

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director

DATE: October 4, 1999

SUBJECT: Halibut and Sablefish Management

ESTIMATED TIME
1 HOUR

ACTION REQUIRED

- (a) Review committee report on IFQ weighmaster program.
- (b) Discuss scheduling final action for halibut subsistence management.

BACKGROUND

Weighmaster program

In December 1996, the Council initially reviewed a weighmaster program submitted by Icicle Seafoods as an IFQ proposal and tasked staff with development of a discussion paper of requiring weighmasters to monitor offloadings to enhance IFQ accountability. IPHC staff submitted a discussion paper for the September 1997 meeting. In response to the IPHC report, the Council requested that NMFS Enforcement prepare an implementation plan for a weighmaster program. The Council reviewed the implementation plan in October 1998 and referred it for review and recommendations to a joint committee of the IFQ Implementation Team and Enforcement Committee. The Council tasked the joint committee with reviewing: 1) adequate compliance monitoring levels; 2) the potential for involving personnel from ADF&G, USCG, NMFS and the IPHC in achieving the compliance monitoring program; and 3) proposals to address the remaining needs at achieving adequate compliance monitoring levels. Task 1 was addressed in the first meeting on December 10, 1998. Tasks 2 and 3 were addressed at the April 20, 1999 meeting. The minutes of those meetings are attached as Items C-8(a)(1) and (2).

The committee recommends the following actions to the Council:

- To not proceed, at this time, with the weighmaster program as presently described.
- That it submit a letter to Assistant Administrator for Fisheries Penny Dalton and the new Chief of NMFS Enforcement, emphasizing its strong interest in continued funding for IFQ enforcement, and to request funding of the nine positions previously identified under AFA to address additional enforcement workload in other groundfish fisheries, particularly BSAI pollock co-ops.
- Request NMFS Enforcement to prepare a report on a reassessment of the recommended 20% IFQ enforcement coverage by determining an appropriate coverage rate, including USCG IFQ enforcement efforts in determining current coverage levels. The report should reexamine the materials used in developing the original determination of the 20% target IFQ enforcement coverage and the four tier

enforcement concept. This could include an assessment of additional agency coordination, although the committee commends the current levels of NMFS/USCG coordination. The report should be presented at the October IFQ Implementation Team meeting, which would then submit recommendations to the Council.

- Request NMFS Enforcement to prepare an annual report on IFQ enforcement to be provided at each February Council meeting.

Halibut Subsistence

Action to develop management measures on halibut subsistence was initiated in September 1996 as a result of a conflict between the IFQ/CDQ regulations and customary and traditional practices of Alaska Natives in IPHC regulatory area 4E, whereby halibut CDQ fishermen were retaining undersized halibut for personal use. The Council formed a Halibut Subsistence Committee and initiated a regulatory amendment process to address this conflict. In April 1997, the Council approved the staff analysis for public review and scheduled final action for June 1997. The Council took final action on part of the proposed action, which allowed Area 4E CDQ fishermen to retain undersized halibut while commercial fishing.

While the federal government retains complete jurisdiction for managing all halibut fishing sectors due to the international treaty between the US and Canada, the remainder of the proposed subsistence action has been tabled since then recognizing the sensitive nature of continuing discussions between the federal and state governments and the public on subsistence harvests for all fish and wildlife. The Council has periodically put the issue on the Council agenda to discuss the status of the federal takeover. The federal takeover of subsistence management occurred on October 1, 1999, and NMFS has requested the Council reactivate its consideration of the issue (Item C-8(b)). The Executive Summary of the earlier analysis is under C-8(c). The analysis will need to be revised given new NMFS directives on the preparation of EA/RIR/TRFAs.

**Enforcement Committee and IFQ Implementation Team Weighmaster Subcommittee
Minutes of the Joint Meeting
April 20, 1999**

The second meeting of the Enforcement Committee and IFQ Implementation Team Weighmaster Subcommittee convened at approximately 6 p.m. on Tuesday, April 20, 1999. Committee members in attendance: Dave Hanson (chairman), Steve Meyer, Bill Karp, CAPT Vince O'Shea, Sue Salvesson, Garland Walker (for Lisa Lindeman); Jeff Stephan, Arne Fuglvog, Drew Scalzi, John Woodruff, John Bruce (Jack Knutsen was absent). Other staff in attendance: Jay Ginter and Bob Trumble. Others in attendance: Bob Alverson, Tim Blott, John Crowley, Mary Crowley, Krag Johnsen, Kent Helligso, Melody Jordan, Shari Gross, Kris Norosz.

Bob Trumble provided a report of IPHC port sampling coverage. Steve Meyer reported that as of July 1, 1999, NMFS Enforcement IFQ staffing for Alaska will have 8 uniformed officers in the field, 7 in training, and 3 vacant (funded) positions. There are ten additional special agents. No additional enforcement positions were assigned as a result of the American Fisheries Act. Mr. Meyer identified the top two enforcement cases have involved: (1) fishing in areas without appropriate QS and (2) fishing by non-IFQ holders.

The committee discussed the 20% enforcement coverage goal. The weighmaster program only addresses one portion of the four enforcement tiers. Mr. Meyer reported that even when fully staffed, NMFS Enforcement would still not be able to fully implement tiers #3 (auditing) and #4 (investigations). The committee discussed that a reassessment of the need for 20% coverage would allow Enforcement to redirect its efforts to more serious IFQ infractions. The committee noted that the 20% or other desired coverage level should be also assessed acknowledging the combined efforts of NMFS and USCG enforcement.

The committee acknowledged the efforts by NMFS to fully staff the IFQ positions and encourages NMFS Enforcement to meet optimum enforcement levels for continued success of IFQ enforcement.

The committee recommends the following actions to the Council:

- To not proceed, at this time, with the weighmaster program as presently described.
- That it submit a letter to Assistant Administrator for Fisheries Penny Dalton and the new Chief of NMFS Enforcement, emphasizing its strong interest in continued funding for IFQ enforcement, and to request funding of the nine positions previously identified under AFA to address additional enforcement workload in other groundfish fisheries, particularly BSAI pollock co-ops.
- Request NMFS Enforcement to prepare a report on a reassessment of the recommended 20% IFQ enforcement coverage by determining an appropriate coverage rate, including USCG IFQ enforcement efforts in determining current coverage levels. The report should reexamine the materials used in developing the original determination of the 20% target IFQ enforcement coverage and the four tier enforcement concept. This could include an assessment of additional agency coordination, although the committee commends the current levels of NMFS/USCG coordination. The report should be presented at the October IFQ Implementation Team meeting, which would then submit recommendations to the Council.
- Request NMFS Enforcement to prepare an annual report on IFQ enforcement to be provided at each February Council meeting.

The committee adjourned at approximately 8 p.m.

**Enforcement Committee and IFQ Implementation Team Weighmaster Subcommittee
Joint Meeting
December 10, 1998**

The joint meeting of the Enforcement Committee and IFQ Implementation Team Weighmaster Subcommittee convened at 6:40 pm on December 10, 1998. The meeting was rescheduled from the evening of December 9, and some members were unable to attend. Enforcement Committee members in attendance were Chairman Dave Hanson, CAPT. Vince O'Shea, Steve Meyer, and Bill Karp. Sue Salvesson and Lisa Lindeman were absent. IFQ Subcommittee members in attendance were Chairman Jeff Stephan, John Bruce, Arne Fuglvog, Jack Knutsen. Drew Scalzi and John Woodruff were absent. Staff in attendance were Jane DiCosimo (NPFMC), Gregg Williams (IPHC), and Paul Flynn and Scott Tobias (USCG). Members of the public were Bob Alversen and Brandon Owen.

The committee reviewed written reports from NMFS Enforcement and USCG on 1996-98 IFQ enforcement staffing and activities. The reports summarized:

- 1) 1998 monitored offloads/at-sea boardings
- 2) summary of violations (96-98)
- 3) 1998 IFQ boardings and inspections by code
- 4) 1998 IFQ boardings and inspections by port
- 5) staffing
- 6) enforcement effort
- 7) adjudications

Steve Meyer reviewed the four levels of enforcement outlined for the IFQ program: 1) patrol; 2) monitoring offloads; 3) auditing; and 4) investigations. He reported that 11 funded IFQ enforcement positions (FPOs) were not staffed in 1998 and reviewed IFQ enforcement coverage in relation to target enforcement levels (i.e., monitoring 20% of offloads). Mr. Meyer identified the difficulty in recruiting and keeping the positions filled as the primary difficulty in meeting target levels of IFQ enforcement.

The joint committee discussed the necessity for a strong enforcement presence for the continued success of the IFQ program and discussed that the lack of staffing potentially jeopardized the program. The committee discussed the lack of staffing in specific ports, particularly Seward and Homer where IFQ landings are high and enforcement effort is low. The committee identified that nine additional enforcement positions may be approved under the American Fisheries Act and possible additional positions for Steller sea lion protection. The committee discussed that weighmasters, as proposed by NMFS, would fill the monitoring role not being met by current levels of enforcement, and might not be necessary if NMFS Enforcement was fully staffed. The committee also discussed the apparent current low level of violations in the IFQ fisheries and possible increase in violations in the future under decreasing levels of enforcement. The committee discussed that even under full staffing (18 fishery patrol officers) the goal of 20% monitoring would still not be adequate to meet all four tiers of enforcement.

While some committee members reported the lack of support by IFQ fishermen and processors for development of a weighmaster program, the committee did not dismiss weighmasters as an enforcement solution at this time.

The committee set its next meeting for the evening of February 1, concurrent with the February Council meeting. The committee requested: 1) NMFS Enforcement and USCG combine their reports so the committee could review comprehensive statewide IFQ enforcement coverage; 2) NMFS expand the summary report of violations for 1996-98 (Attachments 2A and 2B); and 3) IPHC provide a report on its port coverage.



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

AGENDA C-8(b)
OCTOBER 1999

July 7, 1999

RECEIVED

JUL 14 1999

N.P.F.M.C

Richard B. Lauber, Chair
North Pacific Fishery Management Council
604 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

Dear Rick,

As you may recall, at our meeting in December 1997, we decided to table (or "reschedule") the discussion of subsistence uses of halibut to the December 1998 meeting. As reported in the December 1997 newsletter:

...the Council decided to reschedule final action on creating a halibut subsistence or personal use definition to the Council's December 1998 meeting. The Council's decision was based on continuing discussions between the federal and state governments and the public on subsistence harvests for all fish and wildlife.

The matter has remained on the "table" ever since, and is not currently scheduled for any additional Council action.

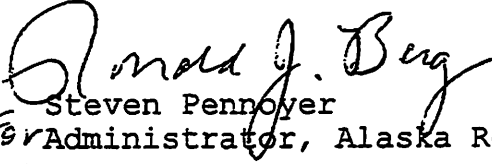
If my memory serves, we decided to delay final action on subsistence because representatives of the Alaska Legislature suggested that precipitous Council action could interfere with the State's efforts to forestall a Federal takeover of subsistence management by taking steps to meet the requirements of Title VIII of the Alaska National Interest Lands and Conservation Act (ANILCA). At the time, we agreed to delay final action until the December 1998 meeting. Now, two legislative sessions (and one general election) later, the State still has not indicated that it will comply with ANILCA, and the concerns of those who petitioned the Council to devise a halibut subsistence management plan remain unaddressed.

This situation has led to the pending Federal take-over of subsistence fisheries management on October 1, 1999. Regulations to accomplish the take-over have been published. No indication exists that the take-over will be further delayed. In consideration of that eventuality, I believe the Council should take the subsistence issue off the table and schedule it for review and final action.



Thanks for considering this recommendation. Let me know if you have any questions or would like a more complete rationale.

Sincerely,


Steven Penoyer
~~For~~ Administrator, Alaska Region

cc: David Benton, Alaska Department
of Fish and Game

Executive Summary

The proposed alternatives in the Halibut Subsistence/Personal Use EA/RIR would address development of regulations to allow for the legal harvest of halibut for food fishing in the Bering Sea/Aleutian Islands and Gulf of Alaska. Subsistence and personal use halibut harvests are currently included within the sportfish regulations, largely because neither fishery pattern of use has been adequately documented. Neither subsistence nor personal use halibut fishing is recognized by the International Pacific Halibut Commission, North Pacific Fishery Management Council, or National Marine Fisheries Service or federal regulations as it is not defined in the Northern Pacific Halibut Treaty of 1982. Halibut subsistence regulations have been promulgated by the State of Alaska and addresses customary and traditional practices of taking halibut to feed families. State personal use regulations are generally promulgated for urban fisheries and were approved for halibut for only the Southeast and Yakutat regions, and are identical to sportfish limits. Sportfish regulations do not reflect the customary and traditional use of halibut in rural communities. Regulations for Alaska limit all non-commercial halibut harvests to two fish per person per day, caught on a single line with a maximum of two hooks or a spear, from February 1 through December 31.

Subsistence/personal use harvests may not be adequately estimated for in the International Pacific Halibut Commission calculations of total halibut removals. Despite the lack of accurate landings information, all non-commercial halibut harvests are estimated to account for about one percent of total halibut removals.

Increased enforcement of commercial halibut IFQ and CDQ regulations has led to increased awareness of the conflict between halibut regulations and customary and traditional subsistence practices of Alaska Natives in coastal communities. In September 1996, the Council received a NMFS report on enforcement issues related to halibut subsistence and designated a committee to advise the Council on management of subsistence halibut harvests. In October 1996, staff from the Council, NMFS Enforcement, NOAA General Counsel, and Alaska Department of Fish and Game Subsistence Division met with Alaska Native Tribal representatives to exchange information on the Council process for developing fishing regulations and Tribal subsistence customs. Agency staff met in November 1996 and provided a report to the Council at its December 1996 meeting on numerous management issues related to development of halibut subsistence regulations. At that meeting, the Council named seven representatives of Native Alaskan Tribes to the Halibut Subsistence Committee and named Council member Robin Samuelson as Chairman. The committee met in January 1997 and provided recommendations for the development of halibut subsistence regulations in its report to the Council in February 1997. At its February meeting, the Council initiated preparation of an EA/RIR for a regulatory amendment to allow the legal harvest of halibut for subsistence in rural communities to conform with state and federal statutes that provide for the opportunity for the continued existence of these traditional cultures and economies. In response to public testimony at its April 1997 meeting, the Council added an alternative to regulate a personal use halibut fishery.

Alternative 2, Option 4, Suboption B and Alternative 3, Option 3, Suboption B address the conflict of Alaska Native subsistence practices and halibut CDQ regulations in Western Alaska. The remaining options under Alternatives 2 and 3 address legalizing existing halibut fishing practices by Alaska rural residents. Approximately 88,663 rural residents in coastal communities with C&T halibut use would be eligible under Alternative 2, Suboption A, of which 42,004 are Alaska Native and 46,659 are non-Native. This option includes all members of Alaska Native Tribes with customary and traditional uses of halibut, regardless of their permanent legal residence. Suboption A will result in approximately 6,492 more Alaska Native Tribal members than Suboption B because the former includes Alaska Native Groups in four urban areas (Juneau, Ketchikan, Kenai-Soldotna and Ninilchik). Included within this suboption are all other residents of the rural communities in areas with customary and traditional uses in which those Alaska Native Tribes are identified. Suboption A is predicted to result in approximately 1,530,299 lb of halibut removed by subsistence fishermen; note, however, that this estimate includes subsistence, personal use, and recreational harvests. It is not possible to differentiate subsistence harvests from among these sources.

Suboptions B and C are based on other federal law. While ANILCA does not apply to management of Pacific halibut, Suboption B is modeled after the rural eligibility standards in ANILCA and the pre-1989 state subsistence law and qualifies all Alaskan rural residents in communities identified with C&T halibut. Under Suboption B, subsistence halibut fishing would be allowed adjacent to the rural community in which an eligible person permanently resides. Suboption B would qualify approximately 82,171 persons in rural areas with customary and traditional uses of halibut. Of these 35,512 are Alaska Natives and 46,659 are non-Natives. Suboption B does not include any resident from Juneau, Ketchikan, Kenai-Soldotna, or Ninilchik since these communities are not rural places. About 6,400 fewer Alaska Natives from four urban communities would be excluded from proposed subsistence regulations. Under Suboption B, approximately 1,437,981 lb of halibut may be harvested for non-commercial purposes. About 544,495 lbs may be harvested by Alaska Natives, and about 893,486 lb may be harvested by non-Natives.

Suboption C includes Alaska Natives and other rural residents in areas with established halibut uses and is modeled after the Migratory Bird Treaty protocol language which allows for individually-based eligibility criteria to prove dependency on subsistence. Like Suboption A, Suboption C is a mix of group and place-defined eligibility with 88,663 eligible rural residents in 114 rural places and 118 Alaska Native groups would be eligible, of which 42,004 are Alaska Native and 46,659 are non-Native. It is distinguished from Suboption A in that it would require individual determinations of "who has legitimate subsistence needs" for non-Native residents. Under Suboption C, an estimated 1,530,299 lb of halibut may be harvested. About 636,813 lb may be harvested by Alaska Natives, and about 893,486 lb may be harvested by non-Natives. The harvest by non-Natives may be less under Suboption C since individual eligibility standards for non-Natives may reduce the number of eligible persons.

In its determination of legal gear, the Council will consider foremost that 'true' subsistence or personal use fishing, that is fishing to feed families, is likely to remain at current per capita levels regardless of the type of gear allowed. Whether the physical costs of harvesting halibut arise from rod and reel gear with two hooks or a longline skate with 60 hooks, an individual or family group can consume only a certain amount of halibut. If halibut are truly to be harvested to feed families, those rates of consumption should not increase measurably due to harvesting efficiency. This may be true more of subsistence fishing than personal use fishing since personal use fishing currently does not exist for halibut. Expanded food fishing opportunities by non-Natives in a subsistence fishery, or the creation of a personal use fishery may increase halibut harvests and result in reduced recreational halibut harvests.

The following management alternatives were approved for analysis:

ALTERNATIVE 1. Status quo.

ALTERNATIVE 2. Allow the harvest of halibut for subsistence.

OPTION 1. Define subsistence.

Halibut subsistence regulations are needed to allow the continued practice of long-term customary and traditional practices of fishing halibut for food for families in a non-commercial manner for non-economic consumption. Subsistence is defined as 'long-term, customary and traditional use of halibut.'

OPTION 2. Define eligibility for halibut subsistence:

Suboption A. Members of Alaska Native Federally-recognized Tribes with customary and traditional use of halibut and other permanent rural residents in such Native villages.

Suboption B. Alaska rural residents as defined in ANILCA and identified in the table entitled 'Alaska Rural Places and Native Groups with Subsistence Halibut Uses,' and will also include other communities for which customary and traditional findings are developed in the future.

Suboption C. Tribal members and other permanent residents of Native villages who have legitimate subsistence needs.

OPTION 3. Define legal gear.

Suboption A. rod-and-reel gear.

Suboption B. hook-and-line gear (including set and hand-held gear) with a range of:

1. 2 hooks;
2. 10 hooks;
3. 30 hooks;
4. 60 hooks.

Suboption C. Allow Tribal governments to contract with NMFS to register designated fishermen to fish for the community using:

1. 1 - 3 skates of gear, up to 60 hooks each;
2. any gear type

OPTION 4. Define minimum size.

Suboption A. No minimum size be imposed for subsistence harvests of halibut.

Suboption B. Revise the commercial halibut minimum size regulations to allow the retention of halibut under 32 inches caught with authorized commercial halibut gear in Area 4E for subsistence use.

OPTION 5. Allow the customary and traditional trade of subsistence halibut.

Suboption A. Prohibit the customary and traditional trade of subsistence-caught halibut.

Suboption B. Allow the customary and traditional trade of subsistence-caught halibut limited to:
(i) an annual amount of:

1. \$200;
2. \$400;
3. \$600.

(ii) and exchanges with:

1. other Alaska Tribes;
2. any Alaskan rural resident;
3. any Alaskan resident;
4. anyone.

OPTION 6. Define a daily bag limit of between 2-20 halibut.

OPTION 7. Develop cooperative agreements with Tribal, State, and Federal governments to collect, monitor, and enforce subsistence harvests and develop local area halibut subsistence use plans in coastal communities.

ALTERNATIVE 3. Provide for personal consumptive use of halibut.

OPTION 1. Define legal gear.

Suboption A. 1-3 hooks per line

Suboption B. 1-3 skates, up to 60 hooks each

Suboption C. any gear type.

OPTION 2. Define legal gear by area.

Suboption A. statewide

Suboption B. IPHC halibut regulatory area

Suboption C. through local use plans.

OPTION 3. Define minimum size.

Suboption A. No minimum size be imposed for personal use harvests of halibut.

Suboption B. Revise the commercial halibut minimum size regulations to allow the retention of halibut under 32 inches caught with authorized commercial halibut gear in Area 4E for personal use.

OPTION 4. Define trade and barter of personal use halibut.

Suboption A. Prohibit the customary and traditional trade of personal use halibut.

Suboption B. Allow the customary and traditional trade of personal use halibut.