

Agenda #19, June 1979

North Pacific Fishery Management Council

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APPENDIX E

MEMORANDUM

DATE: June 6, 1979

TO: Council Members, Scientific & Statistical Committee and
Advisory Panel

FROM: Jim H. Branson, Executive Director 

SUBJECT: Limited Entry Workgroup

The Limited Entry Workgroup appointed by the Council at its May meeting met at 9:45 a.m. on June 4th in the NMFS conference room in Juneau. Attendees were June Baker, CFEC; Bob Simon, CFEC; Lt. Cmdr. Doug Smith, U.S. Coast Guard; Bruce Hart, Extended Jurisdiction, ADF&G; Don Collinsworth, ADF&G; Mike Stanley and Kim White, NOAA/NMFS; and Jim H. Branson, NPFMC (Chairman).

The meeting started with a general discussion of the objectives of the Workgroup, priorities it might establish to achieve those objectives and the product expected from the group. It was generally considered desirable to develop an approach to limited entry systems, recommendations for machinery to administer such systems and recommendations for the establishment of adjudicatory machinery to review disputes. Various methods were discussed for doing this and included such things as contracting with the Alaska Commercial Fishery Entry Commission for some of the developmental and administrative work, a new branch or additional positions within NMFS to administer limited entry and the possibility of some of it being done by the North Pacific Fishery Management Council.

It was generally agreed that any limited entry system developed for salmon by the Council would, of necessity, have to follow the pattern already set by the State of Alaska for that fishery. The group felt that limited entry in any other fishery where limited entry has not been established by the State need not follow that pattern and that all possible approaches should be considered if controlled access is deemed desirable for a specific fishery or fisheries.

The Working Group set as its priorities for this meeting; first, recommendations for a Council instituted, federally administered limited entry system for the hand and power troll fishery off Alaska under the current FMP; second, a limited entry system for the comprehensive salmon FMP expected to be implemented in 1980; and third, limited entry in other fisheries including shellfish, groundfish, etc.

On the first priority item, immediate action on the hand troll and power troll fishery for salmon, the group considered two elements. One was

the partial disapproval of the FMP on salmon by the Secretary of Commerce that eliminated the ban on handtrolling in the FCZ recommended by the Council. The other was the Secretary's concept of the Council's recommendation to adopt the Alaska Limited Entry System for the power troll fishery as a one-year moratorium on entry into that fishery rather than adoption of the system itself. In response to the elimination of the ban on handtrolling, the group makes the following recommendations.

1. Continue to press the Secretary of Commerce to approve the ban on handtrolling in the FCZ. Develop stronger justification for the ban to accompany the Council's request.
2. Encourage the State of Alaska to continue with its present enforcement program on handtrolling in the FCZ and between the surfline and the boundaries of the Territorial Sea, expecting that program will control virtually all of the handtrollers that could be expected to fish off Alaska in 1979.
3. Defer any Council action on limited entry for a handtroll fishery in the Fishery Conservation Zone until the development of the comprehensive salmon management plan. The group felt that a federal limited entry system for handtrollers at this time would tend to lock the Council into that position in the future, negate the State's closure between the surfline and the outer State boundaries and might not mesh with later action taken by the State to develop a limited entry system for handtrollers in all Alaskan waters.
4. In the event that the State enforcement program fails on the handtroll issue in the FCZ the group foresees two possible courses of action:
 - a. Do nothing in hopes that an influx of handtrollers will not result and that no resource damage will be done.
 - b. Cut fishing time by emergency order for all trollers in the FCZ, if a resource problem appears to be developing making those time restrictions proportional to the extra effort exerted by handtrollers in the FCZ. Those offshore closures need not be for all of the FCZ between Dixon Entrance and Cape Suckling but might be instituted for specific statistical areas as defined in the Fishery Management Plan.

The second area for discussion, the comprehensive salmon FMP, was discussed by the group on the basis of its primary objective for the troll fishery - to control effort at or below the status quo in 1975 - 1977. The group recommended the following action which closely parallels the action recommended for priority one:

1. Continue to press for a ban on handtrolling in the FCZ, strengthening the arguments previously used in the FMP. With a comprehensive salmon management plan it was the feeling of the group that banning handtrolling in the FCZ was not as discriminatory as perceived by the Secretary under the existing FMP since handtrollers would still have a large area inside southeastern Alaska to exercise their trade.
2. The comprehensive salmon FMP should be written so that regulations could be promulgated on a timely basis to control fishing time in proportion to increases in effort. Similar in concept to number 4.b. discussed under priority one the FMP itself would contain a formula to apportion fishing time in relation to effort in the FCZ (and possibly in State waters) by both hand and power trollers.

The Working group then considered how the State and Federal limited entry systems could be meshed to handle the recommendations in both the previous discussion areas. It was recognized that the Federal government needed the ability to review and possibly override State decisions on disputed permits and transfers. Assuming the same system envisioned in the current FMP, that is, holders of State of Alaska limited entry permits for the power troll fishery would automatically be considered to hold Federal limited entry permits for that fishery and that the criteria developed by the Commercial Fishery Entry Commission to award those permits is satisfactory to the Secretary of Commerce, some system is needed for Federal review of the decisions made by the State Hearing Officers. That review should extend not only to approval/disapproval of interim permits, but on transfers and emergency transfers of permits that might be refused by the State.

Criteria, based probably on that used by the State, should be developed for a Federal Hearing Officer for all classes of review.

Another concept, which will be explored by Mike Stanley/Kim White, is the possibility of a Memo of Understanding between the State of Alaska and the Department of Commerce that would allow the State Commercial Fishery Entry Commission and its Hearing Officers to make judgments on disputed permits and permit transfers, based on federally accepted criteria, that would not have to be reviewed by a Federal official.

It was recognized that a Federal official might do a review of all decisions made by the State system in issuing, transferring, refusing, or revoking permits. If the Federal official concurred with the State decision, the applicant would have a Federal permit allowing the same privileges as the State limited entry permit, that is, it would be transferable and good in the FCZ as well as State waters. If the Federal reviewing official did not concur with the State decision for denial or revocation, the individual would then be issued a nontransferable Federal permit good only in the CFZ, using the same system and criteria as developed in the current FMP for Washington and Oregon boats who have

fished in the FCZ but have never held Alaska limited entry permits. The group recognized four categories where Federal review would have to be provided if the function cannot be delegated to the State under contract:

1. Denial of transfer of a permit;
2. Denial of a permanent limited entry permit, i.e., revocation of an interim permit (there are 42 in the power troll fishery).
3. Denial of an emergency transfer of a permit; and
4. Any revocation of a permit by the State.

The Working group recommended developing criteria for revoking a Federal limited entry permit for cause and a system of doing so. They suggest that at least two actions should be cause for revocation:

1. Falsification of an application
2. Aggravated or repeated violations of Fishery Conservation laws.

The Working group recognized that there is still a problem with the State confidentiality restrictions on release of fish tickets and other data needed for a Federal Hearing Officer to make a judgment on a permit case. It is hoped that problem will be eliminated by amending the State confidentiality legislation during the next session of the Legislature. In the meantime it is probable that any applicant for a limited entry permit or transfer who has been denied a permit by the State of Alaska would be willing to voluntarily give confidential information to a Federal Hearing Officer for review.

The Working group concluded the session with a discussion of limited entry in general as it may be needed or used in other fishery management plans developed or being developed by the Council. They recognized the need to develop better objectives for all FMP's so that the need for access control in the fishery could be more clearly identified. The group will meet again, probably in July, to begin work on consideration of limited entry for each management plan or fisheries complex and develop a recommendation for a basic approach to a discussion of limited entry in each FMP. They recognized that there are many different forms of controlled access and that not all of them require restrictions on individual fishermen.

cc: Working Group