

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director

DATE: September 17, 1997

SUBJECT: Magnuson-Stevens Act Revisions

ESTIMATED TIME
3 HOURS

ACTION REQUIRED

- (a) Review progress on IFQ/CDQ fee program.
- (b) Final action on North Pacific Loan Program.
- (c) Review proposals for bycatch reduction measures.
- (d) Review progress on other mandates, including essential fish habitat (EFH).

BACKGROUND

IFQ/CDQ Fee Program and North Pacific Loan Program

The Magnuson-Stevens Act now contains a requirement for a Secretarial amendment to establish a fee (up to 3% of exvessel value) on CDQ and IFQ landings, though it contains no 'time certain' deadline for such a fee program. On the other hand, the Act also called for the Council to submit a Loan Program, to be funded with some of the money collected from the fee program, with an October 1997 deadline. A draft Loan Program amendment was sent to you in August for review, with final action scheduled for this meeting in order to comply with the Act. It is uncertain whether the Loan Program can actually be up and running without an appropriation from the Treasury, which presumably must await implementation of the underlying fee program. It is also uncertain whether the Loan Program constitutes an actual plan/regulatory amendment, or whether it is to be submitted to the Secretary simply as an expression of Council intent, in compliance with the Act.

Regardless of the submittal details, which will be worked out by staff following this meeting, the Council needs to review and approve the proposed Loan Program. Council staff will brief you on the provisions, contained under Item C-5 (b)(1). An attachment to that document is the previous report on the underlying fee program - NMFS staff will update the Council on the status of the fee program.

Proposals for Bycatch Reduction

At the last Council meeting we discussed bycatch provisions of the Act, and what steps the Council needs to take to get in compliance with those provisions. It is arguable that we are in fact in compliance with some of the provisions; for example, our current catch and bycatch monitoring programs, supported by observer data, do provide good measurements of overall catch and bycatch. We are scheduled to receive a report from NMFS and ADF&G in December which will address our current catch and bycatch measurement techniques, including an assessment of the accuracy and precision of such techniques (see Item C-5(c)(1)). We have also approved

improved retention and utilization programs aimed at reducing economic discards, and are currently developing VBA alternatives to help address the regulatory discard issue.

Notwithstanding these programs, I reported to you in June that the Congressional intent appears to contain further expectations from our Council with regard to reducing economic and regulatory discards. To that end we emphasized bycatch reduction in this summer's Call for Proposals. While we will be looking at the broader mix of proposals later in this meeting under 'staff tasking', I wanted to explicitly look at the bycatch related proposals under this agenda item. The proposals received are contained in their entirety under D-5, with the bycatch-specific proposals summarized below. We need Council direction on where to proceed from here, with bycatch as well as other proposals we received this summer.

1. Proposal from Alaska Marine Conservation Council (AMCC) to lower all PSC caps by either 5, 7.5, or 10% annually for 5 years, beginning in 1998.
2. Proposal from AMCC to eliminate non-pelagic trawling for pollock.
3. Proposal from AMCC to implement an individual vessel checklist program, where vessels complying will be allowed a special harvest fishery (similar to harvest priority).
4. Proposal from AMCC to resurrect the harvest priority program, with additional legal analysis.
5. Proposal from the Groundfish Forum to implement halibut mortality avoidance measures, including towing protocols and regulated deck sorting.
6. Proposal from United Catcher Boats (UCB) to implement crab PSC caps for the groundfish pot fisheries.
7. Proposal from Alaska Fisheries Conservation Group (AFCG) to prohibit on-bottom trawling in the lower 10-minute slice of the King Crab Savings Area.
8. Proposal from David Hillstrand to identify snow crab/opilio crab bycatch areas and close to on-bottom trawling.
9. Proposal from David Hillstrand to identify high Tanner crab bycatch areas and close to trawling.
10. Proposal from David Hillstrand to subdivide crab PSC zones.
11. Proposal from David Hillstrand to establish a Tanner crab trawl closure area.
12. Proposal from Yukon River Drainage Fisheries Association (YRDFA) to lower the chinook salmon bycatch trigger (from 48,000 to 36,000 fish) and establish overall A season limit of 48,000.
13. Proposal from UCB to Implement quick release and re-evaluate methods for estimating discard mortality.

Other Magnuson-Stevens Act Provisions

Item C-5(d)(1) is a summary of relevant provisions of the Act which we reviewed in June, and is included here again for reference. As noted above, the issue of total catch measurement, and potential weighing of fish requirements, is scheduled for further discussion in December. The Act imposes a January 1, 1998 deadline for the latter, if it is deemed necessary. The requirement for a four-year scheduled reduction in economic discards

is, I still believe, more than satisfied by our IR/IU programs. We are scheduled to have a report submitted to the Secretary on this issue by October of 1998.

The report on Russian fisheries activities is due by the end of this month - it has been drafted and is scheduled for your review and discussion at this meeting. Proposed guidelines for the new National Standards were published by the Secretary, with comments due by September 18. We did not provide staff comments, beyond those submitted in an earlier, internal review, but sent that notice to individual Council members.

Progress continues on the essential fish habitat (EFH) front. Draft Preliminary EFH Reports (groundfish, scallops, crabs, and salmon) have been prepared by the Technical Teams and were reviewed by the NMFS Core Team at their July 15-17 meeting. At this meeting, the SSC will review the Draft Preliminary Groundfish Reports and provide further direction to staff. The Core Team is particularly interested in the SSC's views on classification levels and methods to obtain local knowledge. The Core Team is tentatively scheduled to meet October 22-23 to revise the preliminary drafts. It is the Core Team's intent to distribute revised Preliminary EFH Reports for public feedback prior to development of the Final Reports.

Overall, we seem to be in pretty good shape relative to the provisions of the Act, though we do have to come to grips with the bycatch issue, and what new programs need to be developed in the next several months, along with existing analyses the Council has tasked. Though somewhat vague with specifics, the Act calls for 'bycatch reporting and minimization measures' to be submitted by October 1998. Other FMP requirements due by October 1998 appear to be satisfied by existing Council management measures.

DRAFT FOR PUBLIC AND COUNCIL REVIEW

of the

North Pacific Loan Program

prepared by Staff of the

North Pacific Fishery Management Council



August 8, 1997

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EXECUTIVE SUMMARY

The 1996 Magnuson-Stevens Act contains provisions for fee collection programs (up to 3% exvessel value) by the Secretary of Commerce. The Act also mandates a North Pacific Loan Program (Loan Program) which uses 25% of those fees to underwrite loans for small boat fishermen and entry level fishermen. While this Loan Program is mandated to be submitted by the Council to the Secretary by October 1, 1997, the Loan Program will not be functional until Congressional appropriation, which very likely cannot occur until collection of the underlying fees on IFQs. This will not occur until late 1998 or 1999. (A separate Congressional appropriation could occur in late 1997, allowing the program to be operational in 1998.)

The specifics of the Loan Program are largely prescribed by the Act, including definitions and eligibility requirements for 'small boat fishermen' and 'entry level fishermen.' Some aspects which are either left undefined or are ambiguous in the wording of the Act, and will require Council direction, are:

- AP 1. Whether the 25% of fees directed to the Loan Program should come from only IFQ fees, or from both IFQ and CDQ fees - the amendment as drafted proposes that it come only from IFQ fees.
- AP 2. The division of the loan pool between 'small boat' and 'entry level' fishermen - the amendment as drafted proposes a 50/50 split initially.
- AP 3. Whether the poundage limits are for each species separately, or for both species in combination - the amendment as drafted proposes that limits be on combined totals, regardless of species. *Aggregate*
- AP 4. Minimum sea time requirements for 'entry level' fishermen (not specified in the Act's language) - the amendment as drafted provides discussion of options for addressing this issue (Section 2.1.4), and proposes that 'entry level' fishermen would have to meet existing requirements for first time buyers, and that first time buyers using the Loan Program for financing would be limited to 8,000 pounds. *no diff. in categ. no drop 150*

It is also noted in the analysis that the provisions for 'small boat' fishermen (specifically that they be on board the vessel) will be in partial conflict with existing regulations which allow use of a hired skipper. It is now possible that individuals will have two different types of IFQ/QS, with differing rules of operation, which will have to be tracked by the RAM division.

The fee program on IFQs is expected to generate close to \$6 million annually, of which \$1.5 million (25%) will be available to cover the costs of the Loan Program. This amount is to cover only the Federal Credit Reform Act (FCRA) costs, not the principal. It is estimated that this \$1.5 million will underwrite \$30 million in actual loans, on an annual basis, assuming a 5% cost rate.

The form of the submittal package for this program is currently assumed to be a plan amendment. This will need to be resolved in coordination with NMFS' development of the underlying fee program.

1.0 INTRODUCTION AND BACKGROUND

In the 1996 reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (the Act), two key provisions were included relative to the existing sablefish and halibut Individual Fishing Quota (IFQ) program, as well as the Community Development Quota (CDQ) program, both occurring in the federal EEZ off Alaska. One provision of the Act mandates a Secretarial amendment which will impose a fee, of up to 3% of exvessel value, on landings of both IFQ and CDQ species. The proceeds will be used to offset administrative costs of the program for both the National Marine Fisheries Service (NMFS) and the State of Alaska. A second provision of the Act calls for 25% of the money generated from this fee program to be used to fund the North Pacific Loan Program (Loan Program), which will support loans for small vessel fishermen and entry level fishermen. The language from the Act regarding the overall fee program, from Section 304(d)(2), is contained below:

“(A)...the Secretary is authorized and shall collect a fee to recover the actual costs directly related to management and enforcement of any—

- (i) individual fishing quota program; and*
- (ii) community development quota program that allocates a percentage of the total allowable catch of a fishery to such program.*

(B) Such fee shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program, and shall be collected at either the time of landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

(C)(i) Fees collected under this paragraph shall be in addition to any other fees charged under this Act and shall be deposited in the Limited Access System Administration Fund established under section 305(h)(5)(B), except that the portion of any such fees reserved under Section 304(d)(4)(A) shall be deposited in the treasury and available, subject to annual appropriations, to cover the costs of new direct loan obligations and new loan guarantee commitments as required by Section 504(b)(1) of the Federal Credit Reform Act (2 U.S.C. 661c(b)(1)).”

The bolded print above refers specifically to the provisions contained in the North Pacific Loan Program - Section 303(d)(4)(A) reads as follows:

“(A) A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to Section 1104(A)(7) of the Merchant Marine Act...to issue obligations that aid in financing the—

- (i) purchase of individual fishing quotas in that fishery by fishermen who fish from small vessels; and*
- (ii) first-time purchase of individual fishing quotas in that fishery by entry level fishermen.*

(B) A Council making a submission under paragraph (A) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under clauses (i) and (ii) of subparagraph (A) and the portion of funds to be allocated for guarantees under each clause.”

Notwithstanding the discretionary nature of the above language of the Act, an additional section (uncodified) mandates the North Pacific Loan Program pursuant to the language above, and states:

“By not later than October 1, 1997, the North Pacific Fishery Management Council shall recommend to the Secretary of Commerce a program which uses the full amount of fees authorized to be used under Section 303(d)(4) of ...the Act, in the halibut and sablefish fisheries off Alaska to guarantee obligations in accordance with such section”

1.1 Submission by the Council and Relationship to the Fee Program

The Council will need to take action at the September 1997 meeting to approve the Loan Program for submission to the Secretary of Commerce. While the actual submittal date would be determined by the NMFS Regional Administrator (under the provisions for submittal of plan or regulatory amendments), this schedule should allow the Council to comply with the October deadline imposed by Congress. Compliance with the October deadline may be somewhat of a moot point in this case however, since the Loan Program cannot become operational until funded by the underlying fee program on IFQs (statement from NMFS Financial Services Division). The underlying fee program is being developed by the NMFS as a Secretarial plan amendment, and will not be completed by the October deadline. While that underlying fee program will likely be approved and in place in 1998, and fees could potentially be collected on 1998 fisheries, actual loans could not be processed and administered until late in 1998 or early 1999, barring a separate Congressional appropriation.

Preliminary advice from NOAA General Counsel indicates that the North Pacific Loan Program needs to be submitted in the form of a plan amendment even though the program and its specific provisions are spelled out in the Act. Further, the Loan Program is an offshoot of the underlying fee program, and therefore, the amendment language for the Loan Program goes hand in glove with the yet to be written and adopted plan language for the fee program; i.e., there is no plan language to amend without the underlying fee program. Nevertheless, the Loan Program is being drafted in the format of a plan amendment for Council review, though the actual language will be reserved pending approval of the underlying fee program. Following Council review and approval of this Loan Program package, the actual details of submittal will be coordinated with NMFS, in conjunction with their development of the underlying fee program. It may be that the Loan Program structure will be in place for some amount of time, awaiting funding through the fee program.

2.0 Alternatives Considered in this Document

The specifics of the Loan Program are largely prescribed within the language of the Act. As outlined above, it will use the full amount (25%) of the fees collected to cover the costs of loan guarantees for small boat and entry level fishermen to purchase IFQs (quota shares) in the halibut and sablefish fisheries. The Act further defines potential applicants to this program as follows:

"(2)(A) For the purposes of this subsection, the phrase 'fishermen who fish from small vessels' in Section 303(d)(4)(A)(i) of such Act shall mean fishermen wishing to purchase IFQs for use from Category B, Category C, or Category D, as defined in part 676.20(c) of title 50 CFR (as revised as of October 1, 1995), whose aggregate ownership of IFQs will not exceed the equivalent of a total of 50,000 pounds of halibut and sablefish harvested in the fishing year in which guarantee application is made if the guarantee is approved, who will participate aboard the fishing vessel in the harvest of fish caught under such quotas, who have at least 150 days of experience working as part of the harvesting crew in any U.S. commercial fishery, and who do not own in whole or in part any Category A or Category B vessel, as defined in such part and title of the CFR.

(B) For purposes of this subsection, the phrase 'entry level fishermen' in Section 303(d)(4)(A)(ii) of such Act shall mean fishermen who do not own any IFQs, who wish to obtain the equivalent of not more than a total of 8,000 pounds of halibut and sablefish harvested in the fishing year in which a guarantee application is made, and who will participate aboard the fishing vessel in the harvest of fish caught under such quotas."

While the specifics of the program are largely prescribed, and do not present any obvious alternatives or options, there are some details for which the Council may have some discretion. These include: (1) what proportion of the Loan Program fees will be dedicated to small boat applicants versus entry level applicants, (2) whether the

25% for the Loan Program will be based on IFQ fishery fees alone, as opposed to both IFQ and CDQ fees, (3) whether the totals of 50,000 and 8,000 pounds prescribed above are for each species (halibut and sablefish) or in combination, and (4) whether the entry level fishermen described above would need to have 150 days of commercial fishery experience. These issues are discussed below:

2.1 Council Decision Points

The following items are either unspecified, or ambiguous, in the language of the Act and require Council decision or expression of Council intent.

2.1.1 Fisheries Upon Which to Base the Fee

The Act dictates that a fee of up to 3% will be assessed on both IFQ and CDQ fisheries, and as noted above, that underlying fee program is being developed as a Secretarial amendment. The Act further stipulates that up to 33% of the fees collected from CDQ fisheries can be transferred to the State of Alaska to reimburse for actual costs of administering that program. In its language regarding the 25% to be directed to the Loan Program, the Act is somewhat ambiguous as to which fisheries will form the basis for extracting that 25% amount. Preliminary reports on development of the fee program illustrate the alternative, and potentially complex monetary flows which would ensue, depending on how the language of the Act is interpreted (for reference, that report is included as Appendix I to this document). For example, should the 25% for the Loan Program come only from halibut and sablefish IFQ fee assessments, from both IFQ and halibut and sablefish CDQ fee assessments, or even include other, multi-species CDQ programs as the funding base?

Though it will not affect the actual workings of the Loan Program, this issue is important in that it will affect the amount of monies available to the Loan Program, it will affect the specific structure and monetary flow within the overall fee program, it could affect the amount of money available to the State for reimbursement of CDQ program costs, and it involves a potentially controversial policy decision. At this time, the NMFS has not resolved how this issue will be addressed in the fee program package, though NOAA GC has opined that the language of the Act appears to base the 25% Loan Program on both IFQ and CDQ fisheries, at the same time noting that Congressional intent (taken from the Senate report) was *not* to extract CDQ fees to fund the IFQ Loan Program (Office of NOAA General Counsel - 'Guide to the Sustainable Fisheries Act', February 1997).

A closer examination of the language of the Act would appear to bear out the Congressional intent - that the Loan Program be funded from fees collected from halibut and sablefish IFQ holders only. Looking once again at the language from Section 303(4)(A), it seems to at least imply, if not dictate, a fishery specificity... "a program which reserves up to 25 percent of any fees collected from a fishery...to be used to issue obligations that aid in financing the- (i) purchase of IFQs in that fishery by fishermen who fish from small vessels; and (ii) first-time purchase of IFQs in that fishery by entry level fishermen."

The language above appears to intend that the financing of IFQ purchases through the Loan Program be based on fees collected from that IFQ fishery, not from the CDQ fishery. Critical to this logic is the definition of fishery. It is the assumption of this analysis that the sablefish and halibut IFQ fishery is a distinctly different fishery from the sablefish and halibut CDQ fishery. This perspective is supported by the Act's own definition of fishery, which reads "one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, or economic characteristics..." The IFQ and CDQ fisheries are managed quite separately and have their own very unique geographic, technical, and economic characteristics. The fact that they consist of the same two species does not in and of itself mean they are the same fishery. This distinction is also borne out by NOAA GC advice regarding the differences between CDQs and IFQs; for example, 1996 appropriations bills allowed development of CDQ programs, while prohibiting development of IFQ programs.

The remainder of this analysis is based on the assumption that the Loan Program will be based on fees only from the halibut and sablefish IFQ fisheries. The Council needs to verify its intent with regard to this issue to clarify the Loan Program base and to alert NMFS to its intent with regard to the structure of the underlying fee program.

2.1.2 Division Between Small Boat and Entry Level Fishermen

A finite amount of fees will be collected for use in the Loan Program. Chapter 3 of this document discusses the projected amount of fees, and estimates that approximately \$6 million will be generated by the IFQ fees, with 25% of that making \$1.5 million available for the Loan Program. This would support up to \$30 million in actual loans (loan principal) annually, based on an assumption of a 5% ratio for defaults.

At this point, it is uncertain how many applicants will surface for each aspect of the program (small boat versus entry level). It is also uncertain how much IFQ/QS will be available on the market for purchase. It is not likely that more than \$30 million worth of IFQ/QS would be available for purchase on an annual basis. A 50/50 split between the two categories would make \$15 million available for loans for each.

The apportionment may depend somewhat on the Council's preference with regard to participants in these fisheries; i.e., should the focus be on expanding the operations of existing small boat operators, or on fostering additional participants in the fisheries? This amendment proposes a 50/50 split to begin with, which can be adjusted as necessary after we have some experience with the program and determine where the applicant demand lies.

2.1.3 Poundage Limits by Species or in Combination

The Act refers to a poundage limit, in aggregate, of 50,000 pounds of halibut and sablefish for small boat fishermen and a limit of 8,000 pounds, in total, of halibut and sablefish for entry level fishermen. The question has been raised as to whether the intent of Congress was to allow, for example, for a small boat fisherman to have 50,000 pounds of halibut *and* 50,000 pounds of sablefish, or for an entry level fisherman to purchase 8,000 pounds of *each* species. Unless the Council expresses intent to the contrary, this analysis (and the amendment submitted to the Secretary) will assume that the poundage limits were meant in total; i.e., the poundages will be based on the combined totals of halibut and sablefish. An applicant may have a mix of both species, the total of which cannot exceed 50,000 (or 8,000) pounds.

2.1.4 Minimum Work Experience Requirements for Entry Level Applicants

The language in the Act is very specific with regard to the requirement of 150 days of work experience as part of a harvesting crew, in terms of defining eligibility for 'fishermen who fish from small vessels'. It also seems consistent with the focus of the 'small boat fishermen' provision which appears to be on those who are already participating in the fisheries. However, the language of the Act is silent in terms of such a requirement for 'entry level fishermen', and at least *implies* that 150 days work experience is not required. Based on this wording of the Act it is also possible that an applicant could fit the definitions for both categories, if they do not own any IFQ, but do have 150 days work experience.

It seems possible that the omission of the 150 day work requirement was intentional, otherwise there would be no practical difference between the two categories. To require 150 days experience might also be a contradiction to the intent of this provision, assuming the intent is to allow an entry mechanism for persons who have never been in the fishery, at least as an IFQ owner. Current regulations, which were part of the Council's original intent for this program, do require 150 days work experience to purchase IFQ (QS). A Transfer Eligibility Certificate, issued by NMFS, is currently required for anyone wishing to enter the fisheries for the first time by purchasing

IFQ/QS. To now allow someone to enter these fisheries without that work experience would be inconsistent with the Council's original intent for the IFQ program, and would require an adjustment to the regulations implementing the program.

This amendment, as currently drafted, will assume that the current eligibility requirements for first time buyers will still apply. This means that there is no functional difference between the definitions of 'small boat fishermen' and 'entry level fishermen' which are currently in the Act - the definition of small boat fishermen simply limits the aggregate total, but does not stipulate that they currently own no IFQ/QS. So, anyone wishing to apply for the 'entry level' loan (limited to 8,000 pounds), could just as easily apply for the 'small boat fisherman' loan (limited to 50,000 pounds).

Two options exist to reconcile the language of the Act: (1) the Council could take the language of the Act at face value, and assume that 'entry level' fishermen do not have to satisfy the 150 day work experience requirement (thereby creating an explicit difference between the two categories, but also requiring a major regulatory change to the ownership provisions) or (2) maintain the 150 days work experience requirement for 'entry level' applicants, but stipulate that fishermen who have no previous ownership of QS/IFQ are indeed limited to the 8,000 maximum application.

An additional consideration, relative only to the 'small boat fishermen's' definition, is the requirement that the borrower be on board the vessel when the IFQ is being fished. This is quite different from the existing requirements (exceptions) that initial QS recipients currently enjoy, except in Southeast Alaska (Area 2C for halibut). The owner-on-board requirements originally adopted by the Council would have to be adjusted to remove these exceptions, at least for persons applying for a loan under this program. Or, operators will have IFQ/QS in at least two different classes, some of which can be fished with a hired skipper and some which cannot. NMFS RAM division will be burdened administratively with tagging, and tracking, these different classes of IFQ/QS. Enforcement will also be burdened with this additional issue.

3.0 Assessment of Loan Program Impacts

This section discusses the agency infrastructure in place for administering government loan programs, how the proposed North Pacific Loan Program will work, and the projected financial and economic implications of this program. These issues can best be discussed by first illustrating the potential amounts of money which will be generated by the fee program. Based on current (1997) quotas for halibut and sablefish, projections of revenue flow can be made. These projections will obviously be dependent upon both the annual TACs for both species, as well as the exvessel value (prices) received each year. For 1997 the total IFQ pounds issued was 51,116,000 pounds of halibut and 30,233,885 pounds of sablefish. Using the existing price estimates of \$2.25 and \$2.75 respectively, the exvessel value of these fisheries is \$115,000,000/year for halibut and \$83,000,000/year for sablefish for a total of \$198,000,000. A 3% fee on that amount would result in \$5.9 million, and 25% of that number amounts to \$1,485,000 available to cover the costs of FCRA loans.

3.1 Administrative Process and Logistics of the Loan Program

3.1.1 Revenues Generated and Resulting Loan Principal Available

According to the mechanism for the Loan Program outlined in the Act, this program would fall under Title XI of the Merchant Marine Act of 1936. This is a well established loan authority with over a quarter century of fisheries related lending experience. Under the conditions of this lending authority, only the Federal Credit Reform Act (FCRA) cost of the fishery loans needs to be appropriated - not the amount of principal itself. The FCRA cost is the amount of prospective loan principal that is estimated to be uncollectible over the life of the loans. A simple example will help illustrate this function: If the agency were to have authority for \$100 in loans,

and they estimate that they will not be able to collect 10% of the principal of the loan, then they would require a \$10 FCRA cost appropriation. The other \$90 of loan principal is borrowed from the Treasury - only the \$10 is appropriated.

In the case of the North Pacific Loan Program, the annual loan authority will be a function of the FCRA cost appropriated by Congress and an FCRA cost rate applied by the Administration. In this case, the Act calls for the full 25% (of the 3% IFQ fee) to be used as the basis of the Council's recommendation to the Secretary. Under this scenario, it is likely that the amount of money generated by this 25% 'set aside' will be much greater than what is necessary to cover the FCRA costs of loaning money to small boat and entry level fishermen. For example, we estimated earlier that 25% of the 3% fee would generate somewhere in the neighborhood of \$1.5 million. If this \$1.5 million is used to cover the FCRA cost of administering the loans, and one assumes a 5% cost rate, the resulting loan principal available to borrowers would be \$30 million *for each year that the fee is assessed*.

If indeed there are \$30 million in loans sought by small boat and entry level fishermen annually, then the full 25% would be necessary to cover the costs of those loans, assuming the 5% cost rate. On the other hand, it may be that the first year's fee assessments would provide enough money to cover FCRA loan costs for several years, and future assessments would not need to divert the full 25% to the Loan Program. There is no way to ascertain the potential number of applicants to this program, or the amounts for which they might apply. The availability of QS/IFQ on the market will be an important determinant for the number and magnitude of loans.

The actual cost rate, assumed in the above projections to be 5%, is also uncertain at this time and will only be determined by the NMFS Financial Services Division after they assess the total FCRA cost appropriation, the reliable long-term collateral value of IFQs (QS), other collateral presented by IFQ/QS loan applicants, and other factors which determine the overall 'risk factor' for these types of loans. It is probably safe to assume, for purposes of submittal of this Loan Program, that a 5% rate is in the range of reasonableness. A lower cost rate, which is perhaps likely, will result in more principal being generated per dollar of FCRA cost; for example, applying a 1% cost rate to the \$1.5 million generated by the fees would result in available principal of \$150 million, compared to the \$30 million available under the assumption of the 5% cost rate.

While the Council is required to submit a Loan Program that uses the full 25% authorized, it is possible that the Secretary may approve a program that uses something less than the full 25%, or that the annual appropriation by Congress does not equal the full amount collected. These scenarios are possible, particularly if the projected FCRA cost is substantially less than what would be collected using the full 25%. The actual amount appropriated will depend upon the actual, total amount of loan applications approved. At this time however, the submittal package from the Council will stipulate the full 25%.

3.1.2 Details of the Loan Program Application Process

This program will be administered by the Fisheries Finance Program (FFP) of NMFS' Financial Services Division. FFP is a direct loan program financing certain long-term fisheries and aquaculture debts. FFP does all of the credit work and holds and services the credit collateral. FFP runs basically the same as any commercial bank or industrial credit company. Collateral for the loans will consist of a security filing against the permit (IFQ/QS) financed and the guarantee of the applicant. Additional collateral may be required depending on individual circumstances.

Loans under FFP will be for ten year terms, with a fixed interest rate equal to the current borrowing rate for ten year Treasury obligations, plus two percent - that overall rate for ten year loans is currently 6.53%. Applications for these loans must be submitted to the appropriate NMFS Regional Financial Services Branch, in this case at the following address:

NMFS Financial Service Branch
7600 Sand Point Way, NE
BIN C15700, Building 1
Seattle, Washington 98115

PHONE - 206-526-6122
FAX - 206-526-6306

The loan application is investigated at that office and forwarded to the Central Office for approval. Loans in excess of \$100,000 also require clearance by the Financial Assistance Review Board (FARB) at the Department of Commerce. Application forms for this program are being revised by NMFS and are unavailable at this time.

In addition to the eligibility requirements established by the Act, requirements under Title XI of the Merchant Marine Act may apply. Those basic requirements include the following:

Ability and Experience

The applicant must generally have the ability, experience, resources, reputation, character, and other qualifications that FFP deems necessary for successful operations and the protection of the government's risk.

Income and Expense Projections

FFP's conservative income and expense projections for the operation must prospectively indicate net earnings sufficient to service the debt and protect the government against the industry's cyclic economies and other risks of loss.

Working Capital

FFP's conservative estimate of the applicant's financial condition must indicate sufficient working capital to allow the applicant to achieve its prospective net earnings projections, fund all foreseeable contingencies, and protect the government's risk of loss.

Investigation and Approval

FFP shall conduct a due diligence investigation of every applicant it accepts and determine, at the FFP's sole discretion, that the applicant is eligible and qualified.

Terms and Conditions

The terms and conditions under which FFP will extend credit will be specified in an Approval in Principle Letter, issued following approval of a loan. These terms and conditions will be incorporated into closing documents prepared by the Regional Office. Non-acceptance of the terms and conditions will result in the loan being disqualified. Every loan closing will be in strict accordance with the instructions found in the Approval in Principle Letter.

Application Fees

An application fee will be due upon FFP's acceptance (not to be confused with approval) of the loan application. Fifty percent of the application fee is earned upon acceptance of the application, with the remaining fifty percent earned upon issuance of the Approval in Principle letter. The latter fifty percent is refundable only if FFP

declines the loan or the applicant requests a refund before the FFP issues the Approval in Principle Letter. This application fee is equal to one-half of one percent (.5%) of the original loan amount. A related issue is the fee for refinancings or assumptions - these fees are equal to one-quarter of one percent (.25%) of the loan balance, are due upon application, and are fully earned by FFP when due and non-refundable.

3.2 Other Economic Considerations

It is apparent that this program will make capital available for entry level and small boat fishermen that may otherwise not be accessible, at least not at the interest rates and terms offered by the North Pacific Loan Program. The extent to which this program is utilized by loan applicants will be limited by the market supply available.

One concern raised in staff discussions is the potential impact on QS markets of an influx of cheap capital to the market; i.e., if monies are available at low interest rates (up to \$30 million or more), and a large number of applicants access those monies, the increased demand could serve to inflate QS/IFQ prices beyond their 'normal' levels, and increase the willingness for existing owners to divest. This is a reflection of simple supply and demand economics. Under this scenario, QS/IFQ prices could inflate, creating additional 'windfall profits' for initial QS recipients, as well as increasing revenues to QS brokerage firms who process these transactions.

3.3 NEPA Considerations

This program would not change the overall quota for either species, but simply will create additional opportunities for small boat and entry level fishermen to catch the existing quotas. It is possible that relatively more of the catch will be made by smaller vessels in the years following implementation of the Loan Program. No significant changes would be expected to occur from this program, in terms of impacts to the fisheries, habitat, or on the human environment.

3.4 Regulatory Flexibility Act Considerations

This program is designed to benefit small vessel and entry level (presumably small boat) fishermen. While it may create additional opportunities for smaller operators, the vast majority of the existing participants in these fisheries are already classified as 'small entities'. No additional regulations are imposed by this action, with the exception of minor potential adjustments to the eligibility requirements for IFQ/QS purchase. Without an estimate of the number of potential loan applicants it is not possible to estimate the number of 'affected' entities. Possible impacts to small entities would be positive, in the sense that this program facilitates participation in the fisheries by these entities. However, the definition of small in this case is dictated by the provisions of the Act, in the sense that the amounts of QS/IFQ are specifically limited. While this program is indeed geared toward small vessel operators, it does not impose regulatory requirements that would significantly or disproportionately affect (either positively or negatively) those small operators. Therefore this program does not represent a 'significant' action, either in principle or spirit, with respect to the provisions of the Regulatory Flexibility Act.

4.0 List of Preparers and those Consulted

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APPENDIX I

IFQ/CDQ Fee collection Program

Progress Report and Discussion of Issues Raised

Alaska Region

National Marine Fisheries Service

April 1997

IFQ/CDQ FEE COLLECTION PROGRAM
Progress Report and Discussion of Issues Raised
Alaska Region
National Marine Fisheries Service
April 1997

This is the second report on the IFQ/CDQ Fee Collection Program currently being developed at the Alaska Region Office for the fisheries operating under the individual fishing quota (IFQ) and community development quota (CDQ) programs. The first report was presented to the Council at its meeting in February 1997.

The IFQ/CDQ Fee Collection Team (Team) met on March 3, 1997, and again on April 7, 1997, to review and discuss preliminary matters concerning the development and operation of a fee collection program for IFQ and CDQ fisheries as required by the Magnuson-Stevens Act (Act). Team members are identified at the end of this report.

1. BACKGROUND

The Magnuson-Stevens Fishery Conservation and Management Act (Act), at section 304(d)(2), requires the Secretary of Commerce to "...collect a fee to recover the actual costs directly related to the management and enforcement of any (i) individual fishing quota program; and community development quota program that allocates a percentage of the total allowable catch of a fishery to such program." Other parts of the law also authorize:

- A Limited Access System Administration Fund into which the IFQ/CDQ fees are to be deposited (sec. 305(h)(5)(B));
- A program, funded by collected fees, to aid the financing of IFQ permits by certain fishermen (sec. 303(d)(4)); and
- A central registry system for limited access system permits (sec. 305(h)).

Specific requirements and limitations of the law were reviewed in the first discussion paper presented to the North Pacific Fishery Management Council at its meeting in February, 1997. The purpose of this paper is to review certain issues raised, but not fully resolved, by the Team, and to present alternatives developed by the Team for analysis. Some of these issues will require interpretation of the statutory language of the Act. These issues are presented here simply as unresolved questions on which NMFS has no formal position. They will be examined in greater depth, however, in the analysis of alternatives.

2. MAGNUSON-STEVENS ACT ISSUES

An initial issue that needs resolution is the "partitioning" of deposits and the priority of disbursements of the Limited Access System Administration Fund (LASAF). The Act does not specifically identify what funds should be used for which programs and the priorities of those programs if the funds in LASAF are insufficient to meet all the stated uses. Section 305(h) (5) (B) establishes:

[I]n the Treasury a Limited Access System Administration Fund. This Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary [of Commerce] for the purposes of--

(i) administering the central registry system; and
(ii) administering and implementing this act *in the fishery in which the fees were collected*. Sums in the Fund that are not currently needed for these purposes shall be kept on deposit or invested in obligations of, or guaranteed by, the United States. (emphasis added)

This paragraph provides for a single fund and limits disbursements to administering the central registry system and administering and implementing the Magnuson-Stevens Act *in the fishery in which the fees were collected*. (emphasis added). The preceding paragraph, section 305(h) (5) (A), describes some of the fees that "shall be deposited" in the LASAF, namely, a reasonable fee of not more than one-half of one percent of the value of a limited access system permit (1) upon registration of its title with the central registry and (2) upon transfer of that title.

Other fees that "shall be deposited" in the LASAF are described in section 304(d) (2). Section 304(d) (2) (C) (i) provides:

Fees collected under this paragraph [assumably meaning paragraph (d) (2)] . . . shall be deposited in the Limited Access System Administration Fund established under section 305(h) (5) (B), *except that the portion of any fees reserved under section 303(d) (4) (A) shall be deposited in the Treasury and available, subject to annual appropriations, to cover the costs of new direct loan obligations and new loan guarantee commitments as required by section 504(b) (1) of the Federal Credit Reform Act (2 U.S.C. 661c(b) (1))*. (emphasis added)

The fees collected under section 304(d) (2) are:

[Fees] to recover the actual costs directly related to the management and enforcement of any--

(i) individual fishing quota program; and
(ii) community development quota program that allocates a percentage of the total allowable catch of a fishery to such program.

Also, "[fees provided for in paragraph (d) (2)] shall not exceed 3 percent of the ex-vessel value of fish harvested."

Finally, section 303(d) (4) (A) provides that:

A Council may submit, and the Secretary may approve and implement, a program that reserves up to 25 percent of any fees collected from a fishery under section 304(d) (2) to be used . . . to issue obligations that aid in the financing the--

- (i) purchase of individual fishing quotas in that fishery by fishermen who fish from small vessels; and
- (ii) first-time purchase of individual fishing quota in that fishery by entry level fishermen.

As for disbursements, section 304(d) (2) (C) (ii) provides:

Upon application by a State, the Secretary shall transfer to such state up to 33 percent of any fee collected pursuant to subparagraph (A) *under a community development program* and deposited in the Limited Access System Administration Fund in order to reimburse such state for actual costs directly incurred in the management and enforcement of such program. (emphasis added)

Also, section 305(i) (3) provides:

The Secretary shall deduct from any fees collected from a community development quota program under section 304(d) (2) the costs incurred by participants in the program for observer and reporting requirements which are in addition to observer and reporting requirements of other participants in the fishery in which the allocation to such program has been made.

As the foregoing illustrates, several income sources for LASAF, and several targets for disbursements are identified. Some of the income sources, such as fees from section 304(d) (2), are reduced prior to depositing in LASAF. These reductions are either reimbursed to the payer for costs incurred for observer and reporting requirements that are more than required of others in the same fishery, as in the case of community development program participants, or they are directly deposited in the Treasury and subject to annual appropriations, as in the case of fees (up to 25 percent of the total) reserved under section 303(d) (4) (A) and that are collected under section 304(d) (2).

Several issues regarding income sources and priorities must be clarified before a fee collection program can be established.

First, should the up to 25 percent of the total fees that is reserved, i.e., funds not in the LASAF and subject to appropriation, be based on fees collected from IFQ program(s) exclusively, or from IFQ and CDQ program(s) collectively? A Guide to the Sustainable Fisheries Act (February 1997), prepared by NOAA GC, indicates that the wording in the Act says that the program would use the full amount of fees authorized under section 303(d)(4), which provides that up to 25 percent *of any fees collected from a fishery under section 304(d)(2) may be used to issue obligations.* (emphasis added) Section 304(d)(2) authorizes the collection of fees from any IFQ program and any CDQ program based on a percentage of TAC. The Guide further indicates, however, that despite the wording of the Act, the Senate report indicates Congress intended that the North Pacific IFQ loan guarantee program would be financed from fees collected from the IFQ fishery and not from the CDQ fishery.

Second, can the money deposited in LASAF be partitioned for specific purposes? This issue is extremely relevant to the priority of disbursements. Establishing a priority for disbursements might prove to be critical to program design and accounting if, for example, fees collected from a fishery are to benefit only qualifying participants in that fishery. Further need for partitioning is indicated by section 304(d)(2)(C)(ii), which requires the Secretary to transfer to a State up to 33 percent of any fee *collected . . . under a community development program.* (emphasis added) A method to account for, or partition, the money will be necessary to ensure that only fees collected under a CDQ program are reimbursed.

A related issue is whether central registry fees should be commingled with IFQ/CDQ fees. Should the one-half of one percent fee collected under the central registry be held separate from the three percent fee collected from IFQ/CDQ participants? Or, should all the fees (excluding those used to guarantee loans) be deposited together into LASAF and used to administer the central registry system and the Act in the fishery in which the fees were collected?

3. DETERMINATION OF "ACTUAL COSTS DIRECTLY RELATED TO THE MANAGEMENT AND ENFORCEMENT OF ANY IFQ AND CDQ PROGRAM."

Very rough estimates of IFQ/CDQ costs have already been determined for the Restricted Access Management Division and NMFS Enforcement. These estimates need to be further refined (Jesse Gharrett and NMFS Enforcement). Costs related to management and enforcement of IFQ/CDQ programs must be calculated for other Alaska Region divisions and NOAA General Council (Jay Ginter) and for the State of Alaska (Julie Anderson). An important consideration is what to include as costs. Enforcement personnel that are needed but not actually hired, hardware and support,

planning and developing the program, etc. are costs but are they "directly related"?

4. DETERMINATION OF EX-VESSEL VALUE.

Several suggestions were made concerning the determination of ex-vessel value. For example, the ex-vessel values estimates developed for the Research Plan can be updated and used. Another alternative is to use the same values used by the State of Alaska, Department of Revenue for "landings" tax collection. Landed value for purposes of Alaska's tax collection is based on an annual report required of commercial operators. From these reports, the State annually publishes a list of average fish prices statewide on which taxes for the previous year's landings are calculated. Fish prices on fish tickets are not used because State law does not require price data on fish tickets (except for salmon). The State of California also taxes commercial fish landings based on a schedule of fish values established by the legislature. In general, using an annually determined ex-vessel value would be easier than using the reported value at time of landing, however, this approach was contested by the affected fishermen and processors. The Team will investigate further into different methods of determining ex-vessel values.

An alternative suggested for the CDQ program was to use the revenues reported in the community development plans for fee collection purposes. This would alleviate some of difficulties in determining ex-vessel value for CDQ fish, which may or may not be sold on the open market.

5. HOW SHOULD FEES BE COLLECTED?

The Act provides at section 304 (d) (2) (B) that:

[Fees] shall be collected at either the time of the landing, filing of a landing report, or sale of such fish during the fishing season or in the last quarter of the calendar year in which the fish is harvested.

This language gives the agency little discretion on how and when to collect the fees. The general consensus of the Team was that it is better to collect from as few entities as possible. This can be easily achieved for the CDQ program because there are relatively few CDQ group entities from which to collect. Conversely, the IFQ program has numerous participants (over 5000). Given the number of participants, an annual collection would be a daunting task; collecting at the time of landing or sale could be more difficult. The number of entities from which to collect could be reduced by collecting from registered buyers (over 500). Some resistance to the Research Plan resulted from

the collection method, i.e., using processors to collect the fee. In that registered buyers are typically processors, there may be some opposition to this method of collection. The agency will weigh the pros and cons of collecting from processors vs. collecting from fishermen.

Another consideration for fee collection is whether billing statements should be generated. Billing statements could be a convenience to participants, who would otherwise be required to account for their own landings or sales. Billing statements could be done annually (last quarter of calendar year) or connected with a landing report at multiple times throughout the year, e.g., send bill with a landing report to the participant, who must verify the information on the report, sign the report, and file it. Alternatively, collection could be made at the time of sale. This collection could be held by the registered buyer until such time as it has to be submitted to the agency, e.g., weekly, monthly, quarterly, or annually.

6. DETERMINING COSTS THAT SHOULD BE DEDUCTED FROM CDQ FEES.

The Act provides in section 305(i)(3) that:

The Secretary shall deduct from any fees collected from a community development quota program . . . the costs incurred by participants in the program for observer and reporting requirements *which are in addition to* observer and reporting requirements of other participants in the fishery in which the allocation to such program has been made. (emphasis added)

The primary issue is definition of observer and reporting costs that are in addition to those borne by other participants. Some costs, such as an extra observer, are easy to ascertain and no doubt will not be disputed as "costs that are in addition to" those borne by others. Other costs, such as scales used to determine actual weight of harvested species, may present some difficulty. First, should such an item be included as a "cost that is in addition to" those borne by others? Second, if in fact there can be a deduction, should the entire cost be deducted in a single year, or amortized over its useful life? Regardless of the determination of whether an item or other cost will be included in "costs that can be deducted," the general consensus of the Team was that a list of allowable costs should be provided. A list would provide the certainty needed to make determinations in a fair and timely manner.

A secondary issue is at what time should the deduction be made, i.e., before or after the IFQ loan guarantee funds are deducted?

7. CRITERIA FOR REIMBURSING THE STATE ". . . FOR ACTUAL COSTS DIRECTLY INCURRED . . ." WHILE MANAGING THE CDQ PROGRAM.

The Secretary is required to transfer up to 33 percent of the fees collected from the CDQ program to reimburse the state for actual costs in managing and enforcing the program. These costs can be estimated through the budget process. The determination of what is included in "actual costs directly incurred" will most likely need to be the same as the costs determination for the agency discussed under agenda item 2. Also, the amount of money that can be deducted by CDQ groups (discussed above) will impact the amount of money that can be reimbursed to the State.

8. ALTERNATIVES FOR ANALYSIS.

The requisite *status quo* alternative is untenable given the statutory requirements of the Act. This will be explained in the analysis. The Team has developed an array of other alternatives and options listed below basically dealing with the questions, who pays the fee? how? when? and how much? Other alternatives and options may be added to this list as the Team becomes aware of them.

Who pays: IFQ program -- QS holder
-- IFQ holder; card holder on vessel
-- Registered buyer
CDQ program -- CDQ group
-- Harvesting/processing partner

How to pay: -- Agency billing
-- Deduction at time of landing or sale
-- Required submission (e.g. tax return)

When to pay: -- At time of landing
-- Monthly
-- Quarterly
-- Annually (in last quarter)

How much to pay--determining the basis for the fee:

For IFQ program:
-- Calculate an average exvessel value; published annually
-- Require reporting of exvessel value at time of landing
For CDQ program:
-- Determine exvessel value from reported royalties annually
-- Require reporting of exvessel value at time of landing

9. TEAM MEMBERS

Alaska Region, Fisheries Management Division: Jay Ginter (Chair),

John Lepore, Sally Bibb, Kim Rivera;
Alaska Region, Restricted Access Management Division: Phil Smith,
Jessica Gharrett, Tracy Buck;
Alaska Fisheries Science Center: Joe Terry
North Pacific Fishery Management Council staff: Chris Oliver;
Alaska Department of Fish and Game: Seth Macinko;
Alaska Department of Community and Regional Affairs: Julie
Anderson; and
NOAA General Counsel: Connie Sathre

North Pacific Fishery Management Council

Richard B. Lauber, Chairman
Clarence G. Pautzke, Executive Director



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July 11, 1997

Dave Benton, Deputy Commissioner
Alaska Department of Fish and Game
P.O. Box 25526
Juneau, AK 99802-5526

Dear Dave:

As you are aware, the new Magnuson-Stevens Act sections 313(h)(1 and 2) require the Council to (1) submit measures by June 1, 1997 to ensure total catch measurement in each fishery under its jurisdiction, that will include accurate enumeration, at a minimum, of target species, economic discards, and regulatory discards; and (2) submit a plan to Congress by January 1, 1998, to allow for weighing by fish processors and processing vessels, unless such measures are determined to be unnecessary to meet catch measurement requirements. Based on your motion at the June meeting, the Council has requested NMFS to prepare a document for December that examines the linkages between total catch measurement and weighing of fish, and to report back in December on the current accuracy and precision in catch reporting so we can report to Congress on which actions we need to take to respond to the new provisions of the Act.

As noted in your motion, and as I have been reminded by NMFS (see attached letter), Alaska Department of Fish and Game should be a contributor to this effort. It is the appropriate agency to prepare a similar report for the crab, scallop, and salmon fisheries under the Council's jurisdiction. Hopefully, there will be sufficient time between now and November for its preparation. Then it can be combined with the NMFS document for presentation to and evaluation by the SSC.

I certainly would appreciate any help you could give us on this. Please let me know if you need any further clarifications on this request.

Sincerely,



Clarence Pautzke
Executive Director

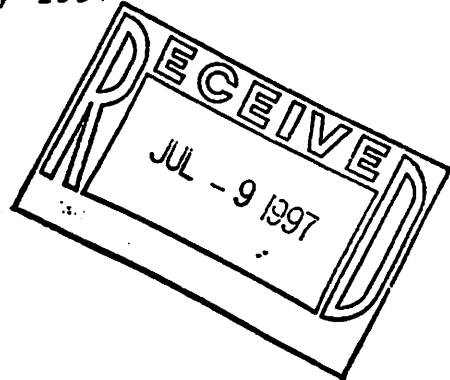
cc: Steve Pennoyer

Attachment



UNITED STATES DEPARTMENT OF COMMERCE
 National Oceanic and Atmospheric Administration
 National Marine Fisheries Service
 P.O. Box 21668
 Juneau, Alaska 99802-1668

July 8, 1997



Clarence Pautzke
 Executive Director, North Pacific
 Fishery Management Council
 605 West 4th Avenue.
 Anchorage, AK 99501-2252

Dear Clarence,

Thank you for your letter requesting NMFS staff help on several agenda items scheduled for the Council's September or December 1997 meetings.

We have initiated staff coordination between the Region and the Alaska Fisheries Science Center to respond to the Council's request for a report on catch measurement techniques, including an assessment of the accuracy and precision of such techniques. Our efforts will be centered on the groundfish fisheries. We assume the Alaska Department of Fish and Game will be asked to prepare a similar report for the crab, scallop, and salmon fisheries under the Council's jurisdiction. Our understanding is that these reports would be scheduled for the Council's December 1997 meeting.

Regional staff will provide a brief report for the Council's September 1997 meeting on the agency's ability to assess whether the proposed IR/IU program provides an effective incentive to avoid unwanted catch. Given all the variables that can affect catch composition, such an assessment likely would be difficult. We also will provide a brief report on whether directed fishing standards could be adjusted to reduce regulatory discards.

Sincerely,

Steven Pennoyer
 Administrator, Alaska Region



North Pacific Council Related
Special Magnuson-Stevens Act Mandates
(Page numbers keyed to red covered, December 1996 copy of Act)

Section 3: Definitions (p. 4)

1. NMFS reviewed new definitions and concluded by letter on 2/20/97, that none of the Council's definitions were inconsistent with those contained in the Sustainable Fisheries Act.
2. There have been comments that the OY definition needs revision. In the BSAI groundfish plan, the OY is set for the groundfish complex as a whole, at 85% of the overall groundfish complex MSY. In the GOA groundfish fisheries, the OY is set at 97% of the MSY. Therefore both plans appear to comport with the new definition of OY.

Section 302(e, i, j): SOPP Updated to Reflect New Procedures (p. 51)

1. Council approved SOPP revisions on 2/7/97. Submitted to NMFS on 2/12/97.

Section 303(a): New Required Provisions of FMPs (p. 58)

1. There are five new FMP requirements relating to the following topics: (1) essential fish habitat, (2) overfishing and stock rebuilding, (3) bycatch reporting and minimization, (4) recreational and charter sector descriptions and allocations, and (5) fishery impact statements must now include communities.
2. We have until October 1998 to submit conforming amendments or assure that the plans already conform. Need to consider these new provisions with the ongoing update of the plan for initial review in September 1997, and in the meantime, get a reading from NMFS on whether we already comply.
3. We received a letter dated December 30, 1996, making us aware of these new requirements and requesting that NMFS' activity sheets be updated once we know our schedule.
4. **Essential fish habitat:** a tasking plan will be considered by the Council in June 1997. The plan will require technical teams to identify and describe EFH for all FMPs by next April. A council final decision will be made in June 1998 on amendments to the plans. Measures to reduce the impacts of fishing on EFH will be developed over the next annual cycle, with final approval in June 1999.
5. **Overfishing and stock rebuilding:** fishery management plans already have overfishing definitions and the only rebuilding plan is for POP, and it is almost rebuilt in abundance. The overfishing definitions may need some adjustment and the teams should consider if adjustments are needed during their August team meeting. They should report to the Council in September 1997.
6. **Bycatch reporting and minimization:** the Council has implemented many measures to minimize bycatch and these will be inventoried for the June 1997 Council meeting. Bycatch also is reported. In June 1997 the Council will need to instruct staff on which additional measures to analyze to further reduce regulatory discards and thus fulfill the intent of this new FMP requirement. The staff recommends that during the call-for-groundfish-proposals this summer, that bycatch reductions be emphasized. Specific proposals will be requested, and in September the Council can develop an amendment package for initial review in April 1998, final approval in June and submission to the Secretary by October 11, 1998.

7. **Charter and recreational fisheries descriptions and allocations:** halibut charterboats measures are being considered, but do not fall under this requirement which is for FMP fisheries only. So no additional work has to be done to respond to this requirement since there is little in the way of recreational fisheries in the Council's jurisdiction for groundfish.
8. **Fishery impact statements for communities:** the Council already incorporates information on effected communities in its fishery management plan amendment analyses as appropriate, and will continue to do so.

Section 303(d)(4): North Pacific Loan Program (p. 63)

1. Council must recommend loan program for small boat and entry level IFQ fishermen by October 1, 1997. Additional information is in Section 304(d)(2)(C) on p. 67 and Appendix on p. 120.
2. Council will give initial review of amendment in June and final review in September 1997. This will be a plan amendment with authorizing language. The information is under agenda item C-2(b). Mike Grable at NMFS will write detailed regulations implementing program. Depending on the extent of the plan amendment required, we should be able to just barely make the October 1 deadline. The loan program will not be funded probably until 1999 at the earliest.

Section 304(d)(2): Fees on IFQ/CDQ Programs (p. 67)

1. Secretary must establish fees up to 3% on IFQs and CDQs.
2. NMFS is preparing fee program as Secretarial amendment to groundfish FMPs. Council will review in September and December 1997.

Section 305(a): Gear Evaluation and Notification List (p. 72)

1. By April 1998, the Secretary must publish a list of all fisheries and gears used in them and guidelines for adding new gears. Secretary has lead but Council will need to respond to information requests. The first request is a letter dated December 30, 1996 from Dr. Gary Matlock seeking list of fisheries and gears by March 1, 1997. Responded by letter on 3/31.

Section 305(b): Fish Habitat (p. 73)

1. Secretary must establish guidelines for describing and identifying essential fish habitat by April 1997. A proposed rule was published on April 23, 1997, and comment period has been extended until July 8, 1997.
2. In February, the Ecosystems Committee prepared comments that were approved by the Council and forwarded to NMFS on February 11.

Section 305(h): Central Registry System (p. 77)

1. Secretary must establish registry system by April 1997, and promulgate regulations after consulting with the Councils.
2. ANPRM published on 3/6/97 and industry asked for and was granted an extension of the public comment period to August 5, 1997.

Section 305(i): CDQ Programs (p. 78)

1. Council must establish CDQ program for groundfish and crab in Bering Sea.
2. CDQs have been approved for all species by the Council as part of the license limitation program which began Secretarial review on June 9, 1997. Council has repeatedly urged NMFS to have new multispecies CDQ programs in place for 1998 even if license program is not implemented until 1999.
3. Pollock CDQs are due to lapse at end of 1998, but will be resubmitted with inshore-offshore proposal scheduled for final Council approval in June 1998. An alternative approach would be to sever the CDQ pollock program from the inshore-offshore amendment and submit it separately as a very brief administrative amendment to remove the sunset of the current pollock program. This is because the pollock CDQ program appears to be legislatively mandated.

Section 313(f): Four-Year Reduction in Economic Discards (p. 103)

1. New Section 313(f) requires the Council to submit by January 1998, measures to reduce economic discards for a period of not less than four years. We will comply by submitting IRIU amendments for BSAI and GOA, to be implemented in 1998. We need to determine if anything needs to be done for crab, salmon and scallop FMPs, as they are fisheries under our jurisdiction.

Section 313(g): Bycatch Reduction Incentives (p. 104)

1. Council may submit system of fines to provide incentives to reduce bycatch and bycatch rates, and VBA type systems.
2. These are discretionary, but Council is working on VBA system and will review progress in 9/97.

Section 313(h)(1): Total Catch Measurement (p. 104)

1. Council must submit measures by June 1, 1997 to ensure total catch measurement in each fishery under its jurisdiction, that will include accurate enumeration, at a minimum, of target species, economic discards, and regulatory discards. Our current catch reporting measures based on observers and the blend system may satisfy this requirement. We need feedback from NMFS and then the Council should determine next steps. Obviously, if what the Council has done so far is insufficient, then we will have failed to meet the June 1, 1997 deadline. In that case, we need to request an extension.

Section 313(h)(2): Weighing of Fish (p. 104)

1. Council must submit a plan to Congress by January 1, 1998, to allow for weighing by fish processors and processing vessels, unless such measures are determined to be unnecessary to meet catch measurement requirements.
2. In October 1994, Council approved a requirement for all processors in the directed pollock fishery to weigh all pollock harvest on a scale and intended that the program be implemented within two years. NMFS published an ANPRM on 2/20/96, but there has been little further action on this matter because of technical problems with finding scales that perform accurately at-sea, and lack of funds for scale inspectors.
3. NMFS will require that certified scales be used in all CDQ operations beginning in 1998 for new

CDQ programs. The Council Chairman, as directed by the Council in February 1997, wrote a letter to NOAA on 2/13/97 urging funding for the certified scale program so that the new CDQ programs could be implemented.

4. Concerning groundfish fisheries, application of scale measurements of total weight will depend on finding a scale that works accurately and consistently at sea. Until such a scale is found and certified for use, and a certification program is established, the current approaches for measuring fish weight through volumetrics must suffice, unless the Council is informed otherwise by NMFS.

Section 313(i): Report on Full Retention (p. 105)

1. Council must submit to the Secretary by October 1, 1998, a report on the advisability of requiring full retention and utilization. We will report first season IRIU results by October 1998 for the BSAI and GOA, if the program is approved and implemented by the Secretary.

Section 401: Vessel Registration and Information Management System (p. 107)

1. Secretary must publish proposed rule by October 1997 to implement a standardized fishing vessel registration and information management system on a regional basis. He must consult with states, commissions, and councils in developing the system.

Section 406: NAS Ecosystems Report (p. 114)

1. The Secretary must establish a panel by April 1997 to develop recommendations to expand the application of ecosystems principles in fishery conservation and management activities, and report the panel's findings to Congress by October 1998. The panel must include Council representatives among others.
2. Formal panel name is Fisheries Systems Research Advisory Panel. Dr. Fluharty was nominated on 3/14 and approved on 4/21/97.

Appendix: NAS Report on IFQ/CDQ (pp. 118-119)

1. NAS must consult with councils and develop an IFQ policy report by October 1, 1998, with a draft due by January 1, 1998. NAS also must consult with the North and West Pacific councils, communities and organizations to develop a comprehensive performance review of the CDQ programs by October 1, 1998.
2. February 1997 Council meeting: Informed that there will be two panels with 15 members each. FR notice within a week and then people will have to submit statement of interest. There should be a letter coming to the Council. Lauber/Behnken nominated on 3/20. Behnken accepted on 5/2/97.

Appendix: Bycatch to Charities Report (p. 120)

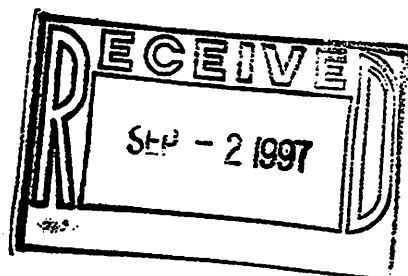
1. The Secretary must conduct a study of the contribution of bycatch to charitable organizations and report to Congress by October 1997. We may need to provide information.

Appendix: Russia Report (p. 120)

1. On schedule to be completed and submitted by 9/30/97 deadline.

August 29, 1997

Mr. Rick Lauber, Chair
North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, Alaska 99501



RE: Bycatch reduction proposals

Dear Mr. Lauber,

Thank you for soliciting proposals for reducing bycatch in North Pacific fisheries. As a citizen concerned with the long-term health of Alaska's ocean ecosystem, I appreciate the Council's respect for the bycatch-reduction mandates of the Magnuson Act.

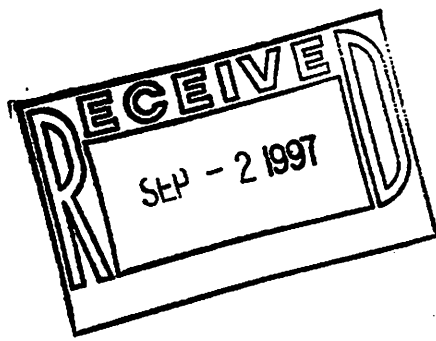
I strongly support the proposals put forth by the Alaska Marine Conservation Council, and urge you to implement their ideas. In particular, both canceling bottom trawling for pollock in the Bering Sea and lowering the caps on prohibited species bycatch, would produce immediate and significant bycatch reductions.

Establishment of programs for harvest priority incentives and individual vessel checklists also deserves serious consideration.

Thank you for your attention to these comments.

Sincerely,

Sandra Arnold
17160 Baronof Avenue
Eagle River, AK 99577



5621 Whispering Spruce Drive
Anchorage, AK 99516
August 29, 1997

To the National Pacific Fishery Management Council,

In regards to the subject of fishery bycatch, I am writing to ask that you strongly consider the proposals submitted by the Alaska Marine Conservation Council. These proposals suggest changes that take into account both the short and the long-term thinking that needs to be considered when making decisions affecting commercial fishing.

As the New England fisheries collapse and the Pacific fisheries run into trouble, Alaska needs to take a harsh look at reducing bycatch as part of their operating plan. We can not sustain the level of bycatch in an industry as large as the Alaska fishing industry and also maintain strong healthy populations of all organisms in the ecosystem.

Alaska may already be seeing the results of overfishing, as the Stellar Sea Lion population continues to decline. The results of various studies are tied more and more to a food source that seems unavailable for the juvenile sea lions.

To continue to support a healthy fishing industry with a sustainable harvest for the future, the NPFMC needs to take the necessary steps to significantly reduce bycatch in all categories.

Thank you for taking these ideas into consideration.

Sincerely,

Trisha Herminghaus

Rick Lauber, Chair
NPFMC
605 W. 4th Suite 306
Anch. Ak. 99501

9.1.97.
John Lyle
Box 83715
FBK's AK
99708

Dear Rick,

I'm not a scientist or a fisherman by vocation. I'm a 17 year resident who spends summers in Prince of Wales Sound and who is concerned about our fisheries resources.

Please accept my brief but heartfelt comment re: the Magnuson-Stevens Act w/ regard to bycatch. It's clear to me that NPFMC needs to become very involved in regulating + monitoring selective fishing practices. I've read AMCC's proposals and they seem solid and logical. I hope you folks feel likewise. Bottom trawling for pollock & other species in the Bering Sea (or anywhere for that matter) is tremendously destructive for other species. Covered caps on bycatch of prohibited or questionable species can help protect salmon, crab, herring + halibut.

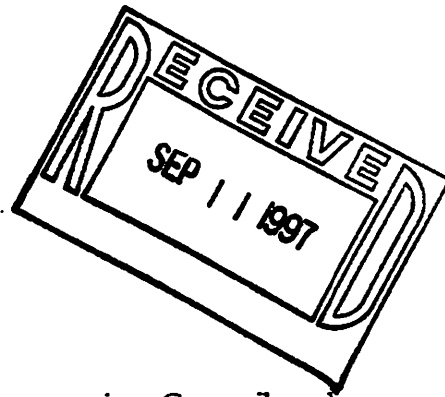
If the industry doesn't regulate itself, then I think we'll be diminished if regulation will come from "above", and none like big brother peering over their shoulders.

Like it or not Rick, the writings on the wall. Fishers need to become more involved, more vigilant in setting limits, protecting other bycatch species and in monitoring each other.

I hope NPFMC takes the AMCC proposals seriously, even if it's a bitter pill to swallow. In the end I think we'll see it

September 9, 1997

Rick Lauber, Chair
North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, Alaska 99501



Dear Mr. Lauber:

We are members of the Alaska Marine Conservation Council and are soliciting your support in implementing strong conservation measures with regards to the recently enacted Magnuson-Stevens Act. Selective fishing practices need to be immediately taken. We recommend the following actions to preserve the long-term health and viability of the North Pacific Fishery/Ecosystem.

1. Eliminate bottom trawling for pollock in the Bering Sea. This action will significantly reduce by-catch immediately.
2. Lower the caps on by-catch of prohibited species. By lowering the caps, fishermen will find ways to avoid catching the prohibited species.
3. Implement "Harvest Priority" and the Individual Vessel Checklist Program.

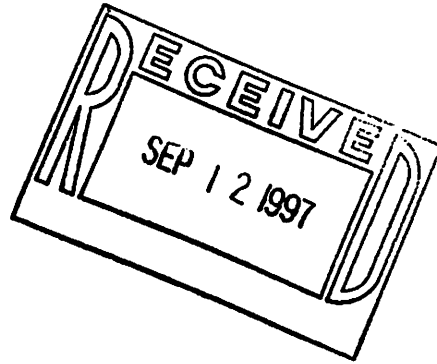
Thank you in advance for your consideration and support.

Sincerely,

George E. Smallwood III
Trina L. Smallwood
P. O. Box 3371
Homer, Alaska 99603-3371

cc: Alaska Marine Conservation Council
P. O. Box 101145
Anchorage, Alaska 99510-1145

Rick Lauber, Chair
North Pacific Fisheries Management Council
605 W. 4th Ave. Suite 306
Anchorage, Alaska 99501



September 9, 1997

Dear Mr. Lauber

I have commercial fished and lived in Alaska for 22 years. I am increasingly concerned about the bycatch and waste that has become acceptable as part of doing business in the trawl fisheries. I urge you to support the proposals put forward by the Alaska Marine Conservation Council to reduce bycatch in the North Pacific.

First, bottom trawling for pollock in the Bering Sea should be eliminated and replaced by pelagic trawling, Second, the caps for bycatch that shut down the fleet should be lowered to force fishermen to be more careful and reduce bycatch.

For the long term, a harvest priority program or something similar would make sense. I have heard all the legal arguments against this but I really don't think NMFS, the NPFMC and AMCC have gotten together in good faith and with minds open to the possibilities and looked carefully at implementing this approach. The Individual Checklist Program may also work, with cooperating fishermen receiving greater access to a reserve fishery. Some sort of reward system for clean fishing must be implemented if we are to reduce bycatch.

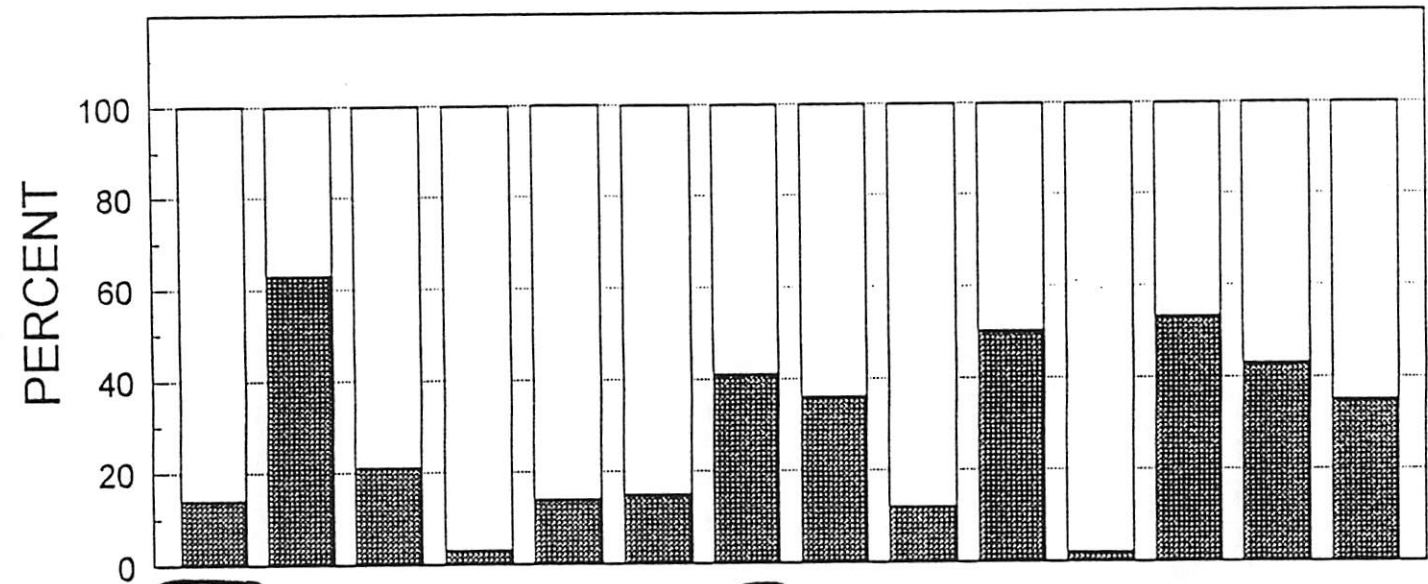
The law is clear, bycatch must be reduced. I sincerely ask that you make this a top priority in your September meetings. Please approach this issue in good faith. Fishermen of future generations and all Alaskans will thank you

Sincerely,

Craig O. Matkin

T. Smith
C-5

1997 BSAI GROUND FISH DISCARDS BY GEAR & TARGET



	C-HAL	S-HAL	T-HAL	C-POT	A-TRW	B-TRW	C-TRW	F-TRW	K-TRW	L-TRW	P-TRW	R-TRW	T-TRW	Y-TRW
DISCARDED	12,197	1,745	1,254	488	10,208	5,914	56,731	2,421	1,476	8,262	12,780	33,057	480	56,024
RETAINED	77,560	1,029	4,704	18,861	62,206	34,310	80,021	4,270	10,663	8,321	604,914	28,994	648	102,064

(through 9/6/97)

TARGETS	A - Atka mackerel	P - Midwater pollock
	B - Bottom pollock	R - Rock sole
	C - Pacific cod	S - Sablefish
	F - Other flatfish	T - Greenland turbot
	K - Rockfish	Y - Yellowfin sole
	L - Flathead sole	

Scott Highleyman
2220 38th Street
Bellingham, WA 98226

tel. 360/715-0063 fax: 715-0072

September 22, 1997

Rick Lauber, Chair
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501

LATE COMMENT

RE: Agenda Item C-5(c) Bycatch Reduction Measures

Dear Chairman Lauber:

The North Pacific Council should be congratulated on again turning its attention to the difficult bycatch problems it faces in North Pacific fisheries. As an interested and active participant in the bycatch debates over the last several years and as a former member of the Advisory Panel, I was gratified to see that the Council is soliciting proposals for how best to implement the requirements under the new Magnuson-Stevens Act to reduce bycatch through avoidance. I endorse the suite of proposals put forward by the Alaska Marine Conservation Council (AMCC) and urge the Council to move them forward for further analysis.

In addition, however, the Council has some unfinished business on a previous proposal that could be of great help to many different proposals on bycatch that the Council has before it. As you know, several years ago AMCC put forward a bycatch proposal called Harvest Priority designed to offer fishermen an incentive to fish clean. The Council ordered some preliminary analysis of the proposal and appointed a Council committee to further study it. However, all of this analysis was stopped in its tracks by a memorandum issued by NOAA General Counsel raising objections to the proposal. The primary objection related to due process concerns stemming from working at the individual -- rather than the fleet -- level.

In response to NOAA GC's memo, AMCC asked two law firms (the Sierra Club Legal Defense Fund, now called the Earth Justice Legal Defense Fund, and Trustees for Alaska) to analyze the memo and provide the Council a second opinion. The resulting memo raised serious questions about the assumptions made by NOAA GC and gave guidance on how the Council could devise programs of individual accountability that would not raise due process concerns. Unfortunately, despite AMCC's invitation to continue a dialogue with NOAA GC and the Council on how to address NOAA GC's concerns, we have seen no further progress.

Perhaps now would be a good time to renew the discussion. As several fishing associations have pointed out to me, NOAA GC's legal opinion could very well be an impediment to virtually any

kind of management scheme that operated at the individual level. But many acknowledge that we won't be able to solve many of the seemingly intractable problems we face in the North Pacific unless we can tackle them on the individual level. Even Congress acknowledged this. In the Senate report accompanying the 1996 amendments to the Magnuson-Stevens Act, Congress specifically endorsed a Harvest Priority-type approach to bycatch avoidance and encouraged the North Pacific Council to work with AMCC and others to resolve any due process concerns.

In conclusion, with many new bycatch proposals before you to consider, the original Harvest Priority proposal may or may not float to the top. But as long as the NOAA GC memo questioning virtually any kind of program targeting individual accountability remains, the Council will be hamstrung. Consequently, I urge you to heed Congress' admonition and request that NOAA GC take a second look at its opinion in light of the new information brought forward and start a dialogue with Earth Justice Legal Defense Fund and Trustees for Alaska. The result could benefit North Pacific fisheries management for bycatch and other issues.

Thank you for consideration of my personal comments on this important issue.

Sincerely,



Scott Highleyman

cc: Eric Jorgensen, Earth Justice Legal Defense Fund
Peter Van Tuyn, Trustees for Alaska