

Executive Director's Report

Council Member Changes

No, the Council member appointments are not out yet, and most likely won't be out until later this month. The changes to which I am referring here include welcoming aboard a new designee from the U.S. Fish and Wildlife Service, Everett Robinson-Wilson, for his first meeting. He is the Regional Director's Special Assistant on Fisheries and Subsistence. The other change is that CAPT Bill Anderson is leaving us. He is retiring from the U.S. Coast Guard to a new adventure in New Hampshire. He has steadfastly represented the Coast Guard here since September 1992. We wish him well in his new adventure.

Section 210 Restrictions on Council Activities

As everyone has noted by now, there is no agenda item this time on IFQ development of vessel bycatch allowances. As discussed in the May 13 letter from Rollie Schmitten to Chairman Lauber (item B-1(a)), Section 210 of the FY 1996 NOAA appropriations bill has been interpreted to preclude further IFQ development, and vessel bycatch accounts. Item B-1(b) is a letter from three Council members requesting that the topics of IFQs and comprehensive rationalization be added to the agenda. Item B-1(c) is a legal opinion on the subject in response to a FOIA request by United Catcher Boats. Attached to that item is a letter from UCB disputing the opinion.

Committee Nominees

Item B-1(d) is a request to replace Richard Merrick with Rich Ferrero on the BSAI groundfish team, and for John Sease to replace Dr. Ferrero on the Gulf team. The SSC should have a recommendation on these changes, and then we need formal Council concurrence. We also have received nominees from the Fish and Wildlife Service for Dr. Vivian Mendenhall to be on our groundfish plan teams, and for Dr. Steve Klosiewski to be added to the SSC. Their resumes are attached to the other letters in B-1(d).

Also under that item is correspondence on changes to the AP. Pete Maloney has resigned and, at his suggestion, Chairman Lauber has appointed Grant Yutzenka to temporarily replace him. We need formal Council concurrence to add Grant to the AP for the remainder of 1996.

Salmon Plan Withdrawal

As you will recall from the April meeting, NMFS is in process of consolidating fisheries regulations and eliminating various fishery management plans across the nation. The Council took formal action objecting to withdrawal of our salmon FMP and we submitted a letter to Rollie Schmitten on May 7 (copied to you in the May 15 mailing) detailing the basis for our objection. ADF&G and the Alaska State Legislature also submitted letters, the former objecting, the latter agreeing, to the withdrawal.

One of the main points we raised was whether the Secretary had authority to unilaterally withdraw an approved FMP without prior Council action. Regarding that issue, we also sent a Freedom of Information request for any legal opinions or writings on that authority. The e-mail response from Jay Johnson (item B-1(e)) indicated they had nothing on record or any legal opinion, except for a herring plan withdrawal in Maine which does not seem to fit the current situation very well. We may want to seek a formal legal opinion either from NOAA or a consulting attorney.

I have heard that Congress might clarify its intent on this issue, either through changes to the Magnuson Act or in the Congressional Record, but have no confirmation yet. The comment period on the withdrawal ended on May 9, but publication of the final rule will be delayed until October 1 this fall. Other councils have written to NMFS opposing withdrawal of their FMPs. They include the Pacific Council on withdrawal of the Northern Anchovy plan, South Atlantic on withdrawing the spiny lobster plan, and the Mid-Atlantic on withdrawing the bluefish plan.

Other Regulatory Changes

On a second front, NMFS is proceeding to consolidate regulations on council operations. Item B-1(f) is the transmittal letter we received with the proposed revisions of the 50 CFR 600 series regulations. Of special note are the substantive changes proposed for part 605 which regulate how we conduct council operations. Among them are restrictions on who can serve as the Governor's designee, term limits for Council members, and changes to sick leave payout that would affect new employees.

NMFS requested comments on all changes by May 24. All eight councils wrote asking for an extension of the comment period past the chairmen's meeting that will be held July 9-11. NMFS offered an additional week, until May 31. Item B-1(g) is a copy of the comments I submitted on May 7. You received an earlier copy in the May 15 Council mailing. Other councils have written to NMFS supporting our position. I am hoping that Congress clarifies its intent on the issues raised, either directly in the Magnuson Act or in the report of Congressional action. A Senate Commerce Committee report dated May 23, 1996, describing S. 39, speaks to term limits and State designees. It clarifies that a member may serve for three "full" consecutive terms. It also says that "... States may designate as their representative on a Council individuals who are not State employees"

September Council Meeting

The Council will meet in Sitka in September, the week of the 16th. We will be at the Sitka Convention Center; lodging will mainly be at the Westmark Shee Atika Hotel. We should have an agenda out to you by early August. I understand that lodging is very limited in the area.

Friendly Reminder on Final Votes

I've been reminded several times that the 50CFR 605 guidelines governing voting procedures require that a written motion must be visible to all council members and the public before the vote is taken on final decisions. We will endeavor to have copies of the motions available at the time of the vote, or to have them on an overhead projector.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1335 East-West Highway
Silver Spring, MD 20910

THE DIRECTOR

MAY 13 1996



Mr. Richard B. Lauber
Chairman, North Pacific Fishery
Management Council
605 West 4th Avenue
Anchorage, Alaska 99501-2252

Dear Mr. Lauber:

The President signed an appropriations bill (Public Law 104-134) for fiscal year 1996 on April 26, 1996 (see enclosed excerpts). The Act provides funds for the Department of Commerce through September 30, 1996.

Section 210 of the Act contains specific language that prevents the Department of Commerce from using any appropriated funds for certain purposes:

None of the funds appropriated under this Act or any other Act may be used to develop new fishery management plans, amendments or regulations which create new individual fishing quota, individual transferable quota, or new individual transferable effort allocation programs, or to implement any such plans, amendments or regulations approved by a Regional Fishery Management Council or the Secretary of Commerce after January 4, 1995, until offsetting fees to pay for the cost of administering such plans, amendments or regulations are expressly authorized under the Magnuson Fishery Conservation and Management Act....

The Act expires on September 30, 1996. We have asked the Department of Commerce Office of General Counsel for an opinion on the effect of this section after that date.

Because they are funded through Federal appropriations, the Councils and the National Marine Fisheries Service are covered by this restriction. We are preparing an interpretive rule on the scope of the prohibition, since Congress did not define the terms. The rule will rely heavily on the definition of "individual fishing quota" in S. 39, while the "individual transferable quota" will resemble the individual fishing quota but with a transferability aspect.

Work must be suspended at least during the next few months on portions of plans or amendments that relate to individual fishing quotas, individual transferable quotas, or individual

THE ASSISTANT ADMINISTRATOR
FOR FISHERIES



- 2 -

transferable effort allocation programs. For the North Pacific Fishery Management Council, this limitation applies specifically to the following:

1. Vessel bycatch accounts. These would be allocations of an allowable take of prohibited species bycatch to an individual vessel owner or to groups of vessel owners (bycatch pool). These allocations would be transferable or not, depending on the Council's choice.

2. IFQs for pollock. A vessel owner would be allocated annually a certain percentage of the pollock total allowable catch.

Please consult Lisa Lindeman if you have any questions.

Sincerely,

Gary Matlock

for Rolland A. Schmitten
Assistant Administrator
for Fisheries

Enclosure

104TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
104-537

**MAKING APPROPRIATIONS FOR FISCAL YEAR
1996 TO MAKE A FURTHER DOWNPAYMENT
TOWARD A BALANCED BUDGET, AND FOR
OTHER PURPOSES**

CONFERENCE REPORT

TO ACCOMPANY

H.R. 3019



APRIL 25, 1996.—Ordered to be printed

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WASHINGTON : 1996**

SEC. 208. (a) IN GENERAL.—The Secretary of Commerce, acting through the Assistant Secretary for Economic Development of the Department of Commerce, shall—

(1) not later than January 1, 1996, commence the demolition of the structures on, and the cleanup and environmental remediation on, the parcel of land described in subsection (b);

(2) not later than March 31, 1996, complete the demolition, cleanup, and environmental remediation under paragraph (1); and

(3) not later than April 1, 1996, convey the parcel of land described in subsection (b), in accordance with the requirements of section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)), to the Tuscaloosa County Industrial Development Authority, on receipt of payment of the fair market value for the parcel by the Authority, as agreed on by the Secretary and the Authority.

(b) **LAND PARCEL.**—The parcel of land referred to in subsection (a) is the parcel of land consisting of approximately 41 acres in Holt, Alabama (in Tuscaloosa County), that is generally known as the "Central Foundry Property", as depicted on a map, and as described in a legal description, that the Secretary, acting through the Assistant Secretary for Economic Development, determines to be satisfactory.

SEC. 209. Any costs incurred by a Department or agency funded under this title resulting from personnel actions taken in response to funding reductions included in this title shall be absorbed within the total budgetary resources available to such Department or agency: Provided, That the authority to transfer funds between appropriations accounts as may be necessary to carry out this provision is provided in addition to authorities included elsewhere in this Act: Provided further, That use of funds to carry out this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

SEC. 210. None of the funds appropriated under this Act or any other Act may be used to develop new fishery management plans, amendments or regulations which create new individual fishing quota, individual transferable quota, or new individual transferable effort allocation programs, or to implement any such plans, amendments or regulations approved by a Regional Fishery Management Council or the Secretary of Commerce after January 4, 1995, until offsetting fees to pay for the cost of administering such plans, amendments or regulations are expressly authorized under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.). This restriction shall not apply in any way to any such programs approved by the Secretary of Commerce prior to January 4, 1995.

SEC. 211. Section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)) is amended—

(1) in the heading, by striking "GRANTS" and inserting "ASSISTANCE";

(2) in paragraph (1), by striking "award grants to persons engaged in commercial fisheries, for uninsured losses deter-

and \$5,000,000 and an additional \$2,000,000 in contingent appropriations as proposed by the Senate.

The \$2,000,000 provided over the House amount, which is also \$2,000,000 over the amount provided in the conference report on H.R. 2076, is to be used to support the civilian technology initiatives with which the Technology Administration is involved, including international science and technology policy assessment, industrial competitiveness studies, support for the U.S./Israel Secretariat and the National Medal of Technology. The funds are not intended to be used to supplant the need for the downsizing of employment that is nearing completion in the Technology Administration.

The Senate bill provided an additional \$2,000,000 in contingent appropriations for the U.S.-Israel Science and Technology Commission, which is not included in the conference agreement. As provided in both the House and Senate reports on H.R. 2076, the Committees continue to support the U.S.-Israel Science and Technology Commission. The conferees expect the Commerce Department to provide its commitment of \$2,500,000 for this program in fiscal year 1996 from within available resources, subject to the standard transfer and reprogramming procedures set forth under sections 205 and 605 of this section of the bill.

GENERAL PROVISIONS—DEPARTMENT OF COMMERCE

Sec. 206. The conference agreement does not include language proposed by the Senate to prohibit the use of funds by the Secretary of Commerce to issue final determinations under the Endangered Species Act. The House bill contained no provision on this matter under this Chapter. Language on this issue is not necessary under this Chapter because the issue is being addressed on a government-wide basis under the Department of Interior and Related Agencies Chapter.

Sec. 210. The conference agreement includes a modified general provision proposed by the House, but not in the Senate bill, to prohibit the use of funds to develop or implement new individual fishing quota, individual transferable quota, or individual transferable effort allocation programs until offsetting fees to pay for the cost of administering such programs are authorized. The House provision applied only to individual transferable quota programs. In addition, the conference agreement adds language not in the House bill to clarify that the restriction does not apply to any program approved prior to January 4, 1995.

Sec. 211. The conference agreement includes a general provision, similar to language proposed under title III of the Senate bill, to amend Section 308(d) of the Interjurisdictional Fisheries Act of 1986 to increase flexibility in providing grants to commercial fishermen for uninsured losses resulting from a fishery resource disaster arising from a natural disaster. The changes from the language proposed by the Senate are designed to provide further assurances that any fishing boat bought back under this program must be scrapped or otherwise disposed of in a way that prevents the boat from reentering any fishery. The House bill contained no similar provision.

Sec. 212. The conference report includes a general provision, not in either bill, giving the Secretary of Commerce authority to

June 3, 1996

Dr. Clarence G. Pautzke
Executive Director
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

Re: Discussion of Individual Quota Programs at the June Council Meeting

Dear Clarence:

In reviewing the agenda for our upcoming Council meeting in Portland we note with concern that there is no time reserved for any discussions of the pollock ITQ program, VBAs or the possible inclusion of king and Tanner crab fisheries in the study of IFQs. You will note from the attached record of decisions from our January meeting that the council voted to put these issues on the agenda for our June meeting.

While we are aware of the language in section 210 of the 1996 appropriations bill that apparently prevents the Council and NMFS from using any appropriated funds to work on individual quota programs until September 30th, and that there are ongoing discussions in Congress regarding amendments to the Magnuson Act that might limit consideration of individual quotas beyond that date, we fail to see where these congressional expressions prevent the council from discussing measures that we deem as appropriate to rational management of the fisheries under our jurisdiction. It seems to us that to do otherwise is to abdicate our responsibility as Council members and as a responsible management body charged with managing the fishery resources of the North Pacific.

We understand that one reason these issues were not agendaed for discussion at the June meeting apparently was the lack of time due to the press of other important issues and the need to complete the meeting on Sunday. Considering that the industry cod negotiators have now reached agreement on the contentious cod allocation issue, the 12 hours set aside for the cod discussions should now be available for the individual quota and other issues.

We feel it is quite important that we move forward with continuing discussions on the Comprehensive Rationalization Program. Several important council decisions such as inshore/offshore, the moratorium and license limitation, including the proposed expansion of CDQs and their operational provisions were predicated on us pushing forward with CRP. If CRP discussions stop at this juncture, these programs, several of which are temporary or not yet approved by NOAA/Commerce, are put in jeopardy.

We realize that it is too late to modify the draft agenda as it has already been sent out. Accordingly, by this letter we want to put the Council on notice that at the beginning of the meeting and before final approval we intend to move to modify the agenda to accommodate discussions on the above referenced individual quota issues and CRP itself. We would ask that in the interim you give some thought as to how our concerns might be addressed during the meeting, including the necessary documents required for meaningful discussions by the Council.

Yours sincerely,


Walter Pautzke


David Finhart


Morris Barker

**DRAFT MINUTES
NPFMC
JANUARY 1996**

In the limited time we have been able to devote to this project since September, we have concentrated on some of the issues identified above. Many lend themselves only to qualitative assessment, but are still extremely critical in understanding how a pollock-only IFQ program would work, and in defining the various elements and options for the system. We hope that these discussions, found under Item C-5(a)(4), will shed light on some of the mechanics of this program, and help the Council make some basic decisions early on which will make the process much more tractable for both the Council and the analysts. This is the area in which we will concentrate the remainder of our report.

Item C-5(a)(5) is a short discussion from September which focuses on one initial allocation issue which has the potential to greatly simplify the complexity, and perhaps the contentiousness, of the initial allocations of QS/IFQs/IPQs. These allocations options are contained in the original proposal from June 1995 and are suggested in a letter from Alaska Ocean Seafoods. In essence, these options would guarantee a minimum IFQ in the initial allocation - for example, not less than some percentage (75% to 95%) of a vessel's catch in a recent time period. Under this type of alternative, the impact of historical participation (catch), or weighting factors, is greatly reduced.

Finally, Item C-5(a)(6) contains letters received on this issue since the June 1995 meeting, including a letter to Rollie Schmitt from Congressman Bob Livingston and Senator Ted Stevens regarding further implementation and development of IFQ programs by NMFS and the Councils. How far and fast we move ahead in IFQs will in part depend on the outcome of Magnuson Act reauthorization.

Neither the AP nor SSC addressed this agenda item.

DISCUSSION/MOTIONS

The Council received a brief overview of staff work on the outline for the analysis of a pollock IFQ program in the BSAI. Council also received a staff discussion paper on the components of such a program. Council members did not discuss the various elements and options of the plan at this meeting. However, based on earlier reports on the status of crab stocks and public comments, the Council did consider adding the BSAI crab fisheries to the analysis for an IFQ program. Council members also discussed Senator Steven's comments with regard to a potential moratorium on future IFQ programs. Some felt that the Council should delay any further work on IFQ programs until after the Magnuson Act is amended; however, others felt it would be better to continue work on a program so that one could be implemented as soon as possible after any moratorium expired.

Dave Fluharty moved that the Council consider bringing the BSAI king and Tanner crab fisheries back into the IFQ analysis. The motion was seconded and failed by a tie vote, 5-5, with Barker, Fluharty, Berg (for Pennoyer), Pereyra and Tillion voting yes and Behnken, Benton, Mace, O'Leary and Lauber voting no (Samuelson was absent).

**DRAFT MINUTES
NPFMC
JANUARY 1996**

Wally Percyra moved to direct staff to take a more comprehensive look at the transferability vs. non-transferability issue in the analysis. The motion was seconded and carried, 8 to 2, with Mace and Lauber voting no (Berg voting for Pennoyer; Samuelsen absent).

Dave Fluharty moved that the Council notify the public that the next time the Comprehensive Rationalization issue is on the agenda that the subject of adding the BSAI crab fisheries back into the IFQ analysis for pollock will be discussed. The motion was seconded and carried, 7 to 3, with Benton, Mace and Lauber voting no (Berg voting for Pennoyer; Samuelsen absent).

SUMMARY

The Council asked staff to further develop the discussion of transferability and non-transferability in the pollock IFQ analysis. The Council also voted to notify the public that they intend to consider the addition of the BSAI king and Tanner crab fisheries to the study of IFQs the next time IFQs are on their agenda, which will be the June 1996 Council meeting in Portland, Oregon.

(b) VBA's/IBO's

ACTION REQUIRED

Review analytical outline, review list of elements and options to be analyzed, and provide further direction to staff.

BACKGROUND

During discussions on staff tasking in September, the Council identified development of a system of individual bycatch accountability as one of the top priorities for staff resources. Staff with the NMFS' Alaska Fisheries Science Center developed an analytical game plan, and initial list of alternatives to be analyzed, for presentation at the December 1995 meeting in Anchorage. The list of alternatives (elements and options for such a system) was based primarily on a proposal for VBAs submitted by United Catcher Boats (UCB). At that meeting the Council decided to postpone further discussion of this agenda item until January 1996, so that they would have more time to review the materials presented in December and to be able to devote the time necessary for meaningful discussion of this issue.

The schedule proposed by the analysts would allow for initial review of the analysis in April, with a final decision possible in June, dependent upon the Council finalizing the elements and options for analysis. As with previous "IFQ type" management programs, a variety of options may be examined with regard to: initial allocations; use and transferability; ownership; monitoring; and, other components of the system. The briefing materials from



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20230

May 29, 1996

Brent C. Paine
Executive Director
United Catcher Boats
1900 West Emerson Place
Fishermen's Terminal
Seattle, WA 98199

Dear Brent,

I am responding to your inquiry about Gary Matlock's letter to the North Pacific Fishery Management Council conveying the agency's interpretation of section 210 of the appropriations bill. Your letter also contained a FOIA request, which I will address first. There are no documents, other than the Matlock letter and a draft interpretive rule, addressing the exclusion of community development quotas (CDQs) from the scope of section 210. I will explain our reasons for the exclusion of CDQs in this letter.

We have received no documents from any Congressional source on the scope of section 210. I did have a telephone conversation with Trevor McCabe of the Senate Commerce Committee, after the agency had decided that vessel bycatch accounts (VBAs) were covered by section 210, and informed him of our interpretation. I also explained our reasons for excluding CDQs and including VBAs to Justin LeBlanc of Senator Murray's staff in a meeting on May 22. Alan Risenhoover, of our Legislative Affairs office, also spoke with David Whaley of the House Committee on Resources staff and with Trevor McCabe, after our interpretation had been determined.

Community Development Quotas

In attempting to discern Congress' intent, we looked at the definitions of "individual quota" (IQ) in the House bill and of "individual fishing quota" (IFQ) in the Senate bill. We also examined the context of these definitions as they appear in sections addressing new requirements for traditional IQ or IFQ programs, while the definition of "individual fishing quota" -- examined out of context -- can arguably be stretched to encompass CDQs, we believe Congress intended to distinguish between these two types of allocations. The scheme of traditional IQ or IFQ programs is allocation of total allowable catch among individual fishermen or their for-profit corporations. CDQs, on the other hand, are designed to benefit entire coastal communities.



In the House bill, CDQs are covered in section 14, while "individual quota limited access programs" are addressed in section 16. There is no indication in the bill or in any legislative history of which I am aware that the requirements in section 16, such as the moratorium and fees, were meant to apply to CDQs.

In the Senate bill, section 112 addresses CDQs, and section 109(e) covers IFQs. The moratorium on new IFQs in the staff draft obviously did not cover CDQs, because otherwise the amendment at mark-up to cap new CDQs at the current percentage would not have been necessary. Of interest is the fees section (110(c)), which sets fees on the value of fish harvested "under any individual fishing quota program or community development program...". If the Senate drafters considered CDQs encompassed under IFQs, the Stevens amendment at mark-up to add CDQs to that sentence would have been unnecessary. The fees are then put to different uses, under the two separate sections on IFQs and CDQs.

Based on the differences between IFQs and CDQs and this legislative history, we believe the drafters of section 210 would have explicitly used the term "community development quotas" if they had intended to freeze the development of new CDQ programs.

Vessel Bycatch Accounts

In considering VBAs, we looked at the Senate bill, particularly at the definition of IFQ and the treatment of bycatch allocations at section 117(a). That section would add a provision to the Magnuson Act that begins, "Notwithstanding section 303(d)...the North Pacific Council may recommend, and the Secretary may approve, conservation and management measures which provide allocations of regulatory discards to individual fishing vessels as an incentive to reduce per vessel bycatch and bycatch rates in a fishery...". Section 303(d) contains the moratorium on IFQs, which indicates the Senate drafters thought VBAs would be subject to the moratorium unless exempted by the initial phrase.

The definition of IFQ speaks of an allocation of total allowable catch. As we understand the VBA proposal, a certain amount of bycatch would be established for a given fishery, gear, and area, and that amount would be allocated to vessels. This cap on the bycatch species is the equivalent of a total allowable catch for a targeted species.

You argue that the IFQ definition's reference to a permit to "harvest" fish means it cannot apply to bycatch, which is often returned to the sea. But the meaning of "harvest" does not necessarily include retention. In addition, the definition in the Senate bill of the allocated "regulatory discards" encompasses fish that must be retained but not sold. We believe VBAs are thus a form of IFQ.

The agency's interpretation of section 210 is not a reflection of its attitude toward the usefulness of either CDQs or VBAs; it is an attempt to discern objectively what Congress intended.

Sincerely yours,

Margaret Hayes

Margaret Frailey Hayes
Assistant General Counsel
for Fisheries

cc: Rollie Schmitt
Gary Matlock
Steve Penoyer
Jay Johnson
Lisa Lindeman
Sen. Slade Gorton
Sen. Patty Murray

Author: RBerg (Ron Berg) (Ron Berg@FM@FAK) at BANYAN

Date: 6/6/96 2:34 PM

Priority: Normal

TO: Clarence Pautzke at NPCouncil

TO: Chris Oliver at NPCouncil

Subject: fyi..

----- Message Contents -----

Ms. Maggie Hayes

United States Department of Commerce
National Oceanic & Atmospheric Administration
Office of General Counsel for Fisheries
1335 East-West Highway
Silver Spring, MD 20910

Dear Ms. Hayes:

We have reviewed your letter of May 29, 1996 to Mr. Brent Paine, concerning the Agency's interpretation of the § 210 appropriations language as it impacts CDQs and VBAs. With all due respect, we find the Agency's reasoning to be non-persuasive and ask you to re-examine your conclusions.

VBAs

You stated that the Agency "looked at the Senate Bill, particularly the definition of IFQ and the treatment of bycatch allocations at Section 117(a). The section...begins, notwithstanding Section 303 (or)... "what follows is your conclusion that since § 303(d) contains the IFQ moratorium language, the drafters "thought VBA s would be subject to the moratorium...".

We suggest you re-examine the Senate Bill. Section 117(a) actually states "notwithstanding Section 304(d), ...". Section 304(D) is the individual fishing quotas fee provision, not the moratorium provision. Not only has the Agency committed an error in its interpretation, but the separate provision authorizing VBA fees underscores that VBAs and ITQs are different entities, each requiring its own fee authorization.

The Agency next claims that "the definition of IFQ speaks of an allocation of TAC. The word "allocation" is not used in the Bill's definition of IFQ. See § 103(20). Under no reasonable interpretation of that definition could an IFQ be understood to represent an allocation of TAC. This is precisely what an IFQ is not. If anything, it is an allocation of a right to harvest a percentage of the TAC. The Agency's interpretation here is not only based on language which does not appear in the bill, but it plays directly into the hands of IFQ critics who claim quotas represent a property interest in fish. Furthermore, a cap on bycatch is not the equivalent of a target species TAC. A bycatch cap is part of the TAC for that species overall, whether as a target species or as bycatch.

Lastly, with regard to VBAs, the Agency argues that Mr. Paine's position that "harvest" does not apply to bycatch, is essentially irrelevant. You fail to take into account, when you claim that "harvest does not necessarily include retention", that IFQ s pertain only to the target species. The IFQ definition does not apply to bycatch. Quota is a permit to harvest a quantity of target species only, described as a percentage of

TAC of that fishery. The issue is not which fish are retained or discarded. The distinction is between which fish may be harvested under IFQ, and which may not. Nothing contained in the language of the Bill's definitions supports the conclusion that VBA's are a form of IFQ's.

CDQ's

You state that the Agency looked to the House Bill IQ definition and the Senate Bill IFQ definition to discern Congress intent. As you well know, S. 39 has not been before the full Senate. We are unaware of any precedent supporting a determination of Congressional intent from the Committee process only when a bill has not progressed to the full Senate. We believe it is perilous for the agency to do so.

The Agency apparently considered the "context of the definitions" and determined that IFQ's and CDQ's are independent entities. We fail to see any support for this conclusion in the definition. Section 16(a)(6)(vi), which describes the contextual requirement for an IQ program, includes "the cultural and social frame work relevant to the fishery and the local coastal communities...". Subsection (iii) describes "dependence on the fishery." These are the salient factors of a CDQ program. The Section 16(a)(2) definition of IQ is certainly expansive enough to include CDQ's and aptly describes CDQ programs as well as IQ programs. You have already concluded that the Senate Bill definition is broad enough to include CDQ's.

Notwithstanding the foregoing, you state: "we believe Congress intended to distinguish between..." CDQ's and ITQ's. If Congress had intended to distinguish between CDQ's and ITQ's, Congress would have simply and summarily done so. The Agency's statement that IQ/IFQ programs allocate amongst individual fishermen while CDQ's allocate to coastal communities is a distinction without a difference.

The agency next discusses Section 112 of the Senate Bill. The term community development quotas is used far too frequently in the Bill to be undefined, yet it is not defined in § 112, or elsewhere. Since CDQ is not independently defined in the bill, the implication is that the definition is found in the IQ/IFQ general definitions.

The Agency next concludes that because Section 110(c) was amended to include CDQ's, that CDQ's must be separate from ITQ's. If you follow that logic out to its rational conclusion, you will see that § 110(c) is titled: IFQ Fees. The clear implication is that both programs are subsets of IFQs. The additional language merely clarifies that CDQs are ITQs.

You also state that the drafters of the § 210 appropriations language would have used the term "CDQ" if they had intended the prohibition to include such programs. How could they, when the term is not even defined? They used the term which is defined, and which, by its definition, encompasses IQ/IFQ/CDQ programs.

Finally, you point to the process of introducing amendments in this committee mark-up as further support of the agency's position. We have already commented on the propriety of relying on mark-up procedures to determine legislative intent. Furthermore, as you well know, mark-up is part of the political appeasement process. The offering of amendments at mark-up is not indicative of legislative intent.

FOIA Request

We would like to broaden the scope of our prior request. We are interested in seeing any and all documents related to interpretation of § 210, not merely written communication from Congressional sources. This would

include internally generated Agency documents and notes of key staffers. We would also like to broaden the scope of our request to include application of § 210 prohibition in any region, not only the North Pacific.

We have learned that other councils have received letters telling them to stop work on programs interpreted to be prohibited by § 210. We are also interested in any notes of your referenced conversations with Trevor McCabe and Justin LeBlanc; and Alan Risenhoover's conversation with David Whaley and Trevor McCabe. We note that such conversations and written materials emanating from them would not be protected by an agency claim of deliberative process privilege, since you explicitly state that such conversations occurred after the agency had made its decision. Finally, we note that Trevor McCabe stated that the purpose of including VBAs in the § 210 prohibitions was to put pressure on the Washington delegation to succumb to Senator Stevens wishes. This is not a legitimate use of Agency discretion.

Thank you for your consideration.

Sincerely,
Elaine Weinstein
Independent Fishermen for Fair Quotas
Brent Paine
United Catcher Boats

cc:

Rollie Schmitten
Senator Patty Murray
Senator Slade Gorton
Steve Pennoyer
Lisa Lindeman

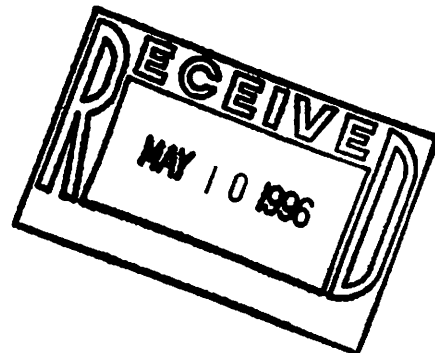


UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Alaska Fisheries Science Center
7600 Sand Point Way NE, Bin C15700
Seattle, Washington 98115-0070

MAY - 6 1996

Clarence G. Pautzke
North Pacific Fisheries Management Council
605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252



Dear Clarence:

Subject to the concurrence of the NPFMC, we wish to change our Marine Mammal Division's staffing on the BS/AI and GOA Plan Teams. At the present, Richard Merrick is on the BS/AI team, and Richard Ferrero is on the GOA team. We would like to replace R. Merrick with R. Ferrero on the BS/AI team, and John Sease (resume attached) will replace R. Ferrero on the GOA team. R. Merrick will then be available to fill in for the regular Plan Team members if they should not be available to perform Plan Team activities.

We request that the changes take effect for the August plan team meetings.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James W. Balsiger".

James W. Balsiger
Acting Science & Research Director
Alaska Region

cc: Howard Braham
Richard Ferrero
Richard Merrick
John Sease



JOHN L. SEASE

Born: 26 December 1951, Middletown, Conn.

Education: University of Maine
Orono, Maine
B.S. Wildlife Biology, December 1976

University of Alaska
Fairbanks, Alaska
M.S. Wildlife Biology, May 1986

Recent Work Experience:

June 1991 - to present: Wildlife Biologist, Steller Sea Lion Task
Alaska Ecosystem Program
National Marine Mammal Laboratory, NMFS
Seattle, WA

Most work directly related to the Steller sea lion research program, assisting with planning and participating in all aspect of field research, data analysis, and writing of scientific papers and technical reports. Individual duties have included capture, handling, measuring, and tagging of sea lions of all ages, as well as the attachment of , time-depth recorders and other telemetry instruments. Additional duties have included participation in field research on harbor seals and several species of whales in Alaska and California sea lions and northern fur seals on the Channel Islands in southern California.

May 1987 to June 1991 Wildlife Biologist, Protected Resources Management Div.
Alaska Region, NMFS
Juneau, AK

Duties included involvement with a wide variety of issues related to marine mammals, such as assisting with the development and implementation of regulations as they pertain to marine mammals and other protected species, reviewing applications for resource development or scientific research that could have an impact on marine mammals, and supplying information to other federal or state agencies. Individual tasks included participating in the early development of regulations governing the interactions between marine mammals and commercial fisheries, drafting portions of the Recovery Plan for Humpback Whales, and assisting with response to the EXXON VALDEZ oil spill in Prince William Sound.



May 21, 1996

Mr. Richard B. Lauber
Chairman
North Pacific Fishery Management Council
105 West 4th Avenue
Anchorage, AK 99501-2252



Dear Rick:

I have decided to take a "break" from the Council family and concentrate on my production responsibilities at UniSea in Dutch Harbor. The decision to resign from the Advisory Panel has been very difficult for me and one that I take very seriously. I have been a member of the AP for five years and have found the experience to be extremely valuable. As the fishing seasons continue to constrict and the need to produce more species and increase quality and recovery, my position as Director of Production at UniSea will demand more of my time.

My decision should not be interpreted as either UniSea or myself believing that the activities of the AP are not important. On the contrary, UniSea intends to remain very active in the Council process and would like to nominate Grant Yutrzenka as my replacement on the AP. Grant is an integral part of UniSea's management and will make an excellent member of the Advisory Panel. Grant's letter requesting appointment is enclosed for your review.

Rick, I would like to thank you and the rest of the Council Members for continuing to support my membership on the AP. I am proud of my participation in the Council family and look forward to continuing to provide input to the Council's deliberations.

Sincerely,
UNISEA, INC.

Pete Maloney
Director of Production

/po

Enclosure



RECEIVED

MAY 22 1996

Post-It™ brand fax transmittal memo 7871 # of pages 2

To *C. Rautzke* From *Rich Lauber*

Co. _____ Co. _____

Dept. _____ Phone # _____

Fax # _____ Fax # _____

May 21, 1996

Mr. Richard B. Lauber, Chairman
 North Pacific Fishery Management Council
 605 West 4th Avenue, Suite 306
 Anchorage, AK 99501-2252

Dear Mr. Lauber:

I am writing to express my interest in filling the position on the Advisory Panel to the North Pacific Fishery Management Council being vacated by Pete Maloney. I have been involved in the fishing industry for a number of years and feel I am both qualified and motivated to serve and be an effective member of the AP.

I have been involved in purchasing salmon from the Columbia River to Nome, herring from San Francisco to Norton Sound, and several species (including halibut and black cod) in between. Being employed by UniSea, I have become closely involved with crab and groundfish in both the Gulf of Alaska and the Bering Sea. As a resident of Alaska for the past 15 years, I have a citizen's environmental and conservation concerns; and in light of my employment in the fisheries industry I recognize the balance that needs to be maintained between environmental and business concerns.

My education and background are centered around practicality and analysis. I have a Bachelor's Degree in Business Administration with an emphasis in accounting from the University of Alaska - Anchorage. As an Alaska resident, I was an officer in the U. S. Air Force, a controller for a small seafood processing company in Anchorage, a fish buyer as mentioned above, and I currently oversee the administrative and systems groups in Dutch Harbor plus signing the weekly NMFS production reports. In addition, I've been the project leader for waste water reduction and product development, focusing on developing higher value for many groundfish byproducts.

In summary, I feel I have a wide background in North Pacific fisheries and Alaska. I also work for the largest shorebased processor in the Bering Sea. As a representative of UniSea, I believe we have a responsibility to participate in the issues affecting our industry. I believe a position on the AP would enhance our responsibility to participate and I would appreciate being selected to the Council "family" as a member of the Advisory Panel.

Sincerely,



Grant B. Yutzenka

Curriculum Vitae

Steven P. Klosiewski

Education

Ph. D. Zoology (Aquatic Ecology). 1991. The Ohio State University. The role of pumpkinseed sunfish predation in structuring snail assemblages in northern Wisconsin lakes.

M.S. Zoology (Aquatic Ecology). 1981. The Ohio State University. Zooplankton-yellow perch interactions in Nebish Lake, Wisconsin.

B.S. Fisheries Management. 1978. University of Wisconsin - Stevens Point.

Work Experience

1994-1995. Fishery Biologist (Biometrician), U.S. Fish and Wildlife Service, Anchorage, AK.

1988-1994. Wildlife Biologist (Biometrician), U.S. Fish and Wildlife Service, Anchorage, AK.

1983-1988. Research Assistant and Teaching Assistant, The Ohio State University, Columbus, OH

1981-1983. Research Biologist, Savannah River Ecology Laboratory, Aiken, SC.

Publications

Bronmark, C., S.P. Klosiewski, and R.A. Stein. 1993. Indirect effects of predation in a freshwater, benthic food chain. *Ecology* 73:1662-1674.

Bart, J., and S.P. Klosiewski. 1989. Use of presence-absence data to measure changes in avian densities. *Journal of Wildlife Management* 53:847-852.

Lodge, D.M., K.M. Brown, S.P. Klosiewski, R.A. Stein, A.P. Covich, B.K. Leathers, and C. Bronmark. 1987. Distribution of freshwater snails: spatial scale and the relative importance of physicochemical and biotic factors. *American Malacological Bulletin* 5:73-84.

Carline, R.F., and S.P. Klosiewski. 1985. Responses of fish populations to mitigation structures in two small channelized streams in Ohio. *North American Journal of Fisheries Management* 5:1-11.

Memberships

American Fisheries Society

Biometric Society

American Statistical Association

CURRICULUM VITAE

Name Vivian Margaret Mendenhall

Date 15 April 1996

Job Title Marine Bird Coordinator

Address Nongame Migratory Bird Program
U.S. Fish and Wildlife Service
1011 E. Tudor Road
Anchorage, Alaska 99503

Contact Numbers Phone: (907) 786-3517
Fax: (907) 786-3641
E-mail: vivian_mendenhall@mail.fws.gov

Education Pasadena High School, Pasadena, California (1961)
University of California at Los Angeles; B.A in Zoology (1966)
University of California at Berkeley; M.A. in Zoology (1970)
Aberdeen University, Aberdeen, Scotland; Ph.D. in Zoology (1976)

Experience

1983-present Marine Bird Coordinator; U.S. Fish and Wildlife Service, Anchorage, Alaska. Provide unified rationale for seabird management and research in the state. Review research results; write plans; propose management policies; comment on permit applications and impact statements of other agencies. Serve as liaison with fishery observer programs of National Marine Fishery Service and Alaska Department of Fish and Game; train observers and collaborate in analysis of bird bycatch data.

1983-1986 Planning Biologist; U.S. Fish and Wildlife Service, Anchorage, Alaska. Wrote descriptions of biology and environmental impact statements for four National Wildlife Refuges (Alaska Maritime, Tetlin, Kanuti, and Nowitna).

1982-1983 Volunteer, Australian National Parks and Wildlife Service, Queensland, Australia. Monitored seabird populations at Raine Island and seabird movements at Brisbane International Airport.

1976-1982 Wildlife Biologist (Research); U.S. Fish and Wildlife Service, Patuxent Wildlife Research Center, Laurel, Maryland. Monitored populations and contaminant problems; wrote plan for long-term monitoring of Eastern Brown Pelicans; performed experiments on secondary effects of pesticides on Barn Owls.

1972-1976 Ph.D. research at Aberdeen University, Aberdeen, Scotland. Field observations and experiments on survival of Common Eider ducklings, with emphasis on predation, parasitism, feeding behavior, and effects of weather. Conclusions: predation was the principal mortality factor, but it was correlated with weather; recruitment to the population was approximately equal to adult mortality.

1969-1971 Technician; University of Alaska, Fairbanks. Wrote literature review on problems caused by shellfish processing wastes; administered psychological tests to mountaineers; managed Wildlife Management library.

- 1966-1969 Master's degree research at University of California at Berkeley. Investigated feeding ecology and social behavior of shorebirds on the coast of California and desert marshes in Oregon.
- 1963-1969 Laboratory aide and teaching assistant positions at California Institute of Technology, Pasadena, University of California at Los Angeles, and University of California at Berkeley.
- Certificates** Certified Wildlife Biologist, The Wildlife Society, 1980
Private pilot's license (single engine land), 1986
- Other Experience** Fishing (family set-net site, Bristol Bay); mountaineering, skiing; languages (read and speak German and Russian slowly)
- Selected Publications** Mendenhall, V.M., and T. Anker-Nilssen. 1996. Seabird populations and commercial fisheries: do we need to worry? *Circumpolar Seabird Bulletin* 2, in press.
- DeGange, A.R., R.H. Day, J.E. Takekawa, and V.M. Mendenhall. 1993. Losses of seabirds in gill nets in the North Pacific. Pp. 204-211 in K. Vermeer, K.T. Briggs, K.H. Morgan, and D. Siegel-Causey, eds. *The status, ecology, and conservation of marine birds of the North Pacific*. Canadian Wildlife Service, Special Publication.
- Mendenhall, V.M. 1992. Distribution, breeding records, and conservation problems of the Marbled Murrelet in Alaska. *Proceedings of the Western Foundation of Vertebrate Zoology* 5: 5-16.
- Mendenhall, V.M. and H. Milne. 1985. Factors affecting duckling survival of eiders *Somateria mollissima* in northeast Scotland. *Ibis* 127:148-158.
- Mendenhall, V.M. 1979. Brooding of young ducklings by female eiders *Somateria mollissima*. *Ornis Scandinavica* 10:94-99.
- Mendenhall, V.M. and R.M. Prouty. 1979. Recovery of breeding success in a population of brown pelicans. *Proceedings of the Colonial Waterbird Group* 1978:65-70.
- Mendenhall, V.M. 1975. Growth and mortality factors of eider ducklings *Somateria m. mollissima* in north-east Scotland. Unpubl. Ph.D. dissertation, University of Aberdeen, Scotland.
- Mendenhall, V.M. 1971. Utilization and disposal of crab and shrimp wastes. University of Alaska Cooperative Extension Service, Publ. no. 15. 41 pp.
- Mendenhall, V.M. 1970. Feeding ecology and behavior of the willet. Unpubl. M.A. thesis, University of California, Berkeley.

Author: JSJohnso (Jay S. Johnson) (Jay S. Johnson@GC@NOAA) at BANYAN
Date: 5/20/96 2:31 PM
Priority: Normal
Receipt Requested
TO: Clarence Pautzke at NPCouncil
Subject: FOIA

----- Message Contents -----

I am sorry we have not yet been able to find anything at agency headquarters that is responsive to your request. The GCF files were boxed when they had to move out of Building One in Silver Spring for health reasons. I asked GCNE to get the program's files in Gloucester which pertain to the withdrawal of the Atlantic herring FMP a number of years ago. The northeast program staff has been overwhelmed by the effort to secure Secretarial approval of Amendment 7 to their groundfish FMP and has not been able to search their archives for the necessary information. I reiterated your interest in obtaining those files and Pat Kurkul has promised to pull her files; however, you might want to try the inter-council network and ask Doug Marshall if he has anything on point. As I told you during our brief visit a few weeks ago, the herring plan failed because compatible state regulations were not adopted by Maine. Since the plan had been approved with the understanding that Maine would cooperate with the Council and the Secretary, it was disapproved by the Secretary when the lack of cooperation became apparent. I believe all that was done procedurally was to publish a proposed notice of withdrawal of approval followed by a final rule actually removing the regulations. I will get back to you when I have something in hand from the northeast region.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1335 East-West Highway
Silver Spring, MD 20910

THE DIRECTOR

APR 24 1996

MEMORANDUM FOR: Distribution
FROM: *Gary Maxlow*
for Rolland A. Schmitten
SUBJECT: Council Operations and Administration Handbook

In March 1995, President Clinton directed all Federal agencies to undertake a review of all of their regulations, with an emphasis on eliminating or modifying those that are obsolete, duplicative, or otherwise in need of reform.

A review of our regulations resulted in a proposed rule to consolidate nine CFR parts (parts 600, 601, 602, 603, 605, 611, 619, 620, and 621) into one, which would contain general provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act) (Attachment 1). In addition, I decided that, since part 605 provides guidelines, not regulations, for Councils' operations and administration, almost all of this part could be removed from the CFR, and the materials contained in that part placed into a Council Operations and Administration Handbook (Handbook) (Attachment 2). This Handbook would be similar to the Magnuson Act Operations Handbook dated March 1985, which was withdrawn on March 11, 1992. The only exceptions are that two paragraphs from § 605.23, on principal state officials and their designees, would be included in the regulations at § 600.205. Also, the Oath of Office from § 601.23 would be revised and shortened and included in the Handbook in Chapter 2, Paragraph (b)(1). It is my intention to make the Handbook effective by the time we publish the final rule for the consolidation of part 600.

Consolidation of Part 605 into a Handbook.

As a result of the consolidation effort, NMFS decided to propose the following substantive changes to part 605 (which will be reflected in the new Handbook): (1) Guidance that appears in the terms and conditions under the awards, OMB circulars A-110 and A-122, or in 15 CFR part 29b is removed from the financial management section of the regulations and is not included in the Handbook; (2) a meeting notice must include language that the meeting is accessible to people with disabilities (Chapter 2, Paragraph (c)(1)(ii)); (3) Council staff are not eligible to receive locality pay (Chapter 2, Paragraph (d)(5)(iii)); (4) Council staff hired after [insert the effective date of the final



rule] will not receive payment for unused sick leave upon retirement or death (Chapter 2, Paragraph (d)(7)(ii)); (5) Councils may set up two bank accounts for payments of unused annual (upon separation) and unused sick leave (upon retirement or death) (Chapter 7, Paragraph (d)(7)(iii)); (6) total employees benefits increase from 20 to 26 percent of employees' gross salary (Chapter 2, Paragraph (d)(8)); (7) instead of the Assistant Administrator for Fisheries, the Regional Director will make recommendations to the NOAA Grants Officer about foreign travel (Chapter 2, Paragraph (d)(10)(i)); (8) Councils can purchase property insurance under certain conditions (Chapter 2, Paragraph (e)(3)(ii)); and (9) only a full-time state employee of the state agency responsible for marine and/or anadromous fisheries may be designated by a constituent state Governor as the principal state official for purposes of section 302(b) of the Magnuson Act (Chapter 2, Paragraph (b)(2)(iii)).

Please review the proposed rule and Handbook and submit comments by May 24, 1996, to Tom Meyer, Office of Fisheries Conservation and Management, NMFS, Room 14838, 1315 East-West Highway, Silver Spring, Maryland 20910. In addition, please identify any information included in the old Magnuson Act Operations Handbook that should be included in the new Handbook. The preamble of the proposed rule for consolidation of part 600, the proposed changes to part 605 discussed in this letter, and the attached cross reference sheet (Attachment 3) should be helpful in determining what sections were affected.

Attachments

Distribution:

F/NEO - A. Rosenberg
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NPFMC - C. Pautzke
WPFMC - K. Simonds

North Pacific Fishery Management Council

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



605 West 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Telephone: (907) 271-2809

Fax (907) 271-2817

May 7, 1996

Rolland Schmitten
Assistant Administrator for Fisheries
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3282

Dear Rollie:

The North Pacific Fishery Management Council requests a delay in the public comment deadline for NMFS' redraft of proposed part 600 and the Council Operations and Administration Handbook until after the Council Chairmen meet in July. This would give the Councils more opportunity to discuss the changes with you, and there is a good chance that Magnuson Act amendments would be finalized by then. The redraft could then incorporate those changes the first time around. We generally support consolidation of regulations and appreciate the new authority to allow Council contractors access to confidential information, but some of the more substantive changes give us concern. I will touch on three here: restriction on state designees, the three-term limit, and payment for unused sick leave.

State Designees

The Magnuson Act provides for 110 voting members nationwide on the eight Councils and prescribes three types of voting members for each Council: principal state officials, NMFS regional directors, and appointed members. Congress authorized, in writing, the Secretary of Commerce to have a hand in selecting only the last two types: the eight NMFS regional directors (Section 302(b)(1)(B)), and the 69 appointed members under Section 302(b)(1)(C). Sections 302(b)(2) through (5) contain the rules for making the 69 appointments.

Congress does not appear to have granted the Secretary any authority to select or reject the first type of voting member, the 33 principal state officials or designees, representing 30 governors. Instead, Congress carefully guaranteed to each state in Section 302(b)(1)(A) that it will have its "... principal state official with marine fishery management responsibility and expertise in each constituent State, who is designated as such by the Governor of the State, so long as the official continues to hold such position, or the designee of such official." The notion that the Secretary does not have a legal role in restricting those individuals is underscored by language in the eight subsections of Section 302(a) which clearly limits the total number that will be appointed by the Secretary, to less than the full complement of voting members on each Council. Also setting them apart is that no oath is required, nor does removal authority in Section 302(b)(5) apply.

Therefore, it is difficult to conclude that NMFS has legislative authority, in redrafting council procedures, to further qualify or restrict who a governor may want as a voting representative on a Council as long as their qualifications meet the letter of the Magnuson Act under Section 302(b)(1)(A). However, proposed Section 600.205 Principal state officials and their designees (pp. 35-36) and the proposed Council Operations and Administration Handbook, Chapter 2 -- Council Administration, Section (b)(3) (pp. 8-10), would require detailed information on employment and salary status, and that the designee be a "subordinate" of the principal state official. The draft rules in Section (b)(3)(vi) then go on to state that individuals not meeting those criteria will not be accepted as state officials or designated alternates to a Council. This language clearly begs the issue of whether the Secretary has a legal basis for accepting or rejecting a Governor's representative.

Notwithstanding the issue of legislative authority, the proposed language is rather ambiguous. Does "subordinate" mean a fully paid employee under direct hire-fire authority of the principle state official? Does the following sentence in 600.205(a): "New or revised designations by state Governors of principal state officials, and new or revised designations by principal state officials of their designees (s), must be delivered in writing to the appropriate NMFS Regional Director

Rolland Schmitten
May 7, 1996
Page 2

at least 48 hours before the individual may vote on any issue before the Council," mean that a current designee, such as our member from Oregon, would have to resign? He has retired from the agency, but continues to serve with distinction, with full support of the agency, the governor and industry. Or do these restrictions just apply when someone new is designated? The State of Alaska in the past also has had a designee who was not fully employed by the State, nor a subordinate of the principal state official, but served at the pleasure of the governor and brought many years of fisheries management and experience to the Council process.

What legal basis does NMFS have to restrict these members from voting? And what problem has become so exacerbated that after 20 years of the Magnuson Act, NMFS suddenly would want to restrict the flexibility of 30 governors (with potential interest of 50 Senators and countless Congressmen) in naming their designees to a Council? No document or correspondence that we have seen reveals that there is a substantial problem with designees. We would appreciate receiving further information on this issue.

Three-Year Term Limits

In Section 600.210 Terms of Council Members, the proposed rule states that as little as one day served in a term counts toward a full term. S. 39 now has draft language that would insert "full" before "consecutive" in the second sentence of paragraph (3) of Section 302(b). This would then conflict with the restrictions envisioned in Section 600.210. This issue has a direct bearing on one of our Council members, and may affect other council members as well.

Sick Leave Payments

As you are aware, we have struggled with this issue before. We now are authorized to pay out sick leave up to the limit provided in our SOPPs when a staff member retires or dies. We want to be able to provide that benefit to all our staff members, not just those that were onboard before a certain date. The incentive should be there to maintain a healthy life style and reduce time off work due to illness. Many other organizations and agencies provide for this, and we see no reason to treat new employees differently.

That completes our comments for now. We would like to be able to meet with the other chairmen in July and then comment further. Also, I would appreciate any clarification you could give me on (1) your legislative authority to restrict who shall serve as a "designee" for the principle state official, and (2) whether your proposed restrictions would apply to current members.

Thank you for considering our concerns.

Sincerely,


Clarence G. Pautzke
Executive Director

cc: NPFMC members
Other Councils
Trevor McCabe
Dave Whaley