

JUNE 1978

North Pacific Fishery Management Council

Harold E. Lokken, Chairman
Jim H. Branson, Executive Director

Suite 32, 333 West 4th Avenue
Post Office Mall Building




Mailing Address: P.O. Box 3136DT
Anchorage, Alaska 99510

Telephone: (907) 274-4563
FTS 265-5435

MEMORANDUM

DATE: June 19, 1978

TO: Council Members, Scientific and Statistical Committee and
Advisory Panel

FROM: Jim H. Branson, Executive Director 

SUBJECT: Agenda Item 18

This Agenda Item deals with proposed amendments to the FMP for the Gulf of Alaska Groundfish Fishery During 1978. Action on any of the proposed amendments needs to be preceded by a decision as to whether they should affect the 1978 FMP or the 1979 FMP. We should make a decision on the timing for 1979 revisions at this meeting, work on re-writing the plan must start soon.

Extending the plan until March 1979, as explained in my letter of June 8 to Harry Rietze (attached), appears to be reasonable even given the uncertainties of reserve allocations and joint venture allocations.

Following then, are eleven amendments which require action by the Council as to whether or not they should be adopted and for which yearly FMP they should be applied.

Attachment

MIH

North Pacific Fishery Management Council

Harold E. Lokken, Chairman
Jim H. Branson, Executive Director

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Post Office Mall Building



Mailing Address: P.O. Box 3136DT
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June 8, 1978

Mr. Harry L. Rietze, Director
Alaska Region
National Marine Fisheries Service
P. O. Box 1668
Juneau, AK 99802

Dear Harry,

The Central Office deadline of June 30th for revised DSEIS's for the Tanner crab and Gulf of Alaska groundfish FMP's is impossible to meet. I am going to suggest to the Council that they extend both FMP's without any changes in numbers or content until at least March 31, 1979. It might even be feasible to extend the groundfish plan until the middle of 1979.

An extension of both plans to March 31st would not interfere with the fishery, although it would, I am sure, give the State Department some problems with making allocations. I really don't expect the surplus numbers to change very much, DAH can be recomputed later in the year and implemented so they will not alter the ongoing U.S. fishery. I am alerting the plan development teams for both plans of the need for revision, but I don't feel it would be fair to ask them to have any thing developed by June 30th, certainly not by the June 22 Council meeting. We have been aware of the problem, of course, in revising FMP's on some kind of schedule that will comply both with the biological, management and political needs of foreign allocation, etc.

It seems a little ludicrous to get a request from the Central Office to revise in 22 days something that is not yet implemented because they have been fumbling around with it for almost nine months.

I will put this on the Council agenda for the June meeting. We should be able to finalize a revision schedule at that time.

Sincerely,


Jim H. Branson
Executive Director

cc: Tanner Crab plan team
Groundfish GOA " "



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
P. O. BOX 1668 - JUNEAU, ALASKA 99801

June 8, 1978

Jim Branson, Director
North Pacific Fishery Management Council
P.O. Box 3136 DT
Anchorage, AK 99510

Dear Jim:

We have been asked by our Central Office to begin the amending process for PMP's for 1979 and to request that the Management Councils begin the amendment process for FMP's for 1979. Of concern to the North Pacific Fishery Management Council are the FMP's for Tanner Crab and Gulf of Alaska Groundfish. Regrettably, the time schedule for the revisions is tight so we recommend they be agenda items for the next meetings of the Council, SSC, and Advisory Panel.

We presume the Council will merely extend both FMP's with whatever modifications are necessary for OY and U.S. capacity. The revisions are subject to the full NEPA process, including a public comment period and a cooling off period, and should be in the form of a Draft Supplemental Environmental Impact Statement (DSEIS). If there are no changes, the negative declaration format may be used.

We have been advised the DSEIS's are due in the Central Office by June 30. To comply with that date, it will be necessary to use the best data available at this time in preparation of the DSEIS's. ~~Changes based on later data and public comment can be used in preparation of the final SEIS's.~~

Sincerely,


Harry L. Rietze,
Director, Alaska Region



North Pacific Fishery Management Council

Harold E. Lokken, Chairman
Jim H. Branson, Executive Director

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Post Office Mall Building



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Anchorage, Alaska 99510


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MEMORANDUM

AGENDA ITEM # 18
June, 1978

DATE: June 19, 1978

TO: Council Members, Scientific and Statistical Committee and
Advisory Panel

FROM: Jim H. Branson, Executive Director 

SUBJECT: PROPOSED AMENDMENTS TO THE FMP FOR GULF OF ALASKA
GROUNDFISH FISHERY DURING 1978

We have received several requests to change portions of the FMP for the Gulf of Alaska Groundfish Fishery. These proposals and any ensuing changes would require formal amendment of the FMP. They have been paraphrased from their original documents (which are attached) and are referenced by author, page in the FMP and any comments which may have been brought out by the Council, SSC or AP regarding the relative merits of the proposal.

1. PROPOSED AMENDMENT # 1: To change the foreign allowable catch (TALFF) west of 157° West longitude and landward of the 500 meter isobath to 7,604.2 metric tons of Pacific cod (from 6,233 metric tons) by:
 - (a) designating all of the Cherikof statistical area TALFF and reserve for cod to the special longline fishery west of 157° West longitude, (Formerly only 40 percent of the TALFF and reserve from the Cherikof area were allocated to the special longline fishery.) and
 - (b) allocating all reserves for cod in the Shumagin and Cherikof statistical areas to the TALFF.

Page #182-Table 62, Page 183-Table 63 and Page 186-Table 64.
Proposed by: North Pacific Council (Attachment A)

Comments: At the March Council meeting the North Pacific Council approved a recommendation from a subgroup of the SSC, AP and the Japanese Longline Gillnet Association (who originally proposed this action). The request has been restated by the North Pacific Longline and Gillnet Association, and their attorneys Mundt, MacGregor, Happel, Falconer and Zaulauf. (Attachment B & C)

2. PROPOSED AMENDMENT # 2: A proposal to eliminate the domestic management measure 8.3.1.1 (E) (2) (b) which states that between January 1 through May 31 and December 1 through 31 that the duration of individual tows shall not exceed one hour.

*Motion - Estor accept
Mace sec.
Passed.*

to cut down halibut mortality

Page 187

Proposed by: North Pacific Council, May 25-26, 1978

Comments: At the May Council meeting the North Pacific Council accepted the recommendations of the Advisory Panel which requested this one hour tow requirement be eliminated from not only the regulations but also the body of the FMP.

3. PROPOSED AMENDMENT # 3: A proposal to change the OY for blackcod in the FMP from 13,000 metric tons to 15,000 metric tons which is the OY currently in effect in the PMP.

*Motion
no action*

Page: iv, 157, 180, 182 Table 62 and 186, Table 64.

Proposed by: North Pacific Longline and Gillnet Association

Comments: The request was presented by the North Pacific Longline and Gillnet Association (NPL-GA) (Mr. Nakamura) and by their attorneys. The NPL-GA believes that the 13,000 metric ton OY is overly conservative and that the 15,000 metric ton harvest allowed under the PMP is more than sufficient to accomplish rehabilitation goals. The NPL-GA have also stated that the 13,000 metric ton OY would have serious implications for and impose unnecessary hardships on the individual members of the Association.

4. PROPOSED AMENDMENT # 4: A proposal requesting the Davidson Bank area not be a prohibited fishing area for foreign fishing.

no action

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Proposed by: North Pacific Longline and Gillnet Association (NPL-GA)

Comments: Recommendations made by NPL-GA's Vice Chairman H. Nakamura and the attorneys for the NPL-GA, Mundt, MacGregor, Happel, Falconer and Zaulauf.

Davidson Bank has been closed to trawling for all or part of the year by bilateral agreement with Japan, USSR and Poland for several years. The PMP closed the area to all foreign fishing.

5. PROPOSED AMENDMENT # 5: That the area between 3 and 12 miles and between 169° and 170° West longitude be reopened for foreign fishing and not be designated a prohibited area for foreign fishing.

*Motion: Tallin
sec.
no trawling
ask for
longlines*

*POL (Ga)
Long.
A*

Page 193

Proposed by: North Pacific Gillnet and Longline Association, and attorneys Mundt, MacGregor, Happel, Falconer and Zaulauf.

Comments: The North Pacific Longline and Gillnet Association believes that their historic fishing in this area should be recognized insofar as they see no domestic fishing conflicts and there are no conservation issues at hand. (Attachments B and C)

*Motion
Telling
particular
trawl only.
Mace sec.
Passed*

6.

PROPOSED AMENDMENT # 6: A proposal to exclude the foreign longline catch of sablefish and cod from the seasonal-division, time/percentage catch restrictions imposed in the FMP which provide that "no more than 25 percent of a nation's FAC may be taken during the periods January 1 to May 31 and December 1 to December 31 combined."

*aimed at
trawls*

Page 193

Proposed by: North Pacific Longline and Gillnet Association (NPL-GA)

Comments: The Scientific and Statistical Committee reviewed this subject at the May Council meeting and recommended to the Council that the FMP and the proposed regulations be amended accordingly. (Attachments D, B and C)

*Motion by
Telling
Easton sec.
Passed*

7.

PROPOSED AMENDMENT # 7: A recommendation that the foreign longline catch of sablefish and cod be exempt from Section 8.3.2.3 of the foreign regulations in the FMP which provides that "once a foreign nation has caught its allocation of any species in any given statistical area all further fishing by that nation be limited in that area for the remainder of the calendar year."

Page 203

Proposed by: North Pacific Longline and Gillnet Association (NPL-GA)

Comments: The SSC has agreed that foreign longline fishermen should be exempt from this particular section and has recommended to the Council that the FMP and the proposed regulations be amended accordingly. (Attachments B, C and D)

8.

PROPOSED AMENDMENT # 8: To change prohibition against foreign fishing landward of the 500 meter isobath restriction east of 157° West longitude to either 300 meters or 400 meters.

*no
action*

Page 201

Proposed by: North Pacific Longline and Gillnet Association (NPL-GA)

Comments: The NPL-GA believes this would not seriously jeopardize either juvenile sablefish or juvenile halibut populations. The SSC has recommended against this proposal.

9. PROPOSED AMENDMENT # 9: A proposal to allow a "limited joint venture" foreign fishing operation east of 140° West longitude for sablefish.

Proposed by: Ketchikan Pisces, Inc., Ketchikan, AK

Comments: A formal request has been made to the Council to consider this change which would allow the use of joint ventured Korean longline boats in the fishery east of 140° West longitude for sablefish (Attachment E).

10. PROPOSED AMENDMENT # 10: A request that periodic reviews of the closure to foreign fishing east of 140° West longitude be made and that the domestic sablefish fishery be analyzed as quickly as possible to determine the feasibility of reallocating surpluses of sablefish to foreign fishermen and possibly reopening the areas later in 1978 to foreign longliners. A recommendation also that the designation of TALFF by major statistical area be studied thoroughly and the number of major statistical areas kept to a minimum.

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Proposed by: North Pacific Longline and Gillnet Association

Comments: While these proposed amendments do not constitute formal changes, they are in the nature of "requests for careful examination of issues and fisheries" which are of major concern to foreign fishermen.

11. PROPOSED AMENDMENT # 11: A request that all reserves and non-utilized DAH be reassessed and reallocated to the foreign allowable catch at the earliest possible time.

Proposed by: North Pacific Longline and Gillnet Association

Comments: While this request does not formally amend the FMP it does state the concern of the NPL-GA that for purposes of planning, realistic and early assessments of the domestic capability should be timely.

Advisory to reject this proposal

no action

no action is being done at Council meetings

Done vs 10.

This letter also went to Ambassador Negroponte

March 29, 1978

203.3

Mr. Terry L. Leitzell
Acting Assistant Administrator
for Fisheries
U. S. Department of Commerce
National Marine Fisheries Service
3300 Whitehaven, Page Bldg. 2
Washington, D.C. 20235

Dear Mr. Leitzell:

On March 24th, members of the North Pacific Council's Scientific and Statistical Committee and Advisory Panel met with representatives of the Japanese Longline Gillnet Association to consider adjustments to the Gulf of Alaska Groundfish FMP. The North Pacific Council favored the following adjustments in order that the severe cutbacks in sablefish and herring catches to the Japanese could be mitigated in such a manner so as not to damage or hinder the development of the U.S. fishery or deviate from the intent of the FMP.

The Council unanimously approved the following recommendations:

1. In the designated longline fishery for Pacific cod (west of 157°W) increase the combined TALFF and reserve from 6230 mt to 7600 mt. This would be accomplished by making the reserve and TALFF from all of Chirikof available to the longline fishery west of 157°W, rather than just the 40 percent of those amounts which reflects the proportion of Chirikof which lies west of 157°W. This action is not expected to produce any adverse biological or conservation consequences in that:
 - (a) The OY for Pacific cod will neither be exceeded in the Chirikof sub-area nor the Gulf as a whole;
 - (b) There is no information which indicates that cod distribution is so localized that this action would lend to depletion in that portion of Chirikof which lies west of 157°W; and
 - (c) This action does not change in any way the ban on foreign longlining in shallow water (landward of the 500 m isobath) east of 157°W.

COPY

2. The Reserve for Pacific cod in Shumagin and Chirikof areas be immediately released for allocation to the foreign longline fishery.
3. The DAH for Pacific cod in Shumagin and Chirikof area be reassessed in August and any projected shortfall be assigned to the foreign longline fishery.

It was also the sense of the Council that all the increase in cod allocation to the longline fishery caused by the above actions should accrue to Japan, who has the longest history of longline fishing in the Gulf of Alaska and whose longline gillnet fleet has been more heavily impacted by recent restrictions on foreign fishing in the Bering Sea, Aleutians and Gulf of Alaska than any other foreign fishing fleet element.

The Council also noted that Japan has allocations of certain species that occur in depths greater than 500 meters that by their own (Japanese) action, could be made available to Japanese longliners to further help them replace their lost herring and sablefish catches.

In conclusion, the Council believes that the above adjustments are of such a technical and minor nature that they do not constitute major federal actions requiring additional public input or review.

The request therefore is made, that the allocation and area adjustments be made in the Council's FMP and in the Secretary of Commerce's PMP and that the Department of State consider our unanimous concern that Japan accrue the increases in cod allocations.

Sincerely,

Jim H. Branson
Executive Director

MIH

cc: Lee Alverson
Harry Rietze
All Council Members
SSC Members
Advisory Panel



Hutton

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Northwest & Alaska Fisheries Center
Resource Ecology & Fisheries Management
2725 Montlake Blvd. East
Seattle, WA 98112

VIA TELECOPIER

March 27, 1978

TO: Mr. James Branson, Executive Director, NPFMC

FROM: H. A. Larkins, Leader, *Bert Larkins* Gulf of Alaska PDT

SUBJECT: Technical adjustment to Gulf of Alaska Groundfish FMP

On March 24, at the Council's request, members of the SSC, AP, and I met with representatives of the Japanese Longline-Gillnet Association to consider adjustments to the Gulf of Alaska Groundfish FMP that might mitigate the severe cutbacks in sablefish and herring catches suffered by Japanese longliners in 1978, a situation that was compounded by a misunderstanding on the part of the Association regarding the portion of the Pacific cod TALFF that would be available to them.

The group produced the following recommendations which were unanimously adopted by the Council:

1. In the designated longline fishery for Pacific cod (west of 157°W) increase the combined TALFF and reserve from 6230 mt to 7600 mt. This would be accomplished by making the reserve and TALFF from all of Chirikof available to the longline fishery west of 157°W, rather than just the 40 percent of those amounts which reflects the proportion of Chirikof which lies west of 157°W. This action is not expected to produce any adverse biological or conservation consequences in that:
 - (a) the OY for Pacific cod will neither be exceeded in the Chirikof sub-area nor the Gulf as a whole;
 - (b) there is no information which indicates that cod distribution is so localized that this action would lend to depletion in that portion of Chirikof which lies west of 157°W; and
 - (c) this action does not change in any way the ban on foreign longlining in shallow water (landward of the 500 m iso-bath) east of 157°W.
2. The Reserve for Pacific cod in Shumagin and Chirikof areas be immediately released for allocation to the foreign longline fishery.



3. The DAH for Pacific cod in Shumagin and Chirikof areas be reassessed in August and any projected shortfall be assigned to the foreign longline fishery.

It was the sense of the Council that all of the increase in cod allocation to the longline fishery caused by the above actions should accrue to Japan, who has the longest history of longline fishing in the Gulf of Alaska and whose longline/gillnet fleet has been more heavily impacted by recent restrictions on foreign fishing (in the Bering Sea, Aleutians, and Gulf of Alaska) than any other foreign fishing fleet element.

The Council believes that the above adjustments are of such a technical and minor nature that they do not constitute "major federal actions" requiring additional public input or review.

Finally, the Council noted that Japan has allocations of certain species that occur at depths greater than 500 m that, by domestic (Japanese) action, could be made available to Japanese longliners to further help them replace their lost herring and sablefish catches.

cc: FAK
Alverson

MUNDT, MacGREGOR, HAPPEL, FALCONER & ZULAUF
ATTORNEYS AT LAW

JAY H. ZULAUF
JAMES C. FALCONER
HENRY HOWARD HAPPEL, III
WM. PAUL MacGREGOR
J. CARL MUNDT

BANK OF CALIFORNIA CENTER
SUITE 1230
SEATTLE, WASHINGTON 98164
206-624-5950

June 5, 1978



Mr. Terry L. Leitzell
Assistant Administrator for Fisheries
National Oceanic and
Atmospheric Administration
3300 Whitehaven Street Northwest
Washington, D.C. 20035

Re: Fishery Management Plan for the Gulf of
Alaska Groundfish Fishery During 1978; and
Proposed Regulations and Amended Regulations
to Implement said Fishery Management Plan

Dear Mr. Leitzell:

Pursuant to Notice of April 21, 1978,^{1/} we hereby submit comments on behalf of our client, the North Pacific Longline-Gillnet Association of Japan (the "NPL-GA"),^{2/} regarding the Fishery Management Plan for the Gulf of Alaska Groundfish Fishery During 1978 (the "FMP"); and the regulations^{3/} and amended regulations^{4/} which have been proposed to implement said FMP.

Before commenting on specific provisions of the FMP or the proposed regulations, however, we would like to make several general observations regarding the FMP and the proposed regulations which will, hopefully, put the NPL-GA's comments into better perspective. Those observations are as follows:

^{1/} 43 FR 17013; and 43 FR 17242.

^{2/} The NPL-GA is an association of independent Japanese fishing boat owners who operate fishing vessels in the Northeastern Pacific Ocean, primarily in the sablefish (blackcod) and Pacific cod fisheries in and around the Gulf of Alaska, Bering Sea and Aleutian Islands.

^{3/} 50 CFR Part 672; 43 FR 17242.

^{4/} 50 CFR Part 611; 43 FR 17013.

Mr. Terry L. Leitzell
June 5, 1978
Page Two

First, for over ten years the members of the NPL-GA have conducted the primary and, in some areas, the only, domestic or foreign longline sablefish fishery in the Northeastern Pacific.^{5/} They are, therefore, the group which bears the heaviest burden as a result of the reduced Optimum Yield ("OY") and Total Allowable Level of Foreign Fishing ("TALFF") for sablefish under the FMP. Indeed, it is generally agreed that the Japanese "longline/gillnet fleet has been more heavily impacted by recent restrictions on foreign fishing (in the Bering Sea, Aleutians, and Gulf of Alaska) than any other foreign fishing fleet element."^{6/}

Second, the implementation of the FMP at midseason, as it is presently scheduled, will be very disruptive and will result in serious management problems as far as fishing plans and efforts are concerned. The members of the NPL-GA have been operating under the PMP during the first half of 1978. Now, midway through the season, they will be forced to adjust to a whole new set of OYs, TALFFs, closed/open areas and other regulations. Such mid-season adjustments obviously make systematic and efficient planning impossible. For this reason, we suggest that implementation of the FMP be delayed until January 1, 1979, and that the PMP remain operative for the balance of this year.

Third, many of the provisions of the FMP and the proposed regulations, particularly those which are designed to minimize gear conflict between U.S. and foreign fishermen and/or to reduce the incidental catch of non-targeted species, fail to make the necessary distinction between longline fishing operations, where gear conflicts and incidental catch rates can be minimized, and other types of fishing operations, where gear conflicts and incidental catch rates can be significant. For this reason, blanket prohibitions of all foreign fishing in certain areas in order to achieve the above-mentioned goals is unnecessarily burdensome to the Japanese longliners.

^{5/} The 22 vessels owned by members of the NPL-GA operated initially under a series of bilateral U.S. - Japan fishing agreements (1967-1977) and, subsequently, under the Sablefish Fishery of the Eastern Bering Sea and Northeastern Pacific Preliminary Fishery Management Plan (the "PMP"), which remains in effect until the FMP is implemented.

^{6/} See March 27, 1978 letter of Mr. Bert Larkins, Leader, Gulf of Alaska Plan Development Team, to Mr. James Branson, Executive Director of the North Pacific Fishery Management Council, which is attached hereto as Exhibit A.

With these general observations in mind, we now turn to comments regarding specific provisions of the FMP and the proposed regulations.

1. Sablefish Quota. Section 6.2 of the FMP sets the OY for sablefish at 13,000 metric tons ("mt") in 1978. Of that amount, Section 7.0 of the FMP allocates 6,400 mt as the Foreign Allowable Catch (FAC). As shown below, these allocations are significantly lower than those set by the PMP and under which the members of the NPL-GA have been operating during the first half of the season:

	<u>PMP</u>	<u>FMP</u>
Optimum Yield	15,000 mt	13,000 mt
Domestic Annual Harvest ("DAH")	4,000 mt	4,000 mt
Reserve	3,000 mt	2,600 mt
Foreign Allocation	8,000 mt	6,400 mt

The NPL-GA, whose members' livelihoods depend upon a viable resource, supports efforts to rehabilitate sablefish stocks. The Association believes, however, that the 13,000 mt OY set by the FMP is overly conservative and that the 15,000 mt harvest allowed under the PMP is more than sufficient to accomplish stock rehabilitation goals.^{7/} Indeed, the 15,000 mt level provided by the PMP has already resulted in a FAC far lower than 1977 catch levels, and has required members of the NPL-GA to make considerable adjustments in their fishing plans for 1978. To impose a further 20% reduction in FAC midway through the season would require additional adjustments which would have serious implications for and impose unnecessary hardships upon the individual members of the NPL-GA.

^{7/} The North Pacific Fishery Management Council estimated the MSY for sablefish to be in the range of 22,000 to 25,000 mt in 1978; and the Equilibrium Yield to be between 17,400 and 19,800 mt. The FMP OY was then set at a level 25% below the low end of the Equilibrium Yield range. See Sections 6.1 and 6.2 of the FMP. No reason for the mathematical relationship between OY and Equilibrium Yield is given; that relationship appears to be entirely arbitrary.

We suggest, therefore, that the sablefish OY established under the PMP is more than sufficient to accomplish fishery management objectives, including stock rehabilitation, and that the OY provided in the FMP should be revised to coincide with PMP levels.

2. Closed Areas. For a variety of reasons, some of which are of dubious relevance to longline operations, the FMP precludes all foreign fishing efforts in certain areas of the Gulf of Alaska. The FMP also closes all of the Southeastern part of the Gulf of Alaska to foreign longline operations. These closures result in the loss of nearly 40% of the fishing grounds which the members of the NPL-GA had traditionally used prior to 1977. Three of the closed areas are of particular importance to the NPL-GA and will be discussed below.

(a) The Davidson Bank. In order to establish a sanctuary for "developing U.S. fisheries", the FMP closes the area known as the Davidson Bank to all foreign fishing.^{8/} The midseason closing of the Davidson Bank, which has been open under the PMP, is, we believe, misdirected and unnecessary as far as the Japanese longliners are concerned. This is true for several reasons.

First, as opposed to other types of fishing operations, gear conflicts and incidental catch of non-target species are minimized in longlining operations. Opening of the Davidson Bank to longliners would, therefore, pose little threat either to the developing U.S. fishery or the non-targeted species of groundfish.

Second, insofar as the sablefish stock is concerned, the OY for the statistical area in which the Davidson Bank is located has already been set at a level which "will allow rebuilding to MSY within a minimum time frame". FMP §6.2. It would not appear necessary, therefore, to close the Davidson Bank in order to rehabilitate sablefish stocks since the OY for the Shumagin statistical area has already been set at a level which is designed to accomplish that objective.

^{8/} FMP § 8.3.2.1.(D)(1)(c) closes the Davidson Bank "to preserve as a sanctuary for developing U.S. fisheries an area with healthy concentrations of several groundfish species which is within range of already established cold storage and processing facilities at Dutch Harbor."

Third, since the Davidson Bank represents a significant portion of the Shumagin statistical area, closure of the Davidson Bank would make it difficult for the longliners to take all of their FAC allocation in that statistical area. A failure to take all of the FAC would preclude realization of OY - one of the stated objectives of the FMP.^{9/}

Finally, midseason closure of the Davidson Bank would also impose serious practical problems for the NPL-GA insofar as major readjustment in fishing plans and reallocation of fishing efforts would be required. In addition, sectioning off alternate fishing, no-fishing, areas naturally results in decreased efficiency of longlining operations and increased operating costs for the longliners, including higher fuel costs.

In conclusion, while opening of the Davidson Bank to longlining would not seem to jeopardize the objectives sought in declaring the area a sanctuary, closing of the area to longlining would jeopardize one of the principal objectives which "control the philosophy of management of the groundfish fisheries in the Gulf of Alaska" - optimal use of the resources. It would also cause serious disruption in the NPL-GA's fishing efforts.

(b) The area between three miles and twelve miles offshore from the baseline used to measure the territorial sea, between 169° W. and 170° W. In order to "prevent conflicts with established, inshore domestic fisheries and the small vessels often used in those commercial, subsistence, and recreational fisheries," FMP Section 8.3.2.1.(D)(1)(a), precludes all foreign fishing landward of a line twelve miles offshore from the baseline.

^{9/} As stated in the proposed amendments to the foreign fishery regulations, 43 FR 17013:

Four major objectives control the philosophy of management of the ground fish fisheries in the Gulf of Alaska. They are:

(A) Rational and optimal use, in both the biological and socioeconomic sense, of the region's fishery resources as a whole;

(B) Protection of the Pacific halibut resource, currently in a state of decline;

(C) Orderly development by the United States of domestic ground fisheries, consistent with (A) and (B) above; and

(D) Foreign participation in the fishery consistent with (A), (B) and (C) above, to take that portion of the optimum yield not utilized by domestic fishermen.

Mr. Terry L. Leitzell
June 5, 1978
Page Six

Although the uniform twelve mile wide zone established by the FMP may be convenient from an administrative standpoint, such a zone is not necessary to accomplish the stated purpose of "preventing conflicts" with domestic fisheries or vessels. This is particularly true in the Gulf of Alaska between 169° W. longitude and 170° W. longitude, where very little, if any, domestic fishing - either commercial or recreational - occurs. There is, therefore, no reason to close this particular area in order to "prevent conflicts".

Furthermore, since the depths encountered beyond twelve miles in the 169° - 170° W. longitude area are too great for longlining, the Japanese longliners have traditionally directed their fishing efforts inside the twelve mile line in this area. This practice was recognized in the earlier bilateral fishing agreements between the U.S. and Japan and, later, in the PMP, all of which allowed the longliners to fish in this corridor.

The opening of this area, while not involving any conflict with domestic fishing efforts, would help to alleviate some of the dislocations and hardships imposed by the FMP on the members of the NPL-GA in other parts of the Gulf of Alaska.

(c) That portion of the Gulf of Alaska east of 140° W. longitude. The entire Southeastern area of the Gulf of Alaska east of 140° W. longitude is closed to foreign longlining in an effort to "prevent pre-emption of sablefish grounds and gear conflicts in the area where the U.S. sablefish fishery is expected to develop." Although the NPL-GA does not challenge this particular closure at this time, recognition should be given to the fact that, in closing the Southeastern area to foreign longlining, the FMP has displaced the members of the NPL-GA from an area upon which they have traditionally relied in their fishing activities. Request is made, therefore, that periodic reviews of this closure be made and, to the extent the domestic sablefish fishery does not develop as rapidly or as extensively as anticipated in this area, that consideration be given to designating unutilized surpluses as FAC and reopening the area in the latter part of the season so that foreign longliners may attempt to harvest any such surplus.

Mr. Terry L. Leitzell
June 5, 1978
Page Seven

3. Statistical Areas. § 8.3.2.1 (A) of the FMP divides the Gulf of Alaska into five separate statistical areas among which the FAC for all species has been apportioned. The purpose of such allocation by statistical area is "to avoid the overfishing of local stocks which has taken place in the past." 43 FR 17013. The NPL-GA has two problems with the present statistical area approach. First, there is serious doubt as to whether there is sufficient scientific or other data to support such allocation among the five statistical areas. Second, since longline fishing gear is many miles in length, apportioning longline fishing efforts between different statistical areas will involve certain operational difficulties as the gear may oftentimes overlap statistical areas. It is also anticipated that the apportioning of fishing effort which will be necessitated by the statistical area approach will seriously reduce efficiency and raise operating costs.

To the extent that reliable data and information demonstrates that statistical areas are necessary, the number of such areas should be kept at a minimum in order to avoid the practical problems involved in conducting longline operations in and between such areas.

4. Time/Percent of Catch Restrictions. Section 8.3.2.1 (B) of the FMP and § 611.92(b)(2)(iii) of the proposed amendments to the foreign fishing regulations provide that no more than 25% of a nation's FAC of sablefish is to be taken during the periods January 1 to May 31 and December 1 to December 31, combined. The purpose of this restriction was to minimize the incidental catch of halibut. Since the incidental catch of halibut in the waters allocated to the Japanese longliners is minimal, and since past experience indicates that 40% of the annual longline sablefish catch is harvested during the periods covered by these restrictions, the NPL-GA suggested to the North Pacific Fishery Management Council, ("NPFMC") at its May 25-26, 1978 meeting in Anchorage, that longliners be exempted from this restriction.

After discussing this suggestion with the representatives of the NPL-GA, the Scientific and Statistical Committee, ("SSC") agreed that the longliners should be exempted from this restriction and recommended to the NPFMC that the FMP and proposed regulations be amended accordingly.

Although the NPFMC has not yet acted on the SSC's recommendation, it is anticipated that the longliners will be exempted from the time/percent of catch restrictions referred to herein.

5. FMP § 8.3.2.3.(A). This section of the FMP provides that once a foreign nation has caught its allocation of any species in any given statistical area, all further fishing by that nation be limited in that area for the remainder of the calendar year.

As this section was designed to "minimize or eliminate incidental capture of non-target species" and, since the incidental catch of non-target species by longliners is already minimal, the NPL-GA also suggested at the May 25-26, 1978 meeting of the NPFMC that longliners be exempted from this provision of the FMP as well. Again, as in the case of the time/percent of catch restrictions described above, the SSC agreed that the NPL-GA should be exempted from this particular section and recommended to the NPFMC that the FMP and proposed regulations be amended accordingly. Although the NPFMC has not yet acted on the SSC's recommendation, it is anticipated that the longliners will be exempted from this provision of the FMP.

6. 500 Meter Isobath Restriction. Section 8.3.2.1.(D)(3)(b) of the FMP closes the area east of 157° W. longitude and landward of the 500 meter isobath. The restriction is imposed to protect juvenile sablefish and to eliminate hooking mortality on juvenile halibut.

As juvenile sablefish tend to occupy surface and inshore water depths of approximately 150 meters or less,^{10/} it would not appear that relaxing the 500 meter isobath restriction east of 157° W. longitude by 100 or 200 meters would seriously jeopardize juvenile sablefish. Nor would relaxation of the isobath restriction seriously increase the "hooking mortality of juvenile halibut", as the incidental catch of halibut by longline operations is low and, to the extent halibut are incidentally hooked, it has been demonstrated that release techniques utilized by members of the NPL-GA can minimize hooking mortality.

^{10/} See, Sablefish of the Northeastern Pacific Ocean and Bering Sea, a Northwest Fisheries Center Processed Report, October, 1976, by Low, Tanonaka and Shippen, Page 3.

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A 100 or 200 meter relaxation of the isobath restriction would, on the other hand, help to alleviate many of the problems imposed on the members of the NPL-GA by the other time/area closures of the FMP. It would also provide the opportunity to more efficiently fish the waters which are available to them by widening the corridors (dictated by the depths in which longlining activity can take place and the slope of the ocean floor) in which the vessels have to work.

7. Pacific Cod Quota. Cognizant of the severe cutbacks suffered by the members of the NPL-GA in their allocation of sablefish and other species, the NPFMC unanimously adopted a series of recommendations made to it on March 24, 1978, regarding foreign longline fishing for Pacific Cod in the Gulf of Alaska.^{11/}

Those recommendations involved technical adjustments to the FMP whereby the combined TALFF and reserve for Pacific cod west of 157° W. was increased from 6230 to 7600 mt; the Pacific Cod reserves for the Shumagin and Chirikof Statistical areas were released for allocation to the foreign longline fishery; and provisions were made to reassess DAH for Pacific cod in the Shumagin and Chirikof areas in August to determine if there was any projected shortfall. If any such shortfall was detected, it would then be assigned to the foreign longline fishery.

Although these technical adjustments to the FMP have not yet been incorporated in the FMP, it is anticipated that such incorporation will occur before the FMP is implemented.

8. Early allocation of reserves and allocation of non-utilized DAH to FAC. To the extent that the realization of OY in any given fishery is a stated policy goal of the FMP^{12/} it would appear that every effort should be made to

^{11/} See letter of March 27, 1978 from Mr. H. A. Larkins, Leader, Gulf of Alaska Plan Development Team, to Mr. James Branson, Executive Director, NPFMC, a copy of which is attached hereto as Exhibit A, regarding a meeting between members of the SSC, Advisory Panel, Mr. Larkins and representatives of NPL-GA.

^{12/} See footnote 9, infra.

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allocate reserves to foreign fishermen at the earliest possible time after it is determined that the reserves will not be needed by domestic fishermen. Furthermore, it would also appear that, to whatever extent the domestic catch for any species is expected to be less than DAH, the unutilized portion of the DAH should also be allocated to foreign fishermen. In order to ensure that OY will be achieved, such reassessments of DAH should be made as early and as often as possible so that surplus reserves and unutilized portions of DAH can be allocated in time for foreign fishermen to harvest the surplus.

The advantages of such a reassessment procedure are obvious. The domestic fishermen would be ensured of their right to harvest as much of the OY as possible; the foreign fishermen would gain by being able to harvest that portion of reserves and DAH that would otherwise go unused; and, most importantly, the optimum use of the resource would be realized.

We ask that you give these comments and suggestions your careful consideration. Our clients have asked us to thank you for the opportunity to comment on the FMP and the regulations proposed to implement that plan. We have also been requested to continue the spirit of cooperation which has characterized the NPL-GA's approach to the development and implementation of the FMP, and to offer any assistance or information which you may need in connection with the points discussed in this letter.

If you have any questions or comments concerning any of the issues discussed herein, please give us a call.

Sincerely yours,

MUNDT, MacGREGOR, HAPPEL,
FALCONER & ZULAUF

Paul MacGregor

WPM:dlr