

REPORT ON FOREIGN FEES WORKGROUP MEETING

The Foreign Fees Workgroup met in Seattle, on August 30, 1983, to consider issues raised by the National Marine Fisheries Service in its notice of proposed rulemaking setting the foreign fee schedule for 1983. In attendance were workgroup members Rudy Petersen, from the Council; Al Didier representing Don Collinsworth of the Council; Rick Lauber from the AP; and SSC representatives Don Bevan and Rich Marasco. Also attending were Mr. An, from the Korean Fisheries Association; Jay Hastings of the Japan Fisheries Association; Paul MacGregor, from the Japanese Longline Association; Joe Terry of the Northwest and Alaska Fisheries Center; and Council staff members Jim Branson and Doug Larson. Workgroup member Barry Fisher of the AP could not attend because of a schedule conflict.

The NMFS, recognizing that fuller use of market incentives might help to accomplish some of the goals of NOAA policy and objectives set out in the Magnuson Fishery Conservation and Management Act, requested comments specifically on two systems of collecting foreign fees. They were:

- (1) sealed competitive bidding for allocations; and
- (2) offering discounted fees in return for joint venture participation, technology transfer, reduction of tariff or non-tariff trade barriers, scientific research, or other contributions to full utilization of the optimum yield by United States fishermen.

The two alternatives presented by NMFS raised issues concerning the purposes for and uses of foreign fees which are inherent in the systems proposed. Two such issues are:

- (1) fees as incentives/disincentives; and
- (2) fees as a means of extracting economic surplus.

The workgroup began by discussing and formulating a list of reasonable objectives a fee system could be designed to achieve. The group arrived at four possible objectives:

- (1) that it should achieve at least the minimum amounts required by law;
- (2) that it could recover costs to domestic fishing interests of foreign fishing;
- (3) that it could recover economic surpluses foreign fleets realize from fishing in the FCZ; and
- (4) that it be used to equalize costs of operation and the competitive position of American fleets relative to foreign fleets.

Discussion proceeded to the merits of administrative systems for setting and collecting fees, and their ability to achieve each of the objectives listed. Specifically, the bidding system and offering discounts were considered, in comparison to the current system.

Since objective (1) is required by law, any system of collecting fees must do that at a minimum. There was a general consensus among the group that if this were the sole objective of a fee system, the system used should be the simplest possible. Given that the present system does collect the minimum amounts required by law, and is already familiar and in place, it is the logical choice for collection only of the minimum amounts.

A problem pointed out with offering discounts was that if a fee schedule were set based on the ratio of foreign fishing-related costs to total Magnuson Act costs, as is now done, offering discounts would cause the amounts collected to fall below the minimum amounts. Thus, in order that the discount system avoid failing to achieve the basic objective (1) and avoid violating the law, some other means of computing the base fee schedule other than that now used must be devised. Thus, it would not be as simple as the current system. It was pointed out that this problem could be eliminated if surcharges, rather than discounts, were used, but the system still would be considerably more complicated than what we have now.

Bidding systems are designed to do more than simply collect some minimum amount, so they were not considered as a system for simply achieving objective (1).

The group proceeded to eliminate the discount system from further consideration, since it has some drawbacks that would apply to every possible objective, and they do not appear to be easily surmountable. One is the difficulty of measuring cooperation by foreign nations, and a second is how to value that cooperation in terms of the discount which should apply. To illustrate the first problem, suppose that discounts were offered based on joint venture tonnage accepted by foreign processors. That tonnage is dependent on other factors in addition to foreign processor's willingness to cooperate, such as the weather and actions by the American industry. Thus, changes in the tonnage purchased by foreign processors might be completely unrelated to the cooperativeness of foreign nations. The problem gets worse when less tangible items are considered, such as technology transfer and scientific research.

The second problem, even assuming that cooperation could be measured, is valuing the cooperation. How much of a break on fishing fees should be granted in return for research on pollock? It seems that a bureaucracy designed to include "cooperation" in the fee schedule would soon become top heavy. Also, a number of the elements of "cooperation" are already considered in determination of foreign allocations under Section 201(e) of the Magnuson Act. For these reasons, no further consideration was given to the discount system.

Looking more carefully at objective (2), the workgroup concluded that attempting to build in compensation for losses to domestic fishermen would either involve problems with measurement or be redundant with other actions taken to solve the problem. One example of a cost of foreign fishing to domestic interests is the by-catch of species important to U.S. fishermen for which no directed foreign fishery is allowed. Foreign catch of these species reduces future amounts available to the American industry. However, other steps can be taken to control this problem, such as the passage of prohibited species amendments (e.g., Amendment 3 to the Bering Sea/Aleutian Islands Groundfish Plan). The same is true for the losses American fishermen suffer

from gear conflicts with foreign fleets, for which the Fishing Vessel Gear Damage Compensation Fund was established. The existence of these other mechanisms for treating costs foreign fleets impose on American fishermen led the group to conclude that objective (2) was not an appropriate objective for a fee system.

Objective (3), the collection of more than the minimum required by the Magnuson Act, is the purpose of a bidding system. Operating correctly, bidding systems should reveal the preferences of foreign nations for stocks of fish found in the U.S. FCZ. If the bids were truly competitive, the system should generate fees greater than those currently collected, if foreign fishing is any more than marginally profitable. However, there are several significant problems with the current system of allocation that appear to preclude a bidding system.

In order to be effective, the bidding system would have to determine price and quantity jointly. Currently, the allocation of TALFF is a complicated process governed by considerations spelled out in Section 201(e) of the Magnuson Act. If allocations continued to be made based on the requirements of Section 201(e), any incentive to bid high would be lost, since foreign nations would have their quantity of fish determined outside the bid system. It was the workgroup's opinion that this problem is fatal to a bidding system, and could not be avoided without amending the Magnuson Act. The possibility of holding some part of TALFF outside the allocation procedures in Section 201(e) for use in a bidding system was considered, but didn't seem feasible unless the Magnuson Act were amended.

Two other, perhaps less critical, problems make the bidding system unworkable given the current state of affairs. First, there are so few nations which receive allocations of any size that collusion to lower bids could be a significant problem. While it would not necessarily jeopardize the achievement of the first objective (collecting the minimum amounts) since minimum bids could be specified, it might fail to collect any greater amounts. A second problem would be the time frame used in the bidding system. If allocations and bidding were done annually, the potential disruption of foreign fleets could be significant. If a nation could receive a much smaller or larger allocation from year to year, depending on the outcome of the bidding, it would be extremely difficult for planning effort deployment. If the allocations were to hold for a longer period, perhaps 2-5 years, this problem could be reduced, though the fairly rapid recent growth of the domestic fleet's capacity for pollock and cod suggests that predicting the total amounts of fish available for foreign fishing over a 2-5 year period would become more difficult.

With respect to the fourth objective (using foreign fees to equalize costs between foreign and domestic fleets), several questions need to be asked before this can be adopted as an objective. Specifically, what is "parity" in costs between fleets of different nations? It was noted that the degree of government involvement with and subsidization of fishing fleet varies considerably among the foreign nations which fish FCZ waters. Can this be measured in a simple and useful way, so that any system which utilized it would not be overly cumbersome? Data on costs and earnings for foreign fleets

can be difficult to obtain and varies among fleets for a given nation. Third, what do you have to do to achieve this objective? Is it done fleet by fleet, species by species, or nation by nation?

If objective (4) were pursued, it would probably be through a variation of the existing system, although a correctly working bid system would tend to equalize costs. Some concern was expressed that if this equalization departed too greatly from what would happen in the free market, distortions of resource allocation could occur. However, subsidization of foreign fleets by their governments represents such a departure from the free market.

The use of fees as incentives or disincentives is implicit in a number of the objectives discussed. Attempts are also made to incorporate incentives and disincentives (to a modest degree) in the current fee systems. The workgroup felt that while fees designed to provide incentives could be a useful way of modifying catch and effort by foreign fleets, it should not be included to any greater degree in the current poundage fee system. If it were desirable to reduce foreign catch of prohibited species, fees might be a very effective means of doing so, but this should be handled apart from the poundage fee systems.

In conclusion, given the problems which appear to exist with both discounts and bidding, the present system cannot easily be improved upon. It is familiar and relatively simple, and does satisfy the basic objective required for poundage fees, collecting at least enough to cover the costs of administering and enforcing foreign fishing.

The workgroup also felt that the question "what's in it for us?" should be raised with respect to foreign fees. The present system, where fees collected from species a Council manages do not provide any immediate benefit to the fishing industry of the region (or perhaps even to the national fishing industry), does not provide any good reasons why the Council should tinker with it. Fee receipts go into the Fishery Loan Fund seemingly never to be seen again. The workgroup expressed concern over the use of the fee receipts, and asked that the staff to report on the status of the Fund. The report on the Fisheries Loan Fund follows as item C-6(a).

Status of the Fisheries Loan Fund

The Fisheries Loan Fund was originally established by the Fish and Wildlife Act of 1956 (70 Stat. 1119), as a revolving fund "to make loans for financing and refinancing of the cost of purchasing, constructing, equipping, maintaining, repairing, or operating new or used commercial fishing vessels or gear."

The intent of the Fund initially was "to provide reasonable financial assistance not otherwise available to commercial fishermen." Loans were to be set at a rate determined by the Secretary of the Treasury, taking into account the average market yield on outstanding Treasury obligations of comparable maturity, plus any additional changes which may be included to cover other costs of the program. Payback periods were set at a maximum of 14 years for construction of new vessels, and 10 years for other loans. The Fisheries Loan Fund was initially capitalized with \$20 million, and was to expire in June 30, 1980, at which time the balance of the Fund and any subsequent loan repayments were to be covered into the Treasury as miscellaneous receipts.

The Fund was initially administered by the Small Business Administration, but was moved into the Department of Commerce in the early 1960s. A moratorium on use of the Fund was declared in 1972, because there was too much money out, and it was not coming back fast enough. No loans were made from 1973 to 1980, during which time most of the outstanding loans were repaid.

At just about the time the Fund was set to expire, the fishing industry, particularly the Gulf of Mexico shrimp industry, was hit hard financially, and the Fund's life was extended to October 1, 1982 by the American Fisheries Promotion Act of 1980. This act, which also amended other assistance programs (such as the Merchant Marine Act and the Saltonstall Kennedy Act), changed the purpose of the Fisheries Loan Fund. In contrast to its initial, fairly general purposes, it was now to be used only for loans to avoid default on obligations covering fishing vessels, or for loans to cover operating losses. The American Fisheries Promotion Act also amended the Magnuson Fishery Conservation and Management Act to provide for a new source of revenues to the Fisheries Loan Fund: foreign fishing poundage fees. Prior to this amendment, foreign poundage fees, which had not been designated by the Magnuson Act, were covered into the Treasury. The amendments to the Magnuson Act not only designated that foreign poundage fees were to go to the Fisheries Loan Fund, but that they must equal or exceed the foreign portion of the cost of carrying out the Magnuson Act. (Prior to this, it was only stipulated that "reasonable" fees shall be paid, and that such fees "may take into account the cost of carrying out the provision of this Act with respect to foreign fishing.")

Despite the fact that the Fisheries Loan Fund is now equipped with a source of income to reinstitute lending, the Fund has been quite inactive since the passage of the AFPA. This is largely because of a clause in Section 204(b)10 of the amended Magnuson Act which reads that "the amount collected... under this paragraph shall be transferred to the fisheries loan fund... for so long as such fund exists and used for the purpose of making loans therefrom, but only to the extent and in the amounts provided for in advance in appropriation acts."

NMFS Financial Services Division estimates that in FY81, \$5 million was received into the Fisheries Loan Fund, and virtually all of it was used for the Gulf of Mexico shrimp fishery (\$250,000 was used in the Northwest and Alaska region). No money was received in FY82, and about \$5.9 million has been received in FY83. This contrasts with the roughly \$20 million in poundage fees collected for 1981, \$33 million for 1982, and \$44 million for 1983. Congress has not been forthcoming with authorizations to spend those funds, even though they are dedicated; as a result, they sit in an account at the Treasury awaiting a decision on their disposition.

The current status of the Fund is that it has been extended to run through FY84, after a previous extension through FY83 expires. There is currently a bill in the House to appropriate \$11 million for use in the Fund in FY84, but nothing on the Senate side. Congress has not yet developed a consensus about what should be done with the fund.

The fund has not been a significant factor in financial assistance in Northwest or Alaska regions, because virtually all of the 1981 money went to Gulf of Mexico vessels and because the 1983 money was appropriated too late in the year to be of much use. It was allotted in the second half of the fiscal year, and was split into two pools: one for individuals covered under the FVOG plan, and one for those who were not. The criteria for qualification were difficult (one had to be a vessel owner for five years, of which two must have been profitable -- not counting depreciation in profits), and a lot of documentation was required. Also, many people who had anticipated using the fund in 1983 had to go fishing by the time the money was available. As a result, the fund has been used for one loan for Alaska this year, and none for the Northwest region, of a total of about 30 applications. There is some likelihood that part of the total money authorized for this year will lapse, though the Northwest region is trying to push a few more loans through before the end of September.

FOREIGN FEES WORKGROUP REPORT

Suggested Motion:

"I move that the Council go on record in this matter, by endorsing the findings of the Foreign Fees Workgroup and sending a copy of their report to the NMFS office in Washington, D.C."

Rationale: I do so because the overwhelming majority of fees (some 90%) are collected from species harvested off Alaska. As a result, the fee systems used, and particularly any changes in the systems, are of importance to the Council because of the possible impacts on the pattern of foreign harvest. Changes in the pattern of foreign harvest may affect the domestic industry. Sending our opinions to the National Marine Fisheries Service is a good way to ensure that they are aware of and consider our opinions in matters of importance to us.