGLEY: Okay, the first one was eligibility for initial allocation. The option that they come up with was any person holding a current permit as of the implementation date – meaning the implementation date of the Catch Share Program – in any zone is eligible for initial allocation. There are 11 permits, so 11 people would be eligible for initial allocation.

Where eligibility is based on vessel logbook data, it varies based on initial allocation formulas under consideration. Catch history is based on currently permitted vessels as of September 2009. What they wanted to do was basically have people who are currently in the fishery, who currently own the permit, those would be the people who would have their catch history used in the initial allocation.

MR. CUPKA: And, of course, we'd have to include some other options for NEPA purposes as we develop this document, but that's the one that the AP is most interested in at this time. Also, I might want to mention, too, that most of the data that you have and you have been looking so far is based on vessels and that you've requested similar data based on permits, but you won't have that until later this year, I think.

MS. QUIGLEY: Right, I won't have that until – the estimate is December, so before the December Council meeting is when they thought they might be able to have the data for me. The vessel data is a little easier to get together than the permit history data. The vessel logbook data can come immediately from the Science Center or pretty quickly from the Science Center given the small number of participants.

The permit data, though, they have to take a look through the years, how permits have changed hands, what vessels they were associated with, and then link that up with the logbook data, so that takes a little bit longer, so they're thinking in December. Now, once we have that data what I would do is go ahead and run the same initial allocation scenarios for all of the participants and then hold a meeting with the Golden Crab AP and other invited participants, meaning those people who participated in the fishery but that are not on the AP, invite them to show up and to discuss the initial allocation scenario.

What we had at this last meeting was all active vessels in the fishery. Those vessel owners and permit owners were there in the room and they came up with these alternatives. The intent would be in December, whenever I receive the data – December/January – to get those same people together again, to have all active participants. Of course, all permit holders have been invited to these meetings and have been updated after every meeting as well. They've been invited in case they're thinking about entering the fishery again.

MR. CUPKA: Okay, moving on down through these, if we don't have any input at this time on that, the next is a whole series of options dealing with the vessel catch history in terms of looking at initial allocations. One of the things I guess is that some of the vessels have a lot larger catch history than the other ones in here.

They've put together a number of options using the standard catch history for various year series, but they've also looked at a series of options that would take into account the fact that based on catch alone some of them would have a lot smaller allocation than the other. The idea behind

these was to give them sort of a bonus allocation if they're in that group of vessels that would receive a small allocation.

You see a number of options there dealing with that; some based on their catch history, and then part would be an equal allocation that's very similar to what we did in wreckfish. Then was even an option in there just to look at equal allocation without even looking at catch history; just giving everyone an equal allocation that are averaging a series of years; just a whole series of options looking at how those allocations would be made.

I don't know if Kate wants to add anything to that. I think there are a pretty big number of numbers of there, but there may be some other options that Kate or the AP haven't thought about that might be appropriate for this, but we do have a wide range of options there. Robert.

MR. BOYLES: Mr. Chairman, I'm just wondering for the purposes of discussion is there any interest in applying the formula that we have established with other fisheries; use a 50 percent long term, 50 percent short term as an option?

MR. CUPKA: Well, I think we could certainly include that. We've done it in these other documents we're working on; and if that is going to be sort of a policy, it wouldn't hurt to include that as an option. We'll ask Kate to do that. Other comments or questions? Ben.

MR. HARTIG: Just to Robert's point, is that something that the council has decided on and voted on as being their way of dealing with allocation in any of the catch shares programs?

MR. BOYLES: I asked that question yesterday and I was told that, yes, in fact we had.

MR. CURRIN: Just to that point, keep in mind that formula was developed as a way to allocate among sectors and not specifically within sectors. Now, that doesn't mean that it may not be interesting to look at, but this application is not what we developed it for.

DR. CRABTREE: I agree with Mac. I remember when we had this discussion and developed that and talked about it, but it was always allocating among sectors, recreational, commercial and for-hire. I don't think we ever intended that would apply in this sort of situation for something. It might be a great idea and it might work fine, but I don't think that was ever our intent.

MR. CURRIN: In principle it may be a very interesting way to look at it because it does consider the early history of participation in the fishery and the more recent participation. It likely will come out very similar to some of these – I don't know how many options or sub-options there are in here, but it may be worth looking at.

MR. CUPKA: Yes, I don't see any problem with adding it at this point just to see how it comes out. Of course, all of these have to be analyzed and the next would probably be to reduce some of these options to get rid of them; but until we put numbers with them, I don't know how they're going to turn out. At this stage of the game I don't see a problem. Roy.

DR. CRABTREE: This is kind of backing up a little, I guess, but, Kate, is the main reason the golden crab guys are interested in a catch shares type of approach to all this or something; is their concern that with ACLs there would be a hard TAC and that would be an incentive to put even more traps out and lead to some sort of a derby or something; is that the gist of it?

MS. QUIGLEY: There are several reasons that they want a catch share program, but, yes, they're concerned that with ACLs being implemented nationwide, that other crab vessels outside of the region will see that this fishery has no MSY, has no TAC and it will be one of the easiest for them to buy a permit because there are several latent permits and come in and fish.

They're concerned that some vessels will come in and will not be familiar with the benthic habitat and could harm corals or go into areas outside of the allowable golden crab fishing areas and that would endanger their future in the fishery.

MR. CUPKA: Other comments or questions? Ben.

MR. HARTIG: Just one more; I don't want to get into a big discussion about it today. The 50/50 is fine for now, but if 50 percent of the quota is going to go to 50 percent of history that doesn't have any current landings I would not go for that at all.

MR. CUPKA: Well, we'll be analyzing these and coming back to you and we'll take another look then. Kate, do you want to continue on.

MS. QUIGLEY: The next option is eligibility for harvest, so eligibility to receive an initial allocation, this is eligibility for harvest. This was the preferred option; any person holding a current permit in any zone is eligible to participate in the golden catch share program. New entrants to the fishery must purchase annual pounds and purchase or lease a permit. There are eleven permits in the fishery and to obtain a permit someone would have to purchase or lease of the eleven permits. If they did, then they would be eligible to harvest, so it's simply saying you need a permit in order to participate in harvest of the fishery.

MR. CUPKA: Questions or comments? Seeing none, go ahead, Kate.

MS. QUIGLEY: Okay, the next one is appeals process. They preferred that the NMFS Regional Administrator would administer the appeals process. There would no hardship clause and that the process will be conducted 90 days after initial allocation but before the bonus is distributed, the bonus that exists in some of the initial allocation option.

They wanted to cap this at 1 to 2 percent of the TAC would be set aside for the appeals process and this if it was not used it be returned back to the overall quota pool and would be redistributed based on the original initial allocation to all shareholders.

MR. CUPKA: This is very similar to the way it has been set up in a number of fisheries, so that's kind of what this is modeled on.

MR. CURRIN: Just a point, and it's obvious, I'm sure, Kate, but in all of these measures and the next several we currently have only one option and at some point we're going to have to develop some additional options, I would presume.

MR. CUPKA: Yes, and we realize that, Mac; and as I said earlier, we would have to add to options to all these actions, but these are the ones really that the AP in working with Kate have come up. Obviously, underneath it we're going to have to have additional options. Kate.

MS. QUIGLEY: Okay, the next action would be program duration. The preferred option is program will exist in perpetuity unless modified by the South Atlantic Fishery Management Council. That was something that they wanted, and obviously we talked yesterday about the Reauthorized MSA and the fact that the privileges would perhaps need to be approved every ten years. They realize that there are some MSA regulations that might influence that.

MS. MERRITT: Mr. Chairman, I'm not a member of this committee, but to what Kate was just speaking of, it seems to me that if in fact catch shares is just another word now for a limited access privilege program, then I think the new MSRA would put the maximum ten years on it. However, if catch shares is something different and limited access privilege comes under that purview, then I think that might be a loophole.

MR. CUPKA: Well, to your earlier point, you are a member of this committee because we're meeting as a Committee of the Whole. My understanding is that a LAPP is a catch share but not all catch shares are LAPPs, but LAPPs is part of a subset of catch shares. Again, we're going to have to get some clarification I guess on the extent of the change or something on some of these things.

To me this is a new program and it would have to meet all of the requirements of the Reauthorized Magnuson-Stevens Act. It's not like the Wreckfish ITQ where there is some question about whether it's a new program or not.

MS. SMIT-BRUNELLO: I'll look into that and it kind of depends on how many changes are going to be to program, too. I'll look at that and the various options and then get back with you.

MR. CUPKA: Well, they're all going to be changed because there is no program to change.

MS. SMIT-BRUNELLO: Well, it is a limited access system now, right, and it does have certain sectors that people can't go into. I mean to some extent it already is fairly limited.

MR. CUPKA: Well, it wouldn't hurt to look into that, but it's not what I think of as a catch share program with a limited access program, really.

MS. SMIT-BRUNELLO: Well, that's true.

MR. HARTIG: To that point, Monica, certainly that ten-year thing we looked at yesterday, it actually said the privilege and not the program when I read it. Your interpretation of what that means would certainly help in the long term.

MS. SMIT-BRUNELLO: Absolutely.

MS. QUIGLEY: Just to clarify, these guys are interested in a limited access privilege program and not a sector allocation or any of the other things that would qualify as defined as a catch share, so they're specifically interested in a limited access privilege program where allocation would be made to individuals and not communities and at this point in time not a regional fishing association as defined in the MSRA.

The next item is program review. Again, this is something that I don't think we need really to talk about too much since it is specified in the MSRA, but perform review every five to seven years. The program reviews would coincide with stock assessments, if possible, so that changes to the program in response to the stock assessment can occur.

Then there is the preferred option under transferability; program allows for all or a portion of permanent, meaning quota share, and temporary, meaning annual pounds, sale of quota among all permit holders and those leasing a permit. If people wanted to participate in the program, they just need to lease or buy a permit, so they want full transferability of quota share and quota pounds.

MR. CUPKA: Questions or comments on transferability? Go ahead, Kate.

MS. QUIGLEY: Okay, quota share ownership caps; as I mentioned before, individuals in this fishery, there are some that are harvesting more than others. There are four active vessels. One of the vessels is currently harvesting – depending on what initial allocation type methodology, what years you look at, 50 percent or above, so owner share caps; Option 1, cap on ownership of quota share where the maximum percentage initially allocated would serve as the owner cap.

However, depending on the initial allocation that could be anywhere from 50 to 70 percent. Then they put some other options in here realizing that might not be acceptable; Option 2, 55 percent; Option 3, 65 percent; Option 4, 75 percent. One thing that we talked about with them is that they asked if there was any precedent for 50 percent or higher. I said that I would look into it and the highest that we found was the Mid-Atlantic golden tilefish, I believe the ownership cap is 49 percent.

MR. CUPKA: Questions or comments on ownership caps? Monica.

MS. SMIT-BRUNELLO: Kate, I had a conversation with the NOAA GC person who advises the Mid-Atlantic on that ownership cap after you brought that to my attention about the 49 percent. I guess no one has 49 percent. That was possible; I don't know if it's still possible. It may be but no one has risen to that point yet. They have these tiered systems where depending on the amount of catch you had you were in Tier 1, and that was only maybe 3 entities I think made it into Tier 1. Then they had a Tier 2 and so on. I'll look at that more, though, and see how that would apply to this situation.

MR. CURRIN: This is a very unique fishery, but my reaction, when I look at those numbers, is that the lowest one is high. I don't know and it may be just viable, but that's just my initial reaction.

MS. QUIGLEY: One thing that we'll do, as I mentioned before, is Mike Travis and I will start putting together an excessive shares presentation to provide the council with an overview of guidance handed down from NMFS on excessive shares or any information that we can find on how the council can identify what would be excessive shares in this fishery.

From what I understand, it has to do with what is too much to influence the market; that's part of it. The other part of it is what are the objectives in the council and what would be the percentage at which the objectives of the council would not be able to be met. That's just my very simple understanding right now. We will look into that and we'll come back with a presentation in December or March.

MS. MERRITT: As a member of the Committee of the Whole, another option you might want to consider is that the original quota share owners have these percentages because there are so few, but to leave the door open for the future when they retire or die off, give up, whatever, and new entrants come in, that this may be divvied up in a much broader scale, so you may want to put a cap that is lower as an option for future entrants such as 10 percent which I think tends to be something that is fairly common amongst ITQs.

MS. QUIGLEY: I was just going to say that's something that the Golden Crab AP talked about. They talked about, well, one person has a very high percentage, so therefore why not grandfather them in but say that when they sell their share or any portion thereof, then all of a sudden new quota share ownership caps would apply to those future people; that only this one person would be allowed.

Now, they didn't put that in their options because some other people on the AP might feel, well, that's unfair, this person is receiving special treatment or some sort, so they didn't put that into their options, but that is something that they talked about.

MR. PHILIPS: When you're doing these ownership shares, you may want to consider whether it is a corporate or personal, because if you set a high share and he puts it in under a corporation it is not going to go away, it's going to stay there. You may want to split it up and state exactly what is what.

MR. CUPKA: Other comments for Kate? Okay, Kate, the use-it lose-it provision.

MS. QUIGLEY: Use-it or lose-it provision, Preferred Option 1, permit owner or person leasing a permit must have used at least 10 percent of an individual's quota share for one year – that is meaning that it was either fished, there was a quota share sale or sale of annual pounds – on a cumulative basis during a two-year period using a running average.

There are lots of problems that we discussed with this use or lose-it provision. They said they definitely want one because they don't want anyone to hold on to quota share or annual pounds, but administratively this could be difficult. I told them that it might only be able to be imposed on a one-year basis. There are a lot more things to talk about with regard to this, but they definitely said they want some sort of use-or-lose provision.

MS. CUPKA: This wording is a little complex here, to say the least, and I think the intent is that they've got quota share and they need to use it within a two consecutive year period at least. There has to be some sort of action where it either gets used or sold to someone else at least 10 percent of their share within a two-year period. Obviously, if for some reason they can't fish one year, they want to base it on just a one-year period.

They wanted it for a two-year and it had to be consecutive years. You couldn't sell 5 percent of it the first year and then drop out and the third year sell another 5 percent. I don't how hard something like that would be to track, but they were interested in something along those lines.

MS. SMIT-BRUNELLO: I'll just remind everybody that we had a use-or-lose provision in this fishery before where they were supposed to land so many pounds within a certain number of years and then those permits would go away. They came back and requested that the council repeal that because it wasn't working for them. I'm not saying that it's the same situation. It may have drastically changed, but just to keep in the back of your mind.

MR. CUPKA: There are latent permits in this fishery for whatever reason that isn't being used. There are such a small number of participants they'd like to see that freed up if people aren't going to use it. Kate.

MS. QUIGLEY: Okay, the next thing I talked about was cost recovery. I'm just going to leave that as it. It talks about it under the Reauthorized MSA. Boat length limit; I didn't correct this presentation. As I said in the previous presentation take that Preferred Option 2. It's just Option 1 and Option 2.

They weren't sure they had a preferred. One option was to leave the boat length limit rule in place, and the other option was to eliminate the boat length limit rule in the middle and southern zones. There is no boat length limit rule in the northern zone. Basically this was because of the implementation of this new recirculating seawater system that they're putting on their vessels.

I've seen three of the four vessels or two of the four vessels now have this recirculating seawater system, but greater length is sometimes needed when you implement that. A larger boat is also more efficient, they're saying, for these trips that they do. They do five- to ten-day trips. However, one person does just go out on day trips.

They talked about if you don't have a boat length limit rule in place, then are they going to be inviting in much larger vessels, and they felt that the ownership cap on the quota share would limit the length of the vessel somewhat.

MR. CUPKA: Questions or comments on boat length limits? Kate, do you want to go ahead on some of the zone issues.

MS. QUIGLEY: The zone issues, two preferred options. Preferred Option 1, participants can use quota in any zone for which they possess a permit, so the quota would be allocated as a whole to an individual vessel or to an individual but you could use the quota in any zone that you wanted to, that you had a permit for.

Preferred Option 2, eliminate the box in the southern zone originally established to protect against very large vessels. This box in the southern zone, anyone who is smaller than 65 feet must stay in that box if they have a permit in the southern zone.

MR. CUPKA: Kate, that first option there, if they could use their quota in any zone, then there probably wouldn't be a need for what they refer to as "permit stacking", because I think the reason they wanted to do that was to be able to fish their quota in any zone. There are such a small number of permits in the fishery, anyway, and one of my concerns has been that if a person tried to buy three of them up so they could fish in any zone, that's going to take a lot of permits relative to the total number out of the systems.

It seems to me that we allowed them to fish in any zone, then they wouldn't have to stack those permits, and there would be more permits available for more participants. It would still be capped at eleven so at least you wouldn't have people going after more than one permit.

MS. QUIGLEY: I think they put in the permit-stacking provision, which is I think the next item, is because they saw that as largely an administrative hurdle right now, so they just wanted to make sure that they can use quota in any zone and have more than one permit on board a vessel, which they're not allowed to do at this point in time. I think they saw them as possible two different issues, but they weren't quite sure.

MR. CUPKA: Other questions or comments?

MS. SMIT-BRUNELLO: Couldn't that get into excessive shares as well if you allowed someone to stack a number of permits on their boat?

MS. QUIGLEY: I don't think so, not in this fishery because there is no catch limit associated with the permit. The permit only restricts you to where you can fish and not how much you can fish.

MS. SMIT-BRUNELLO: So they're just talking about having a vessel with perhaps a southern zone permit and a middle zone permit and not multiple permits for a southern zone or anything like that?

MS. QUIGLEY: No, they were just talking about having three on board or two on board at the same time but different zone permits.

MR. CUPKA: Kate is right, right now the only thing it does is allow you to fish in a certain area but there is no quota associated with the individual permit. If we allow them to fish in any zone with a permit, they wouldn't have to worry about that.

MS. QUIGLEY: I just want to say a little bit of rationale behind their thinking. There are some people that fish in particular zones that like being the only person there or just two vessels there. They didn't want to have everybody in the middle zone. This was the original intent I believe of having different zone permits was to avoid overcrowding within individual zones. They believe they've benefited from that and they want to maintain that.

MR. CUPKA: And I can understand that, but it just seems like, again, if we're going to allow them to stack permits it's going to reduce the number of potential participants if they go after more than one permit. Again, that is something that needs to be looked at and worked out, but this was their thinking on it at the moment.

DR. LANEY: Also, David, it seems like if every vessel in the fleet decided they wanted to stack permits and have a permit for every zone, then what is the purpose of the zones in the first place? I mean it seems like it's self-defeating.

MR. CUPKA: Well, they couldn't do that because there are only eleven permits to start with. I mean you couldn't have four people if they wanted to stack for every one.

MS. QUIGLEY: It was a compromise between people who wanted to keep others out of their zone and people who wanted to use the permits that they have and have been unable to use. I realize it seems conflicting in some ways and that's because it was a compromise between differing points of view.

The next item we've got is the permit stacking which we've talked about a little bit so I'll just go on from that, but it's basically just allow for stacking of up to three permits on one vessel so that any zones for which the vessel has a permit can be fished in one trip. There are individuals currently right now that own three permits for three different zones, although most people have two different permits.

Monitoring; phase in additional monitoring as necessary based on the economic capacity of the fishery; explore real-time reporting via electronic monitoring; that is recording trip ticket and logbook data on a website upon landing. They started out talking about video monitoring. I think they're open to talking about anything. They're concerned about the economic cost.

MR. CUPKA: Questions or comments for Kate?

MS. QUIGLEY: Okay, I think this is the last one, enforcement. They realize that enforcement might want them to hail in so then enforcement knows where they're landing and when they are landing so that they have the option to show up and make sure that what they're landing is no more than they have annual pounds for.

They just wanted to make some issues known; consider requiring hailing in – they're fine with that – at least three hours ahead of time whereby a message could be left or texted in excess of three hours when landing with location and time or other information deemed necessary by enforcement, so they were fine with that.

However, the specific hours of landing and departing are difficult to identify due to weather, tides and nature of the Gulf Stream. In addition, because crabs are brought in live, time is of the essence. In order to maintain a quality product, landings need to occur immediately upon arrival at the dock because we have this high mortality rate of the crabs when they are in the ice; and because if they're in recirculating seawater, there is high mortality because they can't refresh the water once they get to inshore areas.

So renewing recirculating seawater is not always an option nearshore where the water is murky and of low salinity. Therefore, landings need to occur at any time during 24 hours. They would like to work with law enforcement to determine the specifics.

MR. CUPKA: Yes, this is another area in which we're dealing with a somewhat unique fishery in that they're dealing with a live product and they need to move that product. It's not like catching a fish and putting them in a box and ice and they can sit there for a while. These have to move these things out or they get a lot of mortality. Obviously, it will take a lot of work working with the Enforcement AP to work out some of these issues, but we certainly will do that. All right, Kate, I have two other action items after that. One is new entrants and the other is the banking and borrowing, right?

MS. QUIGLEY: Right, I was wrong, that wasn't the last one. There are two more; new entrants, set aside some amount of annual pounds for new entrants when quota is released as a part of a violation; lost quota, use-it or lost-it provision; and when the TAC exceeds 3 million pounds.

Because they don't know what their ACL might be, if it's going to be less than a million pounds or if it's going to be something higher than a million pounds, they couldn't say this time how much they would be willing to set aside, but they definitely realize that new entrants need to be able to come in.

MS. CUPKA: Questions or comments on new entrants? Okay, Kate.

MS. QUIGLEY: Okay, banking and borrowing; Preferred Option 1, 20,000 pound borrowing allowance each year; and Preferred Option 2, 20,000 pounds banking allowance each year. If they go over or if they come under, they would like to be able to take it off of next year or transfer that to the next year, to be used in the following year. I informed them that might only be transferable on a one-year basis.

MR. CUPKA: When we started talking about this at the AP meeting, I guess I raised the issue as kind of a new territory. Now that we're dealing with the ACL and we have to set an annual catch limit and if that's exceeded and then we've got accountability measures that kick in; could we really do some borrowing?

In essence what you're doing is saying, well, you can go over the ACL this year ahead of time and borrow against next year's, but I guess the way these are set up, Roy, where each individual would have an account, you could track that. My concern was, number one, could you say up front you're going to allow them to go over the ACL up front one year; and, number two, if an individual did go over, then is that something the whole fishery would be responsible for paying back?

But, obviously, each individual is tracked by themselves, and so they would be responsible for paying that back the following year, so it could be tracked. My only question was whether you can allow them right up front to exceed the ACL and not get in a problem? I guess you've looked into that, Monica, and it is not a problem.

MS. SMIT-BRUNELLO: Well, just a little bit; you know, if you exceed the ACL in one of four years – I can't remember what the Act says – you trigger an accountability mechanism. This is just kind of an interesting idea to toy with and try to figure out how you can structure it a little bit differently. I'm not quite sure of the answer but I'll be glad to look into it and talk about it with others and see what we could come up with and work with Kate.

MS. SHIPMAN: Was this for the fishery as a whole or for individuals in terms of their shares?

MR. CUPKA: Well, it would have to be individual and it could be tracked. The way I understand the Gulf, red snapper is set up that each person can go in and check their account at any time, and they know how much they've harvested and how much they've got remaining. If they go over that, I guess in the snapper they're allowed to buy –

MS. SHIPMAN: Right, and that was going to be my question; did you –

MR. CUPKA: -- buy a share to cover that.

MS. SHIPMAN: -- discuss buying the overage from other fishermen in terms of the other share?

MR. CUPKA: We haven't really gotten that far in the discussions at least that I've been privy to. Kate may have.

MS. SHIPMAN: Because that would be an option I would think could be either a subset of this or another alternative is they could buy overage from another fishermen.

MS. QUIGLEY: Yes, that's something that they were made aware of and that they talked about. They saw that there is such a small pool, though, of people to buy from and that's why they had a real interest in this banking and borrowing.

MR. CURRIN: With the accountability measures in place, I wouldn't have any problem with them borrowing from next year. I mean the accountability measure could simply subtract it from the next year's quota share. Banking, on the other hand, I think should have some limits on it, some percentage that they're allowed to carry over.

Otherwise, you provide incentive for someone, if they're allowed to carry it over and carry it over again, for building up some amount of product that they can then sell every three or four years or something like that to another vessel or to save it up to harvest it only one year out of four or five, and that could potentially cause some problems in the fishery if the effort gets concentrated in a particular year. I've had some reservations about allowing them to carry over the entire quota from year to year.

MR. PHILIPS: Okay, the banking and borrowing could very well have a rollover into the use-it or lose-it provision because if you're going to borrow or lease or however you want to call it from somebody that has got a permit that they're not using, who gets credit for those pounds. Somebody could be sitting there saying, "Well, I want to loan this out to somebody, so I've got some poundage limits." You need to keep that considered.

MS. SHIPMAN: And just to one of Mac's points, if you did your borrowing from your next year's quota, I would want to make sure that the deduction comes off of that individual's share and not on the overall quota so that everyone gets a reduced share because of one individual went over. I mean, it's intriguing and certainly worth looking at, but I think Charlie raises a good, too. There are all of kinds of nuances of working the system.

MR. CUPKA: Well, that was my concern until I realized that would be tracked individually. Otherwise, if a person went over the entire fishery would pay back their overage, and it needs to be just their responsibility.

MS. QUIGLEY: Those are all the design options I've got, and I guess staff would like to know would you like to have these analyzed?

MR. CUPKA: I guess you're asking when by, and I think the chairman has expressed some interest to have this moved along, but we have to remember we've also asked Kate to continue exploring the possibility of catch shares in the snapper grouper program. She is also working on revamping the Wreckfish ITQ. She is going to be busy. George.

MR. GEIGER: Yes, and not in that order, Mr. Chairman, if I might. I think we looked at doing wreckfish first.

MR. CUPKA: Yes, I didn't mean to imply any priority or anything by that. I just wanted to remind people of some of the commitments that Kate already has. I do know that the industry is very interested in this and wants to move ahead, too, and more so I think than some of the other fisheries we're looking at. That may tend to give it a little more priority, I would think.

MS. QUIGLEY: I guess one thing I'm keeping in mind is that there is a whole team that works on these things and not just me. I don't feel it all falls upon just me. As you will see, a lot of these things are the same things that the Snapper Grouper LAP Exploratory Workgroup brought up; you know, banking and borrowing, use-or-lose provisions, all of these same things. It's kind of the same methodology again and again and again, which makes, I guess, the subject matter familiar, which helps a little.

MR. CUPKA: Well, I guess the only guidance we can give you is to work on it as you can. You know what has been asked of you. Again, like I say, this is one that the fishermen I know are interested in pursuing, more so than some of the others, so to my mind that would tend to give it maybe a little bit higher priority in some respects unless anyone disagrees with that. Okay, do you want to move ahead then and take us through the rest of the amendment?

MS. QUIGLEY: This is a skeleton amendment. There is really nothing in it other than just some ideas about MSY, OFL and ABC. You can see up on the screen or in the amendment, Action 1, establish some sort of MSY: Alternative 1, no action; Alternative 2, MSY of 5 million pounds. That is what the industry has asked for.

Alternative 3, MSY of 2.5 million pounds; that's a number that NMFS had come up with years ago. I think it was over ten years ago. Alternative 4, an MSY of 400,000 and 600,000 pounds, which has a recorded landing, recorded trip ticket landing over the past five years or so. Those are MSY options.

OFL options, these are, I believe from documents from about ten-plus years ago. Gregg can give some detail if wanted. Then we've got some ABC options which are basically just take a look at the MSY, and they're a little bit lower. So the 2.5 million pounds; you see Alternative 2, 2 million pounds and then an ABC of 1.5 million pounds, and then you see Alternative 5, 4 to 4.5 million pounds, a little bit lower than the 5 million pounds.

MR. GEIGER: Mr. Chairman, I don't envision there being a recreational allocation requirement or even a request. I don't know that there are any recreational people fishing for golden crab. I've learned from Dr. Crabtree you can never say never and you don't know until you really know. We did get into this situation in wreckfish by have a 100 percent allocation for wreckfish. It seems to me that just to remain consistent we ought to have an allocation portion in this document and declare it a hundred percent commercial just to let the public know so it's not overlooked or it doesn't appear that we did not consider it, and at least give the public an opportunity to speak to that.

MR. CUPKA: That is a good point, George, and I think we can put that in there and see what kind of response that comes out of the woodwork, but I would be surprised but like you say we ought to cover all the bases, so I agree with that. Other comments?

MR. HARTIG: We spent a large part of yesterday dismantling the wreckfish program possibly, and this one is going to look exactly like it in the end. I just was wondering what was the impetus of why the fishermen thought that this was really going to help them in the long term? If you had any feeling, David or Kate, about what is the driving force behind this; what do they see, you know, what are they going to get out of it; what do they see for the long term?

MR. CUPKA: I think Kate touched on some of that earlier when Roy asked the question. Do you want to respond again? Again, I think they –

MR. HARTIG: Well, I'll just go back in the record and see; don't worry about it. I'll go back in the record and see if it has already been answered.

MR. CUPKA: Well, I don't know if Kate wanted to elaborate on it, but they feel like given what has happened in some of these other fisheries with ACLs and all that there may be a movement for people to enter this fishery who didn't have the background or the experience to fish it, and they'd end up doing damage to habitat and everything else was one of the reasons that they gave.

MS. QUIGLEY: They put out a letter to the council back in March, I believe, giving their reasons that they wanted a catch share program, and that's in the briefing book and I can, of course, distribute it again with no problem. One of the reasons was security; that they wanted to have that security and protection.

Another reason was as far as health problems, that they wanted to be able to – if they did go to a derby, so if they got an ACL of, say, 500,000 pounds, they feel like there would be a derby and that they didn't want their vessel breaking down or health problems to interrupt their ability to harvest crabs. So it was basically they don't know what the ACL is going to be, but they want to have that security and they want to have that flexibility that is allowed through an LAP-type program.

MR. CUPKA: I think this was another example of a fishery that is somewhat unique and a little different in that it's a hard fishery to prosecute, for one thing, and they can't always get back out there as soon as they'd like to, so they wanted some security there. Other comments? Kate, I think that's everything at this point.

Obviously, this document will be further developed and refined based on input today plus the additional input we'll get at the next AP meeting, and we'll be coming back to the council with a more developed document to move forward and then try and develop a public hearing document. Is there any other business to come before the committee? Rita.

MS. MERRITT: Mr. Chairman, one of the attachments in the briefing book was a letter where Chairman Harris responded regarding some negative publicity towards the Golden Crab Fishery. Other than that lovely letter – I really appreciate your responding to the AP members about that – is there anything else that we can do or have done to enhance the reputation of all of the work that the council has done that is very positive and to try to take away some of this negative press image that we've got for both recreational and commercial fishermen. I just think it would be wise if perhaps we can be a little bit more aggressive about that.

MR. HARRIS: Well, thank you, Rita, and I couldn't agree with you more. The action that the council took yesterday, Doug Rader has already put out a press release on that. He is pretty fast. Kim has got one out, too, so certainly what we did with respect to the deep-water coral protection is positive publicity for the council. Anytime we can have positive publicity with respect to what we do with and for the fishing communities is going to be good as well.

It seems right now a lot of that publicity is negative more than positive, but I agree that we need to continue to work with the media through Kim and NOAA Fisheries folks and try to develop the most positive approach we can to the activities and actions of the council. Unfortunately, at this point in time until we get through with snapper grouper a lot of it is going to continue to be

negative, I suspect. In any event we will continue to play away and do what we can. Mr. Chairman, does that complete your report?

MR. CUPKA: Yes, I was just going to say that we do have a lot of negative publicity in a lot of areas, but this is one area where we certainly have an opportunity to stress the fact that we are working closely with the fishermen and they're working closely with us trying to protect the environment. Again, that's part of that tradition that this particular fishery has had in working with this council. Anything we can do to spread that work, I think would be good.

(Whereupon, the agenda of the Golden Crab Committee was completed on September 18, 2009.)

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