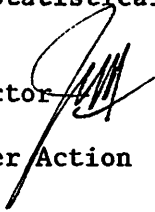


Agenda Item G-4
October, 1979

MEMORANDUM

DATE: September 27, 1979

TO: Council Members, Scientific & Statistical Committee
and Advisory Panel

FROM: Jim H. Branson, Executive Director 

SUBJECT: Halibut FMP - Update and Further Action

COUNCIL ACTION REQUIRED

1. *Council review and comment on proposed enabling legislation for the new Halibut Convention allowing the Secretary to implement limited entry with the concurrence of the Council.*
2. *Decision to reactivate the Halibut DFMP to keep it up to date if problems develop with the IPHC in 1981 or later.*

BACKGROUND INFORMATION

The revised Halibut Convention negotiated last Spring is still awaiting ratification by the Senate. It is expected that it will be ratified without any problems and would then become effective, displacing the old Halibut Convention. If it is not ratified, the present Convention would expire on March 31st, 1981, the U.S. having given a notice of withdrawal for the second time last March.

The Council's Halibut FMP submitted to the Secretary for review last December has not been revised or modified since then. However, there does not appear to be a need for it at least until March 31st, 1981. It might be wise to review it, bring it up to date and keep it in a state of readiness.

It's also possible that the FMP could be used as a vehicle for limited entry. There is still some argument among the NOAA lawyers as to whether that is possible but it hasn't been ruled out either. The Plan, if used for that purpose, would delegate the management recommendations to the

IPHC and use only the limited entry section as the Council recommendation. Another vehicle for instituting limited entry, if the Council decides to go that way, is through the proposed language in the enabling legislation for the new Convention which would allow the Secretary to institute regulations more restrictive than those recommended by the IPHC and, with the concurrence of the North Pacific Council and the Pacific Council, develop a limited access system for American fishermen in that fishery.

Better language for the enabling legislation might be that contained in the FCMA governing the development of limited entry by the Councils, allowing them to institute the process rather than the Secretary.

The enabling legislation for the Halibut Convention is apparently hung up in the U.S. State Department. It's been suggested that we write to the State Department urging action on the legislation so that it would be in effect when the Convention was ratified or as soon thereafter as possible.

JHB

Proposed Addition to Section 5 of

State Department Draft Halibut Convention Implementing Legislations

(c) The Secretary, ^{with the concurrence of the Reg Fish Mgt Council} ~~with the concurrence of the Pacific and North~~ Pacific Fishery Management Councils, may promulgate regulations, ^{including Regs,} applicable to nationals or vessels of the United States, or both, which are more ^{in addition to} restrictive than regulations adopted by the Commission. Such regulations shall not discriminate between residents of different States. If it becomes necessary to allocate or assign halibut fishing privileges among various United States fishermen, such allocations shall be (1) fair and equitable to all such fishermen, (2) reasonably calculated to promote conservation, and (3) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of the halibut fishing privileges.

having at this time for the 900 area Council

Reg Council approved of NPFAC

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G-4



AGENDA ITEM G-4 OCTOBER 79
UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
OFFICE OF GENERAL COUNSEL
P.O. Box 1668, Juneau, Alaska 99802

FILE	ACT	INFO	ROUTE TO	INITIAL
			Exec. Dir.	3
			A. Exec. Dir.	
			Admin. Off.	
			Exec. Sec.	
			Officer/1	
			Officer/2	
			Sec. Admin.	
			Sec. Inv. Off.	

SEP 28 1979

DATE: September 25, 1979

TO : GCF - Jim Drewry

FROM: GCAK - Michael Stanley *MS*

SUBJ: Halibut Convention Implementing Legislation

I offer the following comments on the proposed addition to section 5 of the Halibut Convention implementing legislation:

1. As written, the proposed addition to section (5) would require the concurrence of both the Pacific and North Pacific Fishery Management Councils before the Secretary could promulgate supplementary regulations. The draft explanation gives two reasons for this: such regulations would affect fishers from Alaska, Washington, Oregon and California; and both Councils have geographical authority in the convention area. Does this language imply that any supplementary regulations promulgated by the Secretary must apply to the entire U.S. portion of the convention area? If not, and if in fact it would be possible to have supplementary regulations applicable to, for example, the convention area off Alaska only, why require concurrence of both Councils? It would seem to be more consistent with the FCMA to only require a Council's concurrence if the proposed regulations would apply to its area of authority. Thus, if limited entry were proposed for the domestic halibut fishery off Alaska, only the North Pacific and not the Pacific Councils' concurrence should be required. The Pacific Council has no authority in the geographical area off Alaska, nor does it acquire any authority because Washington, Oregon, and California residents fish there. The first sentence should thus be amended to read:

The Secretary, with the concurrence of the Pacific or North Pacific Fishery Management Councils with respect to the respective areas for which they have authority over fisheries, may promulgate regulations . . .

2. The proposed legislation seems to provide that supplementary regulations will originate with the Secretary, and not the Council;



the Council's function appears to be limited to reviewing and concurring. This scheme suggests a different role for the Councils than does the FCMA which clearly contemplates that the Councils, and not the Secretary, are the primary initiators of management plans. It would seem advisable to have this halibut legislation compliment the FCMA with regard to the Councils' function, particularly from the standpoint of obtaining state and industry support for any regulations proposed. The state and industry will be much more inclined to accept regulations generated by the Council, a body with which they have worked and have representatives on, rather than the Secretary. I therefore propose to amend the first sentence to read as follows:

The Pacific or North Pacific Fishery Management Council may recommend conservation and management measures for the respective areas for which they have authority over fisheries, and upon receipt the Secretary shall promulgate regulations to implement such recommendations, applicable to nationals or vessels of the United States, or both, which are more restrictive than regulations adopted by the Commission.

This would also accomodate the concerns expressed in the first comment above.

3. The last sentence of the proposal essentially is a reiteration of National Standard No. 4. In the draft explanation, the stated intent is to require regulations to "meet the same prerequisites set forth for limited access systems under the FCMA. (See section 301(a)(4) of the FCMA.)" While it is certainly true that a limited access system under the FCMA must be consistent with National Standard No. 4, there is also the requirement that such a system be developed in accordance with section 303(b)(6). That provision specifies the various criteria which should be taken into account in formulating a limited entry system. It is not clear from the proposed legislation to what extent a halibut limited entry system would have to comply with 303(b)(6). I am not completely convinced that incorporation of or reference to that section is necessary, since the fairness command of National Standard No. 4 would probably require that most of the 303(b)(6) factors -- present participation, economic dependence, etc. -- be taken into account. But I do want to insure that if reference to that section is omitted, it is done so intentionally.

Received 10/3/79

MA

FISHING VESSEL OWNERS' ASSOCIATION

INCORPORATED

ROOM 232, C-3 BUILDING
FISHERMEN'S TERMINAL
SEATTLE, WASHINGTON 98119

(206) 284-4720

September 28, 1979

STATEMENT TO THE NORTH PACIFIC FISHERIES
MANAGEMENT COUNCIL 10-3-79 SITKA ALASKA

My name is Robert D. Alverson, I am the manager of the Fishing Vessel Owners Association of Seattle. Our vessels operate in the waters from Southern California to those adjacent to the Soviet Union in the Bering Sea. We fish for halibut, blackcod, pacific cod, ling cod, and albacore tuna.

LIMITED ENTRY FOR HALIBUT

The F.V.O.A. of Seattle supports a limited entry concept in the halibut industry. At this time the F.V.O.A. request that a moratorium on licenses be pursued for the 1980 halibut season. The fishing time per vessel has been drastically shortened in the halibut fishery. The number of days fishing in Area 3 during 1977 was 47, in 1978, 43 and in 1979, 34. The time for fishing in Area 2 North has been reduced from 73 in 1977, to 62 in 1978 to 24 days in 1979.

A moratorium is preferred at this time by the F.V.O.A. for the following reasons.

1. To provide a period of time to conduct a study of those vessels currently operating in the fishery and assess their needs before adoption of a limited entry program.

2. Assess the status of the stocks. An increase in a quota due to improved stock conditions would solve much of the current problem.

3. To provide time for some legal issues to be resolved concerning limited entry which have arisen out of the limited entry system for salmon.

4. The current limited entry program for salmon would not be suitable for the halibut fleet. Some modification needs to be undertaken.

The F.V.O.A. would like to see the limited entry and moratorium issues undertaken by the NPFMC. The state of Alaska has had extensive experience with their limited entry program in salmon and the state of Washington has had experience with the implementation of their moratorium.

SABLEFISH

The F.V.O.A. is aware that until the blackcod resource is fully exploited by the United States fishermen off the coast of Alaska that any gear restriction on the blackcod harvest would be premature. The F.V.O.A. however request that the council support the policy of promoting the harvest of blackcod by longlines wherever possible throughout the Gulf of Alaska in order to promote conservation and management; to enhance the juvenile stock of 3-4 year old fish, and to reduce gear conflicts between domestic users groups and between United States and foreign fishermen.

With respect to the health of the blackcod resource the Fishing Vessel Owners Association is still not convinced that the optimum yield has been set at a level to adequately rebuild the resource. The new equilibrium yield for the Gulf of Alaska has been reduced from 17,400 M.T. to 14,000 M.T. (see letter attached from N/FS). This follows after a 9000 M.T. catch during 1978. This reduction in E.Y. with a catch of 9000 M.T. indicates that the decline in the resource has not been arrested and a further reduction in the quota is probably

required. Though there is a strong year class of 3 and 4 year olds, this does not necessarily reflect any trend that following year classes have been adequately recruited. The F.V.O.A. requests that the S.S.C. reconsiders the O.Y. for blackcod in the Gulf of Alaska. The F.V.O.A. believes the O.Y. should be set between (8-11,000 M.T.). There is no evidence to suggest that the current O.Y. level of 13,000 M.T. will result in any significant rebuilding of the resource with an E.Y. of 14,000 M.T.

SHOULD TRAWLING BE MORE RESTRICTIVE IN
S.E. ALASKA

The F.V.O.A. in reference to the domestic trawl operations in the Gulf of Alaska has previously stated before the NPFMC that a newly expanding fishery should be given all the support that the government can give such that the manner of the new fisheries expansion is an compatible with existing conservation and inhancement measures provided to established fisheries.

The question, should trawling be more restrictive, is somewhat misleading as there are no restrictions in the sense of preventing domestic trawl operations on nursery or spawning grounds, or requirements for the use of midwater gear or pelagic gear as the foreign operations are required to operate with. There are no time area closures which domestic operations must abide by. The NPFMC can not ignore the needs of the halibut and blackcod resources and will have to impose regulations to prevent domestic trawl operations on spawning grounds and nursery areas in the future. There are a significant number of fishermen which have an economical dependance upon the health of these two resources and the maintenance of the resource is essential for communities in Alaska, Washington and Oregon.

SHOULD JOINT VENTURE BE ENCOURAGED OFF OF
S.E. ALASKA

Joint venture activity should not be encouraged off of South East Alaska. The high volume low valued species which joint ventures should be restricted to, such as, pollock, and atka mackerel are in the western gulf of Alaska dn Bering Sea. These are the areas the joint venture should conduct their operations. South Eastern Alaska has a realatively low concertration of pollock, but does have many of the higher valued species such as cod, blackcod and perch which the domestic processors should be given first chance at. The F.V.O.A. has been against the joint venture operations in general and even more so if conducted in the South Eastern Alaska region on the higher valued bottom fish species.

FISHING VESSEL OWNERS ASS'N.


Robert D. Alverson, Manager