

MEMORANDUM

TO: Council and Commission Members

FROM: Jane DiCosimo, NPFMC

DATE: October 4, 1999

SUBJECT: Status of Halibut Subsistence Management in Alaska

BACKGROUND

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 a part of the proposed action, which allowed Area 4E CDQ fishermen to retain undersized halibut while commercial fishing. A report on the levels of removals in this fishery was provided under Tab 1.1.3.

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 of subsistence management. Since the federal takeover occurred on October 1, 1999, the Council may wish to discuss placing this issue on a future Council agenda for final action. The analysis will need to be revised given new NMFS directives on the preparation of EA/RIR/IRFAs.

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 Samuelsen 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.