

M E M O R A N D U M

TO: Council, SSC and AP Members
FROM: Jim H. Branson
Executive Director
DATE: July 21, 1983
SUBJECT: Halibut Fisheries Management

ACTION REQUIRED

Review status of the moratorium and decide a future course of action.

BACKGROUND

As you know, the Office of Management and Budget recommended to NOAA on June 14, 1983 that the proposed three-year moratorium on new entrants in the halibut fishery not be implemented; consequently, Administrator Byrne disapproved the moratorium on June 15. The Council received formal written notice of NOAA's decision on July 12 (Attachment A). Notice was also published in the Federal Register (Attachment B). The official reasons for disapproval stated in the July 12 letter closely resemble those contained in the June 14, 1983 letter from Chris DeMuth of OMB to Dr. Byrne (Attachment C).

A request for clarification of the reasons for OMB's disapproval was made on the Council's behalf by Chairman Tillion in a letter dated June 24, 1983 (Attachment D). While no written response from Mr. DeMuth has been received, Council staff spoke with Mr. DeMuth in a conference call on July 20, 1983. He explained that OMB viewed with disfavor straight moratoriums on new entrants into any commercial activity. He indicated, however, that his office may be receptive to a moratorium that was coupled with a permanent management system that would provide for marketable interests. He also offered his assistance to the Council in seeking a permanent solution to the overcapitalization problems in the halibut fishery.

The Council must decide what course of action is appropriate given the current political atmosphere and problems associated with the halibut fishery. Assuming the intent of the Council is to continue its efforts to resolve the problems in the fishery, options are provided below to assist the Council in its decision making.

I. OPTIONS

A. Assess Management Objectives

Before selecting a particular management approach, the Council may wish to assess its management objectives for the fishery. While the Council has stated the goals to be achieved by any limited entry system it may propose for the fishery (see Attachment E), no general statement of objectives has been made for any halibut management regime the Council may implement. If the Council wishes to set general management objectives, it may do so in one of the following manners:

- (1) Adoption of the limited entry objectives as general objectives.

Considerations: This approach would be less time consuming and costly than other approaches and could be accomplished at this meeting; however, it could be objectionable to some as lacking public participation. It should be pointed out, though, that the limited entry objectives are the result of considerable effort by the Limited Entry Workgroup and were agenda items for more than one Council meeting. These objectives were also reaffirmed by the Council at the last meeting upon the recommendation of a special subcommittee.

- (2) Establish a workgroup or subcommittee to formulate general management objectives for presentation to the Council at the September meeting.

Considerations: This process could be more deliberative than that in Option 1, but the Council must decide whether it would be conducive to a better product than the earlier process. Also, this approach may be criticized as not providing sufficiently for public comment because it would occur during the fishing season.

- (3) Conduct hearings statewide (either on-site, teleconference, or a combination of the two) soliciting public comment with subsequent adoption of objectives at the December meeting.

Considerations: Of the three options described, this procedure would provide for more public participation but would also be the most time consuming and costly. As in Option 2, the Council must decide whether it would result in a better work product than any of the other alternatives. As an alternative or adjunct to the public hearing process, the Council could consider solicitation of written comment on general management objectives.

B. Assessment of Management Methods

If the Council decides to pursue any of the "objectives" procedures before adopting a particular management option, it may also wish to consider whether to appoint a workgroup to propose a management scheme for Council consideration or to conduct public hearings on the most effective method of achieving its management objectives. Either of these processes would necessarily involve consideration of the various ^{1/}forms of limited entry as well as the more traditional fisheries management ^{1/}methods available to the Council.

1. Workgroup

Considerations: This approach would not be as time consuming as the public comment process but could be challenged on the grounds that public participation was not allowed and the Council was result-oriented.

2. Public Hearings

Considerations: The public hearing process would be lengthy and, assuming the Council chose to hold public hearings on the management objectives, the earliest that recommendations could be presented on methods to achieve those objectives would be either at the May or July 1984 meeting. The reason for this is that the Council staff would need a reasonable period of time to prepare detailed information on all the management alternatives for public consideration after the Council adopted general management objectives. This process could be shortened by a special Council meeting in April or June, 1984. Hearings would provide for extensive public participation and could address the concerns some have that the Council has already chosen a management scheme. Some may consider combining the "objectives" public comment period with the "management methods" period; however, this could be confusing to the public and may not result in a clear expression of the public's wishes.

C. Council Action Regarding A Moratorium

If the Council wishes to take further action in the halibut fishery, such action will fall within either of the following general categories regardless of the approach adopted for consideration of objectives and management methods:

1. Council action with a moratorium;
2. Council action without a moratorium.

1. Council action with a moratorium

Should the Council decide to resubmit the moratorium with the intent that it be implemented for the 1984 season, the "best case" schedule is as follows:

- a. Council readoption of moratorium at July 1983 meeting;
- b. Amend supporting documentation (30-45 days);
- c. Resubmit proposed rule to NOAA for publication as Notice of Proposed Rulemaking (45-day agency review period);
- d. New 45-day written comment period;
- e. Implementation in January or February.

Considerations: If it is to resubmit the moratorium, the Council must assess the current political climate within NOAA and OMB to determine the chances of agency approval. In disapproving the first moratorium, both agencies stated the proposal would not resolve the problems of overcapitalization in the halibut fishery and advised the Council to concentrate its efforts on formulation of a permanent management system to address that problem. While this conclusion is puzzling to those familiar with the Council's purpose for the moratorium, i.e., prevent a sudden influx of

speculative entrants into the fishery who may later suffer economic dislocation by removal from the fishery through a permanent management system, it is indicative of the agency perspective through which any future Council proposal will be viewed. Additionally, while the Council has received no formal communication that a halibut moratorium will be further entertained by either agency, informal word has reached Council staff that NOAA will not resubmit a moratorium proposal for OMB review because of the likelihood that OMB would again reject it.

If the Council resubmits the moratorium, it is recommended that a Council delegation travel to Washington to present the proposal to NOAA and OMB and educate the necessary agency officials on the purposes of, and need for, the moratorium. Although this may seem unnecessary in light of the supporting documentation that would accompany the draft regulation, the Council's recent experience indicates that this documentation may not be referred to by the reviewing agencies. A Council delegation may also counter any lobbying against the moratorium by those within the concerned agencies, Congressional offices, and others.

If the Council proceeds with a moratorium, it must be decided whether 1983 participation is to be discounted in establishing an eligibility base period and the appropriate length of that base period. An argument may be made that a considerable number of those who participated in the fishery for the first time this season did so only for speculative purposes and, therefore, should not be eligible for participation under a moratorium period. This approach may be contrary to the Halibut Act in that due consideration is not given to the limited entry criteria of Section 303(b)(6) of the Magnuson Act that is incorporated in the Halibut Act. Before full consideration could be given to these factors as related to the new participants in 1983, data on fishing histories, levels of participation, dependence on the fishery, and other factors must be presented to the Council. As a practical matter, this information would not be available before the Spring or Summer of 1984. If the Council intends to propose a moratorium for the 1984 season, new participants in 1983 should not be excluded from the eligibility pool. While this will expand considerably the number of people eligible to fish during the moratorium, failure to include those individuals could open the moratorium to legal challenge.

Some thought may be given to including the 1983 participants in the eligibility pool, but beginning the base period in 1979 instead of 1978. Again, an exclusion of 1978 participation could only be done after considering the limited access criteria mentioned above and may not be feasible before the 1984 season.

In resubmitting the moratorium, the Council must also consider whether to adopt a moratorium for the two remaining years of the period contained in the first proposal or maintain its original intent that the moratorium last three years. The purpose of the three-year period under the original proposal was to allow the Council adequate time to complete its limited entry studies, consider the various management alternatives, and adopt and implement a particular management system. It should be noted that OMB objected strongly to the 3-year term of the original proposal. During meetings with that agency's reviewers after the proposal was disapproved, it was revealed that OMB interpreted the 3-year moratorium period as an attempt by the Council to simply implement a moratorium and then abandon further efforts to address the problems in the fishery. While it is plainly evident such a conclusion is

incorrect, the Council must keep it in mind when setting the term of a moratorium. The Council should also keep in mind Mr. DeMuth's remarks summarized earlier in this presentation, and include in any future moratorium rule-making a detailed schedule of future Council action addressing the problems in the halibut fishery.

To aid the Council in its deliberation on the length of a moratorium, the following general schedules have been prepared as indications of the time needed to implement limited entry or traditional management schemes. These schedules begin to run after the Council has decided on a particular management measure by way of any of the decisional processes described above under the "Objectives" and "Management Methods" sections.

Schedule for Implementation of Limited Entry in the Halibut Fishery

- (1) Regulation drafting - 4-6 months.
- (2) Submission of draft regulations for NOAA review and publication of Notice of Proposed Rulemaking - 6-18 months.
- (3) Publication as Final Rule and system implemented - 10 months-two years after process initiated.

Schedule for Traditional Management Methods

- (1) Regulation drafting - 4-6 months
- (2) Submission of regulations for NOAA review and publication of Notice of Proposed Rulemaking - 6-12 months. (It is assumed that because traditional management methods are less controversial than limited entry schemes agency review would generally be shorter for traditional methods than a limited entry program.)
- (3) Publication as Final Rule and system implemented - 10-18 months after process initiated.

2. Council Action Without Moratorium

The Council could decide to discontinue efforts to implement a moratorium and proceed with adopting a permanent management scheme for the fishery. This process would follow either of the schedules set out immediately above.

Considerations: As stated earlier, NOAA and OMB recommended that the Council focus its attention on developing a permanent solution to overcapitalization in the halibut fishery instead of trying to implement a moratorium. The Council may interpret these recommendations as indications the two agencies would be helpful in implementing any permanent management measures it may adopt without the aid of a moratorium. In considering this option, however, the Council should be mindful that no assurances have been given that either agency would not, after a lengthy regulatory review process, disapprove the Council's proposal if it proved to be as controversial as the moratorium the Council adopted in April.

Another factor to consider under this option is that the atmosphere for this course of action will differ considerably from that of the moratorium option. Because new entrants would continue to come into the fishery while the Council decided on a particular management scheme, more potential participants under a permanent management system would have to be considered and more opponents would be created for any permanent system that altered the status quo.

II. MISCELLANEOUS CONSIDERATIONS

As a way of shortening any lengthy process associated with any option the Council selects, it may wish to schedule special Council meetings on the subject of halibut management. A special meeting could be held after Council staff has assembled documentation on all management alternatives for the halibut fishery and prior to the release of this information for public review. After public hearings on the management methods, another special meeting could be held at which the Council could adopt a particular management approach.

When considering any of the options listed above, the Council must give some thought to the three public presentations required of Bob Stokes. These presentations should be scheduled in a manner that would be the least confusing and most informative to the public.

III. PROJECTED SCHEDULES

Please refer to Attachment F for a listing of "best case" schedules for various combinations of the options listed in this presentation. These schedules reflect the projected time-frames described earlier for each option.

1/ "Traditional fisheries management methods" would generally include time, area, gear and vessel regulations. This type of regulation is authorized by the Halibut Convention and the Northern Pacific Halibut Act. Article I, Paragraph 2 of the 1979 Protocol (30 U.S.T. 4067; T.I.A.S. No. 9448) reads in pertinent part, ". . .It is understood that nothing contained in this Convention shall prohibit either party from establishing additional regulations applicable to its own nations and fishing vessels and to fishing vessels licensed by that party, governing the taking of halibut which are more restrictive than those adopted by the International Pacific Halibut Commission." The Halibut Act, however, provides, "The Regional Fishery Management Council having authority for the geographic area concerned may develop regulations governing the United States portion of Convention waters, including limited access regulations, applicable to nations and vessels of the United States or both which are in addition to, and not in conflict with, the regulations adopted by the Commission." Section 5(c), P.L. 97-176 (emphasis added). The IPHC is authorized by Article III, Paragraph 3 of the Protocol to:

- "(a) Divide the Convention waters into areas;
- (b) Establish one or more open or closed seasons as to each area;
- (c) Limit the size of the fish and the quantity of the catch to be taken from each area within any season during which fishing is allowed;
- (d) During both open and closed seasons permit, limit, regulate or prohibit the incidental catch of halibut that may be taken or retained, possessed, or landed from each area or portion of any area, by vessels fishing for other species of fish;
- (e) Fix the size and character of halibut fishing appliances to be used in any area;

(f) Make such regulations for licensing of vessels and for the collection of statistics on the catch of halibut as it shall find necessary to determine the conditions and trend of the halibut fishery and to carry out the other provisions of the Convention;

(g) Close to all taking of halibut any area or portion of an area that the Commission finds to be populated by small, immature halibut and designates as nursery grounds."

Any Council attempts to regulate the above-cited aspects of the fishery in a manner more restrictive than that proposed by the IPHC may be considered "in conflict" with the IPHC regulations and contrary to the Halibut Act. For this reason, Council efforts to implement non-limited entry regulations may be restricted to regulations such as trip poundage limits, exclusive area registration for vessels, or limitations on the number of crewmen per vessel. The Council could, however, make recommendations to the IPHC to implement the following regulations:

- (1) Gear restrictions
 - (A) limitation on the number of skates per vessel
 - (B) limitation on number of hooks per skate
- (2) Shorter openings
- (3) Openings scheduled during salmon season
- (4) Vessel size limitation

90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.
The proposed base (100-year) flood elevations are:

Source of flooding	Location	# Depth in feet above ground. Elevation in feet (NGVD)
French Creek.....	U.S. Route 6 (upstream side).	*1,165
	Flats Road (upstream side).	*1,174
	Approximately 1,800' above Dewey Road.	*1,197

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804; November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: June 2, 1983.
Dave McLoughlin,
Deputy Associate Director, State and Local Programs and Support.
[FR Doc. 83-17727 Filed 6-30-83; 8:45 am]
BILLING CODE 6718-03-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 30627-117]

Pacific Halibut Fisheries Withdrawal of Proposed Rulemaking

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Withdrawal of proposed rulemaking.

SUMMARY: NOAA by this document withdraws the proposed rule for the Pacific Halibut Fisheries that appeared at page 4861 in the Federal Register of Thursday, February 9, 1983 (48 FR 4861). NOAA's decision was based on a recommendation from the Office of Management and Budget, which concluded that the proposed moratorium would have interfered with some fundamental social and economic freedoms, especially those that relate to fishing traditions off Alaska, failed to solve economic problems of the industry, and created economic inefficiencies.

FOR FURTHER INFORMATION CONTACT: Jim Branson (Executive Director, North Pacific Fishery Management Council), 907-274-4563.

(16 U.S.C. 1801 *et seq.*)

Dated: June 28, 1983.

Carmen J. Blondin,
Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 83-17710 Filed 6-28-83; 2:27 pm]
BILLING CODE 3510-22-M

50 CFR Part 611 and 672

[Docket No. 30627-116]

Foreign Fishing, Groundfish of the Gulf of Alaska; Implementation of Conservation and Management Measures

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement Amendment 11 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. Implementation of measures contained in this amendment is necessary for conservation and management of the fishery. These measures are intended to provide for fuller utilization of certain available groundfish species, mitigate chances of overfishing local stocks, and enhance the data used for inseason management decisions.

DATE: Written comments must be received on or before August 12, 1983.

ADDRESSES: Comments should be addressed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802. Individual copies of the amendment, the environmental assessment, and the regulatory impact review/initial regulatory flexibility analysis may be obtained by contacting the North Pacific Fishery Management Council, P.O. Box 3136DT, Anchorage, Alaska 99510, 907-274-4563.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fisheries Management Biologist), 907-586-7230.

SUPPLEMENTARY INFORMATION: On February 24, 1978, the NOAA Assistant Administrator for Fisheries (Assistant Administrator) approved the fishery management plan (FMP) for the groundfish fishery of the Gulf of Alaska. The FMP governs foreign and domestic fishing for groundfish in the fishery conservation zone (FCZ) in the Gulf of Alaska between 132° 40' W. longitude (Dixon Entrance) and 170° 00' W. longitude. The FMP was originally published in the Federal Register on April 21, 1978 (43 FR 17242). Since then it has been amended ten times. Amendment 11, which was approved by the North Pacific Fishery Management Council (Council) at its March 26-27, May 19-20, and July 21-22, 1982, meetings, contains five parts.

A description of and reasons for each part of Amendment 11 follow:

1. *The optimum yield for pollock in the Central Regulatory Area would be increased from 95,200 metric tons (mt) to 143,000 mt.* The optimum yield (OY) increase would accommodate the rapidly expanding domestic fisheries in the Central Regulatory Area that are targeting on pollock and delivering to foreign processing vessels at sea in joint ventures. This fishery is capitalizing on pollock that concentrate during early spring in Shelikof Strait between Kodiak Island and the Alaska Peninsula. Joint venture harvests of pollock in the area have increased from 1,900 mt in 1980, to

17,000 mt in 1981, to more than 77,000 mt in 1982. Commitments from foreign purchasers of U.S.-caught groundfish could result in a harvest in excess of 100,000 mt in 1983. The new OY is at the midpoint of the maximum sustainable yield (MSY) range, which was derived from estimates of the total exploitable biomass.

The total exploitable biomass of pollock has been estimated for the Gulf of Alaska from results of trawl surveys conducted by the National Marine Fisheries Service to be between 1,041,000 and 2,081,000 mt. On the basis of the distribution of pollock throughout the Gulf, the total exploitable biomass in the Central Regulatory Area is estimated to be between 595,000 and 1,191,000 mt. Using a relationship prescribed by the FMP, MSY in the Central Regulatory Area is then calculated to be between 95,200 and 191,000 mt. The initial OY established by the FMP was set conservatively at the low end of the MSY range. A preliminary cohort analysis of pollock catch indicates that the exploitable biomass in the Central Regulatory Area is higher than when MSY was first calculated. The Council, therefore, has determined that the proposed OY is appropriate.

Based on testimony to the Council, the 143,000 mt OY would be apportioned among domestic annual processing (DAP), joint venture processing (JVP), reserves, and the total allowable level of foreign fishing (TALFF) as follows: DAP=5,330 mt, JVP=104,020 mt, Reserves=28,600 mt, and TALFF=5,000.

2(a). *The Yakutat District of the Eastern Regulatory Area would be divided into two districts—East Yakutat (137° 00'–140° 00' W. longitude) and West Yakutat (140° 00'–147° 00' W. longitude) to enable better management of the sablefish fishery.* Under the current management regime, a single OY for sablefish and its DAP, JVP, and TALFF components, are established for the entire Yakutat District, which is between 137° 00' and 147° 00' W. longitudes. Foreign fishing, however, is restricted in the Yakutat District to the area west of 140° 00' W. longitude. Foreign fishermen, then, can attempt to harvest the entire allocation from an area smaller than the allocation area, which could result in overfishing of local stocks. Domestic fishermen may also attempt to harvest the entire DAP and JVP amounts of sablefish from a smaller area. Dividing the Yakutat District into two districts and apportioning the OY for sablefish between the two districts will avoid the problem, and the fisheries and local stocks of sablefish would be

managed more conservatively. Also, because foreign fishing was recently restricted to west of 140° 00' W. longitude, the data used to analyze the condition of stocks has changed. Under the new system, foreign catch reporting would be consistent with areas where foreign fishing is presently permissible.

2(b). *The optimum yield for sablefish in the fishery conservation zone would be reduced from 12,300 mt to a range of 7,730 to 8,980 mt and apportioned among the regulatory areas and districts.* The sablefish resource is generally depressed throughout the Gulf of Alaska as evidenced by analysis of foreign and domestic catch and effort data and the magnitudes of recent catches compared to those of previous years. Whereas sablefish were once so abundant that

total annual catches in excess of 20,000 mt were possible (the largest total catch was 36,505 mt in 1972), total catches since 1978 have been comparatively small, ranging from 7,461 mt in 1982 to 9,763 mt in 1981.

The Council has determined that sablefish stocks should be managed to allow for faster rebuilding than would occur if they were harvested at the equilibrium yield (EY) level, estimated to be between 10,965 and 12,630 mt in the Gulf of Alaska (Table 1). OY is set equal to the Acceptable Biological Catch (ABC), which is approximately equal to 75 percent of the EY, and is apportioned among the regulatory areas and districts of the Gulf of Alaska in proportion to the most current estimate of the distribution of the sablefish.

TABLE 1.—EQUILIBRIUM YIELDS AND OPTIMUM YIELDS (=ABC'S) IN THE REGULATORY AREAS AND DISTRICTS OF THE GULF OF ALASKA

	Regulatory areas				Districts	Total
	Western	Central	West Yakutat	East Yakutat	Southeast	
EY(mt).....	2,225	4,075	2,240	1,135 to 1,510	1,290 to 2,580	10,965 to 12,630
OY(mt).....	1,670	3,060	1,680	850 to 1,135	*470 to 1,435	*500 8,230 to 9,480. ¹

¹ Total OY includes 500 mt allocated to the Southeast Inside District which is State of Alaska waters and managed by the State.

* Outside.

* Inside.

3(a). *A framework procedure would be established to allow the Regional Director to determine annually the expected domestic annual harvest (DAH) and the DAP and JVP components of the DAH for each species.* The Council is presently able to adjust the DAP and JVP components of DAH only by amending the FMP, a process that is too lengthy to be responsive to the needs of the fishing industry. Future specifications of DAP's and JVP's necessary to support domestic processors and joint ventures are expected to change, but the amount of change is unpredictable at this time.

The Council adopted the framework procedure to assure that sufficient quantities of groundfish would be available to accommodate the changing needs of the U.S. industry. Under the proposed framework procedure, initial DAP and JVP amounts would equal the amounts harvested by domestic fishermen during the previous fishing year plus any additional amounts that are necessary to satisfy the expected need for the new fishing year. The Regional Director, upon recommendation from the Council, would publish a rule-related notice in the *Federal Register* that would propose apportionments of each OY among DAP, JVP, and TALFF as soon as practicable

after October 1. Based on comments received, he would publish a second rule-related notice of final apportionment figures before January 1 of each year. Hence, planning by domestic and foreign fishermen would be enhanced on the basis of timely apportionments.

3(b). *The domestic nonprocessed (DNP) component of DAH that was apportioned for bait and personal consumption would be eliminated as a component of DAP.* Amounts specified as DNP for bait and personal consumption are not specifically monitored. DNP amounts are presently designated only for Pacific cod and "other species." Rather than continue to specify small DNP amounts for those species, DNP is eliminated as a component of DAH.

3(c). *The reserve and surplus DAH apportionment procedures would be modified to allow the Secretary to apportion reserves and surplus DAH to TALFF on the dates already specified in current regulations or on any other dates he determines necessary.* Current regulations provide for the Secretary of Commerce (Secretary) to apportion to DAH any amounts of the reserves on three specified dates or at any other time considered necessary; however, reserves may be apportioned to TALFF



EXECUTIVE OFFICE OF THE PRESIDENT
 OFFICE OF MANAGEMENT AND BUDGET
 WASHINGTON, D.C. 20503

AGENDA C-1(c)
 JULY 1983

JUN 21 1983

June 14, 1983

Honorable John V. Byrne
 Administrator
 National Oceanic and Atmospheric
 Administration
 U.S. Department of Commerce
 14th & Constitution Avenue, NW
 Washington, D.C. 20230

ACTION	ROUTE TO	INITIAL
	Exec. Dir.	J
	Deputy Dir.	
	Admin. Off.	
	Exec. Sec.	
	Asst. Dir.:	
	Adm. Serv.	
	Inv. & Insp.	
	Legal Coun.	
	Off. of Cong. & Public Affairs	
	Rec. Mgmt.	
	Spec. Insp.	

Dear Dr. Byrne:

We have carefully reviewed the National Oceanic and Atmospheric Administration's proposed regulation, ~~Pacific Halibut Fisheries~~, under the terms of Executive Order 12291. We have concluded that adoption of this rule, which would establish a three-year moratorium on the entry of new fishermen and fishing vessels into the North Pacific halibut fishery, would be inconsistent with the principles of the President's Order.

We agree that the proposal developed by NOAA and the North Pacific Fishery Management Council is an attempt to address a serious issue: excess entry of fishermen and vessels into the halibut fishery in recent years. Excess investment is, of course, a common and important problem in the management of fisheries where total annual catch must be limited. In the case of the halibut fishery, this problem has been exacerbated in recent years by additional entry in anticipation of the establishment of a permanent limited access system--contributing to the artificial shortening of the fishing season and other inefficiencies.

A simple moratorium on new entry would not, however, resolve the excess investment problem without creating additional economic problems. Indeed, it is unclear that a moratorium would be effective even in addressing the problem of anticipatory entry and investment. A limited access system has been under consideration since 1978, and as a result a great deal of anticipatory entry has already occurred. But at the same time, the moratorium would certainly prevent some individuals and firms from fishing during the 1983-85 seasons who would otherwise participate in the catch. Such a ban on entry by private citizens who believe they can catch and market halibut profitably would surely create new inefficiencies, particularly in the later years of the moratorium. We are also concerned that it would interfere with basic economic liberties, especially to the extent that the terms of the moratorium conflicted with the traditions and work patterns of individuals employed in the fishing business.

While the moratorium would be likely to provide arbitrary economic advantages to some fishermen at the expense of others, it would fail to address the basic economic problems of the fishery. We understand that the Fishery Council has been considering a variety of permanent limited access proposals; unfortunately, the draft regulatory impact analysis prepared for the moratorium rule did not address any of these alternatives. The most promising approach would be a limited access system with free marketing of fishery permits by individuals. Under such a system, annual catch permits would be held by or sold to those who could gain the greatest value for given quantities of catch in the marketplace, and the inefficiencies and inequities of flatly restricting new entry or permissible fishing days would be avoided. Entry would be limited, but only to the extent necessary to hold output to appropriate levels. The "right" to catch a given share of the annual halibut limit, just like the "right" to own a fishing vessel, would be determined by the private market rather than dictated by government rules.

In summary, we believe that an adequate showing has not been made of the need for the lengthy entry moratorium proposed in this rule, and that the moratorium would be likely to delay consideration of alternative measures to resolve the halibut management problem in a fair, lasting, and economically efficient manner. We would be happy to assist in any way possible in addressing this important issue.

Sincerely,

/s/ Christopher DeMuth

Christopher DeMuth
Administrator for Information
and Regulatory Affairs

bc: Dave Stockman
Joe Wright
Connie Horner
Steve Halloway
Bob Bedell
Tom Hopkins

North Pacific Fishery Management Council

Clement V. Tillion, Chairman
Jim H. Branson, Executive Director

605 West 4th Avenue
Anchorage, Alaska 99510



Mailing Address: P.O. Box 103136
Anchorage, Alaska 99510

Telephone: (907) 274-4563
FTS 271-4064

June 24, 1983

Mr. Christopher Demuth
Administrator for Information and
Regulatory Affairs
Executive Office of the President
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Demuth:

I refer to your letter of June 14, 1983 to Dr. John V. Bryne wherein you related OMB's disapproval of this Council's proposed moratorium for the north Pacific halibut fishery. In your letter you offered the assistance of your office in addressing that fishery's management problems. The Council greatly appreciates this offer and believes that a first and necessary step toward resolving the problem of excess effort in the halibut fishery is a moratorium on new entrants into that fishery. Lack of a moratorium greatly restricts the form of and support for a permanent limited entry system for the fishery, however, since the proposed rule was disapproved, the Council is placed in a position of setting a new course of action after two years of work on the moratorium. To assist in this regard, we ask you to provide the Council with an explanation of the reasons for OMB's disapproval that is more detailed than that contained in your letter to Dr. Byrne.

With all due respects, the letter is a bit vague and somewhat perplexing with regard to the basis for disapproving the proposed rule. In your letter, you acknowledged that overcapitalization was a problem in the halibut fishery but concluded that the moratorium would not resolve this problem. The moratorium adopted by the Council was never intended to halt overcapitalization in the fishery, but to prevent a sudden influx of speculative entrants who hoped to gain an interest in some future limited entry right. This intent was explained in great detail in both the RIA/Initial RFA and the RIA/Final RFA prepared by NMFS Alaska Region. As also explained in those documents, an influx of speculative entrants will seriously complicate the implementation of any permanent limited entry plan in the halibut fishery. The new entrants would constitute a constituency that would oppose any limited entry system that does not grant them the same degree of fishery access that is granted to those who have long histories of participation in the fishery. If it becomes necessary to displace these speculative entrants from the fishery as part of a limited entry plan, substantial government expenditures would be required to retire this excess capacity from the fishery as well as meeting the additional adjudication and administrative costs.

Mr. Christopher Demuth
June 24, 1983
Page 2 of 3

You also concluded in your letter that it was unclear whether a moratorium could effectively address the problem of speculative entrants because, "(a) limited access system has been under consideration since 1978 and as a result a great deal of anticipatory entry has already occurred." Some of the new entry in the halibut fishery over the past few years may have been due to the Council's discussion of limited entry, however, the major impetus for new entry prior to the 1983 season was record high ex-vessel prices in 1978 and 1979. In fact, this drastic increase in effort (over 60% in 1979 alone) occurred before the Council began seriously considering limited entry in the halibut fishery. The first major Council action in this regard was the appointment of a limited entry workgroup at the May 24-25, 1979 meeting, which was after the halibut season began that year.

Of course, as you imply in your letter, the proposed moratorium for 1983 through 1985 would not address the speculative entry that occurred prior to this time. It would, however, effectively halt speculative entry pending the implementation of a future limited entry system. From all current indications, this entry will be of monumental proportions. A recent check with the State of Alaska Commercial Fisheries Entry Commission, the licensing authority for Alaska commercial fisheries, revealed that because the moratorium was not approved, over 1,000 new licensees would be able to participate in the halibut fishery this season. One or two seasons such as this could destroy the North Pacific halibut fishery as a viable commercial activity.

Contrary to the statement in your letter that a temporary moratorium would delay the implementation of a permanent management scheme that would address the overcapitalization in the halibut fishery, we have felt it is a necessary and integral part of any permanent plan to halt the expansion of effort in the fishery. In pursuit of this goal, the Council has expended considerable effort and resources in studying the applicability of limited entry in the halibut fishery, appointing limited entry workgroups and holding public hearings. This was done to ensure that any Council decision in this regard would be well-reasoned and equitable. As the result of all this effort, it was determined that a temporary moratorium on new entrants was a necessary prelude toward a permanent limited entry system.

To assist the Council in formulating future management plans for the halibut fishery it would be appreciated if you could expand on your conclusion that the proposed moratorium was inconsistent with the principles of Executive Order 12291. An explanation of how the moratorium would have created new inefficiencies in the halibut fishery and "conflicted with the traditions and work patterns of individuals employed in the fishing business" will also aid the Council in future actions concerning the fishery.

To assist in establishing a solid working relationship with your office, I am extending to you or one of your assistants an invitation on behalf of the Council to attend the Council meeting to be held on July 27 and 28 in Homer, Alaska. Homer is a scenic fishing port at the southern end of the

Mr. Christopher Demuth
June 24, 1983
Page 3 of 3

Kenai Peninsula and should be a welcome change during July from Washington, D.C. If you are able to attend, please contact Council Administrative Officer Judy Willoughby (FTS number 271-4064) at your earliest convenience in order that hotel reservations may be made for you.

Again, the Council appreciates OMB's offer of assistance in addressing the problems in the halibut fishery. We look forward to continued correspondence with you and hope you are able to join us in Homer in July.

Sincerely,

Clement V. Tillion
Chairman

In Request for Proposal #82-1 and Contract #82-4, The North Pacific Fishery Management Council stated nine basic objectives to be achieved by imposing a limited entry system in the hook and line halibut fishery off Alaska. The substance of the objectives is hereby affirmed and it is declared that these goals are to be achieved by any halibut limited entry system adopted by the Council.

OBJECTIVES FOR HALIBUT LIMITED ENTRY

1. Distribute the hook and line halibut fishery in time and space to ensure resource conservation.
2. Reduce capitalization, thus encouraging development of an economically viable and efficient year-round domestic halibut hook and line fishery that, unconstrained by regulatory seasons, potentially could provide high quality fresh and frozen fish to the consumer twelve months of the year and that:
 - (a) is made up of owner/operator holders of halibut fishing privileges; and
 - (b) makes it possible for some fishermen to earn a major share of their income from hook and line halibut fishing.
3. Ensure that the costs of administration and enforcement do not exceed the benefits of the program.
4. Ensure that the extraction of royalties from the fishery at least sufficient to cover program costs is not precluded at some point in the future.
5. Minimize adverse biological impacts of the program on related fisheries.
6. Ensure that no particular entity acquires excessive control of halibut fishing privileges.
7. Attempt to be compatible with IPHC objectives.
8. Minimize disruption of the present fleet by using past participation to distribute initial halibut fishing privileges.
9. Use the market to transfer halibut fishing privileges after initial distribution.

"BEST CASE" SCHEDULES FOR COUNCIL ACTION

A. Assess Management Objectives

1. Adoption of limited entry objectives as general objectives - July 27/28, 1983.
2. Workgroup meetings with recommendations to Council - Meetings held in August/September 1983 with recommendations to Council September 28/29, 1983.
3. Public Hearings - Hearings held in October/November 1983 with the recommendations to Council December 7/8, 1983.

B. Assessment of Management Methods

1. Public Hearings - If the Council chooses to follow any of the "objectives" procedures and also to resubmit the moratorium, hearings on management methods could be held during February/March 1984 with recommendations presented to the Council at its regular meeting in May or July 1984, or at a special meeting in April or June 1984. This schedule assumes that the "best case" moratorium schedule is followed and also the Council desires to schedule the "methods" hearings after final agency action on the resubmitted moratorium to avoid confusing the two subjects. Council staff could also prepare the necessary hearing materials on management methods during the interim between the July 1983 meeting and February 1984.

If no moratorium is submitted, "methods" hearings could be held in January/February 1984 with Council action at the March 1984 meeting regardless of the "objective" process followed. Again, the Council staff could use the interim between the July 1983 Council meeting and the beginning of the hearing schedule to prepare materials for public presentation.

2. Workgroup - a "methods" workgroup could consider the staff's presentations early in January 1984 with recommendations presented at a special Council meeting the latter half of January or the first half of January 1984.

C. Resubmission of Moratorium

1. Readoption of moratorium - July 27/28, 1983
2. Amend supporting documentation and submit regulations for agency review and publication of Notice of Proposed Rulemaking - August 31-September 15, 1983.
3. Agency review and publication of NPR - October 17-31, 1983.
4. End of 45-day written comment period - December 1-15, 1983.
5. Regulation implemented - January 15-February 28, 1984.

D. Schedule for Implementation of Management Methods

The Council could initiate action to implement a permanent management scheme after adopting a particular management method following any of the schedules described in Section B above. The earliest this process could begin would be the latter half of January 1984 if a "methods" workgroup made recommendations to a special Council meeting or, April 1984 if "methods" hearings were held and a special Council meeting was scheduled. Below are projected schedules for implementation of traditional fisheries management methods or limited entry after the completion of either the workgroup process or public hearings. Using the general schedules for implementation of traditional methods and limited entry described on page 5 of this presentation, the projected time frame for implementation of each of these methods is as follows:

1. "Methods" workgroup process
 - (a) Traditional management methods - November 1984-July 1985;
 - (b) Limited entry - November 1984-January 1986.
2. "Methods" hearing process
 - (a) Traditional management methods - February 1985-October 1985;
 - (b) Limited entry - February 1985-April 1986.

Section 301.15 Moratorium on entry into the Pacific halibut fishery

(a) Criteria for participation.

(1) From 12:01 A.M., Alaska Standard Time, on May 1, 1983, until 11:59 P.M., Alaska Standard Time, on December 31, 1985, no person may harvest and sell halibut from the northern Pacific Ocean or the Bering Sea and Aleutian Islands area, except as provided in paragraph (b) of this section, unless

(A) that person had lawfully harvested and sold halibut from those waters, and reported such sale to the extent required by law, at any time between January 1, 1978, and December 31, 1982; and

(B) any vessel used by that person in that harvest of halibut is

(i) a vessel five net tons or over that was used at any time between January 1, 1978, and December 31, 1982, in the lawful harvest from those waters of halibut that was later lawfully sold;

(ii) a vessel five net tons or over the keel for which was laid on or before March 31, 1983, and acquired on or before that date by a person who before December 31, 1982 and after January 1, 1978, had owned a vessel described in paragraph (a)(1)(B)(i) or (a)(1)(B)(iv) of this section or;

(iii) a vessel five net tons or over that replaces a vessel described in paragraph (a)(1)(B)(i) or (a)(1)(B)(ii) of this section, and has a net tonnage no more than ten percent greater than that of the vessel it replaces, provided that the vessel replaced has been sunk, destroyed, or otherwise rendered unuseable; or

(iv) a vessel under five net tons.

(2) Except as provided in paragraph (b)(1) of this section, a person described in paragraph (a)(1)(A) of this section must be on board each vessel engaged in the commercial harvest of halibut in the waters described in paragraph (a)(1) of this section, and in the transportation of that halibut to its initial port of landing, and the sale of halibut so harvested must be recorded in the name of that person as required by law.

(3) For purposes of this section --

(A) A person shall be considered to have harvested halibut from the waters referred to in paragraph (a)(1) of this section if that person served as master or crew aboard a vessel at a time when that vessel harvested halibut from those waters.

(B) A person who is considered to have harvested halibut under paragraph (a)(3)(A) of this section shall be considered to have sold that halibut if

sale of that halibut was reported to the extent required by law, and such sale was lawfully recorded in the name of that person on the document of sale required by law.

(C) A vessel shall be considered to have been used in the harvest of halibut if sale of that halibut was reported to the extent required by law, and that vessel is designated on the document of sale required by law as the vessel from which that halibut was harvested.

(b) Exceptions.

(1) If a person described in paragraph (a)(1)(A) of this section is unable to harvest halibut in the waters described in paragraph (a)(1) of this section due to death, injury, disease, or age, that person or the closest relative of that person may designate in writing one substitute for that person for purposes of compliance with paragraph (a) of this section. The substitute so designated may be a person not described in paragraph (a)(1)(A) of this section. The writing shall state the period of time for which the designation is in effect, and shall be in the possession of the substitute at all times when that person harvests halibut in the waters described in paragraph (a)(1) of this section. No person may

(A) designate a substitute under this paragraph (b)(1) except for the reasons specified in this paragraph, and unless those reasons actually exist;

(B) harvest and sell halibut from the waters described in paragraph (a)(1) of this section if that person is a person described in paragraph (a)(1)(A) of this section for whom a substitute has been designated under this paragraph (b)(1) and that designation is in effect;

(C) designate more than one substitute under this paragraph (b)(1) for the same person described in paragraph (a)(1)(A) of this section for the same period of time;

(D) alter a writing designating a substitute under this paragraph (b)(1), or produce a document falsely purporting to be such a writing.

(2) Residents of rural coastal villages of Alaska to the west of 156 degrees west longitude may harvest halibut in areas of the Bering Sea to the north of 56 degrees north latitude and sell that halibut.

(3) This section shall not affect the taking of halibut on public lands and the use of that halibut for subsistence uses for purposes of Sections 803 and 804 of the Alaska National Interest Lands Conservation Act.

(c) Definitions. The terms used in this section have the following meanings:

(1) Bering Sea and Aleutian Islands area means waters under the jurisdiction of the United States within management areas 4A, 4B, 4C, and 4D, as

defined in Section 301.1 of this Part, and the closed area defined in Section 301.5 of this Part.

(2) Halibut means Hippoglossus stenolepis.

(3) Northern Pacific Ocean means waters under the jurisdiction of the United States within management areas 2C, 3A, and 3B, as defined in Section 301.1 of this Part.

(4) Person means an individual natural person.

(5) Waters under the jurisdiction of the United States means the internal waters and territorial sea of the United States and the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act, 16 U.S.C. Sections 1801 et seq.

(d) Relationship to other requirements of law. The requirements of this section are in addition to all other requirements imposed by law for participation in the halibut fishery. The issuance to a person of a State or International Pacific Halibut Commission license or permit purporting to authorize fishing for or sale of halibut during the moratorium period shall neither excuse nor constitute evidence of that person's compliance with paragraph (a)(1) of this section. No provision of this section may be interpreted to allow fishing for halibut that is not authorized under other provisions of this Part.

(e) Future effect of participation during the moratorium. No provision in this section shall be interpreted as guaranteeing that participation during the first time period described in paragraph (a)(1) will be the basis for an allocation of halibut fishing privileges under any halibut limited entry system that may be implemented after that time period.

ALFA

ALASKA LONGLINE FISHERMEN'S ASSOCIATION JUL 15 1983

Box 2234
 Sitka, Alaska 99835
 Telephone (907) 747-3400
 Telex 46-314 HPC SIKKA

ACTION	ROUTE TO	INITIAL
	Exec. Dir.	3
	Deputy Dir.	
	Admin. Off.	
	Exec. Sec.	
	Staff Asst. 1	
	Staff Asst. 2	
	Staff Asst. 3	
	Economist	
	Sec./Bkkr.	
	Sec./Typist	

June 29, 1983

Mr. Christopher DeMuth
 Administrator for Information
 and Regulatory Affairs
 Office of Management and Budget
 Executive Office of the President
 Washington, D.C. 20503

Dear Mr. DeMouth:

It was with a great deal of dismay and a growing sense of frustration that I read your letter to Dr. John V. Byrne, dated June 14, 1983 in which you state your opinion that the proposed moratorium on entry into the Pacific halibut fishery would be inconsistent with the President's Executive Order 12291. A careful review of your letter, apparently intended as justification for your decision left me with the distinct impression that either you failed entirely to examine the justifications for the proposed moratorium or even more seriously the letter does not truly represent the rationale for your decision.

As to the first possibility, let me review the major points of your June 14th letter:

Paragraph 2: While agreeing that the problem of excess entry and investment is a serious issue you erroneously conclude at the end of the paragraph that the problem of excess investment " has been exacerbated in recent years by additional entry in anticipation of the establishment of a permanent limited access system...". Interestingly enough, this presumption, used often by moratorium opponents, is not supported by the evidence. In fact, the evidence, indicates that the greatest increases in effort occurred prior to the Council's indication in September of 1979 that they intended to limit entry to the halibut fishery. These increases were in fact the result of strong ex-vessel prices, shrinking alternative fisheries, and non-halibut related management activity. TABLE 1 shows the numbers and percentage increases in halibut and black cod longline permits issued by the State of Alaska between 1976 and 1979 inclusive. It is significant to the note the increase in black cod permits in the absence of any discussion limiting entry to that fishery by either the Council or the State. Concurrent with these increases, restrictive management measures were being applied to or contemplated for a whole class of 35 to 60 foot fishing vessels as a result of the Boldt decision in Washington and Oregon; and in Alaska, it was apparent by 1978 that Alaska trollers would be receiving cuts in their salmon quotas, leaving in total several thousand

fishermen and their vessels (well suited to longlining) looking for new unrestricted fishing opportunities. At the same time both Washington and Alaska had in place limited access systems which allowed those fishermen still in the salmon fishery the economic confidence to invest capital and labor in alternative fisheries such as longlining. Strong ex-vessel prices also attracted capital and labor from fisheries suffering under increasingly restrictive management regimes, i.e. Washington and Alaska salmon fishermen. Finally, the Albacore tuna fishery off Washington, Oregon and California which had long provided an alternative for medium sized salmon vessels also began to falter in the late 1970's as a result of increased fishing pressure and changing migratory patterns. Ironically, this failure to implement a moratorium allows a substantial number of "new" license holders (over 1000 as of early May) to acquire a history of past participation in anticipation of being given consideration in any future limited access system. Fortunately for yourself it will not be your responsibility to deal with these "new" past participants in the development of such a system as required by MFCMA Section 303 (b) (6). More to the original point, your comment about recent anticipatory growth in effort is not supported by the evidence and any logical conclusions you try to reach using that assumption will be faulty.

Paragraph 3: In this paragraph you make several statements, some of the obvious, and some some-unsupportable, all of which however leave doubt as to your familiarity with the proposed moratorium. To begin, "(a) simple moratorium on new entry would not, however, resolve the excess investment problem without creating additional economic problems". The proposed moratorium was never intended or purported to intend to solve the problem of excess investment. It was intended to clarify in so far as possible a cut off date for new entry and investment in order that the industry and the Council could create a limited access system in a relatively stable and productive atmosphere as opposed to the chaotic atmosphere created by your decision in which potentially thousands of "new" entrants will rush to establish themselves as past participants in order to gain from any economic windfall resulting from the future allocation of "rights".

In your second and third sentences, you conclude that because "a great deal of anticipatory entry has already occurred" it is "unclear that a moratorium would be effective even in addressing the problem...". Here, as I indicated with regard to Paragraph 2, is the result of a faulty analysis of the data regarding new entrants. Clearly, in fact, the trend of new entry and the up-surge that will occur this year, absent the moratorium, demonstrate just how effective the moratorium would have been.

Obviously, the moratorium would have prevented some individuals and firms from fishing in the 1983-85 seasons who would have otherwise have participated in the catch. Conversely, some 6000 fishermen and vessels would have qualified to participate compared to the some 3000 who have annually fished in recent years. It was because the moratorium was designed specifically to maximize participation by past participants that two times as many individuals qualified as fished in recent years. It is quite possible that the flood of new entrants precipitated by the moratoriums disapproval will result in a substantially shorter season this year, certainly preventing several thousand individuals from participating in the catch during otherwise planned seasons. Oddly enough, I cannot find within the scope of Executive Order 12291 the criteria with which you judge that the greater number of existing participants should suffer for the benefit of an unspecified number of new entrants, particularly given the moratoriums emphasis on legitimate past participation.

You go on in this paragraph to suggest that the moratorium will create new inefficiencies. Certainly some inefficiency will result in the small number of cases where vessels greater than 5 net tons are constructed/completed and equipped for the halibut fishery after March 31, 1983 and as a consequence would not be able to participate. Obviously, existing vessels which might not qualify, have for various reasons of their own chosen not to participate in the halibut fishery for 3 consecutive years, and it seems fair to assume that these individuals have chosen to apply their investment to other fisheries. No apparent inefficiency with regard to the halibut fishery will result from these circumstances. Conversely, however, a much greater inefficiency will result when unrestricted new entry into the fishery causes the harvest to be so high as to preclude any additional seasons.

Finally in this paragraph you speak to interference with "basic economic liberties" and to conflicts with "the traditions and work patterns of individuals employed in the fishing business". Although you fail to define what "economic liberties" are, you do suggest they are tied to certain traditions and work patterns. Indeed those liberties may be tied to traditions and work patterns but clearly the fact of your disapproval indicates you have little or no understanding of the traditions and work patterns to which you refer. This statement no doubt refers to the viewpoint put forward by moratorium opponents, particularly from Kodiak, that it is their traditional pattern to move from fishery to fishery as stocks and markets fluctuate. While this pattern may apply to a few individuals, there is no evidence that it applies to the majority of longline fishermen. Even in Kodiak, the evidence does not support this concept.

The following table indicates the actual amount of interchange between fisheries by Kodiak halibut fishermen:

<u>Kodiak (Urban)</u>			
<u>Year</u>	<u># of halibut fishermen</u>	<u># of halibut fishermen w/other landings</u>	<u>%</u>
1978	112	43	38%
1981	238	102	43%

<u>Kodiak (Rural)</u>			
<u>Year</u>	<u># of halibut fishermen</u>	<u># of halibut fishermen w/other landings</u>	<u>%</u>
1978	29	19	66%
1981	54	28	52%

SOURCE: Commercial Fisheries Entry Commission (CFEC);
Kodiak data based on CFEC residency areas

In fact, for the majority of longline fishermen, the successively shorter seasons caused by continued new investment have had the greatest impact on traditions and work patterns. Another of the ironies of your disapproval is that the lack of restraint on new entry during the creation of a permanent limited access system will be much more disruptive of traditions and work patterns than the moratorium would have been, particularly keeping in mind that numerically, twice the number of recent annual participants would qualify under the proposed rule.

Paragraph 4: Contained in this paragraph is a contradiction that is difficult for us to grasp. You begin by suggesting that a moratorium would be likely to provide "arbitrary economic advantages to some fishermen at the expense of others". The only economic advantage provided those who qualify would be the potential of maintaining a status quo in season lengths which are currently so short that capital already dedicated to the fishery is already subject to significant inefficiency. No transferable vessel or individual rights are involved in the moratorium and hence no windfalls would occur. The absence of a moratorium however, will allow more individuals to apply capital to an already overcapitalized inefficient fishery, with there being no economic advantages realized by anyone.

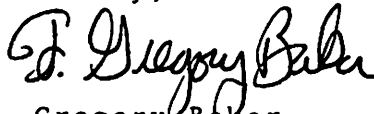
The remainder of this paragraph seems to speak favorably of limited entry system much like the individual quota system

being explored by the Council. Without discussing the merits of this concept here, it is difficult to comprehend that you failed to grasp the significance of a moratorium as a first step to any permanent system, much less the individual quota system. Certainly, in your review of this issue, it must have been apparent that Alaska's fishermen are experienced with limited entry and how it works with regard to past participation. Alaska's experience has been that it is virtually impossible to preclude fishermen with a documentable history of past participation. Certainly a system can be designed so as to weigh the extent of that participation, but keep in mind that the complex political process involved in creating such a system becomes chaotic when each year thousands of "new" participants begin clamouring (and not without justification) for protection of their newly acquired "rights". Hence from our viewpoint, your disapproval of the moratorium, a necessary first step for any system, contradicts your stated support of the marketable share system.

In conclusion, we find your justifications for disapproval of the moratorium unclear, lacking in factual support, and contradictory; leading us to believe that your review of the issue was superficial or worse that your disapproval reflects a policy decision or philosophical bias that is not apparent in your letter. For our part, it is difficult to assess which would be the worst of these two possibilities considering the gravity of the situation.

Thank you for reviewing our comments and we would be happy to discuss them in greater detail at your convenience.

Sincerely,



F. Gregory Baker
President/Marketing Manager

cc: President Ronald Reagan
Senator Ted Stevens
Senator Frank Murkowski
Senator Dick Eliason
Representative Ben Grussendorf
North Pacific Fisheries
Management Council
Dr. John Byrne
Mr. David Stockman

Representative John Breaux
Representative Edwin Forsythe
Mr. William Gordon

CFEC--Estimated Number of Permits Fished: (Halibut Interim-Use-Permits Only. Does Not include Incidental Troll Participat...)

B06B 1975 71
 B61B 1975 207
278

Low because permit number not always key punched

B05B 1976 1 +100%
 B06B 1976 96 + 35.2
 B61B 1976 264 + 27.5%
361 + 29.8%

B05B 1977 17 +1,600%
 B06B 1977 462 +381.2%
 B61B 1977 720 +172.7%
1,199 +232.1%

— same problem as in 1975 & 1976, but to a lesser degree

B05B 1978 9 - 47%
 B06B 1978 705 + 52.6%
 B61B 1978 608 - 16.4%
1,322 + 10.2

B05B 1979 33 +266.6%
 B06B 1979 1,228 + 74.19%
 B61B 1979 855 + 24.1%
 B99B 1979 3 +300% (probably jigs)
2,119 + 60.3%

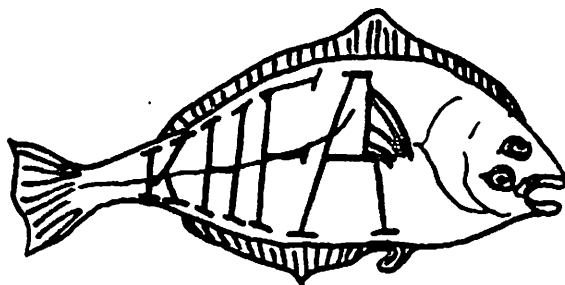
B05B 1980 34 + 3.0%
 B06B 1980 1,210 - 1.4%
 B61B 1980 1,089 - 27.37%
 B26B 1980 16 +433.3%
2,349 + 10.8%

B05B 1981 53 + 55.89%
 B06B 1981 1,360 + 20.67%
 B61B 1981 1,173 + 7.72%
 B26B 1981 49 +206.2%
2,635 + 12.18%

These figures are generated by converted data from IPHC's computerized file-- file conversion problems were just recently identified.

Queirolo's Data on Troll incidental catch

1978- 876 vessels
 1979- 889 " "
 1980- 345 " "
 1981- 463 (conservative preliminary figure)



Kodiak Halibut Fisherman's Association

P.O. BOX 3406 KODIAK, ALASKA 99615

~~(907) 486-5565~~

July 11, 1983

North Pacific Fisheries Management Council
P.O. Box 3136 DT
Anchorage, Alaska 99503

Dear Mr. Chairman and members of the Council:

In the past two years there has been much discussion concerning possible moratorium/limited entry plans for the Pacific halibut fishery. The North Pacific Fisheries Management Council has indicated a desire to hastily impose a moratorium on entry and develop a specific limited entry plan. In light of this, the Kodiak Halibut Fisherman's Association would like to commend Mr. John Byrne of the National Oceanic & Atmospheric Administration for his wisdom in not approving this measure as we feel there are many unanswered questions regarding this issue. Since there will be no moratorium in 1983 and since most fishermen are busy with their summer fishing schedules, the KHFA would like to request that the NPFMC allow a cooling off period for further study and re-examination of this important issue.

There appear to be five main reasons for the large increase in effort over the past several years. These should be examined closely in order to get a bearing on what is happening in the fishery.

1) In 1979, favorable market conditions (ex-vessel price over \$2.00 lb) and an increasingly abundant biological resource combined to make the halibut fishery an attractive and profitable enterprise. Many fishermen logically entered the fishery.

2) Recent fluctuations in biological availability and market conditions in numerous other north pacific fisheries (i.e. declining shellfish stocks and a collapse in the salmon markets) have made the halibut fishery an attractive alternative to some fishermen who will undoubtedly channel their efforts back to their more traditional fisheries as conditions improve.

3) Discussions of limited entry were started by the NPFMC in 1978. The prospect of limited entry for the last five years has caused large numbers of new entrants who are primarily speculating on gaining valuable fishing rights.

4) The same speculation of limited entry has had the effect of forcing many legitimate, multi-species fishermen who are not primarily interested in fishing halibut to enter the fishery in order to protect their right to fish on the occasions when they might wish to do so.

5) In 1981, the concept of quote-share allocation based on past landing was introduced. This has had the devastating effect of causing all participants, whether full-time, part-time, or speculative, to do everything possible to maximize their production.

It should be denoted that the first two of the above stated reasons for the influx into the halibut fishery are part of the ever-changing, cyclical, and inter-related trends within the history of the fishing industry. The last three and most damaging reasons for the influx of new participants are a direct result of efforts by the NPFMC and some fishermen's organizations to isolate the halibut fishery and then to divide and allocate it as if it were the inevitable pieces of pie.

The recent rejection of the Council's moratorium gives all concerned fishermen the opportunity to re-evaluate what is happening and what may happen in the future. This re-evaluation should be undertaken with the best available information and not rationalized with the vague statements, broad generalizations and misinformation that has characterized the Council's position to date.

With this in mind, the KHFA would like to formally request the NPFMC to commission a study that will hopefully give a clearer picture of the state of the halibut fishery at the present time.

We would like to see data formulated for the base period of 1950-1983 in the following categories:

- 1) Number of vessels in the fishery per year in size categories: under 5 net ton, 5-19 tons, 20-39 tons, 40-60 and 60 and over tons;
- 2) pounds landed by vessel by size category;
- 3) average price per year;
- 4) average gross earnings by vessels by size categories;
- 5) number of vessels from each region, i.e. Oregon-Washington; S.E. Alaska, Yakutat; Cook Inlet-PWS, Kodiak, S. Peninsula; and Bering Sea-Aleutians.
- 6) percentage of catch in region by vessels from that region; also by vessel size;
- 7) percentage of catch in each region by vessels from another region, also by size category;
- 8) actual fishing time by vessel per year-by size-by region of origin;
- 9) total landings by region and/or statistical area;
- 10) average catch by vessels per year by size category;
- 11) number of halibut fishermen who participate in other fisheries;
- 12) number of halibut fishermen who have non-fishing incomes;
- 13) amount of incidental foreign catch per year;
- 14) ratio of incidental foreign catch to domestic quota;
- 15) ratio of fresh vs frozen market fish per year;
- 16) price comparison of fresh vs frozen fish;
- 17) percent of income derived from halibut per vessel-per year;
- 18) percentage of catch caught by top 20% of vessels per year;
- 19) percentage of catch caught by bottom 20% of vessels per year;
- 20) gross income by vessel size by region per year;
- 21) ratio of average ex-vessel price to gross earnings per year.

We also request the NPFMC to clarify a number of substantial questions which are inevitably brought forth by discussion of a moratorium-limited entry approach for the future of the halibut fishery:

1) What is a "significant portion" of a fisherman's income? How is this defined? How is this determined?

2) What is an "economically viable" fishery? How is this defined? How is it determined?

3) What is "economic efficiency" in a particular fishery? How is this defined? How is it determined?

4) Is "economic efficiency" the goal of federal fisheries management?

5) To what degree do CPUE statistics indicate resource abundance?

6) What are the various substocks of the halibut fishery? Should the IPHC initiate a winter fishery?

7) What is the relationship between halibut and other valuable marine resources? How does halibut abundance impact other resources such as shrimp, tanner crab, king crab, sablefish, cod, etc?

8) What effect will limited-entry have on a diversified fleet that needs flexibility to survive and/or grow?

9) What effect will limited-entry have on diversified fishermen who fish halibut on an inconsistent basis and may not qualify under a specific plan?

10) What effect will limited-entry have on the residents of small coastal towns and villages that are not in the mainstream of the predominant cash economy?

11) What effect will limited-entry have on Native Alaskans who have traditionally used the resource but may not be included in a specific plan?

12) Why hasn't the Council advocated or examined other management options since the first limited-entry proposals of 1978?

13) What impacts are currently happening in other N. Pacific fisheries by possible limited-entry in the halibut fishery?

Are many or perhaps all other fisheries presently suffering from increased effort, directly related to the possibility of a share-quota allocation in the halibut fishery?

14) To what degree is the main bulk of the halibut resource, which is harvested west of Cape Spencer, likely to be sold on the fresh market?

These are very important questions and there are many more of equal importance. We realize that substantive answers are not easy, but feel that an effort should be made.

The KHFA hopes that the Council will start trying to examine and answer these questions. If it is ascertained that limited-entry is necessary in the halibut fishery, then it would appear to be necessary in many other fisheries as well. We believe that this approach is antithetical to the health of the industry and should not be followed if at all possible. There will always be high-points and low-points in every fishery, but isolating one fishery from the other guarantees disaster when the low-points do occur.

In conclusion, the KHFA urges the NPFMC to gather the appropriate data, answer the important questions and step back and re-examine its' goals.

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The halibut fishery is biologically healthy and certainly not critically endangered in an economic sense. Perhaps a more regionally oriented approach to management is necessary. We have some breathing room, let's examine our options.

Since this issue is of such importance, we would also request the creation of a new seat on the Advisory Panel for a halibut fisherman's representative from Kodiak and Western Alaska.

We would also hope that any discussions or decisions regarding the halibut fishery be postponed until September, as most fishermen are very busy during the summer and do not have the time or ability to follow the Council's actions at this time of year.

Sincerely,



Peter Allan, President
Kodiak Halibut Fishermen's Assoc.

PA/djb

cc: file

public testimony from all over Alaska and the Pacific Northwest, and after consideration of advices received from the Council's own Advisory Panel, Scientific and Statistical Committee, and legal counsel.

No one knows better than the Council that a moratorium alone is not the final answer. The Council sought to implement a moratorium more than a year ago, solely as a holding action to prevent a gold-rush of speculators from entering an already overcapitalized fishery. Thus the Council tried to provide the lead-time necessary for full and careful evaluation of all available alternatives for ultimate limitation of entry and effort. This carefully considered action was taken specifically to protect the economic security and cultural way of life of hundreds of legitimate fishermen already established in the fishery from further attenuation of harvests and incomes by the growing flood of new entries, many of whom were drawn principally by the speculative profits to be made if a foothold could be established prior to implementation of a full-scale limited entry system. The moratorium is a relatively simple action, solely to put a lid on an exploding fishery. It is orders of magnitude less complex than are the equity and legal issues to be resolved in setting up a fair and politically acceptable limited entry scheme. No one is more fully aware of these problems than are the members of the North Pacific Council. Any final decision on limited entry must be based on careful assessment of comparative impacts of alternative procedures, and on full and effective public participation in that assessment process.

While the Council's final decision on the moratorium was not unanimous, still the votes were conclusive, and were representative of both Alaskan and non-Alaskan members. Right or wrong, they represent the very best collective judgement of the body designated by Congress to make these difficult judgements. I find it unconscionable that a group of bureaucrats, who did not participate in this democratic review process and who certainly are not expert either in the fisheries concerned or the alternatives available for managing access to those fisheries, should attempt to justify their veto on the basis of presumed knowledge of what is best for managing that fishery.

I cannot believe that it was the intent of Congress for the Regional Councils to serve only as local sounding-boards for public review, but for policy decisions to be made on substantive management issues by a supreme authority sitting in Washington. I respectfully urge you and our other leaders in the Senate and House of Representatives to take whatever actions are needed to require the Executive Branch to limit its decisions to the intent of the law--conformance to National Standards and consistency with other U. S. laws and policies in the national interest.

Yours sincerely,


John P. Harville
Executive Director

JPH:jc
cc: Clem Tillion, Chairman, North-Pacific Fisheries Management Council
Attachment

NEWS JUL 22 1983 RELEASE

		ACTION	ROUTE TO	INITIAL
July 19, 1983	HALIBUT FISHING SEASON IN AREA 4C CLOSES		Exec. Dir.	3
			Deputy Dir.	
			Admin. Off.	
			Exec. Sec.	
			Staff Asst. 1	
			Staff Asst. 2	
			Staff Asst. 3	
			Book. Clk.	
			Spec. Clk.	
				Spec. Typist

The catch of halibut from Area 4C in the Bering Sea north of the Bering Sea closed area, had reached 280,000 pounds by July 18, and the quota for the area is 400,000 pounds. Based on the present level of catch and the number of vessels presently operating in the area, the Commission has determined that the catch limit for Area 4C will be reached by the end of the current fishing period. Consequently, the Commission announces that Area 4C will be closed to halibut fishing at noon (PST) on July 20, 1983 and will remain closed for the remainder of 1983.

-END-

FOR IMMEDIATE RELEASE

Dr. Donald A. McCaughran, Director
 Phone: (206) 634-1838