

M E M O R A N D U M

TO: Council, AP and SSC Members

FROM: Jim H. Branson
Executive Director

DATE: June 12, 1986

SUBJECT: Joint Venture Policy and DAP Estimation

Action Required

- a. Report of Permit Review and DAP Estimating Committees.
- b. Approve Joint Venture Policy for 1987.

Background

Earlier this year the Council requested the Permit Review Committee to examine the Joint Venture Policy for possible revisions for 1987. In addition, a small executive committee was established to review the types of issues that should come under the purview of the Permit Review Committee. Third, the Council recommended that a workgroup be established to review procedures for developing and validating DAP estimates.

The Terms of Reference Executive Committee, composed of Jim Campbell, John Peterson, and Clem Tillion (for Admiral Lucas), teleconferenced on May 1 and passed their concerns to the Permit Review Committee. On June 5, the Permit Review Committee met with the DAP Estimating Workgroup (J. Peterson, Dyson, and McVey; Lauber and Baker were absent). Their combined report is agenda item C-3(a) and Attachment A is a revised joint venture policy.

In general the combined committees recommended business as usual for the Permit Review Committee with their focus limited to foreign permits, joint ventures, and foreign allocations. DAP projections would be reviewed separately by the full Council. Minor changes were made to the joint venture policy so that it conforms to how the fishery is operating this year: pooled target JVP and company bycatch guidelines. No further public review of the policy this summer is thought necessary. DAP estimation problems were referred back to NMFS and Bob McVey was encouraged to sponsor an industry meeting to determine if the survey questionnaire is adequate and how to validate processor projections.

The Council should review the committee report and its recommendations, paying particular attention to the alternative post-season audit approaches on company bycatch limits (pp. 1-2). Given Council approval, I will forward the new policy and procedures to the joint venture industry directly following this meeting.

Permit Review and DAP Estimating Committees
Meeting Summary: June 5, 1986

The Council's Permit Review and DAP Estimating Committees met in Seattle on June 5, 1986. Jim Campbell chaired the meeting which was attended by John Peterson, Rudy Petersen, Oscar Dyson, Henry Mitchell, Bob McVey, Barry Fisher, Cameron Sharick, and Al Burch. Staff included Jim Branson, Clarence Pautzke, Ron Miller, Bill Robinson and Pat Travers. Industry representatives included Bert Larkins, Phil Chitwood, Mick Stevens, Clint Atkinson, Paul MacGregor, Jay Hastings, Thorn Smith, Margaret Dawson and Steve Dickinson.

Joint Venture Policy

The committee reviewed the joint venture policy for possible changes for 1987 and focused on company allocations of bycatch and target species and conditions and restrictions on foreign vessel permits.

Company bycatch limits. Bob McVey explained that the Region is tracking bycatch allowances but it's very labor-intensive. His shortage of manpower probably will continue given the budget cuts that NMFS has to absorb. Without additional manpower it would be very difficult to monitor and enforce strict bycatch limits. Most companies have complied voluntarily with their bycatch guidelines this year.

Though the voluntary system seems to be working well, the committee considered ways to censure operations that exceed their bycatch guideline. The committee concluded that poor bycatch performance by individual companies should be dealt with each December in a post-season audit. For the Council to know which operations performed unsatisfactorily, it would need confidential individual company data. Several ways were discussed to get around this problem:

(1) The Council simply could recommend that companies exceeding their bycatch guidelines be denied permits the following year. This recommendation would be passed to NMFS which, having the bycatch data, could follow through on the recommendation.

(2) The Council could ask companies to volunteer their bycatch data. However, this would involve ten or more operations and though voluntary, would need OMB approval. This request may not be all that difficult to justify but the backing of NOAA and Commerce would be needed. The voluntary reports could be cross-checked with observer data. Companies that performed poorly probably wouldn't volunteer data, but that alone would be a telling indicator.

(3) The Council could review bycatch at a nation-by-nation level. Countries with bycatch problems in their joint ventures would be told in December to bring their companies into line. Pat Travers indicated that so long as three companies were involved in a country's joint ventures, their aggregated bycatch would not be confidential and could be divulged to the Council. The U.S.S.R. and Taiwan are the only countries with less than three companies and the Council would request them to volunteer

their bycatch data. OMB review may be needed for that request. (Note: Because there are nine or less companies involved in this voluntary request, it is not at all clear that OMB would need to review the request under the Paperwork Reduction Act. A clarification is needed from NOAA-GC.)

The committee ended its discussion of company bycatch by recommending voluntary guidelines for 1987. A post-season audit by the Council could focus attention on the bycatch issue and encourage joint ventures to not exceed their guidelines. Bycatch data could be provided to the Council in December and aggregated by country. Countries having less than three operations would be asked to volunteer the information. The Council could go a step further and recommend that NMFS deny permits for companies with excessive bycatch. The wording of our current policy needs to be changed as in Attachment A to change bycatch limits to guidelines.

Company allocations of target species. The policy now has all joint ventures fishing from pooled JVP. There doesn't seem to be any push from industry for company-by-company directed allocations. Because of the complexities of the whole issue and the limited entry overtones, the committee recommends no changes for 1987. Company allocations and groundfish limited entry in general, if deemed desirable, should be taken up by the Council as a whole, not by the Permit Review Committee.

Conditions and restrictions. The Permit Review Committee recommends that they continue to review each country's permit applications and recommend conditions and restrictions as appropriate. Highly controversial conditions and restrictions will, of course, be thoroughly aired before the Council. As noted before by General Counsel, the Council is purely advisory in this capacity to the Secretary of Commerce.

Joint venture to TALFF ratio. The one-to-one ratio deemed desirable in the current policy has now been achieved by all countries. In fact, most countries are purchasing much more fish through joint ventures than are being received in directed allocations. The appropriate language has been deleted from the policy in Attachment A.

Terms of Reference

The committee considered four main subjects for potential review of the Permit Review Committee:

- (1) Review of DAP performance and projections.
- (2) Review of JVP performance and projections and special permit conditions.
- (3) Evaluation of nations for the purpose of setting TALFF, JVP and foreign fees.
- (4) Review of violations records for foreign vessels.

The committee favors leaving DAP review to the full Council because evaluation procedures are not yet routine and many highly sensitive issues are involved. The processing industry should be encouraged to testify before the Council each December and help validate the DAP estimates from the industry survey by NMFS. In the Permit Review Committee meeting the DAP estimates would be available as a reference for JVP review. However, only items 2-4 above would be the main topics for discussion and recommendation by the Permit Review Committee.

As far as size of the committee and timing of meetings, it should remain the same size and continue to meet, as necessary, for the one to two days just before the full Council meeting. Public testimony on items 2-4 should be channeled through the Permit Review Committee and redundant testimony before the Council kept to a minimum.

DAP Estimation

The committee did not go into much detail on how to validate DAP estimates developed by NMFS. It is recommended that NMFS sponsor a meeting of major processors to determine if the survey questionnaire used by NMFS is adequate and to develop mechanisms for insuring the projections are accurate. The Council has the ability to adjust DAP estimates as necessary in response to new information developed at each December Council meeting.

Public Review

Considering the minor changes recommended to the Council's joint venture policy, the committee recommends it not be sent out for public review this summer.

NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

Policy on Joint Ventures and Allocations*

General Policy. The North Pacific Fishery Management Council is responsible by law for assuring the conservation of fishery stocks off Alaska and fostering the development of the United States fishery for those stocks currently underutilized by this country, though they may be fully exploited by other nations. The Magnuson Fishery Conservation and Management Act allows the Council to equitably allocate harvest privileges, and the Council intends to use these allocations to increase American participation in underutilized fisheries consistent with the Act.

The Council believes it is in the greatest national interest for the resource to be harvested, processed, and marketed by U.S. industry. However, until the domestic industry can harvest, process, and market the available groundfish resource, the Council will allow joint ventures between Americans and foreigners that will increase U.S. participation in the utilization of these resources. Joint ventures generally are considered to be operations in which U.S. fishermen deliver raw fish to foreign processors at sea. Other forms of joint ventures are possible and will be appraised on their individual merits as they are formulated.

The Council will continue to give highest priority to target operations that are wholly American, and joint ventures will only be considered for groundfish species not harvested and processed totally by U.S. industry.

The Council intends that any country to whom a direct allocation is given must also be engaged in "over-the-side" joint ventures or the purchase of U.S. produced products. ~~A relationship of at least a one to one ratio for joint venture fishing to foreign directed fishing is most desirable at this time.~~ As fully-U.S. harvested and processed fisheries expand, TALFF and then JVP will be decreased toward the total elimination of foreign fishing and processing.

Joint Venture Permit Review Procedure. The Council will hold its review each December of all prospective joint ventures for the coming year. This will coincide with the Council making its final recommendations on apportioning available groundfish yields to Domestic Annual Processing (DAP: totally U.S. harvested and processed), Joint Venture Processing (JVP: U.S. harvested and foreign processed), and Total Allowable Level of Foreign Fishing (TALFF: foreign harvested).

The Council must receive all permit applications for joint ventures at least two weeks before the week of the Council meeting. Applications must be complete and have been published in the Federal Register by Friday preceding Council meeting week. Review of applications not meeting these deadlines will be postponed until the next scheduled meeting of the Council. If necessary, the Council may request the Permit Review Committee to consider applications between regular Council meetings.

*Adopted by Council in September 1985.

All interested persons are invited to submit written and oral comments to the Council and its Permit Review Committee on all matters relevant to proposed joint ventures, including the extent to which various foreign nations meet the criteria listed in Table 1.

Joint ventures are expected to estimate their groundfish harvest needs as accurately as possible and to specify their needs by Council management area (e.g. Bering Sea, Aleutians, Western Gulf, etc.). The Council will compare these requests in aggregate with NMFS projections of JVP derived from industry surveys and will closely monitor attainment of joint venture goals during the season.

The Council's recommendations on approvability of permit requests and on permit conditions and restrictions will be forwarded to NMFS. The Council requests that NMFS respond in writing concerning final disposition of the Council's recommendations, with reasons for disapproval should that occur.

Basis for Recommendations. Groundfish operations which are legitimately wholly domestic in the harvesting and processing of our fishery resources and do not involve foreign flag vessels, fall under the Council's definition of DAP and therefore will not need permits. They will be given first priority in groundfish apportionments. Second priority is granted to operations involving foreign processing vessels and U.S. harvesters and other sectors of the U.S. industry.

The Council will use the criteria in Table 1 to appraise a country's joint venture requests relative to other nations and make its recommendations to NMFS. Other factors not listed may be considered also. The Council intends to give preference to those nations whose operations clearly evidence maximum U.S. industry involvement in all phases of the operation and which give strongest support to the development of the domestic industry for underutilized species.

Company Allocation of Bycatch Guidelines

All companies will fish from a common pool for joint venture target species whether or not demand exceeds supply. ~~However, each company or operation will be allocated an appropriate share of bycatch species which, when attained, will curtail only that company's fishing regardless of whether their target tonnage goals have been attained.~~ *However, each company will have harvest guidelines for bycatch species as deemed necessary by the Council. The Council expects a company to voluntarily modify its operations to minimize further bycatch upon reaching its guideline limit. The Council will conduct a post-season audit of performance each December when developing recommendations for joint venture approval for the following year.*

Internal Waters Joint Venture Review

The Council requests the opportunity to review all internal waters joint venture requests. Depending on the nature of the specific application, the Council may meet formally in whole or in Committee to comment further. The Council staff may provide technical comments. The Governor of Alaska is requested to appoint the Chairman of the Council's Permit Review Committee as a standing member of the State's Foreign Processing Advisory Committee.

NOTE: New text in italics.

Table 1. Criteria for the review of joint venture requests*

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- Level of U.S. industry involvement in all phases of nation's joint operations (harvesting, processing, marketing, or others)
 - Enhancement of U.S. employment at sea and ashore
 - Transfer of capital through investment in U.S. industry.
 - Technology transfer.
 - Achievement of joint venture goals during previous seasons.
 - Proof of financial responsibility by foreign partner.
 - Compatibility of joint operation with other U.S. fisheries and incidental species (i.e. gear conflicts, ground preemption, bycatch of U.S. fully-utilized species, etc.).
 - Economic contribution of nation's joint ventures to U.S. harvesting, processing, and support industries.
 - Purchase of U.S. processed product, especially underutilized species.
 - Compliance with U.S. laws, international treaties, and regulations.
 - Existence of trade barriers to U.S. fish products and efforts to remove them.
 - Ratios of country's total joint venture request and purchase of U.S.-processed product to total direct fishing request.
 - Reporting of fishery and market information beyond that required by law.
 - Foreign participation in fisheries research off Alaska.
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*No priorities implied.