


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke 
Executive Director

DATE: June 19, 1990

SUBJECT: Salmon Fishery Management Plan

ACTION REQUIRED

Receive report on status of Amendment 3, annual cycle, proposal review, and draft overfishing definition. Take action as needed.

BACKGROUND

A report on the Council's salmon FMP has been postponed three times (December 1989, January and April 1990) because of more pressing business before the Council. The same report is before you now, as well as some new issues dealing with the chinook salmon OY and a definition of overfishing.

At the September 1989 meeting, the Council approved Amendment 3 to the Fishery Management Plan for the High Seas Salmon Fisheries off the Coast of Alaska east of 175°E longitude. There were three main provisions of that amendment: (1) the Council deferred salmon regulations to the State of Alaska while retaining federal oversight; (2) the Council accepted as OY values the harvest limits set by the Pacific Salmon Commission; and (3) the Council recommended the FMP be extended to cover the entire EEZ west of 175°E longitude should a dissolution of the International North Pacific Fisheries Commission occur. In approving the amended plan, the Council also reaffirmed its support for provisions of the Magnuson Act that give the U.S. jurisdiction over anadromous fish wherever they range except within another nation's EEZ or territorial seas.

The Salmon Plan Team met October 16, 1989 to finalize the amendment package to submit for Secretarial review, and reviewed several proposals to amend the salmon FMP which were received after the Council's September meeting. The Team also met with the Pacific Fishery Management Council's Salmon Technical Subcommittee on May 7-8, 1990 to coordinate an overfishing definition for both Council areas.

A. Status of Amendment 3

Amendment 3, a major revision to the FMP, was submitted for Secretarial review on May 16, 1990. However, approval will likely not occur before the 1990 troll salmon fishery, in which case NMFS is prepared to coordinate regulations with the State of Alaska for this fishing season. Item D below provides additional background on a potential delay of Secretarial approval of Amendment 3 to the Salmon FMP.

B. Salmon Management Cycle

The Team notes that the Council intends to have minimal involvement with salmon management but wishes to retain Federal oversight. It is anticipated that in the future, occasional management proposals, Board recommendations, or other issues may be brought to the Council for discussion and resolution. The Team recommends that the Council adopt a management cycle for salmon so that these actions can be considered in an orderly manner. The proposed cycle is under item D-1(a).

The proposed salmon cycle includes the management cycles of the Alaska Board of Fisheries and the Pacific Salmon Commission for reference. The cycle recognizes that the Council can take up salmon issues at any time but prefers to review public proposals only during its April meeting. No call for proposals would be issued, but if proposals are submitted to the Council they would be reviewed in April. The cycle also provides for annual reports to the Council on salmon fisheries in the EEZ. The Council needs to approve the proposed management cycle.

C. Proposals received since the September 1989 Meeting

The Team also briefly reviewed three proposals received from the public during late September 1989. These proposals are included under item D-1(b). The Team requests the Council's recommendation for their disposition.

D. Chinook Salmon OY

On April 4, 1990 the Pacific Salmon Commission representatives from Oregon, Washington, and the Northwest Indian Tribes petitioned NOAA Administrator Fox to not approve Amendment 3 to the Salmon FMP. They requested that the Council provide for a chinook salmon OY as in the current plan or an alternative harvest limit to control the harvest level in the absence of an agreement between the U.S. and Canada as provided by the Pacific Salmon Treaty [see item D-1(c)].

The current FMP (as approved through Amendment 2) defines OY for chinook salmon fisheries in the Eastern Regulatory Area (Southeast Alaska) as a range of catch from 243,000 to 272,000 fish. This was based on past historic catch records from all commercial salmon fisheries of Southeast Alaska from 1971-1977. Under Amendment 3, the Council is deferring regulations to the State, and accepts the harvest levels set by the Alaska Board of Fisheries based on harvest ceilings established by the Pacific Salmon Commission (PSC). For 1989, the PSC set the Southeast Alaska chinook salmon harvest limit at 263,000 fish plus an unspecified number produced by Alaska's enhancement efforts. That limit expired at the end of 1989. During a series of meetings in early 1990, the PSC had been unable to agree on chinook harvest guidelines for 1990. However, on May 14-16, 1990, the PSC agreed to set the chinook salmon harvest limit at 302,000 fish. The State of Alaska intends to apportion the harvest limit 260,000/20,000/22,000 to the troll, net and recreational fisheries, respectively.

As of 18 June 1990, Dr. Fox had not responded in writing to the letter from Blum, et al., but he has set aside their request by commencing review of Amendment 3, as recommended by the Alaska Regional Director [item D-1(d)]. Mr. Pennoyer will ask the Council to consider the pros and cons of amending the plan further to provide for OY levels should the PSC be unable to set harvest limits. The Council could retain the OY definition as included in Amendment 3, or direct the Plan Team to develop a specific numerical harvest limit or harvest range for each species for the fisheries in the EEZ. Authority provided by the Pacific Salmon Treaty Act to the Secretary may be all that is necessary in the event the PSC fails to set harvest limits. The Act authorizes the Secretary to issue any regulations necessary to ensure that the United States lives up to its international commitments under the treaty, one of which is to prevent overfishing. If the Council chooses to consider amending the plan, the action will have to take place in the form of a plan amendment.

E. Overfishing Definition

During the January meeting, the SSC reviewed a draft discussion paper on an overfishing definition for the Salmon FMP. Although the Council did not take up salmon at that meeting, the SSC recommended that the Salmon Plan Team coordinate the definition with the Pacific Fishery Management Council and the Pacific Salmon Commission.

A joint meeting between the Council's Plan Team and the Pacific Council's Salmon sub-panel was held May 7-8 to coordinate preparation of an overfishing definition. That definition and accompanying EA/RIR were mailed to you last week. The Council needs to approve the EA/RIR for public review during the summer with final Council action scheduled for September. NOAA guidelines require overfishing definitions to be submitted to the Secretary no later than November 23, 1990.

Salmon Management Cycle

<u>Month</u>	<u>Council</u>	<u>Salmon Plan Team</u>	<u>Alaska Board of Fisheries</u>	<u>Pacific Salmon Commission</u>
JAN	Receives postseason report from ADF&G or Plan Team.	Presents postseason report.	Continues considering N, W, & C AK salmon issues.	
FEB		Prepares Status Report.	More of the same.	Annual Meeting: sets quotas, etc.
MAR		Reviews Board proposals for consistency problems and prepares recommendations for the Council.	Considers SE AK salmon issues: sets harvest guidelines, etc.	
APR	Reviews Status Report and any Board or public proposals.	Presents Status Report and comments on Board proposals. Prepares analysis of public proposals.	Continues considerations.	
SEP	Reviews EA/RIR as needed.	Finalizes EA/RIR. <i>Amend.</i>		
OCT	EA/RIR to public review.			U.S. Section & Northern Panel meet.
NOV			Starts considering N, W, and C AK salmon issues.	Postseason review and clarification of issues.
DEC	Approves EA/RIR for SOC review.		Considerations continue.	

See the notes on the next page for details.

NOTES ON SALMON MANAGEMENT CYCLE

The public should submit proposals to change salmon fishing regulations in the EEZ off Alaska to the Alaska Board of Fisheries. If the public has exhausted all Board procedures to change a regulation, they should submit a proposal to the Council for amending its Fishery Management Plan.

Amendments of the Salmon Plan

Proposals for amending the Council's plan should be either for an emergency amendment or a regular amendment.

A. Emergency Amendment

As needed: Public submits proposals for emergency amendments of the salmon FMP.

Salmon Plan Team will review the emergency recommendations (by teleconference if necessary) before the next Council meeting and prepares recommendations for the Council.

The Council will review the public proposals for emergency changes and the Salmon Plan Team's comments and decide whether an emergency amendment is warranted. If so, it will task the Salmon Team to prepare an amendment. If not, it will place the proposal on the schedule for regular amendments for Council consideration in April.

B. Regular Amendments

Members of the public may submit proposals for amending the salmon plan at any time, but the Council will not formally consider those proposals until its April meeting. At that time, the Council will consider the proposals, the Salmon Team's analysis and recommendations, and take public testimony. If it decides the plan should be amended, the Council will task the Team to prepare the amendment for review at the September meeting, public review between September and December, and approval for Secretarial review and implementation in December.

Schedule of the Alaska Board of Fisheries

Specific salmon fisheries considered by the Alaska Board of Fisheries will vary from year to year and from meeting to meeting. The schedule given here reflects the Board's schedule in recent years.

Pacific Salmon Commission

The Chinook, Coho, and other technical committees of the Pacific Salmon Commission meet at various times throughout the year.

Negotiations between the United States and Canada on Yukon River salmon and salmon fisheries are ongoing. Delegations meet once or twice a year. In addition, the Yukon Joint Technical Committee meets once or twice a year to compile and analyze data and prepare reports.

GROUND FISH FISHERY MANAGEMENT PLAN AMENDMENT PROPOSAL
North Pacific Fisheries Management Council

Name of Proposer: Yukon-Kuskokwim Fisheries Task Force
Date: 10/2/89

Address: Box 267, Bethel, Alaska 99559

Telephone: 907-543-3409

Fishery Management Plan: Salmon Fisheries Management Plan

Brief Statement of Proposal: to publish an annual ABC and TAC for salmon spawned in the State of Alaska equal to the Alaska Department of Fish and Game's projection of run size, harvest forecasts and escapement objectives for the subsequent season that would account for reproduction, and forms of harvest including subsistence, commercial sports fishing, and personal use harvest necessary for conservation and complete utilization of the stock.

Objectives of Proposal: (What is the problem?)

Continued interception and at-sea mortality of salmon of North American origin by fleets employing gear at a time and in the area where salmon of North American origin are known to occur by scientific research and enforcement actions contributes to the conservation problems experienced by discrete populations of salmon in their North American terminal streams. When the Council publishes an ABC and TAC that identifies domestic use of the entire population of salmon spawned in Alaskan waters, this fish species is publicly noticed as being fully-utilized, and thereby qualifies for protection under the authority of the MFCMA, and cannot be taken legally by foreign nationals.

Need and Justification for Council Action: Continued interception and at-sea mortality of salmon of North American origin by fleets employing gear at a time and in the area where salmon of North American origin are known to occur by scientific research and enforcement actions contributes to the conservation problems experienced by discrete populations of salmon in their North American terminal streams. Government so foreign nationals claims their take of this species is a high seas fishing freedom. These Nations and the Executive of the U.S. have chosen to disregard MFCMA Section 102(2) in which the Congress declares these salmon the sole property of the United States. Once declared fully utilized by the NPFMC, salmon of North American origin become a prohibited species, and subject to Section 311(a) enforcement action in their ocean range.

Foreseeable Impacts of Proposal: To eliminate claims that the take of salmon of U.S. origin on the high seas beyond the EEZ is a high seas fishing freedom, and to have the Executive Branch of the U.S. Government enforce Section 102(2) and Section 311(a) of the MFCMA, by State practice on the high seas beyond the EEZ through enforcement actions, and by applicable trade sanction provisions of the Lacey Act and Pelly Amendment.

The United States Government has entered into driftnet monitoring agreements that allow foreign driftnet fleets to operate at a time, and in areas where salmon of North American origin are known to range as demonstrated by U.S. scientific research and enforcement actions in violation of Section 102 (2) and 311(a) of the MFCMA. Passage of this amendment by the NPFMC will coincide with the actions of Congress to direct the Executive Branch to seek a ban on the use of this gear type, being supported by the "Tarawa Declaration", and the efforts of the United Nations General Assembly and world environmental movements.

Supporting Data and Other Information: What data are available and where can they be found?

The public record since passage of the Driftnet Monitoring Impact, Assessment, and Enforcement Act of 1987 of government, the fishing industry, and National environment groups is replete with reference to the scientific data base, and results of enforcement actions that describe the magnitude of the interception of salmon of North American origin by of foreign driftnet fleets fishing beyond the EEZ of salmon States of Origin.

Signature: Harold Sparck

Page 2a

GROUND FISH FISHERY MANAGEMENT PLAN AMENDMENT PROPOSAL
North Pacific Fisheries Management Council

Name of Proposer: Yukon-Kuskokwim Fisheries Task Force
Date: 10/2/89

Address: Box 267, Bethel, AK 99559

Telephone: 907-543-3409

Fishery Management Plan: Salmon Management Plan

Brief Statement of Proposal: to prohibit the use of drift gillnets greater than 1.5nm in length as a legal fishing gear within the migratory range of salmon of North American origin that are within the jurisdiction of the North Pacific Fisheries Management Council.

Objectives of Proposal: (What is the problem?) To end the interception of salmon of North American origin in the North Pacific Ocean by drift gillnet fleets that fish at time and in areas that salmon of North American origin are known to frequent in violation of Section 102(2) of the Magnuson Fisheries Conservation and Management Act, PL. 94-265, 16 U.S.C. 1801-1882.

Need and Justification for Council Action: Continued interception and at-sea mortality of salmon of North American origin by fleets employing gear at a time and in the area where salmon of North American origin are known to occur by scientific research and enforcement actions contributes to the conservation problems experienced by discrete populations of salmon in their North American terminal streams

Unrepresentative Implications of Proposal: To have the Executive Branch of the U.S. Government enforce Section 102(2) and Section 311(a) of the MFCMA, by State practice on the high seas beyond the EEZ through enforcement actions, and by applicable trade sanction provisions of the Lacey Act and Pelly Amendment

Are there Alternative Solution? If so, what are they and why do you consider your proposal the best way of solving the problem?
The United States Government has entered into driftnet monitoring agreements that allow foreign driftnet fleets to operate at a time, and in areas where salmon of North American origin are known to range as demonstrated by U.S. scientific research and enforcement actions in violation of Section 102 (2) and 311(a) of the MFCMA. Passage of this amendment by the NPFMC will coincide with the actions of Congress to direct the Executive Branch to seek a ban on the use of this geartype, being supported by the "Tarawa Declaration", and the efforts of the United Nations' General Assembly and world environmental movements.

Supporting Data and Other Information: What data are available and where can they be found?

The public record since passage of the Driftnet Monitoring Impact, Assessment, and Enforcement Act of 1987 of government, the fishing industry, and National environment groups is replete with reference to the scientific data base, and results of enforcement actions that describe the magnitude of the interception of salmon of North American origin by of foreign driftnet fleets fishing beyond the EEZ of salmon States of Origin.

Signature: Harold Sparck

10 02 89 16:17 2 907 543 3409 5:30

GROUND FISH FISHERY MANAGEMENT PLAN AMENDMENT PROPOSAL
North Pacific Fisheries Management Council

Name of Proposer: Yukon-Kuskokwim Fisheries Task Force
Date: 10/2/89

Address: Box 267, Bethel, Alaska 99559

Telephone: 907-543-3409

Fishery Management Plan: Salmon Fisheries Management Plan

Brief Statement of Proposal: The MFCMA definition of "fishing" includes both harvesting and processing within the EEZ of the United States. This proposal requests the NPFMC to deny joint venture processing permits at sea and to begin to develop the administrative record to determine if the t h e NPFMC has authority to limit participation in shore based processing of companies which operate American subsidiaries, or have transferred capitol to American joint venture partners to engage in fish trade of resources from countries whose Nationals violate U.S. conservation laws by operating fleets that take salmon of North American origin in the North Pacific Ocean in violation of MFCMA Section 102(2).

Objectives of Proposal: (What is the problem?)

Continued interception and at-sea mortality of salmon of North American origin by fleets employing gear at a time and in the area where salmon of North American origin are known to occur by scientific research and enforcement actions contributes to the conservation problems experienced by discrete populations of salmon in their North American terminal streams. In addition to the Lacey Act and Pelly Amendment, the NPFMC may have the administrative authority to further limit commerce conducted within the area of the NPFMC authority by these Flag states.

Need and Justification for Council Action: Continued interception and at-sea mortality of salmon of North American origin by fleets employing gear at a time and in the area where salmon of North American origin are known to occur by scientific research and enforcement actions contributes to the conservation problems experienced by discrete populations of salmon in their North American terminal streams. Government so foreign nationals claims their take of this species is a high seas fishing freedom. These Nations and the Executive of the U.S. have chosen to disregard MFCMA Section 102(2) in which the Congress declares these salmon the sole property of the United States. Once declared fully utilized by the NPFMC, salmon of North American origin become a prohibited species, and subject to Section 311(a) enforcement action in their ocean range.

Foreseeable Impacts of Proposal: To eliminate claims that the take of salmon of U.S. origin on the high seas beyond the EEZ is a high seas fishing freedom, and to have the Executive Branch of the U.S. Government enforce Section 102(2) and Section 311(a) of the MFCMA, by State practice on the high seas beyond the EEZ through enforcement actions, and by applicable trade sanction provisions of the Lacey Act and Pelly Amendment.

The United States Government has entered into driftnet monitoring agreements that allow foreign driftnet fleets to operate at a time, and in areas where salmon of North American origin are known to range as demonstrated by U.S. scientific research and enforcement actions in violation of Section 102 (2) and 311(a) of the MFCMA. Passage of this amendment by the NPFMC will coincide with the actions of Congress to direct the Executive Branch to seek a ban on the use of this gear type, being supported by the "Tarawa Declaration", and the efforts of the United Nations' General Assembly and world environmental movements.

Supporting Data and Other Information: What data are available and where can they be found?

The public record since passage of the Driftnet Monitoring Impact, Assessment, and Enforcement Act of 1987 of government, the fishing industry, and National environment groups is replete with reference to the scientific data base, and results of enforcement actions that describe the magnitude of the interception of salmon of North American origin by of foreign driftnet fleets fishing beyond the EEZ of salmon States of Origin.

Signature: Harold Sparck

April 4, 1990

Dr. William W. Fox, Jr.
Assistant Administrator for Fisheries
National Marine Fisheries Service
1335 East-West Highway
Silver Springs, MD 20910

Dear Dr. Fox:

We the Washington, Oregon, and tribal representatives to the Pacific Salmon Commission (PSC), wish to express our concern regarding a memorandum to you from the Alaska Regional Director, Steve Pennoyer, regarding the third amendment to the Alaska salmon fishery management plan (FMP) recently adopted by the North Pacific Fishery Management Council. Director Pennoyer requested a waiver from the requirement that a definition of overfishing be included in the amendment and that the current optimum yield (OY) of 243,000 to 272,000 chinook salmon for the troll fishery be replaced by the harvest level specified by the PSC as the annual OY for chinook salmon. His concern was that a requirement to include a definition of overfishing would not permit the amendment to be in place by July 1, 1990, the expected opening date of the southeast Alaska summer troll fishery.

We do not object to the intent of the amendment under conditions where harvest levels are established by the PSC since those levels take into account the conservation needs of the stocks, as well as balances the fisheries needs between Alaska, Canada, and the west coast states. However, in years when the PSC fails to agree on harvest levels, the proposed action would appear to remove any limitations on the level of harvest for the Southeastern Alaska troll fishery. Although the U.S. has developed and passed to Canada a position on chinook management, we have not reached bilateral agreement on a chinook regime as part of a total acceptable package covering fisheries of concern to the PSC. Bilateral negotiations will resume next week and may or may not decide the issue. Consequently, if the PSC is unable to reach agreement and Director Pennoyer's request were to be approved, the State of Alaska could establish a level of harvest without regard to impacts on chinook stocks or the needs of the southern (west coast) fisheries.

We believe the potential for an unlimited fishery is inconsistent with the PSC rebuilding program, the concept of preventing overfishing, the original basis for establishing the OY currently stated in the North Pacific Fishery Management Council fishery management plan and the intent of the Magnuson Fishery Conservation and Management Act. Since approximately 50 percent of the southeast Alaska salmon catch originates from the Columbia River and from Oregon coastal rivers, we have a definite interest in assuring responsible management of the southeast Alaska troll harvest.

APR 29 1990 17:12 WA BE 1422 -HOTELECOPIE RL BELLEV

P. 3

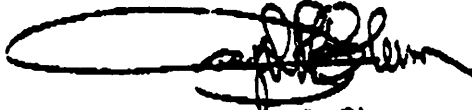
Dr. William W. Fox, Jr.

April 4, 1990

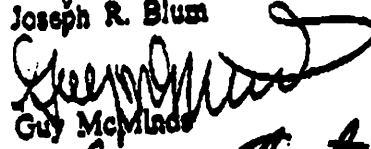
Page 2

We recommend that the amendment be returned to the North Pacific Fishery Management Council with instructions to provide for an OY as now exists or an alternative harvest limit to control the harvest level in the absence of an agreement between the U.S. and Canada in the PSC process.

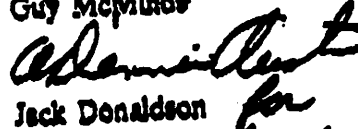
Sincerely,



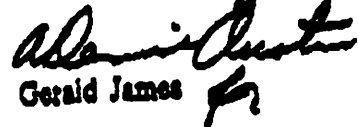
Joseph R. Blum



Guy McInnes



Jack Donaldson



Gerald James



National Marine Fisheries Service
P.O. Box 21666
Juneau, Alaska 99802-1666

DATE: 20 April 1990

MEMORANDUM FOR: F - William W. Fox, Jr.

FROM: F/AKR - Steven Pennoyer *J Pennoyer*

SUBJECT: Fishery Management Plan for the Salmon Fisheries off the Coast of Alaska

We intend to submit the North Pacific Fishery Management Council's third amendment of its salmon plan for Secretarial review by the 23rd of April, and we are aware of the concerns Blum, McMinds, Donaldson, and James expressed in their letter of April 4, 1990, to you.

The Council released the draft plan for public review in April 1989 and accepted comments until 1 September 1989. Thus, people had ample opportunity to comment on the Council's intention to (a) defer regulation of the salmon fisheries in the EEZ to the State of Alaska, and (b) allow the Pacific Salmon Commission to set the annual chinook salmon harvest levels for the salmon fisheries of Southeast Alaska. The Council voted without objection to submit the third amendment to the Secretary for review.

We believe the roles and functions of the North Pacific Fishery Management Council and those of the Pacific Salmon Commission should be kept separate. Nevertheless, we will recommend to the Council that when it revises its salmon plan to incorporate a definition of overfishing it also provide procedures for taking necessary actions if the Pacific Salmon Commission were to default or be dissolved.

The OY levels specified in the existing plan apply to all salmon fisheries of Southeast Alaska, not just to the salmon fisheries in the EEZ off Alaska. The Southeast Alaska salmon fisheries, however, occur predominately in waters under the jurisdiction of the State of Alaska. For example, the average (1978-1989) reported proportion of the chinook harvest made by salmon trollers in the EEZ off Alaska amounts to only 18 percent of the total commercial Southeast Alaska troll harvest, and there is no commercial net or sport fishing in the EEZ off Alaska. For coho, the troll fishery in the EEZ makes about 10 percent of the total troll harvest. We and the Council could not take action under the Magnuson Act if Alaska were to harvest in excess of the OY levels stated in the Council's plan because the salmon troll fishery does not occur predominately in the EEZ. The only action we could take under the Magnuson Act would be to close the EEZ to all salmon fishing.



APR 20 1980 11:15 A.M. F.S. -47 307 333-7131

The United States (including the State of Alaska), however, is obligated under the Pacific Salmon Treaty to ensure that the salmon stocks covered by the treaty are not overfished and that the salmon fisheries of Southeast Alaska are managed with full regard to their impacts on chinook salmon stocks covered by the Treaty. The Treaty requires that each party "shall conduct its fisheries . . . so as to: (a) prevent overfishing and provide for optimum production"

Should the State of Alaska take action or fail to take action to manage its salmon fisheries consistent with the Treaty, the Pacific Salmon Treaty Act provides for the Secretary of Commerce to promulgate necessary regulations that "shall supersede any State or treaty Indian tribal law, regulation or order determined by the Secretary to place the United States in jeopardy of not fulfilling its international obligations under the Treaty" (16 USC 3635).

If the Council chooses to respecify numerical OYs in its salmon plan in a future amendment, they could serve us as harvest guidelines for any preemptive action we might consider under the Pacific Salmon Treaty Act. Specified OYs might also serve to control the Alaska salmon fisheries should the Pacific Salmon Treaty be dissolved and not be replaced by an equivalent international agreement.

In summary, we see no need for NMFS to act contrary to the Council's decision. The Council voted to submit the third amendment of its salmon plan for Secretarial Review. If the Council wants to pull back the third amendment, the Council should vote to do so at its April meeting. If necessary, the Secretary can regulate the Southeast Alaska salmon fisheries under the Pacific Salmon Treaty Act.

cc: F/AKR1, F/CM2-Hays, NPFMC-Wilson