

ALASKA BOARD OF FISHERIES
Salmon Restructuring Panel Meeting Summary
February 16-17, 2005, Juneau

ATTENDEES

Board members:

Ed Dersham
John Jensen
Robert Heyano

STAFF

ADF&G:

Doug Mecum
Sue Aspelund
Art Hughes

CFEC: Kurt Schelle

Department of Law: Lance Nelson

Facilitator: Barbara Sheinberg, Sheinberg Associates

Panel members:

Steve Brown
Sam Cotten
Karen Dunmall
Pete Esquiro
Wallace Fields
John Garner

Jill Klein
Chuck McCallum
Kris Norosz
Cheryl Sutton
Gale Vick
Scott McAllister (for Thorstenson)
Alan Austerman

Unable to attend: Bob Waldrop, Andy Golia, Stephanie Madsen, Chuck Crapo

1.0 OLGA MOSER BAY RESTRUCTURING PROPOSAL

Bill Barker, from Olga-Moser Bay Seafood Producers Alliance and a setnetter from Kodiak, spoke about the Olga Moser Bay Restructuring proposal. This fishery is an end-of-the-line fishery with no other fisheries behind it. There is only one type of gear permitted (seine gear) for the area with a relatively small, limited number of permits. The organization wants to change the method of harvesting so that fish can be kept alive until processing; by increasing live salmon harvest it increases quality and price. A coop would be formed, and fixed leads would be used to herd fish to a live fish pen. ("Fish traps" are not defined in law.) Essentially, a net is anchored at the beach which directs salmon to a live holding area on the other end of the net. Salmon would be harvested from the holding area when the weather is "flyable." It takes two hours to move from a live salmon in the holding area/pen/trap to catch, stun, and process the salmon to be ready for shipping.

To make this work the group needs permission to form a coop, and the prohibition on fish traps removed from statute with authority given to the Board of Fisheries to authorize, on a case-by-case basis, and restricted access.

Discussion focused on how politically charged and value laden the words "fish trap" are. To proceed, it will be critical to define what the characteristics or aspects of fish traps should (and should not) be given to the board as a type of gear that can be authorized. Panel members noted that UFA, the board, legislators and other fishing groups should be consulted with to begin a dialogue on what types of fish traps should and should not become a gear group that the board could authorize.

In addition, work would need to occur with DNR, who authorizes shoreline use permits, to require the setnetters to be in the area for the permit to be considered active. The Department of Law notes that this could probably be accomplished through a change in lease terms, and that a statutory change would not be needed.

2.0 BOARD OF FISHERIES AUTHORITIES THAT WOULD NEED TO CHANGE TO ALLOW APPROVAL OF CERTAIN RESTRUCTURING PROPOSALS.

Discussion of board authority is a continuation of the agenda item that has been a part of each panel meeting. The issue is what laws or regulations may need to change so the board can consider and take action on restructuring proposals. This discussion built upon earlier discussion and points captured in an attorney general informal memo dated December 14, 2004, memo re: "Talking Points for Legal Issues" (available from Boards Support Office upon request).

The panel noted that its charge is to develop a report and recommendations for the Board of Fisheries, to be presented to the state legislature in January 2006. The panel spent time discussing fish traps. Before considering whether a statutory change to remove the prohibition on fish traps and give the board authority to allow fish traps is appropriate, the panel sees a need to create both a legal definition of a fish trap, and identify the subset of fish traps that should be considered. The definition must state that fish traps cannot be authorized for absentee owners. Fish traps should be a gear option that may be suitable for certain areas under certain conditions; possibly as a special gear type permit. The board would not desire to allow fish traps in all cases. The panel discussed how to determine who is the best group to bring this issue forward to legislature (individual fishermen, fishing groups, fishing areas, and elected officials, other). The panel also believes a solid goal statement and definition of fish trap is needed before proceeding, including identification of coordination needed with other agencies (e.g., CFEC). It was noted that in order to transport live fish a permit is needed. Net pens are legal with authorization from the commissioner of the Department of Fish and Game.

Q: Can the board create a new gear type (fixed seine, beach seine, purse seine)? A: Yes. Q: Does board have the authority to issue a special seine permit? A: Yes, the board can allow different or new gear types on an experimental basis. The commissioner has the authority to allow experimental gear types on an experimental basis, unless prohibited by the legislature.

Latent Permits. How can the issue of latent permits be addressed? As restructuring is successful and the value comes back into fisheries, latent permits holders may want back into the fishery. The panel suggested that ideally "latency" should be addressed before restructuring takes place.

A permit holder is allowed to fish in any fishery that takes place where the permit is valid. Ideas to address latent permits coming into a fishery include having a registration deadline, and perhaps require that the permit holder have the gear available to participate in the fishery. The board cannot disenfranchise someone who holds a permit.

Permit Stacking. The panel asked how the board or CFEC could gain the authority to allow one fisher to hold multiple permits in the same fishery. That would allow fishermen to deal with latency. Reference was made to a Bristol Bay fishery regulation that allows two permit holders to fish extra gear on one vessel rather than fishing two separate vessels with two full sets of gear. The idea of benefits for consolidating permits and gear could be expanded to other fisheries. This would require a small statutory change.

Establishing Processor Allocations. Department of Law commented that establishing processor alliances does not automatically raise constitutional questions. Processors have a different constitutional interest than harvesters. It may raise anti-trust and monopoly issues, and possibly bring the commerce clause into question. There are more restrictions on what the state can allow than the federal fishery managers. The December 2004 memo addressed whether a processor can be considered "others" under law in order to receive an allocation; that answer is no. Panel members asked whether processors have to be tied to IFQs? The Department of Law says, yes. Processors have previously commented that their concern is simply that when restructuring

proposal are being considered, processors' interests and investments are not ignored during the analysis and deliberation. The board has the authority to consider economic impacts, including those that effect processors.

Including safety in Board of Fisheries decisions. If safety concerns affect the way a fishery is prosecuted, those concerns may be part of board decision-making. The issue of participant safety is linked to public safety, and that can sometimes be more difficult to address. However, the board has imposed measures when participants' actions can jeopardize the public (e.g., Board of Game regulations prohibit shooting game across a highway).

Other discussion included whether a goal should be, "accomplishing statutory and regulatory changes in order to facilitate more live salmon harvest in Alaska."

3.0 COMMENTS ON RESTRUCTURING PROPOSAL MATERIAL

The panel provided comments to the subcommittee on the following documents that are being drafted.

A. Goal Statement

1. Purpose of the goal statement is to explain to public and decision-makers why restructuring proposals must be considered.
2. Move goal statements to beginning. Expand and strengthen goals.
3. Check cost-related phrasing at beginning of paragraph 3 and throughout, to ensure phrasing does not inappropriately restrict or eliminate some restructuring proposals.
4. Should words "resource protection" and "sustainability" be in there?
5. Remove word "commercial" from first sentence.

B. Guiding Principles

1. The challenge is to balance between pure efficiency in the fishery and socio-economic concerns; that is the heart of the board's decisions. It is important to tell the public that the board will balance, but not how the board will balance.
2. Add safety.
3. Point 4 is not a guiding principle; perhaps the point is to evaluate or reference other government actions that could affect the proposal?
4. Ensure points 1 and 2 include concept of regional interdependence and interactions.
5. Work some or all of this language into goal statement.
6. Should there be a separate Guiding Principles statement?
 - Yes, because the public needs assurance and a clear statement of the overall principles that will guide review of these proposals under this new process.
 - No, because if there are guiding principles the public will expect board findings linked to each one.
7. If Yes, should the Guiding Principles be in regulation or not?
 - Yes, because guiding principles will provide clarity for public that is needed for a new process/action; regulations requiring findings are appropriate; there will not be a large volume of these proposals each year so the problems that findings required by regulation have created for other board decisions will not be created here; and guiding principles provide protection both to the public and the board.
 - No, because the guiding principles need to change over time as a program matures; having guiding principles and criteria in regulation creates problems as criteria become irrelevant, but if in regulation the guiding principles must be addressed; and guiding principles in regulation create more opportunity for legal challenge. An option is to create "areas of

concern” instead of “guiding principles.” Nonregulatory guiding principles are provided to decision makers for reference, but the board does not have to go on the record addressing each point in the guiding principles for each proposal. This type of use guides this board and future boards consistently.

- It does not matter, because the board will use the principles regardless of whether the principles are in regulation or not.

C. Board Review/Impact Criteria

1. List only the phrases in bold. These bold phrases will go on the application form, at no. 8. The detailed sub-points will go on the instructions that accompany the form.
2. After moving the bold criteria onto form at no. 8, make the following additional changes: A-keep, and consider this language, “e.g., allocation effects including commercial, commercial sport, sport and subsistence fisheries in the community or region as applicable”; B through F-delete; G-keep; H-keep; I-keep; and J-delete.
3. Change first bold phrase to, “Community Criteria” or “Community and Regional Criteria.” In the instructions add two subpoints: “Business impacts” and “Community infrastructure loss or gain.”
3. For the phrase, “Interdependence Impact Criteria,” on the instruction form, add the subpoint: “regional interdependence impacts.” Note that the panel’s goal is for there to be an evaluation here of the impacts to other commercial fisheries, subsistence fisheries, and sport fisheries.
4. There needs to be a “Definition section” added to the form/application package. For example, define interdependence so applicants understand what information to submit here and what the board will be evaluating.

D. Form and Instructions

The following comments occurred during panel discussion to consider for revisions to the form and instructions.

Form Q1 - Q: Is this restructuring application and process only for salmon? A: Yes, at this time. The board may use a similar form and review process to consider restructuring proposals that involve other species.

Form Q5 - Panel members note that if the proposal is primarily allocative, it may not be a restructuring proposal. Delete word, “primarily.” The goal is to have people spell out the allocative implications. Consider the wording, “will it result in a shift...” Consider using word “reallocative.”

Form Q9 - Ask, “What is your understanding of the level...”

Instructions Q9 – Consider adding: “The board needs to know the level of support, but this is not a ‘litmus’ test. The board may approve, deny or amend the proposal regardless of the level of support;” also consider adding: “If you do not know the level of support, please state this.”

Instructions. There are too many: “likely, ifs, maybes and perhaps.” The public needs to know what the criteria are, and that the criteria will be applied.

Instructions Part I. End of first paragraph. Change words, “...allocations of dedicated harvest privileges.” What does this mean? This could include allocations between fisheries, equal share quotas, allocations to a group of fishermen, a shift in quota, or dedicated access (not harvest). Decide how to capture in a better phrase; for example; “dedicated harvest quotas.” As revision to this phrase is considered, remember a goal here is to eliminate the long list of example proposals that could be restructuring proposals.

Instructions Part I. Beginning of second paragraph. The first sentence portrays the board as inflexible. Modify: "...then your proposal may be dismissed, tabled, amended by the board, other entities with whom you need to consult may be identified, or other actions suggested."

Instructions Part I. Add a preamble or closing paragraph to let applicants know that not all questions and criteria are relevant to every proposal; if a question is not relevant to the proposal, answer "Not Applicable." Add language to let applicants know that this application asks questions and requests information that the board will need to consider a restructuring proposal. It is significantly more information than what must be submitted for a regular proposal to the board. However, the board does not wish to unduly burden restructuring applicants. This application may be considered a guide. The intent is not to require multiple new studies be accomplished before a proposal can be submitted. However, if the board cannot adequately address the relevant questions and criteria in this application, then it may not have enough information to take action on the restructuring proposal.

Instructions, Part II. Q2, i - Define vertical integration (going up the ladder in regard to business, harvesters doing processing) and horizontal integration (if we still use that term) in new Definition section attached to this form. Note on the instructions that the board could impose limits with respect to the amount of integration that occurs.

Instructions, Part II. Q2, j - Ask; "How do you propose that ADF&G monitor the restructured fishery?"

Instructions, Part II. Q2, l - What does "practical barriers" mean? Suggested wording: "What makes it difficult to implement your proposal?" Another suggestion is; "Are there legislative, regulatory, management, or permit barriers that need to be overcome to implement your proposal? If so, what are they?"

E. Process to complete these items for April Meeting

| DATE | WHO IS DOING WORK | TASK |
|----------------------|--|--|
| Now to March 4 | Panel subcommittees | 1. Incorporate changes outlined at Feb 16-17 meeting; 2. Email final draft to Diana Cote and BALP Committee by March 4 |
| March 7 to March 18 | BOF, ADF&G, DOL, Panel (BALP Committee): Robert Heyano, John Jensen, Doug Mecum, Lance Nelson, John Garner, Chuck McCallum, Gail Vick | 1. Revise restructuring goal statement, form/instructions, and possibly guiding principle language for: (a) a cohesive path and continuity; (b) remove any redundancy; (c) clarity for public and applicants; (d) complete legal review/tweaking; and (e) any changes per ADF&G standard language, etc. 2. Email final draft to full Panel and Diana Cote by March 28 |
| March 21 to March 25 | Full Restructuring Panel | 1. Review BALP Committee products; 2. Email any comments you have to BALP committee members and Diana Cote by March 25 |
| March 28 to April 8 | BALP Committee | 1. Make any final changes based on comments received. 2. Email final documents to Diana Cote by April 8 |
| April 12 | ADF&G (Diana Cote) | 1. ADF&G (Diana Cote) email April 20 meeting agenda and packet, with the draft final restructuring documents, to full Panel. 2. ADF&G posts draft final documents on web so public can view before April 20 meeting. |

4.0 PROCESS TO REVIEW RESTRUCTURING PROPOSALS

More work on the restructuring proposal application and review process is needed. Steps identified to date, include:

1. Begin work with Board of Fisheries and ADF&G on concepts 10-12 months before your area's review cycle is up.
2. Submit application as part of regular review cycle for your area.
3. At the board work session determine:
 - a. Is application complete?
 - b. Are there outstanding questions or information needed?
 - c. Identify whether CFEC, DNR or other agencies need to be brought in to jointly or sequentially take up aspects of the proposal. If so, bring staff together to schedule work and process.
4. Hold public hearing within the region.
5. Hold other hearings/work session as needed.

The panel discussed other processes that may need to be explored, such as reviewing restructuring proposals out-of-cycle. To only be able to submit proposals once every three years seems prohibitive. To address restructure proposals out-of-cycle would mean a process needs to be developed to look at issues in years other than when those issues would normally occur. Panel preference is to stay within current meeting cycle and ACR process.

5.0 ADF&G DATA COLLECTION PROGRAMS: REPORT

At the December 2004 meeting, the panel requested a report from ADF&G concerning data collections programs and needs. The panel received a summary from the department as follows.

Data gaps and issues identified include:

- Cannot identify how many crew members operate in a given fishery, or their earnings.
- Catch and production reports have not been produced since the 1980s. Many fishermen and managers want them back; the data set is there, but the report is not being compiled.
- Private contactors do not have access to confidential data (unless reportee waives confidentiality).
- No comprehensive data exists on exports of state fishery resources; the federal government collects some data for federal fisheries.

Recommendations are to:

- Stabilize and protect funding for essential and important data collection programs.
- Fund the development of an electronic reporting system for salmon fish ticket data.
- Options for analysis of restructuring proposals: (a) Fund new staff positions; (b) Contract work out to private consultants.

The final report will address the cost of filling gaps and making recommendations. Various state agencies collect fishery-related data and regularly share it. As time permits, ADF&G can produce custom reports on fisheries issues. The final report will be available in February or March.

7.0 APRIL 20 AGENDA

The meeting will begin at 8:30 am at the Hawthorne Suites in Anchorage

Agenda items:

- Review and finalize: (a) restructuring proposal goal statement; (b) form and instructions for submitting a restructuring proposal; and (c) criteria Board of Fisheries will use to review restructuring proposals.

- Consider draft guiding principles language, and whether the language should be adopted into regulation or simply listed on the restructuring form as guidance. Are guiding principles not needed because the goal statement is adequate?
- Resources and Research: ADF&G's final report will be included in the April meeting packet (distributed ahead of meeting). Does the panel wish to make any recommendations based on what is in this report? Discussion on other needed research and resources matters.
- Department of Law presentation on Supreme Court decision in Chignik cooperative litigation.
- Identify issues the panel wishes to take up next. Panel members are asked to bring written ideas to April meeting on matters for consideration (for example, latency, fish traps, quality control, processor shares, optimum permit number study). Discuss who can address or solve the matter. Are authority changes needed? Does the issue need more research? What must be considered to move the issue forward?