

Fisheries Access Limitation – Alaska Style

Alaska, both the State and the Region, have had a long and often seemingly schizophrenic relationship with “market-based” rationalization programs. In “territorial” days (pre-statehood), there was really only “one” fish ... SALMON. Granted, there are five commercially important *salmonid* species harvested in and off Alaska, and Pacific halibut historically has supported a commercial fishery of some economic and cultural importance, but SALMON was clearly “king”.

In 1878, some 20 years before prospectors rushed to the gold fields of the Klondike, fish canning came to Alaska. Large commercial canneries, owned and operated by a very small number of privately held companies, dominated the westcoast salmon industry, from northern California, through Oregon, Washington, and British Columbia... and, ultimately, “*The Great Land*”... Alaska.



Salmon cannery at Loring, Alaska in 1897. Reproduced from *The Salmon and Salmon Fisheries of Alaska* by Jefferson F. Moser, 1899

Employing traps, fish wheels, and stream weirs, these companies literally “mined” the coastal salmon streams. Few in number, these processors exercising, in effect, market control and pseudo-ownership of the wild salmon resource, referred to by some as “living silver”.



Unloading salmon from a fish trap
(Photo courtesy Alaska Dept. of Fish & Game)

Revered by some, reviled by many, the excesses (real or perceived) of the Salmon Barons of Alaska's Territorial Days were fresh in the minds of residents of the 49th State, when statehood came in 1959. One of the earliest natural resource management actions of the new state was the banning of fish traps.

Between statehood for Alaska and the passage of the Fisheries Conservation and Management Act of 1976 (subsequently renamed the Magnuson Act, then the Magnuson-Stevens Act), Alaska had fought an often vicious civil war over "limited entry" for their salmon fisheries. Two separate early attempts at limiting entry into these fisheries were overturned in the courts. A subsequent amendment, in 1972, to the State's constitution was needed to overcome legal barriers to management through limiting access.

While the State legislature passed a limited entry plan in early 1973, it was met with an initiative drive to "repeal", which was not settled until 1976. The limited entry law then survived a constitutionality challenge, before the State Supreme Court in 1983; and the U.S. Supreme Court let stand the State court's finding, in 1984.

It was within this historical context that NMFS and the North Pacific Fishery Management Council first entered the murky waters of "access limitation" in the Bering Sea, Aleutian Islands, and Gulf of Alaska fisheries.

By its very design (i.e., appointment of those with extensive, local fisheries experience and investment), the initial composition of the NPFMC included many of the same individuals who had engaged in the fight over State fishery access policy... on both sides of the struggle. Emotions still ran high when the Council first decided to confront growing problems resulting from excess domestic capacity and effort off Alaska.

Because salmon tends to be primarily (but not entirely) a "State waters" fishery in this region, and because Alaska had apparently "dealt" with salmon access, the fishery the Council first turned its attention to, with respect to domestic "access limitation", was that targeting Pacific halibut. Why this was so, is another story, in itself, involving a bi-lateral international treaty, exploding effort, compressed openings, loss of life and gear, product quality and waste concerns, and growing conflicts - setting traditional fishery participants, with long, well established ties to the halibut fishery (mostly non-Alaskans), against relatively large numbers of new entrants (mostly coastal Alaska residents). A proposed management plan was completed in mid-1978, and made available for public review. In January 1979, a final version was filed with the Secretary of Commerce, containing a cutoff date of December 31, 1978, for accrual of credit to qualify under any future limited entry program that might be developed.

Despite this "noble effort" to close the door on further entry, the Federal fisheries management process (e.g., MSFCMA, PRA, NEPA, E.O.12291, RFA) mandates an extended, very public decision making process. During what became years of analysis, public hearings, and debate, entry (much of it believed to be speculative) continued at an accelerating pace. What was, by any measure, an abominable set of circumstances in the Pacific halibut fishery, at the end of the decade of the 1970s, got substantially worse as the

Council toiled away, in the glare of the public spotlight, at limiting access. Political and legal setbacks finally brought their efforts to control access to the Pacific halibut fishery off Alaska to a halt, without success, in the mid-1980s.

The Council's next foray into "access limitation", this time seeking a solution to a rapidly deteriorating "Black cod", or more properly, sablefish fishery, did not come to fruition until almost a decade after the halibut "defeat". Sablefish had supported a fishery of about 36,000 mt, annually, since at least the mid- to late-1960s. Predominantly, this fishery was prosecuted by foreign fleets, with U.S. vessels typically accounting for roughly 2,000 mt to something over 3,000 mt of this total. This general pattern continued until 1987, when the last JVP agreement expired and the Council advised the Secretary that DAP had the capacity and intent to fully utilize the TAC for this species.

The expulsion of the foreign sablefish fleets from the U.S. EEZ off Alaska created a vacuum, into which an explosion of capacity and effort was swept. As Pautzke and Oliver (1997) reported, the first freezer longliner (i.e., designed to catch and process at sea), appeared in the domestic sablefish fishery in 1986. The freezer longline fleet grew to six in 1987, nineteen in 1988, and by 1992, numbered fifty.

Many observers realized that sablefish was following the same destructive path they had witnessed in the halibut fisheries. Indeed, very many of those fueling the sablefish "rush" were halibut longline fishermen. Pautzke and Oliver present an excellent chronology of events leading up to the Council's proposal, and the Secretary's approval and implementation of the sablefish IFQ system for the North Pacific and Bering Sea. While they were at it, the Council took the opportunity to toss in halibut IFQs, at the same time.

This program has proven to be extraordinarily successful (in the judgment of most), yielding more and higher quality product to consumers (primarily marketed "fresh" in the case of halibut), reduced waste of bycatch discards, higher earnings and lower operating costs for the fishermen, improved conservation of the resource (e.g., far less lost and abandoned gear, ghost fishing), and improved safety and security for a "professional" fishing industry. In terms of wealth creation, the sablefish and halibut IFQ programs have generated on the order of \$1 billion, as reflected in the estimated value of "tradable shares", according to research conducted at the University of Washington (Huppert 2001).

Other notable "successes" for the Region's rationalization efforts included, the highly regarded Community Development Quota Program (CDQ), established at the end of 1992. Six CDQ non-profit groups, representing 65 (predominantly) Native villages qualifying to participate, are now allocated "significant" fixed shares of the annual Bering Sea/Aleutian Islands TAC for halibut, crab, and groundfish species, managed under Council authority.

In 1999, Congress stepped into the ten-year long political battle over allocation of pollock, generally known as Inshore/Offshore, and "solved" the argument, once and for all, by enacting the American Fisheries Act. This action fixed the apportionment of shares of the annual pollock TAC, funded a buy-out (some assert, "buy-off") of segments of the offshore sector, and "named" those specific vessels and companies that would be permitted access to

future pollock fishing in the U.S. EEZ, off Alaska. Key to the AFA “compromise” was the provisions allowing for the formation of “cooperative fishing agreements”, within each sector. While a step short of IFQs, the “co-ops” have proven highly successful in stabilizing this billion dollar-plus fishery, yielding most of the promised improvements of “rationalization”... at least to the Bering Sea pollock fishing sectors.

At this writing, the Council is struggling through the complex process of “rationalizing” the Gulf of Alaska groundfish fisheries (including pollock) and, at the same time, is fast approaching successful (it is hoped) culmination of several years’ efforts to bring the major commercial crab fisheries under a permanent “limited access” program.

Crab “Ratz”, as it has come to be known, has taken a bit of a twist from other rationalization efforts. Under “inshore/offshore”, the notion emerged that an “extra” economic pie had to be crafted, so as to assure “Pareto-safety” for those who had made capital investments in pollock processing capacity (some, having clearly done so “speculatively”, well after the severity of excess capacity had become apparent to all who cared to look). While failing to achieve inclusion of the formal “two-pie” (fisherman IFQ and processor IPQ) apportionment in the BSAI pollock rationalization program, advocates of this system regrouped and moved on to “crab”.

Again with direct Congressional intervention, the Council debated the merits and implications of crab “pies”. Owing to special characteristics associated with commercial crab fishing in the Eastern Bering Sea and Aleutian Islands, crab “ratz” has emerged with THREE... count ‘em... three pies. If approved and implemented in its current form, this program will allocate FQS to qualifying fishermen (pie #1) and PQS to qualifying processors (pie #2). Several constraints on consolidation and transfer of QS are provided for, and in addition, cooling off periods, assignment of regionalization to QS, and community ‘right-of-first-refusal’ on any sale of PQS and FQS leaving a qualifying community (among other provisions) constitute the final leg of this three-legged stool (pie #3). How these “baked goods” turn out, only time will tell. The Council and the Agency have produced an enormous, very informative, and detailed analytical package, in support of this limited access program, which interested readers are encouraged to consult. (NPFMC 2004).

These, then, are the “primary” fronts upon which access management have thus far proceeded in the Alaska region. But there are several additional elements to this story worth highlighting, if for no other reason than to reveal how the best of intentions can result in “unanticipated consequences” that demand further attention.

In the first case, continued encroachment upon the commercial Pacific halibut TAC amount, now under an IFQ allocation system, by “charter boats” carrying paying passengers, prompted Council action. Because of the way in which halibut TACs are derived from annual ABCs, (namely, the IPHC sets the ABC, then deductions are made for various sources of “removals”, such as subsistence harvests, recreational catches, bycatch discard mortality, etc., with the remainder made available as TAC in the commercial fishery), every additional fish taken by these various alternative sources of mortality is a direct reduction in the QS pool. Over time, it has been the rapid rate of growth in charter halibut catches that have

proven to be most threatening to the stability of the IFQ fisheries. Therefore, the Council determined to bring the halibut charter fishing industry under the umbrella of IFQs. Several characteristics of the Alaska halibut charter fishing industry made this anything but “straight forward”. First, data presented a serious barrier, given charter businesses are neither systematically registered by the State of Alaska, nor “exclusively” associated with one species. That is, a charter operator is an animal of opportunity, taking halibut, salmon, ling cod, and rockfish (among others) over the course of a season, or even during a single trip. Catches are not carefully monitored and recorded, beyond enforcement of daily bag and possession limits, so establishing a “historical halibut catch record”, upon which to base initial allocations, presented a serious obstacle. In addition, while the “charter operator” would own the QS, their clients “owned” the fish, once landed. Under prevailing law, “sport caught fish” may **not** be sold or bartered. Therefore, the “holder” of the QS is not, and cannot be, the owner of the halibut taken under that QS, in a normal commercial sense.

Other concerns revolved around issues such as “appropriate units”. That is, should charter IFQ be enumerated in “numbers of halibut” (the traditional way in which charter operators tend to market their services), or in “pounds”, as the rest of the “commercial” halibut IFQ program is apportioned? There are persuasive arguments on both sides.

If a halibut is a halibut is a halibut... should trading of QS (or IFQs) be permitted within, and more importantly, ACROSS commercial sectors? If so, under what rules and limitations, given the Council’s stated objective of nurturing and sustaining the traditional halibut fishery, and the recent growth rate of the charter sector?

Then, too, the Council was confronted with its long standing internal struggle between “efficiency” and “social welfare”. Data suggested that the present charter industry was operating at something less than 50% capacity, and that “price” and especially logistical considerations (time constraints, scheduling, the vagaries of transportation in Alaska, etc.) were very significant factors controlling demand. Nonetheless, the Council determined that special provisions should be made in the program to “set aside” a portion of the proposed halibut charter QS for use by “remote Alaska communities” with no present or historic participation in the charter halibut industry, to encourage development of charter halibut fishing businesses. The conflicting objectives were pointed out in the RIR and IRFA.

And, while neither actually last nor least, I’ll conclude this brief overview of Alaska’s extensive experience with “access limitation” with what I tend to think of as confirmation of that sage advice: ***“Be careful what you ask for, lest you get it!”*** As the Council, which after all is intended to reflect the public mind on living marine resource management in the Bering Sea, Aleutian Islands, and Gulf of Alaska EEZ, grappled with the (now too familiar) ills of managed open access, it came to believe in the power of the “marketplace” as savior. The ***“Market”***... conveying the authority and responsibility to manage one’s own future in the fishery, without the clumsy grip of government on the wrist of Adam Smith’s invisible hand... a fisherman’s economic fate was, rightfully, to be in his or her own hands, to do with as he or she pleased (within the prevailing legal and conservation rules, obviously). And so the Council embarked on the path to “rationalization”, resolute in their decision and confident in the promise of a “market solution”.

Not so very long after this trip began, despite all the positive things that did emerge, some unanticipated (and, from the Council's perspective, undesirable) consequences were observed. With specific reference to the Sablefish and Halibut IFQ program, it became clear that the economic power and freedom of the "market" was working too well! When given the economic means to improve their personal circumstances, many did so by leaving their remote villages and relocating to (relatively) larger communities, offering more amenities and a higher standard of living. Some retained their QS, while others took the opportunity to "cash-out" and leave the fisheries, altogether. IFQs permitted "willing sellers" and "willing buyers" to find mutually beneficial terms of trade, just as the theory said it would.

But...WAIT... the Council soon realized that it perhaps wasn't a "free market solution" they really wanted! Fishermen, left to their own devices... exercising their individual economic right to personal utility maximization... weren't producing the "optimal" collective solution the Council desired, at all! Adam Smith's invisible hand seemed to be sweeping the fishery away from, rather than toward, the solution the Council wished and expected. The obvious solution? Intervene in the workings of the marketplace ... prevent IFQ holders from fully exercising their economic autonomy over their QS ... that is, voting with their feet ... and force IFQs back into remote coastal Alaska villages, "where they belong"... or, at least where the Council desires they be!

This the Council has done by changing the rules of IFQ ownership in such a way as to permit communities (meeting strict qualifying criteria), to compete in the marketplace for, own, and control the use of halibut and sablefish IFQs. Rural communities obviously have some resource advantages when it comes to access to financing QS purchases, as compared to the average fisherman, which in itself could distort the market. Furthermore, shares which are likely to be most economically and operationally desirable for rural communities to acquire are the very same shares that the Council had created, in the original Halibut/Sablefish IFQ Program, to facilitate new entry into these fisheries by skippers and crew (i.e., unblocked B-class shares). In effect, this action to resolve the migration of QS from remote coastal Alaska villages subverts the purpose and means of facilitating the aspirations of another user group, namely entry into the QS fisheries by skippers and crew.

The message to be found in Alaska's long journey into access limitation may be this. In the complex world of fisheries management, it is often the case that the rule of unintended consequences inevitably reveals itself in the fine details.

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