

North Pacific Fishery Management Council

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Agenda Item #19
February 22-23, 1979
JHB

Discussion Paper Council Review of Foreign Fishing Permit Application Procedures and the Development of Review Criteria

The New England Council has raised the question of the Management Councils' input into the review of foreign fishing permit applications (Memo of January 10, 1979 to Executive Directors). They contend that their review and comments on foreign fishing permit applications have not been given full consideration by NOAA/NMFS. They believe that this is partly because no policy or objective criteria exists within NOAA or the Councils as a basis for the approval or denial of permits. Their memo, and a letter to Leitzell with a draft of proposed NOAA policy on the subject is in your agenda folder.

The North Pacific Council has recommended against approving permit applications in a number of cases. We have been always overruled by NOAA/NMFS, who has issued the permits. Most of the Council's objections to permit applications have been based on the fact that the countries applying had received allocations in areas where they did not have a traditional fishery or for a species on which they had no traditional fishery. NMFS has issued the permits because "since the countries have allocations there was no valid reasons to deny applications to allow those nations to harvest the allocations." Our basic problem is with the allocation procedure rather than the permit review but since the Councils have no legislative recourse to comment on allocations, review of the permit application is the only avenue left to voice their objections to misdirected allocations.

In addition to the basic problem on the allocation procedure, the New England Council's comments (summarized at the end of this discussion paper) have validity in that there is no objective criteria developed among all of the Councils for the review of permits. A nationwide policy may or may not be desirable.

We can generate additional information on permit applications from the Regional NMFS computer files if they are willing to assist. I would suggest that we send permit applications to NMFS, Juneau, and ask them to give us a run on each vessel requesting a permit prior to Council review. This would give us information on any citations or violations

against that ship, and if the Council wished, information on where they have fished previously, their reported catches, etc! Unless information is really needed, however, we should hold computer reviews to a minimum to save time and labor for NMFS.

Summary of New England Council's
Comments and Recommendations

I. Comments:

1. No policy statement on role of the Councils in review of applications.
2. No objective criteria for approving/denying applications.

II. Need to know NMFS policy on basic issues:

1. What weight does NMFS give Council recommendations
2. Which sources of information will NMFS consider:
 - a. observer reports
 - b. enforcement actions
 - c. reports of U.S. fishermen
 - d. other
3. What action will be taken with respect to:
 - a. subsequent applications by ships who have failed to comply with U.S. regulations
 - b. applications for ships in fishery where ships of the same nation have a record of non-compliance
4. What are appropriate criteria for Council to base recommendations?

III. NEFMC proposed criteria

1. Whether applications represent excessive vessel capacity
2. Whether there is a record of violations by ships or others of same nation

JHB



Agenda #19
February 1979

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Washington, D.C. 20235

JAN 26 1979

F37:AJB

Honorable Don Young
House of Representatives
Washington, D.C. 20515

Dear Mr. Young:

Thank you for your letter of December 13, 1978, concerning policy aspects of allowing "third party" entries into the U.S. fishery conservation zone and basing TALFF allocations on the return of fishery products to this country.

In making 1979 foreign allocations of TALFF's the Department of State considered policy implications of Gulf of Alaska and Bering Sea allocations to Mexico and Poland. The Department was aware of Poland's requests for larger allocations and of arrangements entered into between Mrs. Paul's Kitchens, Inc., and Polish fishing interests. However, the allocations of groundfish were provided to Poland in the Bering Sea and the Gulf of Alaska to partially offset severe reductions which Poland sustained in other fisheries, particularly on the Atlantic Coast. With regard to Mexico, the Department considered the importance of reciprocal fisheries arrangements with the Mexican government in allocating Gulf of Alaska groundfish to that nation.

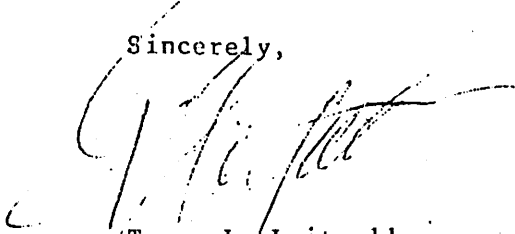
The recommendations of the North Pacific Fishery Management Council were taken into account when 1979 foreign fishing applications submitted by the Polish People's Republic and the United States of Mexico were considered. Since both nations received allocations in 1979, there was no valid reason to deny applications to allow these nations to harvest the allocations. Disapproving the Mexican and Polish foreign fishing applications would have frustrated the intent of the Department of State's allocation decisions pursuant to section 201(e) of the Fishery Conservation and Management Act of 1976, as amended.



I agree that domestic fisheries development is an appropriate consideration in determining the allocations. However, I do not foresee that the allocations to Poland and Mexico will have an adverse impact on such development. The quantities of fish allocated to Poland and Mexico are in excess of the harvesting capacity of vessels of the United States. If not allocated to those nations, the quantities would have been added to the allocations of other foreign nations and the competition with domestic products would be just as great.

I hope this explanation clarifies the situation and we will be glad to provide any additional information if it is needed.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Terry L. Leitzell', is written over the typed name. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Terry L. Leitzell
Assistant Administrator
for Fisheries

ment Council
01960-617-535-5450

Date: January 10, 1979

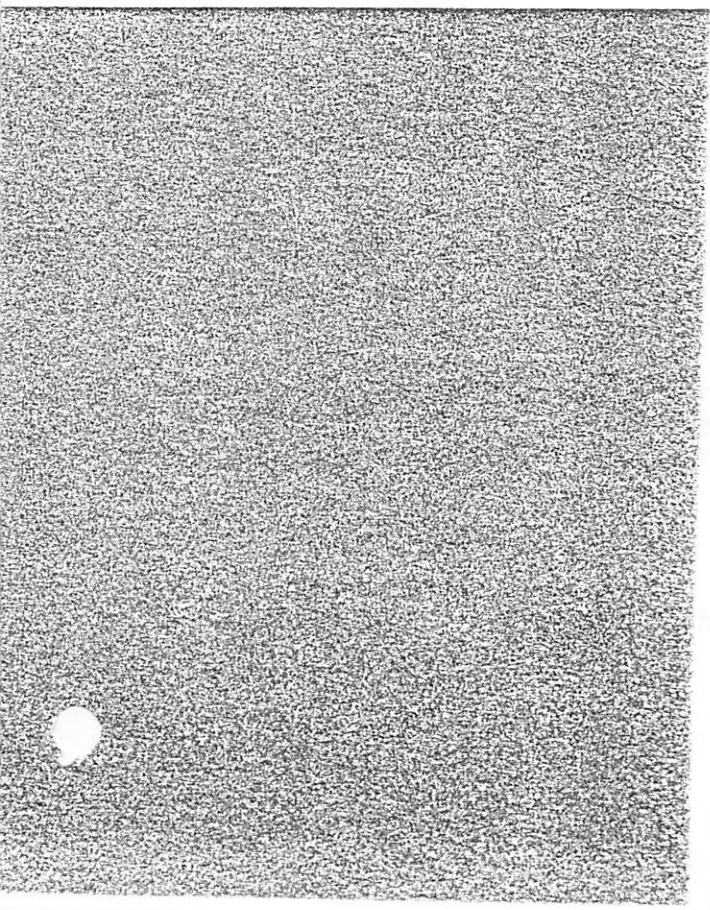
*I think you
may be interested
in the attached.*

Don Young

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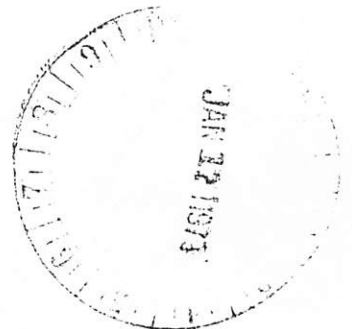
Foreign Fishing Permit Applications



Some months been concerned that its review
of permit applications have not been given
It believes that this is in part be-
cause criteria exists within NOAA or NMFS or the
approval or denial of permits. The Council
should have any significant role in the
criteria should be established. It
letter and suggested policy statement
action.

action and support of the other Councils
provisions for improving the Councils'
permit applications.

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New England Fishery Management Council

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One Newbury Street
Peabody, Massachusetts 01960

617-535-5450

FTS 8-223-3822

January 10, 1979

Mr. Terry L. Leitzell
Asst. Administrator for Fisheries
NOAA/NMFS
Page Building Two
Washington, DC 20235

Dear Mr. Leitzell:

The Council has recently undertaken a review of its process for handling foreign fishing permit applications. Its goal is to develop a more timely and organized review process which is based upon a set of clearly articulated criteria. It notes that there is no policy statement on the role of the Councils in the review process, and no objective criteria for recommending approval or denial of permit applications. In the absence of these, the Council is uncertain whether it has a significant role in the review process. The Council wishes to play a meaningful role in the Secretary's consideration of foreign fishing permit applications and appropriate conditions and restrictions, as required by Section 204(b)(5) of the FCMA.

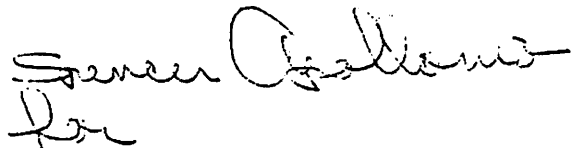
Before a more rational system of permit review can be developed, however, the Council feels there is a need to clarify NMFS policy on several basic issues, specifically, (1) what weight will the NMFS give to the Council's recommendations with respect to foreign fishing permit applications; (2) which sources of information on the activities of permitted vessels, if any, will NMFS consider in foreign fishing permit applications (e.g., observers' reports, enforcement actions, reports of U.S. fishermen, etc.), and what weight will be given to information which indicates noncompliance with the foreign fishing regulations; (3) what action will be taken with respect to a) subsequent permit applications by foreign vessels whose owners or operators have failed to comply with U.S. regulations and b) permit applications for foreign vessels in a fishery where vessels of the same country have a record of noncompliance with the regulations; and (4) what are the appropriate criteria upon which the Council may base its recommendations with respect to foreign fishing permit applications.

To assist in resolving these policy issues, the Council wishes to submit for

Mr. Terry L. Leitzell
January 10, 1979
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your consideration a draft Assistant Administrator's Policy Statement on the role of the Fishery Management Councils in the consideration of foreign fishing permit applications. The Council hopes that this draft statement will facilitate the resolution of the above policy issues. Please feel free to call on the Council staff for further development of this policy.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Allen E. Peterson, Jr.", written in dark ink.

Allen E. Peterson, Jr.
Chairman

AP:jr

cc: William Gordon, Regional Director

STATEMENT OF POLICY

Role of the Fishery Management Councils in Consideration of Foreign Fishing Permit Applications

I Background

Recently, the Fishery Management Councils have expressed concern over their roles and responsibilities in the consideration of foreign fishing permit applications, particularly with respect to fisheries where foreign fishing activities can affect species of particular concern to U. S. fishermen.

In the past, there has been no clear expression of NMFS's view of the Council's role in permit review, nor on the weight to be given to their recommendations in permit application approval and conditioning. NMFS wishes to remedy this and make clear that it has a commitment to give full consideration to the concerns of the Management Councils in its review of foreign fishing permit applications.

II Policy

Recognizing that the interests of the Fishery Management Councils and the policies which they formulate for the conservation and management of species within their geographical areas are affected by foreign fishing activities permitted by the Secretary of Commerce under the authority of the FCMA, and recognizing that the Fishery Management Councils may have access to information regarding the conduct of foreign fishing vessels in the FCZ, it is therefore the policy of the Assistant Administrator for Fisheries, NOAA, to solicit the views of the Fishery Management Councils on foreign fishing permit applications and to give full consideration to any recommendations they make which are based upon the conservation and management of the U. S. fisheries. In addition, it is the policy of the Assistant Administrator to give full weight to the recommendations of the Councils with respect to the imposition of additional conditions and restrictions on the approved applications of foreign nations which are necessary for conservation and management of U. S. fisheries, and in particular, for fishing vessels which have been used in the commission of acts prohibited by the regulations and Section 307 of the FCMA.

It is understood that the above recommendations of the Councils will be based upon the following criteria:

a) whether the permit applications represent, either alone or when considered cumulatively, excessive vessel capacity in comparison to the species allocations of the foreign nation, and

b) whether there is a record of violations by either the vessel described in the application or by other vessels of the same foreign fishery, and the foreign nation responsible for those vessels has failed to comply with its GIFA responsibility under Section 201 (c)(4)(C) to take appropriate steps under its own laws to assure that all vessel owners and operators comply with the permit conditions and restrictions established under Section 204 (b)(7).

III Procedure

Pursuant to the requirements of Section 204 of the FCMA, copies of foreign permit applications will be transmitted by the Department of State to the appropriate Councils. Each Council will then prepare written comments on the applications for submission to the Secretary of Commerce, after considering any comments provided by the public.

The submission will contain recommendations for approval or disapproval of the permit applications, based upon the above criteria, with appropriate reference to the information upon which they are based. If approval is recommended, the Council may also recommend appropriate conditions and restrictions of the permits which the Council deems necessary to assure compliance with the foreign fishing regulations and fishery management plans.

Prior to the consideration of the foreign permit applications, NMFS will provide the Councils with current information on the activities of foreign fishing vessels in the FCZ, including catch statistics, observer reports, information from boarding inspections, enforcement actions taken, and any other information available to inform the Councils on compliance with the foreign fishing regulations and management plans.

If the Assistant Administrator receives a recommendations from a Council for disapproval of an application and the application is nevertheless approved, the Assistant Administrator will provide an explanation of the action in the Notice of Approval required by Section 204(b)(8)(C) to be sent to the Council.

If the Assistant Administrator receives a recommendation from a Council for approval of an application with specific recommendations for appropriate restrictions and conditions and the application is nevertheless approved without the recommended restrictions or conditions, the Assistant Administrator will provide an explanation of the action in the Notice of Approval to the Council which refers specifically to the information and criteria which were the basis of the Council's recommendation.

If the permit application is approved with restrictions and conditions, such restrictions and conditions will be incorporated into the permit.

Terry L. Leitzell
Assistant Administrator
for Fisheries, NOAA