

M E M O R A N D U M

TO: Council, Board, SSC and AP Members

FROM: Jim H. Branson  
Executive Director

DATE: March 24, 1983

SUBJECT: Proposed Moratorium in the North Pacific Halibut Fishery

*ACTION REQUIRED*

*Review proposed rule implementing a three-year moratorium on new entrants into the North Pacific halibut fishery and make final recommendations to the Secretary of Commerce.*

BACKGROUND

In 1978, the North Pacific Fishery Management Council became concerned that a rapidly expanding halibut fleet harvesting the increasing annual quotas during a shorter season every year could create substantial problems in resource management and the availability of a quality product to the consumer throughout the year. This concern led to initial efforts in determining the problems in the fishery and effective solutions. In November 1978 the Council set December 31, 1978 as a cut-off date for eligibility in the eventuality that some form of limited entry was developed in the next two or three years. That date did not hold up for legal reasons, but the Council has since stated on several occasions their intent to establish a cut-off date for accruing rights under any future limited entry system.

In early 1979 the Council appointed a Limited Entry Workgroup composed of halibut fishermen, industry representatives, and agency staff to assess methods of limiting the offshore salmon troll fishery in Southeastern Alaska and to develop possible approaches to limiting effort in the halibut fishery. By June of 1979 some segments of the halibut fleet were urging the Council to develop a limited entry system, and later that year the Council advertised for proposals to study limited entry in the halibut fishery. They also asked that the enabling legislation for the newly renegotiated Pacific Halibut Convention contain authorization for a limited entry system for the halibut fishery. In 1980 the Limited Entry Workgroup again recommended a moratorium on entry into the fishery, but the Council was unable to act until the aforementioned enabling legislation became law. The Northern Pacific Halibut Act of 1982 was signed by the President on May 17, 1982.

At the IPHC meeting in February 1982 many members of the Fishermen's Conference Board, a group of halibut fishermen from the U.S. and Canada, asked the Council to develop a limited entry system based on the "fishermen's share" system and urged a halt to further entry into the fishery. The Council asked

the Department of Commerce to implement a moratorium as quickly as possible, recognizing that it would probably not be possible for the 1982 season, but urging action well in advance of the 1983 fishing season. They believed it would deter people from entering the fishery in hopes of obtaining rights under any limited entry system that might develop and would tend to stabilize effort at the current level. The moratorium is intended to give fishermen, the Council, and the public three years to consider management alternatives to stabilize the fishery so participants can expect reasonable returns on their investment and efforts and consumers can buy fresh halibut for more than a few days a year.

Regulations to implement a moratorium were developed by the Council and the National Marine Fisheries Service and published as a Notice of Proposed Rulemaking in the Federal Register on February 3, 1983. Those regulations are included as Attachment 1. The proposed regulations would permit anyone who has legally participated in the halibut fishery between January 1, 1978 and December 31, 1982 to continue participating in the fishery in the same manner from May 1, 1983 through 1985. The moratorium would end on December 31, 1985. It could end earlier if supplanted by limited entry.

Theoretically, using the base period 1978 - 1982, a maximum of 6,481 individuals could be qualified to participate in the fishery in 1983. Without a moratorium, of course, there would be no limit to the number of people who could fish in 1983. As currently written the moratorium will not necessarily reduce effort, although it should limit the increase below what it would be if the fishery were to remain open to everyone. One of the chief values of a moratorium, in any case, is to establish a cut-off date beyond which participants cannot accrue credit toward participation in a limited entry system.

A 45-day comment period was provided in the Notice of Proposed Rulemaking. During this time period the Council received a substantial amount of written comments and proposals. Copies of these submissions have been given to all Council members and constitute part of the public record in this matter. Synopses of these comments and proposals are included as Attachment 2.

Prior to the publication of the Notice of Proposed Rulemaking (on January 12, 1983), the Council released to the public a copy of the proposed rule along with two other moratorium proposals (Proposals B and C included here as Attachment 3). The purpose of this publication was to solicit public comment on these proposals. To facilitate this process the Council conducted on-site public hearings in the following locations on the following dates:

Juneau	January 7
Ketchikan	January 9
Petersburg	January 10
Homer	January 17
Kodiak	January 18
Seattle	January 20

Summaries of this testimony are included here as Attachment 4.

In addition to the above-listed hearings, teleconference hearings were held in the following locations on the following dates:

Seward, Valdez, Anchorage, Juneau,  
Soldotna, Yakutat and Seattle January 24

Cordova, Juneau, Sand Point, Unalaska,  
St. Paul, King Cove and Seattle January 26

Anchorage, Soldotna, Juneau, Sitka,  
Hoonah, Craig, Wrangell and Haines January 28

Summaries of this testimony are included here as Attachment 5.

## DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 21228-264]

Pacific Halibut Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

**SUMMARY:** NOAA proposes a rule imposing a moratorium on the entry of certain fishermen into the halibut fishery in waters under U.S. jurisdiction in the northern Pacific Ocean (International Pacific Halibut Commission management areas 2C and 3), and that part of the Bering Sea and Aleutians (management area 4) south of 56° N. latitude. The proposed rule would forbid any person to harvest and sell halibut for commercial purposes from those waters from May 1, 1983, through December 31, 1985, who had not lawfully harvested and sold halibut from those waters between January 1, 1978, and December 31, 1982. This action is necessary to prevent a rush of new participants from entering the fishery in hopes of obtaining rights under a limited entry system which is being considered by the North Pacific Fishery Management Council.

**DATE:** Comments on the proposed rule must be received on or before March 21, 1983.

**ADDRESS:** Comments on the proposed rule should be sent to Jim Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 3136 DT, Anchorage, Alaska 99510 (Please see request for comments in SUPPLEMENTARY INFORMATION, below). Copies of the initial regulatory flexibility analysis of this action are available at the same address.

**FOR FURTHER INFORMATION CONTACT:** Jim Branson, 907-274-4563.

**SUPPLEMENTARY INFORMATION:****Background**

In recent years, the fishery for Pacific halibut (*Hippoglossus stenolepis*) off the coasts of Alaska and the Pacific Northwest has witnessed a large increase in the number of participating fishermen despite the fact that halibut stocks during this time have been at depressed levels of abundance. This has required that halibut fishing seasons in these areas be restricted to periods of as little as five days per year. The resulting combination of many participants, a

depressed resource, and short seasons has had a number of undesirable effects:

(1) The concentration of halibut fishing effort in very short periods of time each year may result in overharvesting of stocks that happen to be on the fishing grounds during those periods, while leaving underutilized other stocks that are on the grounds at other times of the year.

(2) For the great majority of participants, the halibut fishery no longer generates sufficient income to earn a significant part of their livings. (For some participants, this has had the effect of encouraging their diversification into other fisheries.)

(3) Fresh halibut, which is superior to the frozen product, is available to consumers only during the few weeks of commercial halibut seasons.

In order to address these problems, the North Pacific Fishery Management Council (Council) is investigating the establishment of a limited entry system for the northern Pacific halibut fishery. Major goals of this system would be the extension of the halibut fishery over a longer period of the year, and the encouragement of voluntary arrangements among current participants that would enable some of them to earn a major portion of their income from halibut fishing, perhaps through the trading of authorized harvest shares. The establishment of such a system is authorized by section 5(c) of the Northern Pacific Halibut Act of 1982 (the Act), Pub. L. 97-176, 16 U.S.C. 773 *et seq.*

It is feared that the prospect of a limited entry system will cause substantial numbers of people with no previous participation or stake in the fishery to consider entering the fishery for the first time, solely in the hope of gaining a financially valuable right in the fishery under any limited entry system which might be adopted. A sudden influx of new participants during the period prior to implementation of a permanent limited entry system would have several undesirable effects:

(1) It would allow an unlimited increase in pressure on the halibut resource;

(2) It would allow unlimited reductions in the average harvests of individual participants and hence reductions in per-vessel earnings;

(3) It would increase the number of individuals whose participation in and dependence on the fishery would have to be taken into account in the establishment of a limited entry program, and whose participation in the fishery might have to be terminated;

(4) It would result in additional and excessive investment in vessels and

gear, much of which might have to be involuntarily retired in the establishment of an effective limited entry program.

In order to mitigate these undesirable results (particularly the third and fourth), the Council, under the authority of section 5(c) of the Act, has developed a proposed rule which would impose a moratorium on entry into the northern Pacific halibut commercial fishery; it is expected that the effective date of the moratorium will be May 1, 1983 (prior to opening of the 1983 halibut season). Under this moratorium (which applies to fishing in the fishery conservation zone, the U.S. territorial sea and internal waters off the coasts of Alaska), no person could harvest and sell halibut for commercial purposes in International Pacific Halibut Commission (IPHC) management areas 2C and 3, and in that part of IPHC management area 4 south of 56° N. latitude, unless that person had lawfully harvested halibut for commercial purposes from those waters and sold that halibut, reporting the sale in his name as required by State or Federal law, between January 1, 1978, and December 31, 1982. A person would be considered to have harvested halibut lawfully from those waters if that person has served as master or crew aboard a vessel there at a time when that vessel harvested halibut. If the halibut so harvested was sold, any person considered to have harvested that halibut would be considered to have sold it if the sale of the halibut was reported to the extent required by State and Federal law, and such sale lawfully recorded in the name of that person on the document of sale (State fish ticket or equivalent) required by law. The moratorium would not apply to that portion of area 4 north of 56° N. latitude in order to implement a provision of section 5(c) of the Act authorizing the Council:

To provide for the rural coastal villages of Alaska the opportunity to establish a commercial halibut fishery in areas in the Bering Sea to the north of 56 degrees north latitude during a 3 year development period.

The moratorium would expire at midnight on December 31, 1985. By that time it is expected that the Council will have developed the permanent limited entry system and that system will have been implemented; or that the Council will have determined that a permanent limited entry system should not be developed.

The fact that a person has obtained a State or IPHC license or permit to fish for or to sell halibut would not affect the application of the moratorium to that

person. Unless a person met the criteria for participation in the fishery established by the proposed rule, that person would be forbidden to harvest halibut in the area specified and to sell that halibut, even if he had obtained all necessary permits.

It should be noted that the Council has not yet determined whether a limited entry system should ultimately be adopted, or what form any such system might take. In view of the Council's desire to avoid imposing unnecessary interim constraints on the fishery, the proposed moratorium allows every current participant, whether master, crew member, or owner of vessels or gear, to continue to participate in that current capacity. New masters or crew members may be employed in the fishery, and investment in vessels and gear may continue. However, it should be noted that the rule requires that an individual qualified to harvest and sell halibut for commercial purposes must be aboard each vessel engaged in the commercial harvest of halibut; moreover, the sale of such halibut from such vessel must be reported and recorded in the name of that individual. Furthermore, it is emphasized that any new participation and investment is undertaken at risk, since imposition of a limited entry system is under active consideration.

The prohibition imposed by this rule, than, would be against the harvest of halibut within the area specified and the sale of such halibut, by those who have not harvested halibut within that area and sold such halibut during the qualifying period. Any scheme to evade this rule would fall within the prohibition of the rules.

#### Request for Comments

The Council and Secretary seek public comment on the proposed moratorium. Comments should be submitted to the Council at the address noted above; the Council will transmit copies of all comments received to the Secretary for his consideration in this rulemaking proceeding.

Comments on the following issues would be particularly helpful in assuring that the moratorium meets the requirements of the Act:

(1) Is the allocation of fishing privileges under the proposed moratorium fair and equitable to all fishermen? Are any hardships created? If so, what is their nature and extent? What, if any, exceptions to the specified criteria should be made to ameliorate those hardships?

(2) Is reliance upon documents of sale (fish tickets or equivalent documents) as sole indicators of participation in and

dependence on the fishery reasonable, fair, and equitable? Does the use of this criterion for participation under the moratorium create any hardships? If so, what other indicators should be examined?

(3) The Council has selected a five-year qualification period, 1978 through 1982, as indicative of present participation in the fishery. Is this approach reasonable, fair and equitable?

(4) Does the proposed moratorium take account of historical fishing practices in, and the economics of, the fishery? Will it raise any question regarding the capacity of vessels used in the fishery to engage in other fisheries? If so, what is that capacity?

(5) Might the proposed moratorium cause any individual, corporation, or other entity to acquire an excessive share of the halibut fishing privileges?

In developing the proposed moratorium, the Council considered and rejected alternative approaches, including a moratorium on entry by vessels. Comments on such alternatives are welcome, however.

It must be emphasized that the Secretary has not made a final determination that the moratorium as proposed can be approved under the Halibut Act's criteria; comments are being solicited to enable the Secretary to make the necessary determinations. Thus, commenters are urged to make as comprehensive a review of the proposed regulation as possible. Final rules to implement the moratorium will be influenced by comments received on the proposed rule; comments received may lead to adoption of final rules that differ from this proposal or to withdrawal of the rulemaking.

The Council and Secretary will be holding public hearings on this proposal. The time(s), date(s) and place(s) of such hearings will be announced in separate Federal Register notices.

#### Classification

The NOAA Administrator has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291, because it will not result (1) in an annual effect on the economy of \$100 million or more; (2) in a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Among alternatives considered, this rule involves the least

net cost to society. By discouraging potentially unprofitable investment in and entry into the halibut fishery, and by reducing the number of persons whose participation will have to be considered in the implementation of any limited entry system, this proposed rule can be expected to yield a net benefit to society.

An initial regulatory flexibility analysis has been prepared on this proposed rule under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This document analyzes alternative approaches to the moratorium, including the proposed action, the inclusion under the moratorium of all prior participants and vessel owners, a prohibition against the entry of new vessels into the fishery and a continuation of the status quo (no moratorium). The analysis presents a range of impacts on individual entities based on various numbers of participants that might be active in the fishery. On the one extreme, if approximately 15 percent of the 3,041 participants who were active in 1981 temporarily withdraw from the fishery for economic considerations and the remaining 2,590 individuals actually fish during the moratorium, average earnings per vessel would be expected to increase by about 21 percent from the average \$8,873 earned in 1981 (assuming static quotas and prices). On the other extreme, if all of the 6,481 "qualified" individuals actively participate in the fishery, average earnings per vessel could decline about 53 percent to just over \$3,000 per vessel. Regardless of how many "qualified" individuals participate, the analysis shows that a substantial risk exists that average vessel performance would be even more severely affected absent some mechanism (the moratorium) to reduce speculative entry into the fishery. The analysis concludes that among the alternatives considered, the proposed rule will have the least economic impact on small entities. Copies of the initial regulatory flexibility analysis may be obtained from the address noted above.

This proposed rule does not contain an information collection requirement or involve any Federal agency in the collection of information for purposes of the Paperwork Reduction Act of 1980.

An environmental assessment on this proposed rule was filed with the Environmental Protection Agency on December 22, 1982. Based upon this assessment, the Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule does not involve a major Federal action significantly affecting the quality of the human environment and requiring an

environmental impact statement under section 102(2)(C) of the National Environmental Policy Act.

The Council has determined that this proposed rule will be carried out in a manner that is consistent to the maximum extent practicable with the Alaska Coastal Management Program, in accordance with section 307 of the Coastal Zone Management Act of 1972 and its implementing regulations.

#### List of Subjects in 50 CFR Part 301

Fish, Fisheries, Fishing, International organizations.

Dated: February 1, 1983.

Carneo J. Blondin,

Acting Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

#### PART 301—PACIFIC HALIBUT FISHERIES

For the reasons set out in the preamble, 40 CFR Part 301 is proposed to be amended as follows:

1. The authority citation for Part 301 is revised to read as follows:

Authority: TIAS No. 9855; 16 U.S.C. 773-773k.

2. A new § 301.15 is added to read as follows:

§ 301.15 Moratorium on entry into the Pacific halibut fishery.

(a) *Criteria for participation.*

(1) From 12:01 A.M., Alaska Standard Time, on May 1, 1983, until 11:59 P.M.,

Alaska Standard Time, on December 31, 1985, no person may harvest and sell halibut for commercial purposes from the northern Pacific Ocean or that part of the Bering Sea and Aleutian Islands area south of 56° N. latitude unless that person had lawfully harvested and sold halibut for commercial purposes from those waters and reported such sale to the extent required by law, at any time between January 1, 1978, and December 31, 1982.

(2) An individual qualified to harvest and sell halibut for commercial purposes under paragraph (a)(1) of this section must be on board each vessel engaged in the commercial harvest of halibut in the waters described in paragraph (a)(1) of this section, and the sale of halibut so harvested must be recorded in the name of that individual as required by law.

(3) For purposes of this section—

(i) A person shall be considered to have harvested halibut for commercial purposes from the waters referred to in paragraph (a)(1) of this section if that person served as master or crew aboard a vessel at a time when that vessel harvested halibut for commercial purposes from those waters; and

(ii) Any person who is considered to have harvested halibut under paragraph (a)(3)(i) shall be considered to have sold that halibut for commercial purposes if sale of that halibut was reported to the extent required by law, and such sale was lawfully recorded in the name of

that person on the document of sale required by law.

(b) *Definitions.* The terms used in this section have the following meanings:

(1) *Bering Sea and Aleutian Islands area*—means waters under the jurisdiction of the United States within management area 4 (as defined in § 301.1 of this part).

(2) *Halibut*—means *Hippoglossus stenolepi*.

(3) *Northern Pacific Ocean*—means waters under the jurisdiction of the United States within management areas 2C, 3A and 3B (as defined in § 301.1 of this part).

(4) *Waters under the jurisdiction of the United States*—means the internal waters and territorial sea of the United States and the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

(c) *Relationship to other licenses and permits.* The requirements of this section are in addition to all other requirements imposed by law for participation in the halibut fishery. The issuance to a person of a State or International Pacific Halibut Commission license or permit purporting to authorize fishing for or sale of halibut during the moratorium period shall neither excuse nor constitute evidence of that person's compliance with paragraph (a)(1) of this section.

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WRITTEN COMMENTS ON THE MORATORIUM BY REGION

	<u>FOR</u>		<u>AGAINST</u>
	25	<u>Southeast Alaska</u>	9
	4	<u>Southcentral Alaska</u>	34
	1	<u>Kodiak Island</u>	30
	3	<u>Western Alaska</u>	2**
	22	<u>Pacific Northwest</u>	3
		<u>Other Areas of the Contiguous 48 States</u>	<u>1</u>
TOTAL	55		79

SPOKEN COMMENTS ON THE MORATORIUM BY REGION\*

	34	<u>Southeast Alaska</u>	7
	13***	<u>Southcentral Alaska</u>	4
	0	<u>Kodiak Island</u>	23
	2	<u>Western Alaska</u>	4
	<u>29</u>	<u>Pacific Northwest</u>	<u>0</u>
TOTAL	78		38
GRAND TOTAL	133		117

\*Does not include those who submitted written comments.

\*\*30 fishermen from Perryville requested an exemption from the moratorium for developmental fishery and 10 fishermen from King Cove wanted a 3-year developmental fishery for their area.

\*\*\*Vote taken at January 17, 1983 hearing in Homer showed 22 in favor and 7 against the moratorium; however not all those present testified. For this reason, the vote total was not included.

AMENDMENTS AND ALTERNATIVES PROPOSED  
BY THOSE FAVORING A MORATORIUM

- Eligibility criteria for moratorium should be based upon minimum catch levels, e.g., vessels over five net tons must have caught a minimum of 1,000 lbs. and vessels under five net tons must have caught a minimum of 500 lbs.
- Should have buy-back for those excluded from fishery by moratorium.
- Limit non-resident fishermen only.
- Don't exclude crews or partners.
- Eligibility criteria should be based upon participation in four out of the past five years and dependency upon the fishery should be demonstrated.
- In addition to moratorium, poundage limit should be established on a per man/per trip basis, e.g., 3,000 lbs. maximum catch per man, per trip.
- A vessel used in the moratorium must have been used in the halibut fishery during the eligibility period.
- Moratorium licenses should be issued to the owners of the vessel used in the halibut fishery.
- Include all years in eligibility period not just 1978 though 1982.
- Licenses should be transferable during moratorium.
- Licenses should not be transferable during moratorium.
- Eligibility period should be extended far enough in the past to remove those who entered fishery speculating on future limited entry.



### REASONS GIVEN FOR FAVORING MORATORIUM

- Short seasons force small boat fishermen to fish in unsafe weather.
- A moratorium is needed to preserve fishery and stabilize its economic aspects.
- A moratorium will protect the serious halibut fishermen.
- Without a moratorium the halibut fishery will become only an incidental fishery.
- A moratorium will discourage new and economically inefficient operations.
- A moratorium is needed because, at present, all segments of the stocks are not harvested.
- Short seasons cause overfishing of quotas.
- Fresh product availability over a longer season will lower cold storage costs and improve the product reaching the consumer.
- A moratorium will help preserve the full-time halibut fishermen, who will constitute a constituency to, in turn, preserve the fishery.
- Poor shellfish seasons will cause larger vessels to enter the halibut fishery in the near future.
- All alternatives to a moratorium and limited entry system are only stop-gap measures that will not effectively address problems in the fishery.

ALTERNATIVES PROPOSED BY THOSE OPPOSED TO MORATORIUM

- Restrictions on the amount of gear fished, e.g., a maximum of 40 or 50 skates per vessel.
- Exclusive area registrations.
- Halibut openings prior to crab seasons and before trawlers start fishing.
- Vessel size limitations.
- Separate areas for large and small vessels.
- Maintain status quo.
- A five-year "grace" period for Perryville fishermen to develop a fishery.
- A series of short openings (from two to five days) to run from April to September will rationalize fishing effort and product flow to the market.
- Vessels should be registered to fish in one specific fishery only, i.e., vessels licensed to fish salmon should not be allowed to fish for halibut or other species.
- Hardships or unavoidable circumstances that prevented participation during the eligibility period should be considered.
- Implementation of early or late openings should be studied.
- Stop bottom trawling within the Alaskan FCZ.
- Mandatory hold inspection for all fishing vessels in FCZ prior to fishing.
- Mandatory hold inspection for all halibut vessels 24 hours prior to an opening.
- Impose catch and delivery limits.
- Limit the increase in vessel size.
- Divide present areas into smaller sub-areas with separate quotas, gear and vessel limits for each sub-area. This is to be done in conjunction with area registration and openings set for two weeks on, one week off.
- The moratorium should be regionalized.
- 100% observer coverage on all foreign ships in the Alaskan FCZ.
- No halibut vessel may travel from one area to another without a hold inspection and logging of catch.
- The incidental catch of halibut should first be reduced or eliminated before a moratorium is implemented.

## REASONS GIVEN FOR OPPOSING THE MORATORIUM

- It prevents upward mobility, diversification, technological innovation and reduces competition.
- It is contrary to traditional management techniques.
- A year-round halibut season is not a valid objective.
- A moratorium in the halibut fishery will lead to limited entry in other fisheries.
- Moratorium eligibility based upon present participation is not equitable because it ignores past participation.
- A moratorium will create an exclusive class of rich fishermen.
- A moratorium will not reduce effort or promote conservation. It will actually increase effort by those who are interested in creating a history of participation for any future limited entry program.
- Fish tickets as records of participation are unreliable.
- The moratorium does not provide for crew or partnership participation.
- It is unrealistic to expect to make one's income from one fishery.
- The rumors and news about the Council's halibut moratorium and limited entry studies caused the influx of participants into the fishery.
- The moratorium would drive out small boats.
- Shortened seasons are the result of conservative quotas set by IPHC.
- The eligibility period covers the best salmon seasons when fishermen chose to fish salmon rather than halibut.
- The eligibility period discriminates against small boats because it covers years when the halibut openings came early in the season. During those seasons, the small boat fleet had to wait until later halibut openings because of poor weather and stock availability.
- The resource is not depressed, the quotas are increasing, and the CPUE is at a historical high.
- The moratorium is against the free enterprise system as well as un-American and unconstitutional.
- The moratorium creates hardship because there are no buy-back provisions for those excluded from the fishery.
- Fresh fish is not, per se, better than frozen.

- The moratorium ignores the economically depressed rural areas of the state south of 56° north.
- The incidental catch of halibut is the reason for shortened seasons.
- Large boats entering the fishery have caused the shortened seasons.
- There aren't too many vessels presently in the fishery.
- A developmental fishery north of 56° north would increase pressure on Bering Sea halibut breeding grounds.
- A moratorium will raise the costs of entering the fishery.
- A moratorium will displace harvest effort to other fisheries.
- Biological management and free competition will protect fisheries.
- A moratorium discriminates against young people.
- The decrease in average boat grosses in the halibut fishery is caused by the decrease in average ex-vessel prices and not by an increase in participants.
- The moratorium disqualifies new entrants who need to get into the fishery for economic reasons.
- Single species management is ineffective.
- The moratorium favors non-residents.
- The moratorium favors the Seattle and Southeast Alaska fleets.
- The industry should be allowed to adjust to natural stock fluctuations.
- No transfer provisions are included in the proposed rule.
- The public was not provided enough information or time to adequately comment on the proposed rule.

PROPOSAL SUBMITTED BY ST. PAUL ISLAND HALIBUT FISHERMAN,  
BERING SEA FISHERMEN'S ASSOCIATION, ST. GEORGE TANAQ AND  
ST. GEORGE VILLAGE

(a)(1) From 12:01 a.m., Alaska Standard Time on May 1, 1983 until 11:59 p.m., Alaska Standard Time on December 31, 1985, no person may harvest and sell halibut for commercial purposes from the Northern Pacific Ocean or the Bering Sea unless that person has lawfully harvested and sold halibut for commercial purposes and reported such sale to the extent required by law at any time between January 1, 1978 and December 31, 1982, provided that residents of rural coastal villages north of 56° latitude may also harvest and sell halibut for commercial purposes in areas of the Bering Sea north of 56° N. latitude.

AMENDMENT TO PROPOSED MORATORIUM THAT WOULD PREVENT  
THE INCIDENTAL HALIBUT HARVEST IN THE SALMON TROLL FISHERY  
FROM EXPANDING TO A TARGETED HALIBUT HARVEST

(4) Nothing in this regulation shall be interpreted to allow those persons who legally harvested and sold halibut incidentally while participating in the Alaskan salmon troll fisheries during the time period described in paragraph (a)(1) to harvest halibut during the term of this moratorium in a manner other than incidentally to the salmon troll fisheries.

§301.15 Moratorium on entry into the Pacific halibut fishery.

(a) Criteria for participation.

(1) From 12:01 A.M., Alaska Standard Time, on May 1, 1983, until 11:59 P.M., Alaska Standard Time, on December 31, 1985, no person may harvest and sell halibut from the northern Pacific Ocean or that part of the Bering Sea and Aleutian Islands area south of 56° N. latitude unless

(A) that person had lawfully harvested and sold halibut from those waters, and reported such sale to the extent required by law, at any time between January 1, 1978, and December 31, 1982; and

(B) any vessel used by that person in that harvest of halibut was used at any time between January 1, 1978, and December 31, 1982, in the harvest from those waters of halibut that was later sold.

(2) A person qualified to harvest and sell halibut under paragraph (a)(1) of this section must be on board each vessel engaged in the commercial harvest of halibut in the waters described in paragraph (a)(1) of this section, and the sale of halibut so harvested must be recorded in the name of that person as required by law.

(3) For purposes of this section --

(A) A person shall be considered to have harvested halibut from the waters referred to in paragraph (a)(1) of this section if that person served as master or crew aboard a vessel at a time when that vessel harvested halibut from those waters.

(B) A person who is considered to have harvested halibut under paragraph (a)(3)(A) of this section shall be considered to have sold that halibut if sale of that halibut was reported to the extent required by law, and such sale was lawfully recorded in the name of that person on the document of sale required by law.

(C) A vessel shall be considered to have been used in the harvest of halibut if sale of that halibut was reported to the extent required by law, and that vessel is designated on the document of sale required by law as the vessel from which that halibut was harvested.

(b) Definitions. The terms used in this section have the following meanings:

(1) Bering Sea and Aleutian Islands area means waters under the jurisdiction of the United States within management



area 4, as defined in §301.1 of this Part.

(2) Halibut means Hippoglossus stenolepis.

(3) Northern Pacific Ocean means waters under the jurisdiction of the United States within management areas 2C, 3A, and 3B, as defined in §301.1 of this Part.

(4) Person means an individual natural person.

(5) Waters under the jurisdiction of the United States means the internal waters and territorial sea of the United States and the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act, 16 U.S.C. §§1801, et seq.

(c) Relationship to other requirements of law. The requirements of this section are in addition to all other requirements imposed by law for participation in the halibut fishery. The issuance to a person of a State or International Pacific Halibut Commission license or permit purporting to authorize fishing for or sale of halibut during the moratorium period shall neither excuse nor constitute evidence of that person's compliance with paragraph (a)(1) of this section.

DEEP SEA FISHERMEN'S UNION PROPOSAL SUBMITTED  
WITH PAT TRAVERS' PROPOSAL OF MARCH 1, 1983

1. PARAGRAPH (1)(A) should be eliminated. If a "dual" qualification system is used, the administrative problems of keeping track of legal fishing operations are at least doubled and a highly discrete transferability clause or "hardship" clause would be necessary.

For instance, if a qualified skipper on a qualified vessel dies or becomes seriously ill, he or his widow or estate would be forced to find another qualified fisherman to run the boat. It's unlikely that a fisherman knowledgeable in the operation of a conventional longline operation with a crew of five, six, or seven men could be found. Most probably, the best candidate for the job would be a crewman already aboard that vessel, and, probably, without a qualification to harvest and sell halibut. The same rationale can be made, and more emphatically, in the case of death or illness during the season.

Also, at any time, regardless of a moratorium, limited entry, or open access, any fisherman may choose to retire because of age. Again, in the case of the sale of part or all of his boat, or in the case of another man operating the vessel, the most likely buyers and/or operators are probably members of his crew or of the crew of a vessel like his. To disallow a crewman from receiving the right to fish would be a disability for both the owner and prospective buyer or operator.

By eliminating paragraph (1)(A), the problems of hardship cases such as these are eliminated. Crewmen could be able to take over the rights to fish, and boats would be salable on a broader market without increasing effort. Basically, for the purposes of a moratorium, in terms of both effort-limitation and record-keeping, paragraph (1)(B), concerning vessels, addresses the problem fully. Paragraph (1)(A) seems an administrative redundancy and an encumbrance. Paragraph (2) would be revised according to the exclusion of (1)(A).

2. In the case of a vessel that is burned, sunk, or otherwise destroyed, a vessel should be allowed to replace the original vessel, provided that the replacement vessel does not exceed the net tonnage of the original vessel by more than 10%. This allows for the inevitable "recycling" of the fleet in hardship cases and restrains fishing effort at the same time.

3. PARAGRAPH (1)(B), concerning vessels, should apply to vessels of all size. According to the IPHC, records are available for all sales of halibut of both the seller and the vessel. Clearly, in both the original allocation of moratorium rights and in the case of vessel replacement (when it is lost), this is the fairest system. For vessels with no net tonnage recorded (mostly skiffs), the "10% rule" could simply be applied to length.

4. If the provisions we recommend are implemented, the general problem of upgrading is considered in both directions: for gear limitation and for mobility. A man with a skiff will not be able to transfer his right to fish to a crabber and thus fish 50 times the gear unless he finds a specific large boat that is qualified to fish. He or anyone else, in fact, would have that right. Still, the fleet would be limited to its present size. And no individual would be denied the right to fish any qualifying vessel.

LEGAL QUESTIONS RAISED DURING THE PUBLIC COMMENT PERIOD

- The moratorium does not adequately define "Commercial Fishing" for subsistence considerations under Title VII Section 802 of the Alaska National Interest Lands Conservation Act (ANILCA) and does not provide for the subsistence priority required by Title VIII Section 804.
- The moratorium fails to consider the criteria of 16 USC Section 1853(b)(6) (the Magnuson Act), i.e., present participation in the fishery, historical fishing practices in and dependence on the fishery, the economics of the fishery, the capability of fishing vessels used in the fishery to engage in other fisheries and the cultural and social framework relevant to the fishery, and other relevant considerations.
- The moratorium provides no appeal procedure for those excluded from the fishery.
- The Secretary of Commerce has not complied with the requirements of Title VIII Section 810 ANILCA.
- No Environmental Impact Statement was prepared.
- There is potential for a conflict of interest in that some Council members may have a direct interest in the outcome of a Council vote on the moratorium.
- NOAA has failed to meet the requirements of the Regulatory Flexibility Act, P.L. 96-354, and Executive Order 12291 by not considering less drastic alternatives to moratorium.
- The moratorium does not comply with Section (5)(C) of the Northern Pacific Halibut Act of 1982, P.L. 97-176 because it is not necessary to allocate fishing privileges in the halibut fishery.
- The exemption to the moratorium for rural coastal villages north of 56° north is unconstitutionally discriminatory.
- The moratorium should be considered a "major rule" pursuant to Executive Order 12291.
- The moratorium is not "fair and equitable" as required by Section 5(C) of the Halibut Act.

## RESOLUTIONS

Resolutions were passed by the Alaska Legislature, Kodiak Area Native Association, Kenai Peninsula Borough, Kodiak Island Borough Assembly, Kodiak Fish and Game Advisory Committee, Kodiak, Akutan, Valdez, Whittier, Cordova, King Cove, Sand Point, Craig.

Only two (Kodiak Area Native Association and Kodiak Fish and Game Advisory Committee) were directed specifically against the moratorium. The others were directed solely against the share system.

House Committee Substitute for Committee Substitute for Senate Joint Resolution No. 7 passed by the Alaska State Legislature on March 16, 1983 requests that serious consideration be given to comments by Alaskans concerning the moratorium and that alternative management halibut techniques also be considered.

ORGANIZATIONS WHICH HAVE STATED OPINIONS  
ON THE CONCEPT OF A HALIBUT MORATORIUM

In Favor

United Fishermen of Alaska  
International Pacific Halibut Commission  
Alaska Longline Fishermen's Association  
Fishing Vessel Owners' Association  
Deep Sea Fishermen's Union of the Pacific  
Bering Sea Fishermen's Association  
Petersburg Vessel Owners Associaton  
North Pacific Fisheries Association  
Alaska Trollers Association  
St. Paul Island  
St. George Tanaq Corporation  
St. George Village Council  
Port Alexander Alaska Department of Fish  
and Game Advisory Committee  
Port Alexander Longliner's Association  
Port Alexander Fishermen's Association  
Hoonah Alaska Department of Fish and  
Game Advisory Committee  
Angoon Alaska Department of Fish and  
Game Advisory Committee  
Halibut Producer's Associaton  
Central Bering Sea Fishermen's Association

Against

Kodiak Halibut Fishermens Association  
Kodiak Area Native Association  
Kodiak Alaska Department of Fish and  
Game Advisory Committee  
Seward Fisherman's Association  
Association of Alaska Halibut Fishermen  
Shumagin Corporation  
Coalition for Open Ocean Fishing  
Independent Fishermen of Alaska  
Shaanseet Inc. of Craig  
ANB Grand Camp Sitka  
Klawok Heenga Corporation  
City of Ketchikan  
Aleutian East CRSA  
Salamatof Native Association, Inc.  
Kenai Peninsula Borough

Proposal B. A proposed alternative reducing the increase in effort beyond that obtained through a moratorium on the individual only.

- (1) Those individuals registered as having sold halibut in 1978 through 1982 may fish in 1983 and 1984 (limit moratorium to two years).
- (2) Those qualifying for a license during the moratorium under (1) may not use a vessel of net tonnage greater than ten percent over that used by them during the base period.
- (3) Permits may be transferred only in hardship cases (illness, death, and so on).
- (4) The permit is valid only when a permit holder is aboard the boat and actively engaged in fishing during the moratorium period (1983 and 1984).
- (5) Permits will be issued only to individuals. On boats owned by partnerships or corporations the owners shall designate one individual to use the fishing permit.
- (6) The moratorium shall be replaced by a limited entry system for the 1985 season if one can be agreed upon. If a limited entry system cannot be implemented by 1985, the moratorium will end.
- (7) The permit shall be valid only in the area (IPHC regulatory areas) or areas where the holder fished during the qualifying base period (1978 through 1982).
- (8) A vessel owner shall be given a permit when during the base period the vessel was operated by one who was not an owner. That permit shall expire as soon as the owner disposes of his interest in the vessel by sale or death.
- (9) Permit holders who operated vessels under five net tons during the base period (1978 through 1982) may change vessels without restriction so long as the boats involved are less than five net tons.

Proposal C (Delay moratorium until January 1, 1984.)

Because of the controversial nature of the moratorium proposal plus the time restraints in its implementation, the moratorium could be made effective January 1, 1984 with a provision that permits would be issued only to those individuals who sold halibut at some time during a base period from 1978 through 1982 as well as in 1983; i.e., individuals who sold halibut only in 1983 would not qualify for a permit for 1984. This would allow adequate time for discussion and implementation of a moratorium.

Summary of Public Testimony  
on  
Proposed Halibut Moratorium  
Juneau, Alaska  
January 7, 1983

The North Pacific Fishery Management Council and the National Marine Fisheries Service held a public hearing on the proposed halibut moratorium on January 7, 1983, beginning at 1:00 p.m. in the Gastineau Suite, Baranof Hotel, Juneau, Alaska. A synopsis of the testimony follows.

COUNCIL MEMBERS

Clement V. Tillion, Chairman  
Harold E. Lokken, Vice-Chairman  
James O. Campbell  
Don Collinsworth  
Chris Dawson, for Ray Arnaudo  
Rudy Petersen  
Keith Specking

Dr. John Harville  
RADM Richard Knapp  
Robert U. Mace, for  
John Donaldson  
Gene DiDonato, for Bill Wilkerson  
Joe Demmert, Jr.  
Jeffrey R. Stephan

NMFS/NOAA Representatives

Robert McVey (also Council Member)  
NOAA/GC

Lewis Queirolo Pat Travers,

NPFMC STAFF

Jim H. Branson, Executive Director  
Clarence Pautzke, Deputy Director

Peggy McCalment  
Helen Allen

SUPPORT STAFF

Pat Travers, NOAA/GC

Lewis Queirolo, NOAA/NMFS

GENERAL PUBLIC

Linda Owen  
Jeff Hendricks  
Maurice Ingman  
Greg Baker  
Gary Beal  
Charles Carlson  
Gordon Williams  
Albert Strom  
Bob Alverson  
Mike Reddekopp  
Eric Jordan

Jack Phillips  
John DeBoer  
Arni Thomson  
Chris Sharpsteen  
Gary McMaster  
Dolly Garza  
Walt Pasternak  
Dick Carlton  
Mike Mayo  
Henry Mitchell  
Robert Chevalier

Linda Owen, a fisherman representing herself and her husband, supports the proposed moratorium vigorously. Concerned about the halibut fishery in the future. Fishing time has decreased from 47 days in 1978 to 11½ days last season and will continue to decrease with the increase in effort, reducing halibut to an incidental by-catch. Does not agree that elimination of foreign fishing would solve the problem; it is necessary to limit entry.

Jack Phillips, a commercial halibut fisherman. Very much in favor of the proposed moratorium; not particularly interested whether permits are attached to the vessel or the people; current draft of the moratorium is satisfactory. Without the moratorium, the fishery will become unmanageable. Council member McVey asked whether he felt the five-year basis is fair. Mr. Phillips believes it is; especially since it included 1982 which gave serious fisherman a chance to be included.

Gary Beal, favors the proposed moratorium. Council McVey asked if Mr. Beal felt the qualifying period was fair. He replied he thought it was.

John DeBoer, from Petersburg, has been fishing halibut for 31 years. Because of the short season last year he was unable to air-freight his halibut to a regular customer in the Midwest; he had to spend all his time on the boat in order to get his catch before the season closed. Feels that the stocks in the Petersburg area are improving. Council member Jeff Stephan inquired about Mr. DeBoer's thoughts on the qualifying period. Mr. DeBoer said that the Council would have to decide what is fair; he feels that those who have been in the fishery for a long time deserve to be included. Council member Petersen asked Mr. DeBoer if he had a preference on how the permits should be issued. Mr. DeBoer said that, for the good of the fishery, the permit should go with the boat.

Eric Jordan, feels it is time for a moratorium on entry into the halibut fishery in the Prince William Sound area. Suggested that perhaps the Council should consider different situations, such as the Western area--Kodiak, Bering Sea, Aleutians. Short seasons and overlap of seasons with the trollers limit opportunities--the Council should consider troll fishermen who catch halibut.

Maury Ingman, would like to see the Council give a three-year ultimatum to crab fishermen to pull their pots and not take halibut; drag boats should not be allowed in the halibut grounds. Favors a personal quota so boats can fish with smaller crews. Favors the moratorium.

Arni Thomson, a Seattle fisherman who fishes out of Halibut Cove, quoted from a thesis paper he prepared in 1975, History of the Pacific Halibut Fishery. He reviewed the history of the halibut stocks and how the industry had pretty much depleted them by approximately 1915 and how they had once again, through conservation efforts, become more abundant, thus bringing more and more people into the fishery. He is in favor of the moratorium.

Gregg Baker, President of the Alaska Longline Fisherman's Assn., has been a commercial fisherman since 1966. His association supports the moratorium as proposed.

Mr. Baker responded to the questions posed in the "Comments Requested on the Moratorium" packet mailed to the public. The comments refer to Proposal A.



1. The allocation is fair to all fishermen because the announcement of a possible moratorium in 1979 gave all fishermen an opportunity to be included if they were interested. Feels that there may be hardship cases which should be dealt with on an individual basis.

2. Relying on the documents of sale as indicators of participation in the fishery is reasonable and fair.

3. Referring to the 5-year qualification period, he feels this is also equitable.

4. The proposed moratorium does take into account the historical fishing practices and economics of the fishery.

5. Does not feel that the proposed moratorium will cause any individual or corporation to acquire an excessive share of the halibut fishing privileges. The Longliners Assn. has not taken any position on the placement of the permit. Mr. Baker said that he, personally, would prefer the permit be limited to vessels.

Chris Sharpsteen, a Petersburg fisherman, feels a moratorium has been needed for some time. If the permit is issued on the boat, it will help to more effectively limit the entry, but will favor the larger vessels. Petersburg fisherman can no longer fish all year for their livelihood; they have to supplement their income in other ways. Some consideration should be given those who fished prior to 1978, but he does not have a suggestion of how this would be accomplished.

Council member McVey asked Lew Queirolo, regional economist for NMFS, to discuss the time frame for the proposed moratorium.

Mr. Queirolo said that the idea was incorrect that the moratorium could not be put in place for the coming season if the Limited Entry Commission has not received word by February 2. Without the participation of the Commission, the process will be more cumbersome because of their staff expertise in issuing permits, but their absence from this year's moratorium would not preclude participation. Several alternatives have been discussed. One option would be to get the necessary federal endorsement on an interim-use permit to be issued for 1983; permittees could be advised that this was an interim-use permit and that they may be precluded if limited entry comes into effect.

Gary McMaster, Chairman of the Pelican Advisory Board, said that this Board endorses the need for a moratorium, although they are not in total agreement with the draft document presented. The Board voted unanimously to propose that the season on sablefish be closed December through March as the fish are in spawning condition and the oil content is lower; this would also protect the halibut stocks in the area.

Charles Carlson, AFB Grand Camp, Sitka, said his organization is against the moratorium. It is designed as a means to protect the fisherman, not the fishery. A moratorium is the same as limited entry. Since the Council has the authority to regulate the seasons for the taking of fish, this should be sufficient.

Delores Garza, Shaanseet Native Assn. of Craig, Alaska, said she opposes the moratorium--establishing the moratorium would still allow a great number of people to come in, and the season could be shortened even further; feels the moratorium should be revised to exclude more people.

Gordon Williams, Angoon F&G Advisory Commission, said his group discussed the moratorium and limited entry at the same time and voted against the concept of both. He isn't sure what the outcome would be if they voted only on the issue of the moratorium. Fishermen in his area are not happy with the current 5½-day season, but do not know enough about the proposed moratorium and how it will affect them. If the permit went with the vessel, it would be a definite problem in his area.

Walt Pasternak spoke in favor of the moratorium because of the speculation created when limited entry in the troll salmon fishery was being discussed. Mr. Pasternak also feels that the biggest problem is that one-third of the biomass is being taken by pots and bottom nets. The Canadian drag fleet has caused irreversible damage to the stocks. Mr. Pasternak told the Council that Sitka landed more fish than Juneau, Petersburg, and Ketchikan, and would like the Council to make an effort to return to Sitka for a future Council meeting.

Albert Strom, Kodiak, is opposed to the moratorium. Limited entry in the halibut fishery is just a little late. The share system concept would mostly favor Anchorage. Totally against all limited entry.

Dick Carlton, Pt. Alexander Longline Assn., and Chairman of the Pt. Alexander F&G Advisory Committee, said that fishermen in his area voted to adopt the moratorium. He inquired whether the document could be changed once adopted. Pat Travers, Counsel for NMFS, responded that since it is a rule, it could be changed through normal procedures through NOAA. Mr. Carlton asked whether a conservative moratorium would change the quota. Jim Branson, Executive Director of NPFMC, replied that he doubted that it would make a difference.

Bob Alverson, Seattle Vessel Owners' Assn., said the Association is in favor of the moratorium if it attaches the permit to the vessel; very little would be gained if it were on the individual. In reference to the base period, 1978-1982, the majority of the Assn. will support it; however, there are some who are not in agreement. It would be better if it were 1981-82, or perhaps two out of four years. If the permit is attached to the individual, they would suggest elimination of the grandfather clause. They would not endorse the restriction of vessels to areas where they have previously fished; but would endorse the section restricting the vessel tonnage change.

Mike Mayo, Independent Fishermen of Sitka, said that most of his organization is against the moratorium. He feels that the harvest is taken at the wrong time of year. Restricting U.S. fishermen and allowing foreigners to increase are in direct conflict of the 200-mile limit law.

Mike Caredikoff is opposed to the moratorium as written. He has been active in the fishery, but just because he hasn't owned a boat or card, he would not be included. Could support the moratorium if the qualifications were different; perhaps to include crew members like himself.

Henry Mitchell, Executive Director of the Bering Strait Fishermen's Association, said his association is in favor of the moratorium. It is important to note the large number of entrants over the last few years; this will not stop without a moratorium. Council member Petersen asked Mr. Mitchell whether he favored having the permit attached to the vessel or the individual. Mr. Mitchell said he was not familiar enough with this issue, but would look into it.

Robert Chevalier, Sitka, feels that voting for a moratorium now is actually setting up criteria for limited entry. Setting troll closures to coincide with the halibut opening was an effort to force fishermen to favor a moratorium. He doesn't feel that any of the moratorium options could be implemented without inviting law suits from other groups.

Public testimony at this hearing was completed at 3:46 p.m.

Summary of Public Testimony  
on  
Proposed Halibut Moratorium  
Ketchikan, Alaska  
January 9, 1983

The North Pacific Fishery Management Council and the NOAA/NMFS conducted a public hearing on the proposed moratorium at the ADF&G offices in Ketchikan, Alaska, on January 9, 1983. Approximately 17 members of the public attended, of which 9 testified. The meeting was chaired by Council member Joe Demmert, Jr. Other Council and staff members attending were Jeffrey Stephan, and Jim Branson. Patrick Travers represented NOAA/NMFS. The hearing began at 3:00 p.m. and ended at 4:50 p.m.

A synopsis of the testimony follows:

Bill Thomas, Alaska Native Brotherhood Fisheries Committee. Their committee voted to object to the proposed moratorium. They are concerned by memories of the salmon limited entry process. Would like to see out-of-state participants excluded. Not closed to limited entry but would want more details on how it will work.

Len Leach favors moratorium. Four-day seasons don't work. Doesn't think moratorium time should be used for qualifying time. Thinks a lot of Area 2 fish are landed as Area 3. Permit should go to individual.

Geraldine Gardner, Klawok Heenga Corp, objects to moratorium because there is no way for young people to get into fishery.

Ole Haynes, has been fishing halibut since 1946. Favors moratorium and thinks it should have been initiated long ago. Doesn't want to make it mandatory to fish during moratorium years. Some concern about new entrants, but sees need for just crewmen, too. No comment yet on whether permit should go to vessel or person.

George Demmert, favors moratorium, but doesn't want qualified fisherman to be required to fish during moratorium.

Alan Knittel, opposed to moratorium on grounds that others should be allowed to participate.

Roger Ingman, favors moratorium to ensure fish in the future. Permits should go to person. Quality is very important. Need to be able to upgrade boat to improve it. Could favor permit on boat.

Russ Cockrum, favors moratorium, fished halibut since 1966. Seasons are so short, it's like a hobby now. Proposed rule looks fair.

Nevin May, salmon troller, doesn't like limit on size of boats. Favors moratorium.

Public testimony was concluded.

Summary of Public Testimony  
on  
Proposed Halibut Moratorium  
Petersburg, Alaska  
January 10, 1983

The North Pacific Fishery Management Council and the NOAA/NMFS conducted a public hearing on the proposed moratorium at the City Hall in Petersburg, Alaska, on January 10, 1983. Approximately 52 members of the public attended, of which 21 testified. The meeting was chaired by Council member Joe Demmert, Jr. Other Council and staff members attending were Jeff Stephan, and Jim Branson; Patrick Travers represented NOAA/NMFS. The hearing began at 1:10 p.m. and ended at 3:50 p.m.

A synopsis of the testimony follows:

Sig Mathison, Petersburg Vessel Owners Assn, fishes mostly longline. Favors moratorium; worked with FVOA, ALFA, etc. in Juneau. Favors Proposal B, except for #7,8,9. Willing to back off if necessary to get moratorium passed. Thinks B will somewhat restrict expansion of effort. Thinks there's a problem with issuing licenses and qualifying them later. Adamant about wanting moratorium. Asked if the base period was fair, Mr. Mathison said perhaps could go back to 1977. Proposal A would be better than nothing at all. Doesn't think participation during moratorium should count toward entry quota.

John A. Svenssen, very much in favor of a moratorium; growing effort is getting completely out of hand.

Marelyne George, power troller. Asked what provisions made for trollers; haven't had much chance in last few years because of short seasons. Opposed unless some provision made for trollers. Used to make 15-20% of profits in halibut.

Charlie Christensen, PFVOA. In favor of moratorium and limited entry. Likes Proposal B with the last three items deleted; but something better than nothing.

Gordon Jensen, very much in favor of moratorium. Need to spread effort over time to avoid serious impact to individual stocks. Mostly favors permit on owner/boat. Feels base period is pretty fair; must keep within some kind of limits. Status of stocks is good in Southeastern Alaska, but poor in British Columbia. Need to spread season.

Dale Bosworth, F/V Lesley Ann, longliner for over 25 years. Favors moratorium; not quite ready to comment on proposals because just received information. Base period might be dropped back both ends, but will never please everyone.

Andrew Gjerde, F/V Midway, favors moratorium. If no moratorium, halibut will become an incidental fishery. Stock status very good recently. Wants bigger quota and better split (50-50) with Canada. Permit should go to skipper, not boat. Base period can go back as far as we want for limited entry.

Nels Otness, fished out of Petersburg for 44 years. Saw this problem coming 8-10 years ago. Favors moratorium. Stagger seasons to catch from all stocks. Dangerous to have round-the-clock fishery and short crews. Pure halibut fishermen suffered most if they tried to stay just with the halibut.

Sig Mathisen (2nd time) Moratorium participation should not count toward limited entry. Told Palmers' committee in 1973 that limited entry on halibut was needed. Quota is not too low. Lot less room for optimum yield than people think in stocks; probably approach OY right now. If Council is even considering counting 1983-84 for limited entry, then must freeze boat size and effort during moratorium.

Rick Williams, fishing halibut since 1974. Limited entry is the only salvation, and the moratorium is the only way to proceed. Favors Proposal B, except #7,8,9. Could go earlier on base period without too much harm. Longtime participants (pre-1978) should be able to fish. Permit on person but restrict boat size (per Proposal B). Shouldn't have to fish a permit if they don't want to.

Harold Medalen, power troller, displaced halibut crewman. Four to five years ago, made whole income from halibut crewing. Now, 15-20%, and has written off getting into it. Generally favors Proposal B, wants one person on boat only to qualify. Not sure that boat limitation is effective, tonnage not a good measure. Nos. 3,4,5, and 6 of Proposal B are acceptable, but #7 is not; on #8, only operator should get permit, and #9 is not good. Trollers should not get special consideration.

Ray Evans, halibut fisherman out of Petersburg. Favors first six items of Proposal B. Favors moratorium. Need to limit effort during the moratorium period.

Gary McCullough, F/V Tiara, in favor of moratorium. Proposal B is acceptable, except last three provisions.

Ed Flugelvog, longline fishery for 35 years. Supports moratorium completely. Short seasons present real management and conservation problems.

Gerald J. Lind, 36' F/V, lifetime resident of Petersburg. Base period should be extended to prior to 1978 for a moratorium. Thinks #2 of Proposal B is illegal. Agrees with the rest of Proposal B. Hates limited entry, but appears there is no other way.

Anne Mathesen, very much in favor of moratorium. Have to limit effort. No sympathy for setting aside part of quota for trolling fleet. Don't increase fleet.

Scott Hursey, F/V Kiski, troll and halibut. Thinks trollers should be included in any systems. Favors moratorium. Probably favors permit on person rather than boat.

Tom Greer, fished halibut since 1974. Worked up to larger boat with partner; both skipper and seller. Favors moratorium; permit to individual.

Steve Hittle, very much for limited entry, but moratorium is really not going to cut effort much.

Chris Sharpsteen, (testified at Juneau hearing). Fished from 1979-82 with a boat of 30'; bought a 36' boat this year. Favors moratorium. Some consideration should be given fishermen who fished prior to 1978.

Rick Williams, thinks trollers should only fish during regular halibut season.

Marelyne George, (2nd time), only wants to land during halibut season.

Charles Christensen, concerned about how can upgrade with restrictions.

Testimony ended at approximately 3:50 p.m.

Summary of Public Testimony  
on  
Proposed Halibut Moratorium  
Homer, Alaska  
January 17, 1983

The North Pacific Fishery Management Council and the NOAA/NMFS conducted a public hearing on the proposed Halibut Moratorium at the Elks Hall in Homer, Alaska, on January 17, 1983. Approximately 55 members of the public attended, of which 14 testified. The meeting was chaired by James Campbell. Other Council and staff members in attendance were: Harold Lokken, Rudy Petersen, Robert Mace, Patrick Travers and Sue Salveson represented NMFS/NOAA, Jim Branson, and Judy Willoughby. Jim Branson summarized the history of the halibut fishery and a brief outline of the proposals of the moratorium. The hearing began at 1:10 p.m. and ended at approximately 5:00 p.m. A synopsis of testimony received is given below.

Eugene Croom, Box 3875, Soldotna, built a new boat in 1982, but did not fish; against the time frame of moratorium.

Kirk Rutzebeck, Halibut Cove, has fished halibut since 1969; favors moratorium. Permit should be on vessel.

Paul Jones, Box 697, Homer, favors moratorium. To save fishery, must cut effort; allow hardship entries. For permit, a minimum poundage sold should be basis, such as 1,000 pounds in any given year. Suggests layman board to rule on hardship cases.

Russell P. Parks, Box 550, Homer, is not a halibut fisherman but does not want to be cut out if he wants to fish. However, favors a moratorium; all fisheries should have limited entry.

Ron Feagin, Box 2692, Homer, FV Sophia, is just buying a boat and has never delivered halibut; not opposed to moratorium, but need system to allow serious fishermen to enter.

Sonja Corazza, Box 1320, Homer, has fished since 1956. Supports moratorium with a limit on boat size. Wants Halibut Assoc. to have input on any form of limited entry. Supports 1,000 pound limit for permit.

Marvin Bellamy, Box 1302, Homer, fished halibut for 15 years; supports moratorium; hold boat size down.

Charles Kekoni, SR 1, Box 2030, Chugiak, 3 years in the halibut fishery; opposed to moratorium. Council should reduce foreign incidental catch. Should have halibut season allocated over 12-month season. Unused permits should be put in a lottery.

Rick Oldham, Box 2683, Homer, favors moratorium and the permit tied to vessel.

Darry Baltz, Box 2251, Homer, fished only one year--against moratorium because of "selfish reasons."



Paul Seaton, Red Feather Fisheries, SR Box 253, Anchor Point, processor for small fishermen. Opposes minimum pound limit. Mixed emotions about need for moratorium.

Richard R. Mueller, Box 3880, Kenai, basically opposed to moratorium, but agrees something must be done. Favors Option 1; wants to be able to expand operation.

Phil McCrudden, Box 794, Homer, Exec. Director of North Pacific Fisheries Association and full-time fisherman and represents 20 full-time fishermen. Against share quota system; supports moratorium.

Paul Fefelov, Box 223, Anchor Point, representing Nikolaeusk Village, Alaska. The village has 50 boats; very diversified. Would new boats be eligible this season? Would not qualify. Some support for moratorium in village, but most against.

Timothy Sullivan, has fished alternate years with brother. Who would get permit?

Council member Harold Lokken asked for a show of hands on proposed moratorium: 22 favored the moratorium; 7 were against.

REVISED  
Summary of Public Testimony  
on  
Proposed Halibut Moratorium  
Kodiak, Alaska  
January 18, 1983

The North Pacific Fishery Management Council and the NOAA/NMFS conducted a public hearing on the proposed moratorium at Fishermen's Hall in Kodiak, Alaska, on January 18, 1983. Approximately 75 members of the public attended, of which 38 testified. The meeting was chaired by Council member Jeff Stephan. Other Council and staff members attending were Rudy Petersen, Harold Lokken, Robert Mace, and Jim Branson and Judy Willoughby. Patrick Travers and Sue Salvesson represented NOAA/NMFS. The hearing began at 7:00 p.m. and ended at 1:00 a.m.

A synopsis of the testimony follows:

Dave Herrnsteen, Mayor of the Kodiak Borough and owner of F/V Anna D, against share quota system and moratorium. Kodiak Borough passed Resolution No. 82-32-4 in opposition to the halibut limited entry. Mr. Herrnsteen presented an economic summary which projected the effect limited entry would have had in the past for Kodiak. Feels the large influx into the fishery has been a result of the Council's discussions since 1978 on the possibility of limited entry. Kodiak residents very mobile and their fisheries are very diversified, so moratorium would not be fair or equitable.

Tom Peterson, Director of Community and Economic Development for Native Association. Opposed to moratorium and limited entry. Children of the village would not be able to fish. Kodiak Area Native Assn. (KANA) Submitted written testimony which has been distributed to Council members. KANA has presented a letter of opposition to the moratorium to NOAA/NMFS and the Council. Ability to diversify is very important for villagers; when one fishery is bad, they need to be able to fish another for their livelihood. KANA believes the socioeconomic impact has not been analyzed and should be before any type of restriction is placed on the halibut fishery. KANA recommends other alternatives such as exclusive registration.

Chip Threinen, President Kodiak Halibut Fishermen's Assn. (94 members last year). Organization voted unanimously against the moratorium. They don't want to be locked into one fishery. They feel the fishery should be managed by having smaller areas, exclusive registration, gear limitations and shorter and more openings. Kodiak Halibut Fishermen's Assn. proposed three major points for comment and consideration: 1) Limited entry, as presently designed, has only partially solved problems and created others; 2) the domino theory--one limited entry fishery leads to another; and 3) limited entry is irreversible and unresponsive to change, regardless of the problems caused.

Oscar Dyson, opposed to moratorium. Since he hasn't fished halibut since 1966, he would not be eligible and feels this is not only unfair to himself, but to the young people also. Said halibut stocks best condition in years. Whenever stocks are down, fishermen need to be able to diversify. Limited entry does not manage fish, only people.

Willy Nye, against moratorium. It undermines free enterprise system; competition should be allowed.

Mark Barham, F/V Topaz, opposed to moratorium; it can lead to limited entry in all fisheries. Fishermen need to be able to diversify. Halibut stocks have never been in better shape in the Kodiak area.

Barbara Monkiewicz, partner on 37-foot F/V. Fishes all species. Opposed to moratorium because fishermen need to diversify to make a living. Suggests two-day openings a month. All fisheries under artificial pressure because of the anticipation of limited entry. Her experience with salmon limited entry has shown that the Kodiak salmon fleet cannot support the debt service on the permit, boat and gear from just the salmon fishery although they have had three recent good years. There isn't any reason to expect that the halibut fishery would be different. Management techniques could solve the three problems in the halibut fishery as described in the draft moratorium, i.e., two-day openings beginning in May and ending in September; shorter opening over a longer period of time would also provide for a higher quality product which would bring a higher price. The third concern expressed, that of the problem of the halibut fishery no longer generating a significant portion of a fisherman's income, is not a real problem since fishermen no longer target on just one fishery. The Council is violating the spirit of the FCMA by eliminating American fishermen from the halibut fishery when the incidental catch is so high. Proposal B is limited entry without the benefit of cursory studies to justify its provisions. Would like the Council to work with the IPHC to change the management scheme to be more responsive to the current conditions, rather than focus on limited entry.

David Shrader, opposed to moratorium. Submitted written testimony, which has been distributed to Council members.

Oliver Holm, F/V Sulina, against moratorium. Fished halibut since 1973 and his CPUE was the highest ever in 1982. In Kodiak it's been a tradition to go back and forth among fisheries. The prospect of limited entry has contributed to the increase in effort. The fishery is not really depressed; some of the bigger boats have had their very best seasons in the recent past. Against moratorium because it only focuses on halibut and does not take in the whole picture.

David Kubiak, F/V Phoenix, against moratorium; its threatening to him and his 8-year-old son. Influx of effort due to speculation about limited entry. Believes moratorium is unfair and unnecessary. There are a lot of boats in Kodiak over 5 tons. Would like to see money from local fishery remain in town.

Don Starr, fished halibut since 1972, opposed to moratorium. There are a lot of boats in Kodiak over 5 tons. Would like to see money from local fishery remain in town.

Michael A. Jones, F/V Royal Quarry, 80-foot vessel; opposed to moratorium. Thinks a fisherman should be restricted to the area where he has delivered prior to the moratorium.

Timothy Howland, opposed to moratorium or limited entry of any form. Fishermen need to diversify. Against moratorium because: it does not consider alternative forms of management; stocks are improving; and moratorium rewards those who have fished halibut exclusively. Diversification is the backbone of the Kodiak fleet.

Barbara Martin, 21ft F/V Darling Dory. Fished halibut for three years. Against moratorium as it will eliminate many people, including young people.

Harold Jones, fisherman since 1947 from Oregon to Bering Sea. Against moratorium, especially for Kodiak as the Kodiak fishermen fish year around and others do not. Kodiak is unique in that fishermen there fish all year. Natural attrition will control the fisheries. Doesn't feel there's a problem with the resource. If Southeast wants limited entry, they should be allowed to have it; but Kodiak doesn't want it.

Mike Haggren, from Astoria, Oregon. Fished halibut since 1966. Fished six fisheries in past year and is against moratorium because people need to have the ability to diversify. Prospect of limited entry has created an artificial fishery because people want to qualify. If moratorium is to be put into effect, he would favor Proposal C.

Michelle Weekly, against moratorium. Feels moratorium will lead to limited entry and the systems she's heard discussed so far would not benefit the small boat fishermen at all and would probably destroy them. Is against the moratorium; no one should be denied the opportunity to fish.

Darrel R. Short, F/V Shearwater, against moratorium. If Southeast Alaska wants limited entry, that's fine; but not for Kodiak.

Charles M. Hill, F/V Ruff and Ready, 90-foot vessel. Against moratorium and limited entry of any form. Has been fishing for over 18 years on California, Oregon, Washington and Alaska coasts for king crab, Tanner, dungeness, shrimp, and other bottomfish. Employs five people full-time. Has 90 ft. vessel and has to be diversified in order to survive. Does not agree that stocks are on the decline. Thinks limited entry or moratorium would hurt Alaska; the bigger shares would go to Seattle.

Richard Thummel, F/V Windrunner-90foot vessel. Against moratorium. He has never fished halibut but with crab stocks in poor condition, wants the ability to do so. Thinks that things will even out without limited entry.

Carl Bach, 76-foot vessel. Fishes shrimp and crab--never halibut but wants option open to him. Against moratorium. Fished six years. IPHC has good control now; let it continue on that basis.

John Finley, fished for 18 years; against moratorium and limited entry. Feels the stocks are up right now, not down.

Paul Seastrand, fished 10 years. Against moratorium and limited entry; they are against the rights of an honest citizen.

Peter Allan, against moratorium and limited entry. Increase in fishery effort is because of Council's threat of limited entry. Wants many short openings.

Stated frozen halibut better than 20-day old "fresh delivered" fish. Requested Council try exclusive registration, gear limitations, before moratorium or limited entry. He criticized the Environmental Assessment and Regulatory Impact Review stating it did not address the need for the fleet to diversify.

Jim Miller, part owner, F/V George W., against moratorium and limited entry. Has not fished for halibut but wants the ability to diversify in future.

Charles L. Sink, F/V Karen K, a 5 nt vessel. Has fished halibut for two years. Against moratorium. Wants halibut openings once a month over the year. Said the talk of limited entry has caused the large influx of participants into the halibut fishery. (has submitted written testimony which has been distributed to Council)

Kirstin L. Stahl, fishery biologist. Opposed to limited entry. Understands the pros and cons of limited entry and does not think it is the answer. The easy answers are not necessarily the right answers. By creating a limited entry system you are creating a false economy.

Dennis McGusker, fished halibut for three years. Against moratorium because he feels there is no way it could be fairly distributed.

Harvey Goodell, has fished for two years as a crew member only. Against moratorium and limited entry because he would not be allowed a permit.

Eric Olsen, opposed to moratorium and limited entry because they would deprive him of the right to make a living in the way he has chosen. He does feel the resource should be controlled.

James A. Guilmet, opposed to moratorium. Has fished for 17 years. (said he would submit written testimony)

Alex "Bill" Leslie, against moratorium. Said the fishermen in favor are misinformed.

Mary Ann Hickey, against moratorium but feels it is the responsibility of the Council to come up with a plan they could agree to. Fishermen are not capable of writing management plans--that is up to the Council.

Peter Allen, wants a 25-day fishery this year. Wants an appeal procedure for the regulations on the moratorium.

Dave Herrnsteen, requested it be noted that all towns are different and Kodiak needs year-long fisheries for economic reasons. If halibut goes limited entry, so could all fisheries.

Wig Bisbee, questioned what other fisheries are being considered for limited entry. The moratorium issue has all happened too fast. Believes it is against free enterprise.

Preston Kester, opposed to limited entry in halibut. He said it was for the Seattle fleet at the expense of the Westward fisheries. (has submitted written testimony which has been distributed to Council)

Navah Jaskoski, opposed to limited entry for moral reasons. Has fished for seven years, her husband for ten. Two children which would not be allowed to get into the fishery under the proposed moratorium and limited entry.

Lu Dochitrowmann, opposed to moratorium and limited entry. Bought the worst boat in Kodiak in 1980 just so he could qualify for permit.

A general discussion was then held and the meeting adjourned at 1:00 a.m.

Summary of Public Testimony  
on  
Proposed Halibut Moratorium  
Seattle, Washington  
January 20, 1983

The North Pacific Fishery Management Council and the NOAA/NMFS conducted a public hearing on the proposed Halibut Moratorium in Seattle, Washington on January 20, 1983, at the Northwest and Alaska Fishery Center Auditorium. Approximately 80 members of the public attended, of which 37 testified. The meeting was chaired by Council member Harold Lokken. Other Council and staff members in attendance were: Gene Didonato, Keith Specking, Robert Mace, Rudy Peterson, Jim Branson, and Judy Willoughby. Patrick Travers represented NOAA & NMFS, as did Robert McVey as Regional Director of NMFS Alaska as well as a Council member. Jim Branson summarized the history of the halibut fishery and a briefly outlined the proposals of the moratorium. A synopsis of testimony received is given below.

Robert Alverson, Executive Director of the Fishing Vessel Owners Association (FVOA) favors moratorium. Submitted a written proposal to change the form of the moratorium.

Ray Olsen and Arne Einmo, F/Vs St. John, Leviathan, and Polaris (with Alverson) Want changes in moratorium as proposed by FVOA. Arne has fished for 50 years, but retired prior to base period so the moratorium would leave him and vessel without a permit. Olsen stated he would qualify on one vessel, but not the other.

Mark Lundsten, Deep Sea Fishermens Union (DSFU) President. Union has 160 active members who voted in favor of a two-year moratorium. For vessels under 5 nt, the permit should go to the individual.

Jack Crowley, F/V Kristine, FVOA. 40-year fisherman. Favors moratorium; if something isn't done the fishery will be lost. Suggests two-year moratorium.

William S. Gilbert, IPHC Commissioner, but representing Halibut Producers Assn. Favors moratorium but disagrees the frozen product is detrimental to the consumer. The Association has no clear consensus on limited entry. Favors moratorium because it gives time to study limited entry and the need for it.

Jay C. Brevik, Vice President of DSFU, supports moratorium, but not convinced about limited entry.

Richard Goldsmith, Coalition for Open Ocean Fisheries. Oppose all restrictions of access. Opposed to moratorium and limited entry.

Rodger Davis, strongly supports moratorium. Wants to give permits to legitimate fishermen. Permits should go to those under 5 nt who delivered 500 pounds or more and to those documented vessels who delivered over 1000 pounds.

Pete Knutsen, F/V Northern, owner/operator for 25 years. Supports moratorium and limited entry. Supports suggestion that the industry should be on group molding any limited entry system.

John Crowley, fished for 24 years; fished with father since 11 years old. Supports moratorium and limited entry.

Arni Thomson, favors a moratorium, but not current wording. Fished for 15 years. Must resolve the Seattle and Alaska fishermen's differences.

Robert E. Smith, Jr., DSFU, favors moratorium. Feels we must have it to save fishery.

Nick Delaney, F/V. Kodiak halibut fisherman for 12 years. Supports moratorium, but make it as short as possible. Incidental catch must be controlled.

Paul Clampitt, DSFU, ex-biologist and fisherman (for NMFS and IPHC). Supports moratorium with DSFU's proposal change.

Harold Hoem, F/V Coolidge, favors moratorium along with FVOA proposal. Fished 10 years for halibut; the old fleet is being penalized by the transients. Would like regulations by regions.

Terry Clausen, 12-year fisherman out of Petersburg and Seattle. Supports moratorium and wants consideration of the union proposal.

Per Odegaard, F/V Vansee, favors moratorium along FVOA proposal. Believes minimum 1000 pound delivery every year should be used for qualifying.

Gale A. Westfall, 15-year member of DSFU. Favors moratorium as presented by union.

Craig Gilmore, DSFU member for five years. Favors moratorium and wants to see a decrease in participants.

Doug Hoel, DSFU. Fished for last 18 years and supports moratorium as presented by union.

Kevin Hogan, owner/operator of a 32' F/V from Homer, Alaska. Not sure at this time. Feels we need more stock assessment.

Karl Sebastian, crewman. Favors moratorium. Wants the fishery to survive and feels if something isn't done to reduce effort it will not survive.

Angell Bunes, DSFU; 35-year crew member. Favors moratorium.

Eric Olsen, DSFU, all of his family (3 brothers, father, sisters) fish halibut. Favors moratorium and the union position. He will not be eligible for permit, but realizes something must be done.

Dean Adams, FVOA. Fished for 11 years and favors moratorium. Short season dangerous for crews and vessels.

Jon Adams, DSFU. Supports moratorium.

Marvin Gjerde, F/V Tordenskjold, member of FVOA. Supports moratorium. Feels livelihood is being ruined by those who have already ruined their own fisheries.



Philip Fretts, halibut fisherman since 1974. Supports moratorium and the union position.

Michael Jurkiewicz, DSFU. Fished 12 years. Favors moratorium. Feels we will lose fishery if we don't restrict increased effort.

Tom Bedell, DSFU, favors moratorium. Will lose fleet if there isn't some control.

Arne Lee, FVOA President. 20-year halibut fisherman. Favors moratorium. He may not like it, but sees it and limited entry as the only answer as other methods have not worked and it looks like the only way to preserve fishery. Concerned about safety of crew, etc., with current short seasons.

Nelson Downs, DSFU for 5 years. Favors moratorium.

Ginger Knutsen, FVOA, and F/V Grant. Favors moratorium. Husband has fished 30 years. She stated they need a full-time fishery; they are not looking for guarantees, just a viable fishery.

Craig Wolfla, DSFU. Fished for 18 years. Supports moratorium and union position. Wants to keep out the big boats from the crab and other fisheries.

Michael A. Ness, DSFU for 13 years. He's a third generation halibut fisherman. Supports moratorium because he wants the fishery to continue for at least 25 more years.

Vernon Jamison, 27-year fisherman. Supports moratorium. Supports Arne Lee's testimony about concern for crew safety, etc.

Arnold Einmo, has marketed fish for 15 years. Restaurants prefer fresh fish. If effort isn't limited the fishing will disappear.

Dean Adams (2nd time) With short season fish are not processed for days because of volume. Seasons must be longer and spread out so processors are not plugged.

Nick Delaney (2nd time) Last season over one million pounds were on the floor at Alaska Packers waiting for processing. It took over seven days to get them in the freezer.

Teleconference  
Public Testimony on Halibut Moratorium  
Seward, Cordova, Valdez, Soldotna, Yakutat  
Anchorage, Seattle, Juneau-NMFS, Juneau-Legislative Site  
January 24, 1983

Jim Branson, Executive Director of the North Pacific Fishery Management Council, began the teleconference by outlining how the teleconference would work giving a brief synopsis on the proposed halibut moratorium.

ATTENDEES

Anchorage:

NPFMC Staff: Jim Branson, Executive Director  
Clarence Pautzke, Deputy Director  
Judy Willoughby, Administrative Officer  
Doug Larson, Staff Assistant  
Helen Allen, Executive Secretary

Public:

John Glenn, Anchorage  
C.R. Kekoni, SRL, Box 2030, Chugiak, AK 99567

Seward:

George Warren, Box 604, Seward, AK 99664  
Peggy Pipkin, Box 407, Seward, AK 99664  
Fred Wolkers, Seward, Alaska  
Henry Anderson, Seward, Alaska

Cordova: Cordova didn't get on line; included in 1/26/83 teleconference

Valdez:

Keith Searles, Box 1043, Valdez, AK 98666

Soldotna:

Ron Smith, Box 883, Kenai, AK 99611  
Lyle Stevenson, Box 361, Sterling, AK 99672  
Harold Lechlitter, Rt. 1, Box 1215, Kenai, AK 99611  
Dale Cocklin, Box 424, Soldotna, AK 99669  
John Severe, Box 2922, Kenai, AK 99611  
Bill Page, Box 3361, Soldotna, AK 99669

Yakutat:

Jack Endicott, Box 314, Yakutat, AK 99689  
Bill Nichols, General Delivery, Yakutat, AK 99689  
Dave Russell, Box 301, Yakutat, AK 99689  
Bob Tate, Box 402, Yakutat, AK 99689  
Russ Bogren, Box 401, Yakutat, AK 99689  
Dale Wells, Box 4, Yakutat, AK 99689  
Greg Dierick, Box 421, Yakutat, AK 99689  
Darrel Stewart, Box 196, Yakutat, AK 99689

Seattle:

Jack E. Crowley, FVOA, Seattle  
Pete Knutsen, FVOA, Seattle  
Robert D. Alverson, FVAO, Seattle  
Arne Lee, FVOA, Seattle  
Steve Spleen, Alaska Power Troll, P.O. Box 655, Suquamish, WA 98392  
Kleve R. Enge, Deep Sea Fishermens Union, 2633 N.W. 60th, Seattle, WA 98107  
Per Odegaard, FVOA, Seattle  
Norman Ness, FVOA, Seattle  
Ralph Jenkins, FVOA, Seattle  
Marvin Gjerde, FVOA, Seattle  
Harold Lokken, NPFMC Council member  
Rudy Petersen, NPFMC Council member  
Marc Miller, Institute of Marine Studies HA-35, Univ. of Washington, Seattle  
WA 98105  
Joe Terry, NWAFC

Juneau:

NMFS-Pat Travers

Juneau Legislative Site:

Representative Goll, Pouch V, Juneau, AK 99811

George Warren, Seward, asked how the Council could justify the limitation on escalating the size of the boat. Mr. Branson responded that the Council at this time was just requesting public input; no decisions have been made. Mr. Warren asked if the Council knows how people would qualify under the proposed moratorium. Mr. Branson responded that over 6,000 people held licenses, but actual delivery of fish is necessary to qualify under the proposed rulemaking.

Peggy Pipkin, Seward, feels the permit should be on the individual. If you have limited entry on a share system, then it wouldn't make much difference what size boat you fish. Ms. Pipkin also suggested that fishermen register by area, like the crab fishery.

Steve Queen, Alaskan power troller out of Seattle, said he doesn't understand the reason for the inclusion of Alaskan power trollers in the moratorium when you consider the power troll fishery has been stabilized for the last eight to ten years. Jim Branson responded that they are included primarily because the troll fishery is one of the legal halibut fisheries; it would not be fair to

exclude them. Mr. Queen said he has recently purchased a limited entry permit for the salmon troll fishery; the boat was purchased from a person who has fished and sold halibut for the base period. He asked whether that would qualify him for inclusion in the halibut fishery for moratorium purposes. Jim Branson replied that, as the proposed rulemaking now stands, Mr. Queen would not qualify. However, it would be possible to write the moratorium so that this sort of thing could be included. Mr. Queen said he thinks it should be included; if you buy a permit, you should be eligible.

George Warren, Seward, feels the permits should be restricted to the person; some canneries own boats and they should not get a permit.

Peggy Pipkin, Seward, asked why there should be a proposed moratorium when limited entry may come into effect in 1984. Mr. Branson stated that the reason is to allow the time to study limited entry without a large number of people getting into the fishery with the anticipation of limited entry. Ms. Pipkin feels that no limited entry should go into effect, then, until the moratorium expires.

Fred Wolkers, Seward, commented on the report on limited entry which has been contracted. Feels it is fairly one-sided in favor of the share system. Asked whether more study would be done on any other system. Mr. Branson explained that the reason the report concentrates heavily on the share system is that it is the limited entry system which is least known; there is available information on other systems which are in place in other states; however this does not mean the Council is considering only the share system. Mr. Warren also commented that out-of-state boats should deliver to the nearest port; this would help address the problem of getting a better quality product to the consumer.

Ms. Pipkin, Seward, is concerned with the provision that does not allow an upgrade of boats. Recently bought a new boat which is longer than the old; the fish hold capacity is no larger; it is simply a heavier boat. She doesn't feel she should be penalized for this.

George Warren, Seward, thinks the restriction should be on gear, not the boat. Large boats should be restricted to the same amount of gear they had at the onset of the moratorium.

Ron Smith, Soldotna, said he is very concerned about limiting size of boat; this could limit a fisherman's ability to make a living, especially when the amount of fish is increasing.

Jack Endicott, Yakutat, feels that every year there are more non-Alaskan boats moving up when they have depleted their own resources. Non-resident boats should be limited. Jim Branson replied that there is no way the Council could limit non-resident boats. Statistics don't support Mr. Endicott's theory; there has been only a slight increase in Alaska of non-resident boats.

Bob Alverson, Seattle Fishing Vessel Assn., said the main problem is whether or not people perceive a problem in the fishery at this time. His Assn. does, and has supported a moratorium, but not as proposed in the rule. They feel that permits should be issued to the individual with boats of less than 5 tons and on the ownership of the boat when the vessel is more than 5 tons. He said

that with 5,000 to 6,000 permits available, probably about 4,000 are on smaller vessels. Seattle vessel owners are not necessarily in favor of a share system. They feel the fleet should be able to dictate what goes into the moratorium.

Peggy Pipkin, Seward, said she understands that the freeze will give the Council time to study the form for a limited entry system; but actually a moratorium is a form of limited entry.

Jim Branson noted that the proposed rulemaking does not actually have a restriction on tonnage; that is an alternative suggested by industry.

Jack Endicott, Yakutat, asked when specific decisions will be made. Mr. Branson replied that the Council will be making the decisions at their Council meeting the week of March 28, after the public hearing process is completed. He also said that public comments would be summarized for the Council and for public inspection.

An unidentified speaker from Seattle asked Pat Travers at the NMFS site in Juneau why there had been a delay in publication of the Notice of Proposed Rulemaking and whether that would make any difference in when the moratorium would take effect. Mr. Travers said that because of new procedures under President Reagan, any proposed rulemaking must be reviewed by the Dept. of Commerce and Office of Management and Budget before publication. This has delayed the publication; however, the moratorium is intended to be in place before the opening of this next season.

Arne Lee, a Seattle fisherman, said he would like to continue making a living from the halibut fishery; and is concerned that if we don't have some form of moratorium or limited entry, there won't be a viable fishery. This is what has happened on the East Coast--halibut is now just an incidental catch.

Ron Smith, Soldotna, agreed. Conservation is important.

Mark Lundsten, President of the Deep Sea Fishermen's Union in Seattle, said that his association has no interest in the boats or permits; they are crewmen and are interested in continuing their livelihood. They support the moratorium because in this way the permits will not become more valuable as happened in the salmon fishery. The members of their organization have nothing to gain monetarily; they feel it is important to keep the fishery healthy.

Alaska Representative Goll asked for public comments on halibut limited entry be sent to him in Juneau.

Norman Knapp, Seattle, has been a halibut fisherman for 12 years, supports the moratorium because it is necessary for conservation and economic reasons. Without the moratorium there will not be a halibut fishery. He said there should not be any more time wasted in getting a proposal drawn up.

Ron Smith, Soldotna, suggested that foreign fishing should be eliminated from the 200-mile limit totally in the Southeast and Gulf areas for six months out of the year and greatly restricted during the rest of the year. Any vessel which is unsupervised is going to take more than they should. The moratorium

should be in effect only three years and other restrictions should not be added. After that period, the situation should be reviewed before anything else is done.

Peggy Pipkin, agrees with Mr. Smith's recommendations.

Pete Knudsen, a Seattle halibut fisherman and boat owner, feels that if a moratorium goes into effect without restricting fishermen from upgrading their boats, people will take the opportunity to upgrade before limited entry.

Keith Searles, Valdez, a commercial fisherman since 1974, uses a 20-ft. skiff, thinks there should be some provision for crewmen to obtain permits.

Peggy Pipkin, Seward, believes that a gear limit would be better than limiting boat size.

Jack Endicott, Yakutat, said that most of the fishermen in Yakutat think there should be a moratorium; however they have a question on Proposal B, #8: what happens if the vessel owner dies? What happens to the permit? Jim Branson replied that this particular proposal came from the Vessel Owners' Assn. in Seattle. The intention was that if the owner died during the moratorium, that permit would "disappear." It could not be transferred or sold.

Bob Alverson, from the Vessel Owners' Assn., said that the intent actually was that the permit would stay with the estate of the deceased.

Henry Anderson, Seward, asked if consideration had been given to people who have been absent from the state, i.e., people in the armed services, or students, who would not be eligible under the proposed rulemaking. Mr. Branson replied that at this time they had not been included in the draft, but could be included in the final rulemaking if enough of the people testifying felt that it is desirable.

Jack Endicott, Yakutat, said that the gear limit idea is really not an effective tool; can limit the amount of gear, but not the number of times it is used during the day. This would be totally inefficient as compared to the vessel limit.

Harold Leichlitter, Kenai, disagrees with the limit on boat size.

John Glenn, Anchorage, doesn't agree with the base period outlined in the Notice of Proposed Rulemaking; eligibility could be based on the area fished when the moratorium is initiated. Mr. Glenn also asked whether a fisherman who fished a boat under 5 nt would be allowed to fish. Mr. Branson explained that, under one proposal, if a person fished a boat under 5 net tons during the base period, that he would be able to use any boat under 5 nt during the moratorium. If he used a documented vessel during that qualifying period, then he would be able to use a vessel of that tonnage and any boat up to 10% larger.

John Severe, Box 2922, Kenai, asked for clarification on the handling of permits--would it depend on what type of permit you had, i.e., longline, hand, etc. Mr. Branson explained that the concept is that if you legally fished for halibut during the qualifying period, you could continue to do so using the same methods.

Public testimony was completed at 10:15 a.m.

Summary of attendees at each site:

Seward	14
Valdez	1
Soldotna	11
Yakutat	8
Seattle	20
Juneau Legislative	7
Juneau NMFS	2

NOTE: There was confusion as to where the hearing site was in Soldotna; thus, they were late in joining the conference.

Teleconference  
Public Testimony on Proposed Halibut Moratorium  
Sand Point, Unalaska, St. Paul, King Cove, Seattle, Cordova  
Juneau-NMFS, Juneau-Legislative Site  
January 26, 1983

Jim Branson, Executive Director of the North Pacific Fishery Management Council, began the teleconference by outlining how the teleconference would work and giving a brief synopsis on the proposed halibut moratorium.

ATTENDEES

Anchorage:

NPFMC Staff: Jim Branson, Executive Director  
Clarence Pautzke, Deputy Director  
Judy Willoughby, Administrative Officer  
Doug Larson, Staff Assistant  
Helen Allen, Executive Secretary

Public:

Terry L. Willard, 3307 Boniface Pk., Sp. 54, Anchorage, AK 99504  
C. R. Kekoni, SR 1, Box 2030, Chugiak, AK 99567  
Dale D. Willard, 3307 Boniface Pkwy, Sp. 54, Anchorage, AK 99504  
Kathleen Graves, c/o 5902 Buckner Dr., Anchorage, AK 99504  
John J. Durkin, Box 8-752, Anchorage, AK 99508

Sand Point:

Martin Spargo, Box 35, Sand Point, AK 99661  
Jim Moritz, Box 32, Sand Point, AK 99661  
Bruce Ross, Box 126, Sand Point, AK 99661  
Rosemary Medieck, Box 75, Sand Point, AK 99661

Unalaska:

Ken Griffin, Area Shellfish Biologist, Unalaska, AK  
Rep. Eric Sutcliffe, Box 3, Unalaska, AK 99685  
Jeff Harrison

St. Paul Island:

Max Lestenkof, Central Bering Sea Fishing Assn., Box 87, St. Paul Island,  
Box 87, St. Paul Island, AK 99660

King Cove:

Tom Carney, P.O. Box 265, King Cove, AK 99612  
Vernon Wilson, Box 272, King Cove, AK 99612  
Robert E. Newman, Box 65, King Cove, AK 99612  
Nels Wilson, Sr., Box 44, King Cove, AK 99612



Robert Gould, Box 244, King Cove, AK 99612  
Johnny Mack, Box 112, King Cove, AK 99612  
Ron Wickstrom, Box 221, King Cove, AK 99612  
Earl Mack, Box 11, King Cove, AK 99612  
Henry D. Larsen, Jr., Box 207, King Cove, AK 99612  
Ivar Kurzokn, Box 273, King Cove, AK 99612  
Edwin Bendixon, Box 27, King Cove, AK 99612  
Henry Mack, Box 224, King Cove, AK 99612  
Sam Nenzenoff, Jr., Box 85, King Cove, AK 99612  
Edwace Mack, Box 95, King Cove, AK 99612  
Herman Samuelson, Box 8, King Cove, AK 99612  
Walter Wilson, Jr., Box 228, King Cove, AK 99612  
Emil Wilson, General Delivery, King Cove, AK 99612  
Richard Mack, General Delivery, King Cove, AK 99612  
Glen Mack, General Delivery, King Cove, AK 99612  
Lawrence Yatikmeneff, General Delivery, King Cove, AK 99612

Cordova:

Mike Appleton, Box 777, Cordova, AK 99574  
Garvin Bucaria

Seattle:

Harold Lokken, NPFMC Council Member  
Rudy Petersen, NPFMC Council Member  
Robert Alverson, FVOA, Rm 232 C-3 Bldg, Fishermen's Terminal, Seattle,  
WA 98119  
Nick Delaney, Box 2712, Kodiak, AK 99615  
Jack E. Crowley, FVOA, 3316 NW Golden Pl, Seattle, A 98117  
Marvin Gjerde, FVOA, 4525 W. Emerson St., Seattle, WA 98119  
Arne Lee, FVOA, 6200 NE Lincoln Rd., Poulsbo, WA 98370  
Pete Knutsen, 7149 N.E. Port Madison, Bainbridge Island, WA 98110  
Wayne Larson, FDA, 5009 Federal Office Bldg., Seattle, WA 98174  
Mark S. Lundsten, DSFU, 5215 Ballard Ave. NW, Seattle, WA 98107  
Bunny Lowman, Institute for Marine Studies, 4114 Interlake N.,  
Seattle, WA 98103  
Joe Terry, NWAFC, Seattle  
Juneau-NMFS: Pat Travers, Sue Salvesson, Lew Queirolo  
Juneau Legislative Site: 9 observers

Jim Moritz, Sand Point, has been a fisherman since 1961. He recognizes the need for a moratorium to stem the flow of new entries into the fishery, but does not agree with the proposed base period. This time period will not allow Sand Point fishermen to participate. The base period should start in 1968. The Sand Point fishermen have not been allowed to develop the halibut fishery because Seattle fishermen have been fishing in their back yard.

Martin Spargo, said he is against limited entry and the moratorium, although he feels that the decision has already been made. He also feels that with the suggested methods of permit issuance twice as many would be allowed to participate as there are now. He feels that if the fishery were allowed to continue as it is, it would take twenty years to reach that number of participants. The South Peninsula has had a limited number of additional participants as

compared to the other areas; should be limited by area. Sand Point residents make their living by the sea, and there are a lot of young people who did not get salmon permits and would also be denied the opportunity to fish halibut under the proposed rulemaking. The Council should look at other ways to distribute the catch throughout the year without limited entry. Mr. Spargo will send the Council a written copy of his testimony.

Council member Harold Lokken in Seattle asked Mr. Spargo the number of fishermen in Sand Point and how much it had increased in the last five years. Mr. Spargo answered that he doesn't know the exact number of participants, but that it has pretty much remained at the same level; no significant increase. Mr. Lokken asked if it is likely that there would be an increase in the future. Mr. Spargo feels that there should be the chance for young people to get a foothold in the fishery.

Eric Sutcliffe, Unalaska, said he would have appreciated having the informational material sooner. He said that there is the same problem in Unalaska with the halibut moratorium as there was when the salmon fishery went limited entry; their area was not eligible. They have not been fishing halibut, but have been trying to develop a small bottomfish fishery. Very opposed to the moratorium and limited entry because the people in the Aleutians would not qualify. Mr. Branson, NPFMC, asked Mr. Sutcliffe if a different qualifying period would make a difference. Mr. Sutcliffe replied that in order to include his area, it would have to go back to the 1940s or 1950s. Council member Lokken asked Mr. Sutcliffe what the potential is for a halibut fishery in Unalaska in the next three years with no moratorium. Mr. Sutcliffe said that is almost impossible to predict. They have not developed a bottom fishery yet. They have never filled their quota. Their small boat harbor has just been completed and the people are just beginning to think about buying a boat and getting into the fishery.

Nick Delaney, a Kodiak fisherman testifying from the Seattle site, asked Sand Point and Unalaska if limited entry in the salmon fishery ensured a stable, economically feasible fishery.

Jim Moritz, Sand Point, responded that it has been only in the last two years that there has been enough money in the salmon industry to sustain them. They made a living on halibut in 1968-73; then in 1974-75 couldn't fish halibut and salmon at the same time. In 1973-74, some of the halibut fishermen got out because it was too regulated; now the people who didn't fish in those years are going to be excluded.

Mike Appleton, Cordova, said he feels that most fishermen feel afraid that the moratorium is going to crimp their lifestyle and they want to be sure that they can maintain their current status. He feels limiting permits is O.K., but limiting the size of boats and gear, etc., is really confining. Mr. Branson asked Mr. Appleton if he would favor a lid on effort, but not on boat size or gear. Mr. Appleton agreed.

Mike Zeharoff, Chairman of the Central Bering Sea Fishermen's Assn., Sand Point, said their concern is why the Pribilof Islands are excluded from the moratorium.

Max Lestinkoff, Central Bering Sea Fishermen's Assn., Sand Point, said his association has evaluated the pros and cons and they would like to go on record as supporting the moratorium with the option included in Attachment 1, on entry of certain fishermen in 2C and 3 and South of 56°N. The reasons are already outlined in the documents issued by the Council. Mr. Lestinkoff said he would also like to reemphasize what his counterparts have been finding out in the past--strong efforts must be made to reduce foreign vessels in the domestic waters.

Tom Carney, King Cove, feels a moratorium at this time would not be advantageous to the people of King Cove. King Cove is predominantly fishermen; having the halibut taken away from them would be very serious. He feels there should be some means to give people from the villages the opportunity to fish halibut. Council member Lokken asked Mr. Carney what the potential is for a halibut fleet in King Cove; how many now and whether or not there would be a large increase if there is no moratorium. Mr. Carney responded that there are about 20 to 25 boats out of King Cove and there is the potential for double if the halibut season lines up between the salmon seasons.

Bob Alverson, Seattle Vessel Owners' Assn., asked Mr. Carney whether the doubling of fishermen he mentioned is largely people who are fishing salmon. Mr. Carney responded that about 50% of the people in the area have limited entry permits for salmon.

Chuck Kekoni, Chugiak, testifying from the Anchorage site, said that he has run four newspaper ads asking for response from fishermen who want more information on the halibut moratorium. He has received calls from all over Alaska. Everyone feels that this moratorium has happened too fast; they haven't had time to study and analyze the information disseminated. He is organizing and incorporating a group called Alaska Halibut Fishermen's Assn.

Mr. Kekoni said he feels that the moratorium should include incidental catches so that they could be controlled; then limited entry would not be necessary. The yearly catch quota is the only way to keep the fishery from being overutilized. He said figures show that the fishery is not depleted at this time. If the quota was divided into six monthly divisions, approximately 5 million pounds could be taken each month. Also, the control of the amount of hooks on each boat, per set, could be used to control the amount of fish being caught.

Mr. Kekoni said he felt not enough time had been given to fishermen to study the issue of the proposed moratorium; he would request that more time be allowed for input. Council member Lokken asked Mr. Kekoni how many fishermen he had spoken to. Mr. Kekoni replied he had spoken to approximately 20. He was also asked how many hooks he felt would be appropriate. Mr. Kekoni replied that that would have to be up to the IPHC after analysis of how many boats, etc., to see what the optimum amount of hooks could be without overfishing the resource.

Dale Willard, Anchorage, got into halibut fishing because of his restaurant business. Mr. Willard said because of his small boat, the weather kept them in most of last season. He feels that if limited entry comes in, restrictions should be on number of hooks. He prefers Proposal B, but does not agree with operator/owner doubling. Council member Lokken asked Mr. Willard how many

hooks per vessel; should it be by size of vessel or overall. Mr. Willard suggested should start with a base number and then increase by boat size.

John Durkin, Anchorage, said he feels that Alaska doesn't want this, and because he feels the public hearing process was not followed, that it will go to the supreme court.

Bob Alverson, Fishing Vessel Owners' Assn., Seattle, said that his association is not necessarily in favor of a share system.

Kathleen Graves, Anchorage, said she is opposed to the moratorium for 1983.. She feels smaller quotas should be set and spread over different areas. Current gear specifications are adequate. She feels the moratorium will not change the problems of mismanagement. Ms. Graves is in favor of postponing a moratorium at this time. Subsistence needs have to be addressed; two fish per day is not enough.

Jack Crowley, FVOA, Seattle, referred to the California system of limited entry. He said he would give a copy to Council member Harold Lokken. In that system, the permit is on the vessel.

Jim Moritz, Sand Point, said he would prefer exclusive registration areas, as in the crab fishery.

Chuck Kekoni, Chugiak, referred to a letter he sent to IPHC asking what action they had taken on the moratorium; the IPHC replied that they have not authority to act in this matter. Mr. Kekoni asked who initiated the moratorium. Jim Branson, NPFMC, said the first requests were from the halibut industry; the share system request was from the IPHC conference committee in 1982.

Garvin Bucaria, Cordova, has participated in the halibut fishery during the qualifying period. He has just received the informational packet and has not had enough time to review it, but he suggested a provision for increasing quotas when stocks increase. He said he is a small boat fisherman and is impacted greatly by weather; he would like to increase the size of his boat.

Martin Spargo, Sand Point, said he feels Prop. A is not fair because it excludes earlier fishermen or people who want to get into the fishery, i.e., the young people. In Proposal B, he feels this is a form of discrimination; a person would never have the opportunity to expand his boat.

Jeff Harrison, Unalaska: Halibut is a developing industry in Unalaska; they were excluded from the salmon limited entry and now it looks like the same thing will happen with halibut.

Mark Lundsten, Seattle Deep Sea Fishermen's Union, said it is important to work together toward the health of the resource.

Emil Barkoff, Unalaska, said he is opposed to the moratorium and limited entry. There should be some sort of quota. He said a study should be done to see how many halibut there are; there is no problem with stocks in his area.

Martin Spargo, Sand Point: Preservation of stocks and distribution of effort are the goals of the moratorium. Maybe the seasons could be split by area, like crab.

Teleconference  
Public Testimony on Proposed Halibut Moratorium  
Sitka, Hoonah, Craig, Wrangell, Haines, Soldotna, Anchorage  
Juneau-NMFS, Juneau-Legislative Site  
January 28, 1983

Jim Branson, Executive Director of the North Pacific Fishery Management Council, began the teleconference by outlining how the teleconference would work and giving a brief synopsis on the proposed halibut moratorium.

ATTENDEES

Anchorage:

NPFMC Staff: Jim Branson, Executive Director  
Clarence Pautzke, Deputy Director  
Judy Willoughby, Administrative Officer  
Doug Larson, Staff Assistant  
Helen Allen, Executive Secretary

Public:

C. R. Kekoni, SR 1, Box 2030, Chugiak, AK 99567  
Kathleen Graves, c/o 5902 Buckner Dr., Anchorage, AK 99504  
John J. Durkin, Box 8-752, Anchorage, AK 99508

Sitka:

Paul Rickert  
Al Chesnut  
John Polivka  
Tom Guggenbickler  
Linda Olin  
Peter Zachara  
Charles Christensen  
Terry MacDonald  
Vick Griffin

Craig:

Ellen Hannon

Wrangell:

Names not available; listened in, but did not testify.

Haines:

Never got on line.

Soldotna: (Reconnected 2nd time)

Ron Smith  
Howard Ulrich, Jr.  
Ron Blankenship

Hoonah: Never got on line.

Seattle:

Harold Lokken, NPFMC Council Member  
Rudy Petersen, NPFMC Council Member  
Arne Lee, FVOA, 6200 NE Lincoln Rd., E., Poulsbo, WA 98370  
Jack Crowley, 3316 NW Golden Pl., Seattle, WA 98117  
Robert Alverson, FVOA, 8-222nd SW, Bothell, WA 98011  
Joe Terry, NWAFC, Seattle  
Jack Knutsen, Seattle

Juneau:

NMFS-Juneau: Pat Travers, Lew Queirolo  
Juneau Legislative Site: 1 observer

Paul Rickert, Sitka, requested a summary of data for American and incidental catches by fleets in 1982, which was provided by Jim Branson, Executive Director, NPFMC. Mr. Rickert asked when 100% observership of foreign fleets will be accomplished. Mr. Branson replied that last year a 35% observership was achieved and expect to increase that another 10-15% this year.

John Polivka, Sitka, a salmon troller for 16 years, believes the moratorium should be put in place to protect those who have invested their money and lives in the fishery. Some trollers have gone longline in order to protect their interests in case of a moratorium or limited entry.

Vic Griffin, will send written testimony w/list of Sitka participants.

Al Chesnut, Sitka, has fished for 11 years of out sitka; his son also fishes long line. In favor of the moratorium in some form. Could live with Proposal A and C, but prefers Proposal B. Would like troll halibut quota so they don't have to fish longline gear.

Tom Guggenbickler, ATA, Sitka. Mr. Guggenbickler is a troller and favors the moratorium and some form of limited entry. Proposed separate quota and season for trollers.

Paul Rickert, Sitka, brought up the problem of children not being eligible to enter when they are ready to enter the fishery.

Linda Olin, Sitka, fishes a longline vessel. Favors short seasons, good products, etc. and supports incidental catch for trollers. Favors the proposed moratorium. Has no preference whether permits are issued on boats or person. Since the issue of a moratorium came up in 1979, serious fishermen have had ample time to qualify.

Peter Zachara, Independent Fishermen of Alaska, Sitka, feels there are inconsistencies in the draft of the proposed moratorium. Disagrees with the statement that the stocks are at a depressed level; actually, they are greater now than in the 1960s. The short season in Area 2C is due to the 60/40 split with Canada. The one million that foreign trawlers were taking should be released and that restrictions should be imposed rather than a moratorium. The Independent Fishermen of Alaska are opposed to the moratorium.

Bob Alverson, Seattle, asked if the Independent Fishermen were rescinding their earlier letter approving the moratorium. Mr. Zachara affirmed this.

Chuck Kekoni, Chugiak, said that something should be done about the foreign incidental catch. Agrees that the halibut stocks are not depleted; limited entry is not the way to set limits.

Charles Christensen, (Petersburg Vessel Assn), Sitka feels shorter and shorter seasons do not make sense; management is the only way. Supports the moratorium so a workable system can be found.

Chuck Kekoni, Chugiak, would like to see every permit holder canvassed to see how they feel on the moratorium.

Ron Smith, Soldotna, feels the publicity for the hearings was not effective.

Howard Oliver, Jr., wants everyone to be aware of the fish taken by draggers.

Ron Blankenship, supports the moratorium. He has been fishing halibut since 1949; ten years ago he derived 100% of his income from the halibut fishery and last year he only got 20%.

Ellen Hannon, Craig, supports of the moratorium.

Terry MacDonald, Sitka, is an owner/operator with 30 years experience, supports the moratorium.

Jack Knutsen, Seattle, has been fishing for 28 years as a longliner and has always made 100% of his income from halibut until about five years ago. He supports the moratorium.

Public testimony was concluded.

Representatives McBride, Goll, Herman, and Zharoff requested summaries of the teleconference hearings.



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Office of General Counsel  
P.O. Box 1668  
Juneau, Alaska 99802  
Telephone (907) 586-7414  
March 28, 1983

TO: F/AKR - Robert W. McVey  
NPFMC Members and Staff

FROM: GCAK - Patrick J. Travers *Pat Travers*

SUBJECT: Legal Analysis of the Halibut Limited Entry System  
Proposed in Northwest Resources Analysis' Draft  
Report, "Limited Entry in the Pacific Halibut  
Fishery: The Individual Quota Option"

#### INTRODUCTION

The purpose of this memorandum is to provide an initial legal analysis of the system of limited entry recommended for the Pacific halibut fishery off Alaska in a Report to the North Pacific Fishery Management Council (Council) by Northwest Resources Analysis of Seattle, Washington, entitled "Limited Entry in the Pacific Halibut Fishery: The Individual Quota Option" (Report). The Report was prepared by Dr. Robert L. Stokes of the University of Washington under a contract with the Council. It discusses the feasibility of a limited entry system for the fishery under which "shares" or "quotas" representing rights to harvest specified portions of the annual permissible halibut catch would be assigned to individual fishermen, who could either exercise those rights or transfer them to other fishermen. This type of proposed system has come to be commonly called the "share system," and it will be so referred to in this memorandum. The Report includes a number of recommendations for specific features of any share system that the Council might adopt for the Alaska halibut fishery, and attempts to assess the economic costs and benefits of a share system having these features.

The following analysis first examines the authority of the Council to adopt, and NOAA to approve, a share system as recommended by the Report under the Northern Pacific Halibut Act of 1982, Pub. L. 97-176, 97 Stat. 78, 16 U.S.C. 773 et seq. (May 17, 1982) (Act), and evaluates the consistency of that system with the standards that the Act prescribes. It then discusses means by which a share system could be implemented in accordance with constitutional and statutory procedural requirements while avoiding reliance on a large number of trial-type hearings. The analysis then describes the issues that must be resolved in order to determine the extent to which implementation of the share system could be delegated to the State of Alaska or another entity





outside of NOAA; and the authority of the Council and NOAA to impose on shareholders penalties and sanctions other than those specifically provided for in the Act. The analysis concludes with a discussion of the various senses in which the rights conferred on fishermen under a share system would and would not constitute "property" for legal purposes.

**AUTHORITY FOR ADOPTION AND APPROVAL OF THE SHARE SYSTEM UNDER THE ACT, AND CONSISTENCY OF THE SHARE SYSTEM WITH THE ACT'S STANDARDS**

General authority of the Council to adopt, and NOAA to approve, the share system as recommended by the Report

The statutory provision under which the Council would adopt, and NOAA approve, a share system for the Alaska halibut fishery is contained in §5(c) of the Act:

The Regional Fishery Management Council having authority for the geographic area concerned may develop regulations governing the United States portion of Convention waters, including limited access regulations, applicable to nationals or vessels of the United States, or both, which are in addition to, and not in conflict with regulations adopted by the Commission. Such regulations shall only be implemented with the approval of the Secretary, shall not discriminate between residents of different States, and shall be consistent with the limited entry criteria set forth in section 303(b)(6) of the Magnuson Fishery Conservation and Management Act. If it becomes necessary to allocate or assign halibut fishing privileges among various United States fishermen, such allocation shall be fair and equitable to all such fishermen, based upon the rights and obligations in existing Federal law, reasonably calculated to promote conservation, and carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of the halibut fishing privileges: Provided, That the Regional Council may provide for the rural coastal villages of Alaska the opportunity to establish a commercial halibut fishery in areas in the Bering Sea to the north of 56 degrees north latitude during a 3 year development period.

There appears to be no serious room for doubt that this provision gives the Council general legal authority to adopt, and NOAA such authority to approve, a share system for the Alaska halibut fishery having the general characteristics described in the Report. Regulations implementing the share system as recommended in the Report would plainly be "limited access regulations" within the meaning of §5(c) of the Act, quoted above. The members of Congress primarily responsible for drafting §5(c) are widely known to have been aware at that time of the proposals for a share system for the Alaska halibut fishery, and of the fact that §5(c) was likely to be relied upon as authority for establishment of such a system. The "geographic area concerned" is Alaska, over which the Council has marine fishery management authority under Magnuson Act §302(a)(7).

Section 5(c) allows limited access regulations to apply in "Convention waters," which are defined in §2(d) of the Act and Articles I(1) and II(3) of the Convention Between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention) to include the fishery conservation zone (FCZ), the territorial sea, and internal waters. Thus, the authority of the Council and NOAA under the Act is not limited to the FCZ, in sharp contrast with their authority under the Magnuson Act. Because only nationals and vessels of the United States may participate in the Alaska halibut fishery in Convention waters, the application of the share system is of necessity limited to such nationals and vessels.

No feature of the share system as described in the Report would appear to conflict with any existing or, for that matter, foreseeable regulation of the International Pacific Halibut Commission (Commission) established by the Convention. Commission staff members have, in fact, been supportive of share system proposals and cooperated in the preparation of the Report. The Secretary of Commerce has delegated his authority to approve regulations developed by the Council under §5(c) to the NOAA Administrator.

Consistency of the share system as recommended by the Report with the standards of the Act

Before examining the consistency of the share system as it is recommended in the Report with the standards prescribed by §5(c) of the Act, it is important to note that the Report refrained from endorsing specific principles for allocation of halibut fishing rights among fishermen. This necessarily limits the scope of this memorandum, because it will be the allocation principles ultimately adopted by the Council that will, in all likelihood, raise the most significant questions

about the consistency of a share system with the Act's standards. Nevertheless, the share system as recommended by the Report has been sufficiently elaborated to permit evaluation of many of its features in light of the standards of §5(c).

(1) Nondiscrimination among residents of different States

The share system as recommended in the Report does not appear to contain any feature that can reasonably be considered to discriminate in favor of or against any person on the ground of that person's State residency.

(2) Consistency with the criteria of Magnuson Act §303(b)(6)

Section 5(c) of the Act requires that regulations adopted under its authority be consistent with the limited entry criteria of Magnuson Act §303(b)(6), which provides as follows:

[An FMP may--]

\* \* \*

(6) establish a system for limiting access to the fishery in order to achieve optimum yield, if, in developing such system, the Council and the Secretary take into account--

- (A) present participation in the fishery,
- (B) historical fishing practices in, and dependence on, the fishery,
- (C) the economics of the fishery,
- (D) the capability of fishing vessels used in the fishery to engage in other fisheries,
- (E) the cultural and social framework relevant to the fishery, and
- (F) any other relevant considerations....

It should first be emphasized that this provision requires only that the factors listed be "taken into account" in the development of a limited access system. It is not required that they be accommodated by that system if the Council and NOAA reasonably find that other factors should be given greater weight. This conclusion is reinforced by the probability that, in many instances, accommodation of some of the five specifically enumerated factors would require that others of those factors not be accommodated. For example, if the economic viability of a fishery required the use of large-scale, new technology by a relatively small number of gear units, it could be permissible for that fishery's limited access system not to reflect historical fishing practices in and dependence on the fishery. Congress itself seems to have recognized the limited role of these factors by giving equal status to "any other relevant considerations."

By doing this, it gave the Council and NOAA great discretion to allow the five named factors to be overridden by other factors they consider relevant, subject to the "arbitrary and capricious" standard of judicial review that applies to most Federal rulemaking under the Administrative Procedure Act, 5 U.S.C. Chapters 5 and 7 (APA). Thus, it need only be determined whether the share system as recommended in the Report would reflect a "taking into account" of the factors set forth in Magnuson Act §303(b)(6), and not whether it would accommodate those factors. Once again, the scope of this determination at this time is limited by the fact that the Report does not endorse specific principles for allocation of fishing rights among halibut fishermen.

As has been advised in previous discussions with the Council, the requirement that the first two factors be taken into account would probably be violated by a limited access system that categorically ignored halibut fishing activities during the year immediately preceding that system's implementation, without evidence in the record that the effects of that categorical exclusion had been assessed during the system's development. If, however, the Council and NOAA had determined the effects of the exclusion in light of the first two factors, and had reasonably determined that they were outweighed by "other relevant considerations," then such an exclusion could be permissible. This is relevant to the determination whether a share system or other permanent limited access system to replace the moratorium would have to reflect participation in the fishery during the moratorium, or whether it could reflect participation only before the moratorium went into effect. Before adopting and approving a system that did not reflect participation during the years since implementation of the moratorium, the Council and NOAA would have to determine the effects of the exclusion of such participation in light of their obligation to take into account present participation in the fishery and historical fishing practices in, and dependence on, the fishery. If, after doing this, they were to determine reasonably that these effects were outweighed by other relevant considerations, they could then adopt and approve a limited access system that did not reflect participation since the implementation of the moratorium.

It should be noted here that, if the Council and NOAA had had the time and resources to determine the effects of excluding 1982 from the moratorium base period, and to weigh those effects against other relevant considerations, it might have been possible to exclude 1982 from the base period even though it was the year immediately preceding proposed implementation of the moratorium.

The Report itself is the primary evidence that the share system it recommends reflects a taking into account of "the economics of the fishery," even though opinions differ sharply about the economic conclusions that it draws. Because halibut fishing does not ordinarily involve the use of vessels and gear that cannot be used in fishing for other species, the share system proposed in the Report would appear, in the absence of conflicting information, to reflect a taking into account of this factor. There does not, at this point, appear to be significant evidence that the share system as recommended in the Report is so inconsistent with "the cultural and social framework relevant to the fishery" as not to reflect adequate consideration of that factor. A separate report is apparently being prepared on this matter. Until further public and agency comment is received, it would be premature to speculate whether there are "any other relevant considerations" that should be taken into account in evaluating the share system as recommended in the Report.

Magnuson Act §303(b)(6), as incorporated by reference in §5(c) of the Act, also requires that one purpose of a limited access system be "to achieve optimum yield." The share system as recommended in the Report appears to meet this requirement. It has as a purpose the promotion of a yield from the fishery that is "optimum" not only in its total amount, but also in its distribution through time and space.

### (3) General allocation criteria

To the limited extent the share system recommended in the Report includes proposals for the allocation of halibut fishing rights, that system would not necessarily appear to be inconsistent with the §5(c) requirements that such allocation be fair and equitable to all fishermen, based upon the rights and obligations in existing Federal law, and reasonably calculated to promote conservation. The Report contains fairly specific proposals to ensure that the share system would be carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of the halibut fishing privileges.

### (4) Special provisions for rural coastal villages of Alaska

The final proviso of §5(c) of the Act authorizes the Council to provide in any limited access system the opportunity for the rural coastal villages of Alaska to establish a commercial halibut fishery in areas of the Bering Sea north of 56 degrees north latitude during a three-year development period. It should be emphasized initially that the Council is permitted, not required, to provide such an opportunity:

the language of the proviso is permissive ("may"), rather than mandatory ("shall"). Because the language of the Act is plain in this respect, legislative history to the contrary is without legal effect. Perhaps the main consequence of the proviso is to exempt any provisions that may be made under its terms from the standards that otherwise apply to limited access systems under the other provisions of §5(c).

The share system as proposed in the Report contains provisions that would offer the rural coastal villages of Alaska the opportunity described in the proviso.

#### IMPLEMENTATION OF THE SHARE SYSTEM WITHOUT A LARGE NUMBER OF TRIAL-TYPE HEARINGS

##### Background

Perhaps the greatest potential obstacle to the actual implementation by the Council and NOAA of a share system or other limited access system for halibut would be the need for a large number of trial-type administrative hearings of the kind that the State of Alaska has had to conduct in the implementation of its own limited entry system. Because of budgetary and personnel restrictions, it would be impossible for NOAA to establish a hearing mechanism on anything like the scale of that established by the Alaska Commercial Fisheries Entry Commission. It is important, therefore, to explore means by which a share system could be implemented in a manner consistent with the procedural requirements of law while, at the same time, avoiding reliance on a large number of trial-type hearings.

The law concerning the circumstances under which an agency must offer an opportunity for a trial-type hearing before taking administrative action, which has developed under the Fifth Amendment to the United States Constitution and the APA, is not only complex but, to some extent, internally inconsistent. Any attempt to summarize it comprehensively in the abstract would be of little value. Some principles that are particularly relevant to the limited access context can, however, be suggested to guide the Council and NOAA in their effort to avoid reliance on trial-type hearings. Collectively, these principles suggest that the Council and NOAA should make regulations implementing a share system as specific as possible, relying to the maximum on "legislative" facts concerning the fishery as a whole, rather than "adjudicative" facts concerning specific individuals. The regulations should provide for determination of halibut fishing rights through mathematical calculations based on written evidence, and

should specifically provide for summary disposition of cases in which there is no significant question of fact.

Each of these principles will now be discussed more specifically.

Principles for minimizing the need for trial-type hearings

- (1) Fishing rights under a share system should be assigned as specifically as possible in regulations that are based on general "legislative" facts

It is well established that, through rulemaking based upon "legislative" facts concerning the general political, social, and economic situation, an agency may extinguish or modify rights of persons without a trial-type hearing. This is true even when the Due Process clause of the Fifth Amendment, the APA, or some other law would have required such a hearing if the agency had acted on a more individualized basis. See 2 K. Davis, *Administrative Law Treatise*, 2d Ed. §14:5 (1979).

For example, it has been held that the Federal Communications Commission could deny an application for a television license without a hearing, despite the express statutory requirement for a "full hearing" before such a denial, where the FCC had previously adopted a rule limiting the number of licenses a person could hold, and the applicant already had that number. United States v. Storer Broadcasting Co., 351 U.S. 192 (1956). Similarly, although a statute required "opportunity to be heard" before an airline pilot's certificate could be modified on an individual basis, it was held that the agency could, through the usual notice and comment procedure, adopt a rule terminating all such certificates whenever the holders reached their sixtieth birthdays without giving those holders any additional hearing. Air Line Pilots Association v. Quesada, 276 F.2d 892 (2d Cir. 1960).

This principle, as illustrated by these and other cases, provides the Council and NOAA with a potent means for avoiding the plethora of individual trial-type hearings that has so plagued the Alaska limited entry program. In order to take advantage of it, they should implement any share system through regulations that specify the assignment of halibut fishing rights in as much detail as possible, foreclosing to the extent practicable issues that might otherwise be left to adjudication through individual hearings. These regulations should be based, as regulations usually are, on "legislative" facts, which are facts concerning the general political, economic, or social situation that the agency is trying to affect. Legislative facts stand in contrast

with "adjudicative" facts, which are facts about individual persons subject to agency action.

- (2) Regulations implementing a share system should express the assignment of halibut fishing rights through formulas that are so exact that the rights of any individual can readily be determined through mathematical calculation using information derived from written records.

Even in a case that might ordinarily involve a question of adjudicative fact requiring a trial-type hearing under the Due Process clause, the APA, or other statutes, such a hearing may not be required "where the decision is based upon mechanical application of mathematics." B. Schwartz, Administrative Law 195-96 (1976). In Pullman Co. v. Knott, 235 U.S. 23 (1914), for example, it was held that a sleeping car company could be required to pay a state tax on gross receipts within the State without a prior trial-type hearing on the amount of tax due. The company was required by the tax law to submit a report listing its gross receipts from business done between points within the State, and the tax was a straight percentage of the amount so reported. Justice Holmes, speaking for the U.S. Supreme Court, stated, "If the companies do as required there is nothing to be heard about. They fix the amount and the statute establishes the proportion to be paid over." 235 U.S. at 26, quoted in Schwartz, supra.

A prior trial-type hearing is normally required before welfare benefits may be reduced or terminated. It has been held, however, that no such hearing was needed where a statute required such a reduction in a person's State benefits in the amount that Federal benefits to that person had been increased under a recent amendment to the Social Security Act. The court held that a trial-type hearing would be meaningless where the only question was whether a mathematical formula had been applied correctly to a specified amount. Velazco v. Minter, 481 F.2d 573 (1st Cir. 1973), discussed in Schwartz, supra.

In light of the principle illustrated by these cases, it would be highly advantageous for the Council and NOAA to implement any share system through regulations that describe the assignment of halibut fishing rights to individual fishermen through mathematical formulas, to the extent that this is practicable. These formulas should be so specific that the halibut fishing rights of any person under the share system can readily and precisely be determined simply by applying the formulas to the relevant facts about that person's relationship to the Alaska halibut fishery. The sources of these facts should, as far as possible, be limited to written records, such as fish tickets. The courts in the



two cases just discussed seem to have been influenced at least partly by the fact that the information to which the mathematical formulas would be applied was readily available in reliable written records. Other cases, the facts of which seem to reinforce this view are Mathews v. Eldridge, 424 U.S. 319 (1976), the leading case on rights to trial-type hearings before administrative action is taken; and Califano v. Yamasaki, 442 U.S. 682 (1979). These cases are discussed in 2 K. Davis, Administrative Law Treatise, 2d. Ed. §13:9 (1979); and id., 1982 Supp. §13:9-1. Thus, the regulations implementing the share system should not only define halibut fishing rights in terms of mathematical formulas, but should also, to the extent reasonable, limit the facts about individual fishermen to which these formulas would be applied to information derived from such written records as fish tickets. (Electronically retrievable records, such as computer data, would do just as well.) By so casting the regulations, the Council and NOAA should greatly reduce the need to rely on trial-type hearings in the share system's implementation.

- (3) Regulations implementing a share system should specifically provide for summary disposition of cases concerning the assignment of halibut fishing rights when such cases do not present significant questions of fact.

Even in situations where trial-type hearings would not have been required under principles like those just discussed, agency decisionmakers have sometimes held such hearings needlessly because they lacked specific guidance on the criteria and procedures for refusing a hearing. See 3 Davis, Administrative Law Treatise, 2d Ed. §14:7 (1980). It is therefore important that regulations implementing a share system include provisions for summary disposition without trial-type hearings of cases that do not raise significant questions of adjudicative fact. These provisions would be based on the same principles long used by courts in issuing summary judgments, and would help ensure that full advantage was taken of provisions designed to minimize reliance on trial-type hearings. The Administrative Conference of the United States and the regulations of other agencies provide examples of summary disposition procedures upon which the Council and NOAA can draw. Id.

#### DELEGATION OF THE SHARE SYSTEM'S IMPLEMENTATION TO THE STATE OF ALASKA OR ANOTHER ENTITY OUTSIDE OF NOAA

The budgetary and personnel limitations to which NOAA is currently subject have caused concern that these limitations might prevent the agency from effectively implementing even a share system that did not rely heavily on trial-type hearings.

Interest has, therefore, been expressed in the possibility of delegating some of the duties that NOAA would ordinarily perform in implementing a share system to another entity, such as the Alaska Commercial Fisheries Entry Commission or the International Pacific Halibut Commission.

As has been discovered in connection with the Bering Sea/Aleutians King Crab Fishery Management Plan, there is no general principle of law forbidding NOAA to delegate its rulemaking authority to the State of Alaska, provided that NOAA exercises sufficient oversight of the State's activities under the delegation. In the case of a share system, the authority to be delegated would most likely be the authority to adjudicate individual cases, rather than to make general rules. It will be important, therefore, to determine whether the legal principles governing delegation of adjudicatory authority by a Federal agency to a non-Federal entity differ significantly from those governing such delegation of rulemaking authority. A very preliminary survey of some relevant authorities did not reveal any such major difference, but more research and analysis will be necessary to confirm this. It may be that, if the underlying regulations are very specific and afford relatively little room for discretion in their implementation, as was recommended above, the case for delegation of their implementation to an entity outside NOAA could be more easily made.

If the principles governing delegation of rulemaking and adjudication authority are similar, it will be necessary for NOAA to review actions of the State or other entity under the delegation, so that the share system would still necessitate some increase in or reallocation of NOAA's financial resources and personnel.

¶¶

#### IMPOSITION OF SANCTIONS ON SHARE SYSTEM PARTICIPANTS OTHER THAN THE PENALTIES SPECIFICALLY PROVIDED FOR IN THE ACT

The report recommends that, when a fisherman holding halibut fishing rights under the share system it describes catches an amount in one year that exceeds or falls short of his authorized harvest by more than 10 percent, "penalties" in the form of deductions from that person's future harvest rights should be imposed. The suggested penalties would be 25 percent of an excessive shortfall and 200 percent of an excessive overage. There are serious questions whether the Act authorizes the imposition of penalties of this sort.

Section 7(a)(1) and (5) of the Act provide as follows:

It is unlawful--

(a) for any person subject to the jurisdiction of the United States--

(1) to violate any provision of the Convention, this Act or any regulation adopted under this Act;

\* \* \*

(5) to ship, transport, offer for sale, sell, purchase, import, export or have custody, control or possession of, any fish taken or retained in violation of the Convention, this Act, or any regulation adopted under this Act....

Regulations implementing a share system would be regulations "adopted under this Act" for purposes of these provisions. The Act specifically prescribes two kinds of sanctions for violation of these provisions. Section 8 of the Act authorizes NOAA to impose a civil penalty of up to \$25,000 for each such violation. Section 10 of the Act authorizes the judicial forfeiture to the United States of vessels and gear used in such violations as well as any resulting catch. Both sections contain detailed provisions concerning the procedures that must be followed before the sanctions they prescribe can be imposed. A person against whom a civil penalty has been assessed has a right to a trial-type administrative hearing. A forfeiture can be ordered only through an action brought in the appropriate United States district court by the Department of Justice. The criminal penalties provided for by §9 of the Act are not available for violations of §7(a)(1) and (5).

5 U.S.C. §558(b), a provision of the APA, provides as follows:

A sanction may not be imposed or a substantive rule or order issued except within jurisdiction delegated to the agency and as authorized by law.

Because the Act specifically prescribes the sanctions and procedures that would be available for violations of regulations implementing a share system, it is highly likely that the "penalties" proposed in the Report would violate the APA provision just quoted. This conclusion is supported by the principle of statutory construction that the mention of one or more things in a law ordinarily implies exclusion of other things that might have been, but were not, mentioned. Thus, the authorization of monetary civil penalties and judicial forfeitures in the Act, together with specific procedures for their imposition, appears to exclude the use by NOAA of other sanctions and procedures.

Under the Magnuson Act, NOAA has imposed permit sanctions on United States vessels even though the Magnuson Act specifically authorizes such sanctions only for foreign vessels. The

Magnuson Act, however, also specifically authorizes the Council and NOAA to require that United States vessels obtain permits before fishing in the FCZ. The authority to require such permits has been read to include the authority to modify and revoke them in response to violations. It therefore overcomes the principle of statutory construction just mentioned. The Act under which a share system for the Alaska halibut fishery would be implemented does not specifically authorize the Council and NOAA to require shares to be obtained for participation in that fishery. It is much more difficult, therefore, to make the case that they may modify and revoke shares for penal purposes than would be the case for permits under the Magnuson Act.

Modification and revocation of fishing rights under a share system that did not have penal purposes would be permissible. For example, there would be nothing to prevent NOAA from reducing a shareholder's fishing rights for a year by the amount his harvest had exceeded his rights for the preceding year. This would seem to have the conservation purpose of keeping the total halibut harvest over time within the authorized amounts. It is the Report's proposal to deprive the shareholder of more than the amount of his overage that raises problems. In that case, the deprivation appears to have the purpose of punishing the shareholder and deterring others from similar action, rather than simply protecting the resource. Since the Act has prescribed specific methods and procedures for punishment and deterrence, NOAA could not use its authority to modify fishing rights under a share system for such a purpose. It would have either to assess a civil monetary penalty against the shareholder or, for a serious violation, ask the Justice Department to sue for forfeiture of the shareholder's vessel, gear, and catch.

The Report also proposes "penalties" for nonuse of harvest rights under a share system. This problem could probably be dealt with through regulations not having a penal purpose or effect. These might provide that a shareholder who consistently harvested significantly less than he was entitled to would be required to sell a number of shares corresponding to the shortfall.

Because of the limited variety of penalties specifically authorized by the Act, research and analysis will continue on the extent to which authority for other kinds of sanctions can be implied from the Act's provisions. For the reasons given above, however, it is unlikely that this effort will be particularly fruitful. If this should present major obstacles to the implementation of a share system or other limited access system for halibut, the Council and NOAA may wish to consider recommending that the Act be amended to increase the range of available sanctions.

## FISHING RIGHTS UNDER A SHARE SYSTEM AS "PROPERTY"

### Background

There has been some discussion about the extent to which rights to harvest halibut under a share system would constitute a new form of "property." Far-reaching claims appear to have been made that a share system would transform halibut from a "common property" resource to one that is owned by individuals, in the same way that the medieval common lands of England were divided into individually owned tracts during the eighteenth century. These assertions reflect confusion of the several legal senses in which the term "property" is often used; and also overlook the special ownership principles that apply under Anglo-American law to free roaming, wild animals like halibut before their capture.

The following discussion examines three senses in which rights to fish halibut under a share system would or would not constitute "property" recognized by the law.

### "Property" in its common law sense

When people in everyday life speak of "property" or of "owning" land or some other thing, they are generally using those terms in a sense that we in the United States have inherited from the English "common law," the ancient court-made law that still forms the basis for most private legal rights in both England and the United States. Common law concepts of property were developed during the Middle Ages, and were accepted or "received" by each of the American colonies and, later, States, as they were founded. In contrast with some other areas of the common law, its basic property concepts have been largely unaffected by State and Federal statute.

It is well established in the common law as it currently applies throughout the United States that a free roaming wild animal, such as a moose, migratory bird, or marine finfish like halibut, cannot be the property of anyone until it has been captured and "reduced to possession." This principle was stated forcefully by the United States Supreme Court in Douglas v. Seacoast Products, Inc., 431 U.S. 265 (1977):

[I]t is pure fantasy to talk of "owning" wild fish, birds, or animals. Neither the States nor the Federal Government, any more than a hopeful fisherman or hunter, has title to these creatures until they are reduced to possession by skillful capture.

Id., at 284.

In light of the Supreme Court's pronouncement, only an express Federal statute could modify the common law principle that it states. Thus, whether or not a share system is implemented for the Alaska halibut fishery, the uncaught halibut resource upon which that fishery depends can be the "property" of or "owned" by no one, in the common law sense. As a result, implementation of a share system cannot parallel the eighteenth century process by which English commonly-owned lands were transformed into individually owned tracts. The common law recognizes both "common" and individual ownership of land, while it recognizes neither "common" nor individual ownership of uncaught fish such as halibut.

The last statement may cause some confusion, since fishery resources are almost universally referred to as "common property" or "commonly owned" resources. In the case just discussed, the Supreme Court dismissed this "common property" concept as

no more than a 19th-century legal fiction expressing "the importance to its people that a State have power to preserve and regulate the exploitation of a common resource." [Citation omitted.]

Id.

Thus, for purposes of the common law, the uncaught halibut resource is not "common property": it is not property at all, and this is true with or without a share system. As will be discussed further below, the uncaught halibut resource will remain "common property" in the fictional sense recognized by the Supreme Court even after a share system is implemented.

While a share system could not confer ownership rights in the common law sense in the uncaught halibut resource itself, the fishing rights conferred under such a system could be recognized under the common law as "intangible" property--that is, property that is not associated with any particular material object. Stocks, bonds, and other debts are the most familiar examples of intangible property. The extent to which halibut fishing rights under a share system might constitute such intangible property would depend on the specific terms of the implementing regulations.

"Property" in the constitutional sense

The Fifth and Fourteenth amendments to the United States Constitution forbid the Federal and State governments, respectively, to deprive any person of "life, liberty, or property" without "due process of law." It can be stated categorically that both the current right of any person to participate in the halibut fishery and any such rights that may be assigned

to a limited number of people under a share system are "liberty" or "property" or both for purposes of these constitutional provisions. It is well established that the "property" protected by the due process clauses is a much broader concept than common law property, and it has not been sharply distinguished from the even more general concept of "liberty." Thus, participation rights in the Alaska halibut fishery will be protected under the due process clause as "liberty, or property" both under the current management system and under any share system.

Further research and analysis is necessary on the extent to which these participation rights would constitute the "private property" which may not, under the Fifth and Fourteenth amendments, be taken by the Federal and State governments without "just compensation." A preliminary review indicates that this concept of "private property" is more closely related to the common law concept of property than is the "property" to which general due process protection applies.

#### "Common property" as a legal fiction

As was noted above, the term "common property" has been applied to uncaught fishery resources as a legal "fiction" or "shorthand" expressing the authority of a State or the United States to regulate such resources when its people have sufficient interests in them. As was also discussed, this fictional concept does not reflect "ownership" of such resources in any normal sense, either by the Government or by the people at large.

The authority of the United States, in accordance with the Convention, to regulate the halibut resource off Alaska will continue whether or not a share system is implemented for the Alaska halibut fishery. Thus, the uncaught halibut resource off Alaska will remain a "common property" resource in the proper "fictional" sense of that term even after any share system is implemented.

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# LATE COMMENT

MAR 28 1983

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The proposed halibut moratorium states that one of the major goals of limited entry is to extend the season over a longer period of the year. Those in favor of the moratorium imply that the shorter seasons are caused by the influx of new boats into the fishery.

A more logical reason for the shorter seasons would be the introduction of modern more efficient fishing systems on the larger halibut vessels. The new auto line systems and hydraulic power reels greatly increased the amount of gear that can be set into the water every day, thus causing the yearly quota to be caught in far fewer days than in past years.

**EXAMPLE:** 96 boats over 40 net tons, only 1.25% of all permits issued, landed 30% of all halibut caught in 1982 (8,307,000 lbs.).

5,200 boats under 5 net tons landed 7% of the total catch, (2,147,000 lbs.).

The large boats even with limited entry could cause over harvesting of the halibut stocks if they all install new modern auto line systems without some type of gear restrictions being imposed on them.

The small boats, that do the least harm to the conservation of the fishery are the ones that will be excluded if limited entry share quota becomes a law.

The halibut stocks could easily be controlled from a conservation stand point by setting the yearly quota, with less days per opening and more openings per year. Gear restriction and exclusive area registration would also be important measures to consider in any management plan.

### Example:

IPHC Quota for 1983 is 30.2 Million Lbs.

May	10th - 15th	6 million lbs.
June	10th - 15th	6 million lbs.
July	10th - 15th	6 million lbs.
August	10th - 15th	6 million lbs.
September	10th - 15th	6 million lbs.

The above opening would also solve the problem of halibut having to be frozen and stored over long periods of time.



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The way the moratorium is now written limited entry for the halibut fishery can only work if share quota, minimum catch and vessel expansion restrictions are imposed onto the fishermen.

The share quota system, because it would restrict your future catch, would keep the combination or small boat from expanding their efforts in the halibut fishery on years their other fisheries were depressed, thus causing them to loose a portion of their yearly income.

The minimum catch rule is designed to eliminate all fisherman that didn't land the required poundage of fish in the determining years (1979 to 1982). The fishermen eliminated or restricted would be those that only fish for subsistence and they would not have the required fish tickets on sales to qualify, combination boat fishermen, because either they didn't participate during the determining years or their poundage is not large enough to qualify and the majority of the under 5 net ton boats that use the halibut fishery as a suplimental source of income, because they earn the majority of their income in other industries.

The restrictions on vessel expansion are designed to inhibit the combination boat and under 5 net ton boat from being able to finacially justify the cost of upgrading their vessel to be able to utilize the halibut fishery to their full potential.

**EXAMPLE:** A 5 net ton boat could only upgrade 1000 lbs. in any one year (10% of 10,000 lbs. = 1,000 lbs).

A 60 net ton boat could upgrade 12,000 lbs. in any one year (10% of 120,000 lbs. = 12,000 lbs.)

The limited entry system being studied could eliminate approximately 75% of the Alaska Halibut Fishermen.

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On the questionnaire our association sent to the halibut permit holders two questions (#3 and 4) were asked concerning the incidental catch issue.

The response shows that a vast majority of fishermen whether they operate large or small boats, believe more should be done toward controlling the incidental catch in Alaskan waters.

One important point to remember in past years the halibut fishery did not have the incidental catch depleting the resource. The foreign trawl fleet operating in the Bering Sea, a major halibut nursery on the West coast, has the highest incidental catch of halibut in the fishery.

It is hard to believe the American halibut fisherman has to restrict his fishing activities by the use of limited entry, while the incidental catch on the West coast was approximately 28 million lbs. of halibut in 1982. If the incidental catch is added to the legal domestic catch of 27.5 million lbs. landed in 1982 we would have a total of 55.5 million lbs., which would match the historical halibut catch levels between the years 1929 to 1950.

Control of the incidental catch by the foreign and domestic trawl fleets could be accomplished with the 100% observer program and the use of modern electronic net monitors. Another major cause of the incidental catch to halibut stocks are side loading crab pots, this could be controlled by converting all crab pots to top loaders over a 5 year time period. The effectiveness of the top loader could be determined with research from the Yakutat area were the use of the top loader is now mandatory.

At this time, the halibut stocks are not depressed as implied by the NPFMC. The IPHC has set the quota for 1983 at 30.2 million lbs. This is 2.7 million lbs. more than 1982.