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CANADA AND THE UNITED STATES OF AMERICA**

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**The 1979 Protocol To The Convention
and Related Legislation**

by

Donald A. McCaughran and Stephen H. Hoag

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THE 1979 PROTOCOL TO THE CONVENTION AND RELATED LEGISLATION

by

Donald A. McCaughran and Stephen H. Hoag

INTRODUCTION

The halibut resource and fishery have been managed by the International Pacific Halibut Commission (IPHC) since 1923. The IPHC was established by a Convention between Canada and the United States, which has been revised several times to extend the Commission's authority and meet new conditions in the fishery (Bell, 1969). The most recent change occurred in 1979 and involved an amendment to the 1953 Halibut Convention. The amendment, termed a "protocol", was precipitated in 1976 by Canada and the United States extending their jurisdiction of fisheries resources to 200 miles. The 1979 Protocol along with the U.S. legislation that gave effect to the Protocol (Northern Pacific Halibut Act of 1982) has affected the way the fishery is conducted, and redefined the role of IPHC in the management of the fishery during the 1980s. (Note: Canada did not require enabling legislation to implement the protocol.)

This report documents the text of the 1979 Protocol and the Northern Pacific Halibut Act of 1982, and discusses the effects of this legislation on the management of the halibut fishery.

THE 1979 PROTOCOL

The U.S. Magnuson Fishery Conservation and Management Act (MFCMA) of 1976 required renegotiation of all international fisheries treaties. As a result, Canada and the United States negotiated an amendment to the 1953 Halibut Convention during 1978 and early 1979. The amendment, termed a "protocol", was signed by both countries on March 29, 1979. The Protocol (Appendix I) provided the following changes to the 1953 Convention:

- 1) Altered the Commission's mandate from managing on the basis of maximum sustained yield to that of optimum yield.
- 2) Rescinded reciprocal fishing privileges between the two countries after March 31, 1981:
 - a) U.S. fishing in Canadian waters was eliminated in 1979.
 - b) Canadian fishing in U.S. waters was phased out during 1979 and 1980.
- 3) Required that 60 percent of the catch in Area 2 (Figure 1) be taken in Canadian waters between April 1, 1979 and March 31, 1981.
- 4) Allowed either party to establish additional regulations which are more restrictive than those adopted by the Commission.
- 5) Eliminated the Commission's authority to regulate the departure of vessels (Article III, paragraph (e) of the 1953 Convention).

The change in the Commission's mandate to optimum yield has made the Halibut Convention consistent with the pronounced national goals of Canada and the U. S., and according to the U. S. definition of optimum yield, allows the Commission to set regulations that consider social and economic factors. However, optimum yield has never been well

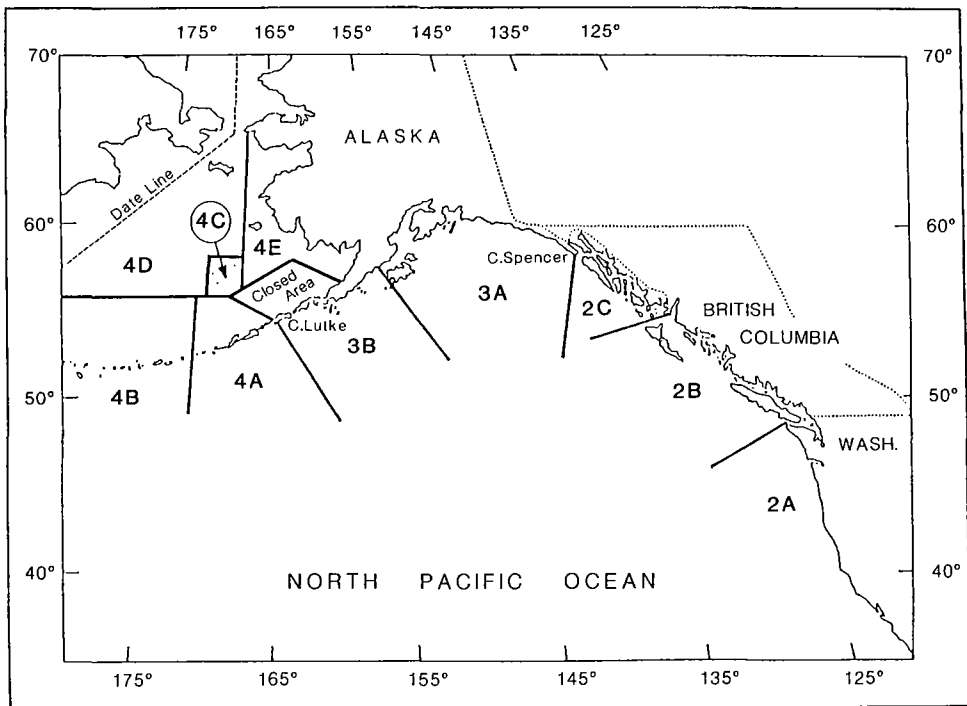


Figure 1. IPHC regulatory areas for the commercial halibut fishery.

defined, and interpretations by both governments have not allowed the Commission to limit entry or explicitly allocate harvest among user groups. Maximizing long term physical yield continues to be the primary goal of the Commission. Social and economic factors have always been considered when setting other types of regulations such as fishing seasons and gear regulations. Consequently the new mandate established by the Protocol has had little effect on halibut management.

Of greater importance was the rescinding of reciprocal fishing privileges between the two countries and the division of catch within IPHC Area 2. The elimination of U.S. fishing in Canadian waters had only a minor effect because only a few U.S. halibut vessels fished in Canada by the 1970s. On the other hand, the elimination of Canadian fishing in U.S. waters had a major effect in both countries. The displacement of Canadian vessels from U.S. waters provided an opportunity for additional U.S. vessels to enter the fishery in Alaska, but did nothing to extend fishing seasons. The number of fishing days required to take the catch limit in Alaska declined steadily during the 1980s as a result of more vessels and improved efficiency. The displacement substantially reduced the Canadian share of the total landings. Canadians landed an average of 24.3 million pounds annually during 1960-1978, which amounted to almost 50 percent of the average coast-wide harvest of 49.0 million pounds. Following the phase-out of Canadian fishermen in U.S. waters, Canadian landings averaged only 9.1 million pounds during 1981-1990 or 17 percent of the average coast-wide harvest of 53.5 million pounds. Thus, rescinding reciprocal fishing privileges probably shifted about 33 percent of the total landings (18 million pounds annually) from Canadian to U.S. fishermen during the 1980s. This shift created an atmosphere of distrust that has made the Commission's job of setting appropriate catch limits and fishing seasons among the two countries more difficult.

The requirement that 60 percent of the total allowable catch in IPHC Area 2 be taken in Canadian waters (Area 2B) and 40 percent in U.S. waters also created management problems. Although the Protocol only required this division during 1979 and 1980 (Paragraph 14 of the

Annex), the Commission did not depart from this division until 1985. The 60/40 division of the Area 2 catch had as its basis the average long term distribution of the catch in the two areas (Hoag et al., 1983). Other methods of evaluating productivity suggest that the long term average was between 56 and 63 percent. However, it is difficult to manage on a fixed harvest ratio because conditions vary over time. The 60/40 division between the two areas lead to management problems during the 1980s because Area 2C stocks became disproportionately more abundant than those in Area 2B.

In 1985 when the Commission recommended a departure from the 60/40 requirement and adopted a harvest strategy which takes a constant proportion of the exploitable biomass in each region, the following resolution was adopted:

“WHEREAS, the Commission acknowledges the historic spirit and intent of the Protocol, specifically as it related to the 60/40 division of the catch in Area 2; and

WHEREAS, the Commission is desirous of optimizing production from all parts of Area 2 based upon careful consideration of scientific data provided by Commission staff and other sources; and

WHEREAS, the Commission is informed by the Commission staff that the current distribution of stocks represents a departure from the long-term condition in this area;

Based on these unusual conditions, the Commission recommends that a departure from the 60/40 catch division is appropriate in 1985. In future years, departures from the 60/40 catch division will be considered based on stock conditions at that time.”

The Protocol allowed each government to establish more restrictive regulations and a limited entry system was introduced in Canada in 1979. This reduced the number of licensed Canadian halibut vessels to 435, and allowed for longer halibut seasons in Canada than in the U.S. where limited entry was not instituted, and over 6,900 licenses were issued in 1990. Canadian fishermen landed 8.5 million pounds in 10 fishing days in 1990, whereas U.S. fishermen landed 42.9 million pounds (Areas 2C, 3A, 3B) in 2 unrestricted fishing days. The longer Canadian seasons have generally resulted in a higher quality product and higher prices to fishermen because more time is available to care for the product and market it fresh. In 1991, Canada instituted an individual vessel quota system which allow for halibut to be landed over most of the year and should result in even higher prices to fishermen. The slower pace of landings in Canada also aids the Commission in the collection of scientific data and the management of the fishery. The U.S. has considered limited entry schemes on several occasions, but has not yet been able to control or distribute fishing effort effectively. The U.S. has approved more restrictive regulations that allocate halibut among groups of U.S. fishermen. These have affected halibut management and are discussed in the following section.

NORTHERN PACIFIC HALIBUT ACT OF 1982

In the spring of 1982, the United States passed the necessary legislation to give effect to the 1979 Protocol and to repeal the previous enabling legislation: the amended Northern Pacific Halibut Act of 1937. The text of the 1982 Act is provided in Appendix II. The Act provided the following changes:

- 1) Specified requirements for U.S. representation on the Commission.
- 2) Provided authority to the regional fishery management council with concurrence of the Secretary of Commerce, to develop regulations which are not in conflict with Commission regulations.
- 3) Provided general responsibility to the U.S. Secretary of Commerce to carry out the

convention and the 1982 Halibut Act.

- 4) Allowed opportunity for coastal villages of Alaska to establish a commercial fishery.
- 5) Defined penalties for violations, funding, enforcement, and legal responsibilities.

The Act requires that one Commissioner be an official of the U.S. National Oceanic and Atmospheric Administration (NOAA) and two Commissioners must be knowledgeable or experienced concerning the halibut fishery. Further, one Commissioner must be a voting member of the North Pacific Fishery Management Council (NPFMC), one a resident of Alaska, and one a nonresident of Alaska. In 1990, U.S. commissioners consisted of (1) the Alaska Regional Director of the U.S. National Marine Fisheries Service (NMFS) who is also a member of the NPFMC, (2) a fisherman who is a resident of Alaska, and (3) a fish buyer who is a resident of Washington State. This section of the Act helps insure that representation on the Commission is knowledgeable, is spread between Alaska and other states, and provides for a close working relationship with the NPFMC.

The authority given to the regional fishery management councils and Secretary of Commerce to develop regulations that are not in conflict with the Commission's, resulted in the NPFMC studying limited entry in the halibut fishery extensively during the early 1980s, including an option for individual quotas (Stokes, 1983; Miller, 1984). In 1982, the NPFMC voted to implement a moratorium in the halibut fishery off Alaska. This moratorium was to last three years (1983-1985), and its purpose was to prevent any further increase in vessels until the NPFMC could decide on permanent regulations. After considerable public review and modification, the proposed moratorium was submitted to the Secretary of Commerce in March, 1983. On June 15, one day before the beginning of the halibut season, NOAA disapproved the moratorium because it did not contribute to the resolution of the problem of over-capitalization in the fishery (Miller, 1985). NOAA's disapproval was partly based on the recommendation from the Office of Management and Budget which thought that the NPFMC action would stop with the moratorium, and would not implement a permanent limited entry regulation.

Following disapproval, the NPFMC directed a work group to examine whether the moratorium should be recommended for the 1984 season. That group recommended in December, 1983 that the initial moratorium be amended and resubmitted for 1984. After a review of the recommendations, the NPFMC voted to discontinue consideration of the moratorium, and instead directed its staff to prepare material on management regimes available for immediate implementation in the fishery. A report entitled, "The North Pacific Halibut Fishery: Options for Realization of Management Goals", was released on August 1, 1984. It concluded that any traditional method of managing the fishery would probably not be effective in achieving management goals, and proposed that the NPFMC implement some form of limited access. In September, 1984, the NPFMC voted to take an active management role and directed the staff to prepare management options that would include area registration, license limitation, and individual quotas. The options were presented to the NPFMC in December when after consideration, they decided to defer taking an active role in controlling effort in the halibut fishery. This lack of control on fishing effort contributed significantly to the short fishing seasons and associated management problems of the 1980s. The NPFMC has continued to work toward management schemes that would limit entry into the fishery, and an individual quota system may be implemented by the mid-1990s.

The Act also granted authority to the Secretary of Commerce through the councils to allocate fishing privileges among U.S. fishermen, and specifically provided for rural coastal villages of the Bering Sea north of 56°00' N. latitude to establish commercial fisheries. The councils, however, did not become involved in halibut management until a decision was made by NOAA that the Commission should no longer consider regulations that relate to domestic allocation. The Commission was first informed of NOAA's decision on April 20, 1987 in a copy

of a letter from Anthony J. Calio, the NOAA administrator, to the Honorable John Miller, a U.S. congressman from Washington State (Appendix III). The letter stated that "as a policy matter, the better way to address the issues that relate primarily to domestic allocation is through the mechanism established in the North Pacific Halibut Act....Therefore, future domestic allocation issues will be submitted to the appropriate Regional Fishery Management Council for a recommendation to the Secretary, rather than be handled by the IPHC." This letter was followed by a letter from a NOAA assistant administrator, to the IPHC director, on May 21, 1987 (Appendix IV) indicating the same change in authority.

Neither letter is specific as to how responsibilities are to be shared between the Commission and the councils and the division in authority remains ambiguous. After discussion between the Commission, the NMFS, the Pacific Fishery Management Council, and the NPFMC, it was decided that all conservation issues and those other responsibilities stated in the 1953 Treaty as amended by the 1979 Protocol, be carried out by the IPHC and that purely domestic allocative decisions be made by the councils. The councils are authorized by the North Pacific Halibut Act of 1982 to implement more restrictive regulations providing they are not in conflict with Halibut Commission regulations. These conditions allow for the allocation of halibut to different groups of U.S. citizens. The councils have undertaken the development of regulations where allocation is the primary objective, but have asked the Commission to include these regulations as part of the total regulations for the halibut fishery. Allocative regulations developed by the councils include the division of the Area 2A harvest among commercial, recreational, and Treaty Indians, and special seasons and restrictions in Area 4 to allow more fishing opportunity for local residents. The division of responsibilities has thus far worked satisfactorily, but has created increased demands on the IPHC staff in the form of additional meetings and reports. Since many of the Commission's responsibilities as stated in the 1953 Treaty and Protocol are allocative, the potential for conflict will remain until the division of authority between the IPHC and the councils is further clarified.

SUMMARY

The 1953 Halibut Convention was amended in 1979 following Canada and the United States extending jurisdiction of their fisheries resources to 200 miles. The most significant result of the amendment was the rescinding of reciprocal fishing privileges between the two countries and the phase out of Canadian fishing in U.S. waters. This shifted about one-third of the total coast-wide catch from Canadian to U.S. fishermen.

The U.S. enabling legislation gave authority to regional fishery management councils, with the approval of the Secretary of Commerce, to develop regulations which are not in conflict with Commission regulations. This has led to several unsuccessful attempts to limit fishing effort off Alaska and together with the convention text is the basis for a NOAA decision that the Commission should no longer consider regulations that relate to domestic allocation.

ACKNOWLEDGMENTS

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APPENDICES

- APPENDIX I.** Protocol amending the Convention between Canada and the United States of America for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea.
- APPENDIX II.** Northern Pacific Halibut Act of 1982.
- APPENDIX III.** The April 8, 1987 letter from Anthony J. Calio to John Miller.
- APPENDIX IV.** The May 21, 1987 letter from William E. Evans to Donald A. McCaughran.

APPENDIX I

PROTOCOL AMENDING THE CONVENTION BETWEEN CANADA AND THE UNITED STATES OF AMERICA FOR THE PRESERVATION OF THE HALIBUT FISHERY OF THE NORTHERN PACIFIC OCEAN AND BERING SEA

The Government of Canada and the Government of the United States of America,

Having regard to the Convention between Canada and the United States of America for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, signed at Ottawa, March 2, 1953 (hereinafter "the Convention"),

Sharing the view that the Convention has served to promote and coordinate scientific studies relating to the halibut fishery of the Northern Pacific Ocean and the Bering Sea, and has aided in the conservation of these fishery resources,

Taking into account that each of the Parties has established exclusive jurisdiction over fisheries within 200 nautical miles of its coasts, and that portions of the Convention area are within the areas of such exclusive fisheries jurisdiction,

Recognizing that the Convention does not take fully into account developments in fishery conservation and management and,

Desirous of amending the Convention,

Have agreed as follows:

ARTICLE I

The Convention shall be amended to read as follows:

"The Government of Canada and the Government of the United States of America have agreed as follows:

Article I

1. All fishing for halibut (*Hippoglossus*) in Convention waters as herein defined is hereby prohibited except as expressly provided in paragraphs 2 and 5 of this Article.
2. Nationals and fishing vessels of, and fishing vessels licensed by, Canada or the United States may fish for halibut in Convention waters only in accordance with this Convention, including its Annex, and as provided by the International Pacific Halibut Commission in regulations promulgated pursuant to Article III of the Convention and designed to develop the stocks of halibut in the Convention waters to those levels which will permit the optimum yield from the fishery and to maintain the stocks at those levels. However, it is understood that nothing contained in this Convention shall prohibit either Party from establishing additional regulations, applicable to its own nationals and fishing vessels, and to fishing vessels licensed by that Party, governing the taking of halibut which are more restrictive than those adopted by the International Pacific Halibut Commission.
3. "Convention waters" means the waters off the west coasts of Canada and the United

States, including the southern as well as the western coasts of Alaska, within the respective maritime areas in which either Party exercises exclusive fisheries jurisdiction. For purposes of this Convention, the "maritime area" in which a Party exercises exclusive fisheries jurisdiction includes without distinction areas within and seaward of the territorial sea or internal waters of that Party.

4. Nothing contained in this Convention shall prohibit the nationals or fishing vessels of Canada, of the Untied (sic) States, or of any third country from fishing in the Convention waters for other species of fish during any season when fishing for halibut in the Convention waters is prohibited by this Convention or by any regulations adopted pursuant to this Convention.

5. Subject to and in accordance with International Pacific Halibut Commission and other applicable regulations and permit and licensing requirements including the payment of fees, sport fishing for halibut and other species by nationals and vessels of each Party may be conducted in Convention waters, except that licensing or permit requirements directed specifically at foreign fishing vessels pursuant to the Coastal Fisheries Protection Act of Canada and the Fishery Conservation and Management Act of 1976 of the United States, as amended from time to time, or pursuant to any statute replacing such Acts, shall not apply. All provisions of this Convention except this paragraph, refer to commercial halibut fishing.

Article II

1. Each Party shall have the right to enforce this Convention and any regulations adopted pursuant thereto:

- (a) in all Convention waters, against its own nationals and fishing vessels;
- (b) in that portion of the Convention waters in which it exercises exclusive fisheries jurisdiction, against nationals or fishing vessels of either Party or of third parties.

2. Each Party may, to the extent of its enforcement authority under this Convention, conduct prosecutions or take other action under its domestic law for the violation of this Convention or of any regulations adopted pursuant thereto. The witnesses and evidence necessary for such prosecutions or other legal actions, so far as any witnesses or evidence are under the control of the other Party, shall be furnished promptly to the authorities of the Party having jurisdiction to conduct such prosecutions or other legal actions.

3. Each Party shall take appropriate measures to ensure that its nationals and fishing vessels allow and assist boardings and inspections of such vessels in accordance with paragraph 1 by duly authorized officials of the other Party.

Article III

1. The Parties agree to continue under this Convention the Commission known as the International Fisheries Commission established by the Convention for the Preservation of the Halibut Fishery, signed at Washington, March 2, 1923, continued by the Convention signed at Ottawa, May 9, 1930, and further continued by the Convention, signed at Ottawa, January 29, 1937. The Commission shall consist of six members, three appointed by each Party, and shall be known as the International Pacific Halibut Commission (hereinafter "the Commission"). Each Commissioner shall serve at the pleasure of the appointing Party, and each Party shall fill vacancies in its representation on the Commission as they occur. Each Party shall pay the salaries and expenses of its own members. Joint expenses incurred by the Commission shall be

paid by the two Parties in equal shares. However, upon recommendation of the Commission, the Parties may agree to vary the proportion of such joint expenses to be paid by each Party after March 31, 1981. All decisions of the Commission shall be made by a concurring vote of at least two of the Commissioners of each Party.

2. The Commission shall make such investigations as are necessary into the life history of the halibut and may conduct or authorize fishing operations to carry out such investigations.

3. For the purpose of developing the stocks of halibut of the Northern Pacific Ocean and Bering Sea to levels which will permit the optimum yield from that fishery, and of maintaining the stocks at those levels, the Commission, with the approval of the Parties and consistent with the Annex to this Convention, may, after investigation has indicated such action to be necessary, with respect to the nationals and fishing vessels of, and fishing vessels licensed by, Canada or the United States, and with respect to halibut:

- (a) divide the Convention waters into areas;
- (b) establish one or more open or closed seasons as to each area;
- (c) limit the size of the fish and the quantity of the catch to be taken from each area within any season during which fishing is allowed;
- (d) during both open and closed seasons, permit, limit, regulate or prohibit the incidental catch of halibut that may be taken, retained, possessed, or landed from each area or portion of an area, by vessels fishing for other species of fish;
- (e) fix the size and character of halibut fishing appliances to be used in any area;
- (f) make such regulations for the licensing of vessels and for the collection of statistics on the catch of halibut as it shall find necessary to determine the condition and trend of the halibut fishery and to carry out the other provisions of this Convention;
- (g) close to all taking of halibut any area or portion of an area that the Commission finds to be populated by small, immature halibut and designates as nursery grounds.

4. The Commission shall periodically publish reports of its activities, including its investigations.

Article IV

The Parties shall take any action, including enactment of legislation and enforcement, as may be necessary to make effective the provisions of this Convention and any regulations adopted thereunder.

Article V

1. The Annex to this Convention shall constitute an integral part of the Convention, and all references to the Convention shall be considered to refer to the Annex as well.

2. The Parties may, by mutual agreement, amend any provision of the Annex.

Article VI

Nothing in this Agreement shall be construed to affect or prejudice any position or claim which has been or may subsequently be adopted by either Party in the course of consultations, negotiations or third party settlement procedures respecting the maritime jurisdiction, including the limits thereof, of Canada or of the United States.

Article VII

This Convention shall remain in force until March 31, 1981, and thereafter until one year from the date on which either Party shall have given notice to the other of its desire to terminate it.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Protocol.

DONE at Washington in duplicate, in the English and French languages, both texts being equally authentic, this twenty-ninth day of March, 1979.

EN FOI DE QUOI, les soussignés, dûment autorisés par leurs Gouvernements respectifs, ont signé le présent Protocole.

FAIT en deux exemplaires à Washington ce vingt-neuvième jour de mars 1979, en français et en anglais, chaque texte faisant également foi.

For the Government of Canada
Pour le Gouvernement du Canada

For the Government of the United States of
America
Pour le Gouvernement des Etats-Unis
d'Amerique

ANNEX

1. Nationals and fishing vessels of, and fishing vessels licensed by, either Party shall not fish for halibut in Convention waters in which the other exercises exclusive fisheries jurisdiction except as provided in Article I of the Convention and as stated in this Annex.
2. In the maritime area outside the Bering Sea in which the United States exercises exclusive fisheries jurisdiction, beyond three miles from the baseline from which the territorial sea of the United States is measured, nationals and fishing vessels of Canada issued registration permits by the United States may catch three million pounds of halibut during the period beginning April 1, 1979, and ending March 31, 1981, subject to the following limits:
 - (a) during the period beginning April 1, 1979, and ending March 31, 1980, they may catch two million pounds of halibut;
 - (b) during the period beginning April 1, 1980, and ending March 31, 1981, they may catch one million pounds of halibut, except that this catch limit shall be adjusted such that the catch by nationals and vessels of Canada under sub-paragraphs (a) and (b) shall total three million pounds.
3. After April 1, 1979, the annual total allowable catch set by the Commission for halibut fishing in Area 2 shall be divided as follows:
 - (a) Forty percent of the annual total allowable catch may be caught in the maritime area in which the United States exercises exclusive fisheries jurisdiction as of March 29, 1979;
 - (b) Sixty percent of the annual total allowable catch may be caught in the maritime area in which Canada exercises exclusive fisheries jurisdiction as of March 29, 1979.
4. Fishing effort by nationals and vessels of Canada in that portion of Area 2 in which the United States exercises exclusive fisheries jurisdiction and in Area 3 shall be in the same general proportion as the historical level of Canadian effort in those areas.
5. Nationals and fishing vessels of Canada may not retain incidental catches of species other than halibut, except for immediate on-board use as bait, when conducting fishing operations pursuant to the Convention in the maritime area in which the United States exercises exclusive fisheries jurisdiction.
6. Vessels of Canada engaged in fishing for halibut in the maritime area in which the United States exercises exclusive fisheries jurisdiction shall have on board a registration permit issued by the Government of the United States. No fees shall be required for such permits. Applications for such permits shall be prepared and processed in accordance with paragraphs 7 and 8 of this Annex.
7. Applications for registration permits under paragraph 6 of this Annex shall be made on forms provided by the Government of the United States for that purpose. Such applications shall specify:
 - (a) the name and official number or other identification of each fishing vessel for

which a registration permit is sought, together with the name and address of the owner and operator thereof;

- (b) the tonnage, capacity, length and home port of each fishing vessel for which a registration permit is sought.

8. The appropriate officials of the Government of the United States shall review each application for a registration permit and shall notify appropriate officials of the Government of Canada upon acceptance of the application. Upon acceptance of the application, the Government of the United States shall issue a registration permit to that fishing vessel, which shall thereupon be authorized to fish in accordance with the Convention. Each such registration permit shall be issued for a specific vessel, shall be applicable for the annual period beginning April 1, 1979, and ending March 31, 1980, or for the annual period beginning April 1, 1980, and ending March 31, 1981, and shall not be transferable.

9. Nationals and fishing vessels of Canada intending to fish for halibut in the maritime area in which the United States exercises exclusive fisheries jurisdiction shall report to appropriate United States officials, at least 24 hours prior to entering the area:

- (a) the vessel name and registration permit number;
- (b) the anticipated date fishing will begin;
- (c) the sub-area, as described in paragraph 13 of this Annex, in which fishing will initially take place.

10. Nationals and fishing vessels of Canada shall have no fish on board at the time of entry into the maritime area in which the United States exercises exclusive fisheries jurisdiction, except for immediate on-board use as bait.

11. Nationals and fishing vessels of Canada, while operating within the maritime area in which the United States exercises exclusive fisheries jurisdiction, shall:

- (a) have the name and port of registration clearly visible on the stern and fly the flag of Canada at all times;
- (b) prior to moving between sub-areas, as described in paragraph 13 of this Annex, report to appropriate United States officials:
 - (i) the vessel name and registration permit number;
 - (ii) the sub-area in which fishing will cease;
 - (iii) the sub-area in which fishing will take place;
 - (iv) the date upon which the move will take place.

12. Nationals and fishing vessels of Canada, prior to departure from the maritime area in which the United States exercises exclusive fisheries jurisdiction, shall report to appropriate United States officials:

- (a) the vessel name and registration permit number;
- (b) the date fishing in such area ceases;
- (c) the estimated amount (in pounds) of halibut on board upon departure from such area;
- (d) the anticipated port of delivery.

13. The sub-areas of the maritime area in which the United States exercises exclusive fisheries jurisdiction, referred to in paragraphs 9 and 11 are:

- (a) Southeast: adjacent to Alaska, south and east of a line running south one-quarter east (177° magnetic) from Cape Spencer Light (58° 11'57" North latitude, 136° 38'18" West longitude);
- (b) Yakutat: adjacent to Alaska, north and west of a line running south one-quarter east (177° magnetic) from Cape Spencer Light to 147°00' West longitude;
- (c) Kodiak: adjacent to Alaska, west of 147°00' West longitude to 159°00' West longitude, not including the Bering Sea;
- (d) Shumagin: adjacent to Alaska, west of 159°00' West longitude to 173°00' West longitude, not including the Bering Sea;
- (e) Aleutian: adjacent to Alaska, west of 173°00' West longitude, not including the Bering Sea;
- (f) Washington/Oregon/California: adjacent to Washington, Oregon and California.

14. By January 1, 1981, and thereafter as it considers appropriate, the Commission shall, on the basis of a review of pertinent information, recommend for the approval of the Parties any appropriate changes in the division of the annual total allowable catch set forth in paragraph 3 of this Annex. No such changes may take effect before April 1, 1981.

15. Each year the Commission shall report to the Parties as soon as 75 percent has been taken of that portion of the annual total allowable catch authorized under paragraph 3(a) or 3(b) of this Annex. Upon making this report, the Commission may recommend to the Parties reallocation of the annual total allowable catch in Area 2 between the areas described in paragraphs 3(a) and 3(b) of this Annex. Any such recommendation shall include a date upon which the reallocation, if approved by the Parties, shall take effect. Such reallocation may, notwithstanding the terms of paragraph 14, take effect at any time, and shall remain in effect until March 31 following the date on which it takes effect.

16. Pending delimitation of maritime boundaries between Canada and the United States in the Convention area, the following principles shall be applied as interim measures in the boundary regions:

- (a) as between the Parties, enforcement of the Convention shall be carried out by the flag state;
- (b) neither Party shall authorize fishing for halibut by vessels of third parties;
- (c) either Party may enforce the Convention with respect to fishing for halibut, or related activities, by vessels of third parties.

17. For purposes of this Annex, "Area 2" means that portion of the Convention waters east of a line running northwest one-quarter west (312° magnetic) from Cape Spencer Light (latitude 58° 11'57" North, longitude 136° 38'18" West) and south and east of a line running south one-quarter east (177° magnetic) from said light.

ARTICLE II

This Protocol shall be ratified by the Parties and the instruments of ratification exchanged at Ottawa as soon as possible. This Protocol shall enter into force on the date of exchange of ratifications.

APPENDIX II

NORTHERN PACIFIC HALIBUT ACT OF 1982

773. Definitions

As used in this Subchapter the term:

(a) "Convention" means the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, signed at Ottawa, Canada on March 2, 1953, as amended by the Protocol Amending the convention, signed at Washington March 29, 1979, and includes the regulations promulgated thereunder.

(b) "Commission" means the International Pacific Halibut Commission provided for by article III of the Convention.

(c) "Fishery conservation zone" means the fishery conservation zone of the United States established by section 1811 of this title.

(d) "Convention waters" means the maritime areas off the west coast of the United States and Canada described in article I of the Convention.

(e) "Halibut" means fish of the species *Hippoglossus stenolepis* inhabiting Convention waters.

(f) "Fishing vessel" means -

(1) any vessel engaged in catching fish in Convention waters or in processing or transporting fish loaded in Convention waters;

(2) any vessel outfitted to engage in any activity described in paragraph (1);
or

(3) any vessel in normal support of any vessel described in paragraph (1) or (2).

(g) "Secretary" means the Secretary of Commerce.

773a. International Pacific Halibut Commission

(a) United States Commissioners

The United States shall be represented on the Commission by three United States Commissioners to be appointed by the President and to serve at his pleasure. The Commissioners shall receive no compensation for their services as Commissioners. Each United States Commissioner shall be appointed for a term of office not to exceed two years, but is eligible for reappointment. Any United States Commissioner may be appointed for a term of less than two years if such appointment is necessary to ensure

that the terms of office of not more than two Commissioners will expire in any one year. A vacancy among the United States Commissioners shall be filled by the President in the manner in which the original appointment was made, but any Commissioner appointed to fill a vacancy occurring before the expiration of the term for which the Commissioner's predecessor was appointed shall be appointed only for the remainder of such term. Of the Commissioners-

(1) one shall be an official of the National Oceanic and Atmospheric Administration; and

(2) two shall be knowledgeable or experienced concerning the Northern Pacific halibut fishery; of these, one shall be a resident of Alaska and the other shall be a nonresident of Alaska. Of the three Commissioners described in paragraphs (1) and (2), one shall be a voting member of the North Pacific Fishery Management Council.

(3) Commissioners shall not be considered Federal employees except for the purposes of injury compensation or tort claims liability as provided in section 8101 et seq. of Title 5, and section 2671 et seq. of Title 28. This subsection shall take effect on the 90th day after May 17th, 1982.

(b) Alternate United States Commissioners

The Secretary of State, in consultation with the Secretary, may designate from time to time alternate United States Commissioners to the Commission. An Alternate United States Commissioner may exercise, at any meeting of the Commission, all powers and duties of a United States Commissioner in the absence of a duly designated Commissioner for whatever reason. The number of such alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of authorized United States Commissioners that will not be present.

773b. Acceptance or rejection of Commission recommendations

The Secretary of State, with the concurrence of the Secretary, may accept or reject, on behalf of the United States, recommendations made by the Commission in accordance with article III of the Convention and paragraphs 14 and 15 of the annex to the Convention.

773c. General responsibility

(a) Secretary of Commerce

The Secretary shall have general responsibility to carry out the Convention and this Subchapter.

(b) Adoption of regulations; cooperation with Canadian officials

In fulfilling this responsibility, the Secretary -

(1) shall, in consultation with the Secretary of the department in which the Coast

Guard is operating, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this Subchapter; and

(2) may, with the concurrence of the Secretary of State, cooperate with the duly authorized officials of the Government of Canada.

(c) Regional Fishery Management Council involvement

The Regional Fishery Management Council having authority for the geographic area concerned may develop regulations governing the United States portion of Convention waters, including limited access regulations, applicable to national or vessels of the United States, or both, which are in addition to, and not in conflict with regulations adopted by the Commission. Such regulations shall only be implemented with the approval of the Secretary, shall not discriminate between residents of different States, and shall be consistent with the limited entry criteria set forth in section 1853(b) (6) of this title. If it becomes necessary to allocate or assign halibut fishing privileges among various United States fishermen, such allocation shall be fair and equitable to all such fishermen, based upon the rights and obligations in existing Federal law, reasonably calculated to promote conservation, and carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of the halibut fishing privileges: *Provided*, That the Regional Council may provide for the rural coastal villages of Alaska the opportunity to establish a commercial halibut fishery in areas in the Bering Sea to the north of 56 degrees north latitude during a 3 year development period.

773d. Cooperation of Federal agencies

Any agency of the Federal Government is authorized upon request of the Commission, to cooperate in the conduct of scientific and other programs, and to furnish on a reimbursable basis, facilities and personnel for the purposes of assisting the Commission in carrying out its duties under the Convention. Such agency may accept reimbursement from the Commission.

773e. Prohibited acts

It is unlawful -

(a) for any person subject to the jurisdiction of the United States -

(1) to violate any provision of the Convention, this Subchapter or any regulation adopted under this Subchapter;

(2) to refuse to permit any enforcement officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Convention, this Subchapter or any regulation adopted under this Subchapter;

(3) to forcibly assault, resist, oppose, impede, intimidate or interfere with any enforcement officer in the conduct of any search or inspection described in paragraph (2);

(4) to resist a lawful arrest or detention for any act prohibited by this section;

(5) to ship, transport, offer for sale, sell, purchase, import, export or have

custody, control or possession of, any fish taken or retained in violation of the Convention, this Subchapter, or any regulation adopted under this Subchapter;
or

(6) to interfere with, delay or prevent, by any means, the apprehension, arrest or detention of another person, knowing that such person has committed any act prohibited by this section.

(b) for any foreign fishing vessel, and for the owner or operator of any foreign fishing vessel, to engage in fishing for halibut in the fishery conservation zone, unless such fishing is authorized by, and conducted in accordance with the Convention, this Subchapter and regulations adopted under this Subchapter.

773f. Civil penalties

(a) Liability; continuing violations; notice; determination of amount

Any person who is found by the Secretary, after notice and opportunity for a hearing in accordance with section 554 of Title 5, to have committed an act prohibited by section 773e of this title shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$25,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violation, the degree of culpability, and history of prior offenses, ability to pay, and such other matters as justice may require.

(b) Judicial review

Any person against whom a civil penalty is assessed under subsection (a) of this section may obtain review thereof in the appropriate court of the United States by filing a notice of appeal in such court within thirty days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary and the Attorney General. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, in accordance with rules prescribed pursuant to section 2112 of Title 28. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of Title 5.

(c) Recovery of assessed penalties by Attorney General

If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(d) Compromise, modification, and remission of penalties

The Secretary may compromise, modify, or remit, with or without conditions, any civil

penalty which is subject to imposition or which has been imposed under this section.

773g. Crimes and criminal penalties

(a) Offenses

A person is guilty of any (sic) offense if he commits an act prohibited by section 773e(a) (2), (3), (4), or (6) of this title; or section 773e(b) of this title.

(b) Fines; imprisonment

Any offense described in subsection (a) of this section is punishable by a fine of not more than \$50,000 or imprisonment for not more than six months, or both; except that if in the commission of any offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce the provisions of this Subchapter, or places any such officer in fear of imminent bodily injury the offense is punishable by a fine of not more than \$100,000, or imprisonment for not more than 10 years or both.

(c) Federal jurisdiction

There is Federal jurisdiction over any offense described in this section.

773h. Forfeitures

(a) Civil forfeiture proceeding

Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 773e of this title shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(b) United States district court jurisdiction

Any district court of the United States shall have jurisdiction, upon application by the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) of this section and any action provided for under subsection (d) of this section.

(c) Seizure of forfeited property

If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States, which has not previously been seized pursuant to this Subchapter or for which security has not previously been obtained under subsection (d) of this section. The provisions of the customs laws relating to -

- (1) the disposition of forfeited property;
- (2) the proceeds from the sale of forfeited property;

- (3) the remission or mitigation of forfeitures; and
- (4) the compromise of claims;

shall apply to any forfeiture ordered, and to any case in which forfeiture is alleged to be authorized, under this section, unless such provisions are inconsistent with the purposes, policy, and provisions of this subchapter. The duties and powers imposed upon the Commissioner of Customs or other persons under such provisions shall, with respect to this subchapter, be performed by officers or other persons designated for such purpose by the Secretary.

(d) Bond or other security; disposal of seized fish

(1) Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under section 773i(d) of this title shall -

- (A) stay the execution of such process; or
- (B) discharge any fish seized pursuant to such process;

upon the receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon such person delivering such property to the appropriate court upon order thereof, without any impairment of its value, or paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

(2) Any fish seized pursuant to this Subchapter may be disposed of pursuant to the order of a court of competent jurisdiction or, if perishable, in a manner prescribed by regulations of the Secretary or the Secretary of the department in which the Coast Guard is operating.

(e) Presumption of violation

For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an act prohibited by section 773e of this title were taken or retained in violation of the Convention and this Subchapter.

773i. Administration and enforcement

(a) Secretary of Commerce and Secretary of department in which Coast Guard is operating

The Convention, this Subchapter, and any regulation adopted under this Subchapter, shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, and of any State agency, in the performance of such duties.

(b) Arrest, search and inspection, seizure; execution of warrants or other process

Any officer who is authorized by the Secretary, the Secretary of the department in which the Coast Guard is operating, or the head of any Federal or State agency which has entered into an agreement with such Secretaries under subsection (a) of this section to enforce the Convention, this Subchapter or any regulation adopted under this Subchapter may -

- (1)** with or without a warrant or other process -
 - (A)** arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by section 773e of this title;
 - (B)** board, and search or inspect, any fishing vessel which is subject to this Subchapter;
 - (C)** at reasonable times enter, and search or inspect, shoreside facilities in which fish taken subject to this Subchapter are processed, packed or held;
 - (D)** seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, an act prohibited by section 773e of this title;
 - (E)** seize any fish (wherever found) taken or retained in the course of an act prohibited by section 773e of this title, or the proceeds of the sale of such fish; and
 - (F)** seize any other evidence related to an act prohibited by section 773e of this title;
- (2)** execute any warrant or other process issued by any court of competent jurisdiction; and
- (3)** exercise any other lawful authority.

(c) Citation of owner or operator of offending vessel

If any officer authorized to enforce this Subchapter (as provided for in this section) finds that a fishing vessel is operating or has been operated in the commission of an act prohibited by section 773e of this title, such officer may, in accordance with regulations issued jointly by the Secretary and the Secretary of the department in which the Coast Guard is operating, issue a citation to the owner or operator of such vessel in lieu of proceeding under subsection (b) of this section. If a permit has been issued pursuant to this Subchapter for such vessel, such officer shall note the issuance of any citation under this subsection, including the date thereof and the reason therefor, on the permit. The Secretary shall maintain a record of all citations issued pursuant to this subsection.

(d) United States district court jurisdiction

The district court of the United States shall have exclusive jurisdiction over any case or controversy arising under this Subchapter. Any such court may, at any time -

- (1) enter restraining orders or prohibitions;
- (2) issue warrants, process in rem or other process;
- (3) prescribe and accept satisfactory bonds or other security; and
- (4) take such other actions as are in the interest of justice.

(e) Witnesses; records and files

When requested by the appropriate authorities of Canada, officers or employees of the Coast Guard, the National Oceanic and Atmospheric Administration or any other agency of the United States may be directed to attend as a witness, and to produce such available records and files or duly certified copies thereof as may be necessary for the prosecution in Canada of any violation of the Convention or any Canadian law relating to the enforcement thereof.

(f) Investigations by Secretary of Commerce; powers; process

- (1) In cooperation with such other agencies as may be appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations as are deemed necessary to carry out the purposes of this Subchapter.
- (2) For the purpose of all investigations which, in the opinion of the Secretary, are necessary and proper for the enforcement of this Subchapter, the Secretary or any officer designated by him is empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Secretary deems relevant or material to the inquiry. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States at any designated place or hearing.
- (3) Process of the Secretary may be served by anyone duly authorized by him either -
 - (A) by delivering a copy thereof to the individual to be served, or to a member of the partnership to be served, or the President, Secretary, or other executive officer or a director of the corporation to be served; or the agent designated for service of process;
 - (B) by leaving a copy thereof at the residence or the principal office or place of business of such individual, partnership, or corporation; or
 - (C) by mailing a copy thereof by registered or certified mail addressed to such individual, partnership, or corporation at his or its residence or principal office or place of business. The verified return by the individual so serving such complaint, order, or other process setting forth the manner of service shall be proof of same, and the returned post office receipt for such complaint, order, or other process mailed by registered or certified mail shall be proof of the service of the same.

773j. Authorization of appropriations

There is hereby authorized to be appropriated for fiscal year 1983 and beyond, such sums as may be necessary for carrying out the Convention and this Subchapter, including -

(a) necessary travel expenses of the United States Commissioners or alternate Commissioners; and

(b) the United States share of the joint expenses of the Commission: *Provided*, That the Commissioners shall not, with respect to commitments concerning the United States share of the joint expenses of the Commission, be subject to section 262(b) of Title 22 insofar as it limits the authority of United States representatives to international organizations with respect to such commitments.

773k. Location of office space and other facilities on or near University of Washington campus in State of Washington

There are hereby authorized to be appropriated such sums as may be necessary for the Secretary of State to provide for fiscal year 1983 and beyond, by contract, grant, or otherwise, facilities for office and any other necessary space for the Commission. Such facilities shall be located on or near the campus of the University of Washington in the State of Washington and shall be provided without regard to the cost-sharing provisions in the Convention.

APPENDIX III

**THE APRIL 8, 1987 LETTER FROM ANTHONY J. CALIO
TO JOHN MILLER**

April 8, 1987

Honorable John Miller
House of Representatives
Washington, D.C. 20515

Dear John,

Thank you for your letter regarding the International Pacific Halibut Commission's (IPHC) area 4C halibut trip limit recommendation for 1987. I enjoyed our frank discussions on this issue.

We intend to advise the Department of State that the IPHC recommendation for a trip limit for area 4C be accepted, but only for the first 25 percent of the quota rather than for the first 40 percent. We trust that the Department of State will take this into account in their reply to the IPHC.

In addition, the National Oceanic and Atmospheric Administration has reviewed the system for allocating halibut among domestic fishermen and has decided that, as a policy matter, the better way to address the issues that relate primarily to domestic allocation is through the mechanism established in the North Pacific Halibut Act of 1982 at 16 U.S.C. 773c(c). Therefore, future domestic allocation issues will be submitted to the appropriate Regional Fishery Management Council for a recommendation to the Secretary, rather than be handled by the IPHC.

Sincerely,

(signed: "Tony")

Anthony J. Calio

cc: A DA LA GC ES F/M F/S F/MI F/M3 GCF F(2) LA5-F(2) F/AKR F/NWR F/M31
F/M31:Gerrfurth:673-5281:mdb:4/1/87 Control no. 33634

APPENDIX IV

THE MAY 21, 1987 LETTER FROM A NOAA ASSISTANT ADMINISTRATOR TO THE IPHC DIRECTOR

May 21, 1987

Dr. Donald A. McCaughran
Director
International Pacific Halibut Commission
Seattle, Washington 98145

Dear Dr. McCaughran:

The National Oceanic and Atmospheric Administration has recently made a decision on how best to deal with domestic allocations of the halibut resource. Some allocative decisions have been made by the International Pacific Halibut Commission (IPHC) in the past few years. Making these decisions in an international body rather than in a domestic forum has caused some domestic controversy.

We have reviewed the procedures used in the past and other procedures available to us. We have decided that recommendations involving domestic allocation of the halibut resource should be made by the appropriate Regional Fishery Management Council. This provides for extensive public involvement both during the Council process and in the subsequent rulemaking. Decisions involving the conservation and management of halibut stocks, or the international allocation of the halibut harvest will continue to be made by the IPHC.

As you and your staff discussed at the meeting in Seattle on April 30, 1987, this new process will require close coordination among the Councils and the IPHC so that each entity can bring its expertise to the process.

My staff and I look forward to working with you in the future to implement the new process.

Sincerely,

(signed: "James E. Douglas Jr. for")

William E. Evans
Assistant Administrator
for Fisheries
