

MEMORANDUM

TO: Council, SSC and AP Members
FROM: Chris Oliver *Chris*
Executive Director
DATE: September 29, 2003
SUBJECT: Groundfish Management

ESTIMATED TIME 6 HOURS all D-1 items
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ACTION REQUIRED

Review discussion paper on repealing the Vessel Incentive Program

BACKGROUND

Vessel Incentive Program

In June 2003, the Council initiated an amendment to repeal the Vessel Incentive Program, given concerns about the effectiveness of the program and its potential for additional administrative burden due to increased legal standards. NMFS staff prepared a discussion paper as the first step in consulting with the Council to develop alternatives for analysis. It was mailed to you on September 29, 2003. The executive summary is attached as Item D-1(f).

Executive Summary

At its June 2003 meeting in Kodiak, the North Pacific Fishery Management Council (Council) "initiated an amendment to repeal the vessel incentive program (VIP), given concerns about the effectiveness of the program and potential for additional administrative burden due to increased legal standards." (Council, 2003). The initial step in this process is the preparation of this discussion paper, which outlines the history of the VIP, discusses its effectiveness, and describes potential alternatives to address existing concerns.

The VIP, which became effective in 1991, requires individual fishing operations in groundfish trawl fisheries in the Bering Sea and Aleutian Islands (BSAI) and the Gulf of Alaska (GOA) to comply with standardized prohibited species catch (PSC) rates for halibut and red king crab. The VIP program is designed to slow down trawl harvests of prohibited species and allow more fishing time for target groundfish species before PSC limits are reached, and targeted groundfish fishing is closed. The VIP rates are published two times a year by the NMFS Alaska Region.

This program has had problems for many years. Relatively few violations have been prosecuted, and in two cases defendants prolonged their cases over many years through extensive appeals. Current enforcement and prosecution measures provide little deterrent to violators. The program is believed to have encouraged fishermen to pre-sort their catches before observers can examine them, and to attempt to corrupt and intimidate observers.

In the past, publication of the bi-annual standard rates has been expedited by using the "good cause" exemption in the Administrative Procedures Act (APA) to proceed directly to a final rule. In the Spring of 2003, NMFS concurred with NOAA GC that the rationale on which good cause waiver of prior notice and opportunity to comment was based did not constitute adequate justification for such a waiver. The Alaska Region was unable to comply with notice and comment rulemaking and associated analysis requirements in the summer of 2003, and did not publish rate standards for the second half of 2003. In June 2003, the Council initiated its amendment to repeal the VIP.

It is unclear whether or not the VIP has been successful in reducing prohibited species bycatch rates. A masters thesis that examined the impacts on halibut prohibited species catch found that "the VIP has not played a serious role in reducing halibut bycatch rates." Evidence on frequency of violation of VIP standard rates shows frequent violations in certain fisheries. The VIP program depends on fishery observers to collect information on PSC bycatch. There is anecdotal evidence that the VIP program has provided an incentive for fishing operations to pre-sort their catches before they are seen by an observer, and to pressure observers to misreport their observations. Both types of actions are illegal, and both compromise the usefulness of observer information for biological management of all species.

This analysis has identified three alternatives. Two of these alternatives each have two options associated with them. The three alternatives are: (1) No regulatory action to change or abolish the program (continue to publish bi-annual standard rates, renewed commitment to program enforcement); (2) modify the program to reduce the frequency of rate publication (the two options to this alternative are to publish rates once a year, or to incorporate rates in regulation so as to eliminate the need for periodic publication); (3) remove the regulatory authority for the VIP program (the two options to this alternative are to eliminate the program at the FMP-level as well as eliminate it in regulations, and to simply eliminate it in regulations). All alternatives were compared to a baseline of no program, no enforcement or other

program activity, no notices of VIP rates, and no regulatory or FMP changes.

The analysis described the following tradeoffs among these alternatives:

- None of these alternatives are expected to have a significant impact on prohibited species protection. The prohibited species are protected by the overall caps or limits on PSC. These would not be affected by changes to the VIP program.
- The “no-action” and “alternative notice schedules” alternatives would require a renewal of the enforcement effort. If this effort were successful, and the VIP rates slowed down groundfish fishing, groundfish fishermen in certain fisheries might enjoy longer seasons and higher harvests and revenues. Compliance with the VIP rates and the longer seasons would increase fishing costs, reducing the benefits somewhat. Two of the fisheries that might benefit are the yellowfin sole and rock sole fisheries in the BSAI. Since the BSAI groundfish fishery TACs are currently equal to the BSAI optimal yield (OY) of two million metric tons, increases in yellowfin sole and rock sole TACs and catches might require the Council to reduce TACs for other species.
- The “no action” and “alternative notice schedules” alternatives would require an increased commitment of observer program, NOAA Enforcement, and NOAA General Counsel resources. The paper reported a partially monetized value for these of \$300 to \$450 thousand per year. If additional budget resources were not forthcoming for this program, other activities of these agencies would have to be cut back.
- The “no action” and “alternative notice schedules” alternatives would require rulemaking to either put the standard rates in regulations, or to publish the rates once or twice a year. The “eliminate VIP alternative” options would require a one-time change to the FMP and/or a change in regulations.

D-14
Ben Musey
presentation

Vessel Incentive Program (VIP) Discussion Paper

October 2003 NPFMC Meetings
Anchorage, Alaska

The issue:

- PSCs led to closures of valuable groundfish fisheries in late 1980s and early 1990s.
- Fishermen were harvesting the available PSC caps too fast
- Vessel Incentive Program (VIP) was designed to address this problem

Outline:

- The issue
- The alternatives
- The tradeoffs

The issue:

- VIP became effective in 1991
- Required individual groundfish trawl operations to comply with standard PSC harvest rates for halibut and red king crab
- Rates were to be published semi-annually by NMFS - AKR

The issue

The issue:

- Program has had problems for many years
- Relatively few violations have been prosecuted
- In two instances defendants prolonged their cases for many years

The issue:

- Current enforcement and prosecution efforts provide little deterrent to violators
- Program believed to have encouraged fishermen to pre-sort and attempt to corrupt observers

Council's June Action

- At the June 2003 Council meeting
- The Council was briefed on the situation
- And voted to initiate an amendment to repeal the VIP, given the concerns about program effectiveness and potential for increased administrative burden

The issue:

- In the past, publication of standard rates was expedited by use of a "good cause" exemption
- NOAA GC has raised concerns about the adequacy of the waiver used by NMFS to waive "notice and comment" under the good cause exemption

Discussion paper

- NMFS - AKR has prepared a discussion paper
- Outlining the history of the program and what is known of its effectiveness
- Describing possible action alternatives
- Review of tradeoffs among alternatives

The issue:

- NMFS is now looking at a significant rulemaking exercise to implement standard rates twice a year
- Council will have to take them up earlier in the annual cycle
- NMFS unable to comply with publication requirement in the second half of 2003

In order to pursue this action:

- The Council now needs to provide NMFS with guidance about the alternatives it would like analyzed
- NMFS can then prepare an EA/RIR/IRFA

The alternatives

Alternative 3

- Change the FMP and/or regulations to eliminate the VIP program
- There are two options
 - Eliminate the VIP program by amending the BSAI and GOA FMPs as well as writing it out of regulations
 - Write it out of regulations

Alternative 1

- No action
- No action to change VIP program
- Either at the FMP or at the regulatory level
- The alternative entails a renewed commitment to VIP in management and enforcement

The tradeoffs

Alternative 2

- Change regulations to reduce frequency of publication of VIP rates
- There are two options to this alternative:
 - Annual publication of VIP rates
 - Writing VIP rates into regulations

Prohibited Species

- VIP only applies to halibut and red king crab PSC
- Prohibited species are protected from overharvest by groundfish fishermen by the PSC caps
- None of the alternatives is expected to have an impact on prohibited species

Groundfish targets

- Yellowfin sole and rock sole fisheries in BSAI and deep and shallow water flats in the GOA most likely to be affected
- Alts 1 and 2 renew enforcement. If enforcement is effective and PSC rates decline, these fisheries may have longer fishing and higher revenues

Fishery management

- Alt 1 implies two notice and comment rulemakings a year.
- Alt 2 requires a change to regulations
- Alt 2, Option 1 implies one notice and comment rulemaking a year
- Alt 2, Option 2 implies one notice and comment rulemaking with others as necessary
- Alt 3 implies an FMP amendment and/or a rulemaking, and no subsequent actions

Groundfish targets

- Increased fishing effort and changes in fishing to stay within standard rates imply higher fishing costs
- Yellowfin sole and rock sole harvest increases will depend on Council specifications decisions. BSAI is currently harvesting at OY, so increases for these species imply harvest reductions for other species

Sources:

- Muse, Ben. "Vessel Incentive Program (VIP) Discussion Paper." National Marine Fisheries Service, Alaska Region. Juneau: September 2003.

Management and enforcement

- Alts 1 and 2 imply increased enforcement levels; Alt 3 does not
- Increased enforcement requires additional funding, or reallocation of funds from other activities
- Partially monetized estimate of costs range from about \$300K to about \$450K

For more information:

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