

North Pacific Fishery Management Council

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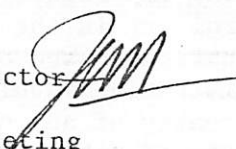
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AGENDA ITEM F-2
December, 1979

MEMORANDUM

DATE: December 10, 1979
TO: Limited Entry Workgroup
FROM: Jim H. Branson, Executive Director 
SUBJECT: Summary of December 5, 1979 Meeting

The Limited Entry Workgroup held its third meeting on December 5th in the NMFS conference room, Juneau, Alaska. In attendance were Jeff Stephan and Bob Alverson from the Council's Advisory Panel, Mike Stanley and Jim Brooks NMFS/NOAA, Ron Miller CFEC, Lt. Cmdr. Doug Smith 17th Coast Guard District, Bruce Hart ADF&G, Dick Myhre IPHC and myself. The Working Group followed the agenda contained in my memo of November 27th to the Working Group. I will summarize the meeting of December 5th in the same categories as outlined in the November 27th memo.

1. The problem with the definition of "person" in state and federal regulations has been adequately resolved by a change in the definition of person in the federal regulations for the salmon FMP defining "person" as a natural person.
2. In reporting on the past year's activity, Mike Stanley noted that there had been only one eligible applicant for a federal power troll permit in the FCZ to date. We had expected that there would probably be at least five or six outside boats eligible and in a position to prove that they had fished in the FCZ during the base years 1975, 76 and 77 without an Alaska limited entry permit. This does not appear to be the case. The Working Group discussed the current status of the State's limited entry system in an attempt to estimate the number of additional permits that might be issued in the next fishing year because of recent court decisions and court cases now in progress. It still appears that there will probably be some additional permits issued but that we will probably not know how many for at least six months.

The Working Group recommended that the Council extend the moratorium on power troll limited entry for 1980 on the same basis as it was implemented in 1979, i.e., that those power troll permits in existence on May 15, 1980 would be able to fish during the 1980 fishing year.

The Working Group then discussed whether new entrants that might be allowed by the State because of the aforementioned court cases should be allowed to fish in the CFZ. The Group made no recommendation as to whether or not new entrants should be allowed but noted that

if they were permitted some review procedure by the Regional Director of CFEC decisions would be necessary to comply with the requirement for federal review and decision in these cases.

3. After extensive discussion the Working Group again recommended that the Council continue its attempts to ban hand trolling in the CFZ. It was the consensus of the Group that the arguments already used by the State, the Council and numerous individuals in an attempt to ban hand trolling in 1979 be consolidated and submitted again to the Secretary of Commerce. In addition, they felt that the arguments should point out the impossibility of establishing a limited entry system for hand trollers in the CFZ since there is no data base to establish qualifications based on experience in that area, and that there is no administrative machinery in existence or in sight to implement limited entry of any description on a federal basis for 1980. The necessity of achieving the plan's stated objective to preserve the status quo of the offshore fishery should be stressed, particularly in light of the increasing problems in some of the Columbia River stocks involved in the troll fishery off Southeastern Alaska.

Mike Stanley agreed to draft preliminary arguments for the hand troll ban for review at the upcoming Council meeting.

4. The Group again considered their earlier recommendation to develop an RFP for a comparative study of limited entry systems. The Group agreed that it should be a fairly small project confining itself to limited entry systems in nations with the same general government and common property systems as Alaska in order to provide useful data or insights to the Council.

It was recognized that most of this material was probably available in the literature and could be read by any Council member or other interested person, however, it was apparent that that literature was so extensive that a summarization and comparison of various systems weaknesses and strengths would be of great benefit to anyone attempting to assimilate the great masses of information available.

Bruce Hart agreed to draft an RFP for consideration by the Work Group at its next meeting.

5. The Group reviewed the RFP developed by Bruce Hart to "provide information which will assist the North Pacific Council in deciding whether to apply limited entry to the halibut fishery off Alaska." This RFP has been reviewed and approved by the SSC for advertising. The Work Group felt that the proposal still had merit and timeliness and that it should proceed. They recommended that the length and cost of the contract be negotiated with the bidders, but expected that it would probably be in the \$30,000 to \$50,000 range.

6. The Group discussed the legal basis for establishing limited entry in the halibut fishery and agreed that the legislation supporting the renegotiated International Pacific Halibut Convention would be the appropriate vehicle.
7. The Group recognized that any form of limited entry proposed to support a fishery management plan or the halibut fishery would require some type of administrative system. Mike Stanley agreed to research the possibility of contracting with the Alaska Commercial Fisheries Entry Commission. It was hoped that it would be possible to contract many of the functions required of an administrative agency for limited entry to that group rather than duplicating them within the Federal Government. When we have that information we will then determine what is needed in the Department of Commerce in terms of function, cost, location, etc., to supplement the CFEC, if its possible to contract with them, or, if not, as a sole administrative agency.
8. The Group discussed recommendations to the Council for the next step in the study of limited entry for the halibut fishery. They discussed the possibility of establishing a moratorium, holding the fishery to those license holders who delivered fish in 1978. They recognized that it would be necessary to use both the IPHC and Alaska licensing systems to cover boats both larger and smaller than 5 net tons.

After extensive discussion they concluded that it was premature to recommend a moratorium to the Council and that the next step should be to start development of model systems that could be used in the halibut fishery. While no decision has been made by the Council as to whether or not limited entry should be instituted for the halibut fishery it would be useful to have one or more systems of limited entry under development that could serve as the framework for public discussion. It was felt that such a study was compatible with the simultaneous study of whether or not limited entry should be instituted, the gathering of information on world wide limited entry systems, and the development of administrative machinery for any form of limited entry. The Group felt it was far more efficient to run these studies concurrently than to attempt to proceed serially, recognizing that all of the ongoing studies could eventually be melded, thus avoiding the delays inherent in waiting for one answer before proceeding to the next step.

In other business Dick Myhre of the Pacific Halibut Commission agreed to start some of his staff working on a study of the implications of limited entry on the management of the halibut resource.

The Working Group agreed to meet again prior to the January Council meeting to start the development of hypothetical entry systems. They felt that the membership of the group should be expanded to include Council members and representatives of the halibut industry, both harvesting and processing, for that study.

The January meeting would also include a review of the RFP being developed by Bruce Hart for the comparison of limited entry systems in the democratic, common property world.

JHB

F-2
Dec 1979
Jan 1980

12-12-79
by NMFS G.C.,
Stanley

SALMON HAND TROLL DISCUSSION PAPER

Efforts to reverse the Assistant Administrator's position on the ban on hand trolling in the FCZ, to the extent they have a chance of success, must focus on three principle arguments. These are:

- (1) that hand trolling and power trolling are distinguishable fisheries, in terms of gear type, traditional fishing practices and regulatory treatment, and therefore may be accorded different treatment without violating National Standard No. 4;
- (2) that the alternative to the ban suggested by the Assistant Administor for Fisheries -- limiting entry into the FCZ to hand trollers who can demonstrated having fished there -- is impracticable due to the lack of reliable data upon which a limited entry system could be based, and due to the lack of an administrative entity to implement such a system; and
- (3) that the condition of salmon stocks in the FCZ, particularly chinook, together with the existence of successive, competing fisheries for those stocks, probably require a reduction, but at the very least no further increases, in the offshore catch off Southeast Alaska.

These arguments will be discussed in more detail separately.

1. Hand Troll vs Power Troll

Numerous points of distinction between the two gear types were presented to the Assistant Administrator in the FMP approved by the Council, as well as in submissions of commenters on the proposed plan. Nevertheless, the Assistant Administrator determined "that no valid conservation purpose was served by the distinctions that were drawn between the two types of gear." 44 FR 29080 (May 18, 1979).

At the outset, it must be noted that the Assistant Administrator does in fact consider hand troll gear and power troll gear to be separate gear types, as shown by the statement quoted above, by the separate definitions in the regulations (50 CFR § 674.2), and by the reference to both in the regulation addressing permissible gear (§ 674.24(a)(2)). Given this position, the question then becomes whether the two gear types are sufficiently distinct to justify dissimilar treatment.

The basic difference between the gear types is the method used to retrieve the lines. Hand trollers must hand crank their lines, either with hand gurdies or with a rod and reel much like sportsfishermen, while power trollers use electric, hydraulic or other mechanisms for retrieval. The difference is reflected in potential fishing depth and retrieval speed, with power troll gear capable of being used both deeper and faster. Further, hand troll vessels, many of which are converted pleasure craft, generally are smaller in size, have less range and less, if any, freezing capability than power troll vessels. There are, of course, some hand trollers who use vessels essentially identical to power trollers, but this is a relatively recent trend due primarily to the fact that power trolling has come under limited entry in Alaska, thus making the costs of entering that fishery high.

The two gear types are also distinguishable in traditional fishing practices. Power trollers have long been "professional" fishermen, many of whom earn their major income from that fishery. Hand trolling, on the other hand, has been mostly a subsistence, supplemental income or sports/commercial fishery (excluding the earliest time when all trollers were hand trollers). Again, however, some hand trollers do not fit this norm and could be considered full-time fishermen like power trollers, but similarly, this phenomenon is relatively recent and due to foreclosure of easy access to the power troll fishery. Moreover, hand trollers, even those who recently have evolved into "professional" harvesters, have not traditionally fished offshore, whereas power trollers have. Although the data is inconclusive, the number of hand trollers who have

fished in offshore areas of the FCZ (i.e., the Fairweather grounds) is apparently very small, perhaps as low as five or six, which represents much less than one percent of the entire hand troll fleet. The only appreciable hand troll effort in the FCZ in recent years has occurred in relatively nearshore areas where the vessels periodically would range across the three-mile line. But this fishery essentially was foreclosed in 1978 when the Alaska Board of Fisheries closed the territorial sea to hand trolling, and then extended such closure beyond three miles in 1979.

Finally, State of Alaska fishing regulations, at least since 1974, have treated the two gear types differently. The most obvious is that power trollers have been brought under limited entry, with the number of permits limited to 950, whereas hand trollers have not been subject to limited entry. The result has been that the number of hand troll permits has risen from roughly 2,100 in 1975 to around 5,400 in 1979. Thus, the one fishery is stable in numbers while the other is experiencing phenomenal growth. The Alaska Commercial Fisheries Entry Commission is beginning to consider limited entry for hand trollers, but it will be some time before such entry limitations will be implemented. Other State management regulations, including time and area restrictions, also have applied differently to the two gear types. This entire scheme of separate regulatory treatment reinforces the distinction between the gear types, and probably has created an expectation of separate management-by-gear-type within the industry.

2. Impracticability of Limited Entry

The Assistant Administrator, in communicating his disapproval of the ban on hand trolling, recognized that the measure was intended to reduce the potential for overfishing in the FCZ. He suggested as an alternative that the Council consider applying limited entry to hand trollers in order to control effort. There are at least two reasons, however, why this alternative is impracticable.

The first hindrance to establishing limited entry for hand trollers in the FCZ is the lack of an adequate data base upon which such a system would be built. Prior to 1977, State of Alaska statistical areas used for reporting of fish catches did not distinguish between the territorial sea and what is now the FCZ. It would be impossible to tell from fish tickets submitted through that year whether a hand troller had in fact fished beyond three miles. In 1978, the distinction between the areas was made, but there is evidence that fishermen did not fully understand the new regime. The Council encountered this same problem when it proposed a separate FCZ limited entry scheme for power trollers. They nearly unanimously testified that the distinctions between the statistical areas in the territorial sea and FCZ were not well known, and that they had not been particularly careful about assuring that the correct area of catch had been recorded on their fish tickets. Finally, in 1979 the State purported to ban hand trolling in the FCZ (termed the Seaward Biological Influence Zone by State regulations), despite the Assistant Administrator's disapproval of such a provision Federally, and it is unlikely that any hand trollers who dared to fish out there would have risked State prosecution by stating so on their fish tickets. There is thus a real lack of empirical data that could be used to establish limited entry for hand trollers.

Perhaps an even greater problem, however, is the absence of any administrative entity to implement a limited entry system for hand trollers. Although available fish tickets show that few hand trollers have fished in the FCZ, it would have to be assumed that a large number of hand trollers would apply for any limited entry permits to be issued. Estimates by management personnel and others involved in limited entry in Alaska suggest that as many as two or three hundred, perhaps more, fishermen, or virtually the entire coastal hand troll fleet, would seek access. This would require significant expenditure of time, effort and resources to process these applications, issue permits and implement the system. Also, since there likely would be many denials of permits, hearing officers frequently would be required to conduct hearings for appeals of such denials. The Alaska Commercial Fisheries Entry Commission has a

number of full-time hearing examiners, and is still conducting hearings on applications made in 1975. It is unlikely that adequate administrative machinery to handle a hand troll limited entry system could be established any time soon.

3. Conservation Necessity

The plan clearly intends that the stocks of salmon in the FCZ should not be subject to expansion of fishing effort. The reasons are the depleted condition of chinooks, both those native to Alaska and those from Washington and Oregon; the need to control interception of these weakened chinook runs as well as other runs that could help alleviate problems being experienced in the salmon fisheries in Washington and Oregon; and the evidence of overharvest of certain coho runs. Moreover, it is becoming apparent that the salmon plan in the future cannot realistically retain its goal of maintaining present levels of effort, but must actually start providing for some reduction in the offshore catch. This imperative is suggested by both the ongoing U.S./Canada salmon interception talks and the recent affirmation of the Boldt Decision by the U.S. Supreme Court. The Pacific Fisheries Management Council has already begun altering its salmon plan to accommodate this latter factor. Thus, neither the Council nor the Assistant Administrator can afford to permit the significant expansion of effort that likely would occur if the ban on hand trolling is not approved, particularly since the one option to this measure, a limited entry system, is at the time infeasible.