

Agenda Item #18
June 28-29, 1979

MEMORANDUM

To: Council, SSC, and AP
From: Jim H. Branson, Executive Director
Subject: Partial approval of the Troll Salmon FMP
Date: June 22, 1979

BACKGROUND INFORMATION

On April 30, 1979 Terry Leitzell approved the Salmon FMP with one exception and one caveat. The regulations were implemented on an emergency basis on May 15, 1979. The ban on hand trolling in the FCZ was disapproved and the caveat was for a one year moratorium on entry into the power troll fishery, rather than accepting the Alaska limited entry system as a Federal system.

On the hand troll issue: They felt (1) that no conservation purpose was served by distinguishing hand troll gear from power troll gear, and (2) that under National Standard 4 the prohibition on hand trolling in the FCZ was not "fair and equitable."

On limited entry: They have implemented our limited entry system for fishing year 1979, but requested that the difficulties associated with a unified federal/state limited entry system be addressed for the following years.

Section 304 (a)(2) of the Act allows the Council forty-five days to respond to the comments of the Secretary in this situation. We received formal notification on June 4 and expect the forty-five day period to run through July 19 -- ample opportunity for Council comment.

COUNCIL ACTION


The Council has already expressed its objection to this partial disapproval, i.e., our May 31 letter to Terry Leitzell. However the Council should develop and submit a more comprehensive argument for the ban on hand trolling. Portions of the attached documents can be used to develop that argument.

1. A letter from Ron Skoog to Secretary Kreps of 23 April 1979.
2. A legal memorandum from John Gissberg, Assistant Attorney General.

on how this should be accomplished. In examining the details of the Alaska system, it became apparent that under this system, State officials make certain discretionary judgments which could affect the rights of individuals to fish in the FCZ under the FMP. Some of these discretionary judgments involve revoking existing permits, granting additional permits, determining the optimum number of permits, and transferring permits. The FCMA contemplates that the Secretary is responsible for promulgating and carrying out the regulations for plans. It would be inappropriate under the FCMA if State, regional or local officials, or private parties, were to be given the authority to determine the rights of individuals in the FCZ. Accordingly, we have implemented the limited-entry system in a manner which is consistent with the intent of the Council, by allowing those persons holding State permits to fish in the FCZ in 1979. The many difficulties associated with developing a unified Federal-State limited-entry system, however, should be addressed before that system is extended beyond 1979.

I regret that we took so long in reviewing this plan, but it raised several new legal and policy issues that had to be reviewed in depth. These difficulties should diminish as the basic issues under the FCMA are resolved. Partial disapproval of this plan in no way reflects upon the good faith, devotion, or ability of the Council and its staff. Rather, it reflects a difficult process that we are both going through in trying to provide sound and equitable management of a complicated fishery. Harry L. Rietze and his staff in the Regional Office will be glad to assist the Council in developing a joint State-Federal limited-entry system in the comprehensive plan that you are now preparing.

Sincerely yours,


Terry L. Leitzell
Assistant Administrator
for Fisheries

Paul Lenzini

John G. Gissberg
Assistant Attorney General
AGO - Anchorage

Proposed Ban on Hand-
trolling in FCZ

THE PROPOSED BAN IS NOT
INCONSISTENT WITH THE FAIRNESS AND
EQUITY PROVISIONS OF THE NATIONAL
STANDARDS IN 16 USC 1851(a)(4)

National standard four concerns allocation of fishing privileges among various United States fishermen and requires any allocation to be "fair and equitable to all such fishermen." Because the sovereign can eliminate fishing privileges without fear of deprivation of constitutional rights (Toomer v. Witsell, 334 U.S. 385, 398 (1948)), the protected fishermen do not represent the entire class of fishermen from net fishers to longliners. Therefore, the class being protected encompasses only participants in the specified fishery. In this case approximately 950 power trollers have received permits from the Alaska Commercial Entry Commission to harvest salmon in the state's waters including the coastal zone extending to three miles offshore where 117 vessels were recorded fishing during the last documented season. Handtroll gear, involving the commercial taking of salmon by hook and line without reliance on power retrieval methods, has not been covered by the limited entry scheme and hand trollers have not been active participants in that coastal zone. In the past that fleet has generally represented weekend fishermen seeking additional income or tax advantages on their fishing expenditures. Recently, however, the increase in price of salmon and likelihood of an extension of limited entry laws to cover hand trollers have promoted a dramatic increase in the hand troll fleet to approximately 4,000 small boats primarily 17 to 26 feet in length. Some of these fishermen are now using effective mechanical winches to handle legal troll fishing gear that consists of a maximum of four long lines with many attached

baited hooks being pulled behind the vessel. Though some of these hand troll units are almost indistinguishable from existing power troll vessels the majority are readily distinguishable by appearance as well as by gear.

Nevertheless, the hand troll unit is a different gear type, it has been treated as a different gear type by the Commercial Fisheries Entry Commission in licensing and the Alaska Department of Fish & Game in management determinations, and hand trollers have not competed with power trollers in the coastal zone. ^{1/} As a result, state management plans establish fishing periods and area openings based upon the standard of fishing effort permitted on these stocks by the limited entry program. Because of the surge of hand troll gear in our inland waters, the Alaska Board of Fisheries curtailed hand troll opportunities available in many southeast Alaska waters so that fishing periods are open only eight out of fourteen days in most areas. Consequently, where only five hand troll vessels were reported operating in offshore waters beyond three miles during the period 1975 to 1976, some of the 4,000 hand troll vessels licensed for fishing in 1978 can now be expected to redirect their efforts to unregulated areas such as the federal zone. In addition, federal management beyond three miles will also likely allow for entry of other power troll vessels from Washington, Oregon and Alaska which have participated in that offshore fishery during recent years. Under Alaska law however they will still not be able to land fish caught in the FCZ in Alaska where a commercial fisheries entry permit is required.

It is imperative that these new offshore opportunities not encourage the proliferating hand troll fleet to expand its efforts to the FCZ. Such expansion of effort on mixed ocean stocks that are destined for freshwater spawning grounds from Oregon to the Cape Suckling area would have unfavorable management repercussions throughout the Pacific rim. Possibly the only response to such a fishery would be the total closure of terminal stream fishing areas where fishery scientists seek to focus their management efforts and where such programs as limited entry and offshore closure are transferring the locus of the commercial fishery. The FCMA was designed to allow eradication of the offshore foreign fishery on migrating salmon; it would be ironic if the Secretary of Commerce encouraged more offshore fishing on similar mixed stocks by American fishermen by failing to recognize the ability of the hand troll fleet to harvest these salmon.

^{1/} Since the 1978 season, hand troll fishing has been prohibited in the coastal zone to discourage development of a fishery there.

It appears to us that the historical distinction between hand trollers and power trollers in Alaska and the distinct differences in equipment and abilities of the two gear types establishes a rational basis for federal allocation to compliment the state's different treatment of the two gear types. The fact that extreme cases may not represent significant differences does not invalidate distinctions based upon such a rational separation of the gear type.

We understand that the Secretary may have expressed some concern that a legal risk may accompany a prohibition of hand trollers in the FCZ. We feel, however, that permitting hand trollers into this area could pose greater legal problems. For example, entry of hand trollers could be interpreted as failure to meet national standard number four because power trollers, which are proposed as subjects for federal limited entry laws, would not be treated fairly and equitably when the hand troll fleet is not also limited. Further, the increased fishing effort on a mixed stock fishery is contrary to the conservation principles as espoused in the other national standards. Also, such a hand troll effort would be contrary to the purposes behind limited entry in the FCZ and the basic objective of that law to remove offshore fleets. On the other hand, ban on hand trollers would receive a much more favorable reception in court because the hand troll fleet has no traditional equitable claim to the fishery and historic distinctions between the gear types would be enhanced by the Secretary's concurrence in the prohibition on hand trollers in offshore waters. Our federal courts in Alaska are likely to defer to administrative expertise in establishing such distinctions and we feel it is very unlikely any court would rule the hand troll prohibition was arbitrary or capricious. (See Glenovich v. Norenberg, 346 F. Supp. 1286, (D. Alas.), Aff'd 409 U.S. 1070 (1972))

We hope the secretary can agree with the state's program and approve the recommendation of the North Pacific Fisheries Management Council on this matter.

JGG:sa

prepare an amendment to the FMP. One approach is to limit the number of hand trollers as well as the number of power trollers. The Council is now preparing an amendment to solve this problem.

Thank you for writing.

Sincerely yours,

Jack W. Gehring

for Terry L. Leitzell
Assistant Administrator
for Fisheries

cc: F, Fx31, F3, F36(3), Secy, POL, D U/S, GC, SecX, FAK. NPFMC
ES, PP, DA, ExSec
F36:NMFS:AMAndersen:634-7449:5/31/79:oa
Control: 14331S/4296A

STATE OF ALASKA

FILE

17321

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

SUPPORT BUILDING
JUNEAU, ALASKA 99801

April 23, 1979

ORIGINAL

The Honorable Juanita Kreps
Secretary of Commerce
14th Street between Constitution
Avenue and E. Street N.W.
Washington, D.C. 20230

1979 APR 26 PM 12 21
APR 30 1979
GENERAL CONTROL UNIT

U.S. DEPARTMENT OF COMMERCE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20513

Dear Madam Secretary:

This letter is to encourage you, in the strongest terms possible, to retain the restriction on hand trolling in the FCZ as provided for in the High Seas Salmon Fishery management plan submitted by the North Pacific Fishery Management Council.

It has been brought to my attention that you may exercise the severability clause 1/ of the plan relative to the ban on hand troll fishing in the FCZ. The consequences of such a decision are significant and I ask that you consider the points and discussion that follow before making your decision.

The Fishery

The Southeast Alaska troll fishery is a complex fishery that occurs primarily in the State's coastal and inshore waters and targets on chinook and coho stocks. The State of Alaska has historically managed it and will continue to actively and cooperatively participate in this capacity.

The management of this fishery is not static; in fact, it changes in response to the condition of the resource. The proposed regulatory regime in the Council's FMP does not reflect the complexity of the regulations necessary to manage this fishery within State and Federal waters as an integrated management unit. The State regulatory system employs extensive time/area closures, stringent gear (net and line) restrictions and allocations, rapid in-season adjustments in response to escapement levels, and minimum size limits among other regulatory tools.

1/ "The Council intends that if any of the following management measures be disapproved, the balance of the plan should still be implemented"
(page 39. Dec. 1, 1978 version of the FMP)

The offshore and coastal segments of this fishery harvest from mixed (and managerially inseparable) stocks of salmon originating from the Pacific states, Canada and Southeast Alaska. Many, if not all of these stocks, are below historic levels of abundance and some are critically low. Ideally no salmon fishing should occur on highly mixed stocks remote from the stream or origin but socio/economic pressures from an established fishery cannot be ignored.

The first objective in the Plan, to control the expansion of the salmon troll fishery has already been adopted by the State. Achievement of this objective must be done in increments overtime to allow adjustment by people directly and indirectly affected. A significant step toward this objective was taken by the Alaska Board of Fisheries when it prohibited hand trolling in the State's coastal zone and in the "adjacent biological influence zone" (i.e. the FCZ).

Hand Trolling vs. Power Trolling

Alaska's Position

Effective fishery management has historically relied on distinctions between gear types. Such plans have consistently been approved by the State and Federal courts and the U.S. Supreme Court where the distinctions drawn have a reasonable basis and have not been applied arbitrarily.

In managing the Southeast salmon resource the State of Alaska recognizes power troll and hand troll as two distinct gear types and treats them differently. This is demonstrated by State regulations that:

- (a) limit entry into the power troll fishery but not into the hand troll fishery;
- (b) define power gurdy troll gear separate and distinct from hand troll gear;
- (c) recognize that hand troll gear includes not only hand cranked gurdies but also the use of sport rods and reels to harvest salmon commercially;
- (d) provide separate time and area restrictions by gear type including a total ban for hand trolling along the entire coast of Southeastern Alaska, and 43 percent less fishing time in all of Southeast Alaska regulatory district 1; and
- (e) prohibit hand trollers from possessing salmon or halibut while taking other species with mechanical jigging machines.

Distinction and differential treatment between these two user groups is and will continue to be a significant aspect of managing the resource.

Difference Between the Two Gear Types

Hand trollers and power trollers are two groups of fishermen who do not use essentially the same type of gear. The criterion in the State's regulation to differentiate these gear types is the method to retrieve the lines: hand power (or hand powered crank including rod and reel) vs. electrical, hydraulic, mechanic or other. This is not a fine line to draw and the difference in the two gear types (i.e. user groups) would be even more apparent in a comparison of the two fleets. A detailed analysis of each fleet's effort--expressed by criteria such as vessel characteristics (seaworthiness, hold capacity, range, electronics, etc.), number of lines and leaders, retrieval mechanism (indicating fishable depths, retrieval speed, etc.), and crew experience--would show that a "typical" hand troller is significantly different from a typical power troller.

Looking at individual units of gear (vessels) would indeed show that some hand trollers (the "highliners") are more efficient than some of the power trollers. But these top-of-the-line hand trollers do not represent the historic hand troll fleet. They have arisen as a result of power troll limited entry and the fact that hand trolling is still open entry to those who did not qualify for a power troll entry permit; to new entrants to the troll fishery; and to those who have upgraded within the hand troll fleet.

Impact of Permitting Hand Trolling in the FCZ

Permission by the Federal government to hand troll in the FCZ would have the following consequences:

1. This would constitute a major setback to the State's efforts to control expansion of the troll fishery.
2. Present West Coast U.S. - Canada salmon negotiations are proceeding on the understanding that neither country will allow significant expansion of the intercepting fisheries. The efforts of Alaska to limit the potential expansion of hand troll effort in its coastal and offshore intercepting fishery have been favorably received by representatives of all parties involved.
3. The prohibition of hand trolling in State coastal waters and the acceptance of hand trolling in the FCZ would create an impossible enforcement situation for the U.S. Coast Guard and the Alaska Department of Public Safety.
4. Prior to the closure of the State's coastal waters to hand trolling in 1978, little hand troll effort took place offshore due to the nature of the boats and retrieval mechanism used by the hand troll fishery. Small craft, many equipped with sport rods, could not effectively fish the exposed coasts of Southeast Alaska. The handful of operators that did occasionally fish offshore caught an insignificant portion of the total troll fishery harvest. However, limited entry on power trolling and the current high price paid for chinook and coho salmon has stimulated the development of a "professional" hand troll fleet which fishes full-time in State waters. Large boats equipped with hand gurdys are capable of

participating in the FCZ fishery. A major increase in offshore troll effort on mixed stocks of chinook and coho salmon could occur within a few years if hand trolling is not banned. This effort increase would have the following social and biological impacts:

The chinook salmon caught in the FCZ include stocks of fish from Oregon, Washington, Canadian and Alaskan river systems. Many wild stocks of chinook salmon from the West Coast, including Alaska, are depleted. The states of Alaska, Washington and Oregon and the Pacific Fishery Management Council have adopted regulations designed to protect and rebuild chinook salmon runs. To allow increased troll fishing effort on the mixed stocks of chinook off Alaska would directly negate these actions as depressed stocks would be subject to even greater fishing pressure.

Mark and recapture studies of wild stocks in northern Southeast Alaska has established that some coho salmon stocks are being harvested at the 80 to 95 percent level. The major portion of this harvest is taken by troll fishing. Restrictions for inshore fishing districts have just been promulgated by the Alaska Board of Fisheries. However, these conservation measures will be frustrated if hand trolling effort is allowed on the mixed stocks offshore. A decline in coho escapements is apparent in Southeast Alaska in those areas where surveys are made. Methods must be found to stabilize and reduce (not increase) troll fishing effort. A harvest level exceeding 80 percent is considered much too high to insure maintenance of a wild stock. A harvest level of 60 to 70 percent is more realistic and the State of Alaska is attempting to reduce the harvest rates to this level.

In order to protect and rebuild depleted chinook salmon stocks and to reduce the high harvest rate on coho salmon, the State of Alaska has developed a complex regulatory regime for all inshore salmon fisheries. Drift gillnetting, seining, sport fishing and commercial trolling on the inside waters have all been markedly affected. Each change in the fishing pattern of an Alaska salmon fishing fleet necessitated by new restrictions has secondary impacts on numerous rural communities. The Alaska Board of Fisheries tries to minimize these secondary impacts, but to allow further increases of trolling effort offshore will only speed the closure of more inside areas and may force a major disruption of existing fisheries and the communities which they support.

Summary

The management regime proposed by the High Seas Salmon FMP recognizes the presence of mixed stocks of salmon in the FCZ and the existence of established power and hand troll fisheries. It is essential that all segments of this plan be implemented to obviate differences between State and Federal management regimes that would adversely affect conservation and allocation practices.

April 23, 1979

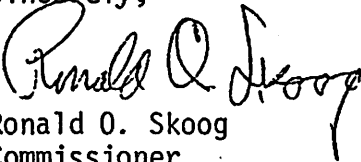
Management of the high seas mixed stock salmon resources off Southeast Alaska requires immediate control of the expansion of the troll fishery and eventual reduction of harvest rates.

Hand trolling has been treated as a separate entity in Alaska since 1973 and meets the test of a different gear type. Hand troll gear has not been significantly utilized in offshore areas and to assure conservation of the salmon resources the State has prohibited this gear in its coastal zone (0-3 N. miles offshore). A necessary element contributing to the success of this management program is the prohibition of hand trolling in the FCZ.

Your recognition of the importance of prohibiting additional units of gear in this fishery will complement the State's established management goals and provide the kind of uniform administrative agency determination which will reduce the risk of legal challenges to our programs.

I welcome your consideration.

Sincerely,



Ronald O. Skoog
Commissioner