

April 19, 2004

MEMORANDUM FOR: The Record

FROM: James W. Balsiger
Administrator, Alaska Region

SUBJECT: Categorical Exclusion from National Environmental Policy Act (NEPA) Analytical Requirements for a Proposed Rule to Allow Processors to Use Offal from Salmon and Halibut Intended for Prohibited Species Donation Program

Pursuant to section 5.05(b), I have determined that the subject proposed rule is categorically excluded from further NEPA analysis according to the criteria for categorical exclusions established in the National Oceanic and Atmospheric Administration's Administrative Order 216-6 (NAO 216-6), which sets out the criteria for categorical exclusions for fishery management plans (FMPs) and plan amendments. Paragraph (a)(3)(b)(1) of NAO 216-6 states that a management plan amendment may be categorically excluded from further NEPA analysis if the action is an amendment or change to a previously analyzed and approved action and if the proposed change has no effect individually or cumulatively on the human environment.

BACKGROUND

The proposed rule would allow processors to use offal from salmon and halibut intended for the Prohibited Species Donation Program (PSDP) for fish meal, fish oil, or bone meal. Current regulations at 50 CFR 679.26 dating from 1996 (initial salmon donation program) and 1997 (expansion of donation program to include halibut) prohibit the personal use, sale, barter, or trade of prohibited species retained for process and delivery to hunger relief agencies.

The PSDP developed problems in 2001, when processors stopped retaining salmon for the program because the rule could be read to prohibit the use of leftover head and guts for fish meal.

NMFS Enforcement responded on April 4, 2002, by issuing an advisory statement (Information Bulletin 02-30) stating that NMFS would not enforce regulations that could be interpreted to prohibit converting Pacific halibut or salmon heads and guts into meal under the PSD program. According to the bulletin, "NMFS does not believe that retention of Pacific halibut or salmon heads and guts for meal constitutes sufficient potential for revenue to undermine the intent of the

PSD program. Rather, concern continues to be focused on prohibiting the sale, trade or barter of edible flesh. Therefore, NMFS intends to propose regulations that would clarify the conditions under which parts of prohibited species may be retained by a processor in a manner that would not undermine the intent of the PSD program.”

These regulations are intended to bring NMFS regulations into conformance with its enforcement policy as stated above.

ENVIRONMENTAL EFFECTS OF THE PROPOSED RULE

The environmental effects of the PSD Program were previously analyzed in the 1996 NEPA analyses for the salmon donation program (Environmental Assessment/Regulatory Impact Review for Amendment 26 to the FMP for Groundfish of the Bering Sea and Aleutian Islands Area) and Amendment 29 to the FMP for Groundfish of the Gulf of Alaska; and the 1997 NEPA analyses for the Pacific halibut donation program (Environmental Assessment/Regulatory Impact Review for Amendment 50 to the FMP for the Groundfish Fishery of the BSAI Area and Amendment 50 to the FMP for Groundfish of the Gulf of Alaska).

The proposed action does not have the potential to pose significant effects individually or cumulatively on the quality of the human environment. The basis for this finding is that fishing and processing patterns would be unchanged or nearly unchanged by the proposed rule. The proposed rule involves no change in policy, but is only intended to bring NMFS regulations into conformance with NMFS enforcement policy. Therefore the processing of the fish for the donation program would remain unchanged or nearly unchanged.

I have concluded that the effects of this proposed rule fall wholly within the scope of issues analyzed in the EA/RIR prepared for Amendments 26/29 and Amendments 50/50. The action considered here would have no significant effects, either individually or cumulatively, on the quality of the human environment because the action would result in no changes, or very minor changes, to existing fishing and processing practices. Based on this explanation, the effects of this action are not controversial or unique, nor do they involve any unknown risks, precedential, individually insignificant but cumulatively significant or likely to adversely impact ESA-listed species or their critical habitat. Therefore, this action is categorically excluded under NAO 216-6 and NEPA from both further analysis and requirements to prepare environmental documents.

cc: Ecology and Conservation Office
Office of the Chief Scientist

NMollett July 7, 2003

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