

Draft for Secretarial Review

REGULATORY IMPACT REVIEW

**For a Proposed Rule to Allow Processors
to
Use Offal from Prohibited Species for Fish Meal**

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Abstract: This Regulatory Impact Review (RIR) examines the costs and benefits of a proposed rule to allow processors receiving fish for the Prohibited Species Donation Program to convert processing byproducts (e.g., inedible heads and guts from salmon and Pacific halibut) into fish meal, oil, or bone meal. This RIR is prepared under Presidential Executive Order (E.O.) 12866 (58 FR 51735; October 4, 1993). This action would allow, through regulation, a practice that is already allowed under an existing enforcement policy. This action would benefit the regulated entities and would entail few, if any, costs.

Executive Summary

This Regulatory Impact Review (RIR) provides information on the economic and socioeconomic implications of a proposed rule to allow processors receiving fish for the Prohibited Species Donation Program (PSD program) to use processing byproducts (e.g., inedible heads and guts from salmon and Pacific halibut) for production of fish meal, fish oil, or bone meal.

An RIR for any proposed regulatory action is required under Presidential Executive Order (E.O.) 12866 (58 *FR* 51735; October 4, 1993). The RIR provides a cost/benefit analysis, identifying and summarizing the tradeoffs associated with a proposed action and alternatives to that action.

The PSD program developed problems in 2001, when processors stopped retaining salmon bycatch for the program because the rule currently in effect could be interpreted as prohibiting the use of offal for fish meal: regulations at 50 CFR 679.26 prohibit the personal use, sale, barter, or trade of prohibited species retained for processing and delivery to hunger relief agencies.

In response, NMFS Enforcement issued an advisory bulletin on April 4, 2002 (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.

The proposed rule is intended to bring NMFS regulations into conformance with its enforcement policy as stated above. The only effect of this proposed rule to codify through regulation a practice that is already allowed under an existing enforcement policy. Under this rule, processors would be allowed to continue to use the offal from salmon and halibut intended for the PSD program for fish meal, fish oil, or bone meal.

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1.0 Introduction

This Regulatory Impact Review (RIR) examines the expected costs and benefits of a proposed rule to allow processors receiving salmon and halibut intended for the Prohibited Species Donation Program (PSD program) to use the offal from salmon and halibut intended for the Prohibited Species Donation Program (PSD program) for fish meal, fish oil, or bone meal. Current regulations at 50 CFR 679.26 prohibit the personal use, sale, barter, or trade of prohibited species retained for process and delivery to hunger relief agencies.

The PSD program developed problems in 2001, when processors stopped retaining salmon for the program because the rule could be read to prohibit the use of offal for fish meal.

In response, NMFS Enforcement issued an advisory bulletin on April 4, 2002 (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.

The proposed rule is intended to bring NMFS regulations into conformance with its enforcement policy as stated above.

What is a Regulatory Impact Review?

This RIR is required under Presidential Executive Order (E.O.) 12866 (58 FR 51735; October 4, 1993). The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the order:

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nonetheless essential to consider. Further, in choosing among alternative regulatory approaches agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

This RIR addresses requirements to provide adequate information to determine whether an action is “significant.” E.O. 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be “significant.” A “significant regulatory action” is defined under E.O. 12866 as one that is likely to:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, local or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

Statutory authority

The National Marine Fisheries Service manages the U.S. groundfish fisheries of the Bering Sea and Aleutian Islands (BSAI) management area and the Gulf of Alaska in the Exclusive Economic Zone under the Fishery Management Plans (FMPs) for those areas. The North Pacific Fishery Management Council prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations implementing the FMPs appear at §50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of §50 CFR part 600.

2.0 Purpose and need for action

The Prohibited Species Donation program (PSD program) allows enrolled seafood processors in the Bering Sea and Gulf of Alaska trawl groundfish fisheries to retain salmon and halibut bycatch for donation to hunger-relief agencies. The PSD program began as a pilot project in 1994. The program was implemented for salmon in 1996, and expanded in 1997 to include halibut. Regulations governing the program are at 50 CFR 679.26. In the absence of the PSD program, fishermen would be required to discard their salmon and halibut bycatch at sea, as they still have the option of doing.

The PSD program developed problems in 2001, when a NMFS field officer in Dutch Harbor alerted participating plants that their established practice of using offal from donated salmon for fish meal might constitute a violation of the PSD program regulations,¹ which prohibit the personal use, sale, barter, or trade of prohibited species retained for processing and delivery to hunger relief agencies.

Processors, who faced a dilemma in determining what to do with the offal of fish that were used for the PSD program, stopped retaining salmon or halibut for donation to the program. It was impractical to isolate the offal and carry them out to sea for dumping,² and a question also arose as to whether Environmental Protection Agency (EPA) regulations would allow such dumping unless the waste products were ground to one-half inch. The processors may also have halted the donation program in order to draw NMFS' attention to the problem.³

After processors had stopped participating in the PSD program for several months, NMFS Enforcement responded, on April 4, 2002, by issuing an advisory (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. The bulletin states: "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."

The proposed rule would allow processors receiving fish intended for the PSD program to use the offal from

¹Pers. comm, April 2, 2003. Tuck Donnelly, executive director, Seashare.

²Pers. comm, Ibid.

³Pers. comm., April 8, 2003. Peter Maloney, production manager, Unisea.

salmon and halibut intended for the PSD program for fish meal, fish oil, or bone meal, which could then be sold. The action is intended to bring NMFS regulations into conformance with its enforcement policy as stated above.

3.0 Description of the Alternatives

Two alternatives were considered for this action:

Alternative 1: No action

Under Alternative 1, the regulations at 50 CFR 679.26 would remain unchanged.

Alternative 2: Status Quo

Under Alternative 2, the regulations at 50 CFR 679.26 would be changed to allow processors to convert offal from donated salmon and Pacific halibut into fish meal, fish oil, or bone meal. This action would bring NMFS regulations into conformance with NMFS Enforcement Policy.

4.0 Description of Industry

4.1 Background information

Detailed information, empirical data, and narrative descriptions, providing context on the social, economic, and environmental aspects of the groundfish industry in the BSAI can be found in the following documents:

Alaska Groundfish Fisheries. Draft Programmatic Supplemental Environmental Impact Statement (NMFS, 2003). Chapter 3 of this report contains descriptions of the history and current status of fishery management for each FMP species and detailed information on the affected environment, including socioeconomic as well as physical and biological aspects.

Economic Status of the Groundfish Fisheries off Alaska, 2001 (Hiatt, Felthoven and Terry, 2002). This document, also known as the *2001 Economic SAFE Report*, is produced by NMFS and updated annually. The 2002 edition contains 49 historical tables summarizing a wide range of fishery information.

4.2 Participants in the PSD program

All three major shoreside processors operating from Dutch Harbor have participated in the PSD program since its inception as a pilot program in 1994. Alyeska Seafoods, Inc. and Unisea, Inc. have participated every year; Westward Seafoods, Inc. has participated more erratically. Thirty-six vessels participate in the program together with these processors. Other processors located in Akutan, Sand Point, and King Cove, have not participated, nor have any processors in Kodiak.

Five catcher processing vessels also are signed up for the PSD program. Thirteen catcher vessels deliver fish to them and are registered to participate. The catcher processors, however, are not affected by this proposed rule, as they can dump the carcasses from salmon and halibut used in the PSD program back into the sea.

Seashare, formerly Northwest Food Strategies, is a non-profit organization that has participated since the PSD program's inception and to date has been the only company licensed to participate.

Table 4.2.1 contains information on the amounts of salmon and halibut received by Seashare annually.

Table 4.2.1: Donations to Seashare, 1998-2002.*			
Year	Salmon (lbs)	Halibut (lbs)	No. Plants Participating
1998	70,390	26,586	2
1999	38,731	5,315	2
2000	62,002	18,435	3
2001	32,741	43,576	3
2002	90,237	33,976	2

*Pers. comm. Tuck Donnelly, April 21, 2003

Converting carcasses to fish meal can lead to large reductions in the volume of fish waste. After dressing, about 25-35 percent of the round weight of salmon or halibut is left over head and guts. Fish waste is composed of about 80 percent water and converting it to fish meal and bone meal is mostly an extraction process. After grinding and extracting the water, industry sources suggest that product recovery rates range between 4 percent and 12 percent.⁴

An understanding of the quantities involved may be aided by an example. In 2002, Alyeska Seafoods took in 29,354 pounds round weight of salmon, and shipped 22,448 pounds to the PSD program. Roughly 7,000 pounds of waste, or 24% of the salmon received, were left. For halibut, the figures were 2,520 roundweight, and 1,846 pounds shipped out, leaving about 700 pounds of waste parts to deal with, or 27 percent. By way of comparison, Alyeska produces about 10 million or 11 million pounds of fish meal annually as a byproduct of its pollock processing.⁵ The cost of running the fish meal operation and keeping it up to code can be substantial. Fish meal production is not necessarily a profitable venture, although it can be profitable.

5.0 Expected Effects of the Alternatives

As described in section 2.0, two alternatives are being considered, including the no action alternative. They are:

Alternative 1: No action.

Alternative 2: Status quo – The regulations at 50 CFR 679.26 would be changed to codify current practice, in which processors convert offal from donated salmon and Pacific halibut into fish meal, fish oil, or bone meal.

5.1 Alternative 1: No action

Under Alternative 1, the no action alternative, two outcomes are possible:

One possibility is that the NMFS enforcement policy would remain in effect, in which case the regulations could continue to be interpreted as conflicting with the policy. This is an unlikely outcome, as the advisory

⁴Pers. comm. Jim Harmon, Seashare Operations Manager, July 29, 2003; Pers. comm., Peter Maloney, op. cit. Author received differing estimates on these figures from talking with processors.

⁵Pers. comm., Sinclair Walt, Alyeska Seafoods, April 8, 2003.

bulletin announcing the enforcement policy also indicated that NMFS planned to clarify the situation through regulations.

More likely, NMFS enforcement policy would change in conformance with the literal interpretation of the regulation. In that case—if NMFS enforcement were not allowing processors to convert offal from donated prohibited species into meal—the onshore processors would stop participating in the PSD program. When inshore processors were given the impression that they would no longer be allowed to process offal from donated fish into meal, they stopped processing salmon for the PSD program for several months, until the NMFS enforcement policy allowing them to process the carcasses was announced.

Instead of participating in the PSD program, processors during this interval required their catcher vessels to discard their salmon PSC at sea; any PSC that was overlooked by fishermen would have to be sorted by processors and returned to sea. The permits under which the processors operate expressly prohibit discharge of finfish wastes near shore.

Processors incur some costs in time, labor, and equipment while preparing the salmon and halibut for donation. The fish must be sorted, filleted, refrigerated, stored, packaged and transported. The transportation costs are donated by Western Pioneer, a freight company, but other costs are borne by the processors. For tax accounting purposes, Seashare values the donated fish at \$2 per pound; processors can claim a tax deduction, although they would not necessarily use the same value that Seashare uses.⁶ Additional costs, including separate waste disposal of leftover parts from the donated PSC, would act as a deterrent to participating. It is possible that some inshore participation in the program would continue, but unlikely in the light of recent history. According to Tuck Donnelly, executive director of Seashare, “In order for a bycatch retention program to have any hope of succeeding, the plant must be able to handle the waste from these fish in the same way they handle their other waste, without implementing a separate waste disposal program.”⁷

Thus, Alternative 1 would most likely lead to the end of the inshore sector’s participation in the PSD program, a program which has been considered successful in terms of meeting Magnuson-Stevens Act standards for reducing waste.

5.2 Alternative 2: Status quo

This action would bring NMFS regulations into conformance with NMFS Enforcement Policy. Under Alternative 2 the PSD program is expected to continue as it has in the past. The benefits and costs analyzed in this section are already being realized.

Program participants would continue to incur costs equivalent to those under the status quo (i.e., there are no new costs attributable to adoption of Alternative 2). Fishermen participating in the PSD program must sort, retain and deliver the salmon and halibut PSC. Their costs include using scarce space on the vessel to store the fish, and maintaining it in suitable condition. Processors must accept delivery, fill out the appropriate paperwork, process, refrigerate and store the donated fish. The fish must then be delivered from the processor to the organization that handles the donated fish. The distribution organization must arrange for the temporary storage of the fish, and its eventual delivery to low-income clients.

⁶Pers. com. Jim Harmon, op. cit.

⁷Pers. com. Tuck Donnelly, Aug. 25, 2003.

The most important social benefit under Alternative 2 would be the increased likelihood of continued delivery of salmon and halibut products to low-income consumers. The donations to the distribution agency are shown in Table 4.2.1. These have amounted to over 100,000 pounds of salmon and halibut each year since 1998. In 2002, for example, Seashare placed a minimum value estimate of the donated fish at \$248,000 (based on a \$2 per pound valuation); but this does not capture the full value of the program to low-income consumers.

Alternative 2 would also generate a relatively insignificant revenue to processors. Pollock processors dispose of offal by grinding it into fish meal. Fish meal from whitefish sells for \$0.24 - \$0.30 per pound. Generally fish meal from salmon is mixed in with whitefish meal.⁸ The revenue from fish meal derived from the PSD program would be very small compared with total fish meal produced by the participating plants. For example, Westward Seafoods produced about 15,000 tons of fish meal in 2002. By comparison, the company processed a few hundred salmon for the PSD program. About 35 percent of a dressed salmon is left over; three-quarters of that weight is expressed during conversion to fish meal.⁹ Alyeska Seafoods in 2002 processed, as mentioned previously, 29,354 round weight pounds of salmon, and shipped out 22,448; therefore roughly 7,000 pounds was processing byproduct, which would have been reduced to about 2,520 pounds of fish meal. The corresponding figure for halibut would be about 100 pounds of fish meal. At \$.27 per pound, these amounts would be worth about \$700, a negligible amount for this company, and likely less than the cost incurred by the plant in participating in the PSD program.

Unisea in some years has produced 60,000 pounds of headed and gutted frozen salmon. Assuming about a 9 percent PRR for fish meal, and a price of \$0.27, this translates to revenue of about \$1,500, or a minute 0.025 percent of their nearly \$6 million in revenue from processing pollock fish meal. According to Pete Maloney, Unisea produces on an annual basis less than 10,000 metric tons of fish meal, not including bone meal. He says that labor costs exceed any gain. "We're doing it because it's the right thing to do."¹⁰

Fish meal production is not necessarily a profitable venture, although it can be.¹¹ In some cases it may be considered a cost of doing business in order to avoid having to dump waste products at sea.¹² The costs of running the fish meal operation and keeping it up to code can be substantial.

The PSD program reduces perceived waste in fisheries with salmon and halibut PSC bycatch. In the absence of these programs, this fish would be discarded at sea, and would not be directly used by anyone (although it could be argued that the discards would re-enter the food chain, potentially benefitting future fish productivity). The donation program provides a way to encourage human consumption of these fish, without creating an economic incentive for fishing operations to target them. Because participation in this program is entirely voluntary, it is axiomatic that the costs must be less than the benefits participants derive—including intangible benefits—or they would not participate in the voluntary activity.

⁸Pers. comm., April 8, 2003. Pete Maloney, production director, Unisea.

⁹Pers. comm., April 8, 2003. Greg Baker, exec. dir. Westward Seafoods.

¹⁰Pers. comm, Pete Maloney, op. cit.

¹¹Pers. comm., Greg Baker, op. Cit.

¹²Pers. comm., Jim Harmon, op. cit.

5.3 Summary of the costs and benefits of the alternatives

In conclusion, Alternative 2 would be expected to yield modest benefits for the industry, low-income consumers, and the nation as a whole, as compared to Alternative 1. There are no appreciable costs identified with adoption of Alternative 2. The revenue from selling the fish meal from the leftover parts of donated salmon and halibut would not be enough to provide an incentive to target these PSC species. A summary table of the costs and benefits of the alternatives follows (Table 5.2.1).

Note that in the table, Alternative 1, the no action alternative, is chosen for the baseline, because doing so made it easier to present the costs and benefits of the PSD program. However, Alternative 2 is the status quo alternative, as processors have used leftover parts from donated PSC species for fish meal throughout the life of the PSD program, and are currently permitted to do so under NMFS Enforcement Policy. The analysis of effects from adoption of Alternative 2 therefore reflects the status quo situation, and not new costs and benefits.

Table 5.2.1. Summary of costs and benefits of alternatives.

	Alternative #1 (no action)	Alternative #2 (status quo)
What will happen?	The donation program will most likely cease. Processors will no longer renew permits for participation in the donation program; fishermen will discard PSC salmon and halibut at sea, and will no longer deliver these PSC species.	Donation program will continue. PSC salmon and halibut will be donated to the food bank. Offal will be converted to fish meal—a usable product. There is no expectation that the revenues from the fish meal will prompt fishermen to target salmon and halibut.
Costs	Baseline (costs are the benefits forgone by not choosing Alternative 2)	Fishermen incur costs to retain and deliver PSC. Processors incur costs to process and donate fillets and convert offal to meal. Transport and hunger-relief agencies incur program costs. Adoption of Alternative 2, however, results in no new costs, given that it is the effective status quo, and, further, that participation in the PSD program is entirely voluntary.
Benefits	Baseline (benefits are the costs of Alternative 2 that are avoided).	Food is provided to food banks. Processors receive trivial amounts of meal revenue. Perceived waste is reduced.
Net Benefits	Baseline (Net benefits are expected to be the inverse of Alternative 2 net benefits, in this case, negative).	Net benefits to the nation are expected to be positive. All parties participate voluntarily in the program. None would continue unless perceived benefits exceeded perceived costs. Salmon and halibut, unavoidably killed as bycatch, are directly utilized as high quality human food, improving social welfare and reducing perceived social waste.

6.0 Summary of the significance criteria

This proposal is not believed to have the potential to:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the executive order.

This proposal will not have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health, or State, local, or tribal governments or communities. NMFS has not identified any factors that would (a) "Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency"; (b) "Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof"; or (c) "Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the executive order."

7.0 References

Hiatt, Terry, Ron Felthoven and Joe Terry. (2002) "Stock Assessment and Fishery Evaluation Report for the Groundfish Fisheries of the Gulf of Alaska and Bering Sea/Aleutian Island Area: Economic Status of the Groundfish Fisheries off Alaska, 2001." Socioeconomic Assessments Program. Resource Ecology and Fisheries Management Division, Alaska Fisheries Science Center, NMFS. Seattle: November, 2002. Also available on internet at: <http://www.fakr.noaa.gov/npfmc/safes/2002/Economic.pdf>

NMFS. (2003). Alaska Groundfish Fisheries Draft Programmatic Supplemental Environmental Impact Statement. September 2003. DOC, NOAA, National Marine Fisheries Service, AK Region, P.O. Box 21668, Juneau, AK 99802-1668. pp. Volumes I-VIII. Portions available on internet at: <http://www.fakr.noaa.gov/sustainablefisheries/seis/default.htm>

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