


MEMORANDUM

TO: Council, AP and SSC Members

FROM: Clarence G. Pautzke 
Executive Director

DATE: September 18, 1990

SUBJECT: Salmon Fishery Management Plan

ACTION REQUIRED

Final action on Amendment 4 to the Salmon Plan which establishes an overfishing definition for salmon stocks which occur in the EEZ off Alaska.

BACKGROUND

In August, the Council released for public review Amendment 4 to the Salmon FMP which presented alternatives for the overfishing definition as required by the Secretary of Commerce. The Secretary of Commerce has given all Regional Councils until November 23, 1990 to submit a definition of overfishing for each of their FMP's. Amendment 3 to the Salmon FMP was approved and forwarded to the Secretary without an overfishing definition with the understanding that an additional amendment would be developed to address the requirements for an overfishing definition. A letter relating this approval is included in your notebook as item D-1(a). The 3 alternatives for an overfishing definition provided in Amendment 4 are:

Alternative 1: Status quo

As the existing FMP contains neither an overfishing definition nor measurable criteria for establishing such, it fails to satisfy NOAA guidelines.

Alternative 2: An integrated approach - proposed by the Salmon Plan Team

Under this approach, the Council would define overfishing in terms of departures from State of Alaska or Pacific Salmon Commission management objectives established to maintain the long-term maximum production of salmon stocks inhabiting the waters of Alaska and the EEZ off Alaska. This approach recognizes that a stock complex may occasionally be overharvested for a variety of reasons. However, if overharvesting occurs in several consecutive years, it constitutes "overfishing" as defined by NOAA regulations. Under this alternative, the Council's response to the NOAA 602 Guidelines, then, is to react to overfishing before the "level...of fishing mortality... jeopardizes the long-term capacity of a stock or stock complex to produce MSY on a continuing basis". The Salmon Plan Team believes this approach to define overfishing for the troll fishery in the EEZ off the coast of Alaska provides a greater level of restraint on the salmon fisheries than any other alternative method based on a definition of overfishing related to a minimum threshold below which a stock might not recover, as suggested by NOAA guidelines.

Alternative 3: Adoption of policies - proposed by the SSC

The SSC recommends that the Council adopt the policies and definitions of overfishing promulgated by the State of Alaska and the Pacific Salmon Commission as its definition of salmon overfishing. These current policies ensure that Alaska's salmon fisheries are managed for sustained yield and to provide for the rebuilding of depressed stocks. To this end, the Alaska Department of Fish and Game has established stock-specific escapement goals or, in the case of mixed-stock interception fisheries, managed for pre-season guideline harvest levels. The Pacific Salmon Treaty states, in summary, that overfishing "means fishing patterns which result in escapements significantly less than those required to produce maximum sustainable yields". Because these policies are more conservative than those required by NOAA's 602 guidelines, they would serve as an adequate definition of overfishing.

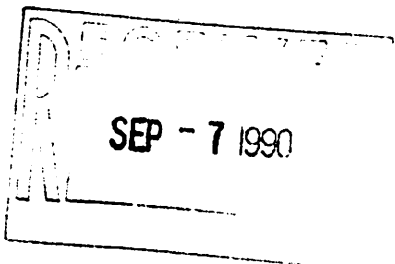
A staff review these alternatives is available. A copy of the Amendment 4 is provided in your notebook as item D-1(b).

In addition to the alternatives listed above, the Council is also considering requesting the Secretary to exempt the requirement for an overfishing definition since the Salmon FMP primarily focuses on management of the Southeast Alaska troll fishery and that fishery is already being managed by Pacific Salmon Commission and State of Alaska guidelines and regulations.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668
September 6, 1990

AGENDA D-1(a)
SEPTEMBER 1990



Don W. Collinsworth, Chairman
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

Dear Don,

I am pleased to notify you that I have approved Amendment 3 of the Council's Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska. On September 6, 1990, Dr. Fox concurred with my decision. I am enclosing a copy of my Decision Memorandum for the Council's files.

An important part of this amendment was the Council's decision to defer regulation of the salmon fisheries in the EEZ off the coast of Alaska to the State of Alaska. The final regulations to implement the amendment are scheduled to become effective on October 21, 1990. Thus, the State of Alaska will regulate these salmon fisheries from that date onward.

Sincerely,

for Jim Brooks
Steven Penoyer,
Director, Alaska Region

Enclosure

cc: F/AKR, F/AKR1, F/EN31, GCAK, F/CM



DRAFT FOURTH AMENDMENT
OF THE
FISHERY MANAGEMENT PLAN
FOR THE SALMON FISHERIES IN THE EEZ
OFF THE COAST OF ALASKA

AND

AN ENVIRONMENTAL ASSESSMENT

Prepared
by the
Salmon Plan Team,
Scientific and Statistical Committee,
and staff of the
North Pacific Fishery Management Council

1 AUGUST 1990

North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

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1.0 SUMMARY

This draft fourth amendment of the salmon plan provides a definition of overfishing as required by NOAA regulations at 50 CFR 602. In addition to the status quo, which is unacceptable, the draft fourth amendment contains two alternatives for the Council's consideration: one proposed by the Salmon Plan Team, the other proposed by the Scientific and Statistical Committee. Both alternatives provide a definition of overfishing that would allow far greater overharvesting of the salmon stocks than is presently allowed under the Pacific Salmon Treaty or the policies of the Alaska Board of Fisheries. An Environmental Assessment shows that neither of the alternatives would have a significant impact on the human environment. A Federalism Assessment shows that implementing the fourth amendment of the salmon plan would have no federalism implications.

2.0 INTRODUCTION

Salmon fishing in the U.S. Exclusive Economic Zone (EEZ) off the coast of Alaska is managed under the Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska. This plan was developed in 1978 by the North Pacific Fishery Management Council (Council). The Secretary of Commerce (Secretary) approved the plan on 3 May 1979, and it was first implemented on 18 May 1979. The Council amended the plan twice and adopted a third amendment of the plan in September 1989, which is presently undergoing review by the Secretary.

The Council solicits public recommendations for amending the salmon plan annually. Proposals for amendments are reviewed by the Council's Salmon Plan Team, Advisory Panel, and Scientific and Statistical Committee. These advisory bodies recommend to the Council which proposals merit consideration for a plan amendment.

Amendment proposals and appropriate alternatives accepted by the Council are then analyzed by the Salmon Plan Team for their efficacy and their potential biological and socioeconomic impacts. After reviewing these analyses, the Advisory Panel and the Scientific and Statistical Committee recommend to the Council whether the amendment alternatives should be changed in any way or rejected, whether and how the analysis should be refined, and whether the Council should release the analysis for public review and comment. If the Council releases an amendment proposal and accompanying analysis for public review, then the Advisory Panel, the Scientific and Statistical Committee, and the Council will consider subsequent public comments before deciding whether to submit the proposed amendment to the Secretary for review, approval, and implementation.

3.0 THE NEED FOR AN OVERFISHING DEFINITION

A provision of the Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that fishery management plans prevent overfishing, and new NOAA guidelines for fishery management plans require each plan to contain a definition of overfishing. The existing plan for managing the salmon fisheries lacks such a definition, therefore the plan needs to be amended to incorporate a definition of overfishing.

3.1 Magnuson Act Requirements

The Magnuson Act contains a set of National Standards with which all fishery management plans and implementing regulations must be consistent. The first national standard states:

Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. (16 USC 1851(a)(1)).

The Magnuson Act, therefore, places a high priority on preventing overfishing. Nowhere in the Magnuson Act, however, is overfishing defined. Recognizing this oversight, the National Oceanic and Atmospheric Administration (NOAA) provided a general definition for overfishing in its Guidelines for Fishery Management Plans (50 CFR Part 602) and required Councils to include specific definitions in their fishery management plans.

3.2 NOAA Guidelines Apply to the Salmon Plan

The NOAA Guidelines for Fishery Management Plans, published on 24 July 1989 (54 FR 30826), require--

After February 25, 1991, all new and existing FMPs should contain a definition of overfishing for the stock or stock complex managed under the affected FMP.

An FMP or amendment of a fishery management plan being developed and not yet adopted as final by the Councils . . . [on 23 August 1989] should contain a definition of overfishing when submitted for approval by the Secretary.

On or before November 21, 1989, Councils should examine each existing FMP as amended and notify the Regional Director if, in the opinion of the Council, the FMP is currently consistent with the provisions of § 602.11(c) without amendment. Within 90 days of notification, the Secretary will review any such FMP for consistency with §602.11(c), and notify the Council of concurrence or disagreement.

On or before November 23, 1990, an amendment should be prepared and submitted to the Secretary for all existing FMPs not approved under paragraph (b)(9)(ii) of this section to add a definition of overfishing for the stock or stock complex managed under the affected FMP.

As of 21 November 1989, the Council's plan for managing the salmon fisheries in the EEZ off the coast of Alaska contained no definition of overfishing. Therefore, according to NOAA, the salmon plan needed to be amended so it would contain a definition of overfishing.

Also, as of 23 August 1989, the Council was in the process of developing, but had not yet adopted, the third amendment of the salmon plan. Thus, according to NOAA requirements, the third amendment should have contained a definition of overfishing. Because of the desire to avoid disruption of the process of the third amendment, the NMFS Alaska Region's Director requested a temporary waiver of the overfishing requirement on the basis that the Council would prepare a fourth amendment to provide the overfishing definition. The request was granted with the understanding that the North Pacific and Pacific Fishery

Management Councils would work together to develop compatible definitions, and the North Pacific Council would submit its definition before 23 November 1990.

3.3 NOAA Requirements for an Overfishing Definition

The guidelines state that each fishery management plan "must specify, to the maximum extent possible, an objective and measurable definition of overfishing for each stock or stock complex covered by that plan, and provide an analysis of how the definition was determined and how it relates to reproductive potential" (50 CFR 602.11(c)(1)).

Specifically, the guidelines state that, "overfishing is a level or rate of fishing mortality that jeopardizes the long-term capacity of a stock or stock complex to produce MSY on a continuing basis" (50 CFR 602.11(c)(1)).

The guidelines do, however, allow a plan to permit short-term overfishing ("pulse overfishing"), harvesting fish before they have attained the maximum weight or yield ("growth overfishing"), and overfishing minor stock components ("localized overfishing") as long as this localized overfishing does not cause any stock to require protection under the Endangered Species Act (50 CFR 602.11(c)(3), (6)(v), and (8)).

Further, the guidelines state that overfishing must be defined in a way to enable the Council and the Secretary to monitor and evaluate the condition of the stock or stock complex relative to the definition (50 CFR 602.11(c)(2)).

Finally, the guidelines state the definition must be based on the best scientific information available (50 CFR 602.11(c)(4)).

4.0 THE STOCKS COVERED BY THE SALMON PLAN.

The salmon stocks covered by this fishery management plan are the anadromous salmon stocks that originate primarily in Alaska, but include some from British Columbia, and a few chinook salmon stocks from Washington, Oregon, and Idaho (and perhaps northern California). The number of separate stocks is unknown but is well into the thousands. For purposes of defining overfishing, these stocks can be separated into two groups on the basis of which of two organizations has primary jurisdiction over those stocks: the Pacific Salmon Commission (see §5.4 of the salmon plan) or the Alaska Board of Fisheries (§5.3).

The Pacific Salmon Commission (founded by a treaty signed in 1985 by the United States and Canada) has jurisdiction over all salmon stocks that originate in one country and are intercepted by fisheries of the other country. Salmon stocks originating in British Columbia and intercepted off or within Alaska by U.S. fishermen are under the jurisdiction of the Pacific Salmon Commission. Chinook salmon stocks originating in Washington, Oregon, Idaho, and California and caught off or within Alaska are also under the jurisdiction of the Pacific Salmon Commission because those stocks are also intercepted by Canadian fishermen. Further, many of the salmon stocks originating in Southeast Alaska are under the jurisdiction of the Pacific Salmon Commission because they are intercepted by Canadian fishermen.

Chinook, chum, and coho salmon stocks originating in Canadian parts of the Yukon River are covered by the Pacific Salmon Treaty and are currently the subject of negotiations between the U. S. and Canada. They will, likely, soon fall under

the jurisdiction of the proposed Yukon Panel of the Pacific Salmon Commission. Until then, harvests from these stocks are controlled by the Alaska Board of Fisheries and the Canada Department of Fisheries and Oceans.

The Alaska Board of Fisheries has primary jurisdiction over most of the salmon stocks originating in Alaska that are harvested off or within Alaska. The exceptions are those stocks under the primary jurisdiction of the Pacific Salmon Commission and, perhaps, those stocks originating on the Annette Islands Reservation.

5.0 OVERFISHING DEFINITIONS CONSIDERED

5.1 Introduction

Because NOAA could not develop a general definition of overfishing that would apply to all fisheries, NOAA has allowed (and required) the Councils to develop specific definitions for each of their fisheries. The NOAA Guidelines (50 CFR 602) provide a wide range of possibilities for defining overfishing. For example, the 602 Guidelines allow, but do not require, the specification of a minimum ("threshold") spawning biomass level. A threshold can be used to define overfishing by requiring that fishing cease whenever a stock falls below its threshold. The 602 Guidelines also allow, but do not require, the specification of a maximum fishing mortality rate (F), which can be formulated in a variety of ways. Thresholds and maximum-F policies can be used either individually or in combination, or the Councils can use other approaches.

NOAA's guidelines also make a clear distinction between the prevention of overfishing and the achievement of optimum yield. The focus of the overfishing definition is protection of the resource, not on the allocation of the harvest from the resource. Overfishing violates the Magnuson Act's requirement to achieve OY, but exceeding OY does not necessarily violate the Act's prohibition on overfishing.

On 7 and 8 May 1990, a work group from the Pacific Council met with the Salmon Plan Team from the North Pacific Council in Portland, Oregon, to discuss ways to define overfishing for salmon stocks. Because the Pacific Council has available much more information on the stocks in its area and operates under additional legal mandates (Boldt and Belloni decisions and the Klamath River Agreement), the two groups were unable to develop one definition that would work for both Councils. The group from the Pacific Council focused its definition on spawning escapement goals, but because few such goals have been established for the salmon stocks found in the EEZ off the coast of Alaska, the Salmon Plan Team from the North Pacific Council developed the definition described below (Alternate 2). Both definitions, in spite of their different approaches, strive to achieve the same end: optimum spawning escapements and maximum harvests from the salmon stocks.

The Salmon Plan Team examined five alternative approaches for defining overfishing. It rejected the status quo (presented here as Alternative 1) as inadequate and rejected three more approaches as being infeasible at the present time (see Attachment 1). The only feasible alternative the Salmon Plan Team could come up with that met the NOAA requirements for an overfishing definition is presented here as Alternative 2.

The Scientific and Statistical Committee reviewed the Salmon Plan Team's draft overfishing definition and recommended it be

retained as an alternative in the draft Fourth Amendment of the Salmon Plan. In addition, the SSC recommended that the Council include a third alternative definition to the draft Fourth Amendment. The SSC's alternative is presented here as **Alternative 3**. It describes the current salmon conservation policies used by the State of Alaska and the Pacific Salmon Commission to manage the salmon fisheries of Alaska.

In conclusion, the following three alternatives for defining overfishing for the salmon stocks found in the EEZ off the Coast of Alaska have been identified for the draft Fourth Amendment of the salmon plan. Other definitions could be derived.

5.2 Alternative 1: Status Quo

The existing FMP contains neither a definition of overfishing (other than optimum yield levels) nor any objective or measurable criteria for implementing a definition of overfishing.

In conclusion, Alternative 1 fails to satisfy the NOAA requirement for an objective and measurable definition of overfishing. Accordingly, the status quo is an unacceptable alternative and must be rejected.

5.3 Alternative 2: An Integrated Approach--Proposed by the Salmon Plan Team.

In general, current strategies for managing salmon fisheries strive to obtain the maximum production (harvest plus spawners) from the stocks. In doing so, they recognize and incorporate a large number of factors affecting salmon productivity, many of which are beyond the control of fishery managers (e.g., management imprecision, annual changes in the number of salmon produced because of fluctuations in the salmon's marine and freshwater environments, annual changes in fishing patterns, annual changes in salmon migration routes, annual differences in relative abundance of various stocks in an area, unaccounted high-seas interceptions, etc.). The Pacific Salmon Commission and the State of Alaska have developed spawning escapement goals, harvest guidelines, and other management strategies that reflect and integrate these factors for the multitude of salmon stocks harvested by the fisheries of Southeast Alaska, including the troll fishery in the EEZ off Alaska. (See Alternative 3 for the definitions and policies of the Pacific Salmon Commission and the Alaska Board of Fisheries.)

Because of these definitions, actions by, and policies of the Commission and the State of Alaska, the Council has not adopted any specific salmon spawning escapement goals or harvest rates for the stocks in the EEZ, but, instead, has accepted the Commission and State management strategies and harvest guidelines as the minimum protection necessary for these salmon stocks. This alternative definition of overfishing for salmon fisheries in the EEZ off Alaska, therefore, is based on that integration of natural factors and policies.

Consequently, Under Alternative 2, the Council would define overfishing in terms of departures from State of Alaska or Pacific Salmon Commission management objectives established to maintain the long-term maximum production of salmon stocks inhabiting the waters of Alaska and the EEZ off Alaska.

This approach recognizes that a stock complex may occasionally be overharvested because of a variety of reasons.

However, if overharvesting occurs in several consecutive years, it constitutes "overfishing" as defined by the NOAA regulations.

The following definitions apply to the chinook and coho salmon stocks harvested by the troll fishery in the EEZ off the coast of Alaska. This fishery harvests less than one percent of the total harvests of the pink, chum, and sockeye salmon stocks occurring in the area; therefore, the Council will not define overfishing for these stocks in the EEZ. Instead, the Council relies upon the State of Alaska to manage the net fisheries in waters under its jurisdiction to achieve the maximum long-term productivity from the pink, chum, and sockeye stocks and to prevent them from being overfished.

Under Alternative 2, the Council's response to the NOAA 602 Guidelines, then, is to react to "overfishing" before the "level . . . of fishing mortality . . . jeopardizes the long-term capacity of a stock or stock complex to produce MSY on a continuing basis" (50 CFR 602.11(c)(1)). The Salmon Plan Team believes this pragmatic approach to define "overfishing" for the troll fishery in the EEZ off the coast of Alaska provides a much greater level of restraint on the salmon fisheries than any alternative method based on a definition of overfishing related to a minimum threshold below which a stock might not recover, as suggested by the NOAA guidelines. The Salmon Plan Team will advise the Council annually on the status of all salmon fisheries harvesting from the stocks occurring in the EEZ off Alaska and will recommend specific action if reports state that one or more salmon stock has been overfished.

5.3.1 The Overfishing Definition for Chinook Salmon Stocks Under Alternative 2.

The chinook salmon harvested in the EEZ off the coast of Alaska by the troll fishery are among the salmon stocks managed by the Pacific Salmon Commission under the Pacific Salmon Treaty. One principle of the treaty is to "prevent overfishing." The treaty and commission strive to do this by several means, including (a) limiting harvests of certain species in specific fisheries, (b) minimizing the incidental mortality in other fisheries, (c) adopting spawning escapement goals for some stocks, and (d) specifying and monitoring plans for rebuilding depressed stocks.

Presently, the chinook salmon stocks covered by this fishery management plan are subject to a rebuilding plan implemented under the Pacific Salmon Treaty. This plan is designed to rebuild by 1998 certain depressed chinook salmon stocks to spawning escapement levels designated by the United States and Canada. The Pacific Salmon Commission intends that the spawning escapement levels be set to achieve MSY over the long term. The rebuilding plan is based on the reproductive potential of the stocks and limits harvests so that enough chinook salmon reach the spawning grounds to rebuild by 1998 the bulk of the stocks to levels the Pacific Salmon Commission has specified.

Because fishery management is an imprecise science, the Pacific Salmon Treaty allows for annual errors in managing fisheries for quotas. In particular, it allows for annual harvests up to but not exceeding 7.5% greater than the given quota on a continuing basis. If the cumulative deviation (in numbers of salmon) exceeds this level, the management agency is required to take appropriate management measures in the succeeding year to return the cumulative deviation (plus any penalty assessed) to a level within the management range. Thus,

according to the Pacific Salmon Treaty, exceeding the management range constitutes overfishing.

The Definition of Overfishing for Chinook Salmon--Overfishing is when in any 2 consecutive years the harvest exceeds the management harvest range set by the Pacific Salmon Commission.

5.3.2 The Overfishing Definition for Coho Salmon.

At the present time, there is no directly quantifiable means to define overfishing for the coho salmon stocks harvested by the troll fishery in the EEZ off the coast of Alaska. These stocks are subject to the Pacific Salmon Treaty and the Pacific Salmon Commission. The fishery is managed inseason to achieve maximum long-term production from the stocks on the basis of historical harvests, fishing patterns, harvest rates, and expected spawning escapement. Aside from allocations of the actual harvest among groups of fishermen, other parameters for these coho stocks (e.g., numerical spawning escapement goals, harvest rates) have not yet been developed or determined, although the Alaska Department of Fish and Game is working toward this goal.

In practice, the coho fisheries are managed inseason on the basis of apparent run strength (catch-per-unit-of-effort by time period and fishery). The effectiveness of the management is evaluated after the fishing season on the basis of harvests by groups of fishermen in each subarea, estimated spawning escapements, counts of coho salmon passing through fish weirs on a few streams, and harvest rates for a few indicator stocks. The postseason evaluation may point to changes of existing management practices for the upcoming year so that the management of the fishery more closely approaches what is believed will achieve the maximum long-term production from the coho stocks.

Although, at the present time this qualitative evaluation is the best assessment of whether the coho stocks are at optimum levels of production or have been overfished, the Alaska Department of Fish and Game is developing a more precise plan for managing the coho fisheries.

The Interim Definition of Overfishing for Coho Salmon Stocks--Overfishing is a situation where in 3 consecutive years the ADF&G managers of the Southeast Alaska coho fisheries report to the Alaska Board of Fisheries that insufficient numbers of coho have returned to the spawning grounds because the harvests were apparently too high.

5.3.3. Conclusions on Alternative 2.

The definition proposed as Alternative 2 has been crafted to be objective and measurable, account for differences in available information for chinook and coho salmon, and be directly related to the reproductive potential of the stocks. In being specified on groups of stocks and a particular fishery, rather than on individual stocks, this definition allows for "short-term overfishing," "growth overfishing," and "localized overfishing." Moreover, this definition allows the Council and the Secretary to monitor and evaluate the condition of the salmon stocks relative to the definition. Finally, because the fishery managers annually evaluate the harvest levels and spawning escapements and revise goals on the basis of the newest scientific information, this definition incorporates the best available scientific information.

It's shortcoming is that it excludes all stocks of salmon found in the EEZ off Alaska except the chinook and coho salmon stocks harvested by the commercial troll fishery (the only fishery actively managed under this fishery management plan).

The Salmon Plan Team believes that under current management policy and strategies, it is unlikely that overfishing, as defined here, will ever be reached. For chinook salmon, the Pacific Salmon Commission will take action as soon as its harvest level plus upper bound of the management error is exceeded; the Council would not be required to act until that situation occurred 2 years in a row. For coho salmon, the Alaska Department of Fish and Game and the Alaska Board of Fisheries would undoubtedly take some action if the State fishery managers reported that coho stocks were overharvested; the Council would not be required to act unless that situation occurred 3 years in a row. The Salmon Plan Team believes that salmon fishery managers will never allow the situation contemplated as overfishing by the NOAA guidelines to happen to stocks covered by the salmon plan.

5.4 Alternative 3: Adoption of Policies--Proposed by the SSC.

The SSC recommends that the Council adopt the policies and definitions of overfishing promulgated by the State of Alaska and the Pacific Salmon Commission as its definition of salmon overfishing.

Current salmon conservation policies adopted by the State of Alaska and the Pacific Salmon Commission ensure that Alaska's salmon fisheries are managed for sustained yield and to provide for the rebuilding of depressed stocks. These policies (stated below) apply to all salmon catches off Alaska and within Alaskan waters except the "prohibited" catches made by the trawl fisheries in the Gulf of Alaska and Bering Sea and the driftnet fisheries in international waters of the high seas.

5.4.1. Alaska Board of Fisheries Policy

The Alaska Board of Fisheries has adopted the following policy on the management of mixed-stock salmon fisheries, which strives to prevent overfishing:

A basic principle of salmon fishery management is that fishing of any salmon stock should not occur until the spawning escapement for that stock is ensured. Run strength and resultant optimum harvest and escapement levels cannot be estimated until discrete stocks have separated themselves from mixed stocks and have arrived in areas near their natal streams. This type of single stock management allows optimum harvest rates on all stocks based on the productivity of individual stocks.

When developing fisheries management policies, factors other than biological data must be considered. Alaska has historically allowed fishing on certain mixed salmon stocks with the result that fishing fleets and related support activities have developed to harvest those stocks. Thus management policies should also address social and economic factors and weigh them accordingly.

In view of the above stated principles, it is the policy of the Board of Fisheries that:

1. In the case of long standing fisheries which fish mixed stocks and for which it may not be feasible for participating fishermen to relocate to fisheries taking more discrete stocks, such fisheries may continue provided that fishing effort on the mixed stocks does not increase and that the harvest rate is not detrimental to the individual stocks.

2. In the case of long standing fisheries which fish mixed stocks and for which it may be feasible for participating fishermen to relocate to fisheries taking more discrete stocks, preference should be given to the fishery that best serves the state's interests.

3. The development or expansion of mixed stock fisheries should be discouraged when the fish that comprise those stocks can be harvested after they have separated into more discrete stocks.

In implementing this policy, the Alaska Department of Fish and Game has the long term goal of achieving maximum sustainable yield for Alaska's salmon fisheries. To this end, the Department has strived, within fiscal resources, to establish stock specific escapement goal ranges with the midpoint being the optimal escapement level. Commensurate with this objective, ADF&G has strived to implement required data collection programs and management systems to achieve these escapement goals. With the escapement goal range strategy, fishing opportunities are limited during years of weak runs and expanded during years of strong runs. Currently, escapement goal ranges together with real-time escapement enumeration (i.e. visual counts from towers, weir counts, aerial survey counts, sonar counts) and intensive fishery monitoring programs, have been established for most of Alaska's major salmon stocks.

In certain fisheries, where it is not cost effective to manage for escapement goal ranges weekly, either because the magnitude of the resource is low or it is difficult or impossible to enumerate escapement, fishing is limited to conservative fishing periods. These fishing periods are set to provide liberal windows of time for salmon to move through the fishery, and reflect the level of fishing that has provided a sustainable level of catch based on the historical performance of the fishery. For these fisheries, fishing periods may be shortened or lengthened depending on qualitative indicators of run strength such as catch-per-unit-of-effort in directed or test fisheries. The fishing-period strategy is reviewed annually on the basis of postseason evaluations of escapement levels and fishery performance. The fishing-period strategy results in lower sustained yields than the escapement goal harvest strategy.

Historical mixed-stock, interception fisheries (e.g. South Peninsula June fishery, Lower Yukon River fisheries) are managed for preseason guideline harvest levels. These guideline harvest levels are set to insure that exploitation rates in these interception fisheries are low compared to the exploitation rates experienced by the stocks intercepted in their respective terminal harvest areas. This procedure insures that sufficient surplus fish are available in the terminal harvest area to meet escapement goals and provide for some level of harvest. The guideline harvest levels are reviewed every 2 years by the Alaska Board of Fisheries and are subject to reduction in situations of forecasted weak runs or declining runs. The Board has consistently acted to reduce historical interception fisheries during periods of weak or declining runs and to eliminate or

severely restrict new interception fisheries whenever they developed.

5.4.2 Pacific Salmon Commission Policy.

Article III of the Pacific Salmon Treaty contains the three Principles agreed to by the United States and Canada; these principles serve as policy for the Pacific Salmon Commission. They have two main goals: prevent overfishing and allow each party to receive benefits equivalent to its production of salmon.

The Pacific Salmon Treaty states "'overfishing' means fishing patterns which result in escapements significantly less than those required to produce maximum sustainable yields" (Pacific Salmon Treaty, Article I, Definitions).

The Principles of Article III are stated as follows:

1. With respect to stocks subject to this Treaty, each Party shall conduct its fisheries and its salmon enhancement programs so as to:

(a) prevent overfishing and provide for optimum production; and

(b) provide for each Party to receive benefits equivalent to the production of salmon originating in its waters.

2. In fulfilling their obligations pursuant to paragraph 1, the Parties shall cooperate in management, research, and enhancement.

3. In fulfilling their obligations pursuant to paragraph 1, the Parties shall take into account:

(a) the desirability in most cases of reducing interceptions;

(b) the desirability in most cases of avoiding undue disruption of existing fisheries; and

(c) annual variations in abundances of the stocks.

Policies and management goals for chinook and coho salmon and specific fisheries are contained in Annex IV of the treaty. The provisions of Annex IV are subject to change upon approval of the Pacific Salmon Commission.

5.4.3 Conclusion on Alternative 3.

Because the policies of the Alaska Board of Fisheries and the Pacific Salmon Commission are more conservative than those required by NOAA's 602 guidelines, they will serve as an adequate definition of overfishing. In conclusion, adopting Alternative 3 will be the most consistent and efficient course of action for the Council.

6.0 COUNCIL RESPONSE TO OVERFISHING

If overfishing is detected for a specific stock or group of stocks, the Council will appoint a work group consisting of members from the Salmon Plan Team and the Scientific and Statistical Committee to investigate the apparent overfishing. In doing so, the work group will examine all the factors that may have contributed to the apparent overfishing (e.g., consistent

underestimates of stock strengths, adverse marine or freshwater environmental conditions, changes in fishing patterns, changes in management strategy). The work group will report its findings and recommendations to the Council.

If the Council determines that the salmon stocks in the EEZ off Alaska have been overfished and that action is necessary, it will communicate its concerns and recommendations to the Alaska Board of Fisheries and the Pacific Salmon Commission. It might also impose further restrictions on the troll fishery in the EEZ.

7.0 CONSISTENCY OF AMENDMENT 4 WITH OTHER APPLICABLE LAW

7.1 Administrative Procedure Act (APA)

Amendment 4 involves no rulemaking, therefore, the APA does not apply.

7.2 Coastal Zone Management Act (CZMA)

The CZMA applies. Amendment 4, however, does not directly affect the coastal zone in a manner not fully considered in the fishery management plan and the initial consistency determination. The fishery management plan, as changed by Amendment 3, sets the optimum yield levels in accordance to mandates from the Pacific Salmon Commission and the Alaska Board of Fisheries. The definition of overfishing provided by Amendment 4 makes no changes to the provisions of the fishery management plan but strengthens those already there.

7.3 Endangered Species Act (ESA)

None of the alternatives proposed in Amendment 4 would constitute actions that "may affect" endangered species or their habitat within the meaning of the regulations implementing Section 7 of the Endangered Species Act of 1973. Thus, consultation procedures under Section 7 on the final actions and their alternatives will not be necessary.

On 5 April 1990, however, NMFS issued an emergency rule to add the Steller sea lion to the list of Threatened Species under the Endangered Species Act. NMFS classified the Alaska troll salmon fishery as a Category 2 fishery, not because marine mammals are caught by trollers, but because some trollers use firearms to drive sea lions away from their gear. The emergency rule will remain in effect until 31 December 1990, but NMFS intends to have permanent regulations in place before the final rule expires. NMFS has initiated consultation procedures under Section 7.

In addition, NMFS is considering listing several stocks of Columbia River salmon to the Threatened and Endangered Species List. Some of these stocks (the upriver spring and summer chinook) occur in the EEZ off the coast of Alaska. They are covered by the Pacific Salmon Treaty because they also occur off the coast of Canada and are intercepted by Canadian fisheries. Because the reason for developing a definition of overfishing is to protect the salmon stocks occurring in the EEZ off Alaska, the Council anticipates that the adoption of any definition of overfishing would result in, at the least, no impacts or, at the most, positive impacts on these salmon stocks.

7.4 Executive Order 12291 "Federal Regulation" (EO 12291)

E.O. 12291 requires that Federal agencies proposing regulatory actions consider several factors. Because Amendment 4

involves no rulemaking, EO 12291 does not apply. Therefore, no regulatory impact review (RIR) is required, nor is it necessary to determine whether the action is a major Federal action. An information copy of the notice approving the amendment will be provided to the Office of Management and Budget.

7.5 Executive Order 12612 (Federalism)

The designated NOAA official has determined that the requirement of an overfishing definition in fishery management plans has sufficient federalism implications to warrant the preparation of a Federalism Assessment under E.O. 12612. Appendix 3 contains the Federalism Assessment for this Federal action.

7.6 National Environmental Policy Act (NEPA)

NEPA requires an agency to prepare an environmental assessment (EA) or an environmental impact statement (EIS) for a proposed Federal action unless the proposed action falls within the scope of alternatives already considered in a previous EA or EIS. This document contains an EA as Appendix 2, which concludes that the proposed action will have no significant impact, as defined by NEPA.

7.7 Paperwork Reduction Act (PRA)

Amendment 4 involves no collection of information, as defined by the PRA, therefore, the PRA does not apply.

7.8 Regulatory Flexibility Act (RFA)

The RFA requires that impacts of regulatory measures imposed on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions with limited resources) be examined to determine whether a substantial number of such small entities will be significantly impacted by the measures. Because Amendment 4 involves no rulemaking, the RFA does not apply.

8.0 REPORTING COSTS

No additional reporting costs are anticipated under any of the alternatives.

9.0 ADMINISTRATIVE, ENFORCEMENT, AND INFORMATION COSTS

No additional administrative, enforcement, or information costs are anticipated under any of the stated alternatives. However, should the Council wish to adopt a more precisely structured definition of overfishing, say, to manage on the basis of individual optimum spawning escapement goals, the costs for administration, enforcement, and information would increase considerably.

10.0 DISTRIBUTION OF COSTS AND BENEFITS

No significant redistribution of costs and benefits is anticipated under any of the alternatives.

11.0 LIST OF PREPARERS

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APPENDIX 1 -- ALTERNATIVES CONSIDERED BY REJECTED

The Salmon Plan Team considered a number of approaches for defining overfishing for the fishery management plan. The team realized that for a definition to be meaningful, it must be usable by fishery managers during the fishing season. Thus, it decided against attempting to define overfishing in terms of exploitation rates (U) or instantaneous rates of fishing mortality (F) because information on these factors is unknown during the fishing season and can only be estimated for a few stocks late after the fishery has ended for the year. In addition, the team rejected optimum spawning escapement goals for similar reasons. The following paragraphs describe three approaches for defining overfishing the team examined in some detail and discusses why the team rejected them as inappropriate or unworkable alternatives.

Alternative A: Minimum Spawning Escapement Goals.

The 602 Guidelines allow overfishing to be defined "in terms of a minimum level of spawning biomass ('threshold')" (50 CFR 602.11(c)(2)). For a salmon stock, this idea would be equivalent to a minimum number of effective spawners. Managers of salmon fisheries, however, generally strive to achieve a much larger spawning escapement than some minimum number that barely prevents the stock from going to extinction or losing genetic variability. They strive to obtain the optimum number of effective spawners, i.e., the number of spawners that will maintain the stock at its maximum level of production (harvest plus spawning).

For most of the salmon stocks found in the EEZ off the coast of Alaska, minimum spawning levels are unknown, but they are far below levels considered desirable or managed for. In addition, two factors--(a) the difficulty of identifying which specific stocks are being harvested combined with (b) the fact that salmon fisheries usually harvest salmon stocks from several days to several weeks before those stocks reach the spawning grounds--renders such an approach unworkable. Furthermore, managers rarely have precise counts of how many salmon of each stock reached the spawning ground.

In conclusion, the alternative of defining overfishing in terms of minimum spawning escapement goals is not doable and it is not desirable.

Alternative B. Optimum Spawning Escapement Goals.

Optimum spawning escapement goals are based on such factors as estimates of spawning or rearing habitat or historical production from a range of observed spawning escapements. Optimum spawning escapement goals are generally expressed in numbers of adult fish or as an escapement rate, often with a numerical floor or threshold. Because optimum spawning escapement goals tend to reflect estimates of maximum sustainable yield for a stock, they provide a good quantifiable measure for judging whether a stock is overfished.

Under this alternative, the fishery would be managed to ensure that the optimum spawning escapement goals were met. Optimum spawning escapement goals have been established for only a few of the thousands of salmon stocks found in the EEZ off the coast of Alaska. Moreover, even if optimum spawning escapement goals were established, it would be impossible to manage the salmon fisheries off the coast of Alaska on that basis alone for the same reasons managers are unable to regulate fisheries on the basis of minimum spawning escapement goals (Alternative A).

In conclusion, Alternative B, at least for the present time, is undoable.

Alternative C: Control The Exploitation Rate.

The 602 Guidelines allow overfishing to be defined in terms a "maximum level or rate of fishing mortality" (50 CFR 602.11(c)(2)). Under this alternative, fishery managers would control the salmon fisheries so that the exploitation rate would not exceed a maximum level.

This alternative faces the same problems as Alternatives A and B. Because of (a) the large number of stocks mixed together in the EEZ off Alaska, (b) the large number of stocks harvested in the multitude of fisheries from Alaska to Oregon, and (c) the general inability to distinguish specific stocks when they are away from their spawning grounds (a few are marked with coded-wire tags or recognizable natural marks), it is, generally, impossible to calculate exploitation rates for individual salmon stocks. Thus, it is impossible to manage salmon fisheries on the basis of exploitation rates for specific stocks and control those rates of exploitation.

Furthermore, even if it were possible to control the exploitation rate on one or more stocks during a fishing season, for the rest of the stocks in the mixed-stock fishery, the overall exploitation rate would be too low on some of the stocks and too high on others.

In conclusion, Alternative C is undoable.

APPENDIX 2 -- ENVIRONMENTAL ASSESSMENT

1. SUMMARY

This assessment evaluates the probable impacts on the human environment of the alternatives contained in the draft Fourth Amendment of the Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska. It concludes that amending the plan to define overfishing will have no significant impacts on the human environment, on marine mammals, or on flood plains, wetlands, trails, and rivers. The Assistant Administrator for Fisheries has found that Amendment Four will have no significant impact.

2. INTRODUCTION

The need for the Fourth Amendment of the salmon plan and the alternatives considered by the council are contained in the Fourth Amendment. The proposed amendment deals only with incorporating a definition of overfishing into the plan.

Neither this incorporation nor the definition itself will have any impact on the human environment. The Council on Environmental Quality defines "human environment" to mean "the natural and physical environment and the relationship of people with that environment." and excludes purely economic and social factors (40 CFR 1508.14).

3. ASSESSMENT OF THE PROBABLE ENVIRONMENTAL IMPACTS

3.1. Impacts of the Proposed Amendment on the Human Environment

The current objectives of the fishery management plan are focused on preventing overfishing and obtaining optimum yield from the salmon stocks found in the EEZ off the coast of Alaska. Amending the plan to specifically define overfishing will add support to these objectives, but because the definition simply further supports what is already in the plan, it will have no impacts (detrimental or positive) on the human environment.

Specifically, Objective A of the plan is to "Manage the troll fishery in conjunction with other Southeast Alaska salmon fisheries to obtain the number and distribution of spawning fish capable of producing the optimal total harvest on a sustained basis from all wild salmon stocks harvested in Alaska."

This theme of preventing overfishing and obtaining optimal yields is furthered with other objectives. Objective C, for example, focuses on reducing catch and mortality of sublegal chinook salmon. Objective E focuses on obtaining full utilization of salmon produced by salmon enhancement methods while providing the necessary protection to the natural runs. Objective F focuses on a coast-wide plan for managing the harvests of chinook salmon, a task largely solved by the Pacific Salmon Treaty.

Thus, the theme of preventing overfishing is a foundation of the existing plan; amending it to incorporate a specific definition of overfishing will have no impacts on the human environment.

3.2 Impacts of the Proposed Amendment on Marine Mammals.

Amendment 4 will not change the way the fishery is managed; thus, it will have no impacts on marine mammals. For more discussion, see sections 6.3 and 6.6 of Amendment 4.

3.3 Impacts of the Proposed Amendment on Flood Plains, Wetlands, Trails, and Rivers.

Section 02-12 of the NOAA Directives Manual implements NOAA policies and procedures for implementing Executive Orders 11988 and 11990. Part 7 of NDM 02-12 requires the responsible program official to review the applicability of the directive to any proposed action and determine whether the action is located in a floodplain or wetland.

NOAA guidelines for the fishery management plan process (Phase II, §5.1.4) specify that an EA must contain an assessment of whether the action significantly and adversely affects flood plains or wetlands and trails and rivers listed, or eligible for listing, on the National Trails and Nationwide Inventory of Rivers.

The NMFS Regional Director for the Alaska Region has determined that this amendment of the salmon plan will have no significant impact on flood plains, wetlands, trails, or rivers because it applies to fisheries in the U.S. Exclusive Economic Zone (EEZ).

4.0 JUSTIFICATION FOR AN EA RATHER THAN AN EIS.

4.1 NOAA Requirements, Procedures, and Criteria.

The NOAA Directives Manual (NDM) establishes NOAA procedures for implementing the National Environmental Policy Act of 1969 (NEPA). Section 20, Chapter 10 (NDM 02-10), Appendix b, provides specific guidance for fishery management plans and amendments. This directive requires that either an environmental impact statement (EIS) or an environmental assessment (EA) be prepared for any amendment of a fishery management plan.

An EA is a concise public document that presents sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact (40 CFR 1508.9). Its purpose is to determine whether significant environmental impacts could result from a proposed action; if so, an EIS must be prepared.

An EIS provides a full and fair analysis of significant environmental impacts and informs decision makers and the public of the reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment. It serves as an action-forcing device to insure that the policies and goals defined in NEPA are infused into the ongoing programs and actions of the Federal Government (40 CFR 1502.1)

If a proposed plan amendment will or may cause a "significant" impact on the human environment, then preparation of an EIS is required.

A NOAA agency may prepare an EA for an amendment of a fishery management plan, rather than an EIS, if it reasonably expects that the proposed action is unlikely to have any of the following five environmental consequences (NDM 02-10 (13(b)), also see 40 CFR 1508.27):

- (1) jeopardize the long-term productive capability of any fish stocks;
- (2) allow substantial damage to the ocean and coastal habitats;
- (3) have a substantial adverse impact on public health or safety;
- (4) affect adversely an endangered or threatened species or a marine mammal population;
- (5) result in cumulative adverse effects that could have a substantial effect on the target resource species or any related stocks.

A NOAA agency must also consider whether the proposed action will likely cause any significant controversy or socio-economic effects.

4.2 Analysis of the Fourth Amendment for Consistency with NOAA Criteria.

4.2.1. Will the Proposed Fourth Amendment Jeopardize the Longterm Productive Capability of any Fish Stock?

No. The fisheries governed by this plan harvest almost exclusively five species of Pacific salmon (chinook, coho, pink, sockeye, and chum). A few other fish species are incidentally caught but in such low numbers as to be insignificant in terms of the long-term productivity of those stocks. For Pacific salmon, the objectives of the Council's fishery management plan, the provisions of the Pacific Salmon Treaty, the provisions of the International Convention for the High Seas Fisheries of the North Pacific Ocean, and the policies of the Alaska Board of Fisheries all serve to ensure that the long-term productivity of the salmon stocks are not jeopardized; in fact, they act to ensure that the fisheries harvesting salmon are managed for the long-term optimum production from the salmon stocks. This amendment, by specifically defining what overfishing means, further protects the long-term productivity capacity of the fish stocks covered by the plan from being jeopardized.

4.2.2. Will the Proposed Fourth Amendment Allow Substantial Damage to the Ocean and Coastal Habitats?

No. By defining overfishing, the fourth amendment helps ensure that the salmon stocks covered by the plan will be held at optimum numbers. By so doing, it sustains the long-term predator-prey associations in the ocean and coastal habitats.

4.2.3. Will the Proposed Fourth Amendment Have a Substantial Adverse Impact on Public Health or Safety?

No. The fourth amendment will have no impact upon public health and safety.

4.2.4. Will the Proposed Fourth Amendment Affect Adversely an Endangered or Threatened Species or a Marine Mammal Population?

No. By defining overfishing, this fourth amendment provides further protection to salmon stocks being considered for the endangered or threatened species status (see section 6.3 of the amendment for more discussion). Also, it tends to support marine mammal populations by ensuring the optimum number of salmon occur in the EEZ off the coast of Alaska.

4.2.5. Will the Proposed Fourth Amendment Result in Cumulative Adverse Effects that Could Have a Substantial Effect on the Target Resource Species of Any Related Stocks?

No. By defining overfishing for salmon stocks, this fourth amendment helps ensure that the target resource species are maintained at optimum levels. By doing so, it helps impose some stability in the environment for the related species.

4.2.6. Will the Proposed Fourth Amendment Likely Cause any Significant Controversy or Socio-economic Effects?

No. This amendment will cause no significant controversy or socio-economic effects. The definition of overfishing basically restates what is already accepted policy and practice.

4.3 Conclusion.

The Regional Director, Alaska Region, National Marine Fisheries Service has determined on the basis of the analyses presented in this document that the Fourth Amendment of the Fishery Management Plan for the High-Seas Salmon Fisheries off the Coast of Alaska East of 175° East Longitude can reasonably be expected to cause none of the five listed criteria to occur, nor is it likely to cause any significant controversy or socio-economic effects. Therefore, he has determined that this EA is the appropriate environmental document for this proposed Federal action.

5.0 FINDING OF NO SIGNIFICANT IMPACT

For the reasons discussed in this Environmental Assessment, implementation of the plan as revised by the proposed Fourth Amendment will not significantly affect the quality of the human environment; thus, the preparation of an environmental impact statement on the final action is not required by Section 102(2)(c) of the National Environmental Policy Act or its implementing regulations.

Assistant Administrator for Fisheries

Date

APPENDIX 3

**FEDERALISM ASSESSMENT
FOR THE
FOURTH AMENDMENT OF THE FISHERY MANAGEMENT PLAN
FOR THE SALMON FISHERIES
IN THE EEZ OFF THE COAST OF ALASKA**

Prepared by

**U.S. Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Alaska Region
Juneau, Alaska**

August 1990

1. SUMMARY

This Federalism Assessment was prepared in accordance to Executive Order 12612 and a Department of Commerce decision that amendments of fishery management plans to incorporate a definition of overfishing requires a Federalism Assessment. The assessment examines the fourth amendment of the salmon plan for federalism implications. It finds that the amendment is consistence with the principles, criteria, and requirements of E.O. 12612.

2. PURPOSE OF THE DOCUMENT

Executive Order 12612, "Federalism," requires that executive departments and agencies, in formulating and implementing policies that have federalism implications, be guided by the fundamental federalism principles set fourth in section 2 of the Order and adhere, to the extent permitted by law, to the federalism policymaking criteria set forth in section 3.

Section 1 of the Order defines "policies that have federalism implications" as regulations, legislative comments, proposed legislation, and "other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Section 6 of the Order requires that the head of each department and agency designate an official for that department or agency to be responsible for ensuring implementation of the Order. Under section 6, that designated official is responsible for determining which proposed policies of the department or agency have sufficient federalism implications to warrant preparation of a federalism assessment. The Secretary of Commerce designated the Deputy Assistant Secretary for Intergovernmental Affairs for this position. That official has determined that the NOAA policy of requiring fishery management plans to include a definition of overfishing has enough federalism implications to warrant preparation of a federalism assessment.

Under section 6, a federalism assessment must (a) contain the designated official's certification that the policy has been assessed in light of the principles, criteria, and requirements set forth in the Order; (b) identify any provision or element of that policy that is inconsistent with such principles, criteria, and requirements; (c) identify the extent to which the policy imposes additional costs or burdens on the states, including the likely source of funding for the states and the ability of the states to fulfill the purposes of the policy; and (d) identify the extent to which the policy would affect the state's ability to discharge traditional state governmental functions, or other aspects of state sovereignty.

This document is the federalism assessment and will be considered by the agency in deciding whether to approve the fourth amendment of the salmon plan.

3. REVIEW OF THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL'S PLAN FOR MANAGING THE SALMON FISHERIES IN THE EEZ OFF THE COAST OF ALASKA.

Under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et. seq.), the United States exercises sovereign rights and exclusive management authority over the fisheries resources (except certain fish designated as "highly migratory species"), anadromous fish, and Continental Shelf fisheries resources found in the United States Exclusive Economic Zone (EEZ). Moreover, the Magnuson Act claimed United States exclusive management authority over anadromous species of U.S. origin and Continental Shelf fishery resources seaward of the U.S. EEZ.

The Magnuson Act provides for the preparation, in accordance with national standards, of fishery management plans by regional fishery management councils. It directs the councils to "prepare, monitor, and revise such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States . . ." (16 U.S.C. 1801(b)(5)).

In 1978, the North Pacific Fishery Management Council (Council) developed a plan for managing the salmon fisheries in the EEZ off the coast of Alaska east of 175° east longitude. The Secretary of Commerce approved the plan on 3 May 1979, and it was first implemented on 18 May 1979. The Council amended the plan twice and adopted a third amendment in September 1989, which is currently undergoing review by the Secretary. Chief among the changes made to the plan, the Third Amendment defers regulation of the salmon fisheries to the State of Alaska.

The plan covers stocks of salmon originating in Alaska, Washington, Oregon, Idaho, British Columbia, and Asia. Moreover, it manages fishermen who are residents of Alaska, Washington, Oregon, and, at times, other states. Furthermore, many of the salmon stocks governed by this plan fall under the jurisdiction of the Pacific Salmon Treaty and Pacific Salmon Commission. Thus, this plan is multijurisdictional in several respects.

4. RATIONALE FOR FEDERAL ACTION

The Magnuson Act requires that all fishery management plans and implementing regulations be consistent with the seven national standards for fishery conservation and management (Section 301(a)). Section 301(b) requires the Secretary of Commerce to issue advisory guidelines, based on the standards, to assist in the development and review of fishery management plan, their amendments, and implementing regulations. The guidelines are intended to improve the quality of fishery management plans by providing comprehensive guidance for the Councils to use in developing plans and amendments and to produce a more uniform understanding of the Secretary's basis for plan review and implementation.

National Standard 1, as set forth in the Magnuson Act, requires conservation and management measures to prevent "overfishing" while achieving "optimum yield" on a continuing

basis. Standard 2 requires conservation and management measures to be based on the best scientific information available.

The Magnuson Act does not define overfishing nor do most fishery management plans developed to date. Further, the biological data necessary to determine overfishing has sometimes been unavailable. As a result, the Councils have often made decisions based primarily on short-term economic and political considerations, with lesser emphasis placed on the long-term viability of the fishery resource or the fishing industry.

To assure the Councils give appropriate decisional weight to long-term viability, on 24 July 1989, NOAA issued guidelines (50 CFR 602) stipulating that each existing and future fishery management plan specify, to the maximum extent possible, an objective and measurable definition of overfishing for each managed stock or stock complex, with an analysis of how the definition was determined and how it relates to biological potential. This requirement is based on the premise that irreversible damage to a resource's ability to recover in a reasonable period of time is unacceptable, and that fishing on a stock at a level that severely compromises that stock's future productivity is counter to the goals of the Magnuson Act. The intended long-term effect of this requirement is to assure that the reproductive capacity of any managed stock is not jeopardized, that depleted stocks are rebuilt, and that economically viable future harvests on a continuing basis are possible.

The NOAA guidelines give the Councils the flexibility necessary to develop a definition of overfishing appropriate to the individual stock or species characteristics, as long as it is defined in a way that allows the Councils and the Secretary to evaluate the condition of the stock relative to the definition.

NOAA provided a phase-in period for developing definitions of overfishing. For amendments of existing plans, NOAA required that on or before 23 November 1990, an amendment should be prepared and submitted to the Secretary.

Accordingly, the North Pacific Fishery Management Council has prepared Amendment 4 for its plan for managing the salmon fisheries. This amendment, if approved by the Secretary, will incorporate a definition of overfishing into the plan.

5. FEDERALISM ISSUES

Section 6 of E.O. 12612 requires that a Federalism Assessment be prepared to (a) identify any provision or element of the Fourth Amendment of the salmon plan that is inconsistent with the principles, criteria, and requirements of the Order; (b) identify the extent to which the Fourth Amendment imposes costs or burdens on Alaska and the likely source of funding to cover additional costs; and (c) identify the extent to which the amendment would affect Alaska's ability to discharge its traditional functions.

5.1 Consistency of Amendment Four with Principles, Criteria, and Requirements Set Forth in E.O. 12612.

By amending the fishery management plan to incorporate a definition of overfishing, the Council is making no change to the

way the fisheries will be managed. Essentially, the Council is adopting a more extreme definition of overfishing than that either (a) imposed by the Pacific Salmon Treaty or (b) adopted by the State of Alaska. As long as the fisheries harvesting the salmon stocks covered by the plan are managed in accordance with the Pacific Salmon Treaty and the policies and practices of the State of Alaska, those salmon stocks should never become overfished, as defined by this fishery management plan.

* The plan for managing the salmon fisheries in the EEZ off the coast of Alaska and the Fourth Amendment were written cooperatively with the State of Alaska.

* Amendment 3 of the plan transfers much of the involvement of the Federal Government in the management of those fisheries to the State of Alaska.

* The plan grants the State of Alaska the maximum administrative discretion possible and leaves it free to experiment with a variety of approaches to managing the salmon fisheries as long as those approaches are consistent with the Magnuson Act and the Pacific Salmon Treaty.

* The plan recognizes the responsibilities of and encourages the opportunities for individuals, families, neighborhoods, local governments, private associations, and the relevant States to achieve their personal, social, and economic objectives through cooperative effort with in the processes of the North Pacific Fishery Management Council, the Alaska Board of Fisheries, and the Pacific Salmon Commission.

* The plan allows for application of Alaskan laws in the EEZ to vessels registered by the State of Alaska and allows for appeal of Alaska's laws and regulations.

* Because of the history of the Alaska Board of Fisheries' policy in managing the salmon fisheries for maximum production and the prevention of overfishing and because of the requirements of the Pacific Salmon Treaty, supersession of State laws or regulations in the EEZ is expected to be a rare occurrence and preemption of State laws or regulations within State waters under 16 U.S.C. 1856(b) is not expected to occur.

5.2 Additional Costs to Alaska and Likely Source of Funding.

The State of Alaska participated in developing Amendment 4 of the salmon plan. The State determined that incorporating the overfishing definition into the salmon plan would cause no additional costs to Alaska. Alaska's management of the salmon fisheries is currently more restrictive and more expensive than it would be if it was guided by this overfishing definition. The implementation of the definition relies on current State of Alaska policies and practices.

5.3 Effect of the Fourth Amendment on Alaska's Ability to Discharge its Traditional Functions.

Because of its less restrictive nature, the overfishing definition created by Amendment 4 will have no effect on Alaska's ability to discharge its traditional functions.

6.0 CONCLUSION

Amendment 4 constitutes a reasonable definition of overfishing and represents a good example of Federal-State cooperation in the management of an interjurisdictional fishery. Approval of Amendment 4 would implement the Federal requirement for an overfishing definition to add further protection to the resource while recognizing Alaska's lead role in managing the salmon fisheries.

7.0 CERTIFICATION OF DESIGNATED FEDERALISM OFFICIAL

I certify that the policies in Amendment 4 of the salmon plan have been assessed in light of the principles, criteria, and requirements set forth in sections 2 through 5 of E.O. 12612.

Mary Ann T. Knauss
Federalism Implementation Officer
Department of Commerce

DATE: _____