C-5 FUTURE MANAGEMENT PLANNING

The Council needs to review and take action on the following items at this meeting.

	Item	Tab
1.	Revisit cut-off date and pipeline definition and consider for adoption.	C-5(a)
2.	Identify problems and concerns with fisheries.	C-5(b)
3.	Sablefish Management: Review Committee recommendations and refine options for further development.	C-5(c)
4.	Halibut Management: Review Committee recommendations and refine options for further development.	C-5(d)
5.	Groundfish and Crab Management: Review Committee recommendations and give further direction for development of open access projections.	C-5(e)
6.	Coastal Communities: Review Committee recommendations and public comments and decide on future course of action.	C-5(e)

Proposed Schedules for Analyzing and Implementing Alternative Management Systems for Sablefish, Halibut, Groundfish and Crab

		Sablefish	Halibut	Groundfish/Crab
1989	April	Interim technical clarification	Interim technical clarification	Interim technical clarification
	June	Final technical clarification		
	September	Approval for public review	Final technical clarification	
	November	Public review		
	December	Final approval	Approval for public review	
1990	January	Secretarial review begins	Public review	
	April	Prepare administrative infrastructure	Final approval	Final technical clarification
	May		Secretarial review begins	
	June		Prepare administrative infrastructure	Approval for public review
	September			Public review
	December			Final approval
1991	January	Implementation		Secretarial review begins
	April		Implementation	Prepare administrative infrastructure
	June			
	September			
	December			
1992	January			Implementation

AGENDA C-5(a)
APRIL 1989

MEMORANDUM

TO: Council, AP, and SSC Members

FROM: Clarence G. Pautzke
Executive Director

DATE: April 7, 1989

SUBJECT: Cut-off Date and Pipeline Definition

ACTION REQUIRED

Revisit the cut-off date and pipeline definition and consider for adoption.

BACKGROUND

In January the Council proposed a January 16, 1989 cut-off date with pipeline criteria recommended by industry members [item C-5(a)(1)]. The Council requested public input concerning the January cut-off date and definition of pipeline. Comments received in writing and at scoping meetings are summarized in item C-5(a)(2).

The Council's action of selecting a cut-off date culminated a year and a half process that began with adoption of a statement of commitment in September 1987:

> Expansion of the domestic fleet harvesting fish within the EEZ off Alaska has made compliance with the MFCMA's National Standards and achievement of the Council's comprehensive goals more difficult under current management regimes. The North Pacific Fishery Management Council therefore is committed to pursue alternate management methods that will support the Comprehensive Goals adopted by the Council and achieve more productive and rational effort and harvest levels in the groundfish fishery.
>
> To fulfill this commitment the Council will:
>
> 1. Develop strategies for license limitation or use of individual transferable quotas in the sablefish longline fishery. The process will begin at the September 1987 meeting and the Council intends to implement the selected management strategy for the 1989 season.
>
> 2. Develop a management strategy for the groundfish fisheries of the Gulf of Alaska and Bering Sea by 1990. Establish a workgroup to consider the need for and impacts of alternative management techniques for groundfish with a full analysis report due by the June 1988 Council meeting. At the June 1988 meeting the Council will consider alternative means to determine the extent to which various participants may accrue credit, including cut-off dates, participation credit, and other approaches, should access limitation be implemented in the future. The Council reserves the right to make retroactive application of such determinations, in whole or in part.
>
> 3. Consider effort management in the halibut and crab fisheries.

The Future of Groundfish (FOG) Committee was formed shortly after the September meeting. It reviewed alternative management techniques used in other fisheries, examined the current Council fisheries, and proposed several management alternatives. Included in the FOG report was a recommendation that the Council adopt a June 30, 1988 cut-off date for all of the fisheries under its jurisdiction. The Council declined to act on FOG's recommendation at the June meeting and set aside further substantive discussion of alternative management systems in all fisheries until, finally, the January meeting.

The Fishery Planning Committee[1] met on March 28 to discuss the cut-off, pipeline definition and other issues. They agreed that the definition of "in the pipeline" tentatively adopted at the January Council meeting was overly vague and generally flawed. Both NOAA Fisheries and Council staffs recommended the use of a specified cut-off date and use of landings documentation (fish tickets) to reduce the number of appeals hearings. NOAA attorney Jon Pollard pointed out that the use of a clear cut-off date could weaken the claims of many participants who may be excluded. Such claims might center on Fifth Amendment Constitutional claims or on "taking" of vessels, gear, and equipment that can no longer be used in the fishery [item C-5(a)(3)]. Mr. Pollard also pointed out that a cut-off date does not hinder the Council from allocating fishing privileges to late entrants. Written comments made reference to the Anti-Reflagging Act. A copy of the pertinent section of the Act is in item C-5(a)(4).

The Committee was unable to reach agreement on any single cut-off date but agreed to recommend two alternatives to the Council [item C-5(a)(5)], both requiring documented landings by a certain date and no pipeline definition. The first is a cut-off date of January 16, 1989 based on documented landings in the fisheries. The notice would resemble the February 13, 1986 Federal Register notice issued for sablefish [item C-5(a)(6)]. This approach is recommended if the Council wishes to reduce speculative entry and yet allow for allocations to later entrants.

The second alternative would involve both present and future cut-off dates. Those qualifying would include all with current landings and those vessels under construction with intent to participate in the Council's fisheries. The language of this alternative is being developed by NOAA Fisheries staff. Developing language to satisfy the legal implications of a cut-off date and still fulfill the Council's intent may not be possible without allowing other vessels and fishermen to qualify.

Many of the public comments the Council has received show a misunderstanding of cut-off dates. There seems to be a general feeling that a cut-off date is a moratorium on qualification for limited access. At the very least, comments seem to suggest that those qualifying under a cut-off date will receive total allocations while those qualifying after that date will receive little if any. One of the critical tasks ahead for the Council will be to determine how the cut-off will be used with respect to weighting performance in the fishery before and after that date. It is not necessarily an all or none proposition.

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[1] The Fishery Planning Committee is composed of Joe Blum (chair), John Petersen, Bob Alverson, Don Collinsworth, Tony Knowles, Henry Mitchell, and John Winther. All but Collinsworth and Winther attended the March meeting. That meeting was staffed by Steve Davis, Dick Tremaine, Jon Pollard, Jay Ginter and Bob Trumble. The Committee met in Seattle on March 28-29, 1989.

Council Motion Adopted in January 1989

At its January meeting, the Council passed the following motion concerning a cut-off date for entry into fisheries under the Council's jurisdiction:

> The North Pacific Fishery Management Council intends to take public comment at its April meeting on all aspects of the following proposal prior to taking final action.
>
> The Council would establish under this proposal a cut-off date of January 16, 1989, after which vessels not in the pipeline may or may not be considered by the Council as eligible for participation in the fisheries under the Council's jurisdiction (including halibut and crab).
>
> For purposes of the cut-off date, a vessel in the pipeline is defined as one which:
>
> a. is currently participating in any fishery under the Council's jurisdiction, e.g. catcher/processor, independent trawler, longliner, pot vessel, etc;
>
> b. is under construction or has recently been constructed with full intent to operate in the fisheries under the Council's jurisdiction; or
>
> c. a major investment, i.e., 20 percent of the delivered cost, has been made to design, construct and operate in the fisheries under the Council's jurisdiction.

The Council agreed that after public comment they would, at the April meeting, adopt, amend or reject the plan as it deemed appropriate.

The Council agreed to expand the terms of reference of the Sablefish Management Committee (now the Fishery Planning Committee) to include all groundfish, halibut and crab species under the Council's jurisdiction in the Bering Sea, Aleutian Islands and Gulf of Alaska. The Committee, along with Council staff and appropriate contracted organizations, is to develop a management scenario for each of three alternatives -- status quo (open access), individual fishing quotas (IFQs) and license limitation. These scenarios would address the major factors which must be considered in implementing any management plan, such as qualifications criteria for any allocation of licenses or quotas, duration and transferability, nationality and concentration of ownership, administration and enforcement, and cost. The Council also adopted a time schedule for consideration of these alternatives.

Summary of Written Comments and Testimony Concerning
Cut-off Date and Vessel Construction Pipeline Considerations

The comments received by the Council since the January Council meeting directly concerning the cut-off date and/or pipeline definition are summarized below. Written comments can be found in numerical order in the appropriate section of the supplemental comment package provided.

1. Jerome Anderson, Speedwell, Inc. - A vessel once flagged under the U.S. was sunk and is currently being repaired. Questions exist as to its qualifications under a pipeline definition. The specifics of the case are presented in the correspondence.

2. Gary Branfeld on behalf of P.M.T. Management and Pacific Bounty - The due process requirements of federal law require that the final proposal contain a prospective rather than a retrospective date. The current "record" before the Council is inadequate to support such legislation although such a record could be made. Legal counsel should draft a new proposal and eliminate the concept of pipeline. Qualification could be based on either having been engaged in any Council fishery prior to June 1, 1989, or (a) been purchased for the purpose of conversion on or before June 1, 1989 and (b) engaged in the fishery by June 1, 1990.

3. Thomas Branshaw, Cordova (2 pieces) - The cut-off date is needed and should not be changed. The situation has become critical to Alaska, its fishermen, shorebased processors, and industry workers. If immediate action is not taken a new flood of participants will emerge into these fisheries from displaced Prince William Sound fishermen. Seiners are already scrambling to get crab pots and the bottom fishing has boats cutting each other's gear. It is a critical situation right now!

4. Alec Brindle, Wards Cove Packing Co. - The current definition of cut-off date and pipeline has several deficiencies. Is a current participant (undefined) in one fishery qualified for that fishery or all fisheries? Vessel is not defined (mothership, self-propelled, moored, and so forth). The 20% investment is unfair to expensive vessels. There is no appellate process designated.

5. Phyllis Carnilla on behalf of Birting Fisheries - Clarification of "with full intent to operate in the fisheries" would be helpful including guidance as to how it could be measured or proved. Likewise the accounting principles to be applied to the investment criteria and how this category would be administered needs clarification. The pipeline definition should include "any vessel that becomes eligible, by July 28, 1990, for a fishery license under Section 4 of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987, Pub. L. 100-239."

6. James Ellis on behalf of Pacific Bounty - The Council's consideration of the cut-off date was not properly noticed, has regulatory impact without observance of the statutorily-mandated process for development of regulations, and cannot be given retroactive effect. The Council should recognize that its apparent preference for using past events as the sole criteria for assessing eligibility is unsound as a matter of administrative law.

7. Jeff Hendricks, Alaska Ocean Seafood - The Council has the responsibility to complete its analysis before it concludes a cutoff is necessary. The pipeline definition is not target species specific; that is, a king crab boat qualifies for pollock. The only sensible cutoff for vessels under construction is the principle used for the Anti-Reflagging Act; the date upon which a contract is signed and the owner legally committed. A major investment is arbitrarily defined and penalizes those who have risked substantial capital in reliance on existing law.

8. Sam Hjelle, Glacier Fish Co. - The cut-off date rule must be (1) clear, (2) simple to apply, and (3) not subject to legal challenge. Eligibility should be either a documented vessel which operated in a Council fishery before the cut-off date, or (a) a contract for construction or conversion was executed on or before the cut-off date and (b) the vessel is documented and operating in a Council fishery on or before June 1, 1991. Eligibility can be determined by reference to three documents: a construction or conversion contract, the vessel license, and catch reports. The cut-off date et al. as drafted in January should not be adopted.

9. Hubert McCallum, Peninsula Marketing Assoc. - Many of the fisherman in southwest Alaska are entering the groundfish fisheries for the first time. They face the competition of at-sea processors and now a potential halt to their conversion plans. Therefore set the cut-off date to actual participation in the respective fishery by December 31, 1990 and make allocations to at-sea and shorebased.

10. Tim McCambly, Dillingham - A cut-off date of January 16, 1989 would all but eliminate Bristol Bay fishermen from a fishery just offshore. The qualifications should include all already owning vessels, especially the local 32 ft. salmon boats. Local fishermen want to enter the fishery and are just preparing to do so.

11. Robert Morgan, Oceantrawl - The placement of large factory trawlers into the fishery requires a lead time of several years. Substantial financial commitments must be made at all stages of the development process. Many factory trawlers currently under conversion have relied on the Anti-Reflagging Act in making plans and financial commitments.

12. Wally Pereyra, Profish - The January 16, 1989 date should be a moratorium date with proper documentation to qualify. All vessels would have to provide documentation to NMFS by January 1, 1990 to demonstrate their qualification. Qualification could be based on past participation or both a contract signed by January 16, 1989 for design and construction or conversion and operation and participation by January 1, 1991. Some limit should be placed on conversions in the near future to limit increased capacity. If a vessel is sunk a similar sized replacement should be allowed.

13. Eric Silberstein, Emerald Seafoods - An additional category should include a vessel qualifying under the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 and especially any vessels that qualify under Section 4 of the Act.

14. John Sinclair, Seaboard Management - There is not an adequate administrative record for the cut-off date or pipeline definition at this time. Also, such action must be consistent with the requirements mandated by Congress when it enacted the Anti-Reflagging Act. A simple, verifiable scheme is preferable and the Anti-Reflagging Act with the addition of a verifiable delivery by January 1, 1991 provides one for vessels converted overseas.

15. Thorn Smith - The cut-off date could be the first step in a series of actions which might dramatically affect the fishing industry. A central theme of the Magnuson Act is that the industry and concerned public should review and comment before any regulatory action is taken. Therefore, the direction of regulatory action should be laid out before the first step is taken. Cut-off dates and pipeline definitions tend to be arbitrary and vulnerable to legal attack. It is difficult to justify the exclusion of anyone who has made any expenditure towards the construction of a vessel. Any cut-off date would result in a number of groups demanding "their" share of the resource.

16. Jess Webster on behalf of Stanley Weikal - There was no advance public notice for the cut-off date nor any logical support for it. The pipeline definition is overly vague regarding such criteria as target species, under-inclusive by not protecting some who have bona fide commitments and investments, and is generally inadequate. The consideration of controlled access at the April meeting is inappropriate for longliners due to the sablefish opening.

The following summarizes the testimony received during the scoping process directed specifically to the cut-off date and definition of the pipeline.

Jay Skordahl - Sitka meeting - The cut-off date of January 16 may make it difficult to use money from Capital Construction Accounts and that should be considered. Supports licenses for sablefish with the use of a cut-off date and landings. Should include oldtimers even if they missed the last few important years.

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
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March 26, 1989

MEMORANDUM FOR: North Pacific Fishery Management Council's Fisheries Planning Committee

FROM: GCAK - Jonathan Pollard

SUBJECT: North Pacific Council's Proposed Cut-off Date and "Pipeline" Definition

At its January meeting, the Council tentatively adopted a January 16, 1989, cut-off date after which vessels not "in the pipeline" may or may not be considered by the Council as eligible for participation in any future limited access system for the groundfish, crab, and halibut fisheries off Alaska. For purpose of the cut-off, a vessel "in the pipeline" is defined as one which:

(a) is currently participating in any fishery under the Council's jurisdiction (e.g., catcher/processor, independent trawler, longliner, pot vessel, etc);

(b) is under construction or has recently been constructed with full intent to operate in the fisheries under the Council's jurisdiction; or

(c) a major investment (e.g., 20 percent of the delivered cost) has been made to design, construct, and operate in the fisheries under the Council's jurisdiction.

The Council has scheduled final approval of this cut-off date and definition for its April meeting.

The Council's tentative adoption of this cut-off date and definition has caused a great deal of confusion and concern in the fishing industry. This memo describes the legal and practical effects of announcing cut-off dates, with particular attention to the Council's tentative cut-off date and "pipeline" definition.

LIMITED ACCESS SYSTEMS AND CUT-OFF DATES:

Magnuson Act section 303(b)(6) provides that any fishery management plan prepared under the Act may

> establish a system for limiting access to the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary [of Commerce] take into account --
>
> (A) present participation in the fishery,
>
> (B) historical fishing practices in, and dependence on, the fishery,
>
> (C) the economics of the fishery,
>
> (D) the capability of fishing vessels used in the fishery to engage in other fisheries,
>
> (E) the cultural and social framework relevant to the fishery, and
>
> (F) any other relevant considerations.

As has been advised in previous discussions with the Council, this provision requires only that the listed factors be "taken into account" in the development of a limited access system. It is not required that each listed factor be accommodated by that system if the Council and the Secretary find that other factors should be given greater weight.

With respect to limited access systems, a cut-off date notifies the fishing industry that entrance into a fishery after a specified date will not necessarily guarantee future access to the fishery resource on the basis of historical participation. The specified date may be used as a control date for distinguishing between present participation and historical participation if a limited access system is implemented in the future. It is important to note that the announcement of a cut-off date does not prevent the later selection of a different date for access to the resource, nor does it categorically extinguish the responsibility of the Council and the Secretary to consider participation after that date but before actual implementation of the limited access system. Any date finally implemented in a limited access system must be supported by an administrative record documenting consideration of the factors in section 303(b)(6).

Given a sufficient record, it could be possible to exclude "present participants" from access to the fishery resource at the

time the limited access system is implemented. It is probable that the participants excluded from the fishery would file claims and suits against the Secretary on any number of potential legal theories related to the development and implementation of the limited access system. It is likely that some excluded participants would raise Fifth Amendment Constitutional claims seeking entrance into the fishery or for the "taking" of vessels, gear, and equipment that can no longer be used in the fishery. [1]

The announcement of a clear cut-off date could weaken the claims of many of these excluded participants. In determining the validity of such "taking" claims, courts would probably consider, among other factors, the specialized character of the vessel, gear, or equipment excluded and the extent to which it may be used in other fisheries; whether it is marketable; the extent to which exclusion from the fishery has diminished its value; and the extent of the owner's investment expectation in the property. In particular, a court might consider whether a claimant had notice of the impending restrictions when the investment was made. A cut-off date could provide that notice. A claimant's case would certainly be weakened if the investments were made in spite of a clear and prospective cut-off date.

THE COUNCIL'S TENTATIVE CUT-OFF DATE AND "PIPELINE" DEFINITION:

The Council's tentative cut-off date and definition have not been promulgated as regulatory standards and have not been justified in terms of any of the Magnuson Act standards noted above. Although the cut-off date and pipeline definition have no binding legal effect, they do raise several legal and practical problems.

First, the definition is vague. For example, the definition does not specify what a "major investment" in vessel design and construction might be; although the definition cites 20 percent of the delivered cost as an example, that is only an example. Also, it is difficult to define "delivered cost" or predict that cost at the preliminary stages of design and construction. The definition does not explain how potential participants are to manifest their "full intent" to operate in the fisheries off Alaska. In short, the definition lacks predictability in application and many potential participants may be unsure whether their projects were "in the pipeline" as of the control date.

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[1] The Fifth Amendment to the United States Constitution provides in part that no person shall be "deprived of life, liberty, or property, without due process of law; nor shall private property be taken . . . without just compensation."

This lack of predictability could come back to haunt the Council in the future, particularly with respect to the Fifth Amendment taking issue identified above. The problem will arise only if the Council decides to exclude participants who entered after the tentative date. As noted above, courts would probably consider a claimant's investment expectation in determining whether a taking of investment property has occurred. However, the pipeline definition is so vague that many potential participants cannot reasonably determine whether they were in or out on January 16, 1989. Under these circumstances, a judge hearing a "taking" claim would probably reject the government's argument that these investors knew the risk before making the investment.

Second, if the purpose of the cut-off date is to provide prospective notice to potential participants of the risk of investing after the announced date, a retroactive amendment of the pipeline definition makes little sense. If the Council refines (amends) the "pipeline" definition in April, it would be impossible to argue that potential participants who continued to invest during January, February, and March had notice of the amended definition during those months. Once again, this consideration becomes relevant only if the Council decides to exclude participants who entered after the tentative date.

Third, the current "pipeline" definition is riddled with vague standards requiring individualized factual inquiry - "major investment," "delivered cost," an operator's "full intent to operate." This sort of factual inquiry requires trial-type hearings for individuals excluded from the fishery. [2] If the tentative date and definition were used to exclude participants from the fishery, NOAA would be holding a potentially high number of hearings on all these factual questions, repeating the worst errors of the Alaska license limitation system. An alternate cut-off date relying upon proof of lawful landing by a specified date would greatly reduce the number hearings. Proof of lawful landing could be provided by fish tickets or other catch and landing reports.

Finally, it is not clear how the tentative cut-off date for all fisheries under the Council's jurisdiction relates to the earlier

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[2] See North Pacific Fishery Management Council Document 87-1, "Limited Access in Alaskan Fisheries: Some Options;" memorandum from Patrick J. Travers, "Legal Analysis of the Halibut Limited Entry System Proposed in Northwest Resources Analysis' Draft Report, 'Limited Entry in the Pacific Halibut Fishery: The Individual Quota Option'" (March 28, 1983).

control date specified for the sablefish longline fishery.[3] There seems to be significant overlap here, raising a question whether the Council intends to supersede those earlier dates with its new tentative announcement.

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[3] Gulf of Alaska sablefish fishery was assigned a control date of September 26, 1985. 51 Fed. Reg. 5393 (February 13, 1986).

Commercial Fishing Industry Vessel
Anti-Reflagging Act of 1987

The language in the Anti-Reflagging Act has been referred to in several pieces of public correspondence to the Council. The following is the actual language of the Act.

SEC. 4. SAVINGS CLAUSE

(a) Notwithstanding the requirements of section 12108(a)(2) and (3) of title 46, United States Code, a fishery license may be issued to a vessel that before July 28, 1987 --

(1) (A) was documented under chapter 121 of that title; and

(B) was operated as a fishery processing or fish tender vessel in the navigable waters of the United States or the exclusive economic zone;

(2) was a fish tender or fish processing vessel contracted to be purchased by a citizen of the United States, if the purchase is shown by contract or similarly reliable evidence acceptable to the Secretary to have been made for the purpose of using the vessel as a fish tender or fish processing vessel in the fisheries;

(3) was documented under chapter 121 of that title and --

(A) was rebuilt in a foreign country; or

(B) is subsequently rebuilt in the United States for use as a fish processing vessel; or

(4) was built in the United States and --

(A is rebuilt in a foreign country under a contract entered into before six months after the date of enactment of this Act, and was purchases or contracted to be purchased before July 28, 1989 with the intent that the vessel be used in the fisheries, if that intent is evidenced by --

(i) the contract itself; or

(ii) a ruling letter by the Coast Guard before July 29, 1987 under 46 CFR section 67.21-1 or section 67.27-3 pursuant to a ruling request evidencing that intent; or

(B) is purchased for use as a fish processing vessel under a contract entered into after July 27, 1987, if --

(i) a contract to rebuild the vessel for use as a fish processing vessel was entered into before September 1, 1987; and

(ii) that vessel is part of a specific business plan involving the conversion in foreign shipyards of a series of three vessels and rebuilding work on at least one of the vessels had begun before July 23, 1987.

(b) A vessel rebuilt under subsection (a)(3)(B) or (4) of this section must be redelivered to the owner before July 28, 1990. However, the Secretary may, on proof of circumstances beyond the control of the owner of a vessel affected by this section, extend the period for rebuilding in a foreign country permitted by this section.

(c) (1) Any fishery license or registry issued to a vessel built in a foreign country under this section shall be endorsed to restrict the vessel from catching, taking, or harvesting.

(2) Before being issued a fishery license, any vessel described in subsection (a)(2) of this section must be documented under an application for documentation acceptable to the Secretary filed before July 28, 1987.

Cut-off Date and Pipeline Definition

The Committee recommends two alternatives for the Council to consider in order to set a cut-off date. The Committee recommends that in either case the use of a pipeline definition is not necessary.

1.) Continued use of the January 16, 1989 cut-off date based on documented landings. A notice similar to that establishing the sablefish control date in the Gulf of Alaska is recommended as follows:

The Council hereby notifies the public that any person or vessel entering any of the commercial halibut,groundfish or crab fisheries in the Bering Sea, Aleutian Islands or Gulf of Alaska after January 16, 1989 [control date] will not be assured of future access to the halibut,groundfish and crab resources if a management regime is developed and implemented that limits the number of participants or vessels in the fisheries. This notice does not affect the previous federal register notice (51 FR 5393) which established September 26, 1985 as the control date for sablefish in the Gulf of Alaska. This announcement does not prevent any other date for eligibility in the fisheries or another method of controlling fishing effort from being proposed and implemented. The intended effect of this announcement is to discourage new entry to the fisheries based on speculation while discussions continue on whether and how access to the halibut, groundfish and crab fisheries should be controlled.

2.) The use of a present date, either January 16 or date of Council action in April, to determine eligibility for vessels currently participating in the fisheries. This eligibility would be based upon documented landings. A future date, to be set by the Council, by which time vessels currently under construction, with intent to participate in the fisheries, would have had to make documented landings.

By adopting this second alternative, the Council would be showing its desire to curtail new entry into the fisheries but allow for entry for those vessels already under construction. NOAA Fisheries is currently drafting a document reflecting this intent.

[Docket No. 50720-5154]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of control date for entry into the Gulf of Alaska sablefish fishery.

SUMMARY: This notice announces that anyone entering the commercial sablefish fishery in the Gulf of Alaska after September 26, 1985 (control date) will not be assured of future access to the sablefish resource if a management regime is developed and implemented that limits the number of participants in the fishery. This announcement is necessary for public awareness of a potential eligibility criterion for access to the Gulf of Alaska sablefish resource. This announcement does not prevent any other date for eligibility in the fishery or another method of controlling fishing effort from being proposed and implemented. The intended effect of this announcement is to discourage new entry to the fishery based on speculation while discussions continue on whether and how access to the sablefish resource should be controlled.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter (Resource Management Specialist), NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) was developed and recently amended by the North Pacific Fishery Management Council (Council). The final rule implementing this Amendment 14 to the FMP was approved by the Director, Alaska Region, NMFS (Regional Director), on September 26, 1985, and published in the Federal Register (50 FR 43193 October 24, 1985).

This notice is not part of Amendment 14. However, in his letter to the Council approving the amendment, the Regional Director noted that NMFS was "... convinced that the rapid increase in fishing effort experienced in the sablefish fishery is likely to continue if not checked." Since the current fishing fleet is capable of harvesting the entire sablefish quota, additional fishing effort would lead to harvesting inefficiencies, more management constraints, and increased conservation risks. The Regional Director recommended that the Council begin immediately to address this problem by developing additional controls on fishing effort. Such controls contemplated in his letter include those that control access to the sablefish fishery resource.

To assist the Council, the Regional Director offered "... to publish a notice in the Federal Register, announcing that anyone entering the sablefish fishery after September 26, 1985, will not be assured to future participation should the Council develop, and the Secretary [of Commerce] implement, an effort control regime that limits the number of participants in the fishery." At its meeting of December 11-13, 1985, the Council voted to accept this offer and adopted September 26, 1985, as the control date. No further action was taken on this issue at that time.

The NMFS and the Council intend, in making this announcement, to discourage speculative entry into the sablefish fishery while potential entry or access control management regimes are discussed by the Council and possibly developed. If the Council decides to develop an access or entry control management regime, some fishermen who do not currently fish for sablefish in the Gulf of Alaska and never have done so may decide to enter the fishery for the sole purpose of establishing a record of making commercial landings of sablefish. Such a record generally is considered indicative of economic dependence on the fishery. On this basis, the fishermen may successfully claim access to a fishery that is otherwise limited to traditional participants. New entrants may have to buy the fishing rights or a permit from an existing participant. Hence, initial access to the fishery at little or no cost may result in a windfall gain when selling an access right to a new entrant. This speculation often is responsible for a rapid increase in fishing effort in fisheries already fully or over developed when management authorities begin to consider use of a limited access management regime. The original problems become exacerbated by those who seek possible windall gain from the solutions being discussed. To help distinguish *bon fide*, established sablefish fishermen from the speculative entrants to a fishery, a management authority may set a control date before discussions and planning of controlled access regimes begin. Fishermen are notified that entering the fishery after that date will not necessarily assure them of future access to the fishery resource on grounds of previous participation. Other qualifying criteria may be applied for entry.

This announcement establishes September 26, 1985, as such a control date for potential use in determining historical or traditional participation in the Gulf of Alaska sablefish fishery. This action does not commit the Council or the Secretary to any particular management regime or criterion for entry to the sablefish fishery. Fishermen are not guaranteed future participation in the sablefish fishery regardless of their date of entry or intensity of participation in the fishery before or after the control date. The Council may choose a different control date, or it may choose a management regime that does not make use of such a date. The Council may choose to give variably weighted consideration to fishermen in the fishery before and after the control date. The Council may choose also to take no further action to control entry or access to the fishery.

Dated: February 3, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator For Science and Technology, National Marine Fisheries Service.

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AGENDA C-5 Supplemental
APRIL 1989

Fishery Planning Committee
March 28-29, 1989 Meeting Summary

The meeting of the Fishery Planning Committee began at 1 p.m. March 28 in room 2079, Bldg. 4, Northwest and Alaska Fisheries Center and reconvened at 8 a.m. on March 29. Council members in attendance were Joe Blum (chairman), John Peterson, Bob Alverson, Henry Mitchell, and Tony Knowles. Committee members not in attendance were Don Collinsworth and John Winther. Staff members present were Steve Davis and Dick Tremaine (NPFMC), Jon Pollard and Jay Ginter (NOAA Fisheries), and Bob Trumble (IPHC). Other agency staff and members of the public also were present. The Committee took up four tasks for recommendation to the Council: definition of "in the pipeline"; defining major problem areas and concerns of all fisheries; further refinements to the sablefish IFQ and license options; and initial configuration and refinements to halibut IFQ and license options.

Task 1: Definition of "in the pipeline"

The Committee agreed that the definition of "in the pipeline" tentatively adopted at the January Council meeting was overly vague and generally flawed. Both NOAA Fisheries and Council staffs recommended the use of a specified cut-off date and use of landings documentation (fish tickets) to reduce the number of appeals hearings. NOAA attorney Jon Pollard pointed out that the use of a clear cut-off date could weaken the claims of many participants who may be excluded. Such claims might center on Fifth Amendment Constitutional claims or on "taking" of vessels, gear, and equipment that can no longer be used in the fishery (Attachment A). Jon also pointed out that a cut-off date does not hinder the Council from allocating fishing privileges to late entrants.

The Committee was unable to reach agreement on any single cut-off date but agreed to recommend two alternatives to the Council (Attachment B). Both alternatives require documented landings by a certain date and therefore do not require a pipeline definition. The first is a cut-off date of January 16, 1989 based on documented landings in the fisheries. The notice would resemble the Federal Register notice issued for sablefish in 1986 (Attachment C). This approach is recommended if the Council wishes to reduce speculative entry and yet still allow for allocations to later entrants.

The second alternative would involve both present and future cut-off dates. Those qualifying would include all with current landings and those vessels under construction with intent to participate in the Council's fisheries. The language of this alternative is being developed by NOAA Fisheries staff. Developing language to satisfy the legal implications of a cut-off date and still fulfill the Council's intent may not be possible without allowing other vessels and fishermen to qualify.

Task 2: Identification of problems and concerns

A list of problems facing the groundfish and crab fisheries which the management alternatives should attempt to solve was drafted. Likewise, a list of concerns against which the alternatives could be evaluated was also drafted. Sets of fisheries problems and concerns from FOG, the draft sablefish plan, the Council's January list of sablefish concerns, the technical workgroup's list of problems, written public comments, and public testimony from the scoping meetings were reviewed.

Six problems were identified: allocation conflicts, non-catch mortality, excess harvesting capacity, opportunity for new entrants, product quality and safety (Attachment D). The areas of biological conservation and data collection were seen as endemic problems but it was agreed that they would be evaluated by being placed on the list of concerns. Allocation conflicts and non-catch fishing mortality are problems the Council already deals with in most if not all of its fisheries. Excess harvesting capacity was the problem identified by the Council in its original call to form FOG and in all subsequent discussion. Opportunity for new entry and economic development was an item raised in the public scoping meetings and felt to be of sufficient importance facing any management system to list as a problem. Product quality and safety were areas in which some quantitative analysis may be of help to the Council and staff was directed to prepare what documentation is available.

The list of concerns generated for the sablefish fishery was modified to include twenty-one areas (Attachment E). Several of the sablefish concerns were dropped since they are currently being addressed (pipeline, cut-off date, gear group allocations) and philosophical concerns were not included. Nine new concerns were added to the list including FOG's concern of world competitiveness (13), several raised during public scoping meetings (14, 15, 19, 20 and 21) and endemic concerns (16, 17 and 18). The Committee feels that this list is a fair measure of the concerns expressed by the public and Council.

The Committee also reviewed the open access scenario put together by the open access "advocacy" subgroup of the technical workgroup (Attachment F). Five new management measures were added: onshore/offshore processing allocations, incentives, limits on discards of fish parts, platooning the fleet, and authorized retention of a percentage of total PSC catch. The Committee recommends that the workgroup be instructed to flesh these measures out and return to the Committee and Council in June with a developed open access scenario. The Committee recognizes that under open access there is a greater potential error in overshooting TACs and therefore managers will be more conservative. It was acknowledged that this exercise is essentially projecting five or more years of plan amendments at once so that the results will necessarily be hypothetical and may not be species specific in all cases.

Task 3: Sablefish management alternatives

IFQs

Several of the decision points under IFQs needed clarification, some required a further reduction of options, and the treatment of community allocations required both. The options for who might be eligible for IFQs were reduced by eliminating vessels and crewmen. The Committee felt that the initial allocations should go to "persons" as defined by the Magnuson Act with the exclusion of non-U.S. citizens. The definition would then be: any individual who is a U.S. citizen, any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State but being controlled by U.S. citizens), and any Federal, State, or local government or any entity of any such government. The Committee is open to a more restrictive definition should one be agreed upon. The category of crewmen was removed from consideration with acknowledgement that records are kept only for vessel owners and permit holders. Qualified vessel owners and State of Alaska permit holders were defined to be those who have documented sablefish landings during the qualification period. The Committee requests industry input concerning the appropriate measures to define qualified leasing arrangements.

The years for eligibility are recommended to be 1984 through 1988. Future analysis will include a variety of weighting schemes based on participation during the last two years.

The Committee made several recommendations concerning regulation of IFQ ownership. Two options, restricting the amount of landings by vessel and requiring that the IFQ holder be onboard or present when

landing, were recommended for deletion. The Committee felt that restricting the amount of landings by vessel would greatly reduce the effective use of IFQs, since they are designed to allow operators flexibility in such matters as landings per trip. Requiring that the IFQ holder be onboard or present when landing was recommended for deletion because such a requirement makes the operation of corporate or managed mini-fleets extremely difficult. Limits on the amount of IFQs one entity could own or control were decided to be unnecessary. Instead, the Committee reiterated National Standard 4: limited access allocation will be carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges. Requirements for proof of ownership or participation in order to "control" (own or lease) IFQs were defined as the same criteria which will be used for initial allocation. That is, if the initial allocation goes to vessel owners then only vessel owners would be permitted to control IFQs. Citizenship requirements were defined according to the Anti-Reflagging Act of 1987 although the Committee was open to the most restrictive definition possibly short of drafting new legislation. The Anti-Reflagging Act definition, as applied to this plan, would require all non-individual entities (corporations, partnerships, associations, and so forth) to have a controlling interest (as measured by a majority of voting shares in that entity) owned by citizens of the U.S. If the entity is owned in whole or part by other entities, the controlling interest in those entities, in the aggregate, must be owned by individuals who are citizens of the U.S.

Licenses

Many of the same decisions and clarifications were made for sablefish licenses as for IFQs. These include: deleting three options, namely, vessels as eligible for initial allocations, restricting ownership by vessel size or effort, and requiring the licence owner to be onboard or present; specifying years to be analyzed; and defining vessel, permit holder, person leasing a vessel, limits on control and citizenship.

The coverage of a license was decided to be on a yearly rather than seasonal basis for ease of administration. The years of consideration are the same as for IFQs, 1984-1988, and analysis will examine non-transferable licenses for entrants in the last one and two years. Size or effort level transferability was deleted as a possibility since it was redundant with size specific licenses. If licenses are allowed to be combined, a recommended restriction on such combinations is two of a size class traded for one of the next larger class. The Committee is still requesting industry input on appropriate vessel size categories.

The Council should be aware of the flaws of licenses issued by vessel size in terms of controlling effort. The Committee was clear on the point that, although vessel size restrictions would more or less fix composition of the fleet, the total effort levels would continue to increase as other types of effort were increased (number of skates used, engine size, and so forth). The technical workgroup had suggested licensing units of gear, either a number of skates or hooks. The allocation of these units could be based on vessel size, the number of fishermen per vessel or some other combination of factors. The workgroup felt that this method would be a more direct means of controlling effort and would allow the management agency flexibility in adjusting overall effort whereas vessel size limits inherently do not. However, the Committee felt that effort controlled by gear units would be very difficult to enforce and too burdensome to the system.

Task 4: Halibut controlled access decision points

The Committee recognized that the sablefish and halibut fisheries are similar in terms of gear, vessels, crew, and grounds. Therefore, in an effort to standardize the proposed alternatives by gear group, the proposed halibut alternatives are almost identical to the sablefish alternatives.

Only two points are different between the sablefish and halibut alternatives; management areas and, for licenses, vessel sizes. IFQs would be specific by IPHC management area: 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E. Likewise,

license areas would be either all eight areas individually or combined into four areas: 2C, 3A, and 3B; 4A, 4B, and 4D; 4C; and 4E. Some of the Committee pointed out that management by IPHC area may become an administrative burden. For licenses based on vessel size, the IPHC vessel size categories are added as an alternative. Public comment is requested on which of these or some other grouping would be most appropriate and uniform for both sablefish and halibut fisheries.

Additional notes concerning all fisheries

Coastal community access to the resource was discussed for all fisheries, not just sablefish and halibut. The Committee was in agreement that some means needs to be taken to ensure continued access to the local resource for communities just entering the fisheries. Two general approaches were considered; restricting participation to small vessels typical of those used by local fishermen in other fisheries; and to require all landings be processed by the local communities. The difficulty arose in trying to define coastal communities. Options included limiting community development programs to just western Alaska, all small Alaskan communities, or all communities. It was generally agreed that such allocations would be made prior to any other limited access allocations and removed from the open access pool should that system be continued. The Committee finally agreed to recommend to the Council that some consideration should be given to coastal communities but it was not willing to make a specific recommendation at this time. The staff is requested to help define communities and criteria for inclusion and to get some sense of how much of the overall quota would be involved.

The Committee discussed the concept of setting aside some small portion of the TAC for management assessment surveys. Such a reserve would allow the management and research agencies to self finance surveys by selling the catch. By accounting for the catch, overall mortality might be reduced and there would be a reduction in waste. Currently, survey mortality is outside of the TACs. This concept was discussed within the longline fisheries although it could be applicable to ~~o~~thers. No recommendations concerning this were made to the Council.

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March 26, 1989

MEMORANDUM FOR: North Pacific Fishery Management Council's Fisheries Planning Committee

FROM: GCAK - Jonathan Pollard

SUBJECT: North Pacific Council's Proposed Cut-off Date and "Pipeline" Definition

At its January meeting, the Council tentatively adopted a January 16, 1989, cut-off date after which vessels not "in the pipeline" may or may not be considered by the Council as eligible for participation in any future limited access system for the groundfish, crab, and halibut fisheries off Alaska. For purpose of the cut-off, a vessel "in the pipeline" is defined as one which:

(a) is currently participating in any fishery under the Council's jurisdiction (e.g., catcher/processor, independent trawler, longliner, pot vessel, etc);

(b) is under construction or has recently been constructed with full intent to operate in the fisheries under the Council's jurisdiction; or

(c) a major investment (e.g., 20 percent of the delivered cost) has been made to design, construct, and operate in the fisheries under the Council's jurisdiction.

The Council has scheduled final approval of this cut-off date and definition for its April meeting.

The Council's tentative adoption of this cut-off date and definition has caused a great deal of confusion and concern in the fishing industry. This memo describes the legal and practical effects of announcing cut-off dates, with particular attention to the Council's tentative cut-off date and "pipeline" definition.

LIMITED ACCESS SYSTEMS AND CUT-OFF DATES:

Magnuson Act section 303(b)(6) provides that any fishery management plan prepared under the Act may

> establish a system for limiting access to the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary [of Commerce] take into account --
>
> (A) present participation in the fishery,
>
> (B) historical fishing practices in, and dependence on, the fishery,
>
> (C) the economics of the fishery,
>
> (D) the capability of fishing vessels used in the fishery to engage in other fisheries,
>
> (E) the cultural and social framework relevant to the fishery, and
>
> (F) any other relevant considerations.

As has been advised in previous discussions with the Council, this provision requires only that the listed factors be "taken into account" in the development of a limited access system. It is not required that each listed factor be accommodated by that system if the Council and the Secretary find that other factors should be given greater weight.

With respect to limited access systems, a cut-off date notifies the fishing industry that entrance into a fishery after a specified date will not necessarily guarantee future access to the fishery resource on the basis of historical participation. The specified date may be used as a control date for distinguishing between present participation and historical participation if a limited access system is implemented in the future. It is important to note that the announcement of a cut-off date does not prevent the later selection of a different date for access to the resource, nor does it categorically extinguish the responsibility of the Council and the Secretary to consider participation after that date but before actual implementation of the limited access system. Any date finally implemented in a limited access system must be supported by an administrative record documenting consideration of the factors in section 303(b)(6).

Given a sufficient record, it could be possible to exclude "present participants" from access to the fishery resource at the

time the limited access system is implemented. It is probable that the participants excluded from the fishery would file claims and suits against the Secretary on any number of potential legal theories related to the development and implementation of the limited access system. It is likely that some excluded participants would raise Fifth Amendment Constitutional claims seeking entrance into the fishery or for the "taking" of vessels, gear, and equipment that can no longer be used in the fishery. [1]

The announcement of a clear cut-off date could weaken the claims of many of these excluded participants. In determining the validity of such "taking" claims, courts would probably consider, among other factors, the specialized character of the vessel, gear, or equipment excluded and the extent to which it may be used in other fisheries; whether it is marketable; the extent to which exclusion from the fishery has diminished its value; and the extent of the owner's investment expectation in the property. In particular, a court might consider whether a claimant had notice of the impending restrictions when the investment was made. A cut-off date could provide that notice. A claimant's case would certainly be weakened if the investments were made in spite of a clear and prospective cut-off date.

THE COUNCIL'S TENTATIVE CUT-OFF DATE AND "PIPELINE" DEFINITION:

The Council's tentative cut-off date and definition have not been promulgated as regulatory standards and have not been justified in terms of any of the Magnuson Act standards noted above. Although the cut-off date and pipeline definition have no binding legal effect, they do raise several legal and practical problems.

First, the definition is vague. For example, the definition does not specify what a "major investment" in vessel design and construction might be; although the definition cites 20 percent of the delivered cost as an example, that is only an example. Also, it is difficult to define "delivered cost" or predict that cost at the preliminary stages of design and construction. The definition does not explain how potential participants are to manifest their "full intent" to operate in the fisheries off Alaska. In short, the definition lacks predictability in application and many potential participants may be unsure whether their projects were "in the pipeline" as of the control date.

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[1] The Fifth Amendment to the United States Constitution provides in part that no person shall be "deprived of life, liberty, or property, without due process of law; nor shall private property be taken . . . without just compensation."

This lack of predictability could come back to haunt the Council in the future, particularly with respect to the Fifth Amendment taking issue identified above. The problem will arise only if the Council decides to exclude participants who entered after the tentative date. As noted above, courts would probably consider a claimant's investment expectation in determining whether a taking of investment property has occurred. However, the pipeline definition is so vague that many potential participants cannot reasonably determine whether they were in or out on January 16, 1989. Under these circumstances, a judge hearing a "taking" claim would probably reject the government's argument that these investors knew the risk before making the investment.

Second, if the purpose of the cut-off date is to provide prospective notice to potential participants of the risk of investing after the announced date, a retroactive amendment of the pipeline definition makes little sense. If the Council refines (amends) the "pipeline" definition in April, it would be impossible to argue that potential participants who continued to invest during January, February, and March had notice of the amended definition during those months. Once again, this consideration becomes relevant only if the Council decides to exclude participants who entered after the tentative date.

Third, the current "pipeline" definition is riddled with vague standards requiring individualized factual inquiry - "major investment," "delivered cost," an operator's "full intent to operate." This sort of factual inquiry requires trial-type hearings for individuals excluded from the fishery. [2] If the tentative date and definition were used to exclude participants from the fishery, NOAA would be holding a potentially high number of hearings on all these factual questions, repeating the worst errors of the Alaska license limitation system. An alternate cut-off date relying upon proof of lawful landing by a specified date would greatly reduce the number hearings. Proof of lawful landing could be provided by fish tickets or other catch and landing reports.

Finally, it is not clear how the tentative cut-off date for all fisheries under the Council's jurisdiction relates to the earlier

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[2] See North Pacific Fishery Management Council Document 87-1, "Limited Access in Alaskan Fisheries: Some Options;" memorandum from Patrick J. Travers, "Legal Analysis of the Halibut Limited Entry System Proposed in Northwest Resources Analysis' Draft Report, 'Limited Entry in the Pacific Halibut Fishery: The Individual Quota Option'" (March 28, 1983).

control date specified for the sablefish longline fishery.[3] There seems to be significant overlap here, raising a question whether the Council intends to supersede those earlier dates with its new tentative announcement.

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[3] Gulf of Alaska sablefish fishery was assigned a control date of September 26, 1985. 51 Fed. Reg. 5393 (February 13, 1986).

Cut-off Date and Pipeline Definition

The Committee recommends two alternatives for the Council to consider in order to set a cut-off date. The Committee recommends that in either case the use of a pipeline definition is not necessary.

1.) Continued use of the January 16, 1989 cut-off date based on documented landings. A notice similar to that establishing the sablefish control date in the Gulf of Alaska is recommended as follows:

The Council hereby notifies the public that any person or vessel entering any of the commercial halibut,groundfish or crab fisheries in the Bering Sea, Aleutian Islands or Gulf of Alaska after January 16, 1989 [control date] will not be assured of future access to the halibut,groundfish and crab resources if a management regime is developed and implemented that limits the number of participants or vessels in the fisheries. This notice does not affect the previous federal register notice (51 FR 5393) which established September 26, 1985 as the control date for sablefish in the Gulf of Alaska. This announcement does not prevent any other date for eligibility in the fisheries or another method of controlling fishing effort from being proposed and implemented. The intended effect of this announcement is to discourage new entry to the fisheries based on speculation while discussions continue on whether and how access to the halibut, groundfish and crab fisheries should be controlled.

2.) The use of a present date, either January 16 or date of Council action in April, to determine eligibility for vessels currently participating in the fisheries. This eligibility would be based upon documented landings. A future date, to be set by the Council, by which time vessels currently under construction, with intent to participate in the fisheries, would have had to make documented landings.

By adopting this second alternative, the Council would be showing its desire to curtail new entry into the fisheries but allow for entry for those vessels already under construction. NOAA Fisheries is currently drafting a document reflecting this intent.

[Docket No. 50720-5154]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of control date for entry into the Gulf of Alaska sablefish fishery.

SUMMARY: This notice announces that anyone entering the commercial sablefish fishery in the Gulf of Alaska after September 26, 1985 (control date) will not be assured of future access to the sablefish resource if a management regime is developed and implemented that limits the number of participants in the fishery. This announcement is necessary for public awareness of a potential eligibility criterion for access to the Gulf of Alaska sablefish resource. This announcement does not prevent any other date for eligibility in the fishery or another method of controlling fishing effort from being proposed and implemented. The intended effect of this announcement is to discourage new entry to the fishery based on speculation while discussions continue on whether and how access to the sablefish resource should be controlled.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter (Resource Management Specialist), NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) was developed and recently amended by the North Pacific Fishery Management Council (Council). The final rule implementing this Amendment 14 to the FMP was approved by the Director, Alaska Region, NMFS (Regional Director), on September 26, 1985, and published in the Federal Register (50 FR 43193 October 24, 1985).

This notice is not part of Amendment 14. However, in his letter to the Council approving the amendment, the Regional Director noted that NMFS was convinced that the rapid increase in fishing effort experienced in the sablefish fishery is likely to continue if not checked." Since the current fishing fleet is capable of harvesting the entire sablefish quota, additional fishing effort would lead to harvesting inefficiencies, more management constraints, and increased conservation risks. The Regional Director recommended that the Council begin immediately to address this problem by developing additional controls on fishing effort. Such controls contemplated in his letter include those that control access to the sablefish fishery resource.

To assist the Council, the Regional Director offered ". . . to publish a notice in the Federal Register, announcing that anyone entering the sablefish fishery after September 26, 1985, will not be assured to future participation should the Council develop, and the Secretary [of Commerce] implement, an effort control regime that limits the number of participants in the fishery." At its meeting of December 11-13, 1985, the Council voted to accept this offer and adopted September 26, 1985, as the control date. No further action was taken on this issue at that time.

The NMFS and the Council intend, in making this announcement, to discourage speculative entry into the sablefish fishery while potential entry or access control management regimes are discussed by the Council and possibly developed. If the Council decides to develop an access or entry control management regime, some fishermen who do not currently fish for sablefish in the Gulf of Alaska and never have done so may decide to enter the fishery for the sole purpose of establishing a record of making commercial landings of sablefish. Such a record generally is considered indicative of economic dependence on the fishery. On this basis, the fishermen may successfully claim access to a fishery that is otherwise limited to traditional participants. New entrants may have to buy the fishing rights or a permit from an existing participant. Hence, initial access to the fishery at little or no cost may result in a windfall gain when selling an access right to a new entrant. This speculation often is responsible for a rapid increase in fishing effort in fisheries already fully or over developed when management authorities begin to consider use of a limited access management regime. The original problems become exacerbated by those who seek possible windall gain from the solutions being discussed. To help distinguish *bon fide*, established sablefish fishermen from the speculative entrants to a fishery, a management authority may set a control date before discussions and planning of controlled access regimes begin. Fishermen are notified that entering the fishery after that date will not necessarily assure them of future access to the fishery resource on grounds of previous participation. Other qualifying criteria may be applied for entry.

This announcement establishes September 26, 1985, as such a control date for potential use in determining historical or traditional participation in the Gulf of Alaska sablefish fishery. This action does not commit the Council or the Secretary to any particular management regime or criterion for entry to the sablefish fishery. Fishermen are not guaranteed future participation in the sablefish fishery regardless of their date of entry or intensity of participation in the fishery before or after the control date. The Council may choose a different control date, or it may choose a management regime that does not make use of such a date. The Council may choose to give variably weighted consideration to fishermen in the fishery before and after the control date. The Council may choose also to take no further action to control entry or access to the fishery.

Dated: February 3, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator For Science and Technology, National Marine Fisheries Service.

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Problems Facing the Fisheries

The problems listed below are those the Fishery Planning Committee believes are facing the groundfish and crab fisheries. It is these problems that the management alternatives will be designed to correct.

1. Allocation conflicts

    a. Management or preseason allocations (examples include sablefish gear in the Gulf; shorebased vs at-sea processing)

    b. Gear conflict, both intra and inter-gear (examples include excessive amounts of longlines on the grounds causing tangles, grounds conflicts between trawlers and longliners during halibut season)

2. Excessive non-catch fishing mortality

    a. Deadloss - ghost fishing and lost gear

    b. Bycatch loss - species whose PSC apportionment or TAC has been reached

    c. Discard mortality - species not landed for economic reasons

3. Economic inefficiency - excess harvesting capacity

4. Poor product quality

5. Decreased safety

6. Opportunity for new entrants into the industry and increased economic development

Areas of Concern

Listed concerns will be used to evaluate each of the management system alternatives. For example, assuming each alternative adequately addresses the management problems, how each alternative accommodates the listed concerns will undoubtedly help the Council and Secretary determine the preferred alternative.

The Fisheries Management Committee recommends the use of the following list of concerns as expressed through past committees, Council discussion, public comment, and scoping sessions:

1. Concentration of fishing privileges
2. Disruption of the traditional relationship between vessel owners, crewmen, and processors.
3. The fear of increases in governmental controls, regulations, intrusion, and costs.
4. Locking out proximate local communities from future participation.
5. Highgrading.
6. Extremely high "buy in' costs for new entrants and an associated decrease in the ability of new entrants to make it on their own.
7. Limited access is forever and, even if not working, will not go away.
8. Fishers will begin to work for a wage rather than shares and their income will decrease.
9. Processing will move almost entirely offshore.
10. Development of a blackmarket with illegally caught fish.
11. Keep any participation rights in the hands of those otherwise involved in the industry.
12. The management system allows for the full harvest of total allowable catch.
13. Provide a framework for the U.S. industry to be competitive in the world groundfish and crab markets within the principles of sound biological management.
14. Allow for technological innovation.
15. Unequal economic advantage will be given to those possessing fishing privileges.
16. Biological conservation must be maintained.
17. Data collection must be sufficient to allow for sound biological management.
18. Enforcement costs may be excessive.
19. Changes will occur for fishermen, their families, and communities.
20. Flexibility to stay competitive by changing between gears and species.
21. Consumers receive a high quality product at a reasonable price.

DRAFT

Open Access Management

The measures used to control fishing effort under open access management will change over the next few years. Measures currently in use (seasons, PSC limits, gear allocations, area closures) will be utilized more often and for a greater number of species and additional measures such as logbooks, trip limits and observers will supplement these. Overall fishing effort will be controlled by making each vessel less efficient or by reducing the amount of time the vessel can actively fish. In this manner the number of vessels need not be limited.

The fishery five years from now

Following is a list of the management measures envisioned as being applicable for addressing the various identified problems of the fisheries. The measures noted with (*) indicate those the group believes will be implemented or expanded within the next five years. Those noted with (#) indicate those the group believes are possible for use or expansion within the next five years.

I. Non-landed mortality. The objective is full accounting of all mortality.

A. Discard waste - species that could be landed but are discarded for economic reasons.

1. Mandatory landing of all catch.
* 2. Mandatory catch reporting.
3. Enforcement:
* a. Observer coverage.
* b. Logbooks.
* 4. Technological innovation, perhaps with incentives.
* 5. Time/area closures.
6. Economic disincentives to discard.

B. Ghost fishing.

1. Report all lost gear:
* a. Register all gear.
* b. Monitor gear in and out of fishing areas.
* 2. Biodegradable gear and modifications.
3. Restrictive gear limits.

C. By-catch loss - the discard of prohibited species and those species whose TAC has been reached.

* 1. Measures as used for discard waste, above.
\# 2. Authorized retention of a percentage of total catch.
3. Mandatory improvements in handling.
* 4. PSC limits.

II. Allocation conflicts

A. Management and preseason allocations.

* 1. Gear shares of TAC.
* 2. Directed or by-catch only fishery allocations.
* 3. Quotas by area/gear/species.
* 4. Trip limits.
\# 5. Exclusive and superexclusive registration areas.
6. Gear restrictions which are limiting.

B. Gear conflicts between similar gear users.

* 1. Exclusive and superexclusive registration areas.
\# 2. Gear limits.
* 3. Prescribed fishing practices.

III. Excess capacity and economic inefficiency

From a national accounting perspective open access cannot address economic efficiency issues. From a regional or local level such efficiencies might be addressable.

A. Platooning the fleet (alternate weeks, etc.).
* B. Vessel and gear limitations.
* C. Exclusive and superexclusive registration areas.

IV. Safety

\# A. Flexible seasons to accommodate weather.
* B. Establish safety standards.
C. Trip limits including:
* 1. Catch limits.
* 2. Trip duration limits.
* 3. Limits on the number of trips.

V. Quality

A. Government mandatory handling standards.
* B. Processor and industry education programs.
* C. Mandatory grading (pricing) system at the processor level.

General Conclusions

In general, future open access fisheries will be characterized by the following as compared to today's management system:

- shorter seasons
- more vessels
- more regulations
- production costs will increase and profits decrease
- economic rents will be further dissipated
- unstable and seasonal employment
- higher economic risk and uncertainty in all sectors
- more costly and complex management, enforcement, and regulations.

Open Access Management Measures Expected to be Implemented Within the Next Five Years

The Fishery Planning Committee reviewed the measures developed by the technical workgroup open access advocacy sub-group at their March meeting. The following is a summary list of those measures the Committee believes will be instituted by the Council within the next five years under open access management. Although many of these measures are currently in use, it is probable that they will be used to a greater extent in the future.

Open access - The measures used to control fishing effort under open access management will change over the next few years. Measures currently in use (seasons, PSC limits, gear allocations, area closures) will be utilized more often and for a greater number of species and additional measures such as logbooks, trip limits and observers will supplement these. Overall fishing effort will be controlled by making each vessel less efficient or by reducing the amount of time the vessel can actively fish. In this manner the number of vessels need not be limited.

The fishery five years from now

The suite of management measures in use will be:

- Allocation of a species as bycatch only or target only
- Authorized retention of a percentage of PSC
- Biodegradable gear and other gear modifications
- Exclusive and/or super-exclusive registration areas
- Gear allocations
- Gear check-in/check-out reports
- Gear registration
- Limits on discarded fish parts
- Mandatory catch reporting
- Mandatory logbooks
- Mandatory observer coverage
- Mandatory price grading system at processor level
- Onshore/offshore processing allocations
- Platooning the fleet
- Positive incentives to catch less bycatch and PSC
- Prescribed fishery management practices to minimize gear conflicts (e.g., longlines set perpendicular to depth contour)
- Processor and other industry education programs
- PSC limits
- Quota by area, gear and species
- Safety standards
- Technological innovation, perhaps with incentives
- Time/area closures
- Trip limits
    - Catch limits
    - Trip duration limits
    - Limits on the number of trips
- Vessel and gear restrictions (e.g., size of vessel, horsepower of vessel, number of skates, size of trawl)

Decision Points for Sablefish Longline IFQ Management System

This document was agreed upon by the Council at their January 16, 1989 meeting in Anchorage. Items which are underlined are comments by the Council. **Bolded** items are those added by the Fishery Planning Committee at its March 28 meeting. Those options over a grey background were deleted by the Committee.

I. Scope of Program
- A. Species: Sablefish
- B. Gear: Longline only, including historic pot boats
- C. Areas:
  1. Gulf of Alaska
  2. Bering Sea
  3. Aleutian Islands

II. Means of Access Control
- A. Type of IFQ
  1. A percentage of the TAC, possibly defined as a "unit"- the individual allocation varies from year to year with the size of the TAC and it could be expressed as a large number of "units" rather than a small percentage.
- B. Coverage of IFQ
  1. Area
     - i. Gulf of Alaska 4 areas - Southeast/outside and East Yakutat, West Yakutat, Central, Western
     - ii. Bering Sea
     - iii. Aleutian Islands
  2. Yearly - would allow the market to dictate the season of landing.
  3. Leave a portion of the fishery open access (Prochoice)
     Set a maximum landing per entity in the open portion.
- C. Who initially
  1. Vessel - ties allocation to the vessel
     - i. With the current vessel
     - ii. Reverts to the last qualified vessel owner
  2. "Person" (must include an extensive definition of "person" or "entity") - **As defined by the Magnuson Act with the exclusion of non U.S. citizens. Any individual who is a U.S. citizen, any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State but being controlled by U.S. citizens), and any Federal, State, or local government or any entity of any such government.**
     - i. Vessel owner(s)
     - ii. Person leasing a vessel - qualified or all
     - iii. Permit holder(s) - **based on State of Alaska permit**
     - iv. Crewmen, with restrictions

III. Initial Allocation
- A. How is the allocation made
  1. Allocation by qualification and eligibility.
- B. Eligibility

1. What years - more recent years allows for more participation while earlier years rewards those who have participated longer or developed the fishery.
   i. 1984, 1985, or 1986 through 1988.
   ii. 1984 or 1985 through 1987.
2. Landings threshold - a higher amount restricts more people but allows a greater share for those eligible.
   i. Average - would smooth out exceptional highs or lows.
   ii. Best year(s) - a proxy for everyone's potential.
3. Duration of participation
   i. Must be a current participant.
   ii. Not necessarily a current participant but number of years participation.
4. Investment threshold - recognizes future participation, boats, gear, keel laid, etc.
   i. Qualifying with a history of participation.

C. Basis for how much per entity
1. Landings - a matter of record in NMFS files.
   i. Best year - as above.
   ii. Average - as above.
   iii. Stair step - used to reduce appeals, all qualified in a certain range receive the same amount.
   iv. **Different amount of allocation based on initial participation in 1987 and\or 1988.**

IV. Transferability
A. Degree of transferability <u>All choices considered under transferable rights need to take into account the protection of consumer and small business interests.</u>
1. Totally transferable - eligible for sale and lease.

B. Transferable mechanisms
1. Management
   i. Must pass through government - allows government to monitor control but slows down process a bit. Government approval required but transactions may be conducted privately.
2. Types - many other probably possible.
   i. Reverse checking accounts (coupons) - allows for use of any size amount.
   ii. New Zealand style - fixed minimum size of IFQs.
   iii. Other.
3. Grace period - depends on transferability.
   i. None - restricts fishermen during a good trip or between trips until they can locate IFQs.
   ii. Set date before the season for transfers to be accomplished, after that transfers allowed during the season by emergency only on a case by case basis.
4. Transfers between areas - depending on transferability.
   i. None - maintains strict biological controls.

V. Controls on Ownership, must discuss level of "control" or ownership and <u>must define "control"</u>. <u>The Council feels some form of control on ownership should be instituted but industry input and data analysis are needed before further decisions.</u>

A. Restrict by vessel - sets top landings per vessel (and possibly effort level) but does not control ownership of vessels.

B. Limit on "control" by any entity - **Not required except as stated in National Standard 4 of the Magnuson Act**

C. Require proof of ownership or participation to "control" - **Same qualifications as used for initial allocation.**

D. On board or present when landing - keeps IFQs with active participants but would have to be modified for corporations.

E. Citizenship requirements (reflagging legislation) - either use existing legislation or change it.

VI. Duration of harvest rights - depending on transferability.

A. No specified ending date - grants large windfall gains.

B. Specified limited duration with reallocation following - reduces size of windfall gains.

C. Allow for review in a specified time (perhaps 5 years) - does not sunset the system but allows for major structural changes if required.

VII. Adjusting amount of IFQs available

A. Not necessary unless IFQs in absolute weight or for government needs (surveys, etc.)

VIII. Coastal Communities

The Council should consider and discuss this issue.

A. Initially how community gains access, may require Magnuson Act change.

1. Allocated - includes communities but reduces other participants shares.
2. Allowed for - no initial allocation but allows communities to buy in and be "separate but equal".

B. Specific regulations

1. Individuals or communities or coastal development organization - who gets them, person, town, corporation, etc.
2. Qualification of ownership right - coastal, proximate, port, etc.
3. Definition of community
4. Use by owner or not - to be used by the entity, leased by it, or both.
5. Special transferability rights - transferable when all others are not, etc.
6. Administrating body - a special body set up to remove local conflicts and provide cohesion.
7. Special duration rights - as with transferability.
8. Amount to be allowed - limits amount totally allocated or allowed to communities.

IX. Administration

A. Agency

1. NMFS region - could be contracted to State of Alaska.

B. Dispute settlements

1. Basis of judgement
   i. Fact - reduces number of appeals.
2. Hearing officer
   i. Administrative law judge with appeals to the Secretary of Commerce and then the court system - impartial and a federal employee.

ii. Appeals board with decision by the NMFS Regional Director and appeals to the Secretary and then the court system - open to question but more knowledgeable of germane issues.

iii. Binding arbitration.

The Council recognizes a need to be aware of the following items and may wish to comment on them but the Council and NMFS staffs will deal with the specifics.

C. Enforcement

1. Nature of right - must be defined (property, lease, harvest, etc) including its use as collateral and the ability of NMFS to censor the right.
2. Ability to accurately account for catch - reporting, observer, and monitoring systems.
3. Adequate enforcement procedures - a new system requires new methods of enforcement (accountants).
4. New regulations - see above.
5. New penalties - see above.

D. Document trail

1. Time of landing - fish tickets.
2. Processor - secondary form to collaborate fish tickets.
3. Wholesale - allows enforcement to target fish at several levels.
4. Retail - difficult but allows total tracking of fish.

Decision Points for Longline Sablefish License Management System

This document was agreed upon by the Council at their January 16, 1989 meeting in Anchorage. Items which are underlined were comments by the Council. **Bolded** items are those added by the Fishery Planning Committee at its March 28 meeting. Those options over a grey background were deleted by the Committee.

I. Scope of Program
- A. Species: Sablefish
- B. Gear: Longline only, including historic pot boats
- C. Areas:
  1. Gulf of Alaska
  2. Bering Sea
  3. Aleutian Islands

II. Means of Access Control
- A. Type of license
  1. Effort level specific
     - i. Vessel length (size) - might require a survey, is a proxy for available effort.
- B. Coverage of license
  1. Area
     - i. Gulf of Alaska - 1 area, Gulf-wide.
     - ii. Combine Bering Sea and Aleutian Islands
     - iii. Combine Gulf, Bering Sea, and Aleutian Islands areas
  2. Yearly or by season - seasonal licenses would spread fishing pressure out but might be valued differently.
  3. Leave a portion of the fishery open access (Prochoice)
     - i. Set a maximum landing per entity in the open portion.
- C. Who initially
  1. Vessel - ties allocation to the vessel.
     - i. With the current vessel.
     - ii. Reverts to the last qualified vessel owner.
  2. "Person" (must include an extensive definition of "person" or "entity") - **As defined by the Magnuson Act with the exclusion of non U.S. citizens. Any individual who is a U.S. citizen, any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State but being controlled by U.S. citizens), and any Federal, State, or local government or any entity of any such government.**
     - i. Vessel owner(s)
     - ii. Person leasing a vessel - qualified or all
     - iii. Permit holder(s) - **based on State of Alaska permit**

III. Initial Allocation
- A. How is the allocation made
  1. Allocation by qualification and eligibility.
- B. Eligibility
  1. What years - more recent years allows for more participation while earlier years rewards those who have participated longer or developed the fishery.

i. 1984, 1985, or 1986 through 1988.
ii. 1984 or 1985 through 1987.

2. Landings threshold - a higher amount restricts more people.
   i. Average - would smooth out exceptional highs or lows.
   ii. Best year(s) - a proxy for everyone's potential.
      a. 1,000 lbs.
      b. 5,000 lbs.
      c. 10,000 lbs.
      d. 25,000 lbs for vessels over 50'.
      e. 50,000 lbs for vessels over 50'.
   iii. Based on vessel size (or effort factor) - recognizes that different size vessels have different potentials.
3. Duration of participation
   i. Must be a current participant.
   ii. Not necessarily a current participant but number of years participation.
4. Investment threshold - recognizes future participation, boats, gear, keel laid, etc.
   i. Qualifying with a history of participation.

C. Type of license - by vessel size, etc., useful depending on transferability and upgrading.
The Council feels that the following size classes were sufficient for a beginning but should be more appropriately defined with industry input.
1. Class A - less than 40 ft.
2. Class B - 41 to 50 ft.
3. Class C - 51 to 60 ft.
4. Class D - 61 to 70 ft.
5. Class E - over 70 ft.

IV. Transferability All choices considered under transferable rights need to take into account the protection of consumer and small business interests.

A. Leasable but non-saleable - removes chance of absentee owners but allows all licenses to be used.

B. Size or effort level specific - useful if split seasons, etc. or with combinative.

C. Totally transferable - effort levels would increase with addition of large vessels but allows full freedom to industry.

D. Combinative - **Allow upgrades in vessel size class by tendering two licenses of a small class for one license of the next larger class.**

E. **A system incorporating transferable and non-transferable licenses based on initial participation in 1987 and\or 1988.**

V. Controls on Ownership
The Council feels some form of control on ownership should be instituted but industry input and data analysis are needed before further decisions.

A. Restrict by vessel size or effort - stops buildup of mini-fleets of similar sized vessels.

B. Limit on "control" by any entity - **Not required except as stated in National Standard 4 of the Magnuson Act**

C. Require proof of ownership or participation to "control" - **Same qualifications as used for initial allocation.**

D. On board or present when landing - keeps licenses with active participants but would have to be modified for corporations.

E. Citizenship requirements (reflagging legislation) - either use existing legislation or change it.

VI. Duration of harvest rights - depending on transferability.

A. No specified ending date - grants large windfall gains.

B. Specified limited duration with reallocation following - reduces size of windfall gains.

C. Allow for review in a specified time (perhaps 5 years) - does not sunset the system but allows for major structural changes if required.

VII. Adjusting Amount of licenses available

A. Buyback - if needed.

1. Industry - program may or may not be dependable.

VIII. Coastal Communities

The Council should consider and discuss this issue.

A. Initially how community gains access, may require Magnuson Act change.

1. Allocated - includes communities but reduces other participants shares.
2. Allowed for - no initial allocation but allows communities to buy in and be "separate but equal".

B. Specific regulations

1. Individuals or communities or coastal development organization - who gets them, person, town, corporation, etc.
2. Qualification of ownership right - coastal, proximate, port, etc.
3. Definition of community
4. Use by owner or not - to be used by the entity, leased by it, or both.
5. Special transferability rights - transferable when all others are not, etc.
6. Administrating body - a special body set up to remove local conflicts and provide cohesion.
7. Special duration rights - as with transferability.
8. Amount to be allowed - limits amount totally allocated or allowed to communities.

IX. Administration

A. Agency

1. NMFS region - could be contracted to State of Alaska.

B. Dispute settlements

1. Basis of judgement
   i. Fact - reduces number of appeals.
2. Hearing officer
   i. Administrative law judge with appeals to the Secretary of Commerce and then the court system - impartial and a federal employee.
   ii. Appeals board with decision by the NMFS Regional Director and appeals to the Secretary and then the court system - open to question but more knowledgeable of germane issues.
   iii. Binding arbitration.

The Council recognizes the need to be aware of the following items and may wish to comment on them but the Council and NMFS staffs will deal with the specifics.

C. Enforcement

1. Nature of right - must be defined (property, lease, harvest, etc) including its use as collateral and the ability of NMFS to censor the right. May wish to use license with effort size endorsements if needed.
2. Ability to accurately account for catch - reporting, observer, and monitoring systems.
3. Adequate enforcement procedures - a new system requires new methods of enforcement.
4. New regulations - see above.
5. New penalties - see above.

Decision Points for Halibut IFQ Management System

The decision points listed below reflect the specifics of the halibut fishery. Underlined items are the Council's comments sablefish longline. Those options over a grey background were recommended for deletion by the Fishery Planning Committee at their March 28 meeting.

I. Scope of Program
- A. Species: Halibut
- B. Gear:
  - 1. Longline
  - 2. Longline and trawl (account for all mortality)
- C. Areas:
  - 1. Gulf of Alaska
  - 2. Bering Sea
  - 3. Aleutian Islands
  - 4. IPHC management areas

II. Means of Access Control
- A. Type of IFQ
  - 1. Fixed weight - allows participants to be certain of the quantity they control from year to year but would require government or industry intervention when TAC decreased.
  - 2. A percentage of the TAC, possibly defined as a "unit"- the individual allocation varies from year to year with the size of the TAC and it could be expressed as a large number of "units" rather than a small percentage.
- B. Coverage of IFQ
  - 1. Area
    - i. Gulf of Alaska
      - a. 4 areas (Council sablefish areas) - Southeast/outside and East Yakutat, West Yakutat, Central, Western
      - b. 2 areas - eastern Gulf (Southeast/outside, East and West Yakutat) and western Gulf (Central and Western)
      - c. 1 area, Gulf-wide.
    - ii. Bering Sea
    - iii. Aleutian Islands
    - iv. Combine Bering Sea and Aleutian Islands
    - v. Combine Gulf, Bering Sea, and Aleutian Islands areas
    - vi. IPHC management areas - 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E
  - 2. Yearly or by season - seasonal IFQs would spread fishing pressure out by mandate whereas yearly would allow the market to dictate the season of landing.
  - 3. Leave a portion of the fishery open access (Prochoice)
    - i. No controls on landings per entity in the open portion.
    - ii. Set a maximum landing per entity in the open portion.

C. Who initially

1. Vessel - ties allocation to the vessel;
   i. With the current vessel;
   ii. Reverts to the last qualified vessel owner;
2. "Person" (must include an extensive definition of "person" or "entity") - As defined by the Magnuson Act with the exclusion of non U.S. citizens. Any individual who is a U.S. citizen, any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State but being controlled by U.S. citizens), and any Federal, State, or local government or any entity of any such government.
   i. Vessel owner(s)
   ii. Person leasing a vessel - "qualified" or all
   iii. Permit holder(s) - based on State of Alaska permit
   iv. Processor
   v. Crewmen, with restrictions
   vi. Financial risk taker if different than above
   vii. People qualifying under a point system
   viii. Other

III. Initial Allocation

A. How is the allocation made

1. Allocation by qualification and eligibility.
2. Lottery
   i. Open to anyone - allows equal participation by all (U.S. citizens?) but involves much reallocation prior to fishing;
   ii. Open only to "qualified" people - depending on who is qualified (see above) allows equal chances to all involved;
3. Auction system, would require a change to Magnuson Act - could be used to fund observers, etc. and would function as gas leases do;
   i. Open to anyone - allows equal participation by all (U.S. citizens?) but involves much reallocation prior to fishing;
   ii. Open only to "qualified" people - depending on who is qualified (see above) allows equal chances to all involved;

B. Eligibility

1. What years - more recent years allows for more participation while earlier years rewards those who have participated longer or developed the fishery.
   i. Beginning date
      a. 1983
      b. 1984
      c. Some other year;
   ii. Ending date
      a. 1987
      b. 1988
      c. Some other year;

Decision Points for Halibut IFQ Management System

The decision points listed below reflect the specifics of the halibut fishery. Underlined items are the Council's comments sablefish longline. Those options over a grey background were recommended for deletion by the Fishery Planning Committee at their March 28 meeting.

I. Scope of Program
- A. Species: Halibut
- B. Gear:
  1. Longline
  2. Longline and trawl (account for all mortality)
- C. Areas:
  1. Gulf of Alaska
  2. Bering Sea
  3. Aleutian Islands
  4. IPHC management areas

II. Means of Access Control
- A. Type of IFQ
  1. Fixed weight - allows participants to be certain of the quantity they control from year to year but would require government or industry intervention when TAC decreased.
  2. A percentage of the TAC, possibly defined as a "unit"- the individual allocation varies from year to year with the size of the TAC and it could be expressed as a large number of "units" rather than a small percentage.
- B. Coverage of IFQ
  1. Area
     - i. Gulf of Alaska
       - a. 4 areas (Council sablefish areas) - Southeast/outside and East Yakutat, West Yakutat, Central, Western
       - b. 2 areas - eastern Gulf (Southeast/outside, East and West Yakutat) and western Gulf (Central and Western)
       - c. 1 area, Gulf-wide.
     - ii. Bering Sea
     - iii. Aleutian Islands
     - iv. Combine Bering Sea and Aleutian Islands
     - v. Combine Gulf, Bering Sea, and Aleutian Islands areas
     - vi. IPHC management areas - 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E
  2. Yearly or by season - seasonal IFQs would spread fishing pressure out by mandate whereas yearly would allow the market to dictate the season of landing.
  3. Leave a portion of the fishery open access (Prochoice)
     - i. No controls on landings per entity in the open portion.
     - ii. Set a maximum landing per entity in the open portion.

C. Who initially

1. Vessel - ties allocation to the vessel;
   i. With the current vessel;
   ii. Reverts to the last qualified vessel owner;
2. "Person" (must include an extensive definition of "person" or "entity") - As defined by the Magnuson Act with the exclusion of non U.S. citizens. Any individual who is a U.S. citizen, any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State but being controlled by U.S. citizens), and any Federal, State, or local government or any entity of any such government.
   i. Vessel owner(s)
   ii. Person leasing a vessel - "qualified" or all
   iii. Permit holder(s) - based on State of Alaska permit
   iv. Processor
   v. Crewmen, with restrictions
   vi. Financial risk taker if different than above
   vii. People qualifying under a point system
   viii. Other

III. Initial Allocation

A. How is the allocation made

1. Allocation by qualification and eligibility.
2. Lottery
   i. Open to anyone - allows equal participation by all (U.S. citizens?) but involves much reallocation prior to fishing;
   ii. Open only to "qualified" people - depending on who is qualified (see above) allows equal chances to all involved;
3. Auction system, would require a change to Magnuson Act - could be used to fund observers, etc. and would function as gas leases do;
   i. Open to anyone - allows equal participation by all (U.S. citizens?) but involves much reallocation prior to fishing;
   ii. Open only to "qualified" people - depending on who is qualified (see above) allows equal chances to all involved;

B. Eligibility

1. What years - more recent years allows for more participation while earlier years rewards those who have participated longer or developed the fishery.
   i. Beginning date
      a. 1983
      b. 1984
      c. Some other year;
   ii. Ending date
      a. 1987
      b. 1988
      c. Some other year;

Decision Points for Halibut IFQ Management System

The decision points listed below reflect the specifics of the halibut fishery. Underlined items are the Council's comments sablefish longline. Those options over a grey background were recommended for deletion by the Fishery Planning Committee at their March 28 meeting.

I. Scope of Program
- A. Species: Halibut
- B. Gear:
  1. Longline
  2. Longline and trawl (account for all mortality)
- C. Areas:
  1. Gulf of Alaska
  2. Bering Sea
  3. Aleutian Islands
  4. IPHC management areas

II. Means of Access Control
- A. Type of IFQ
  1. Fixed weight - allows participants to be certain of the quantity they control from year to year but would require government or industry intervention when TAC decreased.
  2. A percentage of the TAC, possibly defined as a "unit"- the individual allocation varies from year to year with the size of the TAC and it could be expressed as a large number of "units" rather than a small percentage.
- B. Coverage of IFQ
  1. Area
     - i. Gulf of Alaska
       - a. 4 areas (Council sablefish areas) - Southeast/outside and East Yakutat, West Yakutat, Central, Western
       - b. 2 areas - eastern Gulf (Southeast/outside, East and West Yakutat) and western Gulf (Central and Western)
       - c. 1 area, Gulf-wide.
     - ii. Bering Sea
     - iii. Aleutian Islands
     - iv. Combine Bering Sea and Aleutian Islands
     - v. Combine Gulf, Bering Sea, and Aleutian Islands areas
     - vi. IPHC management areas - 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E
  2. Yearly or by season - seasonal IFQs would spread fishing pressure out by mandate whereas yearly would allow the market to dictate the season of landing.
  3. Leave a portion of the fishery open access (Prochoice)
     - i. No controls on landings per entity in the open portion.
     - ii. Set a maximum landing per entity in the open portion.

C. Who initially

1. Vessel - ties allocation to the vessel
   i. With the current vessel
   ii. Reverts to the last qualified vessel owner
2. "Person" (must include an extensive definition of "person" or "entity") - As defined by the Magnuson Act with the exclusion of non U.S. citizens. Any individual who is a U.S. citizen, any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State but being controlled by U.S. citizens), and any Federal, State, or local government or any entity of any such government.
   i. Vessel owner(s)
   ii. Person leasing a vessel - "qualified" or all
   iii. Permit holder(s) - based on State of Alaska permit
   iv. Processor
   v. Crewmen, with restrictions
   vi. Financial risk taker if different than above
   vii. People qualifying under a point system
   viii. Other

III. Initial Allocation

A. How is the allocation made

1. Allocation by qualification and eligibility.
2. Lottery
   i. Open to anyone - allows equal participation by all (U.S. citizens?) but involves much reallocation prior to fishing.
   ii. Open only to "qualified" people - depending on who is qualified (see above) allows equal chances to all involved.
3. Auction system, would require a change to Magnuson Act - could be used to fund observers, etc. and would function as gas leases do.
   i. Open to anyone - allows equal participation by all (U.S. citizens?) but involves much reallocation prior to fishing.
   ii. Open only to "qualified" people - depending on who is qualified (see above) allows equal chances to all involved.

B. Eligibility

1. What years - more recent years allows for more participation while earlier years rewards those who have participated longer or developed the fishery.
   i. Beginning date
      a. 1983
      b. 1984
      c. Some other year.
   ii. Ending date
      a. 1987
      b. 1988
      c. Some other year.

2. Landings threshold - a higher amount restricts more people but allows a greater share for those eligible.
   i. Average - would smooth out exceptional highs or lows.
   ii. Best year(s) - a proxy for everyone's potential.
   iii. Based on vessel size - recognizes that different size vessels have different potentials.
3. Duration of participation
   i. Must be a current participant.
   ii. Not necessarily a current participant but number of years participation.
4. Investment threshold - recognizes future participation, boats, gear, keel laid, etc.
   i. Qualifying with a history of participation.
   ii. Non-qualifying with a history of participation.
   iii. Non-qualifying with no history of participation.
5. Income dependency based on earned income - a ranking of dislocation.
6. Financial risk - similar to investment and ownership.
7. Point system - many possibilities and could incorporate some or all of above.

C. Basis for how much per entity
1. Landings - a matter of record in IPHC and NMFS files.
   i. Best year - as above.
   ii. Average - as above.
   iii. Stair step - used to reduce appeals, all qualified in a certain range receive the same amount.
   iv. Different amount of allocation based on initial participation in 1987 and/or 1988.
2. Financial investment, must carefully consider how to measure - a matter of record in private files, must be submitted, and the type chosen dictates which group is rewarded.
   i. Vessel
   ii. Gear
   iii. Other
3. Potential performance - includes keels laid, etc.
4. Point system - requires a lengthy appeals process.
5. Rural points - rewards costal residents, possible discrimination, may need Magnuson Act change.
6. Years in fishery - rewards longevity.
7. Equal allocations - reduces appeals tremendously but severely impacts those with high historical landings.
8. Vessel size - assignment of stair step or other allocations based on size of vessel, reduces appeals.

IV. Transferability

A. Degree of transferability <u>All choices considered under transferable rights need to take into account the protection of consumer and small business interests.</u>
1. Totally transferable - eligible for sale and lease.

2. Totally non-transferable - allows for no accumulation of shares or windfall monetary gains but hinders the efficiency of the system.

3. Non-leasable but saleable - requires use by entity owning IFQs so removes chance of absentee owners and allows market to work at higher price.

4. Leasable but non-saleable - removes chance of absentee owners but allows market to function at lower price.

5. Emergency provisions - to allow for health problems, etc.

B. Transferable mechanisms

1. Management

i. Must pass through government - allows government to monitor control but slows down process a bit.

a. Government is the only approved broker.

b. Government approval required but transactions may be conducted privately.

ii. Private transfers without government monitoring - more difficult to track control but faster.

2. Types - many other probably possible.

i. Reverse checking accounts (coupons) - allows for use of any size amount.

ii. New Zealand style - fixed minimum size of IFQs.

iii. Other.

3. Grace period - depends on transferability.

i. None - restricts fishermen during a good trip or between trips until they can locate IFQs.

ii. By year or quarter - based on type of IFQ, provides a good monitor on current landings.

iii. Specified period and year end - makes the time period to report finite and manageable and allows makeup in following period.

iv. Specified period regardless of year end - allows no makeup in following period but allows overrun to be more easily taken from next years allocation.

v. Set date before the season for transfers to be accomplished, after that transfers allowed during the season by emergency only on a case by case basis.

4. Transfers between areas - depending on transferability.

i. Small amounts to fill trips - allows fishermen to adjust landings without going to IFQ market.

ii. None - maintains strict biological controls.

iii. Between entities controlling IFQs.

V. Controls on Ownership, must discuss level of "control" or ownership and must define "control". The Council feels some form of control on ownership should be instituted but industry input and data analysis are needed before further decisions.

A. Restrict by vessel - sets top landings per vessel (and possibly effort level) but does not control ownership of vessels.

B. Limit on "control" by any entity - Not required except as stated in National Standard 4 of the Magnuson Act.

C. Require proof of ownership or participation to "control" - Same qualifications as used for initial allocation.

D. On board or present when landing - keeps IFQs with active participants but would have to be modified for corporations.

E. Citizenship requirements (reflagging legislation) - either use existing legislation or change it.

F. No control.

VI. Duration of harvest rights - depending on transferability.

A. No specified ending date - grants large windfall gains.

B. Specified limited duration with reallocation following - reduces size of windfall gains.

C. Allow for review in a specified time (perhaps 5 years) - does not sunset the system but allows for major structural changes if required.

VII. Adjusting amount of IFQs available

A. Not necessary unless IFQs in absolute weight or for government needs (surveys, etc.)

B. If TAC's change dramatically - government or industry intervention or prorate IFQs (functionally percentages).

VIII. Coastal Communities

A. Initially how community gains access, may require Magnuson Act change.

1. Allocated - includes communities but reduces other participants shares.
2. Allowed for - no initial allocation but allows communities to buy in and be "separate but equal".

B. Specific regulations

1. Individuals or communities or coastal development organization - who gets them, person, town, corporation, etc.
2. Qualification of ownership right - coastal, proximate, port, etc.
3. Definition of community
4. Use by owner or not - to be used by the entity, leased by it, or both.
5. Special transferability rights - transferable when all others are not, etc.
6. Administrating body - a special body set up to remove local conflicts and provide cohesion.
7. Special duration rights - as with transferability.
8. Amount to be allowed - limits amount totally allocated or allowed to communities.

IX. Administration

A. Agency

1. NMFS region - could be contracted to State of Alaska.
2. Privatization - would require federal oversight at some level.
3. North Pacific Fishery Management Council.
4. Commercial Fishery Entry Commission.

5. International Pacific Halibut Commission.

6. Other.

B. Dispute settlements

1. Basis of judgement

i. Fact - reduces number of appeals.

ii. Testimony - used by State of Alaska.

2. Hearing officer

i. Administrative law judge with appeals to the Secretary of Commerce and then the court system - impartial and a federal employee.

ii. Appeals board with decision by the NMFS Regional Director and appeals to the Secretary and then the court system - open to question but more knowledgeable of germane issues.

iii. Binding arbitration.

The Council recognizes the need to be aware of the following items and may wish to comment on them but that the Council and NMFS staffs will deal with the specifics.

C. Enforcement

1. Nature of right - must be defined (property, lease, harvest, etc) including its use as collateral and the ability of NMFS to censor the right.

2. Ability to accurately account for catch - reporting, observer, and monitoring systems.

3. Adequate enforcement procedures - a new system requires new methods of enforcement (accountants).

4. New regulations - see above.

5. New penalties - see above.

D. Document trail

1. Time of landing - fish tickets.

2. Processor - secondary form to collaborate fish tickets.

3. Wholesale - allows enforcement to target fish at several levels.

4. Retail - difficult but allows total tracking of fish.

Decision Points for Halibut License Management System

The decision points listed below reflect the specifics of the halibut fishery. Underlined items are the Council's comments sablefish longline. Those options over a grey background were recommended for deletion by the Fishery Planning Committee at their March 28 meeting.

I. Scope of Program
- A. Species: Halibut
- B. Gear: Longline
- C. Areas:
  1. Gulf of Alaska
  2. Bering Sea
  3. Aleutian Islands
  4. IPHC management areas

II. Means of Access Control
- A. Type of license
  1. All equal - ease of checking but does not reflect potential effort levels.
  2. Effort level specific
     - i. Vessel length (size) - might require a survey, is a proxy for available effort.
     - ii. Capacity - might require a survey, is a proxy for vessel size.
     - iii. Processing/non-processing - recognizes differences in time between port calls.
     - iv. Horsepower
     - v. Other
- B. Coverage of license
  1. Area
     - i. Gulf of Alaska
       - a. 4 areas - (Council sablefish management areas) Southeast/outside and East Yakutat, West Yakutat, Central, Western
       - b. 2 areas - eastern Gulf (Southeast/outside, East and West Yakutat) and western Gulf (Central and Western)
       - c. 1 area, Gulf-wide.
     - ii. Bering Sea
     - iii. Aleutian Islands
     - iv. Combine Bering Sea and Aleutian Islands
     - v. Combine Gulf, Bering Sea, and Aleutian Islands areas
     - vi. IPHC management areas
       - a. 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E.
       - b. 4 areas: 2C, 3A, and 3B; 4A, 4B, and 4D; 4C; 4E.
  2. Yearly or by season - seasonal licenses would spread fishing pressure out but might be valued differently.
  3. Leave a portion of the fishery open access (Prochoice)
     - i. No controls on landings per entity in the open portion.

ii. Set a maximum landing per entity in the open portion.

C. Who initially

1. Vessel - ties allocation to the vessel

i. With the current vessel

ii. Reverts to the last qualified vessel owner.

2. "Person" (must include an extensive definition of "person" or "entity") - As defined by the Magnuson Act with the exclusion of non U.S. citizens. Any individual who is a U.S. citizen, any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State but being controlled by U.S. citizens), and any Federal, State, or local government or any entity of any such government.

i. Vessel owner(s)

ii. Person leasing a vessel - "qualified" or all

iii. Permit holder(s) - based on State of Alaska permit

iv. Processor

v. Crewmen, with restrictions

vi. Financial risk taker if different than above

vii. People qualifying under a point system

viii. Other

III. Initial Allocation

A. How is the allocation made

1. Allocation by qualification and eligibility.

2. Lottery

i. Open to anyone - allows equal participation by all (U.S. citizens?) but involves much reallocation prior to fishing.

ii. Open only to "qualified" people - depending on who is qualified (see above) allows equal chances to all involved.

3. Auction system, would require a change to Magnuson Act - could be used to fund observers, etc. and would function as gas leases do.

i. Open to anyone - allows equal participation by all (U.S. citizens?) but involves much reallocation prior to fishing.

ii. Open only to "qualified" people - depending on who is qualified (see above) allows equal chances to all involved.

B. Eligibility

1. What years - more recent years allows for more participation while earlier years rewards those who have participated longer or developed the fishery.

i. Beginning date

a. 1983

b. 1984

c. Some other year.

ii. Ending date

a. 1987

b. 1988

c. Some other year.

2. Landings threshold - a higher amount restricts more people.
   i. Average - would smooth out exceptional highs or lows.
   ii. Best year(s) - a proxy for everyone's potential.
      a. 1,000 lbs.
      b. 5,000 lbs.
      c. 10,000 lbs.
      d. 25,000 lbs for vessels over 50'.
      e. 50,000 lbs for vessels over 50'.
   iii. Based on vessel size (or effort factor) - recognizes that different size vessels have different potentials.
3. Duration of participation
   i. Must be a current participant.
   ii. Not necessarily a current participant but number of years participation.
4. Investment threshold - recognizes future participation, boats, gear, keel laid, etc.
   i. Qualifying with a history of participation.
   ii. Non-qualifying with a history of participation.
   iii. Non-qualifying with no history of participation.
5. Income dependency based on earned income - a ranking of dislocation.
6. Financial risk - similar to investment and ownership.
7. Point system - many possibilities and could incorporate some or all of above.

C. Type of license - by vessel size, etc., useful depending on transferability and upgrading. The Council feels size classes should be more appropriately defined with industry input.

1. Size classes as used for sablefish analysis (these are preliminary for sablefish pending further discussion)
   i. Class A - less than 40 ft.
   ii. Class B - 41 to 50 ft.
   iii. Class C - 51 to 60 ft.
   iv. Class D - 61 to 70 ft.
   v. Class E - over 70 ft.
2. IPHC trip limit size classes
   i. Class A - 25 ft. or less
   ii. Class B - 26 to 30 ft.
   iii. Class C - 31 to 35 ft.
   iv. Class D - 36 to 40 ft.
   v. Class E - 41 to 45 ft.
   vi. Class F - 46 to 50 ft.
   vii. Class G - 51 to 55 ft.
   viii. Class H - over 55 ft.

IV. Transferability All choices considered under transferable rights need to take into account the protection of consumer and small business interests.

A. Totally non-transferable - allows for no windfall monetary gains.

B. Non-leasable but saleable - requires use by license owner so removes chance of absentee owners.

C. Leasable but non-saleable - removes chance of absentee owners but allows all licenses to be used.

D. Size or effort level specific - useful if split seasons, etc. or with combinative.

E. Totally transferable - effort levels would increase with addition of large vessels but allows full freedom to industry.

F. Combinative - Allow upgrades in vessel size class by tendering two licenses of a small class for one license of the next larger class.

G. Emergency provisions - to allow for health problems, etc.

H. A system incorporating transferable and non-transferable licenses based on initial participation in 1987 and/or 1988.

V. Controls on Ownership

The Council feels some form of control on ownership should be instituted but industry input and data analysis are needed before further decisions.

A. Restrict by vessel size or effort - stops buildup of mini-fleets of similar sized vessels.

B. Limit on "control" by any entity - Not required except as stated in National Standard 4 of the Magnuson Act.

C. Require proof of ownership or participation to "control" - Same qualifications as used for initial allocation.

D. On board or present when landing - keeps licenses with active participants but would have to be modified for corporations.

E. Citizenship requirements (reflagging legislation) - either use existing legislation or change it.

F. No control.

VI. Duration of harvest rights - depending on transferability.

A. No specified ending date - grants large windfall gains.

B. Specified limited duration with reallocation following - reduces size of windfall gains.

C. Allow for review in a specified time (perhaps 5 years) - does not sunset the system but allows for major structural changes if required.

VII. Adjusting Amount of licenses available

A. Use or lose - reduces the number of speculative licenses but may increase the number of active vessels, could be used for redistribution or retirement.

B. Buyback - if needed.

1. Government - Would need funding from some source and would require Magnuson Act change.

2. Industry - program may or may not be dependable.

VIII. Coastal Communities

A. Initially how community gains access, may require Magnuson Act change.

1. Allocated - includes communities but reduces other participants shares.

2. Allowed for - no initial allocation but allows communities to buy in and be "separate but equal".

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1. Individuals or communities or coastal development organization - who gets them, person, town, corporation, etc.
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1. Basis of judgement
   i. Fact - reduces number of appeals.
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2. Hearing officer
   i. Administrative law judge with appeals to the Secretary of Commerce and then the court system - impartial and a federal employee.
   ii. Appeals board with decision by the NMFS Regional Director and appeals to the Secretary and then the court system - open to question but more knowledgeable of germane issues.
   iii. Binding arbitration.

<u>The Council recognizes the need to be aware of the following items and may wish to comment on them but that the Council and NMFS staffs will deal with the specifics.</u>

C. Enforcement

1. Nature of right - must be defined (property, lease, harvest, etc) including its use as collateral and the ability of NMFS to censor the right. May wish to use license with effort size endorsements if needed.
2. Ability to accurately account for catch - reporting, observer, and monitoring systems.
3. Adequate enforcement procedures - a new system requires new methods of enforcement.
4. New regulations - see above.
5. New penalties - see above.

AGENDA C-5
APRIL 1989
SUPPLEMENTAL

WHOSE FISH ARE THESE, a Coalition
Contact: Michael Reif
P.O. Box 2346
Sitka, AK 99835
April 4, 1989

To: Honorable Council Members

Subject: Controlled-access alternatives for the North Pacific Fisheries

Hopefully this allocation plan does not become buried under the piles of papers which you are being inundated with, in preparation for the April Council meeting. Enclosed is the final draft of the Competitive Bid Fishing Quota which supersedes the version turned in at previous scoping meetings.

The Competitive Bid Fishing Quota is a plan our coalition has spent a great deal of time in preparing and believe there are thoughts within that warrant your attention. For example:

1. Competitive Bids - Fishermen in competition against other fishermen determine bid amounts. No government determined user fee/tax. Bids provide monies for management, enforcement, etc.

2. A Three Tiered Fishing Quota - Guaranteed distribution to small, medium, and large size fishermen and vessels. Widespread and diverse participation from small Alaskan coastal communities, and from Seattle, Washington.

3. Lease/Trade Fish Clearing House - Governing body administered. Provides a real solution to shameful bycatch waste while staying within present fleet configuration.

The opportunity this Council has afforded the public to give testimony on this issue is one I respectfully plan to take advantage of at the April meeting. Besides presenting our coalition concerns, I would be honored to answer any questions you may have concerning the Competitive Bid Fishing Quota.

Sincerely,

Michael Reif

COMPETITIVE BID FISHING QUOTAS
AN ALLOCATION PLAN
for the
FEDERAL COMMERCIAL GROUNDFISH FISHERY OFF ALASKA

PRESENTED BY: Whose Fish Are These, a Coalition

CONTACT: Michael Reif, P.O. Box 2346, Sitka, Alaska 99835, 907-747-6005

FOREWORD: We are presenting a proposal that would prove beneficial to all those involved in the fishing industry and the general public. Your comments and suggestions are encouraged. This proposal is divided into the following sections:

Section I Proposal Statement

Section II Test Parameters

Section III Justification for Proposal

Section IV Competitive Bid - A Means to Regulate Groundfish Harvest
(This presents one implementation plan. There are many others.)

Section V Competitive Bid - Model Framework

Section VI Comparison of Allocation Plans
(Individual comparison items could change for the various allocation plans depending on the implementation plan developed. This comparison is not all encompassing.)

ACKNOWLEDGEMENT: A sincere thanks to all the people (fishermen, Federal and state officials, university professors, fishing industry representatives, and members of the general public) who reviewed our rough drafts and contributed comments to this allocation plan.

DEFINITION OF GROUNDFISH: As used in this plan, groundfish would include all commercially valuable species under Federal management, including pollock, cod, Atka mackeral, soles and flounders, sablefish, rockfish, perch, halibut and crab.

Section I. Proposal Statement

The 3 to 200 mile Exclusive Economic Zone (EEZ) off the coast of Alaska, are Federally managed public oceans, as are the groundfish in these oceans. The public deserves compensation for the value of the groundfish commercially harvested from these oceans.

Currently, the resource is being given away to a viable private commercial industry. There are few, if any, examples of a renewable or non-renewable public resource on this scale, on land or water, subject to a similar giveaway.

A competitive bid system would generate monies to support proper public management of this public resource, replacing current support from general tax dollars. Excess monies, if generated, could be available for other public fishery related needs.

Section II. Test Parameters

A. Test Species - It is strongly urged that all commercial fisheries be managed under the same basic fishery allocation plan. Since all the species occur as an assemblage in the ocean, a unified fishery allocation plan would promote sound management and bycatch controls.

1. Limited historical participation by American fishermen.

2. Recent Americanization of this fishery and rapid expansion of American fishermen participation.

3. Apparent need to restrict harvest participation.

B. Test Area

Will consist of the Exclusive Economic Zone (EEZ) of coastal water off Alaska only.

C. Test Period - ___ years (4 years suggested)

1. There should be an on-going evaluation of the proposal.

2. Adjust and/or adopt or reject.

3. During this test period no new exclusive permit system should be created for groundfish in Alaska.

Section III. Justification of Proposal

A. Groundfish are a public resource found in public waters. Precedence indicates that payment should be made on resources commercially harvested or extracted from publicly owned areas.

1. Compare with leasable resources (e.g. oil and gas) found on or in public lands and waters.

2. Compare with saleable resources (e.g. timber and common variety minerals, such as gravel) found on public lands.

3. Contrast with disposal of hardrock or locatable minerals (e.g. gold and silver) with roots in early American law's passed in the late 1800's.

B. Public resources should not be given to commercial harvesters or extractors of that resource without open competitive bids.

We the public believe we can still be pro-logger even if we do not believe in giving away our public timber harvest rights to loggers.

We the public believe we can still be pro-oilmen even if we do not believe in giving away our public oil extract rights to oilmen.

We the public believe we can still be pro-fishermen even if we do not believe in giving away our public fishing harvest rights to a few fishermen.

Our intent is not to offend any fishermen with this idea, but instead to raise a question of fairness. The concept of public fishing rights being subdivided thus:

Costs for managing, enhancing, and enforcing regulations are paid for by the public	Valuable rights to harvestable quantities of fish are free to commercial industry

is a very troubling concept, and frequently a real division.

C. The groundfish fishery costs money to manage properly. Revenue collected from groundfish bids would go to the U.S. Treasury with the Federal government appropriating funds to manage groundfish off the coast of Alaska. Dedication of funds to programs like those outlined below are strongly urged. Presently the Federal government and public pay 100 percent of management costs from tax dollars. Adequate funding for programs, as below, will probably never happen until the public receives a direct return from the resource.

1. Group A programs (NOTE: Group A programs are designed to directly benefit the health and viability of the groundfish species off Alaska.)

a. On-board (vessels and processors) Observer Program dollars

i. Program would provide verifiable data of amounts harvested by species, revenue to be collected, and enforcement of laws. Percent and method of various fishery fleet coverage with on-board observer to be determined by the governing body.

ii. Program would provide basic fish stock and biological data essential to proper management

b. Research Program Dollars

Our collective biological and ecological book on groundfish species and ocean ecosystems is not thick. Much more information is needed for better management.

c. Enhancement Program Dollars

Program for habitat and groundfish species improvement

d. Enforcement Program Dollars

i. For high sea interception of foreign vessels.

ii. For domestic fleet enforcement.

iii. Illegal sale of fish on domestic and foreign markets.

2. Group B programs

National Fisheries Improvement Program - provide funding to improve fishery stocks and habitat in all the other Regional management areas.

Section IV. Competitive Bid - A Means to Regulate Groundfish Harvest

A. Quota's, Competitive Bids, and Bidders Defined

1. Quota's

a. They are leased from the governing agency for ___ (1 to 3) years, and are to go to American registered fishing vessel(s)/owner(s).

b. They are not the permanent private property of the recipients.

c. They are on a percentage basis of total allowable catch or poundage basis.

d. Successful bidders are allowed only one quota.

e. Successful bidders may lease one share, or a portion of one share, only.

f. Sales of quota'a are allowed to current non-holders of bids only.

g. They are for a main target species. The governing body retains ___ (0 to 10) percent of various species allowable biological catch for lease/trade purposes with the fleet. All leases or trades occur at posted exchange rates. The intent is to provide flexibility and potentially reduce waste, at sea, of marketable fish to zero. (See also Section V for model/explanation.)

h. Existing American vessels/owners would be grandfathered into the initial quota lease free for 1, 2, or 3 years based on past participation in the fishery. After this time, successful competitive bids will be required to participate.

i. The total number of quota's can be reduced through non-use (quota's that are leased and not actually fished by successful bidders) in subsequent years. This eliminates the need for an expensive buy back program. The total number of quota's can also be increased (e.g. a species that is in higher demand as an assemblage or small boat fishery) by redistributing quota's that are leased and not actually fished by successful bidders in subsequent years.

j. Quota's cannot be used as collateral for loans.

NOTE: The intent of the above definition of quota's is to provide public managers a flexible, dynamic system that can change with the times; and to provide fishermen the flexibility to change within a lease period of ___ years.

2. Competitive Bids

a. Competitive bids should be __% of market price (similar to royalty payment) as determined by the competitive bids of the participants. Market prices are notoriously volatile. The percent basis reduces risk to fishermen. Bid could also be a dollar amount.

b. Competitive bids would indicated __% of market price, quota size, fishery, area, vessel, and owner.

i. Only one closed bid per entity per fishery per area.

ii. Various fisheries and areas will be put up for bid in an orderly, open and fair process during the months of November and/or December.

iii. Successful bids determined by highest percent of market price that are needed to fulfill Allowable Biological Catch by parameters indicated above.

c. Market price shall be at time of sale based on round weight or unprocessed form concerning these bids.

3. Bidder

The question of whether the bidders are owner(s) and/or vessel(s) is a critical one. We support a bidder being defined as an owner(s) and vessel(s) so as to discourage domination by a few.

B. Governing body - the North Pacific Management Council in conjuction with the National Oceanic and Atmospheric Administration (NOAA).

1. Functions would be the same as determined by the Magnuson Act and other laws. Conflicts in this plan with present law could be addressed during re-authorization of the Magnuson Act.

2. Councils would determine:

a. Various coastal management area units

i. Total allowable catch per area per year by species.

b. Closure periods required based primarily on fishery biological and ecological concerns.

c. Administer competitive bid program and collect revenue

d. Distribute revenue to various programs through Federal appropriations or dedication of funds.

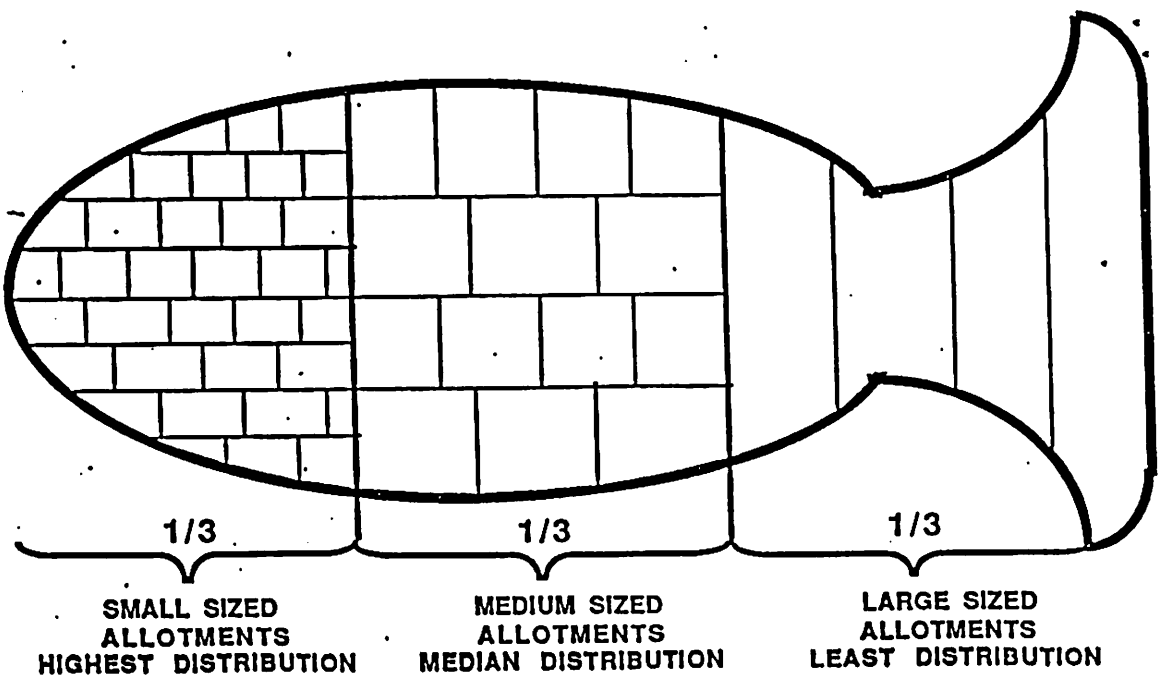
C. Conceptual distribution of a tiered quota system

TOTAL ALLOWABLE CATCH

(NOTE: A and B below could apply to one species of groundfish or could be an assemblage of groundfish species. This is a conceptual example only.)

Groundfish Bid Quota Size (A)	Small	Medium	Large
Number of Groundfish Quota's (B)	Largest ----------		Smallest
Total Groundfish TAC (AxB)	*30%	*30%	*30%

*10 percent of the TAC is retained by the governing body for lease/trade purposes.



1. Quota's are broken into small, medium and large sizes.

a. Size would vary with the particular fishery. For example the quota sizes for halibut and pollock would vary relative to those fisheries and participants.

b. Would allow for a substantial year long fishery where possible.

c. Would be subject to periodic reviews and adjustments by the governing body.

2. Benefits of tiered quota's (non-transferable, to other quota holders only).

a. Would provide a guaranteed distribution to small, medium, and large size fishermen and vessels.

b. Would promote widespread and diverse participation from the small Alaskan coastal communities and from Seattle, Washington.

D. Enforcement

1. Widespread cheating reduces incentives to take advantage of flexibility outlined under Competitive Bid fishing quota's. Enforcement with real penalties is critical to the success of any allocation plan and good fisheries management.

2. Under the Competitive Bid Allocation Plan:

a. Fishermen are allowed to go over their quota in one year as long as the quantity over the quota is obtained from another quota.

b. Fishermen are allowed to defer the harvest of up to 5 percent of their quota from one year to the next on multi-year leases.

c. To significantly discourage high grading at sea, processors are to offer no price difference based on legal size classes. Quality differences are strongly encouraged.

d. Landings:

i. On-board processors should require observers.

ii. Observers should be on-board, for at sea transfers to occur.

iii. Designated landing harbors should have observers or port agents.

iv. Trip logs, landing records, and buyer records should be required. Computerization is strongly recommended.

E. Revenue Generated

1. Presently no direct revenue is generated for fishery management or to the general public. Almost all experts believe this situation will change.

2. Taxes on fisheries (or user fee's) for "management" costs are probable. Flat rate taxes are regressive in application. Generally taxes will squeeze the profit margin, tighter for smaller than larger bidders.

a. Government management is generally not known for its efficiency. In public forestry today, "management" costs frequently exceed the cost of competitive bids by industry and the public pays the difference while industry remains profitable.

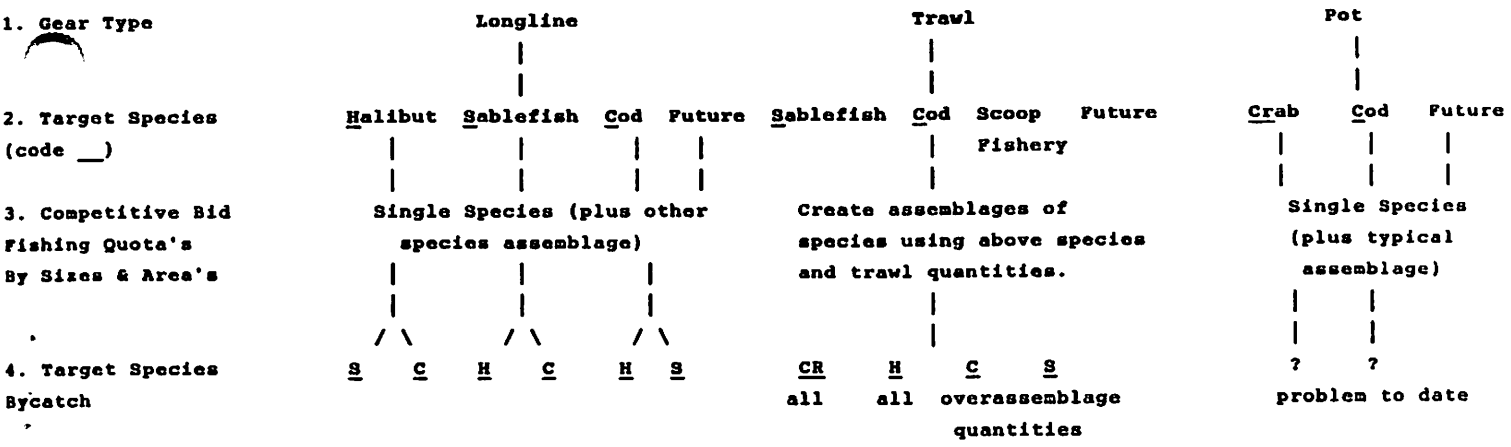
b. Government determines the tax - beware!

3. Competitive Bid revenues pay for "management" costs.

a. If "management" costs are higher than industry competitive bids, the public pays the difference. If "management" costs are lower than industry competitive bids, the public receives the difference.

b. Commercial fishermen determine the different tiered competitive bid rates today and tomorrow. Small to large operations have equal but separate profit opportunities.

Section V. Competitive Bid - A Framework (with bycatch solution)



5. Other Species Bycatch

It is suggested that other species be included as an assemblage to other target species and gear type for ease of management.

6. Bycatch Solution

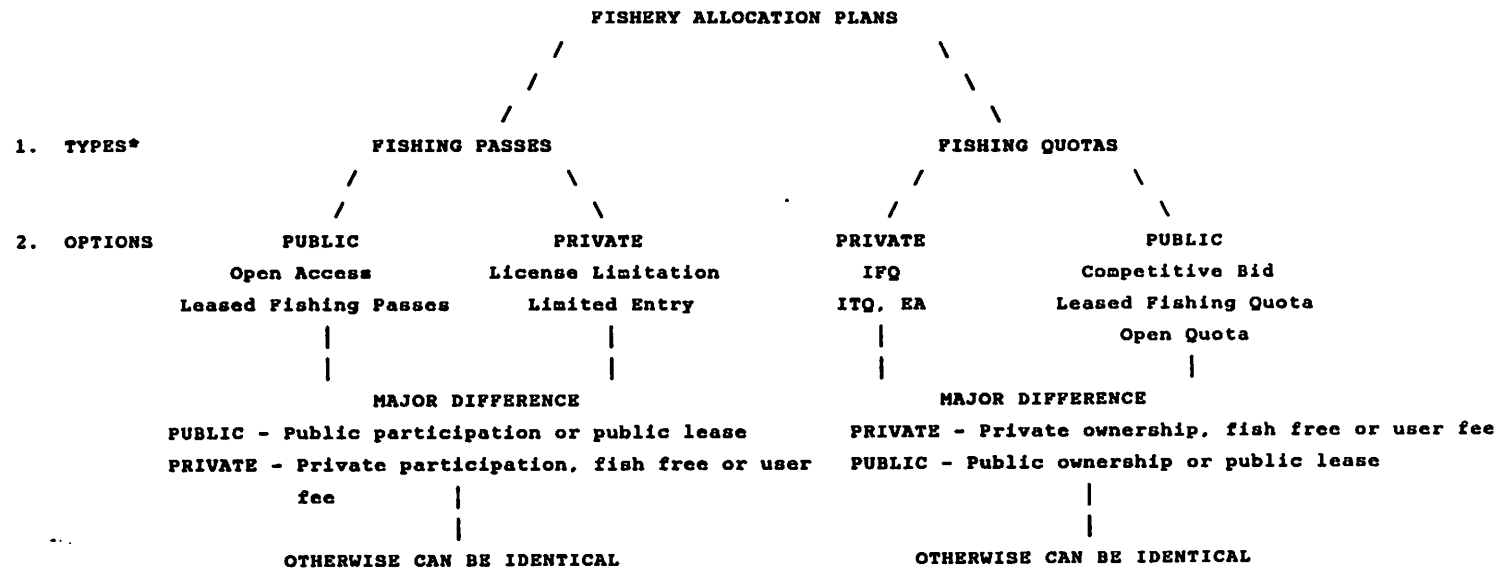
a. Participants allowed to lease one quota or partial quota only. This leased quota could be for a bycatch species.

b. Participants should be required to trade or purchase species with governing body at posted exchange or purchase rates up to __ % of their quota to create an assemblage of actual species caught. The options of purchase would be at the discretion of the governing body, except for crab and halibut which must be purchased since no bycatch currently exists for those species. Once __ % quota bycatch is reached, participants can no longer fish that year. Remaining quota could be leased to another quota holder.

Under Competitive Bid Fishing Quota funds collected are to be retained by the governing body. Under non-competitive bid, funds collected are to be transferred to target fishery quota holders and divided on a percentage of allowable catch basis.

Section VI. COMPARISON OF ALLOCATION PLANS

In studying the various allocation plans we propose the following to be an accurate representation.



*FISHING PASSES - Driving mechanism is derby/race to catch the most fish from common waters
FISHING QUOTAS - Driving mechanism is ownership of quantity of fish in common waters

COMPARISON ITEM	PUBLIC FISHING QUOTA	PRIVATE FISHING QUOTA	PRIVATE FISHING PASS	PUBLIC FISHING PASS
1. Examples.	Competitive Bid.	ITQ's, EA's, IFQ's	Limited entry, license limitation	Open entry, open access.
2. Future ability to change management direction on public oceans.	Very flexible & responsive to "public" owners . A dynamic system (a critical concept)	The users receiving this "free" resource, claim rights comparable to ownership rights. The users often direct the management and control the future of the resource, much as an owner would, and usually does not pay for management. Inflexible to changes desired by "public" owners.		
3. Public Revenue Generated	__ % of market value.	No revenue. Future tax probable.		
	All allocation plans generate many indirect fishery spin-offs.			
4. Participation Limited By	Highest bidders & number of quota's. COMPETITIVE	Grandfather rights & permit transfer.	Grandfather rights & permit transfer.	No limit. FREE FOR ALL
5. Monies for Programs Outlined	Funded from bids.	Unfunded or funded from general tax revenues.		
6. Fishing Season	Entire year, except for biological concerns.	Same as Competitive Bid.	As fast as fleet can catch quota during various openings (short season)	
7. Supply/Demand Market	Market responsive. High price - fish Low price - wait	Same as Competitive Bid	Unresponsive to markets, fish only during openings.	
8. Fish Quality	Higher. Time available, high quality.	Same as Competitive Bid	Lower. Limited time available, low quality.	

COMPARISON ITEM	PUBLIC FISHING QUOTA	INDIVIDUAL FISHING QUOTA	INDIVIDUAL FISHING PASS	PUBLIC FISHING PASS
9. Fish Waste	Lower. On-board observer, time available. Creates assemblage of species.	Lower. Time available. Program rule dependant.	Higher. Limited time available. Currently no on-board observer to enforce no waste rules.	
10. Lost Gear	Lower. Long fishing season. Time available.	Same as Competitive Bid	Higher. Congested fishing grounds, derby mentality. Limited time available.	
11. Fishery Employment	Fewer numbers & nearly equal to number of quota's. Non-transferable permits.	Potentially very few number of large operations. Possible because permit is transferable. Program rule dependant.	Fewer number and equal to number of licenses.	Larger numbers and equal to number who want to fish.
12. Processing & Storage Capacity	Even flow. Efficient capacity usage. Higher quality.	Same as Competitive Bid.	Peak and valley type usage. Less time available to handle massive quantities. Lower quality.	
13. Over Capitalization of Fleet	Lower. Using vessels much of the year. Limit number of owners and vessel.	Potentially lowest with a few large vessels. Program rule dependant.	Higher. Limit on vessels. Use vessels until quota caught. Use only for small portion of year.	Highest. No limit on vessels.
14. Safety	Higher. Fair weather fishermen.	Same as Competitive Bid.	Lower. Fishing no matter what kind of weather.	
15. Bycatch Waste	Lower. Solution outlined in Section V.	Usually not addressed, but could be addressed.		
16. Commercial fishermen vs. commercial charter conflicts	Market bid solution possible.	Not addressed.	Political solution probable.	
17. "Son" of Magnuson Act	Framework in place to allocate added resource.	Not addressed. Possible windfall to present participants.		
18. Up front quota's or permit fees.	No cost. % bid paid at time of landing.	Quota's could be costly	Permit could be costly.	No cost.
19. Maximum value of fishery realized.	Quite high. Bycatch marketed.	Dependant on plan.	Very low.	Extremely low.
20. Value of fishery shared.	Highest. Three tier quota - small, medium, and large plus public.	Potentially very low, dependant on plan.	Fairly high.	Extremely high.

Wally Pereyra

CUT OFF DEFINITION

A) A VESSEL MAY OR MAY NOT BE ELIGIBLE FOR A LICENSE TO PARTICIPATE IN THE FISHERIES UNDER THE JURISIDICTION OF THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL (NPFMC), UNLESS IT SATISFIES ONE OF THE FOLLOWING CRITERIA:

(1) ANY VESSEL WHICH HAS OPERATED IN THE U.S. FISHERIES ON OR BEFORE APRIL 14, 1989 MUST HAVE ENGAGED IN THE HARVESTING AND/OR PROCESSING, AND SALE OF LEGAL FISH OR FISHERY PRODUCTS FOR SPECIES WITHIN THE AUTHORITY OF THE NPFMC BY APRIL 14, 1989; OR

(2) ANY OTHER VESSEL MUST HAVE ENGAGED IN THE HARVESTING AND/OR PROCESSING, AND SALE OF LEGAL FISH AND FISHERY PRODUCTS FOR SPECIES WITHIN THE AUTHORITY OF THE NPFMC BY JANUARY 1, 1991.

B) ANY VESSEL MAY LOSE ITS QUALIFICATION TO PARTICIPATE IN THE FISHERIES IF IT UNDERGOES A CONVERSION AFTER JANUARY 1, 1991 WHICH:

(1) ALTERS THE VESSEL'S MODE OF OPERATION (CATCHING, PROCESSING OR CATCHING/PROCESSING); OR

(2) WHICH EXCESSIVELY INCREASES ITS FISHING POWER OR CAPACITY (FOR EXAMPLE MORE THAN 40% INCREASE IN A 10 YEAR PERIOD).

C) ANY QUALIFIED VESSEL WHICH IS LOST, DAMAGED OR RETIRED COULD BE REPLACED WITH A VESSEL OF SIMMILAR FISHING POWER AND CAPACITY.

NPFVOA

March 17, 1989

N P F V O A P O S I T I O N P A P E R
ON
E F F O R T L I M I T A T I O N

The North Pacific Fishing Vessel Owners' Association has traditionally supported the "Open" system of fisheries management, or stated conversely, has opposed attempts to implement effort limitation schemes on any fisheries. Part of that opposition is based on philosophical considerations, but part also is based on the observation that, to date, no system has yet been devised that has resulted in any demonstrated improvement for the resource or for the fisherman over the status quo.

The Council at the January meeting passed a motion with the stated intent to implement a "Date Certain", suggested to be January 16, 1989, after which vessels not "In the Pipeline" would be "At Risk" of not being permitted to stay in the fishery if effort limitation were to be implemented at some later date. None of the enquoted terms were furnished with satisfory explanations, leaving the issue of who will qualify for participation in case of effort limitation up in the air.

Based on that Council motion and other indications, NPFVOA has concluded that the certainty of the Council proceeding in some direction toward at least a study of the various effort limitation systems is quite high. The Council most likely will make a firm determination regarding that direction during the April Council meeting. Therefor, while maintaining their traditional strong support for the Status Quo, i.e. the "Open System", the Association, at a meeting attended by over thirty members on March 10, 1989, has come to the following consensus determination:

1). That NPFVOA express at the April Council meeting their continued opposition to effort limitation schemes.

2). That if the Council, in spite of NPFVOA and industry's opposition, wishes to proceed with any study of effort limitation, that study should be limited to LICENSE LIMITATION schemes.

North Pacific Fishing Vessel Owners' Association
1800 W. Emerson, Suite 101, Fishermen's Terminal, Seattle, WA 98119
Telephone (206) 285-3383 FAX (206) 286-9332

3). That Quota systems, specifically ITQ's, be rejected out of hand as being unworkable.

4). That before a study is undertaken, the Council, assisted by the financial community and the fishing industry, clearly define the term "In the Pipeline", and also establish with industry the criteria to evaluate the various management systems.

5). That if the study is to go forward, the "Date Certain" of January 16, 1989, or earlier, be accepted. That date will become the start of a " freeze" on fishing licenses called a "Moratorium", during which time license transfer activities between fisheries may occur, but no new licenses may be issued.

6). That the Moratorium be extended for the duration of the study, not to exceed a three-year period.

7). That the study be evaluated once each year during this moratorium to see if it can be determined that the open system remains the superior system.

8). That once the open system is determined to be the superior system, the Moratorium is automatically lifted or cancelled and the open system re-implemented.

9). That regardless of the status or success of the study, the Moratorium shall not be extended beyond the agreed-upon time period and shall "sunset" (disappear or be cancelled) at that time. Once the Moratorium is cancelled, the open system will be re-implemented.

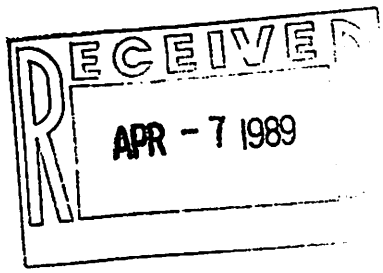
10). That the committee to conduct the study shall be made up of, and chaired by, industry members.

AGENDA C-5(a)
APRIL 1989
SUPPLEMENTAL

Pacific Hawaiian Line, Inc.

PHONE (503) 241-1255
TELEX No. (503) 299-6653

MAILING ADDRESS:
POST OFFICE BOX 1658
PORTLAND, OREGON 97207



April 3, 1989

Bill Wilson
North Pacific Fishery Management Council
P. O. Box 103136
Anchorage, Alaska 99510

Dear Mr. Wilson:

Thank you for sending to me your summary of the scoping process for exploring alternative management systems for groundfish, halibut and crab. As I mentioned to you on the phone recently, we purchased a tug supply vessel (the OCEAN MARLIN to be renamed SEA TRADER O.N 573519) for use in the fisheries from the U.S. Maritime Administration in late 1988. As such, with regard to comments you are soliciting with regard to the Council's next meeting of April 10th, it would be appreciated if you would pass on our comments as follows. We suggest that for purposes of the definition of "in the pipeline" that Subsection (b) of said definition be amended to read:

> "(b) Is under construction or has recently <u>been acquired</u> or constructed with full intent to operate in the fisheries under the Council's jurisdiction; or" (emphasis added to new language).

In addition, it would probably be more appropriate to have the cutoff date April 10, 1989 rather than January 16, 1989.

I would appreciate your forwarding these comments to the individual handling comments on this matter.

Sincerely,

Joseph P. Tennant

JPT:bjb

AGENDA C-5
APRIL 1989
SUPPLEMENTAL

ALASKA CRAB COALITION

3901 Leary Way (Bldg.) N.W., Suite #6 • Seattle, WA 98107 • (206) 547-7560 • FAX (206) 547-0130

TO: John Peterson, Chairman
NPFMC
Joe Blum, Director
WDF, Representative NPFMC

FROM: Alaska Crab Coalition
Arni Thomson, Executive Director

RE: LIMITED ACCESS AND OTHER ALTERNATIVES FOR FUTURE FISHERIES MANAGEMENT

At this time, ACC does not favor a cutoff date for fisheries managed under the jurisdiction of the NPFMC. Crab and groundfish fisheries are already over capitalized, therefore a cutoff date limiting new participants will not achieve a stabilizing effect on the fisheries.

The ACC is also philosophically opposed to an "Individual Transferable Quota" system. That type of program will likely lead to corporate and foreign ownership of quotas and loss of the individual fisherman/boat owner ethic that presently dominates the fishing industry.

If the NPFMC decides to establish a cutoff date for entry into groundfish fisheries and also decides on a definition for "new construction in the pipeline", then the ACC requests the inclusion of BS/AI crab fisheries in such a limitation program. The crab industry would object to being the only "open access fishery" under this scenario.

In conclusion, the ACC sees the priority need of the NPFMC as developing an observer program for DAP groundfish fisheries. An overcapitalized, unobserved groundfish industry is imposing major costs to our crab fisheries in terms of bycatch. Unlike the overcapitalization issue, the Council can provide leadership for and resolve the observer issue.

Sincerely,

Arni Thomson

Arni Thomson,
Executive Director

AGENDA C-5
APRIL 1989
SUPPLEMENTAL

WHOSE FISH ARE THESE, a Coalition
Contact: Michael Reif
P.O. Box 2346
Sitka, AK 99835
April 4, 1989

To: Honorable Council Members

Subject: Controlled-access alternatives for the North Pacific Fisheries

Hopefully this allocation plan does not become buried under the piles of papers which you are being inundated with, in preparation for the April Council meeting. Enclosed is the final draft of the Competitive Bid Fishing Quota which supersedes the version turned in at previous scoping meetings.

The Competitive Bid Fishing Quota is a plan our coalition has spent a great deal of time in preparing and believe there are thoughts within that warrant your attention. For example:

1. Competitive Bids - Fishermen in competition against other fishermen determine bid amounts. No government determined user fee/tax. Bids provide monies for management, enforcement, etc.

2. A Three Tiered Fishing Quota - Guaranteed distribution to small, medium, and large size fishermen and vessels. Widespread and diverse participation from small Alaskan coastal communities, and from Seattle, Washington.

3. Lease/Trade Fish Clearing House - Governing body administered. Provides a real solution to shameful bycatch waste while staying within present fleet configuration.

The opportunity this Council has afforded the public to give testimony on this issue is one I respectfully plan to take advantage of at the April meeting. Besides presenting our coalition concerns, I would be honored to answer any questions you may have concerning the Competitive Bid Fishing Quota.

Sincerely,

Michael Reif

COMPETITIVE BID FISHING QUOTAS
AN ALLOCATION PLAN
for the
FEDERAL COMMERCIAL GROUNDFISH FISHERY OFF ALASKA

PRESENTED BY: Whose Fish Are These, a Coalition

CONTACT: Michael Reif, P.O. Box 2346, Sitka, Alaska 99835, 907-747-6005

FOREWORD: We are presenting a proposal that would prove beneficial to all those involved in the fishing industry and the general public. Your comments and suggestions are encouraged. This proposal is divided into the following sections:

Section I Proposal Statement

Section II Test Parameters

Section III Justification for Proposal

Section IV Competitive Bid - A Means to Regulate Groundfish Harvest
(This presents one implementation plan. There are many others.)

Section V Competitive Bid - Model Framework

Section VI Comparison of Allocation Plans
(Individual comparison items could change for the various allocation plans depending on the implementation plan developed. This comparison is not all encompassing.)

ACKNOWLEDGEMENT: A sincere thanks to all the people (fishermen, Federal and state officials, university professors, fishing industry representatives, and members of the general public) who reviewed our rough drafts and contributed comments to this allocation plan.

DEFINITION OF GROUNDFISH: As used in this plan, groundfish would include all commercially valuable species under Federal management, including pollock, cod, Atka mackeral, soles and flounders, sablefish, rockfish, perch, halibut and crab.

Section I. Proposal Statement

The 3 to 200 mile Exclusive Economic Zone (EEZ) off the coast of Alaska, are Federally managed public oceans, as are the groundfish in these oceans. The public deserves compensation for the value of the groundfish commercially harvested from these oceans.

Currently, the resource is being given away to a viable private commercial industry. There are few, if any, examples of a renewable or non-renewable public resource on this scale, on land or water, subject to a similar giveaway.

A competitive bid system would generate monies to support proper public management of this public resource, replacing current support from general tax dollars. Excess monies, if generated, could be available for other public fishery related needs.

Section II. Test Parameters

A. Test Species - It is strongly urged that all commercial fisheries be managed under the same basic fishery allocation plan. Since all the species occur as an assemblage in the ocean, a unified fishery allocation plan would promote sound management and bycatch controls.

1. Limited historical participation by American fishermen.

2. Recent Americanization of this fishery and rapid expansion of American fishermen participation.

3. Apparent need to restrict harvest participation.

B. Test Area

Will consist of the Exclusive Economic Zone (EEZ) of coastal water off Alaska only.

C. Test Period - ___ years (4 years suggested)

1. There should be an on-going evaluation of the proposal.

2. Adjust and/or adopt or reject.

3. During this test period no new exclusive permit system should be created for groundfish in Alaska.

Section III. Justification of Proposal

A. Groundfish are a public resource found in public waters. Precedence indicates that payment should be made on resources commercially harvested or extracted from publicly owned areas.

1. Compare with leasable resources (e.g. oil and gas) found on or in public lands and waters.

2. Compare with saleable resources (e.g. timber and common variety minerals, such as gravel) found on public lands.

3. Contrast with disposal of hardrock or locatable minerals (e.g. gold and silver) with roots in early American law's passed in the late 1800's.

B. Public resources should not be given to commercial harvesters or extractors of that resource without open competitive bids.

We the public believe we can still be pro-logger even if we do not believe in giving away our public timber harvest rights to loggers.

We the public believe we can still be pro-oilmen even if we do not believe in giving away our public oil extract rights to oilmen.

We the public believe we can still be pro-fishermen even if we do not believe in giving away our public fishing harvest rights to a few fishermen.

Our intent is not to offend any fishermen with this idea, but instead to raise a question of fairness. The concept of public fishing rights being subdivided thus:

Costs for managing, enhancing, and enforcing regulations are paid for by the public	Valuable rights to harvestable quantities of fish are free to commercial industry

is a very troubling concept, and frequently a real division.

C. The groundfish fishery costs money to manage properly. Revenue collected from groundfish bids would go to the U.S. Treasury with the Federal government appropriating funds to manage groundfish off the coast of Alaska. Dedication of funds to programs like those outlined below are strongly urged. Presently the Federal government and public pay 100 percent of management costs from tax dollars. Adequate funding for programs, as below, will probably never happen until the public receives a direct return from the resource.

1. Group A programs (NOTE: Group A programs are designed to directly benefit the health and viability of the groundfish species off Alaska.)

a. On-board (vessels and processors) Observer Program dollars

i. Program would provide verifiable data of amounts harvested by species, revenue to be collected, and enforcement of laws. Percent and method of various fishery fleet coverage with on-board observer to be determined by the governing body.

ii. Program would provide basic fish stock and biological data essential to proper management

b. Research Program Dollars

Our collective biological and ecological book on groundfish species and ocean ecosystems is not thick. Much more information is needed for better management.

c. Enhancement Program Dollars

Program for habitat and groundfish species improvement

d. Enforcement Program Dollars

i. For high sea interception of foreign vessels.

ii. For domestic fleet enforcement.

iii. Illegal sale of fish on domestic and foreign markets.

2. Group B programs

National Fisheries Improvement Program - provide funding to improve fishery stocks and habitat in all the other Regional management areas.

Section IV. Competitive Bid - A Means to Regulate Groundfish Harvest

A. Quota's, Competitive Bids, and Bidders Defined

1. Quota's

a. They are leased from the governing agency for ___ (1 to 3) years, and are to go to American registered fishing vessel(s)/owner(s).

b. They are not the permanent private property of the recipients.

c. They are on a percentage basis of total allowable catch or poundage basis.

d. Successful bidders are allowed only one quota.

e. Successful bidders may lease one share, or a portion of one share, only.

f. Sales of quota'a are allowed to current non-holders of bids only.

g. They are for a main target species. The governing body retains ___ (0 to 10) percent of various species allowable biological catch for lease/trade purposes with the fleet. All leases or trades occur at posted exchange rates. The intent is to provide flexibility and potentially reduce waste, at sea, of marketable fish to zero. (See also Section V for model/explanation.)

h. Existing American vessels/owners would be grandfathered into the initial quota lease free for 1, 2, or 3 years based on past participation in the fishery. After this time, successful competitive bids will be required to participate.

i. The total number of quota's can be reduced through non-use (quota's that are leased and not actually fished by successful bidders) in subsequent years. This eliminates the need for an expensive buy back program. The total number of quota's can also be increased (e.g. a species that is in higher demand as an assemblage or small boat fishery) by redistributing quota's that are leased and not actually fished by successful bidders in subsequent years.

j. Quota's cannot be used as collateral for loans.

NOTE: The intent of the above definition of quota's is to provide public managers a flexible, dynamic system that can change with the times; and to provide fishermen the flexibility to change within a lease period of ___ years.

2. Competitive Bids

a. Competitive bids should be __% of market price (similar to royalty payment) as determined by the competitive bids of the participants. Market prices are notoriously volatile. The percent basis reduces risk to fishermen. Bid could also be a dollar amount.

b. Competitive bids would indicated __% of market price, quota size, fishery, area, vessel, and owner.

i. Only one closed bid per entity per fishery per area.

ii. Various fisheries and areas will be put up for bid in an orderly, open and fair process during the months of November and/or December.

iii. Successful bids determined by highest percent of market price that are needed to fulfill Allowable Biological Catch by parameters indicated above.

c. Market price shall be at time of sale based on round weight or unprocessed form concerning these bids.

3. Bidder

The question of whether the bidders are owner(s) and/or vessel(s) is a critical one. We support a bidder being defined as an owner(s) and vessel(s) so as to discourage domination by a few.

B. Governing body - the North Pacific Management Council in conjuction with the National Oceanic and Atmospheric Administration (NOAA).

1. Functions would be the same as determined by the Magnuson Act and other laws. Conflicts in this plan with present law could be addressed during re-authorization of the Magnuson Act.

2. Councils would determine:

   a. Various coastal management area units

      i. Total allowable catch per area per year by species.

   b. Closure periods required based primarily on fishery biological and ecological concerns.

   c. Administer competitive bid program and collect revenue

   d. Distribute revenue to various programs through Federal appropriations or dedication of funds.

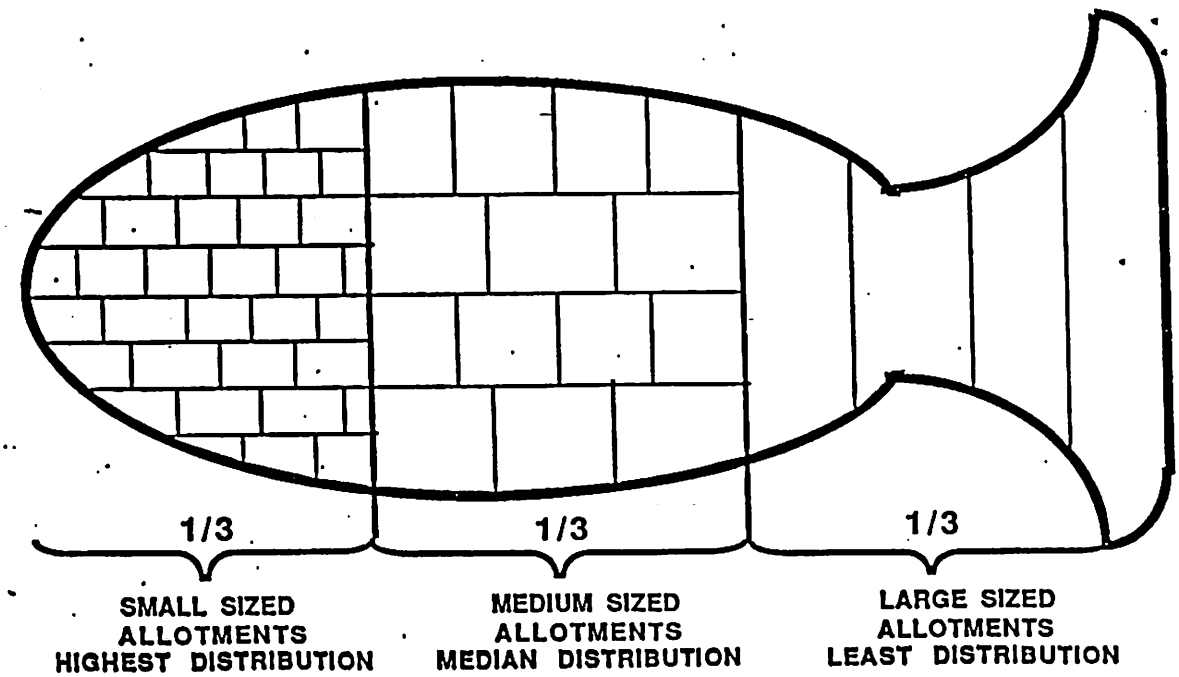
C. Conceptual distribution of a tiered quota system

TOTAL ALLOWABLE CATCH

(NOTE: A and B below could apply to one species of groundfish or could be an assemblage of groundfish species. This is a conceptual example only.)

Groundfish Bid Quota Size	(A)	Small	Medium	Large
Number of Groundfish Quota's	(B)	Largest ----------		Smallest
Total Groundfish TAC	(AxB)	*30%	*30%	*30%

*10 percent of the TAC is retained by the governing body for lease/trade purposes.



1. Quota's are broken into small, medium and large sizes.

a. Size would vary with the particular fishery. For example the quota sizes for halibut and pollock would vary relative to those fisheries and participants.

b. Would allow for a substantial year long fishery where possible.

c. Would be subject to periodic reviews and adjustments by the governing body.

2. Benefits of tiered quota's (non-transferable, to other quota holders only).

a. Would provide a guaranteed distribution to small, medium, and large size fishermen and vessels.

b. Would promote widespread and diverse participation from the small Alaskan coastal communities and from Seattle, Washington.

D. Enforcement

1. Widespread cheating reduces incentives to take advantage of flexibility outlined under Competitive Bid fishing quota's. Enforcement with real penalties is critical to the success of any allocation plan and good fisheries management.

2. Under the Competitive Bid Allocation Plan:

a. Fishermen are allowed to go over their quota in one year as long as the quantity over the quota is obtained from another quota.

b. Fishermen are allowed to defer the harvest of up to 5 percent of their quota from one year to the next on multi-year leases.

c. To significantly discourage high grading at sea, processors are to offer no price difference based on legal size classes. Quality differences are strongly encouraged.

d. Landings:

i. On-board processors should require observers.

ii. Observers should be on-board, for at sea transfers to occur.

iii. Designated landing harbors should have observers or port agents.

iv. Trip logs, landing records, and buyer records should be required. Computerization is strongly recommended.

E. Revenue Generated

1. Presently no direct revenue is generated for fishery management or to the general public. Almost all experts believe this situation will change.

2. Taxes on fisheries (or user fee's) for "management" costs are probable. Flat rate taxes are regressive in application. Generally taxes will squeeze the profit margin, tighter for smaller than larger bidders.

a. Government management is generally not known for its efficiency. In public forestry today, "management" costs frequently exceed the cost of competitive bids by industry and the public pays the difference while industry remains profitable.

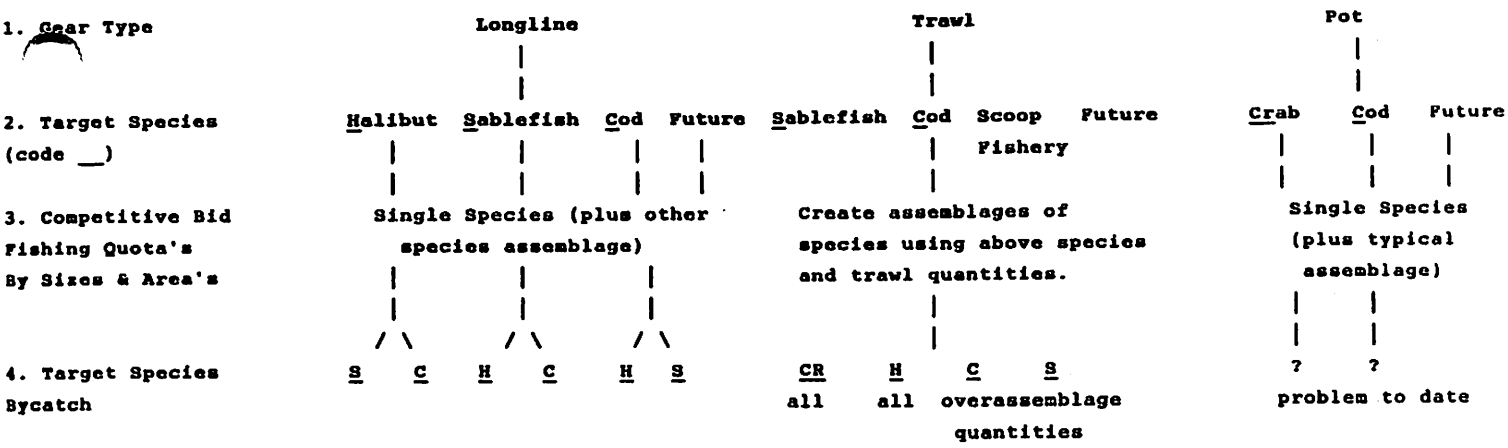
b. Government determines the tax - beware!

3. Competitive Bid revenues pay for "management" costs.

a. If "management" costs are higher than industry competitive bids, the public pays the difference. If "management" costs are lower than industry competitive bids, the public receives the difference.

b. Commercial fishermen determine the different tiered competitive bid rates today and tomorrow. Small to large operations have equal but separate profit opportunities.

Section V. Competitive Bid - A Framework (with bycatch solution)



5. Other Species Bycatch

It is suggested that other species be included as an assemblage to other target species and gear type for ease of management.

6. Bycatch Solution

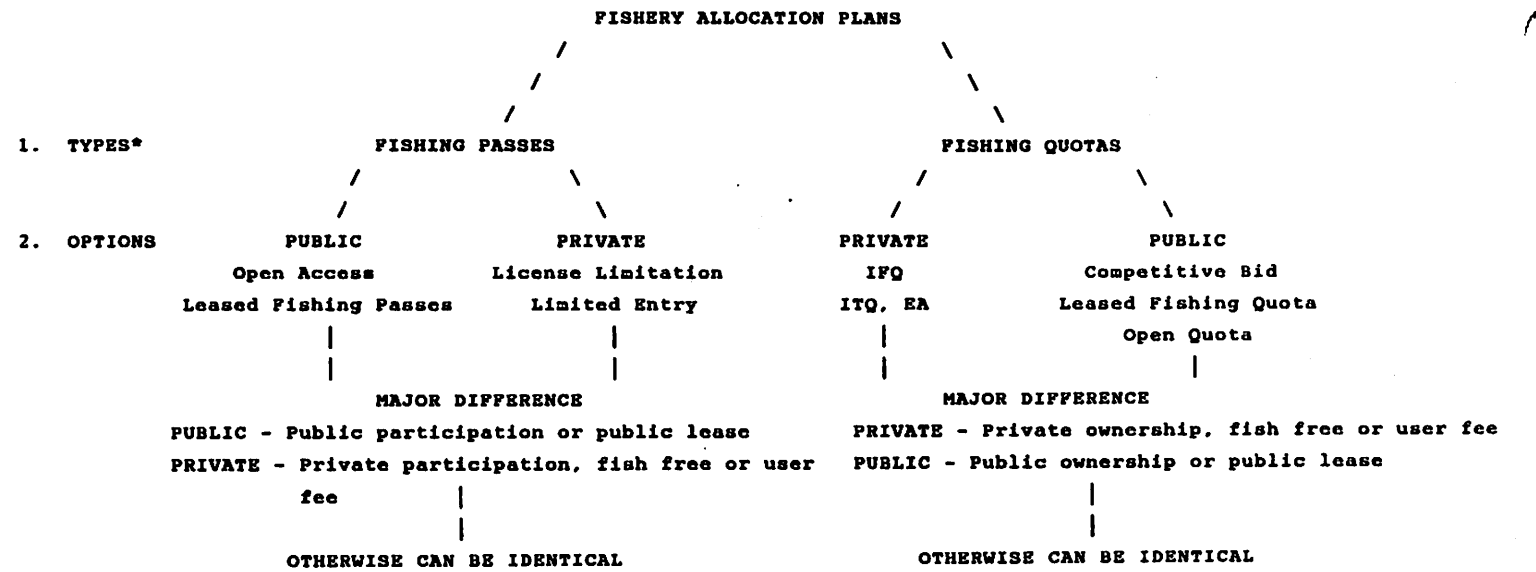
a. Participants allowed to lease one quota or partial quota only. This leased quota could be for a bycatch species.

b. Participants should be required to trade or purchase species with governing body at posted exchange or purchase rates up to __ % of their quota to create an assemblage of actual species caught. The options of purchase would be at the discretion of the governing body, except for crab and halibut which must be purchased since no bycatch currently exists for those species. Once __ % quota bycatch is reached, participants can no longer fish that year. Remaining quota could be leased to another quota holder.

Under Competitive Bid Fishing Quota funds collected are to be retained by the governing body. Under non-competitive bid, funds collected are to be transferred to target fishery quota holders and divided on a percentage of allowable catch basis.

Section VI. COMPARISON OF ALLOCATION PLANS

In studying the various allocation plans we propose the following to be an accurate representation.



*FISHING PASSES - Driving mechanism is derby/race to catch the most fish from common waters
FISHING QUOTAS - Driving mechanism is ownership of quantity of fish in common waters

COMPARISON ITEM	PUBLIC FISHING QUOTA	PRIVATE FISHING QUOTA	PRIVATE FISHING PASS	PUBLIC FISHING PASS
1. Examples.	Competitive Bid.	ITQ's, EA's, IFQ's	Limited entry, license limitation	Open entry, open access.
2. Future ability to change management direction on public oceans.	Very flexible & responsive to "public" owners . A dynamic system (a critical concept)	The users receiving this "free" resource, claim rights comparable to ownership rights. The users often direct the management and control the future of the resource, much as an owner would, and usually does not pay for management. Inflexible to changes desired by "public" owners.		
3. Public Revenue Generated	__ % of market value.	No revenue. Future tax probable.		
	All allocation plans generate many indirect fishery spin-offs.			
4. Participation Limited By	Highest bidders & number of quota's. COMPETITIVE	Grandfather rights & permit transfer.	Grandfather rights & permit transfer.	No limit. FREE FOR ALL
5. Monies for Programs Outlined	Funded from bids.	Unfunded or funded from general tax revenues.		
6. Fishing Season	Entire year, except for biological concerns.	Same as Competitive Bid.	As fast as fleet can catch quota during various openings (short season)	
7. Supply/Demand Market	Market responsive. High price - fish Low price - wait	Same as Competitive Bid	Unresponsive to markets, fish only during openings.	
8. Fish Quality	Higher. Time available, high quality.	Same as Competitive Bid	Lower. Limited time available, low quality.	

COMPARISON ITEM	PUBLIC FISHING QUOTA	INDIVIDUAL FISHING QUOTA	INDIVIDUAL FISHING PASS	PUBLIC FISHING PASS
9. Fish Waste	Lower. On-board observer, time available. Creates assemblage of species.	Lower. Time available. Program rule dependant.	Higher. Limited time available. Currently no on-board observer to enforce no waste rules.	
10. Lost Gear	Lower. Long fishing season. Time available.	Same as Competitive Bid	Higher. Congested fishing grounds, derby mentality. Limited time available.	
11. Fishery Employment	Fewer numbers & nearly equal to number of quota's. Non-transferable permits.	Potentially very few number of large operations. Possible because permit is transferable. Program rule dependant.	Fewer number and equal to number of licenses.	Larger numbers and equal to number who want to fish.
12. Processing & Storage Capacity	Even flow. Efficient capacity usage. Higher quality.	Same as Competitive Bid.	Peak and valley type usage. Less time available to handle massive quantities. Lower quality.	
13. Over Capitalization of Fleet	Lower. Using vessels much of the year. Limit number of owners and vessel.	Potentially lowest with a few large vessels. Program rule dependant.	Higher. Limit on vessels. Use vessels until quota caught. Use only for small portion of year.	Highest. No limit on vessels.
14. Safety	Higher. Fair weather fishermen.	Same as Competitive Bid.	Lower. Fishing no matter what kind of weather.	
15. Bycatch Waste	Lower. Solution outlined in Section V.	Usually not addressed, but could be addressed.		
16. Commercial fishermen vs. commercial charter conflicts	Market bid solution possible.	Not addressed.	Political solution probable.	
17. "Son" of Magnuson Act	Framework in place to allocate added resource.	Not addressed. Possible windfall to present participants.		
18. Up front quota's or permit fees.	No cost. % bid paid at time of landing.	Quota's could be costly	Permit could be costly.	No cost.
19. Maximum value of fishery realized.	Quite high. Bycatch marketed.	Dependant on plan.	Very low.	Extremely low.
20. Value of fishery shared.	Highest. Three tier quota - small, medium, and large plus public.	Potentially very low, dependant on plan.	Fairly high.	Extremely high.

AGENDA C-5
APRIL 1989
SUPPLEMENTAL

RECEIVED
APR 11 1989

Steve Williams
Red River Rt Box 23
Elk City, ID 83525

To North Pacific Fisheries Management Council
P.O. Box 103136
Anchorage, AK 99510
Attn: John Peterson, Chairman

Dear Sir

I have received a notice that you have begun a scoping process to examine long-term management alternatives for sablefish, other ground fish, halibut, and crab fisheries. I am writing to comment.

I have been following these issues in the media, and it is very clear to me that different management strategies are necessary. I resent the current open access to these fish, and the free access to these fish within the territorial waters of the United States

I feel that permitted access solves many safety, storage, and social issues associated with this fishery. A paid system helps make the fishery self sustaining by providing money for fisheries management and law enforcement. I do not think your January 16, 1989 cutoff date is a really adequate response to the problems associated with this fishery. Only strict permitting (a lottery) and paid access will insure maintenance of this high quality fishery.

Restrictions such as these are very similar to restrictions used to manage other limited quantity, publically owned natural resources (timber, range, leasable minerals). The fish in the territorial waters of the U.S. (3-200 miles) are no different. P/S act responsibly are decisively.

Sincerly Yours
Steve Williams

To: North Pacific Fishery Management Council

April 12, 1989
Anchorage, ALASKA

Subject: A Full Time ALASKAN resident's opinion to, Agenda item C-5 'Future Fisheries Management,' with certain objections that we have concerning this matter.

First it is our contention that the public hearing process has been greviously omitted with regards to the January N.P.F.M. Council meeting on Item 1, the 'Vessel cut-off and pipeline definition, adoption. The lack of a previous public NOTICE and hearing regarding this watermark proposal, is in contrast to one of the main purposes of this Council. We cite #3 of 'Council' functions under the Act, "Conduct public Hearings," and the last sentence "the intent is to maximize public participation in the Council process."

Secondly on page 15 of the Blue Booklet, titled North Pacific Fisheries Management Council, "the Americanization of Groundfish," is touted. only in recent years, have we exercised control of our great ALASKAN offshore fisheries. Now and in less then a decade a situation of near NON-control to what we are facing here, an over-control or a certain 'Lock out' on these VAST Resources.

And Thirdly, can this Council in good Conscience, honestly Knock out Now and future New Boats owned and operated by ALASKAN Residents, in our Newly 'retrieved'

Fish resources. Should ALASKA continue To have a 'Quasi-Colonial' fishing industry status to the STATE of WASHINGTON interests. You need only to look at the ALASKA SALMON-permits and see where a vast amount of the holders of this wealth siphons ~~to~~.

So are you FOLKS going to in good faith, honestly Knock out ~~the~~ very environs whose vast shoreline is The Backdrop to these Tremendous resources, Their New Boats and honest entry into This Vast Fishery?

We strongly Urge The North Pacific Fishery MANAGEMENT Council continue to or add specie Quotas where necessary and allow ALASKANS Their rightful Manifest Destiny To develope and grow with This Fishery and add New boats, From The Headlands That are the resources ~~to~~ This great Fishery.

Thank You,

W.J. Nystrom
831 Gambell St.
Anchorage, ~~ALASKA~~
99501

CUT - OFF DATE AND GROUNDFISH ACCESS

The Kodiak Longline Vessel Owners are opposed to the types of groundfish limited access options being addressed. A cut-off date at this time would serve no purpose in limiting the access to the fisheries considered. There currently exists much more harvesting capability than quotas allow.

One facet of implementing and maintaining any type of limited access program which we feel is not being adequately considered would be the financial cost. Our concern is that the already limited funds for fisheries will be further depleted. Industry representatives recently traveled to Washington D.C. to lobby for the desperately needed funding required to manage the groundfish fisheries.

The KLVOA members feel that our concentration and efforts should be on other ways of managing the resource under an open access system. For example, our priorities should be the domestic observer program, permanent bycatch controls, allocation between gear groups, allocations for shore based and catcher/processers, and gear modification research to name a few.

It is the opinion of the KLVOA that we are not making headway and too much time has been spent on this issue. We need to get on with managing the resources under an open access program.

We would request that the Council put the cut-off date and limited access discussions to rest and that our efforts and the valuable staff time be put to managing our resource.

Linda Kozak
EXECUTIVE DIRECTOR
KODIAK LONGLINE VESSEL OWNERS ASSN.

Alaska State Legislature
Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

April 9, 1989

John Peterson, Chairman
North Pacific Fisheries Management Council
P.O. Box 103136
Anchorage, AK 99510

Dear Mr. Peterson:

We understand that the North Pacific Fisheries Management Council intends to make a final decision on whether to use January 16, 1989 as a cutoff date for eligibility in any future controlled access - or limited entry system - for the groundfish, halibut and crab fisheries under the Council's jurisdiction.

We realize that the Council has not made a final decision on whether a controlled-access system will be implemented, nor has the Council decided what kind of system might be implemented. We also realize that the rapid Americanization of the fisheries within our 200-mile limit has led to fierce competition on the fishing grounds and increased concern over the current management system and its ability to protect the resource. The problems this year with the Shelikof Straits pollock stocks is just one example of the resource possibly being jeopardized by increased fishing pressure. In addition, the situation is seriously exacerbated by foreign fishing of groundfish stocks in the donut hole.

However, very little of this Americanization is Alaskan. In fact, at least one study indicates that more than 90% of the value of the bottomfishery goes to Washington state. Now the Council is discussing some form of limited entry, and we are very concerned that Alaskans will be excluded from ever participating in these fisheries if a final decision is made on the cutoff date.

The rapidity with which Americanization took place has surprised nearly everyone in the fishing industry. Certainly, Washington and Oregon fishermen were in a position to take advantage of the situation, and they are to be commended for filling in the void left by foreign fishing interests. However, the tremendous capital investments required to participate in the groundfish fisheries has delayed, and in many cases prohibited, Alaskans from

establishing a foothold early on. Yet commercial fishing generates 7% of the total state income and 27% of the personal income of the private sector. In rural regions of the state, income from fishing represents a much greater portion of the community's total income since few other jobs exist. The thought of having this multi billion dollar resource at Alaska's doorstep, with Alaskans receiving little, if any economic benefit from it is outrageous to say the least.

The state of Alaska has a responsibility to help provide a meaningful economic base for its rural residents. Any future controlled-access system must include some provision for Alaska's coastal communities. We, like many others in the state, strongly believe that some form of community development quota or set-aside must be seriously explored. Until that is done, we oppose any controlled-access system as well as the establishment of any cutoff date for a future system.

We appreciate the opportunity to comment on this proposal. Like yourselves, our main concern is for the future of the fisheries resources within American waters. However, our other major concern is for the future of a viable economy for Alaska's coastal communities.

Sincerely,

Senator Johne Binkley

Representative Lyman Hoffman

Senator Fred Zharoff

Representative Cliff Davidson

Senator Al Adams

Representative George Jacko

Representative Richard Foster

Representative Eileen MacLean

cc: Governor Steve Cowper

4/13/89

MR PETERSEN, MEMBERS OF THE COUNCIL,

I AM AWARE THAT THERE MIGHT HAVE BEEN SOME APPEARANCE OF INCONSISTENCY IN THE TESTIMONY OF MYSELF AND THAT OF MR JAMES WEXLER, OUR CORPORATE ATTORNEY FOR EMERALD SEAFOODS. INC. AND SWAN FISHERIES INC.

IN MR. WEXLER'S TESTIMONY HE SAID THAT EMERALD'S OFFICIAL POSITION WAS THAT OF OPPOSING A CUT-OFF DATE WHICH WOULD BE INCONSISTENT WITH THOSE DATES STIPULATED IN THE ANTI-REFLAGGING ACT.

HOWEVER, HE DID TEMPER THAT STATEMENT BY SAYING THAT IF THERE <u>WAS</u> TO BE A CUT-OFF DATE IMPOSED, JANUARY 1, 1991 WOULD BE REASONABLE AND WOULD ADDRESS EMERALD'S CONCERN WITH REGARDS TO A CONVERSION CURRENTLY IN PROGRESS.

IN MY TESTIMONY I INDICATED THAT I WOULD SUPPORT NOT ONLY A JANUARY 1, 1991 CUT-OFF DATE TO ADDRESS CONVERSIONS CURRENTLY

IN PROGRESS BUT ANOTHER DATE, APRIL 14, 1989 TO ADDRESS DAH VESSELS CURRENTLY IN OPERATION. THIS DATE WOULD ADDRESS THE CONCERN OF CAPPING OFF ENTRY OF VESSELS OPERATING IN OTHER COUNCIL JURISDICTIONS FROM ENTERING THE NPFMC JURISDICTION.

I HOPE THIS CLEARS UP ANY INCONSISTENCIES THAT MIGHT HAVE BEEN INSINUATED INTO OUR TESTIMONIES.

THANK YOU FOR YOUR RECONSIDERATIONS.

ERIC MAISONPIERRE
EMERALD SEAFOODS, INC.

James A. Wexler

JAMES A. WEXLER
SWAN FISHERIES, INC.

April 1989
Agenda C-5
Future Mgmt Planning
Partial transcription of Council Discussion

Knowles: I want to bring up one issue, maybe this goes back to the other page on the problems facing industry, and the one thing that as we go through this process, one thing I want to monitor is to make sure we don't skew the results to come up with a predicted end. I was at that meeting of the planning committee and I don't recall that the dominant problem of the industry which as you stated is the economic inefficiency which was the excess capacity, and the other two were just symptoms and not problems. I think that what I detect coming out of this and I don't want to be paranoic out of it, but I think what I detect is a skewing of the concerns oriented towards a limited access end and I want to make sure that it's neutral.

Tremaine: I'm looking through my notes for that meeting; you may also want to ask the Chairman of that committee who did approve these minutes.

Knowles: Who is neutral.

---miscellaneous remarks among Council members---

Blum: Four and 5 were clearly those two items that we identified that you felt or asked whether or not there were way to measure - quantify those - and we agreed there probably were and they needed to be included in this. Economic inefficiency/excess harvesting capacity has been an issue and a problem facing through the FOG process and through this process. I'm not sure where the skewing, except maybe in the way that Dick stated it, is coming from. If you're uncomfortable with it, maybe a statement to that effect is . . . (interrupted by John P)

Peterson: I would like to comment on that. Economic and inefficiency in this particular case, in my opinion, is an estimate of inefficiency of the industry as a whole, not of individual operations. And if we were talking about a planned economy, that may be an appropriate problem, but we're not; we do not operate within a planned economy. Our business climate is based on individual decisions and individual inefficiencies, not the whole of the industry. And I think that's what you're referring to there when you say economic inefficiency, is that not right?

Tremaine: Without going into a planned economy . . . (John P interrupted - "which we are not in and I don't see any prospect of that changing in the United States in the near future) . . . Tremaine: for pure economic theory, I would agree with you. I have hear some fishermen . . . (John P: I'm talking about facts, that's the way it is now) . . . Tremaine: I've heard some fishermen discuss that when they are told where to catch their fish, how much to fish by load, that they thought that might be a planned economy.

Peterson: That's an individual decision with individual fishermen.

Tremaine: In fact we are addressing the fleet as a whole and not individual operators.

G-5 Controlled Access

(Transcription, re: #7 under G-5 of the To-Do List)

Knowles: I want to bring up one issue, maybe this goes back to the other page on the problems facing industry, and the one thing that as we go through this process, one thing I want to monitor is to make sure we don't have the results to come up with a predetermined end. I was at that meeting of the planning committee and I don't recall that the dominant problem of the industry which as you stated is the economic inefficiency which was the excess capacity, and the other two were just symptoms and not problems. I think that what I detect coming out of this and I don't want to be paranoid out of it, but I think what I detect is a skewing of the concerns oriented towards controlled access and I want to make sure that it's neutral.

Tremaine: I'm looking through my notes for that meeting; you may also want to ask the Chairman of that committee who did approve those minutes.

Knowles: Tho is neutral.

---Miscellaneous remarks among Council members---

Eliot: Four and 5 were clearly those two items that we identified that you felt or asked whether or not there were ways to remedy quickly, those - and we agreed there probably were and they needed to be included in this. Economic inefficiency/excess harvesting capacity has been an issue and a problem facing through the FMP process and through this process. I'm not sure where the slanting, except maybe in the way that Dick worded it, is coming from. If you're uncomfortable with it, maybe a statement to that effect in . . . (Interrupted by John P).

Peterson: I would like to comment on that. Economic and inefficiency in this particular case, in my opinion, is an estimate of inefficiency of the industry as a whole, not of individual operations. And if we were talking about a planned economy that may be an appropriate premise, but we're not; we do not operate within a planned economy. Our business climate is based on individual decisions and individual decision-making, not the whole of the industry. And I think that's what you're referring to there when you say economic inefficiency, is that not right?

Tremaine: Without going into a planned economy . . . (John P interrupted - which we are not in and I don't see any prospect of that changing in the United States in the near future) . . . Tremaine: In pure economic theory, I would agree with you. I have heard some fishermen . . . (John P: I'm talking about facts, that's the way it is now) . . . Tremaine: I've heard some fishermen discuss that when they are all where to catch their fish, how much to fish by lord, that they thought that might be a planned economy.

Peterson: That's an individual decision with individual fishermen.

Tremaine: In fact we are addressing the fleet as a whole and not individual operations.

Peterson: Correct, and this would be a problem you would attempt to resolve with the limited access system . . .

Tremaine: And with open access to the extent possible.

Peterson: But you look at it on a fleet basis and my concern is that I don't think that is possible, I think you still must look at it on an individual fisherman basis, some of whom are damn good fishermen and will always do well, some of whom are lousy fishermen and will never do well. And in this particular description of a problem, you're talking about economic inefficiency which is kind of a broad-brush description of the fishery. My concern, of course, is that that is not necessarily true. The problem would be with those individuals who are not good fishermen and who are not going to survive under any system.

Blum: Is the Chairman's suggestion that the economic inefficiency problem be dropped as a problem?

Peterson: Well, is it a problem? I don't think it is.

Cotter: I realize that this is all very important, aren't we really talking about excess harvesting capacity and why don't we just drop the economic efficiency language that is generating the definitional concerns and just go with excess harvesting capacity.

Dyson: Mr. Chairman, I feel the same exactly as you said. By putting economic inefficiency in there it puts a bad look on the operation and the further we go down this trail, paper trail and everything else, we're coming to one conclusion and in the end it's going to tell you what you're going to get, but I don't like "economic inefficiency;" I'd like to see that struck.

Alverson: I also have a problem with the term economic inefficiency, but also, what is going to be our threshold of excess harvesting capacity? Is that going to be when you can't fish 12 months a year, is it reasonable only to have a 4-month season on some of our fisheries as opposed to a 9-month season? What is the gauge for excess harvesting capacity in any one fishery? I don't think we have one.

Parker: One example that comes to mind is when you have a fleet capacity that exceeds the surplus that you have at hand so that you can effectively open a fishery without fear of overharvesting, and we have reached that point in a number of fisheries.

Cotter: Another definition, I think, is the one that Mr. O'Connor was alluding to that we're ultimately required to make, and that is, what is the appropriate number of vessels to participate in the harvest of the OY which would generate the maximum social and economic return to the nation. But aren't these things that the committee's going to be doing in their program?

Peterson: It seems to me that we would be better advised to discuss these things at the committee level. Another one that comes to mind is "poor product quality." I don't know any system of management that would improve that except to improve the environment within which the fishermen operate. Product quality cannot be mandated.

Peterson: Correct, and this would be a problem you would attempt to resolve with the limited access system . . .

[illegible]: And with open access to the extent possible.

[illegible]: If you look at it on a fleet basis and my concern is that I don't think that is possible, I think you still must look at it on an individual fisherman basis, some of whom are good fishermen and will always do well, some of whom are lousy fishermen and will never do well. And in this particular discussion of a problem, you're talking about economic inefficiency which is kind of a broad-brush description of the fishery. My concern, of course, is that that is not necessarily true. The problem would be with the individuals who are not good fishermen and who are not going to survive under any system.

Dunn: Is the Chairman's suggestion that the economic inefficiency problem be dropped as a problem?

[illegible]: Well, is it a problem? I don't think it is.

[illegible]: I presume that this is all very important, aren't we really talking about excess harvesting capacity and why don't we just drop the economic efficiency problem and [illegible] the definitional concerns and just go with excess harvesting capacity.

Bryant: No objection. I feel the same exactly as you said. By putting economic inefficiency in there it puts a bad look on the operators and the further we go down this trail, paper trail and everything else, we're coming to one conclusion and in the end it's going to tell you what you're going to get, but I don't like "economic inefficiency." I'd like to see that struck.

Alverson: I also have a problem with the term economic inefficiency, but also, what is going to be our threshold of excess harvesting capacity? Is that going to be when you can't fish 12 months a year, is it that we're only to have a 4-month season in some of our fisheries as opposed to a 9-month season? What is the gauge for excess harvesting capacity in any one fishery? I don't think we have one.

Pautzke: One example that comes to mind is when you have a fleet capacity that exceeds the surplus that you have on hand so that you can effectively open a fishery without fear of overharvesting, and we have reached that point in a number of fisheries.

[illegible]: The other definition, I think, is the one that Mr. O'Connor was alluding to that we're ultimately required to make, and that is, what is the appropriate number of vessels to participate in the harvest of the OY which will produce the maximum social and economic return to the nation. But aren't we jumping ahead here on what the contractor's going to be doing in their program?

[illegible]: It seems to me that we would be better served to eliminate [illegible] at the conference level. Another one that comes to mind is "overcapitalization." I don't know any system of management that would improve [illegible] except to improve the environment within which the fisherman operates. I don't think it needs to be addressed.

Blum: Mr. Chairman, the purpose of this was to see if the Council wanted to add or delete any of the problem areas and then turn it back to the committee for further exploration. I think what I have heard is that there is an uncomfortableness on the Council with economic inefficiency; I think scratching that but leaving excess harvesting capacity is the type of action that we were expecting.

Pautzke: I just wanted to make a few comments on why this is in here. Whenever we do an analysis sometimes there is concern by the public and the Council that we haven't defined the problem properly and identified it. So, we wanted to put in the problems here and have you pass off on them and these will be the major basis, this string of problems, will be be major basis for the comparative analysis of the fricassee of the open access versus ITQs versus a license limitation system to see which is the best way to go on those and that's why I want them defined at this early stage so the team can take them out and do the appropriate analysis.

Knowles: Mr. Chairman, what I just want to make sure, and the reason I initiated this discussion, that doesn't happen, is that we establish a paper trail that rachets us into a conclusion that we can't escape from. Apparently we go slickly racheted into a schedule, but I'll be darn if I'm going to let the outcome follow the same course. And I would point out, for instance, the discussion at the committee level on poor product quality and decreased safety came up in relation to the attribution of that to the open access system and that that was why we needed to look at limited access. If we were going to be neutral about it and rather than establish a built-in bias, we would discuss safety as an issue that all three systems would address; we would discuss product quality, but we would not build in the decreased safety of the current system as a given, one we have no statistics that I understand are available as to the fact that it is a decreased safety attributable to an open access system, or poor product quality attributed to that, but that is the method by which they were brought up and I want to make sure that we don't start laying that groundwork through this Council if we approve this list, build ourselves into a record that we can't escape from, but may not agree with.

Blum: Mr. Chairman, I cannot let the word "slickly" slip through. You were here, Mr. Knowles, at the Council meeting and you were a participant in the debate and how you can reach the conclusion four months later that we did some slickly in the forum in which we do things, with the legal advice that we have, with the endless debate that goes on with the subject, I find insulting and demeaning and I don't this Council needs that kind of rhetoric. We didn't do it "slickly." we did it in the open; it had a result that you're uncomfortable with three or four months later. That's unfortunate, but to start to use slickly in reference to how this Council does business, I would hope that I'm not the only one at the Council table who is uncomfortable with that approach. As far as what you want to accomplish today with respect to identifying the problems the fisheries are facing, if you have a concern with the "poor" part of poor product quality, and the "decreased" part of decreased safety, I'm very comfortable with us dropping those kinds of terms, because I agree with you, we do not want to rachet ourself into something that has a result that we can't work our way out of in a decent manner. So, that's one

Flint: Mr. Chairman, the purpose of this was to see if the Council wanted to add or delete any of the problem areas and then turn it back to the staff for further exploration. I think what I have heard is that there is no uncomfortableness on the Council with economic inefficiency. I think reaching that out leaving excess harvesting capacity is the type of action that we were expecting.

[illegible]: I just wanted to make a few comments on why this is in here. Whenever we do an analysis sometimes there is concern by the public and the Council that we haven't defined the problem properly and identified it. So, we wanted to put in the problems here and have you pass off on them and these will be the major basis, this group of problems, will be the major basis for the comparative analysis of the alternatives of the open access versus this limited access limitation system to see which is the best way to go on these and that's why I want them defined at this early stage so the team can take them out and do the appropriate analysis.

Knowles: Mr. Chairman, what I just want to make sure, and the reason I hesitated on this discussion, that I don't think, is that we establish a paper trail that brings us into a conclusion that we can't escape from. Apparently we got quickly railroaded into a schedule, but I'll be darn if I'm going to let the outcome follow the same course. And I would point out, for instance, the discussion on the regulated level of poor product quality and decreased safety came up in relation to the attribution of that to the open access system and that that was why we needed to look at limited access. If we were going to be honest about it and rather than establish a built-in bias, we would discuss safety as an issue that all three systems would address; we would discuss product quality, but we would not build in the decreased safety of the current system as a given, and we have no statistics that I understand are available as to the fact that it is a decreased safety attributable to an open access system, or poor product quality attributed to that, but that is the method by which they were brought up and I want to make sure that we don't start laying the groundwork through this Council if we approve this list, build ourselves into a record that we can't escape from, but may not agree with.

Flint: Mr. Chairman, I cannot let the word "quickly" slip through. You were here, Mr. Knowles, at the Council meeting and you were a participant in the debate and how you can reach the conclusion four months later that we did something quickly in the forum in which we do things, with the legal advice that we have, with the endless debate that goes on with the subject, I find it alarming and demeaning and I don't think this Council needs that kind of rhetoric. We didn't do it "quickly." We did it in the open; it had a result that you're uncomfortable with three or four months later. That's unfortunate, but to start to use quickly in reference to how this Council does business, I would hope that I'm not the only one at the Council table that's uncomfortable with that approach. As far as what you want to accomplish with respect to identifying the problems the fisheries are facing, if you have a concern with the "poor" part of poor product quality, and the "decreased" part of decreased safety, I'm very comfortable with us dropping those kinds of terms, because I agree with you, we do not want to paint ourself into something that has a result that we can't work our way out of in a decent manner. So, that's the

thing, but I would urge you, and myself, in this debate and future debates to deal with them in a professional manner.

Knowles: Mr. Chairman, I would apologize to Mr. Blum if he took any insult, certainly none was intended. So, let's me be more precise in my description of it, an slickly was not used as necessarily an insulting term. But, Mr. BLum came to me after a vote was taken at the January meeting and I was on the prevailing side of defeating a motion for a January 16 deadline, cut-off for the inclusion in it of groundfish and halibut into a sablefish management plan. He asked me to reconsider on the basis that it was just putting it out to the public and this was the entire process of it, just to the public for their consideration that could be, if they didn't approve of it, which could be undone at the next meeting and I said on that basis, since it was not a commitment for it, that I would gladly reconsider. Otherwise, the motion was defeated. So, I did, and I don't think it was the intention necessarily of Mr. Blum at that time and I don't accuse him of it, but what has happened de facto, we have built ourself in, because of that vote, into a year-and-a-half process, the expenditure of enormous sums of money, of the staff, of the industry, which will have to monitor and watchdog this for a long time to come, for a year and a half, and it was done on the basis that we were just putting something out for the public to review, that was not necessarily locking ourselves in, but the system apparently has locked that in. So, I want to make sure -- fool me once, shame on you; fool me twice, . . . so that is the way in which I'm going to approach this part of the system. That it is not biased and that we don't end up racheted into something that doesn't work, so slickly is the . . .

Peterson: Tony, this is an interesting debate but it's not very objective at this point for either of you and we're not making any progress this afternoon. One of the problems that I see that has not been included in this list is short seasons. Where is that?

Tremaine: I'm not sure that was listed as a problem.

Peterson: Is that not a problem? The folks that operate processing facilities sure think it's a problem as we hear a lot about the last couple of days.

Tremaine: We can certainly add to the list if that's the wish of the Council.

Peterson: Has anyone else identified any other problems against which these systems will be gauged?

Mace: I'd like to ask Clarence, how much do we have left to address on 5C; I want enough time when I have enough energy to consider the directed fishing issue and the herring bycatch issue which are the main high priorities, I think and this exercise can go on - I realize it's interesting, but I don't really want to listen to too much of it.

Peterson: Mr. Mace, I have the same feeling and even though this is something that we may do if we have time, it perhaps could be better relegated to the committee for further consideration and discussion. If Council members have any input they can provide it to the committee, would be my approach to this and we could . . .

[illegible], but I would [illegible], in this debate and future debates to deal with them in a reasonable manner.

Chairman: Mr. Chairman, I would apologize to Mr. Lima if he took our remarks, or that made was misunderstood. So, just to be more precise in my description of it, we did not -- I would not characterize it as an unwelcome term. And, Mr. Lima, come to us after a vote was taken at the January meeting and I was on the prevailing side of deferring a motion for a January 10 deadline cut-off for the application if it of [illegible] to publish a candidate acceptance [illegible]. He asked me to reconsider on the basis of a just getting in the public and this was the matter process [illegible], just so the public consideration also would, if they did [illegible], which could be [illegible] at the next meeting and I said on that basis, since it was a unanimous [illegible], that I would gladly reconsider. Otherwise, the motion was defeated. So, I did, and I [illegible] it was the intention [illegible] Mr. Lima at the time and I do [illegible] of it, but what has happened do [illegible], we have built ourself [illegible] of that vote, [illegible] process, the expenditure of enormous sum of money, on the staff, of the industry, which will have [illegible] and wasting it, for a long time to come, I [illegible] a year and a half, and it was done on the basis that we were just putting something out for the public to review, that was not necessarily [illegible] in, but the system apparently has failed them so. So, I want to make sure -- just be sure. Ahead on your [illegible]. . . so that in the way in which to [illegible] to approach this part of the [illegible]. That it is not hurried and that we don't end up tracked [illegible] that doesn't work, [illegible] in the . . .

Pat [illegible]: Tony, this is an interesting debate but will not vote objective at this point in the [illegible] and we're not making any progress this a reason. One of the problems that I see that has not been [illegible] in this list is short versions. Where is that?

Counsel: I'm not sure that was stated as a problem.

Peterson: Is that not a problem? The Public that operate processing [illegible] there shall [illegible] a problem as we hear a lot about the time couple of days.

Secretary: We can certainly add to the list if that's the will of the Council.

Peterson: Has anyone [illegible] identified any other or three agenda which these matters will be judged?

Dixon: I'd like to ask Clarence, how much do we have left to add to 60%? I would enough like we'd have enough to continue the televised fighting issue and the herring byecatch issue which are the very high priorities, I think, and this exercise can go on -- I realize it's interesting, but I don't really want to listen to too much of it.

Chairman: Mr. Lima, I have the same feeling and even though this is something that we may in the [illegible] future, it perhaps could be better put to the [illegible] for further consideration and discussion. I should remind [illegible] may input they can provide it to the committee, would be to approach [illegible] and to [illegible] . . .

Mitchell: For everything in this topic area?

Peterson: I think so. Doesn't that conclude . . .

Mitchell: I do have one further question. I'm still unclear what action we've taken as to item 6 where it talks to coastal communities.

Peterson: That was Mr. Cotter's motion.

Mitchell: That did not address coastal communities; that's another aspect.

Peterson: We tried to sort that out.

Mitchell: Well, we didn't sort it out right . . .

Peterson: We had a unanimous, no, we had one objection to that motion.

Blum: Mr. Chairman, coastal communities will continue to be a part of the consideration as we move forward under the three approaches to future management that we're talking about.

Mitchell: Why was it separated in the book as an action item?

Blum: I have no idea. I believe the committee asked the Council to make a declaration of Council view on the subject and in a sense the Council, by almost unanimously approving Mr. Cotter's motion, has made that kind of a statement that they want a plan amendment for the big picture and basically they've just said that the rest of the items can wrestle with and keep the Council informed.

Peterson: The coastal community issue has not disappeared from this limited access work schedule. In addition there's been a motion made that is soliciting proposals from the industry that we would be looking at in June; that should do it, I would think.

Mitchell: I just want it clear for the record.