

Enforcement Committee Minutes
February 9, 2010
Benson Hotel
Portland, Oregon

Committee present: Roy Hyder (Chair), CAPT Mike Cerne, Sherrie Myers, Martin Loefflad, Sue Salvesson, Ken Hansen, Garland Walker, Brad Robbins, Steve Bear, and Jon McCracken (Staff)

Others present: Sally Bibb, Jane DiCosimo, Heather Gilroy, Mike Adams, Chris Oliver, Jeff Samuel, Susan Auer, Mike Cenci, Ray Reichl, Lt. Sverre Aas (Norwegian Coast Guard), Burke Waldron, Ryan DeTorres, Jay Ginter, Bill Tweit, David Polushkin, and Frank Miles.

C-1 Halibut/Sablefish IFQ Program

Sherrie Myers presented an overview of the Office of Law Enforcement (OLE) report on preliminary assessment and enforcement issues associated with the IFQ proposals submitted to the Council for consideration. A summary of that report relevant to those proposals posing enforcement concerns is provided below. These comments are considered to be preliminary. As proposals are developed for analysis, the Committee may have additional comments.

Proposal #1 – Allow retention of coincidentally caught halibut during BS sablefish fishing

New charts are recommended to identify where halibut retention would be allowed (area that overlaps Area 4A with the BS and AI sablefish management areas). New regulations that would identify the latitude and longitude where halibut retention would be allowed are necessary. NOAA Enforcement would also need to provide feedback on location restrictions and may require that the vessel be transmitting with a VMS transmitter. A regulatory amendment would be required with respect to the differences in the VMS clearance requirements for Area 4 halibut (as found in the Annual IPHC regulations) and BSAI sablefish (as found in Section 679). Halibut fishermen have to call the data clerks "within 72 hours before fishing," while sablefish fishermen have to call the data clerks "at least 72 hours prior to fishing".

Additional issues that should be considered with this proposal include gear conflicts, creation of a new halibut fishery, redistribution of catch by gear, fish quality and potential for future requests for expansion to winter cod fisheries.

This proposal could create a targeted pot halibut fishery. The Council will need to make clear how much halibut bycatch caught in pots would need to be retained – i.e. full retention, MRA's, etc.

Proposal #2 – Allow pots in GOA SE Sablefish fishery

This proposal would require an at-sea enforcement component (surface and/or aerial) in the GOA Southeast Outside to ensure adherence to areas opened and closed to longline or pot gear, and prevent halibut retention in pot gear while targeting sablefish. NOAA Enforcement does not have at-sea enforcement resources and would rely on the US Coast Guard and/or the State of Alaska Wildlife Troopers for the at-sea enforcement component. This type of enforcement work is within the scope of the Joint Enforcement Agreement (JEA) between NOAA OLE and the Alaska

Wildlife Troopers but is not currently addressed in an Annual Operations Plan. The Wildlife Troopers may be able to provide the at-sea enforcement resources needed, however, there would be a cost in terms of additional JEA funds or the reallocation of at-sea days from another fishery or mission to enforce this fishery. Some combination of VMS, electronic logbooks and observer requirements would also greatly enhance NOAA's ability to enforce any provisions adopted under this proposal and should be included for consideration in an analysis of enforcement measures.

If the Council recommends that this proposal is forwarded for analysis, staff also recommends expanding the proposed action to require distinctive marking of buoys by gear type for all groundfish fisheries.

Proposal #7 – Exempt D class vessels delivering less than 500 lbs of halibut IFQ to provide 1 hour notice of delivery

The committee does not support exempting vessels under 26 feet from Prior Notice of Landing (PNOL) filings. There are several important reasons for maintaining this requirement. The original intent and primary purpose of the PNOL was to allow Enforcement the opportunity to monitor an offload. The Council has recognized the importance this regulatory tool for Enforcement in the past. The original PNOL requirement was 6 hours. Enforcement supported reducing it to the current 3 hours because this generally permitted a reasonable amount of lead time for notification of the impending landing and the requisite travel time to access many (but not all) ports. Reducing the PNOL requirement for vessels less than 26 feet LOA to one hour would inhibit Enforcement's ability to monitor offloads effectively. Under the best of circumstances, a mere 60 minutes is too constrained, even for ports on the road system.. The problem is exacerbated when the offload port is not accessible by road, the PNOL notification to an officer is rarely immediate, the travel time is rarely short, and it typically takes time for the officer to locate the reporting vessel. In addition, the IPHC plans to begin sampling on offloads of less than 1,000 pounds. IPHC port samplers (who also utilize PNOL's to meet landings) would also have difficulty sampling these offloads under a one-hour PNOL constraint, for the same reasons stated above.

Many small day-boat halibut fishermen have complied with the PNOL by calling in their PNOL prior to leaving town to go fishing. In addition, Registered Buyers often make the PNOL on the fishermen's behalf. The PNOL information is easily updated if the fisherman's circumstances change. Today's communications capabilities with cell phones and satellite phones, in addition to marine radios that are carried by the vast majority of fishermen, enable these notifications to be made in accordance with the existing regulation.

The Office of Law Enforcement frequently addresses fishermen's concerns over arriving prior to their offload time and fish quality concerns, by authorizing early offload waivers. While early offload waivers are not guaranteed, Enforcement determines the appropriateness of this on a case-by-case basis. It is essential that we preserve Enforcement's ability to monitor offloads by ensuring that PNOLs provide adequate time to respond to landing sites.

Between 3/22/2009 to 10/12/2009, 85 vessels less than 26' LOA made 275 landings at various ports around the State. 2009 landing data are not yet available, but in 2008 and 2007, 1,570 and 2,074 landings of 500 pounds or less were made by vessels under 26 feet. While the volume of fish landed during these offloads varies, the number of landings indicates this is a meaningful sector amongst the IFQ halibut fleet.

Enforcement Concerns Related to Proposals Submitted in February

Proposal #1 - FV Magabite – Trailing of fish to landing site

The Committee is not in favor of this proposal that would allow the transport of fish on a catcher vessel via trailer to the buyer. This proposal would reverse a correction to the regulations that were identified by NMFS as necessary to enforce the IFQ program. Ron Antaya (OLE) and Jessie Gharrett (RAM) reported that the proposed allowance was an enforcement loophole that existed when the IFQ program was first implemented. The regulations were revised in the first few years of the IFQ program to define an IFQ offload because some smaller catcher vessels were trailered with IFQ fish onboard and offloaded upon arrival at a new location. Section 679.2 now defines an IFQ offload (see below). The regulations were revised to identify when the offload occurred specifically to close that loop hole. Between March and September 2009, 84 distinct vessels in the less than 26 ft LOA category made 275 IFQ landings. Tom Meyer (AKGC) reported that under the Administrative Procedures Act, any regulation that overlooks a material fact (i.e., enforcement) would be legally vulnerable. This proposal would make locating and monitoring an offload very difficult and would represent a significant compromise for enforcement. It would also make it difficult for IPHC to meet vessels during offloads to sample.

A number of Registered Buyers have established viable operations in remote locations using the benefits of technology (laptop computers, cell cards, portable printers) to allow them to make landings in compliance with the current regulations.

Section 679.2. IFQ landing means the unloading or transferring of any IFQ halibut, CDQ halibut, IFQ sablefish, or products thereof from the vessel that harvested such fish or the removal from the water of a vessel containing IFQ halibut, CDQ halibut, IFQ sablefish, or products thereof.

Section 679.5 (2) IFQ Landing.

- (i) Remain at landing site. Once the landing has commenced, the IFQ permit holder, the IFQ hired master permit holder, or the CDQ hired master permit holder, and the harvesting vessel may not leave the landing site until the IFQ halibut, IFQ sablefish, or CDQ halibut account is properly debited (see § 679.40(h)).*
- (ii) No movement of IFQ halibut, CDQ halibut, or IFQ sablefish. The offloaded IFQ halibut, CDQ halibut, or IFQ sablefish may not be moved from the landing site until the IFQ Landing Report is completed through eLandings or other NMFS-approved software and the IFQ permit holder's or CDQ permit holder's account is properly debited (see § 679.40(h)).*
- (iii) Single offload site.*
 - (A) IFQ halibut and CDQ halibut. The vessel operator who lands IFQ halibut or CDQ halibut must continuously and completely offload at a single offload site all halibut onboard the vessel.*
 - (B) IFQ sablefish. The vessel operator who lands IFQ sablefish must continuously and completely offload at a single offload site all sablefish onboard the vessel.*

Proposal #2 - APICDA and CBSFA, increase halibut vessel IFQ cap in Area 4;

Proposal #3 - GOAC3, allow CQEs to participate in the federal loan program; and

Proposal #2 - ACDC, allow Adak to be an AI CQE community.

Staff noted potential inconsistencies relative to the current Gulf of Alaska CQE program. Jessie Gharrett identified that for effective enforcement or accountability, proposed geographic delivery

requirements for IFQ derived from community-held QS would require that this IFQ be accounted for on a separate permit because all “like” IFQ currently is comingled on a permit. The geographic delivery requirement makes the IFQ a different type with different use provisions. The Council would need to identify who would be responsible if the IFQ was used improperly (i.e., lessee, non-profit entity, community, or a combination)?

D-3(b) Review new area closure options for chum salmon bycatch alternative

Sally Bibb provided an overview of the discussion paper on alternatives for chum salmon bycatch area closures. The Committee discussed at length some monitoring and enforcement issues potentially associated with use of ICAs. The committee recommends that the Council request NMFS and NOAA GC to provide an assessment of potential monitoring, enforcement, and ancillary issues that have been raised with the current exemption from triggered closures by ICA participants under Amendment 84. Since we have the opportunity and advantage of using Amendment 84 as a “case study” related to the use of ICAs, it seems prudent to consider these issues in the development of alternatives and address them in any analysis of future alternatives that use an ICA based exemption to modified chum salmon area closures under the new proposed program.

The Committee also expressed concerns regarding options which would require that salmon PSC be monitored in many small areas which would trigger respective area-specific closures. Committee members believed monitoring salmon PSC within each of these 20 small areas pose significant PSC estimation issues for NMFS for catcher vessels and could result in higher likelihood of inaccurate reporting of area of harvest for all sectors. Monitoring closure of these small areas is possible with VMS if sufficient resources are available to review VMS data in a timely and consistent manner.

It was also noted that a system of bycatch management that includes a large number of discreet small areas that could conceivably be open to some vessels within a sector, closed to others, which could also change over time with transferability provisions is overly complex and certainly not lend itself to real time at-sea monitoring.

The potential impacts of fine scale bycatch management on observers was discussed. It was noted that the industry may have higher demands for observer data than the agency. For example, ICA’s may allocate salmon bycatch to individual catcher vessels. The individual vessel may need to know salmon bycatch numbers for each tow whereby current practice is to census the entire delivery at the shore plant. This is due to the fish handling practices when handling large volumes. In practice, thorough at-sea sorting of salmon is impossible on most pollock catcher vessels. Tension may result from the inability to obtain accurate tow by tow salmon bycatch counts. The subsequent dockside census may place vessels over their salmon allocations. If multiple areas were fished on the trip, it would be impossible to identify which area the salmon in the delivery came from. Last, there is increased potential for corruption because of the high value of pollock and the direct dependence on observer data to monitor the limiting salmon.

C-6 GOA Rockfish Program

The Committee recommends that VMS requirements for the entry level non trawl fishery should be assessed as an option. The current suite of elements and options exempt this fishery from VMS and thus hampers effective monitoring and enforcement of area specific catch limitations being considered for the Rockfish Program.