

599

ARRC

HANDROLLING

Ronald O. Skoog  
November 1, 1979

3  
Page two

as to the extent of or necessity for hand troll limited entry. However, the economic and social research of all affected fishermen should certainly be undertaken expeditiously so that an informed decision can be made as quickly as possible.

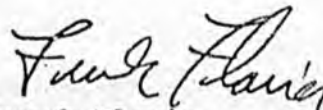
8) If you are speaking to "entry", <sup>when</sup> which you say the Board of Fisheries has taken no action to "limit" hand trollers, how then can you justify the Board of Fisheries action of "eliminating hand troll fishing for salmon in the FCZ", an action which is in opposition to the FMP? (You have limited by total elimination!)

In regard to your comments regarding testimony by the Ombudsman's Office at your December 1979 Board of Fisheries meeting we operate under AS 24.55.190; not under the procedures you suggest. When a complaint is received and investigated, we take our findings and recommendations directly to the agency involved so they may take corrective measures, as permitted by law, through their own (the agency's) initiative. The Board can certainly review this matter on their own initiative.

We appreciate the complexity and magnitude of the task of regulation of Alaska's fishery resources with which you are challenged. We also encourage your efforts toward achievement of the "equitable" solution and "sound" management scheme you seek "in the interest of all Alaskans."

By copy of this letter we are bringing these complaints and subsequent related materials, to the attention of the Administrative Regulations Review Committee, the Commercial Fisheries Entry Commission, and all complainants involved.

Sincerely,



Frank Flavin  
Ombudsman

FF/JAH/jm

cc: Gregory F. Cook, Executive Director, Board of Fisheries  
Steven Pennoyer, Director, Division of Commercial Fisheries  
Nick Szabo, Chairman, Board of Fisheries  
John Williams, Commissioner, Commercial Entry Fisheries Commission  
Senator Don Bennett, Chairman, Administrative Regulation Review Committee

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF FISH AND GAME OFFICE OF THE COMMISSIONER

SUPPORT BUILDING  
JUNEAU, ALASKA 99801

November 23, 1979

RECEIVED  
NOV 26 1979

ANCHORAGE  
OFFICE OF THE OMBUDSMAN

Mr. Frank Flavin  
Ombudsman  
State of Alaska  
840 "K" Street, Room 203  
Anchorage, Alaska 99501

Re: Ombudsman Complaints J79-0279, J79-0271, J79-0272,  
J79-0283, J79-0366, J79-0368, J79-0391, and J79-0398

Dear Mr. Flavin:

Thank you for your letter of November 1, 1979, in which you respond to the Department's last letter to you, and make further comments regarding the subject "Ombudsman Complaints."

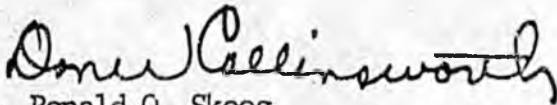
Your letter omitted reference to several specific points mentioned in our reply of October 12, 1979. Since those points are capital to consideration of the troll salmon issue, I am taking this opportunity to reiterate them briefly and request that you include this material as part of the Department of Fish and Game's formal reply to your inquiry.

1) The ban on hand trolling in the FCZ was enacted by the Board of Fisheries because of the depleted and depressed coho and chinook stocks of Southeast Alaska. Such conditions demand an effective and immediate reduction in the amount of fishing effort directed at those stocks. Permitting expansion of fishing effort is clearly not advisable. It would be irresponsible, at best, for the Board to wait until hand-trolling effort increased before paying heed to it.

2) No State regulation exists at this time which limits the hand troll fleet to 20 per cent of the total troll fleet's salmon catch. Indeed, preliminary figures for the 1979 season show that hand trollers caught slightly over 25 per cent of the total troll catch of salmon in Southeast Alaska. The Board will devote further attention to the troll salmon issue at their December, 1979, regulatory session. I wish to encourage you again to offer any constructive advice you may have to the Board at that time. This is one of the enumerated powers of your Office as listed in AS 24.55.190 and .200, and I urge you to take advantage of it.

3) The State of Alaska and the Board of Fisheries have the authority to regulate fishing in the FCZ by Alaska residents and by vessels registered under the laws of the State of Alaska. See: AS 16.05.220 - .300, Alaska Constitution, Article VIII, Fisheries Conservation and Management Act of 1976, 16 U.S.C.A. 1856, State v. Sieminski 556 P2d 929 (Ak, 1976), Glenovich v. Noerenberg 346 F. Supp. 1286, 1291-1292 (D. Alaska, 1972). Continued Regulation of all Alaskan fisheries by the State of Alaska as opposed to the Federal government is a primary objective of our Department and the Board of Fisheries.

Sincerely,



*for* Ronald O. Skoog  
Commissioner

cc: Nick Szabo, Chairman,  
Alaska Board of Fisheries  
Gordon Jensen, Vice Chairman  
Alaska Board of Fisheries



MEMO

Date: May 1, 1980  
To: Regulation Review Committee *FF* MEMBERS  
From: Frank Flavin, Ombudsman *FF*  
Subject: Handtrolling Cases

Attached is a copy of material which was to have been distributed to each of you some months ago, but may not have found its way to your desk.

As you will see, this office investigated quite a number of cases brought to us from handtrollers throughout Southeast Alaska. We made formal recommendations which were not acted upon in a positive manner by the Board of Fisheries. The issue was then brought before your committee, at our request.

We understand that the formal/public hearings have taken place, your committee has discussed the matter, and was waiting until after the Board of Fisheries met to see what action they took. We further understand that if the Board of Fisheries did not take sufficient action, you were to consider the matter further.

We are now in the process of formally closing the handtrolling cases and the ball is in your court. If further input is desired from this office, please contact me. Thank you for your attention to this matter.

FF:bk  
Attachment  
cc: S.E. Regional Ombudsman Office

RECEIVED  
SEP 25 1979

Ombudsman

State of Alaska

Frank Flavin

Reply to:

September 21, 1979

- 840 K Street, Room 203  
Anchorage, Alaska 99501  
(907) 276-4011
- Pouch W0  
Juneau, Alaska 99811  
(907) 465-4970
- P.O. Box 74358  
Fairbanks, Alaska 99707  
(907) 452-4001

JUNEAU  
OFFICE OF THE OMBUDSMAN

Ronald O. Skoog  
Commissioner  
Alaska Department of Fish & Game  
Subport Building  
Juneau, Alaska 99801

Re: Ombudsman Complaints J79-0270,  
J79-0271, J79-0272, J79-0283,  
J79-0366, J79-0368 and J79-0391  
4J79-0398

Dear Commissioner Skoog:

Please take notice that the Office of the Ombudsman has completed its investigation of the following allegations:

1. That the ban on hand trolling in the high seas salmon fishery is an unfair and illegal economic sanction;
2. That the ban on hand trolling in the high seas salmon fishery unfairly discriminates against hand trollers vis-a-vis power trollers;
3. And, that the State regulation imposing the hand trolling ban in the Fishery Conservation Zone is illegal in light of the approval of the federal Fishery Management Plan on May 15, 1979.

BACKGROUND

1. At the December <sup>1977</sup> Board of Fisheries meeting, the "Board unanimously adopted the coastal fishing area 6/0, Goll absent. It was moved by Jensen and seconded by Fair that hand troll gear be prohibited in the coastal fishing zone. The motion carried 6/0."
2. In early 1979, in a "Report to the Board of Fisheries on the Southeast Alaska Salmon Troll Fishery," it was stated that the North Pacific Fisheries Management Council had recently concluded a first level of review on the draft of the High Seas Salmon Fishery Off the Coast of Alaska East of 175° East Longitude. The FMP was to undergo further review and redrafting and was expected to be implemented by mid-April, 1979. Included in the "proposed regulations in the plan" was "3. Power troll and sport fish gear only."

3. On May 9, 1979, the Division of Commercial Fisheries, in a "NEWS" release, reminded salmon trollers that the State Regulations adopted at the January, 1979 Alaska Board of Fisheries meeting (which extended state regulatory control of the Southeast troll fishery into the adjacent Seward Biological Influence Zone) were currently in effect. It further stated that anticipated adoption of federal regulations for salmon fisheries in the Fisheries Conservation Zone has caused uncertainties over the applicability of the State regulations offshore. The news release concluded that the NPFMC's Fishery Management Plan and its regulations would not go into effect until they were approved by the Secretary of Commerce and therefore, State fishery regulations concerning salmon trolling (ban on hand trolling) were still effective in both state and federal waters.

4. On May 15, 1979, (earlier than was expected) the assistant administrator for Fisheries, Department of Commerce (NOAA) announced approval of the Fishery Management Plan "with the exception of one provision," and issued on an emergency basis regulations implementing the approved portion. The following appeared in the Federal Register, Vol. 44, No. 98, dated Friday, May 18, 1979:

provision of the FMP was not approved and will not be implemented. The disapproved portion of the FMP would have prevented fishing by hand trollers in the fishery conservation zone (FCZ). The Assistant Administrator determined that this provision was inconsistent with National Standard 4 of the Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 et seq., (Act), because it would have prohibited fishing by certain hand trollers who had historically fished in this area, while it would have allowed power trollers with a similar history to continue to fish in the FCZ. Power trollers use power from their boats' engines to crank their reels, while hand trollers crank their reels manually. It was determined that no valid conservation purpose was served by the distinctions that were drawn between the two types of gear.

The FMP further stated, under Sec. 674.24 Gear restrictions, that "Commercial fishing for salmon in the East Area is permitted only with power or hand-troll gear."

5. Winifred H. Meibohm, Executive Director, National Marine Fisheries Service, in a May 15, 1979 communication to the Juneau NOAA office, related detail on the Fishery Management Plan. Selected portions of that memo include:

"Regulations implementing the approved portion of the FMP are issued on an emergency basis in order to limit fishing effort on the salmon stocks."

"The salmon fishery covered by the FMP occurs throughout the waters off Alaska east of 175° east longitude... divided into two management units...(and) Both management units include the FCZ and waters under Alaskan jurisdiction. All harvest taking place on those portions of the management units within State waters will be regulated by Alaska."

"Optimum yield for this fishery corresponds to the average annual harvest during recent years. The FMP is intended to maintain recent levels of fishing effort on the salmon stocks. The NPFMC determined that an increase in fishing effort would be detrimental to the stocks. Any substantial decrease in fishing effort, on the other hand, would be unacceptable for social and economic reasons, because many individuals are dependent on the ocean salmon fishery."

Under a section entitled "Limited Entry Moratorium" it was stated that, "Under those regulations, (limited entry) this maximum number would be exceeded only to the extent necessary to ensure that no eligible person who has been dependent on this fishery would be precluded from harvesting salmon." (Emphasis added.)

"With the exception of allowing hand trolling in the FCZ, these management measures are essentially the same as the Alaska regulations governing salmon fishing in waters under its jurisdiction."

"These regulations are effective immediately as emergency regulations."

It was further stated under Subpart A-General, 674.1 Purpose and Scope, (b), that "These regulations govern fishing for salmon by fishing vessels of the United States within that portion of the North Pacific Ocean seaward of Alaska, east of 175° East Longitude, over which the United States exercised exclusive fishery management authority under the Act." (Emphasis added.) The "Act" means the Fishery Conservation and Management Act of 1976, 16 U.S.C. Sec. 1801-1882, as amended.

6. On May 22, 1979, the Division of Commercial Fisheries, in a "NEWS" release, announced the recent enactment of the Fishery Management Plan. It stated that, "The plan and implementing regulations, which became effective on May 15, 1979, fail to regulate the salmon hand troll fishery in offshore waters. In the absence of federal management and regulatory measures concerning the salmon hand troll fishery offshore, State of Alaska salmon conservation regulations continue to be effective." (Emphasis added; regulation referred to is the "ban" on hand trolling offshore.)

7. In a letter to Mr. Robert C. Loomis dated June 13, 1979, Mr. Harry L. Rietze, Director of the Alaska Region, NOAA, NMFS, commented that "salmon regulations cover fishing for salmon and tanner crab in Alaskan waters outside 3 miles. No other domestic fisheries are now covered by federal regulation within the 3-200 mile Fishery Conservation Zone. When regulations for additional fisheries are finalized, permits may be required, at which time NMFS Juneau will begin issuing permits. Regulations implementing the fishery management plan for the salmon fishery in the 3-200 mile Fishery Conservation Zone (FCZ) in the Gulf of Alaska are now in effect. These regulations allow commercial fishing for salmon with troll gear only." Mr. Rietze further stated that "Persons fishing with hand troll gear are advised that the State of Alaska has implemented a regulation which prohibits use of hand troll gear in offshore waters. We strongly urge that hand trollers contact the Alaska Department of Fish and Game or the Alaska Department of Public Safety regarding this State regulation. NMFS Juneau strongly recommends that all Alaska State fishing and landing laws and regulations be reviewed prior to the beginning of fishing activities." The letter did not, however, make it clear whose regulations (Alaska or Federal) were to be followed.

#### FINDINGS

Allegation No. 1: That the ban on hand trolling in the high seas salmon fishery is an unfair and illegal economic sanction.

Analysis: The primary Departmental basis for the ban on high seas salmon hand trolling is the increase in effort by hand trollers on depleted King Salmon and heavily utilized coho stocks. [Interviewers - Skoog, Cook, Pennoyer, Cantillon; letter from Commissioner Skoog to Secretary Kreps, April 21, 1979; Memo John G. Gissberg, Assistant Attorney General re: proposed ban on hand trolling in FCZ] The Board of Fisheries intent in

adopting the ban was to limit the total hand troll catch to 20% of the salmon catch. [Performance Review of Commercial Fisheries Entry Commission by Legislative Audit, May 15, 1979, at pages 26 and 376]; Memo John Williams, CFEC from Carl Rosier, Deputy Commissioner Alaska Department of Fish and Game, August 21, 1979, re: Limited Entry for Hand Troll Gear.]

There is no doubt that the increase in hand troll effort is a legitimate cause for Board and Department concern and regulatory response. Certainly, the increase calls for restrictive regulation and arguably a lid on the hand troll effort.

However, a regulation establishing a total ban on one gear type in one area and the adoption of a maximum catch percentage for that gear type in the region is economic and social regulation that is deliberate and not incidental to conservation management.

There is little doubt the high seas hand trolling ban and overall hand troll restrictions are in response to the failure of the Limited Entry Commission to implement limited entry in the hand troll fishery. However, the Board of Fisheries regulatory scheme amounts to limited entry without the procedural safeguards and thorough economic and social research required of the Commercial Fisheries Entry Commission.

It is clear from the Board of Fisheries minutes and our interviews with Departmental staff that hand troll fishermen are considered less "traditional," less "beneficial," and less "dependent" than power trollers. [These assumptions will be considered later in this report.]

The legal problems associated with the Board of Fisheries assuming a responsibility delegated to the Commercial Fisheries Entry Commission has been adequately explored in the recent Legislative audit of the Commercial Fisheries Entry Commission. Practically, the Board of Fisheries does not have the economic or social data base to decide that one class of fishermen, hand trollers, should be totally restricted from the high seas fishery while another class of fishermen, power trollers, are allowed the privilege.

Social or economic manipulation of the livelihood of the state's citizens should be accomplished, if at all, by elected officials (the Legislature) directly or through appointed officials (the Commercial Fisheries Entry Commission) pursuant to a legislatively established formula with due process safeguards. With the Commercial Fisheries Entry Commission safeguards have been legislatively established--with the Board of Fisheries they have not.

It should be noted that the federal Fisheries Management Plan disapproved the high seas hand troll ban because it served no valid conservation purpose.

With the implementation of the high seas hand trolling ban and maximum catch percentage, the Board of Fisheries moved from managing the methods and means of harvest to managing the composition of the harvesters.

To further restrict or even put a lid on the hand troll effort in the high seas would undoubtedly have a salutary effect on the fish. To ban the hand trollers completely has an unconscionably greater salutary effect on competing fishermen.

Determination: Partially Justified. The increase in hand troll effort necessitates restrictions or arguably a lid on the effort. The Board of Fisheries, in adopting a complete high seas ban, has adopted a limited entry rather than conservation measure.

Allegation No. 2: That the ban on hand trollers in the high seas salmon fishery unfairly discriminates against hand trollers vis-a-vis power trollers.

Analysis: One Departmental basis for the hand trolling ban in the high seas fishery was to prevent the hand troll fishery from becoming more established. [Letter from Commissioner Skoog to Secretary Kreps, April 23, 1979.] Most Departmental personnel interviewed felt that power trolling was the "traditional" use in the high seas area.

Some Departmental officials characterize hand trolling as sport-commercial, "weekend warriors," etc. Others point to a growing "professional" hand trolling effort. One is struck, however, with the lack of concrete data, beyond observation or assumption as to both the size and importance (social and economic) of the hand troll effort both in the inshore and high seas zones.

In his memo on the proposed ban on handtrolling in the FCZ, Assistant Attorney General Gissberg states: "In the past that fleet has generally represented weekend fisherman seeking additional income or tax advantages on their fishing expenditures." This statement is fairly reflective of the Departmental characterization of hand trollers that we encountered. However, we have yet to see any hard data which establishes the income, dependence or "tax sophistication" of the average hand troller, past or present.

Even the total number of hand troll fishermen in the high seas area (Fisheries Conservation Zone) is not tied down. Five hand trollers were "reported" operating by both Gissberg and the federal "Informational Memorandum" on the "Partial Disapproval of the Fishery Management Plan for the High Seas Salmon Fisheries off the Coast of Alaska." It is not at all certain that this figure is accurate as it does not account for "occasional" effort, nor is the information on fish tickets accurate or thorough enough to establish the actual location of catch and the total hand troll effort in the FCZ.

If the total hand troll fishing effort in the FCZ were indeed five hand trollers this fact certainly undermines the conservation necessity of a total ban in lieu of tighter restrictions or a lid on the high seas hand troll effort.

The federal Fisheries Management Plan rejected the proposed hand troll ban as power trollers who had previously fished the area would be permitted to continue but hand trollers would not.

Determination: Justified. Very little data concerning the economic and social aspects of the troll fishery have been compiled yet basic assumptions concerning the nature of this fishery have influenced the allocation of fish between user groups. Traditional hand troll effort in the FCZ is not well documented, nor is there any legitimate or rational reason why traditional hand trollers in the FCZ should be banned and power trollers permitted to continue.

Allegation No. 3: That the State regulation imposing the hand trolling ban in the Fishery Conservation Zone is illegal in light of the approval of the federal Fishery Management Plan.

Analysis: On May 15, 1979, the assistant administrator for Fisheries announced the approval of the Fishery Management Plan, but with the disapproval of that portion of the plan that provided for a ban on hand trolling in the FCZ. This created a clear inconsistency between federal regulation and state regulation of hand trolling in the FCZ; the federal plan allowing, the state plan prohibiting.

Since that date neither the State nor federal government have made a reasonable effort to inform the involved fishermen as to which management scheme the fishermen should obey.

Clearly the federal law pre-empts. In State v. Bundrant, et. al., 546 P. 2d 530 (Alaska, 1976) the Alaska Supreme Court stated that the doctrine of pre-emption holds "that when Congress has exercised its regulatory authority over a particular subject

in manner to indicate an intention to deal fully and exclusively therewith, all state regulation in that particular field must yield." (Id. at p. 538)

The language in the Fishery Conservation and Management Act (16 U.S.C. 1801 et. seq.) is clear as to federal exclusivity. The Act provides:

(b) Purposes.--It is therefore declared to be the purposes of the Congress in this Act--

(1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by establishing (A) a fishery conservation zone within which the United States will assume exclusive fishery management authority over all fish, except highly migratory species, and (B) exclusive fishery management authority beyond such zone over such anadromous species and Continental Shelf fishery resources; . . .

Despite the clear pre-emption of the FMP allowing hand trolling, State and federal regional officials have finessed the pre-emption question leaving involved fishermen guessing as to if and when the FMP takes effect.

The May 22, 1979 Division of Commercial Fisheries "NEWS" release was at best deceptive in stating:

"In the absence of federal management and regulatory measures concerning the salmon hand troll fishery offshore, State of Alaska salmon conservation regulations continue to be effective."

The preceding language implies a failure to act when in fact the hand troll ban was specifically disapproved and a regulatory scheme allowing hand trollers approved.

The director of the Alaska Region, NOAA, NMFS was more artful in dodging the pre-emption question completely and steering Robert C. Loomis, a fisherman, back into the morass of legal uncertainty:

"Persons fishing with hand troll gear are advised that the State of Alaska has implemented a regulation which prohibits use of hand troll gear in offshore waters.

We strongly urge that hand trollers contact the Alaska Department of Fish and Game or the Alaska Department of Public Safety regarding this State regulation. NMFS Juneau strongly recommends that all Alaska State fishing and landing laws and regulations be reviewed prior to the beginning of fishing activities."

Determination: Justified. State and federal regional officials are leaving the pre-emption question murky until ADF&G and the North Pacific Management Council seek a reversal of the disapproval of the hand troll ban in the FCZ. This is fine for administrators and managers but lousy for the fishermen caught in the middle.

#### CONCLUSION

The expansion of the hand troll fleet clearly calls for increasingly restrictive regulation to protect salmon stocks and diminish the unfairness to other fishermen who have been subject to limited entry. However, any economic regulation of hand trollers is clearly the province of the legislatively empowered Commercial Fisheries Entry Commission and not the Board of Fisheries. The FCZ hand troll ban and 20% catch limitations both amount to economic regulation and the administrative seizure of control over the livelihoods of State residents without their approval, without the approval of their elected representatives, and without adequate research or procedural safeguards.

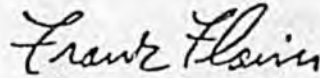
#### Recommendations:

1. The Administrative Regulation Review Committee of the Legislature should review 5 AAC 33.330 and 5 AAC 48.090;
2. The Board of Fisheries should reconsider 5 AAC 33.330 and 5 AAC 48.090 at its next meeting;
3. The commissioner of Fish and Game and regional director, NOAA, NMFS should announce the date that hand trolling pursuant to the FMP will be permissible, or offer negotiation or litigation plans for resolving the inconsistencies in the federal and state regulatory schemes; *and*
4. That limited entry of the hand troll fishery be undertaken expeditiously.

Commissioner Skoog  
September 21, 1979  
Page 10

Thank you for your assistance and consideration in this matter. We look forward to your response within 30 days.

Sincerely,



Frank Flavin  
Ombudsman

FF:rj

cc: Gregory F. Cook  
Steven Pennoyer  
Nick Szabo

*S. E. Regional "O" Office*



# Ombudsman

Frank Flavin

State of Alaska

September 25, 1979

Reply to:

- 840 K Street, Room 203  
Anchorage, Alaska 99501  
(907) 276-4011
- Pouch W0  
Juneau, Alaska 99811  
(907) 465-4970
- P.O. Box 74358  
Fairbanks, Alaska 99707  
(907) 452-4001

RECEIVED  
SEP 28 1979

JUNEAU  
OFFICE OF THE OMBUDSMAN

Ronald O. Skoog  
Commissioner  
Department of Fish and Game  
Subport Building  
Juneau, Alaska 99801

Re: Ombudsman Complaints J79-0279,  
J79-0271, J79-0272, J79-0283,  
J79-0366, J79-0368, J79-0391 and  
\*J79-0398 (\* not previously listed)

Dear Commissioner Skoog:

Several items in our findings issued September 21, 1979, need further explanation.

First, we will not send these findings to the Administrative Regulation Review Committee or the Commercial Fisheries Entry Commission until you have responded, and a copy of that response will be included with our materials.

Second, we will not send copies of these findings to our complainants for two weeks. As you know we do not publicize our findings (if at all) until we have a response from the Department. In fairness to agencies, as we cannot control the activities of our complainants, we try to allow a grace period for the Department in controversial matters.

Finally, recommendation number four is made with the understanding that CFEC is already working on limited entry for hand trolling. Because of the problems brought to light by the Alaska Department of Fish and Game we hope that CFEC evaluation and implementation occur expeditiously.

Thank you for your attention and consideration in this matter.

Sincerely,

Frank Flavin  
Ombudsman

FF:rj

cc: Gregory F. Cook  
Steven Pennoyer  
Nick Szabo

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF FISH AND GAME OFFICE OF THE COMMISSIONER

SUPPORT BUILDING  
JUNEAU, ALASKA 99801

October 12, 1979

RECEIVED  
OCT 15 1979

ANCHORAGE  
OFFICE OF THE COMMISSIONER

Mr. Frank Flavin, Ombudsman  
State of Alaska  
840 K Street, Room 203  
Anchorage, Alaska 99501

Dear Frank:

I have received your letter of September 21, 1979, and will respond to the allegations and findings contained in that letter in the order in which they were made. I have consulted with Steve Penoyer, Director of the Division of Commercial Fisheries, and Greg Cook, Executive Director of the Alaska Boards of Fisheries and Game, before compiling these comments.

Allegation No. 1. The ban on hand trolling in the high seas salmon fishery is an unfair and illegal economic sanction.

The gist of the analysis appears to be contained in the second full paragraph on page 5, wherein you state "...a regulation establishing a total ban on one gear type in one area and the adoption of a maximum catch percentage for that gear type in the region is economic and social regulation that is deliberate and not incidental to conservation management." In order to respond to that conclusion I must examine each clause of that lengthy sentence separately.

The Board of Fisheries has established a total ban on one gear type in one area in many different instances. For example, a variety of areas exist in the state that are open exclusively to gillnetting for both the salmon fishery and the herring fishery. Also,

- a) Security Cove was made an exclusive gillnet area for herring in December, 1978;
- b) In Upper Cook Inlet, no seining north of Anchor Point is allowed, and no drift gillnetting is allowed below Anchor Point;
- c) Set gillnetting was eliminated from Lynn Canal in 1972.

Such action by the Board of Fisheries is within their delegated powers to affect the methods and means of take of fisheries resources.

(AS 16.05.251. See also *Dow v. Ickes* 123 F. 2d 909 (1941)). The ban on hand trolling in the FCZ similarly falls within the Board's powers as a regulation affecting the methods and means of take.

The second clause of the sentence cited above states that "the adoption of a maximum catch percentage for that gear type in the region is economic and social regulation that is deliberate and not incidental to conservation management." First, the Board has never "adopted" a maximum catch percentage for hand trolling. The percentage figure to which you refer, I assume, comes from a January 23, 1979, letter from Greg Cook, Executive Director, Board of Fisheries, to the Commercial Fisheries Entry Commission. In that letter the following language appears, "The Board respectfully wishes to express to the Commission its interest in the development of a program that would consider the following elements: 1) preference for rural over urban hand trollers, and 2) allocation of hand troll permits in a number that will result in an overall ratio of the troll catch of 80 percent power troll and 20 percent hand troll." The Board of Fisheries has not adopted any regulations which impose a maximum catch percentage on hand trollers. The percentage figure to which you refer was a request made to the Commercial Fisheries Entry Commission for their consideration. No formal adoption of that figure has been made by the Board of Fisheries.

Finally, you state that the Board's disposition toward that 80 percent/20 percent distribution of the total troll catch is "economic and social regulation that is deliberate and not incidental to conservation management." As stated above, no regulation per se is involved. To claim that limiting effort in a particular fishery is not an aspect of conservation management is not realistic. The level of effort present in a particular fishery corrolates directly to the total number of fish which will be taken, and concomitantly affects total escapement.

In summary, I disagree with all of the conclusions which you state in the second full paragraph on page 5.

In paragraph 3 of page 5, you state that the Board of Fisheries' regulatory scheme "amounts to limited entry." Again I must disagree strongly with your conclusion. As all Alaskans know, a limited entry scheme entails regulating entry into a commercial fishery. (See AS 16.43.100(a)) Entry into the hand troll fishery is still unlimited and is open to anyone with gear and a boat. The Board of Fisheries has taken no action that is tantamount to "limited entry."

In paragraph 4 of page 5, you make the conclusion that hand troll fishermen are considered inferior in several ways in relation to power trollers. Certainly, the Board of Fisheries is well aware that hand trollers antedate power trollers and consequently are more "traditional." However, hand trolling gear has not remained static since the inception of the hand troll fishery. The gear used by hand trollers now is far more sophisticated (more lines, more hooks, more efficient methods of retrieval) than the gear fished by hand trollers during the early years of the fishery. It is the use of the outside waters by the hand trollers that is less traditional than the use of the outside waters by power trollers. (See catch data for troll fishery, Alaska Department of Fish and Game, 1975 - 1977).

In paragraph 6 of page 5, you state that the Board of Fisheries' legal responsibilities have been adequately explored in the recent Legislative audit of the Commercial Fisheries Entry Commission. I suggest that you review the entire report, published May 15, 1979, with special attention to pages 37(f) through 37(j). It should be noted that the auditors' responses on page 40(f) were nonresponsive to the merits of the argument raised in the Department of Fish and Game's response. (See also AS 16.43.350).

Additionally, your conclusion that the Board of Fisheries does not have the economic or social data base to evaluate the restrictions necessary in Alaskan fisheries is incorrect. Regarding the hand troll issue, I would call your attention to the series of hearings held throughout Southeastern Alaskan in 1977 on hand trolling (See below, page 4, paragraph 3). In addition, I also call your attention to the hundreds of fishermen who semi-annually come before the Board of Fisheries to offer both economic and social testimony. Finally, please find appended to this response the Alaska Department of Fish and Game Report to the Board of Fisheries, December 1978.

The final paragraph, which begins on page 5, states that safeguards have not been legislatively established for the Board of Fisheries. Again, I must disagree with this statement since it is incorrect. (See AS 44.62.320, AS 16.05.280). Naturally collateral due process safeguards inhere in the system of judicial review as well. (AS 44.62.-020, .030, .300).

The first full paragraph on page 6 states that "the Federal Fisheries Management Plan disapproved of the high seas hand troll ban because it served no valid conservation purpose." That statement is incorrect. In reality, the reason for the Federal action was stated to be "no valid conservation purpose was served by the distinctions that were drawn between the two types of gear" and the attitude in Washington that the distinction contravened 16 U.S.C. 1851 (emphasis added). The ban on high seas hand trolling reduced the total potential salmon fishing effort on the high seas and prevents further increases in the mixed stock fishery. Consequently, a valid conservation purpose was served by limiting effort. It should be noted that only the Washington, D.C., attorneys for the Department of Commerce took the position that the distinction between hand trollers and power trollers was invalid. An attorney for NOAA in Juneau, Alaska is in agreement with the State's position that the ban on hand trolling in the FCZ is in conformance with the national standards of the FOMA and equal protection under the 14th Amendment to the U.S. Constitution.

In conclusion, I must disagree with the statement that the Board of Fisheries "has adopted a limited entry rather than conservation measure." The Board of Fisheries' action has not slowed entry into the hand troll fishery. Indeed, in 1979, 5,400 permits were issued to commercial hand trollers. This represents an increase of 1,500 over the total number of permits issued in 1978 and an increase of 3,300 over the total number of permits issued in 1975. The number of permits actually fished increased from 1,086 in 1975, to 2,604 in 1978.

Although data are not available in final form for the 1979 high seas troll fishery, I am confident that the reduction in effort occasioned by the ban on hand trolling on the high seas contributed to conservation of the depleted and depressed coho and king salmon stocks present off the coast of Southeastern Alaska. I sincerely appreciate your concern for these depleted and depressed stocks and look forward to hearing your testimony before the Board of Fisheries when they meet to consider finfish proposals in Anchorage December 3-20, 1979.

Allegation No. 2: That the ban on hand trollers in the high seas salmon fishery unfairly discriminates against hand trollers vis-a-vis power trollers.

The fact that entry and the level of potential effort in the hand troll fishery is presently without bounds establishes a reasonable basis for the Board of Fisheries' action in eliminating hand troll fishing for salmon in the FCZ. This key distinction between hand trollers and power trollers, i.e., power trollers' effort has been limited whereas hand trollers' effort is unlimited in magnitude, is a clear basis for differentiating between the two gear types. The fundamental reason for the distinction between the two gear types remains, of course, functional distinction, viz., the method of retrieval.

From January 20 through March 16, 1978, representatives from the Board of Fisheries held hearings on the hand troll fishery in the communities of Ketchikan, Juneau, Sitka, Petersburg, Wrangell, Angoon, and Hoonah. These hearings were held to allow members of the public to present their views and ideas on possible regulation and limitation of the hand troll fishery. At least one Limited Entry Commissioner and a varied number of Department of Fish and Game personnel attended the hearings with Gordon Jensen and/or Jim Beaton, who represented the Alaska Board of Fisheries. Approximately 145 persons testified during the hearings. Extensive testimony was received on the economic and social aspects of the hand troll and power troll fisheries. I must emphasize that the expertise possessed by the members of the Alaska Board of Fisheries, the data presented by the Commercial Fisheries Entry Commission, the data presented by the Alaska Department of Fish and Game, and the extensive testimony received in regulatory sessions of the Board of Fisheries and special hearings the Board has held constitute a thoroughly legitimate data base on which to make decisions.

Your statement that traditional hand troll effort in the FCZ is not well documented is well taken. It is the Department's and the Board's position that the lack of documentation of such "traditional" effort is due to the fact that the effort has been so low as to be negligible in the past. The Board of Fisheries' action, however, was based on the precept that the previously negligible level of effort is subject to rapid expansion, and the depleted and depressed state of the king and coho stocks does not allow for potentially unlimited expansion of the hand troll effort in the FCZ at the expense of the resource for the sole purpose of obtaining data to satisfy other state agencies.

October 12, 1979

It goes without saying that hand trollers still fish intensively in inside waters in areas where stocks are more discrete. Management of discrete stocks is biological, more sound than a mixed stock fishery, since it allows managers a better chance to avoid overfishing specific stocks. (See Washington Kelpers' Association v. State 502 P 2d 1170, 1172 (Wash., 1972)).

Allegation No. 3: That the State regulation imposing the hand trolling ban in the Fishery Conservation Zone is illegal in light of the approval of the Federal Fishery Management Plan.

You are correct in stating that there is an inconsistency between the State regulation and the Fisheries Management Plan. It is not, however, the duty of the State or the Federal Government to give legal counsel to individual fishermen. Your statement that "clearly the Federal law pre-empts" is a legal conclusion unsupported by judicial application to the hand troll issue. There is no substitute for the informed legal counsel which a competent attorney can render to an individual citizen. (See AS 08.08.210). With that caveat in mind, I will comment on the personal opinions of your office staff relating to the pre-emption issue.

Your citation of 16 U.S.C. Sec. 1801 is well taken. However, your unexplained omission of 16 U.S.C. 1856(a) was unfortunate. That section (Sec. 306 P.L. 94-265) states the following: "except as provided in subsection (b), nothing in this Act shall be construed as extending or diminishing the jurisdiction or authority of any state within its boundaries. No state may directly or indirectly regulate any fishing which is engaged in by any fishing vessel outside its boundaries unless such vessel is registered under the laws of such state." Naturally the State of Alaska regulations pertaining to hand trolling in the FCZ are meant to apply only to vessels registered under the laws of the State of Alaska and citizens of Alaska. Similar regulations of the State of Alaska exist for the king crab fishery in the FCZ. Since the Secretary of Commerce has not held a hearing in accordance with the Federal APA as mandated by subsection (b) of Section 306, the exception to State jurisdiction noted above in Section 306 does not apply. Your opinion, therefore, that federal pre-emption is "clear" and federal exclusivity is "clear", is fragile and appears to be unsupported by an understanding of the F.C.M.A. as a whole.

I agree with you that the area of State/Federal jurisdiction is murky and that the action taken by the Secretary of Commerce inures to the detriment of all fishermen concerned. Nonetheless, I am unable to control actions taken in Washington, D.C., and I cannot deliberately abuse Alaska's resources because of unwise action taken on the Federal level.

## CONCLUSIONS

I concur with your opinion that the mushrooming of the hand troll fleet calls for increasingly restrictive regulation to protect salmon stocks and to diminish the unfairness to other fishermen who have been subjected to limited entry. I am sure you see the folly of attempting to completely separate regulations in the troll fishery into "economic" regulations and "non-economic" regulations. (See Legislative Audit Report, May 15, 1979, pages 37(g) - 37(i)).

The Board of Fisheries' statutory responsibilities include conservation and development of the State of Alaska's fisheries resources (AS 16.05.221(a)). It should be clear to even the most ingenuous observer that many actions taken for the purpose of conservation will have collateral economic results. In other words, conservation actions may affect the development or utilization of fisheries resources and vice versa. The regulations of the Alaska Board of Fisheries regarding hand trolling in the FCZ are founded on a rational basis. Extensive public testimony has been received over a period of years, forming a massive data base for their decision. The specific action taken by the Board of Fisheries is within their legitimate powers under AS 16.05.251(4), and is not ultra vires as you contend.

## COMMENTS ON OMBUDSMAN'S RECOMMENDATIONS

1. The Administrative Regulation Review Committee should review 5 AAC 33.330 and 5 AAC 48.090.

No comment.

2. The Board of Fisheries should reconsider 5 AAC 33.330 and 5 AAC 48.090 at its next meeting.

The published deadline for submission of public proposals for consideration by the Board of Fisheries at its December 1979 meeting was September 14. It is now too late for you to submit a proposal regarding the referenced regulations. Nonetheless, to the extent public proposals have been submitted concerning those regulations, they will be legally advertised, and the Board may take regulatory action in those two areas (AS 44.62.190). I suggest that you may wish to offer oral or written testimony to the Board of Fisheries on the referenced regulations. The Board of Fisheries meeting will be held December 3-20, during which public testimony will be received. If you wish to submit written comments, those comments may be submitted directly to the Board's office in Juneau prior to November 23, 1979. Alternatively, you may wish to submit a petition to the Boards under AS 44.62.220.

3. The Commissioner of Fish and Game and the Regional Director of the National Marine Fisheries Service should announce the date that hand trolling pursuant to the Fisheries Management Plan will be permissible or offer negotiation or litigation plans resolving the inconsistencies

October 12, 1979

in the federal and state regulatory schemes.

I am not now working with NOAA or the National Marine Fisheries Service on the regional level to resolve the inconsistency. You should be aware, however, that the North Pacific Fishery Management Council is strongly in support of the State Board of Fisheries' regulation pertaining to hand trolling in the FCZ. The North Pacific Fishery Management Council is actively pursuing a change in orientation at the Washington, D.C., level, so that the federal Fisheries Management Plan will be brought into line with the state regulations. If you wish further information on the position of the North Pacific Fishery Management Council, I suggest that you contact Jim Branson, Executive Director of the NPFMC in Anchorage.

4. That Limited Entry of the hand troll fishery be undertaken expeditiously.

I agree strongly with this recommendation. The Commercial Fisheries Entry Commission stated to the Board of Fisheries at their 1978 Finfish Regulatory Session that it would take a minimum of two years to institute a limited entry program on the hand troll fishery. If you sincerely desire to expedite the application of a limited entry scheme on the hand troll fishery, I suggest that you contact the Commercial Fisheries Entry Commission.

CODA

Regulation of the Southeastern Alaska troll fishery is a massively complex matter. The issues are multifarious and the solutions are far from easy. The salmon resource is a highly valuable one and allocation of that scarce resource is bound to inflame volatile emotions. I appreciate your deep concern for the maintenance of Alaska's natural resources and fishery resources in particular. I look forward to hearing your testimony in Anchorage at the December 1979 Board of Fisheries meeting and anticipate that you will have specific constructive comments to make at that time. Achieving an equitable solution and a sound management scheme are in the interests of all Alaskans.

I thank you for this opportunity to comment.


Sincerely,

  
Ronald O. Skoog  
Commissioner

Attachment



MEMO

Date: November 1, 1979  
To: Handtroll Complainants  
From: Judith Holden, Ombudsman Assistant   
Subject: Status of Handtroll Cases

Attached for your information are four documents:

- 1) September 21, 1979 letter from Frank Flavin to Commissioner Skoog
- 2) September 25, 1979 letter from Frank Flavin to Commissioner Skoog
- 3) October 12, 1979 response from Commissioner Skoog to Frank Flavin
- 4) November 1, 1979 response to the response from Frank Flavin to Commissioner Skoog.

As you will note in the last paragraph of document #4, we have forwarded copies of these enclosures to the Administrative Regulations Review Committee which may or may not take positive appropriate action. For this reason, we are going to leave all handtroll cases included in this investigation in a "pending" state. However, in view of the Commissioner's response (or non-response) the ball is now in another court. If we hear from the Regulation Review Committee, or if additional useful information is forwarded to us, I will be in contact.

Call me, collect if you have questions and/or concerns after reading the attachments. We are sorry this exercise did not result in a reversal of the Board of Fisheries and Division of Commercial Fisheries actions. As you may know, under our statutes we can not force an action to take place. We can only recommend that it take place when investigation so indicates.

/jah  
Enclosures as listed above



ombudsman

Frank Flavin

NOV 6 1979

State of Alaska

Office of the Ombudsman  
Reply to 100000

- 840 K Street, Room 203  
Anchorage, Alaska 99501  
(907) 276-4011
- Pouch W0  
Juneau, Alaska 99811  
(907) 465-4970
- P.O. Box 74358  
Fairbanks, Alaska 99707  
(907) 452-4001

November 1, 1979

Mr. Ronald O. Skoog  
Commissioner  
Department of Fish and Game  
Support Building  
Juneau, Alaska 99801

Re: Ombudsman Complaints J79-0279  
J79-0271, J79-0272, J79-0283  
J79-0366, J79-0368, J79-0391,  
and J79-0398

Dear Commissioner Skoog:

Without belaboring the obvious differences in opinion in this matter, we remain firm in our conviction that the ban on hand trolling in the "outside" waters is unfair, discriminatory, and illegal. Further, we still find questionable, actions of the Board of Fisheries and the Department of Commercial Fisheries regarding that ban.

We feel compelled to offer several brief comments.

1) The Board of Fisheries was created for the purpose of the conservation and development of the fishery resources of the state. We fail to see, for the purpose of conservation, how the banning of hand trollers would lead to an impact on the fishery sufficient enough to be termed an effective conservation effort. To wit, your statement, "It is the Department's and the Board's position that the lack of documentation of such 'traditional' effort is due to the fact that the effort has been so low as to be negligible in the past." Although the hand troll effort is expanding, that expansion has not yet been quantified. Therefore, how could the action in question be termed "sound" conservation management? It is obvious that a hand troll restriction is a limited entry measure.

You further stated, "The level of effort present in a particular fishery correlates directly to the total number of fish which will be taken, and concomitantly affects total escapement." Again, how effective is the conservation effort if hand troll fishing in the FCZ "had been so low as to be negligible" and the increase is an unknown factor?

2) You state that, "The Board of Fisheries has not adopted any regulations which impose a maximum catch percentage on hand trollers." However, (in addition to the two documents cited in my 9/2/79 letter) a January 16, 1979 News release from the Department of Fish and Game

Ronald O. Skoog  
November 1, 1979

Page two

states, "the Board believes hand trollers should be allowed to harvest 20 per cent of the commercial troll catch of coho salmon. Szabo also said the Board thinks that any future limited entry program for the hand troll fishery should be designed to maintain that 20 per cent level...As an interim measure until a limited entry program can be developed, the Board adopted regulations which will help protect coho salmon stocks in northern Southeast and will begin to reduce hand troll catches to the level the Board wants to maintain." The news release then went on to list regulations which were in effect during the 1979 fishing season. If, in fact, "No formal adoption of that figure has been made by the Board of Fisheries.", they should not be imposing it upon the fishery as is obviously the case at present.

3) As we previously stated, the Fishery Management Plan, under a section entitled "Limited Entry Moratorium" states that, "Under those regulations, (limited entry) this maximum number would be exceeded only to the extent necessary to ensure that no eligible person who has been dependent on this fishery would be precluded from harvesting salmon." (Emphasis added) The Board of Fisheries, has however, precluded 'traditional' fishermen from harvesting salmon in the waters covered under the Fishery Management Plan. You stated, "the use of the outside waters by the hand trollers... is less traditional than the use of the outside waters by power trollers." We do not believe the decision to eliminate fishing in those waters for any traditional fishery lies with the Board of Fisheries. Furthermore the FMP guidelines <sup>apply</sup> ~~go to~~ "traditional" in the sense of the individual fisherman ("no eligible person") and not a collective use.

4) We are, and have been, aware of the North Pacific Fishery Management Council's pursuance of a change in "orientation" and find it interesting that the federal plan should "be brought into line with state regulations." Until a change is accomplished the status quo does not favor state regulations which conflict with the federal standard (ie. handtrolling ban).

5) The "safeguards" which you have cited (AS 44.62.320 and AS 16.05.280) are after the fact and do not provide management standards by which agency action is to be measured. They are not on a scale with the legislatively imposed management and procedure safeguards under which the Commercial Fisheries Entry Commission is mandated to operate.

6) We are dismayed by your response to allegation No. 3 on page 5. Throughout this investigation no official, state or federal, seriously questioned federal preemption. It is a sorry system of governmental administration which foists the responsibility, and associated costs, of solving inter-governmental legal disputes onto private citizens. It is truly disheartening to see local federal and state officials "waffle", to buy time, at the expense of individual fishermen who are trying to figure out where they stand.

7) Limited Entry: It is not our function to make a decision

Ronald O. Skoog  
November 1, 1979

3  
Page two

as to the extent of or necessity for hand troll limited entry. However, the economic and social research of all affected fishermen should certainly be undertaken expeditiously so that an informed decision can be made as quickly as possible.

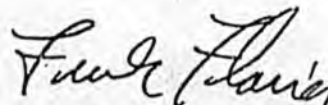
8) If you are speaking to "entry", <sup>when</sup> which you say the Board of Fisheries has taken no action to "limit" hand trollers, how then can you justify the Board of Fisheries action of "eliminating hand troll fishing for salmon in the FCZ", an action which is in opposition to the FMP? (You have limited by total elimination!)

In regard to your comments regarding testimony by the Ombudsman's Office at your December 1979 Board of Fisheries meeting we operate under AS 24.55.190; not under the procedures you suggest. When a complaint is received and investigated, we take our findings and recommendations directly to the agency involved so they may take corrective measures, as permitted by law, through their own (the agency's) initiative. The Board can certainly review this matter on their own initiative.

We appreciate the complexity and magnitude of the task of regulation of Alaska's fishery resources with which you are challenged. We also encourage your efforts toward achievement of the "equitable" solution and "sound" management scheme you seek "in the interest of all Alaskans."

By copy of this letter we are bringing these complaints and subsequent related materials, to the attention of the Administrative Regulations Review Committee, the Commercial Fisheries Entry Commission, and all complainants involved.

Sincerely,



Frank Flavin  
Ombudsman

FF/JAH/jm

cc: Gregory F. Cook, Executive Director, Board of Fisheries  
Steven Pennoyer, Director, Division of Commercial Fisheries  
Nick Szabo, Chairman, Board of Fisheries  
John Williams, Commissioner, Commercial Entry Fisheries Commission  
Senator Don Bennett, Chairman, Administrative Regulation Review Committee

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF FISH AND GAME OFFICE OF THE COMMISSIONER

SUPPORT BUILDING  
JUNEAU, ALASKA 99801

November 23, 1979

RECEIVED  
NOV 28 1979

ANCHORAGE  
OFFICE OF THE OMBUDSMAN

Mr. Frank Flavin  
Ombudsman  
State of Alaska  
840 "K" Street, Room 203  
Anchorage, Alaska 99501

Re: Ombudsman Complaints J79-0279, J79-0271, J79-0272,  
J79-0283, J79-0366, J79-0368, J79-0391, and J79-0398

Dear Mr. Flavin:

Thank you for your letter of November 1, 1979, in which you respond to the Department's last letter to you, and make further comments regarding the subject "Ombudsman Complaints."

Your letter omitted reference to several specific points mentioned in our reply of October 12, 1979. Since those points are capital to consideration of the troll salmon issue, I am taking this opportunity to reiterate them briefly and request that you include this material as part of the Department of Fish and Game's formal reply to your inquiry.

1) The ban on hand trolling in the FCZ was enacted by the Board of Fisheries because of the depleted and depressed coho and chinook stocks of Southeast Alaska. Such conditions demand an effective and immediate reduction in the amount of fishing effort directed at those stocks. Permitting expansion of fishing effort is clearly not advisable. It would be irresponsible, at best, for the Board to wait until hand-trolling effort increased before paying heed to it.

2) No State regulation exists at this time which limits the hand troll fleet to 20 per cent of the total troll fleet's salmon catch. Indeed, preliminary figures for the 1979 season show that hand trollers caught slightly over 25 per cent of the total troll catch of salmon in Southeast Alaska. The Board will devote further attention to the troll salmon issue at their December, 1979, regulatory session. I wish to encourage you again to offer any constructive advice you may have to the Board at that time. This is one of the enumerated powers of your Office as listed in AS 24.55.190 and .200, and I urge you to take advantage of it.

3) The State of Alaska and the Board of Fisheries have the authority to regulate fishing in the FCZ by Alaska residents and by vessels registered under the laws of the State of Alaska. See: AS 16.05.220 - .300, Alaska Constitution, Article VIII, Fisheries Conservation and Management Act of 1976, 16 U.S.C.A. 1856, State v. Sieminski 556 P2d 929 (Ak, 1976), Gienovich v. Noerenberg 346 F. Supp. 1286, 1291-1292 (D. Alaska, 1972). Continued Regulation of all Alaskan fisheries by the State of Alaska as opposed to the Federal government is a primary objective of our Department and the Board of Fisheries.

Sincerely,

*Ronald O. Skoog*

*for* Ronald O. Skoog  
Commissioner

cc: Nick Szabo, Chairman,  
Alaska Board of Fisheries  
Gordon Jensen, Vice Chairman  
Alaska Board of Fisheries

SUPPORTIVE MATERIAL FOR THE 1980 REGULATORY PROGRAM  
FOR THE  
SOUTHEAST ALASKA  
TROLL SALMON FISHERY

(FINAL DRAFT)

November 1979

Alaska Department of Fish and Game

Juneau, Alaska 99801

## CONTENTS

	<u>PAGE</u>
Summary	iii
Forward	vi
Introduction	1
History of Management Plans	2
The Chinook and Coho Plan	3
Problem Statement	5
Depleted Stocks of Native Chinook Salmon	5
Excessive Harvest Rates on Coho Salmon	6
The Troll Fishery	7
Coastwide Corrdinated Management	10
Management Objectives	11
Management Recommendations and Considerations	14
Introduction	14
Existing Regulations	14
Future Direction for S.E. Alaska Chinook and Coho Salmon Management	16
Regulatory Recommendations for the 1980 Season	19
Regulatory Options Considered for the 1980 Season	30
Enforcement Recommendations	32
Research Recommendations	33
Limited Entry Discussion	36
Appendix "A" (Biological Descriptors)	
a. Chinook	
b. Coho	
Appendix "B" (Chinook and Coho Resource Considerations)	
Appendix "B(1)" (Coho Harvest Rate Methodology)	

- Appendix "C" (Habitat Considerations)
- Appendix "D" (Description of the Salmon Troll Fishery)
- Appendix "E" (Yields and Capacities)
- Appendix "F" (Interactions of the Fisheries)
  - F(1) Power Troll - Hand Troll Interactions
  - F(2) Drift Gillnet Fishery
  - F(3) Set Gillnet Fishery
  - F(4) Purse Seine Fishery
  - F(5) Southeastern Alaska Salmon Trap Fishery
  - F(6) Subsistence Fishery
  - F(7) Native Salmon Fishery Characteristics
  - F(8) An Analysis of the Coho and Chinook Sport Fishery  
in Southeast Alaska
- Appendix "G" (Supplemental Production)
- Appendix "H" (Processing and Marketing Characteristics)
- Appendix "I" (Chinook Tagging in Inside Waters of S.E. Alaska)
- Appendix "J" (Contribution of Non-Alaskan Stocks (chinook) to the Alaska  
Troll Fishery)
- Appendix "K" (Variation in Chinook Salmon Average Weights in the Southeast  
Alaska Outer Coastal Troll Fishery)

## Summary

### Regulatory Recommendations For The 1980 Season

In order to address the objectives and problems set forth in this regulatory program, existing State and Federal troll fishery regulations should continue in force. In addition, recommendations are proposed that will enhance the conservation of chinook and coho salmon stocks in S.E. Alaska and attempt to stabilize the interception of non-Alaska chinook salmon at present levels. The following recommended additions to existing regulations will require complementary action by both the Alaska Board of Fisheries and the North Pacific Fishery Management Council.

1. Hand trolling should be prohibited in that portion of the FCZ adjacent to the State's waters prohibiting hand trolling.

This would prevent a potential increase in troll effort and also contribute to consistent State/Federal regulation of the coastal/offshore fishery.

2. In waters bounded by a line projected west of Cape Spencer at  $58^{\circ}12'30''$  N.,  $136^{\circ}39'00''$  W., to a point at  $58^{\circ}12'30''$  N.,  $137^{\circ}08'30''$  W., thence to a point at  $59^{\circ}21'00''$  N.,  $139^{\circ}47'30''$  W., then east to the mouth of the Dangerous River at  $59^{\circ}21'00''$  N.,  $139^{\circ}19'00''$  W., the troll season should be from April 15 through June 30 except that coho salmon may be taken only from June 15 through June 30.

Closure of this coastal strip (Cape Spencer to Dangerous River) to troll gear after July 1 is recommended for conservation of coho and immature chinook salmon.

3. In waters bounded by a line projected west from the mouth of the Dangerous River at  $59^{\circ}21'00''$  ,  $139^{\circ}19'00''$  W. to a point at  $59^{\circ}21'00''$  N.,  $139^{\circ}47'30''$  W., then to a point at  $59^{\circ}43'00''$  N.,  $141^{\circ}08'30''$  W., then east to Sitkage Bluffs at  $59^{\circ}43'00''$  N.,  $140^{\circ}39'00''$  W., the following regulations should be in effect:
  - A. The season for troll gear will be from April 15 through September 20, except that coho salmon may be taken only from June 15 through September 20.
  - B. From the first Monday in July through September 20 the weekly fishing period for troll gear should be from 12:01 p.m. Monday through 12:00 noon Friday.

This is intended to check effort increases on Yakutat district coho and still allow the established local troll fishery to continue.

4. The maximum number of lines fished from a troll vessel should be four.

5. The maximum number of power gurdies allowed on a power troll vessel should be four.

These (4 and 5) are intended to curtail an increase in troll effort and harvest.

6. No salmon should be mutilated or otherwise disfigured in any manner which prevents determining the legal minimum size requirement or the species of the fish.

There are indications that a market may exist for salmon fillets. This regulation is intended to prevent butchering of salmon on the fishing grounds which would make it impossible to enforce size limits.

7. No troll vessel may fish for salmon in an area closed to coho salmon fishing if it has coho salmon aboard.

After the close of the coho troll season commercial trolling boats might continue to fish for other salmon species, making it difficult to enforce the closing of the coho season. This is especially true for freezer boats and trip boats where it would be impossible to tell when a fish was landed if held on board. This regulation would enhance enforcement of the coho season closure.

## FORWARD

In order to provide the reader with a reasonably quick understanding of the management program presented herein, the main text contains information relevant to chinook and coho resource problems, current management policies, and proposed alterations to the current management system with adequate, though limited, supportive discussion. Additional supportive materials and information with respect to resource considerations, the interaction of various fisheries conducted in the troll fishery area, supplemental production effects, special data reports and other items of relevance to the chinook and coho resources are presented in Appendices A - K.

Literature references in the text are designated by appendix. Literature references in the Appendices are documented for each appendix where appropriate.

## INTRODUCTION

This document addresses the chinook (Oncorhynchus tshawytscha) and coho (O. kisutch) salmon resources throughout Southeast Alaska -- from Cape Suckling southeast to Dixon Entrance; in State and Federal waters. The chinook and coho fisheries are a significant segment of the socioeconomic and ecological character of Southeast Alaska.

There are well established life styles and industry components that are oriented to these salmon resources and their existing management regimes. In particular, an extensive troll fishery has developed throughout the area. Dramatic changes in these institutions would not come without disruptive socioeconomic costs. On the other hand, if the resources on which this fishery is dependent are allowed to decline catastrophic changes will occur nonetheless. The continued existence of these institutions at present levels will require some changes in conduct of the fishery.

The stocks (wild and hatchery) of chinook and coho originate from the Pacific states, Canada and Alaska. The abundance and distribution of all stocks are not well established and many stocks intermingle to an unknown degree making the management of this mixed stock fishery very complex.

Annual catches in recent years have often exceeded 325,000 chinook and 950,000 coho. These substantial harvests though, are considerably lower than levels produced between the 1930s and the 1950s.

The status of these stocks coupled with the nature of the fishing industry has generated dilemmatic problems in management.

#### HISTORY OF MANAGEMENT PLANS

Prior to 1979 no formal management plan document was prepared for all or part of the chinook and coho resources of Southeast Alaska. Management strategies and rationale were annually presented to the Alaska Board of Fisheries and reflected in their Commercial Fishing Regulations.

The North Pacific Management Council, whose jurisdiction covers all of the FCZ seaward of Alaska, assigned a high priority to the Southeast Alaska salmon fishery and included it in the first round of plans to be prepared for the U. S. Secretary of Commerce. This priority was based on the recognition of the significance of the salmon resources of the northwest coast and a coastwide concern for the status of these salmon resources.

A draft FMP was released by the Council for public comment in the fall of 1977. That draft concentrated on the troll fishery in the FCZ which is only a segment of the entire chinook and coho fishery in Southeast Alaska. It proposed time and area restrictions that received strong negative response from industry which claimed: 1) insufficient biological and fishery data; and 2) insufficient analyses of socioeconomic impacts. The draft was retracted by the Council and in the fall of the following year, 1978, another draft was released that proposed an interim plan. With an objective to control

the expansion of the offshore fishery it seemed necessary to have a plan with implementing Federal regulations in place for the 1979 fishery. This would ensure that for all vessels fishing the FCZ (whether registered under the laws of the State of Alaska or not) the following significant restrictions would apply: no trolling east of Cape Suckling; minimum size on chinook; limited entry on power trollers; and a prohibition of hand trolling. In May 1979, the Secretary approved and implemented this plan except for the ban on hand trolling. The Secretary's plan is "interim" because the need was recognized for a comprehensive plan for all fisheries on chinook and coho in all waters of Southeast Alaska -- State and Federal.

#### THE CHINOOK AND COHO PLAN

The Alaska Department of Fish and Game proposed to develop a fishery management plan for the chinook and coho salmon resources throughout all of Southeast Alaska. It would also recognize the importance of non-Alaskan chinook stocks to the coastal troll fishery and the need for coordinated coastwide management of these stocks.

The first version of this plan is presented in this document. It makes no claim to being a final, comprehensive plan. The complexity and dynamics of the resources and the management of their utilization will require additional versions. It is intended that management will enhance as more information is learned about the stocks and the fisheries.

This current document emphasizes the problems associated with the chinook and coho resources; the existing management approach; and the need for modifying the regulatory program for the 1980 fishery.

There are five major items which may cause significant future impacts which must be resolved before a truly comprehensive plan can be effective.

These are:

1. The status of U. S. - Canada salmon negotiations;
2. the outcome of the Indian treaty entitled allocations on the Pacific Coast;
3. development of a hand troll limited entry system;
4. acquisition of data on stock contributions of other Alaska origin chinook and coho and analysis of data from non-Alaskan origin chinook; and
5. results of a biometric analysis investigating the feasibility of "time-area management" in the Southeast troll fishery. (Predominantly funded by NPFMC Contract # 79-4)

The time required to resolve: items 1, 2, and 3 is difficult to predict and out of the hands of the current PDT. Item 4 is dependent on Alaskan tag returns in 1981 and 1982, and the availability of coastwide harvest and tag return files. Item 5 is scheduled for completion in January 1981.

#### PROBLEM STATEMENT

Four major problems confront management of the chinook and coho resources in Southeast Alaska: 1) depleted stocks of native chinook; 2) excessive harvest rates on coho; 3) the character of the troll fishery; and 4) coordinated coastwide management.

#### Depleted Stocks of Native Chinook

Chinook stocks native to Southeast Alaska have historically supported gill net harvests near the mouths of large mainland rivers, and commercial troll and limited recreational fisheries in most inshore waters. Catch records for the chinook gill net fisheries indicate historical harvest levels at as much as ten times present levels. Little is known of the relative troll harvest of native Alaskan chinook during this period of historically high gill net harvests but it can be assumed that these stocks also contributed to the troll fishery at levels substantially higher than at present (Appendix B, Chinook and Coho Resource Considerations).

There has been little measurable environmental degradation of the watersheds of Alaskan chinook rivers. Neither has there been any indication of detrimental ecological disturbance (besides that caused by fishing) of chinook ocean life. Therefore, the management of the commercial net and

troll fisheries and the recreational fishery must bear the responsibility for the decline in Alaskan chinook production.

In recent years, directed gill net fisheries for chinook have been eliminated by regulation, although an incidental harvest of chinook occurs in the chum, sockeye, and pink salmon gill net fisheries. Certain levels of incidental harvests cannot be avoided as chinook run timing overlaps with significant runs of pink, sockeye and chum salmon. Therefore, management must take into account this incidental harvest of chinook when providing for the escapement from the troll fishery.

Troll gear continues to harvest chinook of Alaskan origin in areas adjacent to (but not within) terminal areas but in unknown numbers (due to the mixed nature of the stocks). Unfortunately, the restrictions on chinook harvests in terminal areas by net and troll gear have not increased escapements substantially (ADF&G unpublished escapement reports 1928-78).

#### Excessive Harvest Rates on Coho

Interception by commercial fisheries of coho from certain Southeast Alaska streams was measured in 1974 (pigment marking) and 1978 (coded wire tagging). (See Chinook and Coho Resource Considerations, Appendix B). Harvest by the commercial troll and gill net fisheries for several coho stocks were calculated to be in excess of 80 percent of the return. These interceptions occurred in offshore, coastal and inshore waters. Although the information from these studies was limited in geographical coverage (northern Southeast Alaska), it amply demonstrates the ability of present commercial troll and net fleets to effectively harvest coho stocks at great distances from their natal streams.

Coho are harvested by all gear types with the combined purse seine and gill net harvest usually being less than 50 percent of the total harvest by all gear types. Troll gear generally harvests in excess of 50 percent of the entire commercial coho catch.

Net fisheries are discouraged by regulation (time and area closures) from targeting on coho. However, there is little control over the troll fleet (particularly in coastal and offshore waters) during the coho season. There is no closed season for troll gear in coastal and offshore waters from June 15 to September 20 (which encompasses the time of peak coho harvests). In fact, during weekly closures of the gill net season trolling continues in areas adjacent to the closed areas. This results, for example, in the management of gill net fisheries for chums in which there will be an incidental harvest of coho when as much as 75 - 80 percent of the return of some coho stocks may have already been harvested by troll gear. This can force the premature closure of inshore net fisheries to protect remaining coho for escapement. Thus, incidental harvests of coho salmon by the net fisheries controls major harvests of other salmon species since coho harvestable surplus above that needed for escapement may have already occurred in the troll fishery.

#### The Troll Fishery

The nature of the troll fishery itself creates problems for fisheries management. A large percentage of the salmon taken in the commercial troll harvest are caught at great distances from their natal streams. Trollers concentrate on schools of feeding salmon comprised of fish from many different stocks. A large ocean fishery coupled with little information on stock definition (stock origins, time and area distributions of stocks, and stock contribution to fisheries) make it difficult to manage for inside fisheries and escapements.

Coho are harvested by all gear types with the combined purse seine and gill net harvest usually being less than 50 percent of the total harvest by all gear types. Troll gear generally harvests in excess of 50 percent of the entire commercial coho catch.

Net fisheries are discouraged by regulation (time and area closures) from targeting on coho. However, there is little control over the troll fleet (particularly in coastal and offshore waters) during the coho season. There is no closed season for troll gear in coastal and offshore waters from June 15 to September 20 (which encompasses the time of peak coho harvests). In fact, during weekly closures of the gill net season trolling continues in areas adjacent to the closed areas. This results, for example, in the management of gill net fisheries for chums in which there will be an incidental harvest of coho when as much as 75 - 80 percent of the return of some coho stocks may have already been harvested by troll gear. This can force the premature closure of inshore net fisheries to protect remaining coho for escapement. Thus, incidental harvests of coho salmon by the net fisheries controls major harvests of other salmon species since coho harvestable surplus above that needed for escapement may have already occurred in the troll fishery.

### The Troll Fishery

The nature of the troll fishery itself creates problems for fisheries management. A large percentage of the salmon taken in the commercial troll harvest are caught at great distances from their natal streams. Trollers concentrate on schools of feeding salmon comprised of fish from many different stocks. A large ocean fishery coupled with little information on stock definition (stock origins, time and area distributions of stocks, and stock contribution to fisheries) make it difficult to manage for inside fisheries and escapements.

Fishery managers have responded to identified chinook and coho problems with closures for troll and/or net fisheries near terminal areas where the stocks are more identifiable. The effect of these closures has been minimized by the ability of the troll fleet to move outside the closures and continue fishing on mixed stocks. Where chinook salmon is the species of concern, closures to protect adult spawners results in additional effort being placed on immature feeding fish outside of the closure boundaries. Fishing pressure by troll gear on mixed stocks of chinook and coho salmon now appears to be approaching an intensity which does not allow enough escapement for some stocks to even reach the terminal areas. A recent tagging study on major Lynn Canal and Stephens Passage coho stocks has established that this mixed stock overfishing is occurring in some areas (Appendix B). The need to provide an incidental catch for "inside" net fisheries in or near terminal areas further complicates this problem.

Troll gear efficiency is compounded by the long time period that salmon are available to this gear type and the large area that can be fished. An individual salmon stock may be exploited for several weeks or years and pass through several concentrations of troll gear before reaching its natal stream. In effect, there is a sequence of intercepting fisheries for chinook and coho. From the northern limit of the troll fishery at Cape Suckling, south to Dixon Entrance, the troll fleet is not evenly dispersed but can be seen in groups of from five to two hundred vessels. These congregations of vessels directly correspond to known coho and chinook interception locations along the coast, and the fleet is capable of rapid re-deployment when migration behavior patterns of coho or chinook salmon develop concentrations in new or different areas. Maturing chinook and coho must pass through one or several of these congregations of power and hand troll vessels to reach the inside/terminal areas where they may be subjected to a net fishery.

Not only has the troll fishery been relatively unrestricted from intercepting chinook and coho prior to exposure to an inside net fishery, but the troll fleet (hand and power) in the past decade has expanded its capability to harvest these fish due to expanded fleet size and vessel efficiency.

The number of power troll vessel operators was limited in 1974 by the Alaska Commercial Fisheries Entry Commission, but vessel quality and expressed fishing effort have increased in spite of this limit. Hand troll gear units are not limited in number and there are presently approximately 4,000 hand troll permits. Because individual hand troll units are generally less effective than power troll units, the collective catch is less than the power troll catch. However, hand troll vessels usually operate at less expense than power troll vessels and may fish in areas that power trollers cannot profitably fish. A significant portion of hand trollers in recent years, particularly those adjacent to urban areas, have a low level of economic dependence on the fishery. Recent increases in hand troll gear units may add effort on stocks that are already in jeopardy.

A characteristic of the troll fishery is the occurrence of chinook "shakers" - fish that are required to be returned to the water because they are less than the minimum legal size. This legal size serves two functions. First, it established "three ocean fish" as the recruit age (scale analyses determined 28 inches as the size to separate two year from three year fish). Second, it assumes there is a potential gain of growth by returning undersized fish for future harvest if the growth is greater than losses to natural and "hooking" mortalities and escapement. However, this assumption may not be valid for the Southeast fishery in areas of high concentrations of immature chinook and if hooking mortalities range as high as 30 to 70 percent (as shown by studies of delayed mortalities, Appendix B).

### Coastwide Coordinated Management

Tagging studies have clearly shown that the chinook resource off Southeast Alaska is a composite of stocks originating as far south as Oregon. Further, some of these fish are also exposed to established ocean fisheries from Canada through the Pacific coast states prior to spawning.

However, the distribution, abundance and conservation needs of these stocks are not well established. The total harvest by all user groups (coastwide) must not exceed the stock's capability to reproduce itself on a sustained yield basis. If the harvestable surplus is exceeded the stock will become depressed below its full production potential and eventually depleted. Until international, Federal and State agencies clarify the conservation and allocation of these fish (through objectives and rationalized management regimes) Alaska will continue recent harvest rates and apply conservation measures where research and fishery performance clearly identifies the need and solutions.

These problems must be addressed jointly by coastal management agencies as the fisheries of all areas are dependent upon the continued health of the resource. Savings in one area must not be simply passed to another fishery, but must also be passed through that fishery into the necessary spawning escapement.

## MANAGEMENT OBJECTIVES

The regulatory regime for the harvest of chinook and coho salmon stocks in Southeast Alaska was formulated to realize the following management objective:

Increase the chinook and coho production for Southeast Alaska fisheries by:

- A. 1) Maintaining present escapement levels for healthy native coho stocks; and,
- 2) Maintaining the present interception proportion from non-Alaskan chinook stocks (until biological, socioeconomical and/or political sources justify a reason to change this proportion).
- B. 1) Increasing the escapement of native Southeast Alaskan chinook and depleted coho stocks;
- 2) Reducing the harvest and the "hooking" mortalities of salmon having significant remaining growth potential; and,
- 3) Utilizing hatchery and habitat manipulation programs.

To increase production, part A above addresses the need to maintain (i.e., not reduce) certain segments of the resources and their fisheries. Efforts should be made to protect remaining healthy runs of coho and, until the status of non-Alaskan stocks are clarified and coastwide management addressed, production from these stocks should not be reduced, but maintained at current levels.

Part B above addresses increased chinook and coho production by enhancing certain components of the fishery. In particular, the need to increase escapements of native Alaskan chinook and depleted coho stocks.

Structuring a management regime to achieve the above objective is governed by certain criteria.

- 1) Significant reallocation of harvests between user groups (sport, purse seine, gill net, set net, subsistence, hand troll and power troll) should be avoided.
- 2) Some management strategies could lead to major disruptions of established social and economic structures.
- 3) The Board of Fisheries policy toward mixed stock fisheries is:
  - a) In the case of long standing, historical fisheries which operate to a large degree on mixed stocks and for which it is not feasible for participating fishermen to relocate in more inshore fisheries operating on more discrete stocks, such fisheries may be continued provided that the harvest rate and/or fishing effort on stocks passing through such fisheries does not, on the average, increase, and provided that this harvest by these fisheries is not detrimental to the conservation of these stocks.

- b) In the case of long standing, historic fisheries which operate to a large degree on mixed stocks but for which fishermen participating in these fisheries can feasibly participate in the harvest of these same and other stocks in more inshore fisheries operating to a greater degree in discrete stocks, preference shall be given to the fishery that serves the public's best interests.
- 4) The existing CFEC power troll limited entry system is well established and investigation of a hand troll system has begun.
- 5) International negotiations with Canada are still underway and Washington State Indian treaty entitled allocations have significant implications.
- 6) The seven National Standards of the FCMA are:
1. prevent overfishing and achieve OY
  2. use best scientific information available
  3. manage stocks throughout their range
  4. allocate fairly
  5. promote efficiency
  6. allow for variations in fishery
  7. minimize costs

## MANAGEMENT RECOMMENDATIONS AND CONSIDERATIONS

### INTRODUCTION

The existing management policies and regulations currently used by the Board of Fisheries and the National Pacific Fisheries Management Council (and NMFS) provide necessary flexibility to meet in-season abundance variations. Some of the important regulations briefly outlined below provide the framework for meshing the existing policies of management for net, troll and recreational fisheries in Southeast Alaska.

In addition to present regulations covering the coastal and offshore troll fishery, more restrictive recommendations are made to enhance the conservation of chinook and coho stocks in Southeast Alaska and stabilize the interception of non-Alaskan chinook at present levels. These recommended changes in existing regulations are also discussed and will require complementary action by both the Board of Fisheries and the NPFMC.

### EXISTING REGULATIONS

1. Numerous terminal area net, sport and commercial troll closures are designed to protect runs of mature Alaska chinook entering their spawning rivers.

2. At current effort levels, the existing sport fishing structure (gear type, bag limits, etc.) is adequate to protect the chinook and coho resource unless poor runs occur.
3. The troll closures in portions of districts 6 and 11 (Juneau) are designed to protect areas of large concentrations of sublegal chinook.
4. The four-line limit for State waters helps control the expansion of effort.
5. The historic chinook season (April 15 - October 31) for waters west of the surfline (defined by 5 AAC 33.310 (B)(4)) conforms with the interest to maintain the current levels of chinook harvest.
6. The coho season (June 15 - September 20) has a delayed opening to allow for the rapid growth of this species which occurs in the spring of their last year of life.
7. The 28-inch size limit for commercial troll and sport caught chinook salmon discourages effort in areas where concentrations of immature chinook exist and promotes the harvest of chinook salmon after a significant portion of their growth potential has been realized.
8. The new 8-day fishing period in a portion of northern Southeast Alaska was designed to decrease the troll gear harvest on coho. Modifications

in the open time periods and areas of application may be necessary after the evaluation of its effectiveness.

9. The 8-day fishing period for hand troll gear in district 1 (Ketchikan) is intended to stabilize hand troll effort until tagging studies to determine the condition of wild coho stocks in the area are completed.
10. The in-season adjustment of time and area openings and closures (i. e., emergency/field orders) are a necessary aspect of effective salmon management.
11. The State ban on hand trolling beyond the surfline controls the expansion of effort in coastal and offshore waters.

#### FUTURE DIRECTION FOR SOUTHEAST ALASKA CHINOOK AND COHO SALMON MANAGEMENT

The information available at this time suggests that the troll fishery in Southeast Alaska has become efficient to a level that, under current regulations, will allow it to harvest a high percentage of the coho stocks on an annual basis. At this time, high harvests of coho salmon are evidenced by tagging studies on some major producing systems in northern Southeast Alaska, declining production from inside water fisheries and general observations of declining escapements at various locations throughout the region. The information for Alaskan chinook salmon stocks is limited, but their depressed status is well documented and wild stock tagging studies on the Stikine and Taku rivers will provide information on harvest rates and distribution in the fisheries for these stocks over the next few seasons.

Obviously, additional research on chinook and coho salmon stocks in Southeast Alaska is necessary to provide a more complete picture of stock status and the effects of the existing fisheries on these stocks. Although additional coho tagging studies to determine harvest rates and migration routes, observer programs and high seas tagging of chinook to determine availability and distribution from year to year have been proposed, this information does not solve the immediate problem. Unless effort in the troll fishery can be stabilized and possibly reduced to some degree, inside water fisheries will have a decreasing number of salmon available to them over time, and harvest rates will remain dangerously high or even increase from present levels.

In order to avoid placing Southeast Alaska's chinook and coho salmon stocks in ever increasing jeopardy from increases in troll fishery effort and efficiency two measures should be taken without waiting for further research, 1) hand trolling effort must be stabilized through the establishment of an effective limited entry program and, if necessary, regulations and, 2) power troll effort in outer coastal waters must be stabilized and reduced to some degree to offset efficiency increases by this fleet. The degree of difficulty encountered in stabilizing the handtroll effort will be directly related to the number of gear units established by a limited entry program and the efficiency that this gear can develop over time. Limiting power troll effort offshore provides a problem of great difficulty as a clear approach to its solution is not available. The proposed regulations for the 1980 season should be viewed as interim measures that may have to undergo revision once their effectiveness is determined.

The extreme mixed stock nature of chinook and coho salmon stocks in offshore waters suggests that overall effort control and not stock management be the approach used to prevent overharvest of Southeast Alaska coho stocks.

The proper information needed to establish an effort control program is lacking at this time. Although it is generally recognized that a number of factors have combined to make the power troll fleet more effective, no quantitative information exists in a usable form. Obviously, if an effort control program based on the fleet capacity and performance is to be designed, a data base on the fleet itself will be necessary. Programs to establish the following data base should be implemented as soon as possible:

1. The port sampling program should be strengthened such that the following information can be collected in addition to tag recovery work:
  - a. A yearly profile of the fleet itself should be maintained so that changes that contribute to harvesting efficiency can be documented. This information would include vessel size, number of lines used, crew size and processing or extended holding capacity.
  - b. Through interviews, an extensive (as practical) data base on catch-per-day-fished for all areas should be established. This information exists in part for the 1977, 1978 and 1979 seasons. If catch-per-day-fished information can be established it may prove indicative of run size and may serve as a tool to monitor catches in conjunction with any numerical limitation on the fishery to be managed.

- 342
- c. One of the greatest variables in the outer coastal troll fishery is the behavior of the chinook and coho stocks themselves from season to season. A better in-season understanding of this variable is necessary in order to insure that any in-season management decisions are made with the benefit of an understanding of current conditions in the fishery. At least two persons working with the port samplers to maintain close contact with the fleet would be necessary to gather this information.

If effort offshore can effectively be managed through control of the number of vessel days expended in the fishery, this method may provide a better basis for troll fishery management than time and area restrictions, which tend to shift effort, and are difficult to evaluate for effectiveness.

#### REGULATORY RECOMMENDATIONS FOR THE 1980 SEASON

1. Only power troll gear should be fished in waters west of the coastal fishing zone (as defined by 5 AAC 33.312(a)(4)). Alaska State regulations presently prohibit the use of hand troll gear in the Seaward biological Influence Zone (as defined by 5 AAC 33.312(a)(5), and Federal regulations should follow suit.

Effective fishery management has historically relied on distinctions between gear types. Such plans have consistently been approved by the State and Federal courts and the U. S. Supreme Court where the distinctions drawn have a reasonable basis and have not been applied arbitrarily.

In managing the Southeast salmon resource the State of Alaska recognizes power troll and hand troll as two distinct gear types and treats them differently. This is demonstrated by State regulations that:

(a) limit entry into the power troll fishery but not into the hand troll fishery;

(b) define power gurdy troll gear separate and distinct from hand troll gear;

(c) recognize that hand troll gear includes not only hand cranked gurdies, but also the use of sport rods and reels to harvest salmon commercially;

(d) provide separate time and area restrictions by gear type including a total ban for hand trolling along the coast of Alaska south of  $56^{\circ}04'45''$  n. latitude (one mile south of Cape Ommaney) and north of the latitude of Red Fish Cape and 43 percent less fishing time in all of Southeast Alaska regulatory districts 1, 14 and portions of districts 11, 12 and 15.

(e) prohibit hand trollers from possessing salmon or halibut while taking other species with mechanical jigging machines.

Distinct and differential treatment between these two user groups is, and will, continue to be a significant aspect of managing the resource.

Policies adopted by the Board of Fisheries concerning hand troll gear were designed to control expansion of the exploitation of chinook and coho salmon by that gear. Restrictions placed on the gear as a result of those policy decisions were applied only where significant growth in terms of numbers of vessels had occurred or where there was already other gear types present in numbers so abundant as to be able to fully harvest the available resource. In several instances, as a result of Board policy, hand troll gear was awarded special consideration and areas that had previously been closed were opened. The Board reviewed all information available in making these decisions. The recognized differences in socioeconomic characteristics, the potential for rapid increase in numbers, the improving gear efficiency, and the biologically detrimental results of no action prompted the Board's action. Hand troll gear continues to support those dependent upon that fishing gear type at historic levels. Lack of time or area restrictions on hand troll gear for those areas not effected by the Board's action continues to allow for substantial harvest of chinook and coho.

#### Difference Between the Two Gear Types

Hand trollers and power trollers are two distinct groups of fishermen. The criterion in the State's regulation to differentiate these groups is the method to retrieve the lines: hand power (or hand powered crank including rod and reel) vs. electrical, hydraulic, mechanical or other. A detailed analysis of each fleet's effort -- expressed by criteria such as vessel characteristics (seaworthiness, hold capacity, range, electronics, etc.), number of lines and leaders, retrieval mechanism (indicating fishable depths, retrieval speed, etc.), and crew experience - would show that a "typical" hand troller is significantly different from a typical power troller.

It is emphasized that hand trolling is allowed throughout many of the inside districts in Southeast Alaska.

Impact of Hand Trolling in the FCZ

Hand trolling was allowed by the Secretary of commerce in the FCA during the 1979 season.

Continuation of this policy will have the following consequences:

- A. It will obstruct the State's efforts to control expansion of the troll fishery.
- B. Present West Coast U.S. - Canada salmon negotiations are proceeding on the understanding that neither country will allow significant expansion of the intercepting fisheries. The efforts of Alaska to limit the potential expansion of hand troll effort in its coastal and offshore intercepting fishery have been favorably received by representatives of all negotiating parties involved.
- C. The prohibition of hand trolling in State coastal waters and the acceptance of hand trolling in the FCZ creates a difficult enforcement situation for the U.S. Coast Guard, NMFS, and the Alaska Department of Public Safety.
- D. Prior to the closure of the State's coastal waters to hand trolling in 1978, little hand troll effort took place offshore due to the nature of the boats and retrieval mechanism used by the hand troll fishery. Small craft, many equipped with sport rods, could not effectively fish the exposed coasts of Southeast Alaska. The small number of operators that did occasionally fish offshore caught an insignificant portion of the

total troll fishery harvest. However, limited entry on power trolling and the current high price paid for chinook and coho salmon has stimulated the development of a "professional" hand troll fleet which fishes full-time in State waters. Large boats equipped with hand gurdies are capable of participating in the FCZ fishery. A major increase in offshore troll effort on mixed stocks of chinook and coho salmon is expected if hand trolling is not banned. This effort increase could have the following social and biological impacts:

The chinook salmon resource in the FCZ includes stocks of fish from Oregon, Washington, Canadian and Alaska river systems. Many wild stocks of chinook salmon from the west coast, including Alaska, are depleted. The states of Alaska, Washington and Oregon and the Pacific Fishery Management Council have adopted regulations designed to protect and rebuild chinook salmon runs. To allow increased troll fishing effort on the mixed stocks of chinook off Alaska would directly negate these actions as depressed stocks would be subject to even greater fishing pressure.

Mark and recapture studies of wild stocks in northern Southeast Alaska have established that some coho salmon stocks are being harvested at the 80 to 95 percent level (Appendix B). The major portion of this harvest is taken by troll fishing. Conservation measures will be frustrated if hand trolling effort continues on the mixed stocks offshore. Methods must be found to reduce and stabilize (not increase) troll fishing effort. A harvest level exceeding 80 percent is considered much too high to insure maintenance of a wild stock. A harvest level of 60 to 70 percent is more rational and the State of Alaska is attempting to reduce the harvest rates to this level.

In order to protect and rebuild depleted chinook salmon stocks and to reduce the high harvest rate on coho salmon, the State of Alaska has developed a complex regulatory regime for all inshore salmon fisheries. Drift gillnetting, seining, sport fishing and commercial trolling in the inside waters have all been markedly affected. Each change in the fishing pattern of an Alaska salmon fishing fleet necessitated by new restrictions has secondary impacts on numerous rural communities. The Alaska Board of Fisheries tries to minimize these secondary impacts, but to allow further increases of trolling effort offshore will only speed the closure of more inside areas and could force a major disruption of existing fisheries and the communities which they support.

E. A final consequence of the Secretary continuing the policy toward permitting hand trolling in the FCZ would be the necessity for an alternative technique to limit hand trolling such as:

- a) A Federal limited entry system which would only grant access to hand trollers who could document having fished in the FCZ during a given base time period; or
- b) A system to limit effort (e.g., restrict the number of vessel days); or
- c) Rely on the State to prohibit hand trolling in the "adjacent biological influence zone" (i.e., the FCZ) as was done in 1979.

Hand trolling has been treated as a separate entity in Alaska since 1973 and meets the test of a different gear type. Hand troll gear has not been significantly utilized in offshore areas and to assure conservation of the salmon resources, the State has prohibited this gear in its coastal zone (0-3 N miles

offshore). A necessary element contributing to the success of this management program is the prohibition of hand trolling in the FCZ.

2. In waters bounded by a line projected west of Cape Spencer at  $58^{\circ}13'20''$  N.,  $136^{\circ}39'00''$  W., to a point at  $58^{\circ}12'30''$  N.,  $137^{\circ}08'30''$  W., thence to a point at  $59^{\circ}21'00''$  N.,  $139^{\circ}47'30''$  W., then east to the mouth of the Dangerous River at  $59^{\circ}31'00''$  N.,  $139^{\circ}19'00''$  W., the troll season should be from April 15 through June 30 except that coho salmon should be taken from June 15 through June 30. This proposes to close the coastal zone north of Spencer and south of Yakutat to all salmon fishing after June 30.

Closure of this area to trolling is recommended for conservation of coho and immature chinook.

With current information and management techniques it is difficult to directly monitor the effect of the outside troll fishery on coho since it is the first fishery to intercept these fish. This fishery was acceptable in the past, when enough fish escaped the outside fishery to provide allotments for inside fisheries and stream escapements. Because of the intensity of recent fishing pressure, the Board has dramatically increased conservation measures for the inside fisheries in an attempt to provide for stream escapement and maintenance of net fisheries directed on pinks and chums. (The need to provide an incidental harvest of coho in these net fisheries was identified in the "Problem Statement"). This is demonstrated by: area closures, 8 on /6 off fishing periods, no sport fishing from commercial vessels, etc. However, these measures have not been sufficient. Further, the outside area was closed to hand trolling to prevent

an increase in effort there by this user group. But, restrictions on the inside (e. g., 8 on / 6 off) have motivated a redistribution of some power troll effort to the coastal zone.

Recent tagging studies (Appendix B) have shown that the coastal area north of Cape Spencer serves as a migratory route for coho destined for Southeast Alaska streams. Further, harvest rates on these stocks have been excessively high.

In other words, it is necessary to allow these coho to enter inside waters where their harvest can be more effectively monitored and managed.

The present coho season for troll gear begins June 15. Initial catches in the outside area are small and begin to increase in July with peak harvests occurring in mid-August. The weights of individual coho early in the season are small and increase as the season progresses. The proposed closure would prevent any significant harvest of coho in the area north of Cape Spencer and, in turn, make these native coho available for an inside harvest at a larger size.

Coupled with the high harvest of coho in this area is the high incidence of immature, sublegal chinook particularly after July 1. The 1978 troll observer program (NPFMC leaflet #6, p. 12) reports that:

"The highest incidence of undersized fish occurred on observer trips to on-shore fishing districts adjacent to, or north of, Icy Straits (statistical areas 116-05, 181-05 and 114-21). The average incidence of undersized chinook for trips in these areas was 1.57 for each legal fish caught.

For the other areas fished (statistical areas 104, 113, 116-25, 154, and

181-25) the incidence of undersized fish averaged 0.24 undersized chinook for each legal chinook caught."

A statistical analysis of the 1978 harvest tickets shows that the daily average weight of chinook salmon caught in areas 181 and 116 was significantly smaller than fish caught in areas 113 and 104 to the south (Appendix K).

Fishermen concentrate in this coastal area beginning in July to harvest the large availability of coho and thereby also harvest a large number of shaker chinook. It can be argued that if the coho were not available the fishermen would look elsewhere for chinook of a larger size. By closing the area to fishing, not only will the coho be allowed to enter the inside waters, but the pressure on shaker chinook will be reduced.

3. In waters bounded by a line projected west from the mouth of the Dangerous River at  $59^{\circ}21'00''$  N.,  $139^{\circ}19'00''$  W. to a point at  $59^{\circ}21'00''$  N.,  $139^{\circ}47'30''$  W., then to a point at  $59^{\circ}43'00''$  N.,  $141^{\circ}08'30''$  W., then east to Sitkagi Bluffs at  $59^{\circ}43'00''$  N.,  $140^{\circ}39'00''$  W., the following regulations should be in effect:

A. The season for troll gear should be from April 15 through September 20, except that coho salmon may be taken from June 15 through September 20.

B. From the first Monday in July through September 20 the weekly fishing period for troll gear should be from 12:01 p.m. Monday through 12:00 noon Friday.

This proposal closes the general fishing season on September 20 and restricts the weekly fishing period to four days in the area outside Yakutat Bay after the first Monday in July.

Coho salmon taken in Yakutat Bay, and along the coast immediately outside the Bay, are stocks bound for Yakutat District streams. A local troll fleet has developed a dependency on a portion of the harvest from these streams, but set gill net fisheries located in river mouths in the Yakutat District have historically harvested and continue to harvest the majority of these fish.

A weekly fishing period for troll gear inside Yakutat Bay has stabilized troll effort in recent years, but additional troll effort is increasing outside the bay and allocation problems between trollers and gillnetters will soon develop unless trolling is restricted from expanding. Extending the existing fishing period to waters immediately outside of Yakutat Bay is intended to check effort increases on Yakutat District coho stocks and still allow the established troll and net fisheries to continue. Further, troll effort on chinook should not be increased because 1) local stocks of Yakutat chinook are depleted, and 2) fish that migrate through, and feed along, the coast from Dry Bay to Cape Spencer are usually small.

4. The maximum number of lines fished from a troll vessel should be four lines.

5. The maximum number of power gurdies allowed on a power troller should be four.

Legal power troll and hand troll gear is defined by 5 AAC 39.105 (d)(7) and (8).

The four line limit has been existant in waters of State jurisdiction for

several years. The regulation is intended to control the effort on the resource.

The four line limit is also more efficient in terms of reducing shaker mortality. When more than four lines are fished there is the potential for additional mortalities to shakers, through drowning, as the lines take longer to work.

A four line limit in Council waters would be valid for the above reasons, plus being compatible with the State for purposes of enforcement. The corresponding limit on power gurdies (4) is intended to promote ease in enforcement of the four line limit regulation.

6. No salmon should be mutilated or otherwise disfigured in any manner which prevents determining the legal minimum size requirement or the species of the fish.

There are indications that a market may exist for salmon fillets. This regulation is intended to prevent butchering of salmon on the fishing grounds which would make it impossible to enforce size limits.

7. No troll vessel should fish for salmon in an area closed to coho salmon fishing if the vessel has coho salmon aboard.

After the close of the coho troll season, commercial trolling boats may continue to fish for other salmon species, making it difficult to enforce the closing of the coho season. This is especially true for freezer boats and trip boats, where it would be impossible to tell when a fish was landed if held on board. This regulation would enhance enforcement of the coho season closure.

The proposed regulatory recommendations for the 1980 season are considered minimal in light of depressed chinook stock abundance and known high coho harvest rates. It should be recognized that this program is amendable as new resource and fishery performance data become available.

#### REGULATORY OPTIONS CONSIDERED FOR THE 1980 SEASON

During formulation of the 1980 management recommendations for this program consideration was given to various "options" that might be implemented to alleviate resource and management problems identified in the Problem Statement. Management options considered but rejected for the 1980 season were as follows:

##### Coastal Closures South of Cape Spencer

Closures south of Cape Spencer were rejected on the basis that:

1. Even though harvest rate studies have indicated that coastal harvest rates in excess of 80 % have been indicated for certain norther Southeast stream systems, (see Appendix B, Chinook and Coho Resource Considerations) coho stock compositions, migrations and harvest rate information for southern Southeast systems is inadequate for the formulation of meaningful regulations at this time. Information from studies currently in progress should become available starting in late 1980.
2. There does not appear to be a problem with immature chinook salmon of the same magnitude as that north of Cape Spencer.
3. It is uncertain what impacts closures south of Cape Spencer, in addition to those north of Cape Spencer, would have on coastal communities and buying stations.

## Temporal Closures

1. Recent action by the Alaska Board of Fisheries resulted in eight-day-on, six-day-off commercial fishing periods for much of the "inside" waters of Southeast Alaska (Alaska Commercial Finfish Regulations 1979). The effects of these closures on the harvest rates of coho salmon, for which they were intended to benefit, will not be known until the returns for several seasons have been analyzed; similar restrictions, were they to be implemented on a coastal basis, would not address the immature chinook salmon ("shaker") problem along the coast, especially north of Cape Spencer.

In waters where migrating cohos are passing through heavy concentrations of troll gear, temporal closures are probably the best way to limit catches without totally closing the fishery. In outside waters where longer trips are made and buying stations are more distant from fishing areas, this type of regulation would not serve to protect concentrations of immature chinook that are feeding and not migrating.

2. A winter closure inside the surfline was also considered as being beneficial to chinook salmon conservation in terms of the savings in potential native Southeast Alaska spawners. Such restriction, however, was considered excessive in light of the limited knowledge available in relation to native chinook escapements and the new fishing periods imposed by the Board of Fisheries.
3. Daylight only drift gill net openings may reduce incidental catches of immature chinook salmon. The use of night closures to reduce the incidental catch of small chinooks was successfully attempted in the district 6 gill net fishery in 1978 on an Emergency Order basis. The further

use of this type of regulation may be warranted in instances where above-average incidental chinook or coho catches occur.

#### Total "Outside" Trolling Closure; Relaxation of "Inside" Closures

This option was rejected for the following reasons:

1. The troll fleet would be denied the opportunity to harvest much of the non-Alaskan stocks of chinook salmon that have, historically, provided the bulk of the Alaskan chinook troll catch.
2. Coastal communities and buying stations, dependent on the troll fleet for their livelihood, would be severely impacted.

#### Gear Restrictions for Trollers

In order for an individual unit of troll gear to maintain the potential for effective harvesting of salmon, no regulations other than the current four line limit should be imposed.

### ENFORCEMENT RECOMMENDATIONS

#### PUBLIC AWARENESS

Regulations adopted by the Board of Fisheries and NPFMC/NMFS should receive a greater degree of media exposure. The public cannot be expected to comply with new regulations if they do not know the changes. Part of the responsibility for the lack of knowledge about new regulations must fall to the various

agencies that promulgate these regulations. However, the primary responsibility for learning of regulatory changes must fall on the fishermen themselves. The lack of regulatory changes throughout most of the history of the troll fishery has promoted an attitude of complacency among trollers and some of them fish for the whole season without being aware of regulation changes.

#### INCREASED ENFORCEMENT EMPHASIS AND CAPABILITY

Presently the amount of time spent enforcing the regulations in the troll fishery by both the Department of Public Safety and National Marine Fisheries Service is not adequate to insure compliance. The staff of both enforcement agencies are often poorly equipped and undermanned and duties related to other fisheries enforcement have required that minimum time be spent on troll regulation enforcement.

As the necessity for troll restrictions increase, greater enforcement emphasis will be required to insure an orderly harvest and compliance with regulatory changes.

#### RESEARCH RECOMMENDATIONS

Effective management of the chinook and coho resources of Southeast Alaska requires expanded fisheries research.

Of greatest significance are micro-wire tag related projects because the major portion of the chinook and coho are harvested from mixed stocks. Analysis of data from the marking and recovery of native and hatchery stocks from Alaska and the other Pacific Coast states supplies the basis for stock definition - stock origin, time and area distribution of stocks, migration routes and harvest rates.

Since decreased harvests and escapements indicate critically low levels of native Alaskan chinook current tagging programs for these stocks need to be expanded and new programs should be started for the remaining major river systems in Southeast Alaska.

Results from marking stocks of coho from northern Southeast Alaska systems indicate excessive harvest rates. Coho tagging projects must be expanded throughout Southeast, particularly to the outer coasts of Baranof and Chichagof Islands, lower Chatham Strait, the west coast of Prince of Wales Island and the "inside" streams of southern Southeast. Further, marking studies should be periodically repeated to evaluate the effectiveness of management strategies.

The recovery and analysis of micro-wire tags is significant not only in terms of determining harvest rates and distributions of native Alaskan chinook and coho, but also for the determination of the contributions of non-Alaskan stocks and salmon produced from Alaska hatcheries. The effect of hatchery fish on mixed stock fisheries and the success of hatchery facilities will require analysis.

It is essential, therefore, to maintain or increase the current rate of tag recovery. Since it is necessary to expand tagging programs it follows that the effort put into the recovery program for these tags must also expand.

Another topic of research concern are times and areas of suspected high incidence of chinook shakers. Limited troll observer programs and analyses of fish tickets and logbooks are needed to document, and hopefully predict, the occurrence of undersized fish in these selected areas.

Continuing data collection through harvest tickets has shown certain fishing

grounds to be primarily feeding and nursery areas for immature chinook salmon. The coastal banks from Cape Spencer north to Yakutat are, in particular, such an area. More definitive information could be gathered by means of an in-season high seas tag and recovery program. Though costly, such a program would provide information not only on size composition, but also on stock origins, migration and timing of runs, interaction between user groups (gear conflicts) and harvest rates. This information would start to become available the first season that such a program was implemented.

Information is also needed on the potential consequences of alternative management strategies, particularly from a socio-economic perspective. This requires investigation into the processing, harvesting and community sectors as discussed in the Socioeconomic Data: Collection & Analysis For Use In Fishery Management Plans, Council Document #6, Aug. 1979.

Finally, there is a definite need to identify and pursue quantitative evaluations of fishery performance data as they relate to possible management strategies for the troll fisheries throughout the range of the chinook and coho resources. Is there a way to truly limit effort? Can seasonal time / area management be used with existing data? What data and criteria should be applied to in-season management? etc.

Beginning November 1, 1979, the NPFMC will fund a one year biometric analysis to investigate the feasibility of using certain fishery data as the basis of time and area management for the Southeast Alaska troll fishery. Additional work of this nature must be conducted.

LIMITED ENTRY DISCUSSION

PRELIMINARY COPY  
FOR REVIEW/SUBJECT TO CHANGE  
DATE \_\_\_\_\_

ALASKA'S LIMITED ENTRY SYSTEM

The State of Alaska passed limited entry enabling legislation in April of 1973, which established the Commercial Fisheries Entry Commission (CFEC) and charged it with promulgating regulations to limit entry into those fisheries which, in the CFEC's judgment, require limitation. The Southeast power troll salmon fishery was limited by the CFEC in December of 1974. Entry into the Southeast hand troll fishery has not been limited.

Regulations implementing power troll limited entry established the maximum number of permits at 950, although this could be exceeded so as to prevent exclusion of persons who would suffer "significant economic hardship." (See. Appendix 8.3.1.3, December 1, 1979 final draft of the Salmon Plan approved on May 15, 1979 (44 FR 33250, June 8, 1979), for a discussion of how the State system was developed.) As of May 15, 1979, 934 power troll permanent entry permits had been issued. Approximately 40 more applications for such permanent permits were still in adjudication, the applicants for which were allowed to continue fishing under power troll interim-use permits. Thus at the time regulations for the 1979 salmon plan were first implemented, there were about 974 units of power troll gear allowed to fish under Alaska's limited entry system.

In July of 1979, however, the Alaska Supreme Court handed down a decision which will require CFEC to issue an as yet undetermined number of additional permits. Essentially, the CFEC will have to award a certain number of points to persons who did not hold a gear license, and were thus prevented from applying for an entry permit, but who nevertheless were partners of, and equal in status to, the power troller who held the gear license and was awarded the entry permit. The CFEC is not drafting regulations to implement this decision, but it is too soon to know how many persons will apply for permits, and how many of those applicants will be granted interim-use permits until decisions on their applications are made. The CFEC estimates that the number of additional interim-use and perhaps permanent entry permits may range from as low as 25 to as high as 200, although 50 is suggested as the most realistic estimate.

As stated, the CFEC has not implemented limited entry for hand trollers. Whether or not this fishery should continue to remain open to entry has been a hotly debated issue for the last few years. Those who wish the fishery to continue to remain open feel that there should be at least one unlimited salmon fishery to provide a relatively low cost entry opportunity to anyone who wishes to become a fisherman. Those who want the fishery included under the limited entry system cite the tremendous growth in the fishery over recent years and the resulting management problems (See Problem Statement)

The CFEC is now taking initial steps to limit the hand troll fishery. Studies are being conducted to determine characteristics of fishermen participation. The results of these studies and their applicability to a limited entry system will be the subject of public hearings held this year. Subsequently, regulations establishing a point system will be drafted and presented at a second round of hearings. These regulations, or a modified version, will then be adopted. However, it is unlikely that access to the hand troll fishery will be controlled prior to 1981.

#### COUNCIL MORATORIUM

The Salmon Plan prepared by the Council now in effect states that limited entry is necessary to maintain present levels of effort and catch in the power troll fishery in the FCZ, that limited entry will promote efficient operation of other management measures, that without limited entry there is a significant probability that persons affected by restrictions in other fisheries will turn to Alaska, and that limited entry is less socially and economically disruptive than alternative management measures designed to restrict trolling in the FCZ. Earlier drafts of the plan proposed a separate limited entry system for the FCZ which would have only granted access to power trollers who could document having fished there in the years 1975-1977. This was rejected, however, partly due to allegations by power trollers that the fish ticket data upon which such a scheme

would be based was faulty, but primarily due to the recognition by the Council that the power troll fishery was a single fishery and should not be split by the three-mile boundary line. Accordingly, the plan "adopted" Alaska's limited entry system, thus permitting all holders of power troll entry permits to fish in the FCZ. The plan also granted access to persons not holding an Alaska permit but who could document having fished in the FCZ. No one has yet qualified under this last provision.

During preparation of regulations to implement the plan, it became apparent that there was little, if any, guidance in the plan on just how the State system should be "adopted." The most significant problem was expressed by the Assistant Administrator for Fisheries, NMFS, in a letter to the Chairman of the Council explaining approval of the salmon plan:

In examining the details of the Alaska system, it became apparent that under this system, State officials make certain discretionary judgments that could affect the rights of individuals to fish in the FCZ under the FMP. Some of these discretionary judgments involve revoking existing permits, granting additional permits, determining the optimum number of permits, and transferring permits. The FCMA contemplates that the Secretary is responsible for promulgating and carrying out the regulations for plans. It would be inappropriate under the FCMA if State, regional or local officials, or private parties, were to be given the authority to determine the rights of individuals in the FCZ. Accordingly, we have implemented the limited entry system in a manner which is consistent with the

intent of the Council, by allowing those persons holding State permits to fish in the FCZ in 1979. The many difficulties associated with developing a unified Federal-State limited entry system, however, should be addressed before that system is extended beyond 1979.

As further explained in the preamble to the proposed regulations (44 FR 29080, May 18, 1979), the plan's "adoption" of the State system was implemented as a one year moratorium on issuance of commercial power troll permits for the FCZ. Only those persons who held a State power troll permanent entry or interim-use permit on May 15, 1979 were allowed to fish in the FCZ in 1979, which, as discussed above, was approximately 974 persons.

The regulations implementing this moratorium provided that the Regional Director could override a decision by the CFEC which affected an individual's right to fish in the FCZ. For example, if the CFEC denied transfer of a State entry permit, which effectively would also deny transfer of the FCZ authorization, the parties involved could apply to the Regional Director to have that FCZ authorization transferred. Although the Regional Director would make his decision based on the same criteria as the State decision, it is possible that he could approve such a transfer, which would effect a severance of the FCZ authorization from the State permit. If this happened, the State permit holder could no

longer fish in the FCZ and the Federal permit holder could not fish in State waters. Unfortunately, a severance as described would have a result contrary to the management objectives of the salmon plan in that where there formerly was only one unit of gear, there would, after a severance, be two units of gear, although each would be restricted to a separate area. In addition, that a separate FCZ-only authorization or permit would result from a severance, and possibly in other situations as well -- override a State denial of an emergency transfer, revocation of a State permit, and more -- raises serious enforcement problems in determining which permit holder is allowed to fish where.

#### ALTERNATIVES FOR THE FCZ FOR 1980

##### Power Troll Fishery

Four alternatives are identified for limited entry for the FCZ for 1980. These are having no limited entry or moratorium; extending the moratorium now in effect, which means no entry into the FCZ for anyone who obtained a State interim-use or permanent entry permit after May 15, 1979; broadening the current moratorium to include any persons who obtain a State permit after May 15, 1979, mostly as a result of the recent Alaska Supreme Court decision; and establishing the limited entry system proposed last year, which would allow into the FCZ only those power trollers who can document having fished in the FCZ during the base years 1977-1979.

1. No Limited Entry or Moratorium

This alternative would essentially reopen the FCZ to any power trollers who desired to fish there, including all Alaska entry permit holders as well as other power trollers who don't have Alaska permits but land their catches out of Alaska (e.g., Washington).

Advantages:

- Eliminates all administrative and enforcement problems associated with having a limited entry system in the FCZ.

Disadvantages:

- Does nothing to restrain or control expansion of the power troll fishery in the FCZ; and
- Would probably necessitate rather severe time and area limitations in the FCZ in order to accomplish such restraint or control.

2. Current Moratorium

This alternative would leave matters as they now exist - the number of units of gear would be limited to the approximately 974 allowed in the FCZ as of May 15, 1979. New interim-use or permanent entry permit holders, that is, who became such after May 15, 1979, would not be allowed to fish in the FCZ. The intent would be to exclude those persons who obtain their permits as a result of the recent Alaska Supreme Court decisions. Of course, transferees of permanent permits which had been issued by May 15, 1979 would not be excluded from the FCZ.

Advantages:

- Prevents the number of units of power troll gear allowed in the FCZ from increasing beyond the approximately 974 units now allowed, which addresses the management goal of restricting increased effort; and
  
- By controlling effort in that manner would do nothing to worsen current West Coast salmon problems, including treaty entitlements of Washington State tribes.

Disadvantages:

- Raises problems in administering two types of State permits - those allowed into the FCZ, and those recently issued permits not allowed into the FCZ;
- Creates potential enforcement problems associated with having the two sets of permits; and
- Contemplates almost a "separate" limited entry system in the FCZ.

3. New Moratorium

This alternative would extend the current moratorium but in a revised fashion -- persons who receive a State permanent entry or interim-use permit after May 15, 1979, mostly as a result of the recent court decisions, would be permitted to fish in the FCZ. There would still be a restriction to entry for persons who did not have a State permit.

Advantages:

- Alleviates the enforcement problems associated with allowing some, but not other, State permit holders to fish in the FCZ; and