

## Federal Halibut Subsistence Regulations

### **A Discussion of Issues Pertinent to Drafting Proposed Regulations Implementing the Halibut Subsistence Policy Adopted by the North Pacific Fishery Management Council**

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The North Pacific Fishery Management Council (Council) adopted a policy proposal for halibut subsistence management measures on October 7, 2000 (Council action). If approved by the Secretary of Commerce (Secretary), these management measures would be implemented by Federal regulations. As stated in the Council action, the purpose of subsistence halibut regulations is

*...to allow the continued practice of long-term customary and traditional practices of fishing halibut for food for families in a non-commercial manner for non-economic consumption.*

The purpose of this paper is to review issues pertinent to the development of regulations that would implement the Council's proposed subsistence policy. Some direction or clarification of the Council's intent would be helpful to staff with respect to certain implementation details.

#### Background

Subsistence fishing and hunting is well known in Alaska as a customary and traditional practice of Alaska Natives and non-Natives especially in rural areas with limited alternative food resources. As a means of survival long before the present, subsistence is inextricably woven into the cultural fabric of Alaska Natives and the rural lifestyle. The current regulatory regime which governs fishing for Pacific halibut in and off of Alaska, however, currently does not recognize the harvesting of halibut for subsistence purposes.

Management of the Pacific halibut fishery in and off of Alaska is based on an international agreement between Canada and the United States—the "Convention between United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea," signed at Ottawa, Canada on March 2, 1953, and amended by the "Protocol Amending the Convention," signed at Washington, D.C., March 29, 1979. This Convention, administered by the International Pacific Halibut Commission (IPHC), is given effect in the United States by the Northern Pacific Halibut Act of 1982 (Halibut Act). Generally, fishery

management regulations governing the halibut fisheries are developed by the IPHC and recommended to the U.S. Secretary of State. When approved, these regulations are published by NMFS in the *Federal Register* as annual management measures. For 2001, the annual management measures were published March 21, 2001 at 66 FR 15801.

The Halibut Act also provides for the Council to develop halibut fishery regulations, including limited access regulations, in its geographic area of concern that would apply to nationals or vessels of the U.S. (Halibut Act section 773(c)). Such an action by the Council is limited only to those regulations that (a) are in addition to and not in conflict with IPHC regulations, (b) must be approved and implemented by the Secretary and (c) any allocation of fishing privileges must be fair and equitable and consistent with other applicable Federal law. This is the authority under which the Council acted in October 2000, to adopt a halibut subsistence policy.

The Council does not have a "fishery management plan" (FMP) as that term is used under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Hence, halibut fishery management rules developed by the Council do not follow the FMP or FMP amendment procedures set out in the Magnuson-Stevens Act. Instead, a regulatory amendment process is followed. This process requires submission of the Council action to the Secretary together with a draft proposed rule notice for publication in the *Federal Register* and supporting analyses as required by other applicable law.

For purposes of this discussion, Council action is the text of its motion dated October 7, 2000 (published in the Council's October 2000 newsletter, and attached), and the draft supporting analysis dated February 2, 2001. The draft proposed rule currently is under development in the Alaska Region, NMFS. When complete, it will be sent to Council staff for review and formal submission to the Secretary. After review in NMFS and NOAA central offices, proposed rules will be published in the *Federal Register* for additional public comment. If approved by the Secretary after further review and consideration of public comments, final implementing rules would be published in the *Federal Register*. The preamble to the final rules would respond to any public comments received on the proposed rules. The final implementing rules likely would be codified in the Code of Federal Regulations (CFR) at 50 CFR § 300.63 along with the Council's catch sharing plan for IPHC Area 4, the local area management plan (LAMP) for Sitka Sound, and Sitka Pinnacles Marine Reserve prohibitions. Other halibut fishery regulations (e.g. for individual fishing quota (IFQ) and community development quota (CDQ) programs) appear at 50 CFR part 679, and in the annual management measures.

#### Defining "Subsistence"

If approved and implemented as proposed, the Council action would provide for and recognize a third form of halibut fishing—subsistence fishing—in addition to the commercial fishing and sport fishing currently recognized in the IPHC regulations. Hence, defining halibut subsistence fishing is at the heart of the Council action. To achieve its purpose, the definition must allow for the customary and traditional practice of halibut fishing while clearly distinguishing subsistence

fishing from commercial fishing and sport fishing. The Council action defined subsistence as *the non-commercial, long-term, customary and traditional use of halibut.*

The same text would be used in the proposed implementing rules. This definition raises no ambiguity that needs clarification. Other definitions and other regulatory text will be needed, however, to make the subsistence definition fully effective.

#### Other Definitions

Several other terms that were not explicitly addressed by the Council should be defined in the proposed regulations. These include "Alaska Native tribe," "rural," "rural resident," and "subsistence halibut."

"Alaska Native tribe" would be defined for purposes of the proposed regulations as a Federally recognized Native tribe of Alaska that has a customary and traditional use of halibut and that is named in a table or listing of such tribes that would be included in the rule text. This definition should make separate definitions for "rural Alaska Native tribe" and "urban Alaska Native tribe" unnecessary and would simplify the eligibility rule. The table referred to in this definition would be derived from the Table 5.18 in the draft analysis dated February 2, 2001, prepared by the Council staff for NMFS review. This table has been simplified to indicate the organized tribal entity, the place where it maintains its tribal headquarters, and the IPHC regulatory area in which the place is located. The table is attached to this paper as Table 2. By including this table in the regulatory text, a regulatory amendment initiated by the Council would be required to add or delete a listed Alaska Native tribe.

"Rural" would be defined for purposes of the proposed regulations to mean a community or area of Alaska in which the non-commercial, customary and traditional use of fish and game for personal or family consumption is a principal characteristic of the economy or area and in which there is a customary and traditional use of halibut, and that is named in another table that would be included in the rule. This definition would be consistent with the current definition used in State of Alaska (State) regulations at AS 16.05.940(26). The table would be the same table referred to in the Council action (i.e., Table 5.4 in the draft analysis dated February 2, 2001, prepared by the Council staff for NMFS review). This table also has been simplified to indicate the rural community and the IPHC regulatory area in which it exists, and is attached as Table 1. Similar to the table of Alaska Native tribes, including this table of rural communities with customary and traditional uses of halibut in the regulatory text sharply distinguishes these communities from all others. Also, adding or deleting a rural community would require a regulatory amendment. This requirement would be consistent with the intent expressed in the Council action that the "...list of eligible rural communities can only be changed by Council action."

"Rural resident" would be defined to mean a person domiciled in a rural community who has maintained a domicile in Alaska for the 12 consecutive months immediately preceding the time

when the assertion of residence is made, and who is not claiming residency in another state, territory, or country. This definition would be consistent with the current definition used in State regulations at AS 16.05.940(26), and also captures the meaning of "resident" as that term is used by the U.S. Fish and Wildlife Service for subsistence purposes. The Council action referred to "Alaska rural residents" as defined by the Alaska Native Interest Lands Conservation Act (ANILCA). However, ANILCA does not directly define "Alaska rural resident."

The definitions for two other existing terms likely will need to be revised. These are the terms "commercial fishing" and "IFQ halibut." The current definition of "commercial fishing" in the IPHC regulations or annual management measures reads as follows:

*Commercial fishing means fishing, the resulting catch of which is sold or bartered; or is intended to be sold or bartered.*

At 50 CFR 300.61, commercial fishing is defined similarly as follows:

*Commercial fishing means fishing, the resulting catch of which either is, or is intended to be, sold or bartered.*

In both cases, the phrase "sold or bartered" is used to characterize commercial fishing. The non-commercial sale and barter, however, are recognized in the Council action as acceptable in the customary and traditional distribution of subsistence halibut. Revising the existing definition in the halibut regulations would distinguish "commercial fishing" from "subsistence fishing." Without this distinction, a bartered halibut could be either harvested as commercial or subsistence. The existing State definition (at AS 16.05.940(5)) of "commercial fishing" also includes the terms "barter" and "trade." Moreover, the State definition assumes commercial fishing if commercial fishing gear is used and the fisherman does not have a valid subsistence permit. Participation in the commercial halibut fishery is controlled by the IFQ Program which requires a fisherman to hold IFQ for the halibut he possesses; no assumption of commercial fishing for halibut is needed. A simpler definition of "commercial fishing" may be one modeled on the current definition in the IPHC or Federal regulations but that clearly states that subsistence fishing or subsistence halibut is not included.

A similar issue is raised by the existing definition of "IFQ halibut" at 50 CFR section 679.2. Currently, this definition reads:

*IFQ halibut means any halibut that is harvested with fixed gear in any IFQ regulatory area.*

Obviously, subsistence halibut also could be harvested with fixed gear in an IFQ regulatory area (i.e., an IPHC regulatory area off Alaska) but not be IFQ halibut for which valid IFQ is required. Again, a distinction needs to be made in the official definitions of these terms between "IFQ halibut" and "subsistence halibut." This could be done by revising the existing definition for "IFQ halibut" to link it to "commercial fishing" and defining "subsistence halibut" in terms of the definition of "subsistence." Although halibut harvested under the CDQ Program also is commercially harvested, no comparable definition of CDQ halibut exists.

## Subsistence Halibut Eligibility

The eligibility criteria specifies *who* may have halibut subsistence fishing privileges, without which a person would be either commercial fishing, which requires an IFQ or CDQ permit, or sport fishing, which requires a sport fishing license and limits the person to no more than two hooks and a two fish daily bag limit (IPHC rules sec. 23). The Council action basically specified three groups as eligible to fish for subsistence halibut:

- (a) Alaska rural residents as defined in ANILCA and listed in Alaska Rural Places in Areas with Subsistence Halibut Uses (Table 5.4 in the analysis; Table 1 attached).
- (b) All identified members of Alaska Federally recognized Native tribes in rural areas with a finding of customary and traditional use of halibut who move to or have moved to an urban area; and
- (c) All members of Alaska Federally recognized Native tribes with a finding of customary and traditional use of halibut that live in an area that has become or in the future becomes urban (Table 5.18 in the analysis; Table 2 attached).

The Council action also mixes eligibility criteria with what areas (i.e., where) eligible persons can do subsistence halibut fishing. The draft regulatory text could simplify these categories by focusing first on the eligibility criteria (the *who* question) and stipulating the *where* limitations in subsequent paragraphs. Relying on the previously defined term "Alaska Native tribe" allows further simplification of the eligibility criteria because the only distinction the Council action makes relates to where an Alaska Native tribal member may do subsistence fishing. Again, this *where* question is answered in subsequent rule paragraphs that set out limitations on subsistence fishing. Consequently, the eligibility rule could be drafted to read as follows:

*No person shall engage in fishing for subsistence halibut unless that person (a) is a rural resident of a community with customary and traditional uses of halibut named in Table 1, or (b) is a member of an Alaska Native tribe with customary and traditional uses of halibut named in Table 2.*

Recall that Tables 1 and 2 would be included in the text of the implementing rules primarily for definition and eligibility purposes. This would simplify implementation in practice by limiting eligible persons to those who are rural residents (as defined above) of a community listed in Table 1 or a member of a Federally recognized Native tribe listed in Table 2. Further, monitoring and enforcement of this eligibility standard could be facilitated by issuing halibut subsistence permits to eligible persons. Issuance of such subsistence permits could be done through a cooperative agreement with the affected tribal governments or a tribal government liaison organization (as contemplated in the Council action at Option 6). If permits are required, then the regulatory text describing eligibility also would include a requirement to hold a valid subsistence halibut fishing permit.

## Limitations

After defining eligibility for the subsistence halibut privilege and the meaning of subsistence (the two critical *who* and *what* issues), the proposed implementing regulations would proceed to stipulate the limitations or constraints on subsistence halibut fishing (the *when*, *where*, and *how* issues).

*Oil* *When.* The Council action is silent on an authorized season for subsistence halibut fishing. For rule drafting purposes, this would be interpreted as the Council intending to allow year-round subsistence halibut fishing. For comparison, the IPHC determines the commercial halibut fishing season off Alaska which, since 1995, has been eight months specified as March 15 through November 15 (IPHC rules, sec. 8). The IPHC also specifies an 11-month sport fishing season for halibut off Alaska of February 1 through December 31 (IPHC rules, sec. 23).

*Where.* The Council action is specific with regard to where some eligible persons may conduct subsistence halibut fishing but not specific with regard to where others may do so. Of the three groups of eligible persons identified by the Council and listed in the eligibility discussion above, one group is specifically allowed to "...exercise their halibut subsistence rights anywhere in a designated rural area.," another group is limited to its "area of tribal membership," and no allowances or limits are expressed for the third group. However, based on this language, eligibility limitation to "rural residents," and references to ANILCA, the Council appears to have intended for subsistence halibut fishing to be limited only to rural areas and not to urban or non-rural areas.

If this interpretation of the Council action is correct, then the implementing rules would have to define rural and non-rural areas within the eight IPHC regulatory areas adjacent to Alaska. Other agencies have made such definitions that may serve as a guide. For example, the Federal Subsistence Board (FSB) generally has defined all communities and areas in Alaska as rural except Adak, Anchorage, Fairbanks, Juneau, Ketchikan, Valdez, and Wasilla (for subsistence halibut purposes, Fairbanks and Wasilla need not be considered). The FSB, however, has not yet identified non-rural waters. The State also has defined four areas (not including Fairbanks) as non-subsistence areas (5 AAC 99.015). These include Ketchikan, Juneau, Anchorage-Matsu-Kenai, and Valdez (definitions attached).

*Oil* Adoption of the existing definitions for non-rural or non-subsistence areas would improve consistency between the Council's proposed subsistence halibut rules and other rules and aid public understanding of areas in which subsistence halibut fishing may or may not occur. Using the State's definitions appears to be a better fit with the intent of the proposed subsistence halibut policy than the FSB's definition because the FSB definition does not include water areas where halibut fishing occurs. Also, the Council rejected the FSB definition because it includes the Kenai Peninsula as rural and Adak as a non-rural community. Therefore, the draft proposed rule would presume that the non-subsistence areas currently defined by the State satisfy the Council's intent regarding the distinction of rural and non-rural (i.e., urban or non-subsistence) areas

As already noted, the Council specified the area of permissible subsistence fishing differently for all three groups that would be eligible to conduct subsistence halibut fishing. This is illustrated in the following table.

<b>Group Eligible for Subsistence Halibut Fishing</b>	<b>Area Specified by Council in Which Subsistence Halibut Fishing May be Conducted</b>
Alaska rural residents as defined in ANILCA and listed in Alaska Rural Places in Areas with Subsistence Halibut Uses (Table 5.4 in the analysis; Table 1 attached)	Not specified in Council action.
All identified members of Alaska Federally recognized Native tribes in rural areas with a finding of customary and traditional use of halibut who move to or have moved to an urban area	Area of tribal membership.
All members of Alaska Federally recognized Native tribes with a finding of customary and traditional use of halibut that live in an area that has become or in the future becomes urban (Table 5.18 in the analysis; Table 2 attached)	Anywhere in a designated rural area.

Before discussing the implementation of area-specific eligibility, several terms would be clarified in the proposed rules.

- For regulatory and administrative simplicity, the phrase “area of tribal membership” would be interpreted to mean the IPHC regulatory area in which an Alaska Native tribe (as defined above) is located, i.e., the place of its tribal headquarters as listed in Table 2 (attached).
- The phrase “anywhere in a designated rural area” would be interpreted to mean “in any rural area” or in any IPHC area not specified as a non-subsistence area.
- The phrase “has become or in the future becomes urban” would be interpreted to mean all Alaska Native tribes with tribal headquarters (as listed in Table 2) located in a non-subsistence or non-rural area.

This construction of authorized area of subsistence halibut fishing by an eligible person appears to be based on two conditions which can be posed as questions. First, is the place of residence of a qualified subsistence halibut fisher rural? If yes, then the person, regardless of Alaska Native tribal membership, would be able to conduct subsistence halibut fishing in the IPHC regulatory area in which his or her community was located (as listed in Table 1). If the answer to the first question is no, then the second question becomes is the person a member of an Alaska Native tribe (as defined above) that is located in either a rural or non-rural area. For each possibility, the

person may be a resident of a rural or non-rural area. This creates at least five combinations of outcomes or events as described in the following table.

If you are a,	then you may conduct subsistence halibut fishing in rural areas of
1. resident of a rural community listed in Table 1, regardless of Alaska Native tribal membership,	Any <sup>un</sup> the IPHC regulatory area in which your rural community is located as listed in Table 1.
2. Alaska Native tribal member and (a) your tribe is located in a rural area and (b) you reside in the same rural area, or a different rural area,	the IPHC regulatory area in which your rural community is located as listed in Table 1 <u>or</u> tribal entity is located as listed in Table 2.
3. Alaska Native tribal member and (a) your tribe is located in a rural area but (b) you reside in an urban area,	the IPHC regulatory area, as listed in Table 2, where the tribal entity of which you are a member is located.
4. Alaska Native tribal member and (a) your tribe is located in an urban area and (b) you reside in the same urban area, or a different urban area,	any IPHC regulatory area off Alaska.
5. Alaska Native tribal member and (a) your tribe is located in an urban area but (b) you reside in a rural area,	any IPHC regulatory area off Alaska, <u>or</u> the IPHC regulatory area in which your rural community is located as listed in Table 1.

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Note that a person could be eligible to fish for subsistence halibut in more than one area under different circumstances. In the most liberal case, event 4 in the above table, a member of an Alaska Native tribe theoretically could fish for subsistence halibut in any of the eight IPHC regulatory areas off Alaska. A subsistence fisher would more likely do subsistence halibut fishing near his or her home community or family, however. The liberal “any area” provision of event 4 also would apply to a member of an Alaska Native tribe located in an urban area even if the tribal member resides in a different urban area. The alternative of returning to the area of tribal membership, as in event 3, would not be possible because that area itself would be an urban, non-rural or non-subsistence area. A question may be raised, however, about what area rule would apply to a member of an Alaska Native tribe who resides outside of Alaska. Unless otherwise clarified by the Council, the proposed rules would treat such a tribal member as residing in an “urban” area. In this case, such a person could fish for subsistence halibut either (a) only in the area of his or her tribal membership under event 3, or (b) any area under event 4. This would be consistent (for purposes of this discussion) with the “tribal rule” apparent in the Council action. The “tribal rule” maintains that a member of an Alaska Native tribe is eligible to conduct subsistence halibut fishing in at least one area off Alaska, regardless of where he or she resides.



Finally, the application of a "rural rule" (again apparent from the Council action) could effect eligibility to fish for subsistence halibut in multiple areas. The "rural rule" refers to event 1 which applies regardless of membership in an Alaska Native tribe. Hence, a subsistence halibut fisher who is eligible because he or she is a rural resident and a member of an Alaska Native tribe would be able to do such fishing either (a) in the area of his or her rural community, or (b) in the area of his or her tribal membership, or (c) in any area if his or her tribe is in an urban area.

This raises a question of whether the proposed subsistence regulations should distinguish between Alaska Native rural residents and non-Native rural residents when they relocate their residences to a rural community in the State but not listed in Table 1. The answer suggested here is "yes." This is because an Alaska Native tribal member who also resides in a rural community listed in Table 1 would have two reasons for being eligible to fish for subsistence halibut: (i) she is an member of an Alaska Federally recognized tribe (listed in Table 2) with a customary and traditional use of halibut, and (ii) she is a resident of an Alaska rural community (listed in Table 1) with a customary and traditional use of halibut. If that Alaska Native tribal member were to relocate her residence to an unlisted rural community, then she would lose her rural status but would not lose her Native status. The "tribal rule" would continue to apply although the "rural rule" does not. On the other hand, a non-Native resident of a rural community listed in Table 1 would have only one reason for being eligible to fish for subsistence halibut: he is a resident of an Alaska rural community (listed in Table 1) with a customary and traditional use of halibut. If he were to relocate to an unlisted rural community, then he would lose his rural status and would have no other basis for subsistence halibut eligibility. Although this question pertains to basic subsistence halibut eligibility, with respect to Alaska Native tribal members, it also would affect the area in which they could exercise their subsistence halibut fishing privilege.

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*How.* Limitations on how fishing is conducted suggest constraints on types and quantities of fishing gear that may be used. A corollary issue here, however, is how much fish may be harvested. Beginning with this latter issue first, the Council's action specified a daily bag limit of no more than 20 halibut, except that no limit would apply in IPHC regulatory areas 4C, 4E and in Savoonga and Gambell. The proposed rule would likely simplify this exception to apply to IPHC regulatory areas 4C, 4D, and 4E because Savoonga and Gambell are the only communities in Area 4D. The apparent reason for this exception is that the natural constraints on fishing imposed by narrow opportunities of good weather in these areas would require the harvest of as much subsistence halibut as needed for a community in a relatively short time. To impose the daily bag limit in addition to the natural constraints imposed by the climate of these areas would run counter to the purpose of the Council's action of making legal the customary and traditional harvest of halibut.

By comparison with other catch or retention limits in State and Federal regulations for other types of fisheries, no seasonal or annual catch limits or possession limits would apply to subsistence halibut harvests. In addition, the recommended daily bag limit is presumed to apply to each subsistence halibut fisher individually. Hence, two subsistence fishers together could retain up to 40 halibut per day; three fishers up to 60 halibut per day; and so on. Although this

subsistence daily catch limit may appear exceedingly liberal by comparison to the current sport catch limit in Alaska of two fish per day and four in possession (IPHC rules sections 23(2)(b) and 23(7)), it has the advantage of obviating the need for proxy fishing permits which would add administrative complexity for the fisher and government alike. Moreover, subsistence harvests would be naturally limited by the food needs of the communities being served by the subsistence halibut fishery. The Council has been informed that subsistence fishers would not likely take more than they need to provide food for their families and friends especially in light of a prohibition on the commercial sale of subsistence halibut (discussed below). Hence, the Council's objective to make legitimate the customary and traditional harvest of halibut for subsistence purposes would not be served by a highly constraining catch limit.

Also, the Council's daily catch limit language of "up to 20 halibut" would be interpreted to mean that a subsistence fisher could harvest less than that amount in a single day. In some localized areas, i.e., areas within and smaller than the IPHC regulatory areas, daily subsistence catch limits may need to be reduced, say to prevent localized depletion. Such a recommendation could be made and advanced through the Council's LAMP process or the Council could take action independently. In either case, such action would be implemented through subsequent Council action and regulatory amendments.

To some extent, the amount of subsistence halibut actually harvested each year also will be controlled by the types and amount of fishing gear that may be used in a subsistence halibut fishery. The Council action is recommending that:

*the legal gear for subsistence halibut fishing is set and hand-held gear of not more than 30 hooks, including longline, handline, and rod and reel, spear, jigging and hand-troll gear.*

This language generally is consistent with existing IPHC regulations, i.e., it would not authorize any gear types not already authorized under the IPHC regulations. The phrase, "of not more than 30 hooks," would be interpreted to mean that legitimate subsistence halibut fishing gear could have less than 30 hooks. Absent the "not more than" language, subsistence fishers would be required to use gear with 30 hooks—no more; no less. The Council could revisit the 30-hook limit (e.g., in the context of LAMPs) in a subsequent regulatory amendment if it appears more liberal than desired on a localized basis or if it is unreasonably constraining to the customary and traditional harvest of halibut up to the daily catch limit. The Council also may wish to revisit the 30-hook limit in connection with the exemption of IPHC regulatory areas 4C, 4D, and 4E from the 20-fish daily catch limit of subsistence halibut. Meanwhile, Council clarification of the purpose of the 30-hook limit in areas exempt from the daily catch limit would be helpful in drafting the proposed regulations.

*Why a gear limit in an area where you don't have a bag limit?*

### Prohibitions

The prohibitions section of the draft proposed regulations would be used to help enforcement of those activities that are specifically not allowed. This would involve some repetition of the

obvious requirements, for example, conducting subsistence halibut fishing without clear eligibility to do so, using more than 30 hooks, or within non-subsistence urban areas. The prohibitions section, however, also would be used to stipulate two important provisions in the Council action that has not yet been addressed in this discussion. These are the additional limitations on mixing of commercial and subsistence halibut, and on monetary exchange in the customary and traditional trade of subsistence halibut.

*Commingling commercial and subsistence halibut.* The basic rule would be that no subsistence halibut could be retained on a vessel at the same time as commercial halibut is being retained. A similar prohibition applies to the retention of commercial and sport halibut (50 CFR 679.7(f)). More precisely, this prohibition requires that sufficient IFQ or CDQ be held by persons on board a vessel to account for all of the commercial halibut on board the vessel. Hence, a fisherman who wished to take home for his personal use a halibut he caught while commercial fishing would have to have that halibut properly weighed and counted against his IFQ (or CDQ) regardless of his claim that he may have caught the fish for sport or (under the proposed rules) subsistence. Fishermen without IFQ or CDQ accounts would be presumed to be sport fishermen or (under the proposed rules) subsistence fishermen and therefore bound by the bag limits and gear limits that pertain to those fisheries.

An exception to this basic rule already exists, however, and would be expanded by implementing the Council action. This exception was previously adopted by the Council and implemented by the Secretary (at 50 CFR 300.63(c) and the IPHC at sec. (7) of the IPHC rules). It allows for the retention of halibut less than the minimum 32-inch legal size for commercial halibut for subsistence purposes along with commercially harvested halibut, but only in IPHC regulatory area 4E. The commercial catch limit in this area is allocated entirely to the CDQ fishery. Another condition on this exception is that it is due to expire on December 31, 2001. The Council action would extend this "short halibut" exception for subsistence purposes to IPHC regulatory area 4D (Council action text states "Savoonga and Gambell") and make it indefinite (i.e., remove the expiration date). The Council action also states: *IFQ AND CDQ?*

*Retention of halibut greater than 32 inches while commercial fishing is allowed statewide, with retentions reported and counted against an IFQ*

*Clarification:*

This part of the Council text raises some questions regarding the Council's intent. These are outlined as follows: *Subsistence fish NOT allowed on charter vessels. 200 CDQ! Can't hold CDQ*

- Current IFQ and CDQ program regulations already require the retention of legal-sized halibut (i.e., halibut 32 inches or more long for commercial purposes) if sufficient IFQ or CDQ exists on account of the fisherman who catches such fish. By not including the phrase "or CDQ" at the end of the quoted sentence above, the Council appears to suggest a change to current rules which could confound joint IFQ/CDQ fishing trips
- Because the commercial catch limit in area 4E is allocated entirely to the CDQ fishery, counting all legal-sized halibut against an IFQ in this area is impracticable

and would appear to obviate all CDQ fishing as no legal-sized halibut could be retained without being counted against an IFQ account.

- If the proposed rules were to presume that the Council intended the above quoted text to say “retention of *subsistence* halibut greater than...” (emphasis added), then only persons with IFQ would be able retain legal-sized halibut in conjunction with commercial fishing for their personal or subsistence use. Fisherman without IFQ but fishing under the CDQ program would not be able to exercise this option.

In addition to IPHC regulatory area 4E, CDQ allocations of halibut are made in areas 4B, 4C, and 4D. If prescribed in the implementing rules as written in the text of the Council action, a CDQ fisherman with no IFQ in IPHC regulatory areas 4C or 4B but who is a rural resident of one of these areas, for example, (a) could not retain any “short halibut,” and (b) could not retain any legal-sized halibut for subsistence purposes. His subsistence harvest of halibut would have to be taken entirely during a non-commercial fishing trip. On the other hand, another fisherman from the same rural village but who has IFQ would be able to retain a legal-sized halibut for his subsistence purposes while he is commercial fishing after counting the fish against his IFQ account. While the probability of this scenario happening is unknown, the Council should explain its intent for treating IFQ and CDQ fishermen in the same area differently. Without such rationale and for implementation simplicity, it is suggested here that the above quoted part of the Council action text be interpreted as including any commercial allocation—IFQ or CDQ. This would leave the only exception to the prohibition against commingling commercial and subsistence halibut as the current “short halibut” exception in area 4E and its proposed extension to area 4D.

Another commingling issue is whether subsistence halibut and sport halibut could be retained at the same time on the same vessel. Although the Council action was silent on this issue, the proposed rule would prohibit the commingling of subsistence and sport halibut. This issue arises because the legal gear for sport halibut—a single line with no more than two hooks or spear—also could be used for subsistence halibut. Because these gear types are inefficient for commercial fishing purposes, a fisherman using these gears and possessing more than the four-fish possession limit (IPHC rules sec. 23(7)) would be presumed to be subsistence fishing and have to have subsistence eligibility to do so. If not, that fisherman could be in violation of the sport fishing rules. The proposed prohibition also would prevent a fisherman found with 24 halibut in her possession from claiming 20 fish under the subsistence bag limit and 4 under the IPHC sport catch possession limit.

A related question is whether subsistence fishing for halibut could be conducted from a charter halibut vessel. Charter boats typically are used for sport halibut fishing. The proposed rule would prohibit subsistence halibut and sport halibut fishing at the same time regardless of the vessel type used. This would not prevent, however, the hiring of a charter vessel for subsistence purposes. For example, one or more eligible subsistence fishers could arrange with a charter vessel owner for the exclusive use of his vessel and guide services to set and retrieve subsistence halibut gear and retained catch.

*Customary and tradition<sup>al</sup> trade of subsistence halibut.* This is a critical provision of the Council action. While customary and tradition trade is necessary for the Council's stated purpose of allowing "...long-term customary and traditional practices of fishing halibut for ... non-commercial consumption," this provision also raises concern that subsistence halibut could find its way into commercial channels and thereby erode the market for halibut. On this point, the Council action is fairly clear: *Fix this.*

*Subsistence is defined as the non-commercial, long term, customary and traditional use of halibut (emphasis added).*

*No customary and traditional trade is allowed upon the premises of commercial buying operations.*

*Persons licensed to engage in fisheries businesses may not exchange, solicit to exchange, or receive for commercial purposes, subsistence-taken halibut.*

*No exchange of subsistence-caught halibut from a monetary exchange, trade, or barter is allowed to enter commerce at any point.*

Therefore, the proposed rule would be unequivocal in prohibiting subsistence halibut from entering commerce. An exception would be provided as stated in the Council action, however, for customary and traditional trade through monetary exchange to be limited to an annual maximum of \$400. Like all exceptions, this one blurs the otherwise bright line between commercial fishing and subsistence fishing for halibut. The exception is nevertheless an important one as some nominal monetary exchange, like the barter of fish for other foods and non-edible products, is inherent in the customary and traditional trade of fish in Alaska rural and Native cultures. A critical difference between an allowed monetary exchange of subsistence halibut and a sale of commercial halibut is the commercial intent of the fisher and buyer to make a profit.

Several questions about this prohibition should be raised and clarified if necessary. The first two questions pertain to the \$400 maximum annual limit on monetary exchange. The Council action appears to pertain only to the actual exchange of money and not the monetary value of goods and services that may be bartered. The Council action places no limit on the customary and traditional trade through non-monetary exchange. Although potentially unlikely, a subsistence fisher could receive substantially more than \$400 worth in non-monetary trade for subsistence halibut he delivers to members of his family and community. Unless otherwise clarified, the proposed rule will assume that no limit on the non-monetary trade of subsistence halibut is the Council's intent. Secondly, the Council action is silent on whether the \$400 limit on monetary exchange is intended to apply to each subsistence fisher or to some other unit, e.g., household. Due to its relatively nominal level—that it not conducive to fishing for profit—the proposed rule will assume that the annual monetary limit on exchange of subsistence halibut is to be applied on a per-person basis. The Council should clarify and correct this assumption if it is erroneous.

Finally, the Council action suggests that subsistence halibut should be prohibited from the premises of commercial fish buying operations and that licensed fish buyers may not trade for subsistence halibut. If this interpretation is correct, it would prevent two possible scenarios

which may occur now legally. The first is the handling and weighing of "short halibut" which may be retained for subsistence purposes in IPHC regulatory area 4C at the same place as the commercial CDQ halibut with which it is legally landed. The second is the prevention, for example, of an IFQ buyer in Kodiak from bartering or trading for subsistence halibut for non-commercial use. Unless otherwise clarified, the proposed rule would assume that the Council did not intend for its non-commercial trade provision to prevent these existing practices.

Three types of customary and traditional exchange of subsistence fish are apparent. These may be described as sharing, bartering, and customary and traditional trade, the latter of which may involve non-commercial monetary exchange defined by the Council as annual sales of \$400 or less. The proposed implementing rules would be designed to allow for all three of these types of exchange.

*ON* *Sitka Pinnacles Marine Reserve.* Although not addressed directly by in the Council action, the proposed rule would presume that the existing prohibition on halibut fishing in this 2.5 square nm area off Cape Edgecumbe, would apply also to subsistence halibut fishing.

### Implementation

Two principal implementation issues yet to be fully resolved are procedures for the permitting and reporting of subsistence halibut harvests. The Council action encourages cooperative agreements with Alaska Native tribal, State and other Federal government agencies. To that end, NMFS initiated contacts with these other agencies to start a dialog on possible permitting and reporting requirements for subsistence harvests. On May 2, 2001, the Administrator, Alaska Region, NMFS sent letters to the Alaska Native tribes listed in Table 2 that officially alerted them to the Council action and the Alaska Region's desire to consult with them on the development of the proposed rule. One informal meeting was held with tribal representatives on May 8, 2001, and more consultations are planned. Such consultations also are required by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, signed November 6, 2000 and published November 9, 2000 (65 FR 67249). In addition, NMFS Alaska Region staff held an interagency meeting on May 23, 2001, to discuss implementation aspects of the subsistence halibut implementing rules. About 25 persons representing 12 State and Federal agencies and the Council were participated in this meeting.

Generally, all involved in these discussions have been supportive of a collaborative and cooperative approach to implementing the Council action if it is approved by the Secretary. There is no question that several State and Federal agencies have more experience than NMFS Alaska Region in implementing subsistence hunting and fishing rules, and that duplication of expertise and systems would be inefficient. Ultimately, however, NMFS would be the agency primarily responsible for knowing who the subsistence halibut fishers are and how much they are harvesting on an annual basis.

For its stock assessment purposes, the IPHC staff likely will need to know at a minimum, how

much subsistence halibut (numbers of fish and size) are being harvested and from what IPHC regulatory areas. For other reasons, NMFS and the State may wish to know more about harvesting patterns, for example, seasonal variations in harvest and amounts relative to other subsistence food sources. Answering these obvious questions about subsistence halibut will no doubt first require resolution of funding sources for the collection of these data. As yet, no specific budget item is identified for funding a subsistence halibut data collection program. Clearly, the precision and accuracy of subsistence halibut harvest data will be directly related to the amount of agency budgets designated to collect these data. In developing the proposed rule, Alaska Region staff will continue to consult with tribal and agency governments to develop a system for collecting basic information about subsistence halibut harvests within existing agency budget priorities.

*Timing.* The Council action also requested the Alaska Board of Fisheries (Board) to provide recommendations on certain aspects of the halibut subsistence program. These aspects include (a) legal gear; (b) daily limits; (c) reporting requirements; (d) customary and traditional use areas of tribes and rural communities; and (e) non-rural area definitions for halibut fishing areas. The Council is scheduled to receive a report, in June 2001, from the Board on these items.

Preparation of the proposed implementing rules for the Council action presumes that subsequent action the Council may wish to take in response to Board recommendations would be implemented, if approved, by a subsequent regulatory amendment. Hence, Council action on Board recommendations during the remainder of 2001, would not necessarily affect the timing of a final rule implementing the proposed subsistence halibut provisions if the Council action is approved. Drafting and agency review of the proposed implementing rules will continue through the summer of 2001. The proposed rules could be published in the *Federal Register* during the latter part of the year which also would solicit additional public comment. Publication of final implementing rules, however, would depend on consultation with the IPHC over provisions that may be in conflict with the current IPHC regulations. The annual IPHC meeting normally is scheduled in January. Consultation with the IPHC at that time, and assuming no critical difficulties are found, likely would result in final implementing rules becoming effective in the early spring (March or April) of 2002.

Attachments:

- Council action
- Table 1
- Table 2
- State definitions of non-subsistence areas

## FINAL CORRECTED VERSION

### North Pacific Fishery Management Council Action on Halibut Subsistence Issues October 7, 2000

Adopt an alternative to allow the harvest of halibut for subsistence with the following options:

#### **Option 1: Define subsistence.**

Halibut subsistence regulations are needed to allow the continued practice of long-term customary and traditional practices of fishing halibut for food for families in a non-commercial manner for non-economic consumption. Subsistence is defined as the 'non-commercial, long-term, customary and traditional use of halibut.'

#### **Option 2: Define eligibility.**

Suboption B: Persons eligible to subsistence fish for halibut are: Alaska rural residents as defined in ANILCA\* and identified in the table 5.4 entitled "Alaska Rural Places in Areas with Subsistence Halibut Uses," and will also include other communities for which customary and traditional findings are developed in the future. The list specifically includes the communities of Adak, Diomedes, and Shismaref. This list of eligible rural communities can only be changed by Council action. The Council urges communities seeking eligibility to subsistence fish for halibut to pursue a 'customary and traditional' finding from the appropriate bodies before petitioning the Council.

Other persons eligible to subsistence fish for halibut are:

1. All identified members of Alaska Federally recognized native tribes in rural areas with a finding of customary and traditional use of halibut who move to or have moved to an urban area are allowed to return to their area of tribal membership and exercise their subsistence rights for halibut fishing.
2. All members of Alaska Federally recognized native tribes with a finding of customary and traditional use of halibut that live in an area that has become or in the future becomes urban shall be allowed to exercise their halibut subsistence rights anywhere in a designated rural area within the state of Alaska.

\*Under federal law in ANILCA, subsistence uses are identified as customary and traditional uses of fish and game by rural Alaska residents.

#### **Option 3: Define legal gear.**

Suboptions A and B. The legal gear for subsistence halibut fishing is set and hand-held gear of not more than 30 hooks, including longline, handline, rod and reel, spear, jigging and hand-troll gear.

Suboption D. Retention of subsistence halibut less than 32" (shorts) while commercial fishing is allowed only in Regulatory Area 4E (and Savoonga and Gambell). Retention of halibut greater than 32" while commercial fishing is allowed statewide, with retentions reported and counted against an IFQ.



**Option 4: Allow the customary and traditional trade of subsistence halibut.**

Suboption A. Customary and traditional trade through monetary exchange shall be limited to an annual maximum of \$400. No customary and traditional trade is allowed upon the premises of commercial buying operations. Persons licensed to engage in a fisheries business may not exchange, solicit to exchange, or receive for commercial purposes, subsistence-taken halibut. No exchange of subsistence-caught halibut from a monetary exchange, trade, or barter is allowed to enter commerce at any point.

Suboption B. Customary and traditional trade through non-monetary exchange is allowed with anyone.

**Option 5: Define a daily bag limit.**

The daily limit for subsistence halibut in rural areas is up to 20 halibut, except there is no limit in 4C and 4E (including Savoonga and Gambell).

**Option 6:** Cooperative agreements with tribal, State, and Federal governments and other entities may be developed for harvest monitoring, local area planning, and other issues affecting subsistence uses of halibut.

The North Pacific Fishery Management Council (Council) requests the Alaska Board of Fisheries (Board) to recommend potential regulatory options in subsistence halibut regulations relating to:

1. Legal gear;
2. Daily limits;
3. Reporting requirements;
4. Customary and traditional use areas of tribes and rural communities; and
5. Non-rural area definitions for halibut fishing areas.

The Council requests that the Board meet on this issue during their normal 2000-2001 cycle and present its recommendations to the Council at the Council's June 2001 meeting.

**Table 1. Alaska Rural Communities with Customary and Traditional Uses of Halibut within Specified Halibut Regulatory Areas**

<u>Rural Community*</u>	<u>Organized Entity</u>	<u>Halibut Regulatory Area</u>
<b>Regulatory Area 2C</b>		
Angoon	Municipality	2C
Coffman Cove	Municipality	2C
Craig	Municipality	2C
Edna Bay	Census Designated Place	2C
Elfin Cove	Census Designated Place	2C
Gustavus	Census Designated Place	2C
Haines	Municipality	2C
Hollis	Census Designated Place	2C
Hoonah	Municipality	2C
Hydaburg	Municipality	2C
Hyder	Census Designated Place	2C
Kake	Municipality	2C
Kasaan	Municipality	2C
Klawock	Municipality	2C
Klukwan	Census Designated Place	2C
Metlakatla	Census Designated Place	2C
Meyers Chuck	Census Designated Place	2C
Pelican	Municipality	2C
Petersburg	Municipality	2C
Point Baker	Census Designated Place	2C
Port Alexander	Municipality	2C
Port Protection	Census Designated Place	2C
Saxman	Municipality	2C
Sitka	Municipality	2C
Skagway	Municipality	2C
Tenakee Springs	Municipality	2C
Thorne Bay	Municipality	2C
Whale Pass	Census Designated Place	2C
Wrangell	Municipality	2C
<b>Regulatory Area 3A</b>		
Akhiok	Municipality	3A
Chenega Bay	Census Designated Place	3A
Cordova	Municipality	3A
Karluk	Census Designated Place	3A
Kodiak City	Municipality	3A
Larsen Bay	Municipality	3A
Nanwalek	Census Designated Place	3A
Old Harbor	Municipality	3A
Ouzinkie	Municipality	3A
Port Graham	Census Designated Place	3A
Port Lions	Municipality	3A
Seldovia	Municipality	3A
Tatitlek	Census Designated Place	3A
Yakutat	Municipality	3A

**Table 1. Alaska Rural Communities with Customary and Traditional Uses of Halibut within Specified Halibut Regulatory Areas**

<u>Rural Community*</u>	<u>Organized Entity</u>	<u>Halibut Regulatory Area</u>
<b>Regulatory Area 3B</b>		
Chignik Bay	Municipality	3B
Chignik Lagoon	Census Designated Place	3B
Chignik Lake	Census Designated Place	3B
Cold Bay	Municipality	3B
False Pass	Municipality	3B
Ivanof Bay	Census Designated Place	3B
King Cove	Municipality	3B
Nelson Lagoon	Census Designated Place	3B
Perryville	Census Designated Place	3B
Sand Point	Municipality	3B
<b>Regulatory Area 4A</b>		
Akutan	Municipality	4A
Nikolski	Census Designated Place	4A
Unalaska	Municipality	4A
<b>Regulatory Area 4B</b>		
Adak	Census Designated Place	4B
Atka	Municipality	4B
<b>Regulatory Area 4C</b>		
St. George	Municipality	4C
St. Paul	Municipality	4C
<b>Regulatory Area 4D</b>		
Gambell	Municipality	4D
Savoonga	Municipality	4D
<b>Regulatory Area 4E</b>		
Alakanuk	Municipality	4E
Aleknagik	Municipality	4E
Bethel	Municipality	4E
Brevig Mission	Municipality	4E
Chefornak	Municipality	4E
Chevak	Municipality	4E
Clark's Point	Municipality	4E
Council	Census Designated Place	4E
Dillingham	Municipality	4E
Diomedes (Inalik)	Municipality	4E
Eek	Municipality	4E
Egegik	Municipality	4E
Elim	Municipality	4E
Emmonak	Municipality	4E
Golovin	Municipality	4E
Goodnews Bay	Municipality	4E

**Table 1. Alaska Rural Communities with Customary and Traditional Uses of Halibut within Specified Halibut Regulatory Areas**

<u>Rural Community*</u>	<u>Organized Entity</u>	<u>Halibut Regulatory Area</u>
Hooper Bay	Municipality	4E
King Salmon	Census Designated Place	4E
Kipnuk	Census Designated Place	4E
Kongiganak	Census Designated Place	4E
Kotlik	Municipality	4E
Koyuk	Municipality	4E
Kwigillingok	Census Designated Place	4E
Levelock	Census Designated Place	4E
Manokotak	Municipality	4E
Mekoryak	Municipality	4E
Naknek	Census Designated Place	4E
Napakiak	Municipality	4E
Napaskiak	Municipality	4E
Newtok	Census Designated Place	4E
Nightmute	Municipality	4E
Nome	Municipality	4E
Oscarville	Census Designated Place	4E
Pilot Point	Municipality	4E
Platinum	Municipality	4E
Port Heiden	Municipality	4E
Quinhagak	Municipality	4E
Scammon Bay	Municipality	4E
Shaktoolik	Municipality	4E
Sheldon Point	Municipality	4E
Shishmaref	Municipality	4E
Solomon	Census Designated Place	4E
South Naknek	Census Designated Place	4E
St. Michael	Municipality	4E
Stebbins	Municipality	4E
Teller	Municipality	4E
Togiak	Municipality	4E
Toksook Bay	Municipality	4E
Tuntutuliak	Census Designated Place	4E
Tununak	Census Designated Place	4E
Twin Hills	Census Designated Place	4E
Ugashik	Census Designated Place	4E
Unalakleet	Municipality	4E
Wales	Municipality	4E
White Mountain	Municipality	4E

\* Communities or areas of Alaska in which the non-commercial, customary and traditional use of fish or game for personal or family consumption is a principal characteristic of the economy of the community or area, as determined by the NPFMC

**Table 2. Alaska Native Tribes with Customary and Traditional Uses of Halibut within Specified Halibut Regulatory Areas**

<u>Place With Tribal Headquarters</u>	<u>Organized Tribal Entity*</u>	<u>Halibut Regulatory Area</u>
<b>Regulatory Area 2C</b>		
Angoon	Angoon Community Association	2C
Craig	Craig Community Association	2C
Haines	Chilkoot Indian Association	2C
Hoonah	Hoonah Indian Association	2C
Hydaburg	Hydaburg Cooperative Association	2C
Juneau***	Aukquan Traditional Council**	Any Rural Area
Juneau***	Central Council Tlingit & Haida Indian Tribes	Any Rural Area
Juneau***	Douglas Indian Association	Any Rural Area
Kake	Organized Village of Kake	2C
Kasaan	Organized Village of Kasaan	2C
Ketchikan***	Ketchikan Indian Corporation	Any Rural Area
Klawock	Klawock Cooperative Association	2C
Klukwan	Chilkat Indian Village	2C
Metlakatla	Metlakatla Indian Community, Annette Island Reserve	2C
Petersburg	Petersburg Indian Association	2C
Saxman	Organized Village of Saxman	2C
Sitka	Sitka Tribe of Alaska	2C
Skagway	Skagway Village	2C
Wrangell	Wrangell Cooperative Association	2C
<b>Regulatory Area 3A</b>		
Akhiok	Native Village of Akhiok	3A
Chenega Bay	Native Village of Chanega	3A
Cordova	Native Village of Eyak	3A
Karluk	Native Village of Karluk	3A
Kenai-Soldotna***	Kenaitze Indian Tribe	Any Rural Area
Kenai-Soldotna***	Village of Salamatoff	Any Rural Area
Kodiak City	Lesnoi Village (Woody Island)	3A
Kodiak City	Native Village of Afognak	3A
Kodiak City	Shoonaq' Tribe of Kodiak**	3A
Larsen Bay	Native Village of Larsen Bay	3A
Nanwalek	Native Village of Nanwalek	3A
Ninilchik***	Ninilchik Village	Any Rural Area
Old Harbor	Village of Old Harbor	3A
Ouzinkie	Native Village of Ouzinkie	3A
Port Graham	Native Village of Port Graham	3A
Port Lions	Native Village of Port Lions	3A
Seldovia	Seldovia Village Tribe	3A
Tatitlek	Native Village of Tatitlek	3A
Yakutat	Yakutat Tlingit Tribe	3A
<b>Regulatory Area 3B</b>		
Chignik Bay	Native Village of Chignik	3B
Chignik Lagoon	Native Village of Chignik Lagoon	3B
Chignik Lake	Chignik Lake Village	3B

**Table 2. Alaska Native Tribes with Customary and Traditional Uses of Halibut within Specified Halibut Regulatory Areas**

<u>Place With Tribal Headquarters</u>	<u>Organized Tribal Entity*</u>	<u>Halibut Regulatory Area</u>
False Pass	Native Village of False Pass	3B
Ivanof Bay	Ivanoff Bay Village	3B
King Cove	Agdaagux Tribe of King Cove	3B
King Cove	Native Village of Belkofski	3B
Nelson Lagoon	Native Village of Nelson Lagoon	3B
Perryville	Native Village of Perryville	3B
Sand Point	Pauloff Harbor Village	3B
Sand Point	Native Village of Unga	3B
Sand Point	Qagan Toyagungin Tribe of Sand Point Village	3B
<b>Regulatory Area 4A</b>		
Akutan	Native Village of Akutan	4A
Nikolski	Native Village of Nikolski	4A
Unalaska	Qawalingin Tribe of Unalaska	4A
<b>Regulatory Area 4B</b>		
Atka	Native Village of Atka	4B
<b>Regulatory Area 4C</b>		
St. George	Pribilof Islands Aleut Communities of St. Paul Island & St. George Islands	4C
St. Paul	Pribilof Islands Aleut Communities of St. Paul Island & St. George Islands	4C
<b>Regulatory Area 4D</b>		
Gambell	Native Village of Gambell	4D
Savoonga	Native Village of Savoonga	4D
<b>Regulatory Area 4E</b>		
Alakanuk	Village of Alakanuk	4E
Aleknagik	Native Village of Aleknagik	4E
Bethel	Orutsararmuit Native Village	4E
Brevig Mission	Native Village of Brevig Mission	4E
Chefornak	Village of Chefornak	4E
Chevak	Chevak Native Village	4E
Clark's Point	Village of Clark's Point	4E
Council	Native Village of Council	4E
Dillingham	Native Village of Dillingham	4E
Dillingham	Native Village of Ekuk	4E
Dillingham	Native Village of Kanakanak**	4E
Diomede (Inalik)	Native Village of Diomede (Inalik)	4E
Eek	Native Village of Eek	4E
Egegik	Egegik Village	4E
Egegik	Village of Kanatak	4E
Elim	Native Village of Elim	4E
Emmonak	Chuloonawick Native Village	4E
Emmonak	Emmonak Village	4E

**Table 2. Alaska Native Tribes with Customary and Traditional Uses of Halibut within Specified Halibut Regulatory Areas**

<u>Place With Tribal Headquarters</u>	<u>Organized Tribal Entity*</u>	<u>Halibut Regulatory Area</u>
Golovin	Chinik Eskimo Community	4E
Goodnews Bay	Native Village of Goodnews Bay	4E
Hooper Bay	Native Village of Hooper Bay	4E
Hooper Bay	Native Village of Paimiut	4E
King Salmon	King Salmon Tribal Council**	4E
Kipnuk	Native Village of Kipnuk	4E
Kongiganak	Native Village of Kongiganak	4E
Kotlik	Native Village of Hamilton	4E
Kotlik	Village of Bill Moore's Slough	4E
Kotlik	Village of Kotlik	4E
Koyuk	Native Village of Koyuk	4E
Kwigillingok	Native Village of Kwigillingok	4E
Levelock	Levelock Village	4E
Manokotak	Manokotak Village	4E
Mekoryak	Native Village of Mekoryak	4E
Naknek	Naknek Native Village	4E
Napakiak	Native Village of Napakiak	4E
Napaskiak	Native Village of Napaskiak	4E
Newtok	Newtok Village	4E
Nightmute	Native Village of Nightmute	4E
Nightmute	Umkumiute Native Village	4E
Nome	King Island Native Community	4E
Nome	Nome Eskimo Community	4E
Oscarville	Oscarville Traditional Village	4E
Pilot Point	Native Village of Pilot Point	4E
Platinum	Platinum Traditional Village	4E
Port Heiden	Native Village of Port Heiden	4E
Quinhagak	Native Village of Kwinhagak	4E
Scammon Bay	Native Village of Scammon Bay	4E
Shaktoolik	Native Village of Shaktoolik	4E
Sheldon Point	Native Village of Sheldon's Point	4E
Shishmaref	Native Village of Shishmaref	4E
Solomon	Village of Solomon	4E
South Naknek	South Naknek Village	4E
St. Michael	Native Village of Saint Michael	4E
Stebbins	Stebbins Community Association	4E
Teller	Native Village of Mary's Igloo	4E
Teller	Native Village of Teller	4E
Togiak	Traditional Village of Togiak	4E
Toksook Bay	Native Village of Toksook Bay	4E
Tuntutuliak	Native Village of Tuntutuliak	4E
Tununak	Native Village of Tununak	4E
Twin Hills	Twin Hills Village	4E
Ugashik	Ugashik Village	4E
Unalakleet	Native Village of Unalakleet	4E
Wales	Native Village of Wales	4E
White Mountain	Native Village of White Mountain	4E

**Table 2. Alaska Native Tribes with Customary and Traditional  
Uses of Halibut within Specified Halibut Regulatory Areas**

<u>Place With Tribal Headquarters</u>	<u>Organized Tribal Entity*</u>	<u>Halibut Regulatory Area</u>
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\* Native entities recognized and eligible to receive services from the United States Bureau of Indian Affairs, cf., Federal Register, February 16, 1995, v. 60, no. 32, p. 9249-9255.

\*\* Applying for recognized status.

\*\*\*Urban tribes



## Attachment

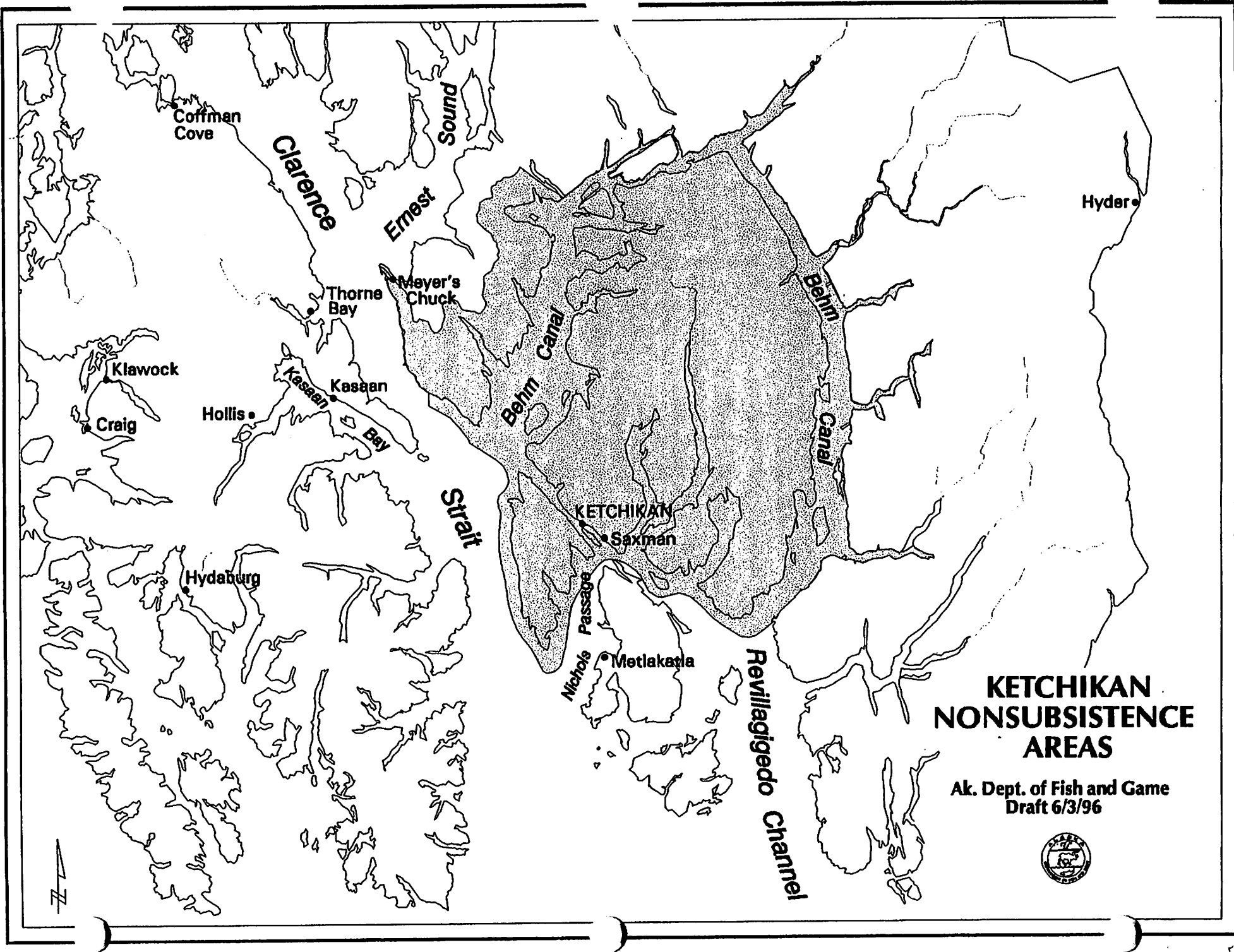
### State of (State) Alaska definitions of non-subsistence areas

The Ketchikan non-subsistence area is defined by the State at 5 AAC 99.015(a)(1) as including all marine waters of Sections 1-C (waters of the district between a line from a point at 55 11' 47" N. lat., 131 05' 08" W. long., located on Point Sykes to a point at 55 12' 13" N. lat., 131 05' 42" W. long., located one-half mile northwest of Point Sykes to Point Alava, and a line from Point Eva to Cactus Point); 1-D (waters of the district between a line from Point Eva to Cactus Point and a line from Nose Point to Snail Point); 1-E (waters of the district between a line from Caamano Point to Point Higgins and a line from Nose Point to Snail Point); waters north of the latitude of the southernmost tip of Mary Island and within one mile of the mainland and the Gravina and Revillagigedo Island shorelines; and that portion of District 2 (all waters south of a line from the easternmost tip of Narrow Point to the northernmost tip of Lemesurier Point, west of District 1 and east of a line from Point Marsh Light to 54 40' N. lat., 132 17' 30" W. long.) within one mile of the Cleveland Peninsula shoreline and east of the longitude of Niblack Point;

The Juneau non-subsistence area is defined by the State at 5 AAC 99.015(a)(2) as including all marine waters of Section 11-A (waters of the district north and west of a line from a point at 58 12' 20" N. lat., 134 10' W. long., to the Coast Guard marker and Light on Point Arden); Section 11-B (waters of the district north of the latitude of Midway Island Light and south and east of a line from a point at 58 12' 20" N. lat., 134 10' W. long., to the Coast Guard marker and Light on Point Arden); Section 12-B (all waters of Lynn Canal south of the latitude of Little Island Light, west of a line from Little Island Light to Point Retreat Light and north of the latitude of Point Couverden (58 11' 25" N. lat.)); that portion of Section 12-A (all waters of Chatham Strait south of the latitude of Point Couverden (58 11' 25" N. lat.) to the latitude of Point Gardner (57 01' N. lat.), east of a line from Point Couverden Light to Point Augusta Light and east of a line from the southeastern most tip of Point Hayes to the northernmost tip of Point Thatcher) north of the latitude of Point Marsden; and that portion of District 15 (waters of Lynn Canal north of the latitude of Little Island Light) south of the latitude of the northern entrance to Berners Bay, and including Berners Bay;

The Anchorage-Matsu-Kenai non-subsistence area is defined by the State at 5 AAC 99.015(a)(3) as including all marine waters of Alaska enclosed by a line extending east from Cape Douglas (58 51.10' N. lat.), and a line extending south from Cape Fairfield (148 50.25' W. long.), except those waters north of Point Bede which are west of a line from the eastern most point of Jakolof Bay north to the western most point of Hesketh Island including Jakolof Bay and south of a line west from Hesketh Island, and the waters south of Point Bede which are west of the eastern most point of Rocky Bay; and

The Valdez non-subsistence area defined by the State at 5 AAC 99.015(a)(5) as including all marine waters of Alaska north and east of a line extending from Tongue Point (61 02' 10" N. lat., 146 39' 45" W. long.) to Potato Point (61 03' 25" N. lat., 146 41' 35" W. long.).



Hyder

Coffman Cove

Clarence

Ernest Sound

Ernest

Thorne Bay

Mayer's Chuck

Behm Canal

Behm

Behm Canal

Klawock

Craig

Hollis

Kasaan

Kasaan

Bay

Strait

KETCHIKAN

Saxman

Hydaburg

Nichols Passage

Metlakatla

Revillagigedo Channel

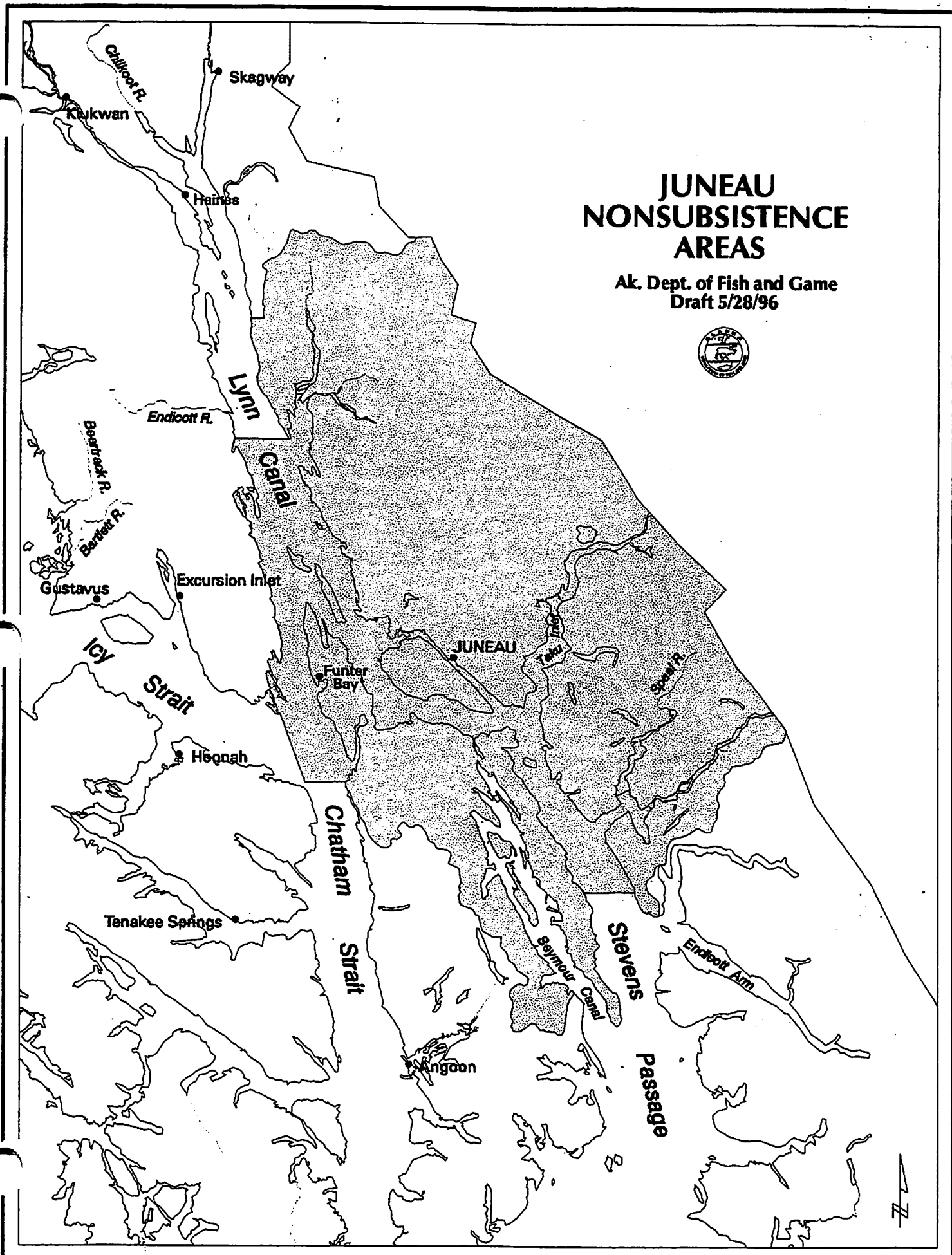
# KETCHIKAN NONSUBSISTENCE AREAS

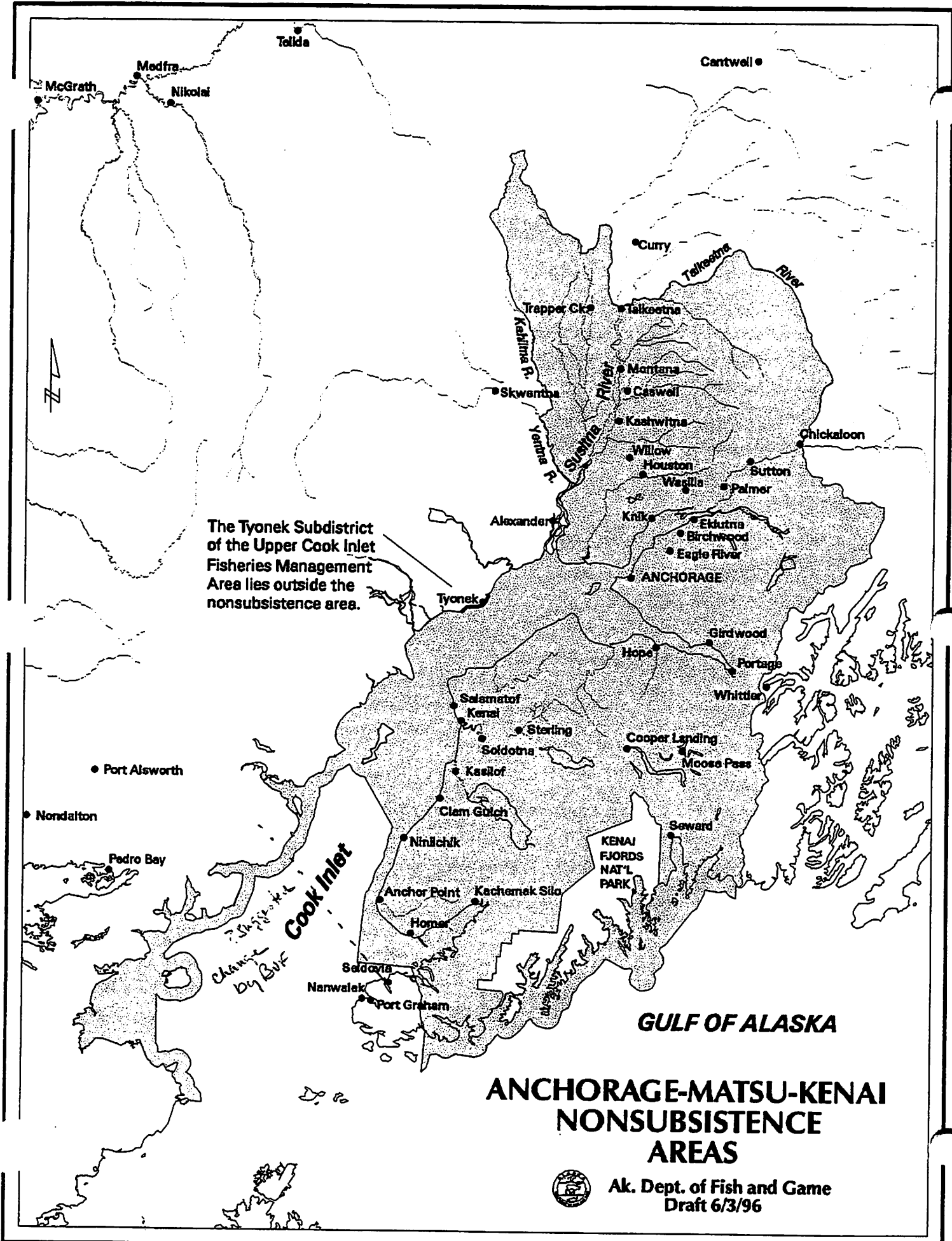
Ak. Dept. of Fish and Game  
Draft 6/3/96



# JUNEAU NONSUBSISTENCE AREAS

Ak. Dept. of Fish and Game  
Draft 5/28/96





The Tynec Subdistrict of the Upper Cook Inlet Fisheries Management Area lies outside the nonsubsistence area.

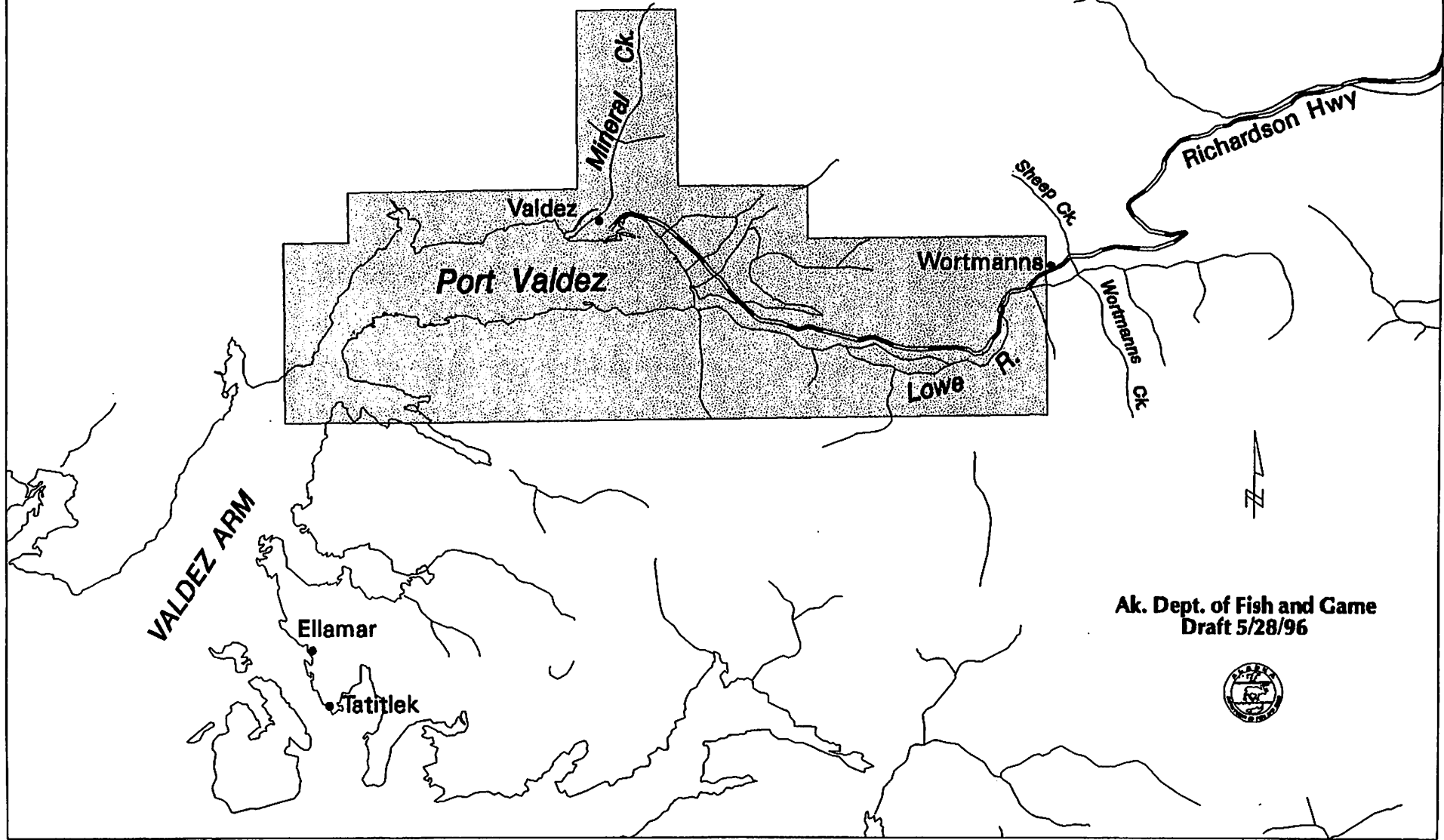
GULF OF ALASKA

# ANCHORAGE-MATSU-KENAI NONSUBSISTENCE AREAS



Ak. Dept. of Fish and Game  
Draft 6/3/96

# VALDEZ NONSUBSISTENCE AREAS



Ak. Dept. of Fish and Game  
Draft 5/28/96





UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

AGENDA B-4

JUNE 2001

Supplemental

May 18, 2001

RECEIVED

MAY 23 2001

N.P.F.M.C

Mr. David Benton, Chairman  
North Pacific Fisheries Management Council  
605 West 4<sup>th</sup> Avenue  
Anchorage, Alaska 99501-2252

Dear Dave,

In February 1999, the North Pacific Fishery Management Council (Council) adopted a proposed regulatory amendment that would require full retention of all demersal shelf rockfish (DSR) in the hook-and-line gear fisheries in statistical area 650 of the Eastern Gulf of Alaska Regulatory Area. The Council's action also limited a fisherman's ability to profit from landed DSR catch by restricting how DSR catch or catch revenues would be distributed. The objective of the Council's action was to obtain better data on the incidental catch mortality of DSR for stock assessment purposes and to reduce wastage of DSR. Based on the advice of NOAA General Counsel, the Council reconsidered the action and adopted a modified alternative in June 1999. We received the revised draft environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) on the Council's preferred alternative in October 2000.

After careful review, we continue to have serious reservations about proceeding with this action as adopted by the Council (See Attachment 1). For reasons provided in more detail in Attachment 2, we remain concerned about whether the Council's objectives as outlined in the draft EA/RIR/IRFA would be effectively met by the proposed action. Without an at-sea verification program to provide some index on compliance with mandatory retention of DSR, the Council's proposed reliance on landed catch to provide scientific data on incidental catch mortality could be problematic. We are also concerned about potential monitoring and enforcement costs and believe that more effective ways exist to obtain useful data on incidental catch rates of DSR in the hook-and-line gear fisheries.


We recommend instead a short-term sampling program that would allow a controlled collection of catch data in the hook-and-line gear fisheries. This could be accomplished in either of two ways: (1) a sampling program could be designed using



observers to collect catch data on a portion of the fleet deemed appropriate, given the assumed variability of DSR incidental catch rates; or (2) information could be collected under an experimental design and issuance of an associated exempted fishing permit (EFP) under 50 CFR 679.6. Such an EFP would authorize participating vessels working in cooperation with the State of Alaska (State) to collect information on DSR or retain DSR caught incidentally in the hook-and-line gear fisheries. This approach would better provide for quality control of data. The data would be collected by a cooperating fleet for use by the State in determining the variability of incidental catch rates and appropriate catch rate assumptions. The information could be used to improve overall DSR mortality estimates in different hook-and-line gear fisheries, and to make adjustments in the maximum retainable incidental catch amounts. The experimental design would outline clear procedures for collection of data, including full retention of DSR, if appropriate; set a time limit for obtaining required information; and would involve enrolling vessels that wished to participate. We believe that vessels which voluntarily participate would be more likely to comply with full retention requirements. This approach would also avoid potential legal issues associated with forcing halibut IFQ vessels to land and weigh their catch in Alaska for purposes of monitoring and enforcing compliance with the Council's proposed DSR retention and catch distribution requirements.

For the reasons described in Attachment 2, we urge the Council to reconsider its previous action on DSR and consider instead the EFP alternative. Under an EFP, the State could essentially run the experiment it wishes, but with enhanced quality control of data collected under an EFP. If the State and the Council wish to consider this option, NMFS staff will be available to provide guidance on the EFP process and the development of an EFP application and associated experimental design for review by the Alaska Fisheries Science Center and the Council.

Sincerely,

*for*   
James W. Balsiger  
Administrator, Alaska Region

Attachments (2)

Attachment 1

**Council action on DSR at its June 1999 meeting**

The Council's action in June 1999 would require full retention of DSR in the hook-and-line gear fixed gear fisheries in GOA statistical area 650 (Southeast Outside). More specifically, the Council recommended that NMFS:

1. Eliminate the maximum retainable bycatch (MRB) limit for DSR;
2. Require that all DSR caught by federally-permitted vessels using hook-and-line gear in statistical area 650 be retained, landed, weighed, and reported;
3. Limit the amount of DSR that may be sold to an amount that is no more than 10 percent of other retained catch; and
4. Require fishermen to do one or all of the following with amounts of DSR that are in excess of the amount that may be sold:
  - a. voluntarily surrender the excess to the State of Alaska;
  - b. retain the excess for personal use; or
  - c. donate it to a State-recognized charity that provides meals for the homeless, the needy, the sick or infirm, or the elderly.



**Issues of concern on the Council's June 1999 action on DSR**

1. Data quality. The quality of information collected on DSR incidental catch amounts and rates would be questionable, as the data would be based solely on landed catch composition from an unobserved fleet with some practical incentives to not retain DSR. Concern exists whether the quality of data collected under this program would meet the Council's objective and is worth the cost, especially if other options exist to collect higher quality data in a more controlled environment.

2. Monitoring and enforcement costs. The Council's action would involve duplicative Federal and State regulations for a relatively small fishery. We are concerned in particular about the cost and feasibility of administering and enforcing the Council's recommendations with respect to the disposal of DSR that exceed the 10 percent threshold.

The first option in the EA/RIR, surrender of excess DSR to the State, does not appear to be viable because the State does not accept direct surrender of fish and instead requires the fish to be sold and the proceeds surrendered to the State. As a result, Federal enforcement officers would be expected to monitor and enforce Federal regulations requiring surrender of proceeds to a State agency. No guarantee exists that shoreside processors would accept DSR. If they did, processing costs might be sufficiently high as to result in little profit to the State. Federal management of shoreside processing operations to guarantee compliance with the intent of the Council's action can be expected to be costly and unwieldy.

The Council's third option, donation of excess DSR to a recognized charity, also is problematic. A federally-managed donation program would entail administrative burdens for NMFS and the charities involved. Whether such a program would be viable for DSR at principle ports in Southeast Alaska is uncertain and depends on factors including the condition of the fish and the distribution of catch among local ports.

3. Forced landings in Alaska. The Council's action would require Pacific Halibut IFQ vessels to land and weigh DSR in an Alaskan port. Other catch, e.g., halibut, also might have to be offloaded and weighed to determine what percentage of

the catch is comprised of DSR and whether the 10 percent threshold was reached. Requiring a halibut fisherman to offload DSR for weighing at a State port could entail legal issues, as a fisherman's opportunity to land out of State is well established in our federal regulations. In addition, any requirement for a vessel to enter an Alaskan port would raise Constitutional questions under Article I, section 9 (the "port preference" clause).

4. Analytical deficiencies. The EA/RIR/IRFA has several deficiencies that would have to be addressed before the action as passed could meet standards for Secretarial review. Chief among these is that the analysis omits discussion of reasonable options for achieving the primary goal of obtaining scientific data on incidental catch mortality. NMFS's usual procedure for obtaining such data is an observer program. The EA dismisses the idea of a 100 percent observer program because all small vessels could not be expected to carry observers. However, the idea of a partial observer program, e.g., 10 percent coverage, is not considered.

Another option that was given only cursory consideration is increased State management of the fishery. We recommend that the DSR complex be retained as groundfish species in the Fishery Management Plan for Groundfish of the Gulf of Alaska. However, the existing delegation to the State for management of the DSR complex could be expanded under subparagraph 306(a)(3)(B) of the Magnuson-Stevens Fishery Conservation and Management Act to include specifications of maximum retainable bycatch amounts and restrictions on the distribution of landed DSR catch. Such action would have to be analyzed to understand the desired scope of the State's management authority, its ability to affect other Federally managed groundfish or halibut fisheries that harvest DSR incidentally, and the level of Council/NMFS oversight that should be retained.

Last, The draft EA/RIR/IRFA does not adequately consider the costs of this measure to the fishermen affected, to local communities, or to Federal and State agencies. Specific comments on this issue are available from NMFS staff pending Council direction on whether to continue to work with State and Council staff to implement its June 1999 action.

May 29, 2001

Mr. David Benton  
North Pacific Fishery Management Council  
605 W. 4<sup>th</sup> Avenue, Suite 306  
Anchorage, Alaska 99501-2252

Sent Via facsimile to 907-271-2817

RECEIVED

MAY 29 2001

N.P.F.M.C

Re: Agenda Items B-4

Dear Chairman Benton,

We, the industry representatives of the Gulf trawl fisheries, are writing to bring to the attention of the Council, a problem that has occurred due to the change of opening date for the 2001 "B" season Gulf Pacific cod fisheries.

When the first emergency rule was laid out, the Pacific cod fishery was slated to open on June 11. Anticipating the June 11 opening date, the annual trawl PSC cap of halibut mortality was rearranged allocating 150 MT to the shallow complex fisheries on June 11 (See tables 1 and 2). The 150 MT apportionment represents the historical halibut usage for the 40% allocation of Pacific cod for the second season.

During the April Council meeting, the Pacific cod opening date was changed to September 1. The trawl halibut bycatch mortality cap release of 150 MT has not been changed to match the new opening day and will be released on June 11.

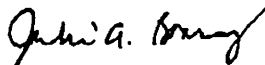
The trawl industry testified to the Council in January that the trawl PSC apportionment of 150 MT needed to move with the "B" season Pacific cod fishery opening date. The Council and industry goal was not to reallocate or realign the traditional trawl fisheries but to reserve enough halibut PSC so that the "B" season Pacific cod quota could be harvested when it became available. Because the halibut PSC allocation of 150 MT has not been moved, it is now stranded in June and will likely be used by trawl vessels fishing shallow flatfish and flathead sole targets.

We request that the Council move the June 11 halibut mortality cap or the remaining amount of that cap apportionment to the September 1 "B" season Pacific cod opening date, as quickly as possible, and in the meantime, close the shallow water complex fisheries until July 1 to prevent the reduction of the mortality reserved for the "B" season Pacific cod fishery by other trawl fisheries. Any halibut mortality that remains as of July 1 would be rolled to September 1.

Thank you for your attention to this oversight.



Al Burch  
Alaska Dragger's Association



Julie Bonney  
Alaska Groundfish Data Bank



Beth Stewart  
Aleutian East Borough



John Gauvin  
Groundfish Forum



Joe Childers  
Western Gulf of Alaska Fisherman

Table 1. Halibut prohibited species catch limits for the years 1996 - 2000.

Quarter	Shallow water Complex	Deep water Complex	Total
1 (Jan 20)	500 MT	100 MT	600 MT
2 (Apr 1)	100 MT	300 MT	400 MT
3 (July 4)	200 MT	400 MT	600 MT
4 (Oct 1)	No Apportionment		400 MT
All Quarters	800 MT	800 MT	2000 MT

Table 2. 2001 halibut prohibited species catch limits

Quarter	Shallow water Complex	Deep water Complex	Total
1 (Jan 20)	450 MT	100 MT	550 MT
2 (Apr 1)	100 MT	300 MT	400 MT
3 (Jun 11)	150 MT	0 MT	150 MT
4 (July 1)	200 MT	400 MT	600 MT
5 (Oct 1)	No Apportionment		300 MT
All Quarters	900 MT	800 MT	2000 MT

Shallow water complex = pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species".

Deep Water Complex = sablefish, rockfish, rex sole, Arrowtooth flounder, and deep-water flatfish.



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
P.O. Box 21668  
Juneau, Alaska 99802-1668

May 31, 2001

RECEIVED  
MAY 31 2001  
N.P.F.M.C

David Benton, Chairman  
North Pacific Fishery Management Council  
605 West 4<sup>th</sup> Avenue, Suite 306  
Anchorage, Alaska 99501-2252

Dear Mr. Dave Benton:

The American Fisheries Act (AFA) has largely superseded the Council's inshore/offshore management regime in the Bering Sea and Aleutian Islands Area (BSAI). However, because the AFA was passed concurrent with the Secretarial review period for inshore/offshore 3 (Amendments 51/51), our existing FMPs and regulations contain overlapping AFA and inshore/offshore requirements that are not entirely consistent. We are, therefore, recommending a series of housekeeping changes to better mesh our AFA and inshore/offshore management measures.

After the AFA was approved in October 1998, NMFS consulted with the Council at a special meeting in November 1998 and ultimately disapproved the BSAI pollock allocations contained in Amendments 51/51 as inconsistent with the AFA, but approved the remaining aspects of inshore/offshore 3 including Gulf of Alaska (GOA) inshore/offshore allocations and the Catcher Vessel Operational Area (CVOA). The Council subsequently voted to extend the GOA inshore/offshore amendments through the end of 2004 as part of its AFA Amendments 61/61/13/8 which were passed in June 1999. Under Amendments 51/51, the CVOA has no expiration date and will remain in effect until amended by the Council.

We have identified five areas where the passage of the AFA and simultaneous partial approval of Amendments 51/51 have created inconsistencies or confusion in our regulations and have developed recommendations to address each of these five areas:

- CVOA regulations,
- inshore/offshore category definitions in the Bering Sea,
- single geographic location requirements for GOA inshore processors,
- Inshore catcher/processors under 125' LOA, and
- single geographic location requirements for AFA inshore processors.

*Housekeeping  
now in LB notes*



We will address each of these issues individually and explain NMFS's recommended changes.

CVOA Regulations. Amendment 51 to the BSAI groundfish FMP extended the CVOA as a permanent management measure. Under Amendment 51, only the inshore/offshore pollock allocations were given a 3-year sunset date. Other aspects of the amendment such as the CVOA were not given a sunset date and will remain in effect until changed or repealed by the Council. However, the CVOA regulations and amendment language no longer comport with the reality of the fishery. The FMP currently states:

*The CVOA shall be in effect during the B season from September 1 until the date that NMFS closes the inshore component B season allocation to directed fishing. Vessels in the offshore component are prohibited from conducting directed fishing for pollock in the CVOA unless they are participating in a CDQ fishery.*

This language was written prior to the passage of the AFA and the development of Steller sea lion "reasonable and prudent alternatives" (RPAs). As such, it no longer comports with the current reality of the BSAI pollock fishery. First, the B season no longer starts on September 1. Second, under the AFA, NMFS no longer closes the inshore sector component to directed fishing. Each inshore cooperative is issued a separate allocation making sector-wide closure notices unnecessary. Third, an inconsistency exists between the regulations and the FMP provision given that implementing regulations only prohibit pollock catcher/processors from fishing in the CVOA and are silent on the mothership sector.

To remedy this situation, NMFS recommends that the Council amend the FMP to bring the CVOA regulations into conformance with the existing circumstances of the fishery. However, any substantive change to the CVOA regulations would go beyond a simple housekeeping change and require a full FMP amendment. The most efficient means of accomplishing this may be through the development of Steller sea lion RPA measures that would supersede the existing CVOA with an alternative form of restrictions on fishing in the CVOA or similar area such as the Steller sea lion conservation area (SCA).

Inshore/offshore category definitions in the BSAI. Under the previous inshore/offshore regimes it was necessary to categorize every BSAI processor into either the "inshore" or "offshore" category. It was necessary to categorize every groundfish processor because all pollock harvested in the BSAI, whether in the directed pollock fishery or as bycatch in other groundfish fisheries, needed to accrue against either the inshore or offshore TAC allocations. The AFA changed this system by creating an incidental catch allowance (ICA) against which incidental catch of pollock in other fisheries would accrue making it no longer necessary to accrue incidental catch of pollock against either the inshore or offshore TAC allocations. The AFA also created three closed classes of pollock processors; AFA inshore processors, AFA motherships, and AFA catcher/processors which have the exclusive right to process pollock harvested in the directed pollock fishery. The establishment of these three categories of processors superseded the previous inshore and offshore designations for the purpose of managing the BSAI pollock fishery.

As a result of these two changes, we do not believe it serves a management purpose to assign "inshore" and "offshore" designations to groundfish processors in the BSAI. When NMFS partially approved Amendments 51/51 we incorporated the "inshore" and "offshore" definitions contained within the AFA into our regulations and have continued the practice of designating all BSAI processors as either "inshore" or "offshore." However we have concluded that these definitions contained within the AFA do not serve any purpose other than to categorize historic catch history for the purpose of determining AFA eligibility and inshore cooperative allocations. Because no other groundfish species is allocated among processor classes, we recommend eliminating the requirement that all BSAI processors declare themselves to be "inshore" or "offshore" as a separate declaration from the three AFA processor categories. We believe this change could be accomplished as a housekeeping amendment because such a change would have no substantive effect on the conduct of the BSAI groundfish fishery and would not materially change the requirements on groundfish processors in the BSAI.

Eliminating the requirement that all BSAI groundfish processors declare themselves to be "inshore" or "offshore" would have one consequence with respect to the inshore/offshore regime in the GOA. Currently our regulations prohibit a processor from operating in the offshore component

in the BSAI and the inshore component in the GOA or vice versa. They also prohibit a floating processor from operating as an inshore processor at one single geographic location in the GOA and in a different single geographic location in the BSAI. However we believe these issues are better dealt with as explicit prohibitions rather than inter-locking definitions.

Single geographic location requirements for GOA inshore floating processors. Our existing regulations define GOA inshore processors as shoreside processors, floating processors processing groundfish in a single geographic location in the GOA, and catcher/processors under 125' LOA that process less than 126 mt round weight of pollock or GOA Pacific cod in a given week of operations. Our existing regulations further prohibit GOA inshore processors from operating as BSAI offshore processors during the same fishing year (and vice versa) and prohibit GOA inshore processors from operating as BSAI inshore processors at a different single geographic location than where the processor operated as a GOA inshore processor. The consequence of these overlapping definitions and prohibitions is that a floating processor that wishes to process pollock or Pacific cod in the GOA must operate at a single geographic location during a fishing year whenever pollock or Pacific cod from the BSAI or GOA is being received and processed. Given that the IR/IU program requires full retention of pollock and Pacific cod by catcher vessels operating in all groundfish fisheries, the only practical circumstances under which such a processor may operate in a different location during a fishing year is when it is processing non-groundfish species such as salmon, herring, and crab.

To maintain this single geographic location requirement in the absence of "inshore" and "offshore" designations for BSAI groundfish processors, we recommend maintaining the existing requirement that all processors wishing to operate in the inshore component for GOA pollock and/or Pacific cod must declare themselves as inshore processors for a fishing year with the addition of a housekeeping change that would prohibit GOA inshore processors from receiving and processing pollock and Pacific cod in the BSAI at a different location than was used to receive and process pollock and Pacific cod in the GOA. Such a housekeeping change would maintain the existing restrictions on GOA inshore processors in the absence of inshore/offshore designations in the BSAI. Without such a



single geographic location requirement applied to both the BSAI and GOA operations, nothing would prevent large catcher/processors from the BSAI from entering the GOA to operate as inshore processors during certain times of the year. Such a result would clearly be contrary to the purpose and intent of the GOA inshore/offshore amendments.

Inshore catcher/processors under 125' LOA. Under the GOA inshore/offshore regulations, catcher/processors under 125' LOA that process less than 126 mt round weight of pollock or GOA Pacific cod in a given week of operations may also declare themselves to be inshore processors and operate in the GOA inshore Pacific cod and/or pollock fisheries. Under the old inshore/offshore regime in the BSAI, such inshore processors also were restricted to processing no more than 126 mt of pollock in the BSAI in any given week. In other words, they needed to maintain their inshore status in the BSAI as well as the GOA to avoid violating the prohibition on operating in the inshore component in the GOA and the offshore component in the BSAI during the same fishing year. However, as a practical matter, no catcher/processors under 125' are eligible to harvest and process pollock under the AFA, meaning that they are excluded from the BSAI pollock fishery anyway. Consequently we see no need to maintain obsolete inshore/offshore regulations that limit the amount of BSAI pollock that inshore catcher/processors may process during a given week.

Single geographic location for AFA inshore processors. Under AFA Amendments 61/61/13/8, the Council recommended that AFA inshore floating processors (NORTHERN VICTOR and ARCTIC ENTERPRISE) be limited to operating at a single geographic location during a given fishing year. The Council's first recommendation on this issue in June 1999 was to restrict these processors to the single geographic location in which they operated in 1996 and 1997. However this recommendation was changed in December 1999 to restrict such processors to the single geographic location at which the floating processor first received and processed pollock during a given fishing year. Absent Council action, this single geographic location requirement contained in Amendments 61/61/13/8 would remain in effect for the duration of the AFA. The issue of single geographic location for AFA floating processors is distinct from the issue of single geographic location for GOA inshore processors, which is a larger class of vessels. However, if these two AFA inshore processors wish to participate in the

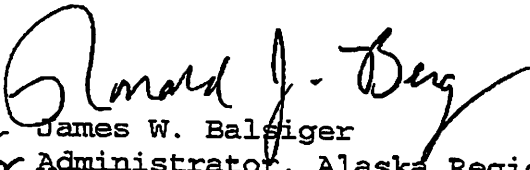
GOA inshore Pacific cod or pollock fisheries they would be bound by both the single geographic location requirement for AFA inshore processors and the single geographic location requirement for GOA inshore processors meaning that they would be required to receive and process all BSAI and GOA groundfish in a single geographic location during a fishing year. However, with the housekeeping changes recommended above, if such processors did not wish to declare themselves as GOA inshore processors, they would be free to operate in multiple locations in the BSAI and GOA at any time that they were not receiving or processing pollock harvested in the BSAI directed pollock fishery. Of course they also would be prohibited from operating in the GOA inshore Pacific cod and pollock fisheries if they did not comply with the GOA inshore processor single geographic location requirements.

Consideration of additional changes to the BSAI and/or GOA inshore/offshore regimes. With the exception of the recommendation to substitute the CVOA with appropriate Steller sea lion RPA restrictions, all of the changes outlined above would take the form of housekeeping changes that would not require analysis or multiple meetings to implement because they would not substantively change the existing restrictions on the fishing fleet. However, given the Council's previous action on AFA and on extending inshore/offshore in the GOA until the end of 2004, we believe that any recommendations that substantively modify these restrictions would require the normal FMP amendment process to implement. This would include, for example, a loosening of the single geographic location requirement for either GOA inshore processors or AFA inshore floating processors so that GOA inshore processors or AFA inshore floating processors could operate at more than one location in the BSAI.

With the Council's concurrence on these suggested housekeeping changes we would proceed to incorporate them in the final AFA rulemaking to implement Amendments 61/61/13/8 for the beginning of the 2002 fishing year. If, however, the Council wishes to consider more substantive changes to the existing inshore/offshore and AFA regimes, it will need to agenda these proposed changes for a future Council meeting and proceed

according to the normal FMP amendment process. Until Council action is taken and implemented, we will continue to enforce our existing inshore/offshore regulations and restrictions.

Sincerely,

  
James W. Balsiger  
For Administrator, Alaska Region  
"

B-4  
 NMFS-AKR  
 6/01

**Status of Emergency Rules and Other Actions**  
 Report to Council June 6, 2001

<b>Emergency Rules and Other Actions</b> Status: <u>Since April 2001 Council Meeting</u>	<b>Date of Council Action</b>	<b>Start Regional Review</b>	<b>Transmittal Date of Action to NMFS Headquarters</b>	<b>Proposed Action Published in Federal Register, if any</b>	<b>Final Action Published in Federal Register</b>
<b>Emergency Rule Actions</b>					
Extension of SSL ER for 2001	April 2001				
Extension of AFA ER for 2001	June 2001				
<b>Other Actions</b>					
Notice extending public comment period on Draft Groundfish PSEIS to July 25, 2001	NMFS				May 4, 2001 66 FR 22551
Notice of intent and scoping of SEIS on modifying measures to protect SSL	NMFS				<u>May 15, 2001</u> <u>66 FR 26828</u>
Notice of intent and scoping of SEIS on EFH designation	NMFS	<i>Draft is under construction in consultation with HQ</i>			

**Status of Action on FMP Amendments**  
 Report to Council June 6, 2001

<b>FMP Amendment Status: <u>Actions Since April 2001 Council Meeting</u></b>	<b>Date of Council Action</b>	<b>Start Regional Review</b>	<b>Transmittal Date of proposal to NMFS Headquarters for Review</b>	<b>Proposed FMP Amendment Notice of Availability Published</b>	<b>Proposed Rule Published in Federal Register</b>	<b>Final Rule Published in Federal Register</b>
<b>Groundfish FMPs</b>						
Amends. 48/48: Reform TAC specification process	Reconsid. scheduled for late 2001					
Amends. 54/54: IFQ program changes	October 1998	10-1-1999				
Amends. 60/58/10: LLP 1, crab recent participation, etc. <u>Approved April 18, 2001</u>	October 1998; April 1999	7-28-1999	Jan. 2, 2001	Jan. 17, 2001 66 FR 3976 Comment period ended Mar 19, 2001	Mar 30, 2001 66 FR 17397 Comment period ended April 30, 2001	<i>Draft final rule started Regional review May 29, 2001</i>
Amend. 60 GOA: Cook Inlet bottom trawl ban	Sept 2000	<i>Analysis rec. from Council staff 3-19-2001</i>				
Amends. 61/61/13/8: AFA management of co-ops and sideboards	June 1999 June 2000 Sep. 2000	<i>EIS and PR docs in internal review &amp; revision</i>				
Amends. 65/65: HAPC Part 1	April 2000	<i>Letter to Council 1-31-2001</i>				
Amend. 67 BSAI: LLP 2, gear and Pcod endorsements	April 2000	3-12-2001				

**Status of Action on Regulatory Amendments**  
**Report to Council June 6, 2001**

<b>Regulatory Amendment</b> Status: <b>Actions</b> <b>Since April 2001</b> <b>Council Meeting</b>	<b>Date of Council Action</b>	<b>Start Regional Review of Proposed Rule</b>	<b>Transmittal Date of Proposed Rule to NMFS Headquarters</b>	<b>Proposed Rule Published in <u>Federal Register</u></b>	<b>Final Rule Published in <u>Federal Register</u></b>
<b>Groundfish Regulations</b>					
IFQ Omnibus 3	NMFS	May 20, 1998	June 1, 2000	Dec. 14, 2000 65 FR 78126; Comment period ended Jan. 16, 2001	<a href="#"><u>May 21, 2001</u></a> <a href="#"><u>66 FR 27908</u></a>
Recordkeeping and Reporting rule changes for 2001	NMFS	Aug. 31, 2000	Nov. 28, 2000	<i>Draft PR under review at HQ; revisions sent to HQ 4-3-2001</i>	
Commercial Operator's Annual Report (COAR)	June 1999	Sept. 16, 1999	Aug. 3, 2000	Dec. 14, 2000 65 FR 78131; Comment period ended Jan. 16, 2001	<i>Draft final rule sent to HQ March 30, 2001</i>
Length overall (LOA) definition revision	NMFS	Oct. 15, 2000	Jan. 25, 2001	<a href="#"><u>May 25, 2001</u></a> <a href="#"><u>66 FR 28883</u></a> <a href="#"><u>Comments due June 25, 2001</u></a>	
DSR full retention and donation rules	June 1999	<i>Analysis received from Council staff 10-25-00</i>			
Revision to appeals regulations re. timing of motions	NMFS				
Revision of IR-IU rules	February 1999				
HMAP					

<b>Regulatory Amendment Status: <u>Actions Since April 2001 Council Meeting</u></b>	<b>Date of Council Action</b>	<b>Start Regional Review of Proposed Rule</b>	<b>Transmittal Date of Proposed Rule to NMFS Headquarters</b>	<b>Proposed Rule Published in <u>Federal Register</u></b>	<b>Final Rule Published in <u>Federal Register</u></b>
<b>Halibut Regulations</b>					
Halibut charter boat GHL	February 2000: December 2000	Feb. 26, 2001			
Halibut charter boat IFQ	April 2001				
Halibut Subsistence fishing provisions	October 2000	<i>Analysis received from Council staff 2-2-01</i>			
Halibut 4D/4E issues: trip limits; location of catch	October 1998	<i>Proposed rule and analysis under construction.</i>			
<b>Crab Regulations</b>					
Crab LLP license and vessel buyback program	Congress December 2000	<i>Proposed rule and analysis under review in HQ.</i>			
Crab CDQ season start date	October 1998	Nov. 27, 2000			

<b>Gulf of Alaska</b>		
	<b>Fishery</b>	<b>Activity</b>
<b>Trawl gear</b>		
	shallow water complex	Closed due to halibut mortality April 27 reopened May 21, closed May 26 until June 10
	deep water complex	Closed due to halibut mortality May 25 until July 1
<b>Offshore component</b>		
	<b>Western Regulatory Area</b>	
	Offshore Pacific cod	Closed for the A season April 26, opened May 18 closed May 24
	<b>Central Regulatory Area</b>	
	Offshore component Pacific cod	Closed for the A season May 25

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## Alaska Region NMFS

Inseason management activity highlights for late April - May 2001		
Bering Sea and Aleutian Islands		
	Fishery	Activity
<b>Trawl Gear</b>		
	Yellowfin sole	Closed due to halibut mortality April 26, opened on May 21
	Rocksole/other flatfish/flathead sole	Closed due to halibut mortality April 27 until July 1
<b>Hook-and-line gear</b>		
	Greenland turbot	Opened May 1, several boats have stopped fishing due to killer whale predation