


MEMORANDUM

TO: Council, AP and SSC Members

FROM: Clarence G. Pautzke 
Executive Director

DATE: September 18, 1990

SUBJECT: Future Management Planning

ACTION REQUIRED

Further consideration of limited access and community development quota schedules. Provide guidance to staff.

BACKGROUND

Limited Access Schedules

Design and development of limited access for halibut and other species have been delayed the past two years as the Council worked its way through sablefish. Now that the sablefish IFQ system has been tabled, the Council needs to examine its priorities and determine if and when it wants to move ahead with limited access of fisheries under its jurisdiction. Time and effort spent on limited access will detract from other projects such as the moratorium, inshore-offshore, and groundfish amendments. The Fishery Planning Committee grappled with these competing priorities, but could only agree that status of stocks should be top priority (please see excerpted report under C-4(a)). What is the Council's desire on further development of limited access?

Community Development Quotas

The latest community development quota system design was that developed for sablefish (C-4(b)). The concept could be developed further independent of consideration of limited access. The Fishery Planning Committee determined that this topic was best left to consideration by the full Council. What is the Council's desire in further developing and implementing CDQs?

REPORT FROM FISHERY PLANNING COMMITTEE - DATED AUGUST 24, 1990

IV. REVIEW OF OTHER SCHEDULED COUNCIL PROJECTS, ACTIONS, AND WORK REQUIREMENTS

Steve Davis reviewed a list of Council projects and other mandatory activities that could affect the work schedules. The September Council meeting initiates the Council's annual review of the groundfish status of stocks, the determination of acceptable biological catch figures (ABCs), the setting of 1991 quotas (TACs) and apportionments to domestic and joint venture fisheries, and the setting of prohibited species catch limits (PSC) for various fisheries and gear types. This process requires approximately four months and substantial staff effort in evaluating stock assessment surveys and preparing the necessary background documents.

The September meeting also begins the Council's annual amendment cycle, where management proposals are reviewed and 1991 amendment packages outlined. Approximately 41 groundfish proposals and 12 halibut proposals were received for the upcoming cycle. Depending on the number of proposals selected by the Council for development and analysis, and the complexity of the issues, staffing requirements could be substantial if the amendments are to remain on schedule.

The Council also has made commitments to address several other problems on particular work schedules. These include development of a more comprehensive bycatch management program, development of limited access systems for sablefish, halibut, groundfish, and crab fisheries; and the inshore/offshore allocation amendment and moratorium analyses. All of these Council projects will require substantial staff effort and time to remain on their work schedules.

At the request of the Council, the FPC attempted to prioritize these projects given current time, staff, and funding constraints. There was unanimous agreement that the highest Council priority should be placed on the annual status of stocks review and the setting of ABCs, TACS, and PSCs. No consensus could be reached on prioritization of the remaining projects/activities. Some committee members recommend that inshore/offshore be given the highest priority with moratorium, bycatch management, and amendments following, in that order. Others support the moratorium as the highest priority following the ABC/TAC/PSC activity. Other members support the placement of inshore-offshore and the moratorium on the same or identical work schedule.

VI. SABLEFISH MANAGEMENT

With the Council's recent tabling of the sablefish IFQ management system, the FPC requested that traditional open access management proposals submitted for sablefish during the 1988-1990 amendment cycles be included in the 1991 proposal package for Council family review. Concerns were raised that elements of the sablefish industry may not have submitted proposals this year having assumed the Council would take final action on a new management system.

Assistance for Economically Disadvantaged Fishing
Communities Under the Sablefish Management Plan

AGENDA C-4(b)
SEPTEMBER 1990

(As approved in concept by the Council for further review)

In order to ensure that longline fishing vessels associated with eligible communities ~~within the geographic jurisdiction of the Council~~, as designated, have reasonable access to and opportunity to develop substantial commercial fisheries under the authority of the Council, the Secretary may approve community development quotas in accordance with the following provisions.

1. ~~A~~ The Governor of Alaska is authorized to recommend to the Secretary that a community be designated as an eligible economically disadvantaged fishing community. To be eligible, a community must meet all of the following conditions:
 - (a) be located on the coastline west of a line immediately to the east of Port Graham and English Bay at a site accessible to commercial fishing vessels and the sablefish fishing grounds;
 - (b) be unlikely to be able to attract and develop economic activity other than commercial fishing that would provide a substantial source of employment;
 - (c) have culturally and traditionally engaged in and depended upon fishing in the waters off its coast;
 - (d) have not previously developed harvesting or processing capability sufficient to support substantial participation in the commercial groundfish fisheries because of a lack of sufficient funds for investment in harvesting or processing equipment; and
 - (e) have developed a fishery development plan approved by the Governor of Alaska ~~the requesting State~~ that includes arrangement to: (1) acquire or contract with U.S. fishing vessels and U.S. processing plants for the development of commercial sablefish fishing based primarily in the community or region; (2) provide employment of persons in the community and otherwise contribute to the economic development and improvement of the community as a whole; and (3) provide sufficient financing to implement the plan successfully.
2. ~~Each~~ The Governor of Alaska shall develop such recommendations in consultation with the North Pacific Fishery Management Council.
3. ~~Each~~ The Governor of Alaska shall forward any such recommendations to the Secretary, following consultation with the Council. Upon receipt of such recommendations, the Secretary may designate a community as an eligible economically disadvantaged fishing community if:
 - (a) the community meets the criteria set forth in (1) above; and
 - (b) the Secretary finds that the State has reasonable assurances that sufficient financing and other arrangements will be available to implement the plan successfully.
4. ~~Not more than a total of 8% of the fixed gear total allowable catch of sablefish each year, determined on a management area basis, may be utilized in aggregate by designated eligible economically disadvantaged communities.~~ No community may be designated as an eligible economically disadvantaged community for more than 10 consecutive or nonconsecutive years.

Apportionment of Area IFQ to communities would not be greater than:

Bering Sea	10 5% of Area TAC
Aleutian Islands	10 5% of Area TAC
Western Gulf	10 5% of Area TAC
Central Gulf	5% of Area TAC
W. Yakutat	1% of Area TAC
E. Yak./S.E. Outside	1% of Area TAC



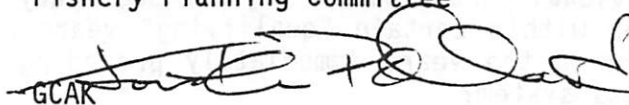
UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of General Counsel
P.O. Box - 21109
Juneau, Alaska 99802-1109
Telephone (907) 586-7414

AGENDA C-4
SUPPLEMENTAL
SEPTEMBER 1990

August 24, 1990

MEMORANDUM FOR: North Pacific Fishery Management Council
Fishery Planning Committee

FROM:


GCAK

SUBJECT: Recent Magnuson Act Litigation Challenging Amendment 8
to the Mid-Atlantic Fishery Management Council's Surf
Clam and Ocean Quahog Fishery Management Plan

On June 14, 1990, the Secretary of Commerce promulgated final regulations implementing Amendment 8 to the Mid-Atlantic Fishery Management Council's Surf Clam and Ocean Quahog Fishery Management Plan (FMP). Amendment 8 establishes an individual fishery quota (IFQ) system of limited access in these fisheries. On July 13, 1990, several surf clam and ocean quahog harvesters and processors filed lawsuits challenging Amendment 8 and its implementing regulations in United States District Court for the District of Columbia. These lawsuits, Sea Watch International, Ltd. v. Mosbacher, Civ. No. 90-1616, and Pearson v. Mosbacher, Civ. No. 90-1626, will establish judicial precedent governing the development and implementation of limited access regulations.

The lawsuits raise many important issues related to development and implementation of limited access systems generally, and IFQ systems specifically. Some of the issues presented for the court's resolution are as follows:

- Notwithstanding the national standard 4 requirement that allocations to United States *fishermen* must be fair and equitable *to all such fishermen*, may the FMP assign the IFQ to vessels based upon the vessels' harvesting histories without regard to the fishermen's harvesting histories? The IFQ initial distribution system implemented under Amendment 8 is based upon vessel catch histories, not the histories of the fishermen who fished from those vessels.
- Is the IFQ system "reasonably calculated to promote conservation" of the surf clam and ocean quahog resources as required by national standard 4?
- Does the IFQ system adequately ensure that "no particular individual, corporation, or other entity acquires an excessive share of fishing privileges" as required by national standard 4? Amendment 8 leaves the question of accumulation of fishing privileges to the United States Department of Justice and its enforcement of the federal antitrust laws.
- Given that the optimum yield for these fisheries is defined simply in terms of harvest quotas, is this IFQ system necessary "to achieve optimum yield" as required by Magnuson Act section 303(b)(6)? Must the FMP amendment also redefine optimum yield to specifically include the social,



economic, and ecological goals that Amendment 8 was designed to promote?

- Under Magnuson Act section 303(b)(6)(B), how specifically must the Secretary consider "historical participation in, or dependence upon, the fishery?" Must the Secretary consider the participation and dependence of each individual participant? May the Secretary limit consideration to participation within certain "qualifying" years and ignore or discount participation in the years immediately preceding implementation of the limited access system?
- Does the record for Amendment 8 reflect adequate consideration of "the economics of the fishery" as required by Magnuson Act section 303(b)(6)(C)? For example, does this provision require, and does the record adequately reflect, consideration of the costs of operating the fleet before and after Amendment 8, the likely costs of purchasing IFQ, the cost to excluded fishermen of commencing fishing operations elsewhere, and the "trickle down" economic effects of Amendment 8?
- Does the record for Amendment 8 reflect adequate consideration of "the capability of fishing vessels used in the fishery to engage in other fisheries" as required by Magnuson Act section 303(b)(6)(D)? Did the Secretary consider alternate opportunities exist for excluded vessels, and the costs of taking those alternate opportunities?
- Does the record for Amendment 8 reflect meaningful consideration of the impacts upon "the cultural and social framework relevant to the fishery" as required by Magnuson Act section 303(b)(6)(E)? How extensively must the Secretary consider individual instances of cultural and social dislocation caused by implementation of the limited access system?
- Does the Magnuson Act prohibit the assessment of fees for IFQ in excess of the administrative costs of issuance?
- Does the Magnuson Act authorize the "privatization" of fishing privileges through implementation of an IFQ system?
- Is economic allocation the sole purpose of Amendment 8?

NOAA General Counsel will keep the Council and its standing committees informed of developments in these cases, particularly as those developments might affect the Council's deliberations on limited access proposals.

cc: NMFS Alaska Region

SEP 20 1990

P.O. Box 6065
 Sitka, AK 99835

September 18, 1990

North Pacific Fisheries Management Council
 605 West 4th Avenue
 Anchorage, AK 99501

SABLEFISH IFQ

Dear Members of the Council,

I have testified, both by letter and in person, ~~on this issue, urging the~~ Council to adopt an IFQ system for the sablefish fishery. I was impressed by the appropriateness of the system hammered out by the Council at the June meeting; it was well-suited to this particular fishery and answers the concerns of the industry. I was appalled to learn that the IFQ system had been tabled and might even be scrapped entirely--you are so close to taking a monumental step forward in fisheries' management, can you really close your eyes to the chaos ahead if you allow open access to continue? What good will a moratorium do when there are already too many boats in the fishery? The details of the system--CDQ, provisions for deckhands--all those controversies are resolvable. What is unresolvable, unforgivable is the damage to the grounds (through lost gear), the waste of incidentally caught species, the loss of human life--all the symptoms of a mismanaged, open access fishery. The fishery is sick. The list of symptoms goes on and on. Tabling the issue is not going to heal the fishery, and scrapping it will kill more people, waste more fish--in short, destroy both the industry and the resource. The time for change is long since past. As the skipper of the *Masonic* said in June: "Good God just do something!"

If there is absolutely no way to finalize and adopt an IFQ system for this fishery at the September meeting, then, at the very least, sablefish IFQ should be scheduled to be reconsidered concurrent with halibut IFQ. Scrapping sablefish IFQ after studying them for two years and postponing the decision for another will destroy what little faith the industry still holds in the Council's ability to effectively manage the fisheries. The industry needs to know that the Council is committed to developing a system that works. Another round of public review is not necessary (why not make 10 or 20% of a fisherman's IFQ transferable after the other 90 of 80% has been

ACTION	ROUTE TO	INITIAL
	Exec. Dir.	
	Deputy Dir.	
	Admin. Off.	
	Exec. Sec.	
	Staff Ass. 1	
	Staff Ass. 2	
	Staff Ass. 3	
	Int. Affairs	
	Sec. Dir.	
	Sec. Typist	

harvested? Then the need for public comment on transferability is eliminated, and if the IFQ holder must be on board while harvesting the first 80 to 90% of his or her quota the resource will remain in the hands of the fishermen). The Council's staff has done an excellent job designing a workable IFQ system, the public has had its say--it is time for the Council to make a decision and stick to it. Please don't let us down again.

I eagerly await the Council's decision. Thank you for your time and attention.

Sincerely,

Linda Behnken

Linda Behnken
(A.L.F.A. member)