

AP Tanner Crab Bycatch
Committee Report

The subcommittee met Monday, September 23 to discuss the possibility of a 1986 directed C. bairdi pot fishery in the Bering Sea and to review the performance of the 1986 yellowfin sole and other flatfish joint venture fishery.

The subcommittee recommends that there be no 1986 directed C. bairdi fishery. This recommendation was initiated by the Alaska Crab Coalition for conservation reasons. The subcommittee hopes that this emphasis on conservation of crab stocks by the crab fleet is held by all sectors of the industry when any future decisions are made on the Bering Sea bycatch issue.

The subcommittee recommends that in order to better assess the C. bairdi population for 1987 and beyond, a self-funding pot survey using chartered private vessels be organized and implemented in consultation with the NWAFC, ADF&G and the Alaska Crab Coalition. The subcommittee acknowledges that for the survey to be a useful measure of crab abundance, it would have to be continued on an annual basis.

During the discussions of the subcommittee on the performance of the 1986 fishery, it became apparent that there were methods of controlling bycatch not included in the Amendment 10 package that provide greater flexibility to the trawl fishermen and still afford crab stocks the needed level of protection. The subcommittee recommends that the Council continue with its implementation of Amendment 10; however, the subcommittee requests that the Council allow it to meet prior to the December meeting to submit a more comprehensive bycatch proposal for the 1987 management cycle.

Worksheet for determining 1987 TACs, DAPs, JVPs and potential TALFF
Bering Sea and Aleutians Groundfish (all in metric tons).

26-Sep-86

Species	Area	RAD		Provisional		Potential	
		1987 TAC 1/	DAP 2/	JVP 3/	6/	DAH	ITALFF 4/ 6 RESERVE
Pollock	BS	1,100,000	101,755	750,000	851,755	83,245	
	AI	100,000	5,500	33,804	39,304	45,696	
Pacific ocean perch 5/	BS	3,000	3,000	0	3,000	0	
	AI	11,900	11,900	0	11,900	0	
Rockfish 5/	BS	550	550	0	550	0	
	AI	1,900	1,900	0	1,900	0	
Sablefish	BS	5,000	5,000	0	5,000	0	
	AI	5,000	5,000	0	5,000	0	
Pacific cod***	BSAI	265,000	33,484	50,830	84,314	0	
Yellowfin sole	BSAI	187,000	60	144,300	144,360	14,590	
Turbot-Greenland Arrowtooth	BSAI	5,500	5,500	0	5,500	0	
	BSAI	33,400	50	1,667	1,717	26,673	
Other flatfish Rock sole	BSAI	159,700	7,247	98,850	106,037	29,548	
	BSAI	70,500	5,966		5,966	53,959	
Other flatfish	BSAI	89,200	1,281		1,281	74,539	
Atka mackerel	BSAI	30,800	10	30,790	30,800	0	
Squid	BSAI	10,000	0	100	100	8,400	
Other species	BSAI	36,700	295	7,000	7,295	23,900	
TOTAL		1,955,450	181,251	1,117,341	1,298,592	363,541	293,318

NOTES:

- Changes are anticipated for the following species:

Pollock BS 1,200,000
 POP BS 3,800
 POP AI 10,800
 P. cod BSAI 404,000
 G. turbot BSAI 15,500 - 30,000
 Other Flatfish BSAI 94,000

Some TACs would have to be reduced to bring the total down to 2.0million.

- DAP projected catch from Table D-3(e)(1). Source: NMFS, AK Region
Includes AP DAP recommendations.
- JVP projected catch from Table D-3(e)(1). Source: NMFS, AK Region
Council will choose the final figures.
- Potential ITALFF = TAC - (DAH + Reserve)
To be calculated after Council chooses TAC and DAH figures.
- POP refers to the POP complex, and the other rockfish species comprise "Rockfish"
- *** AP recommends DAH = TAC.
- Minimal allowances for JVP and TALFF bycatches will be made where DAP = TAC.

September 25, 1986

NORTH PACIFIC FISHERY MANAGEMENT COUNCIL
FISHERY MANAGEMENT PLAN FOR THE
BERING SEA AND ALEUTIAN ISLANDS GROUND FISH FISHERY

AMENDMENT 10

Changes to the FMP

I. SUMMARY

Amendment 10 was approved by the Council at its September 24-26, 1986 meeting. The amendment makes the following changes to the FMP:

- (a) Establishes area closures and prohibited species catch (PSC) limits for U.S. fishermen fishing for yellowfin sole and other flatfish.
- (b) Revises catch reporting requirements for at-sea processor vessels.
- (c) Establishes explicit authority for reapportionment between DAP and JVP fisheries.
- (d) Establishes in season management authority to address biological emergencies.

II. CHANGES TO THE RELEVANT SECTIONS OF THE FMP

A. In the Table of Contents, beginning on Page 1-1, revise to accommodate the amendments described in this document.

B. In Section 2.1, "History and Summary of Amendments", page 2-4, add the following at the end:

Amendment 10, implemented _____:

(1) Established Bycatch Limitation Zones for domestic and foreign fisheries for yellowfin sole and other flatfish (including rock sole); an area closed to all trawling within Zone 1; red king crab, C. bairdi Tanner crab, and Pacific halibut Prohibited Species Catch (PSC) limits for DAP yellowfin sole/other flatfish fisheries; and a C. bairdi PSC limit for foreign fisheries.

(2) Revised the weekly reporting requirements for catcher/processors and mothership/processors.

(3) Established explicit authority for reapportionment between DAP and JVP fisheries.

(4) Established inseason management authority to address biological emergencies.

C. In section 11.5, "Reapportionment of Reserve and Unneeded DAP," page 11-4, delete Section 11.5 and replace it with a new section 11.5 Reapportionment of Reserve and Unneeded DAP and JVP as follows:

The Regional Director may assess the DAP and JVP at any time and apportion to them any amounts from the reserve that he finds will be taken by U.S. vessels. As the fishing season progresses, should the initial DAP exceed subsequent expectations of actual harvest, the Regional Director shall reapportion the excess to JVP, if needed, or to TALFF.

If the initial JVP exceeds subsequent expectations of actual harvest, the Regional Director shall reapportion the excess to DAP, if needed, or to TALFF.

The Regional Director shall apportion to TALFF as soon as practicable after April 1, June 1, and August 1, and on such other dates as he determines appropriate any portion of the reserve, JVP and/or DAP that he determines will not be harvested by U.S. fishing vessels during the remainder of the fishing year.

When the Regional Director determines that apportionment is required on dates other than those scheduled or that immediate action is necessary to increase DAP, JVP, or TALFF, he may decide that such an adjustment is to be made without affording a prior opportunity for public comment. Public comments on the necessity for, and the extent of the apportionment shall then be submitted to the Regional Director for a number of days after the effective date that will be specified in a notice announcing such action.

D. In Section 14.4.2 "Prohibited Species" (for Domestic fishery), part "B. Objective," page 14-5, in the first line insert "king crab," after Tanner crab and delete the last sentence of the paragraph which reads "Upon implementation of the Bering Sea/Aleutians King Crab FMP, these species will include king crab."

In part "D. Policy," page 14-5, in the second paragraph, delete the second sentence which reads "To avoid any unnecessary impediments to that development, the Council will not at this time recommend any regulations of the domestic fishery specifically designed to protect 'prohibited' species."

E. In Section 14.4.2 "Prohibited Species" (for Domestic fishery), page 14-6, insert a new part "E. PSC limits and Time/Area closures for DAP fisheries."

The PSC limits and area closures for DAP fisheries expire on December 31, 1988.

14.4.2.1 Bycatch Limitation Zones

A. Zone 1 is that area bounded by 165°W longitude and 58°N latitude extending east to the shore.

B. Zone 2 is that area bounded by 165°W longitude, north to 58°N, then west to the intersection of 58°N. and 171°W. longitude, then north to 60°N., then west to 179°20'W. longitude, then south to 59°25'N. latitude, then diagonally extending on a straight line southeast to the intersection of 167°W

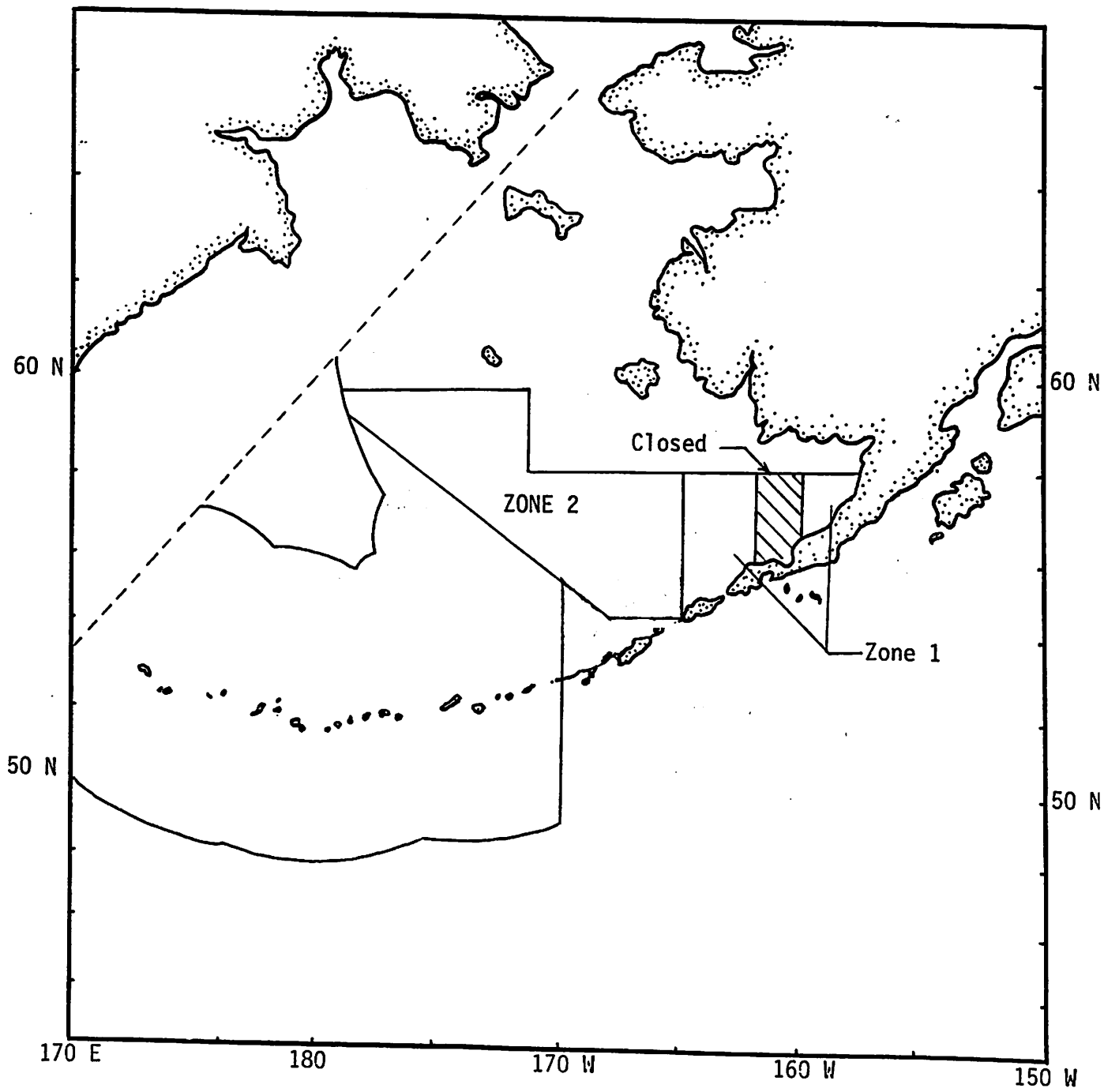


Fig. 27a Areas relevant to bycatch alternative 2.

longitude and 54°30'N latitude, and then extending eastward along 54°30'N latitude to 165°W. longitude.

C. Crab and Halibut Protection Zone Domestic and foreign trawl fishing is not permitted in the EEZ north of the Alaska Peninsula, south of 58°N latitude, east of 162°W longitude, and west of 160°W longitude (Figure 27a).

14.4.2.2 Prohibited Species Catch Limits The PSC limits for C. bairdi Tanner crabs and red king crabs apply to domestic DAH (i.e. DAF plus JVP) fisheries for yellowfin sole and the "other flatfish" species group (including rock sole).

A. The DAH fishery for Pacific cod south of a straight line approximating the 25 fathom curve in the Crab and Halibut Protection Zone identified in 14.4.2.1 C is limited to a PSC limit of 12,000 red king crabs.

B. The DAH fishery for yellowfin sole and other flatfish is limited to a PSC of 80,000 C. bairdi Tanner crabs and to a PSC of 135,000 red king crabs in Zone 1.

C. A PSC limit of 326,000 C. bairdi Tanner crab applicable to the DAH fishery for yellowfin sole and other flatfish is established Zone 2.

D. A PSC limit of 828,000 Pacific halibut applicable to the JVP fishery for yellowfin sole and other flatfish in the entire Bering Sea/Aleutian Islands is established. When this number of Pacific halibut is taken, Zone 1 will be closed to that fishery."

F. In Section 14.4.3 "Fishing Area Restrictions", subsection 14.4.3.2 "Trawl Fishery", page 14-6, add the following part "C. Crab and Halibut Protection Zone -- (as described in Appendix III and Figure 27a) -- Closed to all trawling from January 1 through December 31.

G. In subsection 14.4.3.4 "Modification of Time and Area Limitations", page 14-6, change the title to "Implementation of Time and Area Limitations", add the following:

"When the DAH fishery for yellowfin sole and other flatfish (including rock sole) in any area or zone is reached, no further directed fishing for yellowfin sole or other flatfish in that zone will be allowed for the remainder of the fishing year."

H. Add a new Subsection 14.4.3.5 "Discretionary authority of the Secretary" as follows: "When the fishing vessels of the United States to which a PSC limit applies have caught an amount of prohibited species equal to that PSC limit (but less than an amount which would constitute overfishing), the Secretary may allow some or all of those vessels to continue or resume directed fishing for yellowfin sole and other flatfish under conditions which will limit fishing by permissible gear, areas, times, and other appropriate factors, and subject to other provisions of this part. Such other factors may include delivery of a vessel's catch to United States fish processors. In authorizing and conditioning such continued or resumed directed fishing by those vessels, the Secretary will take into account the following considerations:

(a) A determination by the Regional Director of the risk of biological harm to Tanner and king crab stocks and of socioeconomic harm to authorized crab users posed by authorizing continued or resumed directed fishing for yellowfin sole and other flatfish.

(b) A determination by the Regional Director of the extent of incidental catches of Tanner and king crabs in specific areas.

(c) A determination by the Regional Director of the accuracy of the estimates of incidental catches of Tanner and king crabs.

(d) A determination by the Regional Director that adherence to the prescribed conditions can be assured in light of available enforcement resources.

(e) A determination by the Regional Director that continued or resumed directed fishing for yellowfin sole and other flatfish will not lead to overfishing of prohibited species."

I. In Section 14.4.5 "Reporting Requirements," page 14-8, delete part "D. Catcher/Processors", subpart "1. Reporting Requirements," and replace with the following:

D. At-sea Processor Vessels

1. Reporting requirements. Vessels that catch and process groundfish at sea (catcher/processors) and vessels that receive catch from other vessels for processing (mothership/processors) have the ability to operate for extended periods without landing. To avoid delay in monitoring catches, catcher processors and mothership/processors are required to report to the Director, Alaska Region, NMFS, at regular intervals as specified in the regulations.

J. On page 14-9 add the following new Section 14.4.7 Inseason Adjustments as follows:

"Harvest levels for each groundfish species or species group that are set by the Council for a new fishing year are based on the best biological, ecological, and socioeconomic information available. The Council finds, however, that new information and data relating to stock status may become available to the Regional Director and/or the Council during the course of a fishing year that warrants inseason adjustments in a fishery. Such changes in stock status might not have been anticipated or were not sufficiently understood at the time harvest levels were being set. Such changes may become known from events within the fishery as it proceeds, or they may become known from new scientific survey data. Certain changes warrant swift action by the Regional Director to protect the resource from biological harm by instituting gear modifications or adjustments through closures or restrictions. Other changes warrant action by the Regional Director to provide greater fishing opportunities for the industry by instituting time/area adjustments through openings or extension of a season beyond a scheduled closure.

The need for adjustment may be related to several circumstances. For instance, certain target or bycatch species may have decreased in abundance. When current information indicates that a species has decreased in abundance,

allowing a fishery to continue to a harvest level now known to be too high could increase the risk of overfishing that species. Likewise, current information relating to prohibited species, i.e., those species that must be returned to the sea, might become available that indicates their abundance has decreased. Conservation measures limited to establishing prohibited species catch (PSC) limits for such prohibited species may be necessary during the course of the fishery to prevent jeopardizing the well-being of prohibited species stocks.

When current information demonstrate a harvest level to have been set too low, closing a fishery at the annually specified harvest level would result in underharvesting that species, which also results in the fishery unnecessarily foregoing economic benefits during that year unless the total allowable catch were increased and the fishery allowed to continue.

Similarly, current information may indicate that a prohibited species was more abundant than was anticipated when (PSC) limits were set. Closing a fishery on the basis of the preseason PSC limit that is proven to be too low would impose unnecessary costs on the fishery. Increasing the PSC limits may be appropriate if such additional mortality inflicted on the prohibited species of concern would not impose detrimental effects on the stock or unreasonable costs on a fishery that utilize the prohibited species. However, adjustments to target quotas or PSC limits which are not initially specified on the basis of biological stock status is not appropriate.

The Council finds that inseason adjustments are accomplished most effectively by management personnel who are monitoring the fishery and communicating with those in the fishing industry who would be directly affected by such adjustments. Therefore, the Council authorizes the Secretary by means of his delegation to the Regional Director, NMFS, to make inseason adjustments to conserve fishery resources on the basis of all relevant information. Using all available information, he may extend, open or close fisheries in any or part of a regulatory area, or restrict the use of any type of fishing gear as a means of conserving the resource. He may also change any previously specified TAC or PSC limit if such are proven to be incorrectly specified on the basis of the best available scientific information or biological stock status. Such inseason adjustments must be necessary to prevent one of the following occurrences:

(1) The overfishing of any species or stock of fish, including those for which PSC limits have been set.

(2) The harvest of a TAC for any groundfish, the taking of a PSC limit for any prohibited species, or the closure of any fishery based on a TAC or PSC limit which on the basis of currently available information is found by the Secretary to be incorrectly specified.

The types of information which the Regional Director must consider in determining whether stock conditions exist that require an inseason management response are described, as follows, although he is not precluded from using information not described but determined to be relevant to the issue.

(A) The effect of overall fishing effort within a regulatory area;

ERRATA TO CHANGES TO THE BSAI FMP

In Section 14.5.3, Fishing Area Restrictions (for foreign fisheries), part B Trawl Fishery, on page 14-18, add the following:

2. Crab and Halibut Protection Zone -- No trawling year-round in the Crab and Halibut Protection Zone (as described in Appendix III and Figure 27a).

REVISIONS TO THE BERING SEA/ALEUTIAN ISLANDS
AMENDMENT 10 EA/RIR

These sections update the EA/RIR to reflect new alternatives
approved by the Council on September 25, 1986.

Prepared by the Bering Sea/Aleutian Islands Groundfish Plan Team
and Council Staff

September 26, 1986

2.4.1 Fishery Costs and Benefits

The revised Alternative 2 includes two variations from all other alternatives. First, it contains a sunset clause which limits the effective period of the bycatch control mechanisms. This does not require further analysis as the impacts of all other alternatives are measured on a per year basis. Second, it includes a halibut cap of 828,000 animals which is measured Bering Sea wide, but only closes that area designated as Zone 1.

It is unlikely that this cap will be reached, as Table 2 shows that 266,000 halibut were caught in the 1985 joint venture flatfish fisheries and that the 1986 bycatch to date is 354,000 animals. Furthermore, even in the unlikely event that the cap of 828,000 animals is reached, Zone 1 will have already been closed due to the attainment of either the Tanner or king crab bycatch caps. Therefore, no additional constraints on the joint venture flatfish fisheries would result from the implementation of this halibut PSC limit. For the same reasons it is unlikely there would be any additional halibut savings Bering Sea wide nor any additional protection to halibut in Zone 2.

5.0 DESCRIPTION OF MANAGEMENT PROBLEM 4 AND ENVIRONMENTAL AND REGULATORY IMPACTS OF THE PROPOSED ALTERNATIVE SOLUTIONS: INADEQUATE AUTHORITY TO MANAGE INSEASON BIOLOGICAL EMERGENCIES

5.1 The Management Problem

Inseason authorization for the Secretary, by means of his delegation to the Director, Alaska Region, NMFS, is provided to adjust gear restrictions, season opening and closing dates, and TQs and PSC limits. Such adjustments must be necessary to prevent overfishing or to change TQs or PSC limits which the Regional Director finds, as a result of the best available stock status information, to have been incorrectly specified.

The Regional Director is constrained, however, in his choice of management responses to prevent potential overfishing by having to first consider the least restrictive adjustments to conserve the resource. The order in which the Regional Director must consider inseason adjustments to prevent overfishing are specified as: (1): Any gear modification that would protect the species in need of conservation protection, but which would still allow fisheries to continue for other species; (2) a time/area closure which would allow fisheries for other species to continue in non-critical areas and time periods; and, (3) total closure of the management area and season.

An example of a potential gear restriction would be the closure of an area to non-pelagic trawling to prevent overfishing of a bottom dwelling species. The exercise of the Secretary's authority to adjust TQs or PSC limits requires that adjustments be made only as a function of the best available scientific information that the biological status or condition of a stock is different from that on which the currently specified TQ or PSC limits is based. Any adjustments to the specified TQ or PSC limit must be reasonably related to the change in stock status. The Secretary may not make inseason adjustments based on any rationale other than a change in biological stock status.

For example, a PSC limit for a crab stock derived from a specific level of the crab biomass, could be adjusted upwards or downwards if the new stock status information showed that the crab biomass had changed.

If the TQ or PSC limit was based on factors other than the biological stock status of that species, however, the Regional Director would not be able to make the determination that the TQ or PSC limit was incorrectly specified. For example, the red king crab PSC limit in Zone 1 of the eastern Bering Sea in 1986 was a negotiated level between representatives of the crab and trawl fishermen. In this instance, any change in the stock status of red king crab could not result in exercise of this authority since the PSC limit was not based on the stock status of red king crab.

The types of information which the Regional Director must consider in determining whether stock conditions exist that require an inseason management response are described, as follows, although he is not precluded from using information not described but determined to be relevant to the issue.

- (A) The effect of overall fishing effort within a regulatory area;
- (B) Catch per unit of effort and rate of harvest;
- (C) Relative abundance of stocks within the area;
- (D) The condition of the stock within all or part of a regulatory area;
and
- (E) Any other factors relevant to the conservation and management of groundfish species or any incidentally caught species which are designated as a prohibited species or for which a PSC limit has been specified.

Finally, the procedure which the Secretary must follow requires that the Secretary publish a notice of proposed adjustments in the Federal Register before they are made final, unless the Secretary finds for good cause that such notice is impracticable or contrary to the public interest. If the Secretary determines that the prior comment period should be waived, he is still required to request comments for 15 days after the notice is made effective, and respond to any comments by publishing in the Federal Register either notice of continued effectiveness or a notice modifying or rescinding the adjustment.

BSA 10 DRAFT PROPOSED REGULATIONS FOR PREFERRED ALTERNATIVES

1. Management Problem 1, Alternative 2: The Emergency Rule As Implemented Plus The AP Recommended Halibut PSC Limit.

PART 611--[AMENDED]

A. Section 611.93 is amended by adding new paragraphs (b)(1)(iii), (c)(2)(ii)(E)(2)(iv), and (c)(2)(ii)(F) and (G), and figure 1 to read as follows:

(611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *
* (b) * * * * *
* (1) * * * * *

(iii) Directed fishing, with respect to any species, stock, or other aggregation of fish, means fishing that is intended or can reasonably be expected to result in the catching, taking, or harvesting of quantities of such fish and amounting to 20 percent or more of the total amount by weight of fish or fish products on board at any time. It will be a rebuttable presumption that, when any species, stock, or other aggregation of fish comprises 20 percent or more by weight of the catch, take, or harvest, or 20 percent or more of the total amount by weight of fish products on board at any time, such fishing was directed fishing for such fish.

* * * * *
* (c) * * * * *
* (2) * * * * *
* (ii) * * * * *
* (E) * * * * *
* (2) * * * * *

(iv) When, during the fishing year, the trawl vessels of foreign nations conducting directed fishing for yellowfin sole and "other flatfish" in either Zone 1 or Zone 2 (areas A and C in Figure 1) catch the PSC limit of 64,000 C. bairdi Tanner crabs, the Regional Director will publish a notice in the FEDERAL REGISTER prohibiting foreign trawling for yellowfin sole and "other flatfish" in both of these areas for the remainder of the fishing year. For this purpose, Zone 1 is defined as that part of the management area south of 58 degrees N. latitude and east of 165 degrees W. longitude exclusive of other closed areas specified under this part (area A in Figure 1), and Zone 2 is defined as that part of the management area bounded by straight lines connecting the following coordinates in the order listed and exclusive of other closed areas specified under this part (area C in Figure 1):

- 54 deg. 30 min. N. lat., 165 deg. 00 min. W. long.;
- 58 deg. 00 min. N. lat., 165 deg. 00 min. W. long.;
- 58 deg. 00 min. N. lat., 171 deg. 00 min. W. long.;
- 60 deg. 00 min. N. lat., 171 deg. 00 min. W. long.;

60 deg. 00 min. N. lat., 179 deg. 20 min. W. long.;
59 deg. 25 min. N. lat., 179 deg. 20 min. W. long.;
54 deg. 30 min. N. lat., 167 deg. 00 min. W. long.;
54 deg. 30 min. N. lat., 165 deg. 00 min. W. long.

(F) At all times in the area enclosed by straight lines connecting the following coordinates: 57 deg. 30 min. N. lat., 162 deg. 00 min. W. long.; 58 deg. 00 min. N. lat., 162 deg. 00 min. W. long.; 58 deg. 00 min. N. lat., 160 deg. 30 min. 30 sec. W. long. (area B in Figure 1).

(G) When the domestic fishery for yellowfin sole and "other flatfish" is prohibited under (675.21 (b) of this chapter, the directed fishery for yellowfin sole and "other flatfish" is prohibited in the same area specified in (675.21 (b) exclusive of other closed areas specified under this part.

[Insert Figure 1]

* * * * *

PART 675--[AMENDED]

B. In (675.2, two new definitions are added in correct alphabetical order to read as follows:

(675.2 Definitions.

* * * * *

Bycatch limitation zone 1 (Zone 1) means that part of the Bering Sea subarea that is south of 58 deg. 00 min. N. latitude and east of 165 deg. 00 min. W. longitude (areas A and B in Figure 2).

Bycatch limitation zone 2 (Zone 2) means that part of the Bering Sea subarea bounded by straight lines connecting the following coordinates in the order listed (area C in Figure 2):

54 deg. 30 min. N. lat., 165 deg. 00 min. W. long.;
58 deg. 00 min. N. lat., 165 deg. 00 min. W. long.;
58 deg. 00 min. N. lat., 171 deg. 00 min. W. long.;
60 deg. 00 min. N. lat., 171 deg. 00 min. W. long.;
60 deg. 00 min. N. lat., 179 deg. 20 min. W. long.;
59 deg. 25 min. N. lat., 179 deg. 20 min. W. long.;
54 deg. 30 min. N. lat., 167 deg. 00 min. W. long.;
54 deg. 30 min. N. lat., 165 deg. 00 min. W. long.

* * * * *

C. In (675.7, paragraph (g) is redesignated as paragraph (h) and a new paragraph (g) is added to read as follows:

(675.7 General prohibitions.

It shall be unlawful for any person to:

* * * * *

(g) Use a vessel (1) to fish with trawl gear in Area B of Figure 2 unless specifically allowed by the Secretary as provided under (675.22 of this part; (2) to fish with trawl gear in the area at any time when no approved data gathering program exists

or after such a program has been terminated; or (3) to fish with trawl gear in the area without complying fully with an approved data gathering program;

* * * * *

D. In §675.20, paragraph (c)(1) is amended to read as follows:

§675.20 General limitations.

* * * * *

(c) Prohibited species. (1) Prohibited species, for the purpose of this part, means any species of fish caught while fishing for groundfish in the Bering Sea and Aleutian Islands management area, the retention of which is prohibited by other applicable law. Any catch of Pacific halibut by fishing vessels regulated under this part is a catch of a prohibited species, unless retention is authorized by regulations of the International Pacific Halibut Commission. Any catch of Tanner crab, king crab, or salmon by vessels regulated under this part must be treated in the same manner as a catch of a prohibited species.

* * * * *

E. A new §675.21 and Figure 2 are added to read as follows:

§675.21 Prohibited species catch (PSC) limitations.

(a) Tanner crab (*C. bairdi*). (1) If, during the fishing year, the Regional Director determines that vessels of the United States will catch the PSC limit of 80,000 *C. bairdi* Tanner crabs while conducting directed fishing for yellowfin sole and "other flatfish" in Zone 1 (area A in Figure 2), he will publish a notice in the FEDERAL REGISTER prohibiting a directed fishery in Zone 1 by vessels of the United States for yellowfin sole and "other flatfish" for the remainder of the fishing year, subject to paragraph (d) of this section.

(2) If, during the fishing year, the Regional Director determines that vessels of the United States will catch the PSC limit of 326,000 *C. bairdi* Tanner crabs while conducting directed fishing for yellowfin sole and "other flatfish" in Zone 2 (area C in Figure 2), he will publish a notice in the FEDERAL REGISTER prohibiting a directed fishery in Zone 2 by vessels of the United States for yellowfin sole and "other flatfish" for the remainder of the fishing year, subject to paragraph (d) of this section.

(b) Red king crab. If, during the fishing year, the Regional Director determines that vessels of the United States will catch the PSC limit of 135,000 red king crabs while conducting directed fishing for yellowfin sole and "other flatfish" in Zone 1 (area A in Figure 2), he will publish a notice in the FEDERAL REGISTER prohibiting a directed fishery in Zone 1 by vessels of the United States for yellowfin sole and "other flatfish" for the remainder of the fishing year, subject to paragraph (d) of this section.

(c) Pacific halibut. If during the fishing year, the Regional Director determines that vessels of the United States

will catch the PSC limit of 828,000 Pacific halibut while conducting directed fishing for yellowfin sole and "other flatfish" in the Bering Sea and Aleutian Islands management area for delivery to floating foreign processors, he will publish a notice in the FEDERAL REGISTER prohibiting directed fishing in Zone 1 for yellowfin sole and "other flatfish" by such vessels for the remainder of the fishing year, subject to paragraph (d) of this section.

(d) When the fishing vessels of the United States to which a PSC limit applies have caught an amount of prohibited species equal to that PSC limit (but less than an amount which would constitute over fishing), the Secretary may allow some or all of those vessels to continue or resume directed fishing for yellowfin sole and "other flatfish" under conditions which will limit fishing by permissible gear, areas, times, and other appropriate factors, and subject to other provisions of this part. Such other factors may include delivery of a vessel's catch to United States fish processors. In authorizing and conditioning such continued or resumed directed fishing by those vessels, the Secretary will take into account the following considerations:

(1) A determination by the Regional Director of the risk of biological harm to Pacific halibut, Tanner and king crab stocks and of socioeconomic harm to authorized halibut and crab users posed by authorizing continued or resumed directed fishing for yellowfin sole and "other flatfish";

(2) A determination by the Regional Director of the extent of incidental catches of Pacific halibut, Tanner and king crabs in specific areas;

(3) A determination by the Regional Director of the accuracy of the estimates of incidental catches of Pacific halibut, Tanner and king crabs;

(4) A determination by the Regional Director that adherence to the prescribed conditions can be assured in light of available enforcement resources; and

(5) A determination by the Regional Director that continued or resumed directed fishing for yellowfin sole and "other flatfish" will not lead to overfishing of prohibited species.

[Insert Figure 2]

F. A new 675.22 is added, to read as follows:

675.22 Time and area closures.

(a) No fishing with trawl gear is allowed at any time in that part of Zone 1 in the Bering Sea subarea that is south of 58 deg. 00 min. N. latitude, east of 162 deg. 00 min. W. longitude and west of 160 deg. 00 min. W. longitude (area B in Figure 2).

(b) The Secretary may allow fishing for Pacific cod with trawl gear in that portion of the area described in paragraph (a) of this section that lies south of a straight line connecting the coordinates 56 deg. 43 min. N. latitude, 160 deg. 00 min. W.

longitude, and 56 deg. 00 min. N. latitude, 162 deg. 00 min. W. longitude, provided that such fishing is in accordance with a data gathering program, approved by the Regional Director after consultation with the Council, designed to provide data useful in the management of the trawl fishery, the Pacific halibut, Tanner crab, and king crab fisheries, and which will be monitored to prevent overfishing of the Pacific halibut, Tanner and king crab stocks in the area.

(c) The owner or operator of each vessel which fishes in Area B pursuant to an approved data gathering program must agree with the Secretary to comply with all requirements of that program.

(d) If the Regional Director determines that vessels fishing with trawl gear in the area described in paragraph (a) of this section will catch the PSC limit of 12,000 red king crabs, he will immediately close all fishing with trawl gear in that area by notice in the FEDERAL REGISTER and will make reasonable attempts to notify all parties to each agreement referred to in paragraph (c) that the program has terminated.

2. Management Problem 2, Alternative 2: Reporting Requirement Change With AP Recommended Wording Change.

PART 675--[AMENDED]

In 675.5, paragraph (a)(3) is amended to read as follows:

675.5 Reporting requirements.

(a) * * *

(3) Catcher/Processor and Mothership/Processor Vessels. The operator of any fishing vessel regulated under this part who salts or freezes any groundfish on board that vessel must, in addition to the requirements of paragraphs (a)(1) and (a)(2) of this section, meet the following requirements:

(i) Twenty-four hours before starting and upon stopping fishing or receiving groundfish in any area, the operator of that vessel must notify the Regional Director of the date and hour in GMT and the area of such activity.

(ii) * * *

(iii)* * *

(iv) After the first catch or receipt of groundfish at sea by that vessel and continuing until that vessel's entire catch or cargo of fish has been off-loaded, the operator of that vessel must submit a weekly catch or receipt report for each weekly period, Sunday through Saturday, GMT, or for each portion of such a period, during which groundfish were caught or received at sea. Catch or receipt reports must be sent to the Regional Director within one week of the end of the reporting period through such means as the Regional Director will prescribe upon issuing that vessel's permit under 675.4 of this part. These reports must contain the following information:

(A) Name and radio call sign of vessel;

(B) Federal permit number for the Bering Sea and Aleutian Islands groundfish fisheries;

(C) Month and days fished or during which fish were received at sea;

(D) The estimated round weight of all fish caught or received at sea by that vessel during the reporting period by species or species group, rounded to the nearest one-tenth of a metric ton (0.1 mt), whether retained, discarded, or off-loaded;

(E) The area in which each species or species group was caught; and,

(F) If any species or species group was caught in more than one area during a reporting period, the estimated round weight of each, to the nearest 0.1 mt, by area.

3. Management Problem 3, Alternative 2: Explicit Authority To Reapportion Surplus DAP To JVP.

PART 675--[AMENDED]

Section 675.20 is amended by redesignating subparagraph (b)(1)(ii) as (b)(1)(iii) and adding a new subparagraph (b)(1)(ii) to read as follows:

(675.20 General limitations.

* * * * *
* (b) * * *
* (1) * * *
* (i) * * *

(ii) Apportionment between DAP and JVP. As soon as practicable after April 1, June 1, and August 1, and on such other dates as he determines appropriate, the Secretary shall, by notice in the FEDERAL REGISTER, reassess and reapportion to JVP the part of DAP that he determines will not be harvested by U.S. vessels and delivered to U.S. processors during the remainder of the fishing year, unless such reapportionments to JVP would adversely affect the conservation of groundfish or prohibited species or would have an adverse impact on the socioeconomic considerations set forth in paragraph (a)(2)(i)(B) of this section.

* * * * *

4. Management Problem 4, Alternative 2: Inseason Management Authority.

PART 675--[AMENDED]

A. In (675.7, paragraph (g) is redesignated as paragraph (h) and a new paragraph (g) is added to read as follows:

(675.7 General prohibitions.

It shall be unlawful for any person to:

* * * * *

(g) Conduct any fishing contrary to a notice of inseason adjustment issued under (675.20 (e) of this part;

* * * * *

B. In (675.20, new paragraphs (e), (f) and (g) are added to read as follows:

(675.20 General limitations.

* * * * *

(e) Inseason adjustments.

(1) Inseason adjustments issued by the Secretary under this paragraph include:

(A) The closure, extension, or opening of a season in all or part of a management area;

(B) Modification of the allowable gear to be used in all part of a management area; and

(C) The adjustment of TACs or PSC limits.

(2) Any inseason adjustment under this paragraph must be based on a determination that such adjustments are necessary to prevent:

(A) The overfishing of any species or stock of fish or shellfish; or

(B) The harvest of a TAC for any groundfish species, the taking of a PSC limit for any prohibited species, or the closure of any fishing for groundfish based on a TAC or PSC limit which on the basis of the best available scientific information is found by the Secretary to be incorrectly specified.

(3) The selection of the appropriate inseason management adjustments under (1)(A) or (B) of this paragraph must be from the following authorized management measures and be based on a determination by the Regional Director that the management adjustment selected is the least restrictive necessary to achieve the purpose for the adjustment:

(A) Any gear modification that would protect the species in need of conservation protection, but which would allow fisheries to continue; or

(B) A time/area closure which would allow fisheries to continue in non-critical areas and time periods; or

(C) Closure [or opening] of a management area to all groundfish fishing for the remainder of the fishing year.

(4) The adjustment of a TAC or PSC limit for any species under (1)(C) of this paragraph must be based on the best

available scientific information concerning the biological stock status of the species in question and on the Regional Director's determination that the currently specified TAC or PSC limit is incorrect. Any adjustment to a TAC or PSC limit must be reasonably related to the change in biological stock status.

(f) Data. All information relevant to one or more of the following factors may be considered in making the required determinations under paragraph (e) of this section:

- (1) The effect of overall fishing effort within a regulatory area;
- (2) Catch per unit of effort and rate of harvest;
- (3) Relative abundance of stocks within the area;
- (4) The condition of the stock within all or part of a regulatory area; and
- (5) Any other factors relevant to the conservation and management of groundfish species or any incidentally caught species which are designated as a prohibited species or for which a PSC limit has been specified.

(g) Procedure.

(1) No inseason adjustment issued under paragraph (e) of this section shall take effect until:

(A) The Secretary has filed the proposed adjustment with the office of the FEDERAL REGISTER for public inspection and,

(B) The Secretary has published the proposed adjustment for public comment for a period of thirty (30) days before it is made final, unless the Secretary finds for good cause that such notice and public comment is impracticable, unnecessary or contrary to the public interest.

(2) If the Secretary decides, for good cause, that an adjustment is to be made without affording a prior opportunity for public comment, public comments on the necessity for, and extent of, the adjustment will be received by the Regional Director for a period of fifteen (15) days after the effective date of the notice.

(3) During any such 15-day period, the Regional Director shall make available for public inspection, during business hours, the aggregate data on which an adjustment was based.

(4) If written comments are received during any such 15-day period which oppose or protest an inseason adjustment issued under this section, the Secretary shall reconsider the necessity for the adjustment and, as soon as practicable after that reconsideration, shall either:

(A) Publish in the FEDERAL REGISTER a notice of continued effectiveness of the adjustment, responding to written comments received during the 15-day period; or

(B) Modify or rescind the adjustment.

(5) Notices of inseason adjustments issued by the Secretary under this paragraph must include the following information:

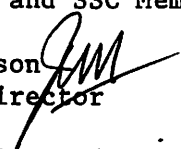
(A) A description of the management adjustment;

(B) The reasons for the adjustment and the determinations required by this part; and

(C) The effective date and any termination date of the management adjustment. If no termination date is specified, the adjustment will terminate on the last day of the fishing year.

M E M O R A N D U M

TO: Council, AP and SSC Members

FROM: Jim H. Branson 
Executive Director

DATE: September 10, 1986

SUBJECT: Bering Sea/Aleutian Islands Groundfish FMP

ACTION REQUIRED

- (a) Identify preferred alternatives for Amendment 10.
- (b) Plan Team analyzes chosen alternatives, prepares draft regulations and changes to the FMP.
- (c) Final Council approval of Amendment 10 for Secretarial review.

BACKGROUND

At the June 1986 Council meeting you delayed final action on Amendment 10 and approved preparation of a revised Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA). Due to delays in preparation and release of the document, the public comment period on the revised Draft EA/RIR/IRFA for Amendment 10 was extended through September 19, 1986. All comments have been included in Agenda item D-3(c)(2) for your review.

The amendment addresses four issues:

1. Inadequate control of bycatch of crabs and halibut in DAH fisheries.
2. Inadequate catch reporting requirements in DAP fisheries.
3. Inadequate authority for inseason apportionment among domestic fisheries.
4. Inadequate authority to manage inseason biological emergencies.

An Amendment 10 summary is provided under Agenda Item D-3(c)(1). We do not plan to revise the document, but rather an Errata sheet and three additional chapters will be added at the end: Council Preferred Alternatives and Rationale, Changes to the FMP, and Draft Regulations.

Final action on Amendment 10 should be taken in three steps at this meeting: First, you should identify the preferred alternative for each of the four amendment issues. Second, the Plan Team and NOAA General Counsel will analyze the chosen alternatives and prepare the "Changes to the FMP" document and draft implementing regulations. Third, you need to consider the recommendations of the Team and General Counsel and give final approval to

send Amendment 10 to Secretarial review. These documents (with minor editing) will constitute most of the formal Amendment 10 package submitted to the Secretary. The remaining transmittal documents (preamble to the Federal Register notice, etc) will be prepared as soon as possible. The amendment should be implemented by April 1, 1987.

AMENDMENT 10 SUMMARY

ISSUES AND ALTERNATIVE MANAGEMENT SOLUTIONS

The Council may choose among the alternatives or choose individual measures from different alternatives and combine them to create a new alternative.

1. INADEQUATE CONTROL OF BYCATCH OF CRABS AND HALIBUT IN DAH FISHERIES

Red king crab and C. bairdi Tanner crab stocks are at extremely low levels of abundance and directed fisheries have been cut back substantially from former high levels. Incidental catches of these species by the joint venture fishery for yellowfin sole and other flatfish have risen substantially since 1980, and domestic bycatches are currently controlled only by an emergency rule which will expire in early December. If regulatory controls are to be implemented for the 1987 fishery, the FMP and regulations must be amended.

Alternative 1 - Do nothing (Status quo).

No PSC limits will be set for the DAP and JVP fisheries. The emergency rule for the 1986 fishery will no longer be in effect and cannot be extended beyond December 1986.

Alternative 2 - The emergency rule as implemented by NMFS.

This alternative would implement the emergency rule for the 1987 fishery and beyond, until the measures are modified by future FMP amendment. An area would be closed to all trawling and prohibited species catch (PSC) limits for red king crab and C. bairdi Tanner crab would be established in specific areas for the joint venture yellowfin sole/other flatfish fishery. DAP and JVP vessels would be allowed to fish for Pacific cod within 25 fathoms along the Alaska Peninsula, but observers would be required on all DAP vessels. An additional foreign C. bairdi PSC limit would also be established in a specific area. The 1986 joint venture fishery greatly reduced its bycatch of red king crab and C. bairdi Tanner crab while still taking the full target tonnage. Thus this alternative should achieve a balance between the conservation needs and the need to allow development of the joint venture fishery.

Alternative 3 - The emergency rule as recommended by the Council.

This alternative is similar to Alternative 2 in the bycatch limits and areas but includes halibut PSC limits and closes Zone 1 to all fishing rather than just to trawling. There are other differences also. Domestic observers are required. This alternative has the potential to achieve a balance between the conservation needs and the need to allow development of the joint venture fishery but the halibut restrictions within Zone 1 will greatly constrain the joint venture fishery.

Alternative 4 - The framework of the emergency rule.

This alternative would establish measures similar to Alternative 3 but would provide flexibility to modify PSC limits on an annual basis. No domestic observer requirements are included. This alternative should also achieve a

balance between the conservation needs and the need to allow development of the joint venture fishery. In addition it would allow the management flexibility to fine tune PSC limits and adjust them to changing conditions.

Alternative 5 - Pot Sanctuary closure

All groundfish fishing would be terminated in the Bristol Bay Pot Sanctuary. This alternative would eliminate bycatches within the affected area but the overall effect cannot be determined at this time. It would probably be less effective than alternatives 2, 3, or 4.

2. INADEQUATE CATCH REPORTING REQUIREMENTS IN DAP FISHERIES

In 1985 the Council approved weekly catch reporting requirements for vessels holding fish on board more than 14 days in an attempt to improve inseason monitoring of domestic catches. The State fish ticket program, although adequate for monitoring slower and more evenly paced fisheries, is inadequate for monitoring fast paced and rapidly developing fisheries such as the sablefish fishery, where domestic catch rates have proven to be higher than anticipated by the management agencies. Catcher/processors have gotten around the weekly reporting by landing prior to day 14, causing accounting difficulties. The FMP amendment proposed by the Alaska Region of NMFS would eliminate this loophole.

Alternative 1 - Do nothing (Status quo).

No change in the reporting requirements would be implemented. Weekly reports would be required only if fish remains on board 14 days or longer.

Alternative 2 - Reporting requirement modification.

Any catcher/processor vessel that freezes or dry-salts any part of its catch on board that vessel would be required to report its catches weekly regardless of how many days there are between landings. The same would apply to mothership/processor vessels. Inseason catches by these vessels would be tabulated only from the weekly reports. This proposal is identical to the measure proposed for the Gulf of Alaska groundfish FMP.

3. INADEQUATE AUTHORITY FOR INSEASON REAPPORTIONMENT AMONG DOMESTIC FISHERIES

The FMP provides explicit authority for the RD to reapportion unneeded DAP to TALFF but is silent on reapportionment between DAP and JVP. The NMFS Alaska Region has requested that explicit authority be provided. The proposed FMP change and regulation are identical to those currently in effect for the Gulf of Alaska groundfish fisheries. This is a "housekeeping" issue.

Alternative 1 - Do nothing (status quo).

Reapportionments from DAP to JVP have been made in the past even though not explicitly authorized by the FMP. There is little doubt that this is consistent with the intent of the respective statutes and policy.

Alternative 2 - Explicit authorization to reapportion.

Language from the Gulf of Alaska Groundfish FMP and implementing regulations is proposed for the Bering Sea FMP and regulations.

4. INADEQUATE AUTHORITY TO MANAGE INSEASON BIOLOGICAL EMERGENCIES

Currently there is no Field Order or rule-related notice authority provided in the Bering Sea FMP or regulations, and this authority has been disapproved by the Secretary in the past for allowing too much discretion in the decision making process. The proposed language is similar to that proposed for the Gulf of Alaska FMP and would be limited to managing biological emergencies in a more efficient manner.

Alternative 1 - Do nothing (Status Quo). Under this alternative the RD is authorized to make inseason adjustment to TACs by: (1) inseason reapportionment of reserves to increase TACs for conservation or socioeconomic reasons; (2) withholding unallocated TALFF and reserves for conservation; and (3) prohibiting further targeting and/or retention of a groundfish species when its TAC is reached to allow other fisheries to continue, or to close or limit other nontarget fisheries to prevent overfishing of the groundfish species for which the TAC has been achieved (NOTE: item 3 is not yet in effect, but should be implemented by emergency rule in the immediate future pending permanent implementation by regulatory amendment).

Alternative 2 - Inseason management authority.

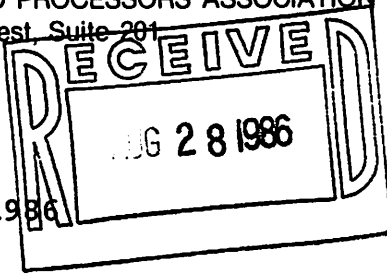
The RD would be authorized to close fisheries in any or part of a regulatory area, or change any previously specified TAC or PSC limit as a means of conserving the resource.

AGENDA D-3(c)(2)
SEPTEMBER 1986

COMMENTS RECEIVED ON
AMENDMENT 10 TO THE
BERING SEA/ALEUTIAN ISLANDS GROUND FISH FMP



PACIFIC SEAFOOD PROCESSORS ASSOCIATION
4019 - 21st Ave. West, Suite 201
Seattle, WA 98199
(206) 281-1667



August 27, 1986

Mr. James O. Campbell, Chairman
North Pacific Fishery Management Council
411 West 4th Avenue
Anchorage, Alaska 99510

Dear Jim:

Upon thorough review of the issue of DAP Time and Area Priority the members of the Pacific Seafood Processors Association have concluded that neither the Council, it's staff or the industry have adequate time to fully analyze a specific proposal prior to the September Council meeting. Therefore, PSPA recommends that this issue be addressed during the 1987 groundfish amendment cycle.

A specific DAP Time and Area Priority proposal will be submitted to the Council by the December amendment deadline. This procedure will insure that all parties involved have enough time to review the proposal and gather the necessary supporting data.

We would like to take this opportunity to thank the membership of the Council for their continued strong support of the domestic processing industry. We look forward to addressing this very important issue of DAP Time and Area Priority to maximize the economic development of the U.S. seafood industry.

Sincerely,

Robt F. Morgan
President

RFM:gg

CC: NPFMC Members

COMMISSIONERS:

SIGURD BRYNJOLFSON
DELTA, B.C.
RICHARD ELIASON
SITKA, AK
WALD MC LEOD
VANCOUVER, B.C.
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JUNEAU, AK
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SEATTLE, WA

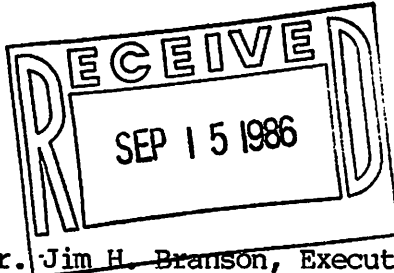
INTERNATIONAL PACIFIC HALIBUT COMMISSION

DIRECTOR
DONALD A. MC CAUGHRAN

P.O. BOX 95009
SEATTLE, WA. 98145-2009

TELEPHONE
(206) 634-1838

ESTABLISHED BY A CONVENTION BETWEEN CANADA
AND THE UNITED STATES OF AMERICA



10 September 1986

Mr. ~~Jim H. Branson~~, Executive Director
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

Dear Jim:

The International Pacific Halibut Commission staff has reviewed the amendment package for the proposed Amendment 10 to the Bering Sea-Aleutian Islands Groundfish Fishery Management Plan. The staff of IPHC supports the proposed alternatives to increase catch reporting requirements (Problem 2) and increase inseason management authority (Problem 4), and has no comment on DAH reapportionment (Problem 3). However, we are very disappointed that a comprehensive by-catch program originally planned could not be completed within this amendment package. The limited approach outlined for halibut in Problem 1 (inadequate by-catch control) remains inadequate; none of the alternatives offer sufficient controls on the sources of halibut by-catch mortality. Our position is not that groundfish fishing should be severely restricted, but that a proper management regime should be established that accounts for all sources of mortality. As such, we cannot support any of the alternatives as presently described. We fear that if one of the alternatives is selected, it may be subsequently viewed as getting enough of the job done to forego further work on a comprehensive plan. We prefer postponing action on the by-catch issue until a complete approach can be developed.

PROBLEM 1. Inadequate control of by-catch of crabs and halibut in DAH fisheries.

Recommendation. (1) Identifying and controlling, where possible, all sources of mortality is a requirement for good fishery management. By-catch mortality in the Bering Sea is controlled by NPFMC. We recommend that the Council establish a Bering Sea - wide limit on halibut, calculated to recognize the legitimate needs of the groundfish fisheries, and manage the groundfish fisheries not to exceed the limit. (2) We do not believe that alternatives oriented only to yellowfin sole - flounder joint venture fisheries are sufficient. We recommend postponing implementation of any of the alternatives, and committing to develop comprehensive by-catch mortality management during the next amendment cycle. (3) This amendment package develops and explains several concepts to control by-catch. We recommend the Council evaluate these concepts to give guidance to the groundfish team for development into a comprehensive regime to be adopted at a later time, preferably within a year.

Rationale. After NMFS and many components of the fishing industry rejected the first framework by-catch proposals prepared by the BSAI Groundfish Team, too little time remained to complete a comprehensive by-catch management plan. The groundfish team successfully completed the Council's task of devising alternatives based on the emergency rule to restrict yellowfin sole - flounder joint venture fisheries. However, the alternatives fall dramatically short of the minimum by-catch plan required for good management.

We often hear industry representatives express the concept of all participants "eating from the same rice bowl" to emphasize that allocation occurs within a finite resource. Our complaint with the Amendment 10 by-catch proposal is the failure to accommodate this concept. Rather than base a by-catch regime on the total resource available, Amendment 10 focuses on one removal (yellowfin sole-flounder joint venture fisheries) responsible for a minority of the by-catch. The entire joint venture fishery represents approximately 32% of the 1985 halibut by-catch, and about 21% of the 1982-1985 mean by-catch values (data from Table 2.8 of EA). The yellowfin sole-flounder component would be even less. We strongly believe that all components of DAH need to be included under by-catch management.

Evaluation of the proposal. Although none of the five alternatives are satisfactory, we believe that an effective comprehensive by-catch regime could be developed from the overall by-catch limit of Alternative 3 (Council recommended emergency rule) and the small-area closures of Alternative 4 (Framework). This combination of alternatives would also be our choice should the Council decide to manage DAH by-catch only for the joint venture yellowfin sole-flounder fishery. An overall by-catch limit is necessary to control all sources of fishing mortality.

The main deficiency in the framework approach is that by-catch limits for halibut trigger a closure of Zone 1 and the HPZ, but move the fishery to other areas that have no by-catch restrictions. By-catch in areas outside the closure is unlimited, determined only by by-catch rates and quantity of groundfish taken. The RIR (p. 42) points out that halibut by-catch rates increased in 1986 after the fleet moved out of the closed area. This scenario again points out the need for an overall by-catch limit. Alternative 4 has desirable features that create the Halibut Protection Zone, allow closure of areas with highest probable by-catch rates, tie by-catch limits to stock condition of the prohibited species, and provide for some flexibility in setting by-catch limits.

Mr. Jim Branson
10 September 1986

Page Three

Alternatives 1 and 2 (status quo and NMFS-implemented emergency rule, respectively) offer no provisions for controlling overall halibut removals. The amendment package clearly points out the need for by-catch management. Alternative 2 estimates potential reduction of halibut by-catch (64,000 fish) because of crab-related area closures. Alternative 3 has the desirable concept of a halibut by-catch limit for the Bering Sea, but applies only to the joint venture yellowfin sole-flounder fishery. By-catch limits in the eastern Zone 1 and the western pot sanctuary appear very restrictive. Estimated potential halibut by-catch reduction amounts to 134,000 fish. Further, the estimated savings represent a small proportion of the 1982-1985 mean halibut by-catch, approximately 128 mt or 4% for Alternative 2, and 268 mt or 8% for Alternative 3. Reductions of halibut by-catch projected in Alternatives 2 and 3 may not occur if fishing shifts to areas with higher by-catch rates, as suggested following the emergency rule closure. Alternative 5 totally protects an area important to halibut, but offers no protection or limits elsewhere. We strongly support the overall by-catch limit expressed in Alternative 3, and believe that Alternative 4 contains concepts worth developing for a comprehensive by-catch management plan.

The EA states that the halibut stock in the BSAI area is at above average abundance. A preliminary assessment provided to the Groundfish Team by the IPHC showed that halibut had increased in the BSAI over the past several years, and that 1985 data suggested abundance at or above MSY. A complete analysis subsequently completed by Dr. R.B. Deriso of the IPHC staff confirmed the increasing abundance, but showed that current stock level in the BSAI is about 75% of the biomass at MSY. While IPHC is encouraged with the abundance trend, we wish to caution against overly high expectations, and to reaffirm our commitment to continue rebuilding in the BSAI area.

The amendment package has requirements for observers on all DAP vessels (Alternatives 2 and 3) and also has rationale for not requiring domestic observers (Alternative 4). IPHC has long favored a more inclusive observer coverage; in-season closures based on PSC limits require observers to be effective, and existing by-catch rates could be substantially improved with increased observer coverage. In the absence of observer data, PSC limits are most effectively implemented by setting TAC's calculated from dividing PSC limits by the catch rate. If the Council should decide not to require DAP observer coverage, we suggest the Council encourage NMFS and the industry to actively pursue the voluntary observer program discussed at the June 1986 Council meeting.

Concepts developed in the Amendment 10 package could readily be extended to a comprehensive by-catch management plan that incorporates Bering Sea-wide by-catch limits. If necessary, this opportunity could be developed as part of the next amendment cycle (Amendment 11) for the BSAI. "Eating from the same rice bowl" recognizes the need for a comprehensive plan that examines the common needs of the disparate components of the fishing industry in the Bering Sea. The IPHC has no preference for allocation measures that would be used to implement a comprehensive by-catch program, but we support a conscious decision by the Council to specify allocation. Allocation is implicit in the Amendment 10 package, because all DAF fisheries, other than joint venture yellowfin sole, are in effect allocated their status quo by-catch plus any increases that may occur.

PROBLEM 2. Inadequate reporting requirements.

Recommendation. We support increasing reporting requirements so that vessels processing catches on board must report catches regardless of time between landings (Alternative 2).

Rationale. Accurate and unambiguous data are necessary for effective management. The amendment package clearly points out the disadvantages of status quo that can be resolved by improved catch accounting.

PROBLEM 4. Inadequate in-season management authority.

Recommendation. We support Alternative 2, which authorizes the NMFS Regional Director to close or open the fisheries on the basis of currently available information to promote fishery conservation. We prefer a modification of Alternative 2 which would allow subarea closures to prevent hot spots of by-catch from reaching a PSC limit and closing wider areas.

Rationale. Being able to use "all currently available information" means complete access to data and working with conclusions that are up to date. "Current information" to be used in-season must be of the same type and quality as that used pre-season, to avoid incomplete or preliminary data from leading to erroneous conclusions.

We believe that the Regional Director should have the authority to close parts of areas to prevent or delay a hot spot of prohibited species by-catch from closing a wider area to directed fishing or from causing wastage of the prohibited species. As such, we support modification of Alternative 2 and adding a new occurrence 4 with wording similar to the following:

Mr. Jim Branson
10 September 1986

Page Five

- (4) Higher than anticipated by-catch of a prohibited species in a subarea that increases the probability of closing a larger area to directed fishing, or that causes wastage of the prohibited species.

Thank you for the opportunity to respond to the Amendment 10 draft for the BSAI Groundfish Fishery Management Plan. We will be available for further discussion of these issues at the September Council meeting in Anchorage.

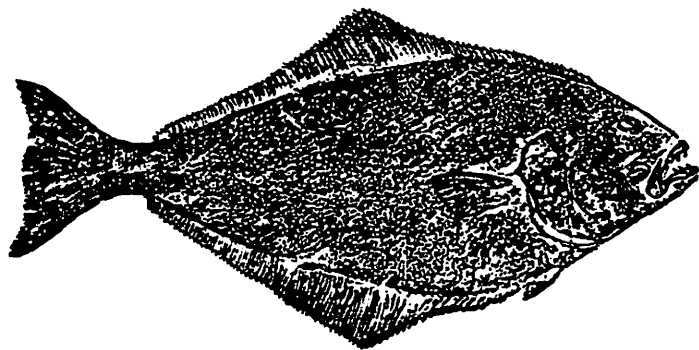
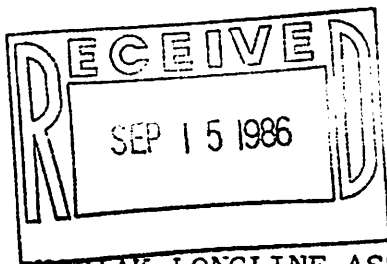
Sincerely,



Donald A. McCaughran
Director

DAM:ps

cc: IPHC Commissioners



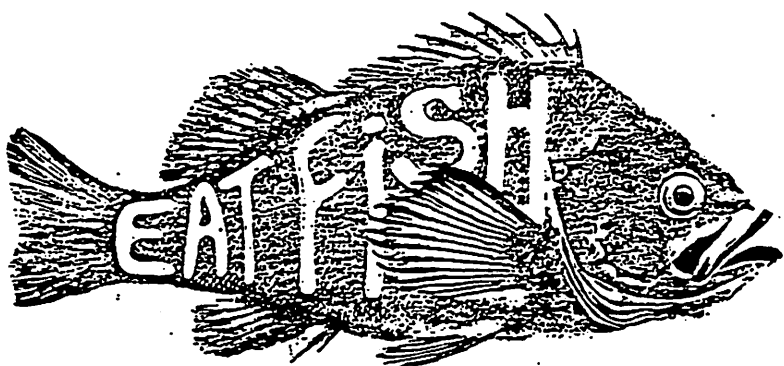
KODIAK LONGLINE ASSOCIATION
BOX 3406
KODIAK, ALASKA 99615

RE: COMMENT--AMENDMENT 10-BERING SEA

DEAR MR. CAMPBELL:

THE BERING SEA AMENDMENT 10 HAS SEVERAL DIFFICULT ISSUES THAT NEED TO BE RESOLVED. THE KODIAK FLEET HAS A SUBSTANTIAL STAKE IN THESE DECISIONS. KODIAK LONGLINERS NOW CATCH A SIGNIFICANT PORTION OF THE BERING SEA HALIBUT QUOTA AND OUR GULF FISHERY IS ALSO IMPACTED BY TRAWL REMOVALS OF JUVENILES IN THE BERING SEA WHICH WOULD MIGRATE IF ALLOWED TO LIVE. THE BERING SEA CRAB FISHERIES STILL GENERATE A LARGE INCOME TO KODIAK AND ANY DISPLACEMENT OF EFFORT OCCURRING BECAUSE OF POOR STOCK CONDITIONS (BAIRDI) IN THE BERING SEA NEGATIVELY IMPACTS KODIAK. KODIAK HAS A MUCH LESSER ECONOMIC INVOLVEMENT IN BERING SEA ON-BOTTOM TRAWLING, (COMPARING THE NUMBER OF BOATS AND LOCAL CREWMEN AND THE AMOUNT OF PRODUCT BROUGHT BACK FOR PROCESSING).

THERE IS ONE CRUCIAL QUESTION STILL UNANSWERED THAT THE COUNCIL SHOULD WEIGH HEAVILY IF IT WISHES TO PURSUE THE ZONE AND CRAB P.S.C. LIMIT APPROACH FOR A PERMANENT RULE. HOW MANY CRAB ARE RUN OVER AND INJURED AND NOT CAUGHT SO THEY CAN BE COUNTED. IT IS OBVIOUS FROM THE MANTA PICTURES THAT THE NEW GENERATION TRAWLS ARE DESIGNED TO FISH OVER THE TOP OF MORE CRAB THAN THE OLDER GEAR. THIS IS POSITIVE IN THE AREA OF THE SWEEPS APPROACHING THE DOORS AS ENOUGH CLEARANCE IS PROVIDED THAT CRAB COULD GO UNDER WITH MINIMAL CONTACT. HOWEVER, THIS ISN'T TRUE FOR THE CENTER OF THE NET. WHILE MORE CRAB ARE LIKELY TO GO UNDER THE NET, THE GEOMETRY GIVEN BY THE FILM INDICATES THAT THERE ISN'T ENOUGH ROOM BETWEEN THE ELEVATED FOOTROPE AND THE TRAILING WEB PANEL TO ALLOW AVERAGE HEIGHT KING CRAB TO PASS UNDER WITHOUT CONTACT. YOU COULD EXPECT ALL THE LARGER CRAB TO BE ROLLED OR SKIDDED ALONG BETWEEN THE UNDERSIDE OF THE WEB PANEL AND THE SEA BOTTOM. THIS WOULD APPLY TO THE WHOLE AREA OF THE FOOTROPE WHERE THE BOBBINS WERE IN CONTACT WITH THE SEAFLOOR. TANNER CRAB ARE LOWER IN PROFILE SO MAY BENEFIT MORE THAN KING CRAB FROM THE NEW GEAR. UNTIL MORTALITY CAN BE ASSESSED FOR THE UNCAUGHT CRAB THE P.S.C. LIMIT MAY BE A SERIOUS ERROR IN TRYING TO PROTECT KING CRAB STOCKS.



A HALIBUT P.S.C. LIMIT MAY BE WORKABLE IF OBSERVER COVERAGE IS EXTENSIVE ENOUGH (DAP EFFORT) AND THAT N.M.F.S. CAN REACT QUICK ENOUGH TO KEEP ACTUAL BYCATCHES WITHIN THE LIMITS.

WE FAVOR THE ALTERNATIVE OF CLOSING THE OLD POT SANCTUARY TO ON-BOTTOM TRAWLING UNTIL THESE QUESTIONS CAN BE ANSWERED. REPORTING REQUIREMENTS NEED TO BE TIGHTENED UP FOR ADEQUATE MANAGEMENT.

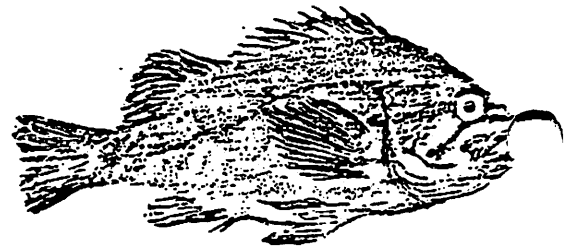
WE ARE LEERY OF AUTOMATIC REAPPORTIONMENTS OF THE OY IN-SEASON. IF THIS WERE IN THE TANNER CRAB PLAN THE GOOD OPILO FISHING THIS YEAR WOULD NEVER HAVE OCCURRED.

AS MUCH AS POSSIBLE, I WOULD LIKE ALL APPORTIONMENTS TO OCCUR BEFORE THE COUNCIL AND NOT BACK IN D.C. BETWEEN N.M.F.S. AND DEPARTMENT OF STATE. MOST DAP FISHERMEN AND PROCESSORS ARE EXTREMELY BUSY IN-SEASON AND CAN'T KEEP UP WITH A CONTINUING ALLOCATION PROCESS BACK IN WASHINGTON D.C. I THINK THE DAP INDUSTRY NEEDS MORE ASSURANCE THAT INSEASON APPORTIONMENTS WON'T BE MADE PREMATURELY. NOT ONLY DOES IT IMPACT POTENTIAL CATCHES BUT IT CAN HAVE MAJOR MARKET IMPACT.

RESPECTFULLY,

Oliver N. Holm

OLIVER N. HOLM, PRESIDENT
KODIAK LONGLINE ASSOCIATION

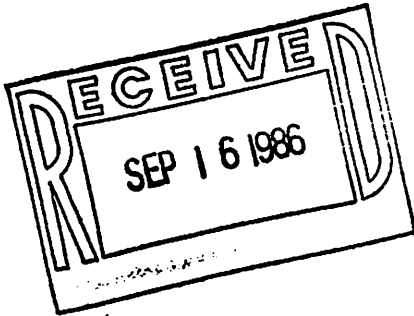


FISHING VESSEL OWNERS' ASSOCIATION

INCORPORATED

ROOM 232, C-3 BUILDING
FISHERMEN'S TERMINAL
SEATTLE, WASHINGTON 98119

(206) 284-4720



September 11, 1986

James Campbell, Chairman
No. Pacific Fishery Mgmt. Council
P.O. Box 103136
Anchorage, Alaska 99510

Chairman James Campbell:

The Fishing Vessel Owners' Association is a trade association comprised of the operators of vessels engaged in fishing in the North Pacific Ocean. At present, Association members operate in the harvest of halibut, sablefish, lingcod and Albacore tuna. Our vessels are all high seas vessels covering the Pacific Ocean from the waters off Mexico to those adjacent to the Soviet Union in the Bering Sea.

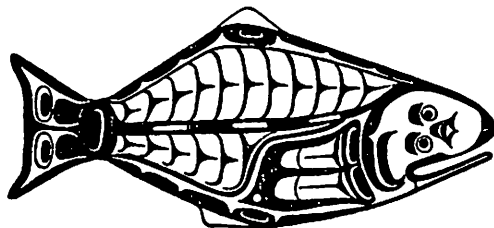
The following are our comments concerning the groundfish amendment to the Bering Sea Groundfish Plan, Amendment #10:

1.5 General Discussion of Environmental Impact of Groundfishing.

"This particular type of incidental capture and mortality can be minimized by adjusting the net in such a way that contact with the ocean floor is minimized. Trawls so adjusted, however, are less effective in capturing target flatfish species that tend to reside in or on the sand."

This comment is not based on any supporting data. The NMFS has just concluded a submersible test in the Bering Sea which looked at newly designed trawls that minimized incidental catches of crabs. The analysis presented by Dr. Aaron in Kodiak, at least primarily suggests just the opposite of your conclusion. Your conclusion also is not supported by NMFS gear studies in the Gulf of Mexico, associated with turtle escape mechanisms. Redesigned nets in this area have also decreased fin fish discards in the shrimp fishery. This conclusion seems to be without any examples or supporting data.

cont. . .



2.0 Inadequate Control of Bycatches of Crabs and Halibut in DAH Fisheries.

The Fishing Vessel Owners' Association preferred position with respect to this represents an amalgamation of all alternatives using Alternative 4 as a basis to work from.

A. Closed Area Between 160°W and 162°W.

1. The rationale for closing this area is based on the high concentration of crabs and halibut found within this area. The closure seems to us as an attempt to protect the flounder fishery from itself in the event vessels get into high concentrations of crab or halibut. This could result in the fishery shutting down before target levels of flounder were taken.

In an open ocean concept of fishing, this area should be maintained or expanded to incorporate areas of other high concentrations of crabs or halibut. Certain J.V. operations have demonstrated a better reflex action on moving their fleets off high concentration areas of crab and are probably less of a threat to premature closure than the DAP fleet. However, until all J.V. activities can operate with the effectiveness of MRC with respect to moving off "hot spots", the Council has to seriously consider this type of closure.

2. Any closed area should be restrictive to DAP, TALFF, and JVP trawl fishing operations.

3. The area east of 160°W in Zone 1 should require observers on DAP trawl operations until an information base can be acquired.

B. Bycatch Limitation Zones.

The Halibut Protection Zone (HPZ) has been improperly plotted for public review on Figure 1. The co-ordinates given under Alternative 4 when plotted, define an area that does not include the Continental Shelf on the north side of the Aleutians. The chart on Figure 1 shows the southern boundry of the HPZ as resembling the dividing line between the Gulf of Alaska and the Bering Sea.

The F.V.O.A. is sure this was an oversight on the part of the drafters. The F.V.O.A. supports the HPZ area as shaded in Figure 1 with a southern boundary commensurate with the co-ordinates that currently appear in the Bering Sea Groundfish Plan for this area. In addition to this, the chartlet on Page 14 is incorrectly drawn. The map of Alaska is not proportionally large enough for the longitude and latitude provided. Example: If you follow 165° it would appear that 165° is on the west side of Unimak Island instead of at Cape Sarichef. This error makes the western portion of Zone 1 appear larger than it is and puts the Halibut Protection Zone further west than it should be. Zone 2 is also proportionally out of alignment.

C. Observer Requirements.

If the Council is satisfied with the information base it has from J.V.'s, TALFF operations and the NMFS trawl survey data and will use this to restrict DAP operations where appropriate, then no observers are required.

The standard argument has been, however, that DAP trawls are different than J.V. trawls and they are all different from TALFF trawls. The Council has not given any documentation to suggest any great differences; however, this has been a significant claim. The F.V.O.A. supports an observer program in areas of high concern, such as in the HPZ and Area 1, on DAP activities. The HPZ area and Area 1 are the areas of highest concern.

D. Incidental Catch Limits.

The F.V.O.A. would like to see a less cumbersome method of choosing the absolute PSC numbers. The PSC numbers in Alternative 4 represent a very wide range.

We object to the idea that these numbers have been calculated on the basis of relative stock conditions and needs. The numbers are basically from J.V. industry production records. The PSC limits are derived at solely on the needs of the targeted fisheries. The RIR states, "The PSC limits were calculated by applying bycatch rates in Table 2.2 by the anticipated target tonnages specified."

The F.V.O.A. would like to have a Bering Sea-wide PSC limit, which TALFF, J.V.'s and DAP operations were restricted to. In addition, the amendments have failed to address bycatch by all bottom trawl operations.

DAP flounder operations are omitted. The targeted fishery, i.e. flounder, is not the issue; the issue is the type of gear deployed. Bottom trawls on rockfish and cod in Areas 1, 2 and 3 will cause just as much damage to crabs and halibut. We would like all J.V. bottom trawl operations to be restricted by the bycatch rate chosen by the Council. This would include directed cod operations by J.V.'s.

DAP on-bottom trawl operations should be required to live within the PSC limits that are set. We are specifically concerned about this winter's "rocksole roe" fishery with perhaps 20 factory trawlers operating in the HPZ area and Area 1. This species is very valuable in the roe state and, at best, is only a 20% to 30% targetable fishery with the remainder being bycatch of other species. The Council would be remiss to allow 20 vessels for 4 months in the HPZ area and Area 1 without any restrictions or observers. If this requires part of the

PSC limit being made accessible to DAP rocksole operations, this is what should be done. It would be appropriate to be more liberal with PSC limits on J.V.'s and DAP operations as TALFF allocations diminish. Some mechanisms for this adjustment should be provided for.

We are chiefly concerned about the overall bycatch numbers, such that they do not increase. The HPZ area and Area 1 in the Bering Sea are important nursery areas for halibut. These areas have large numbers of juvenile fish that are important to the overall resource. The restrictions supported by the F.V.O.A. are designed to accomodate a trawl fishery as well as the crab and halibut fisheries.

3.0 Inadequate Reporting Requirements in DAP Fisheries.

The F.V.O.A. has no problems with the reporting requirement modifications as proposed in Alternative 2.

4.0 Inadequate Authority for Inseason Reapportionment Among Domestic Fisheries.

The F.V.O.A. supports Alternative 1, which is the status quo. The RIR states, "This is consistent with the intent of the respective statutes."


We are concerned that once the Council determines apportionments to TALFF, JVP and DAP at its annual meeting, one method to reapportion the Council's actions back to JVP or TALFF would be to cancel or delay purchasing agreements.

The apportionments made in January are very important for each season's business expectations. If reapportionments can take place in season, this can substantially change supply and demand to export markets, primarily in Japan.

5.0 Inadequate Authority to manage Inseason Biological Emergencies.

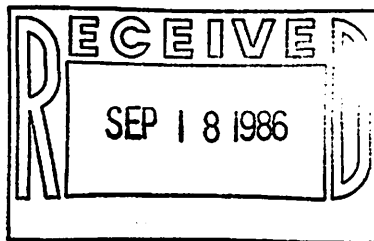
We support Alternative 1, the status quo.

Very truly yours,
FISHING VESSEL OWNERS ASSOC.


Robert D. Alverson, Mgr.

RA/jd

September 16, 1986



Mr. James O. Campbell
Chairman
North Pacific Fishery Management Council
P. O. Box 103136
Anchorage, AK 99510

Dear Jim:

The undersigned, representing a predominant share of both the DAP and JVP groundfish fisheries of the Bering Sea, would like to submit for the record the following comments on proposed Amendment 10 to the Bering Sea/Aleutian Island Groundfish Fishery Management Plan as described in the August 1986 Draft EA/RIR/IRFA.

Management Problem 1: Inadequate Control of Bycatches of Crab and Halibut.

Our first comment concerns the statement at the top of page 13 of the EA/RIR: "These are at best a stop gap measure to deal with the most pressing immediate problem, and more comprehensive bycatch measures will need to be developed in the future." We disagree. Alternative 4, discussed below and with several modifications, along with the other proposed amendments contained in the EA/RIR package could very well end the need for annual amendments for at least the 3-5 year term.

Comments on the individual alternatives follow.

Alternative 1 is quite acceptable to us but we suspect it is really something less than viable and requires no additional comments.

Alternative 2 resulted from long, painful Council-user and user-user negotiations, was quickly adapted to by the trawl industry, and allowed relatively successful flounder fisheries during 1986. Crab bycatches were reduced dramatically. Alternative 2 would be acceptable to us for 1987 but, as crab resources rebuild, this Alternative would very likely become unacceptably stifling to further development of the domestic trawl industry. If for some reason a long-term solution to the bycatch question cannot be achieved through Amendment 10, we urge that this Alternative with the DAH cod fishery modifications described in our Alternative 4 recommendation be relied upon for one more year while the longer-term fix is developed rather than working toward that fix in a seemingly endless and time

consuming series of annual increments. This Alternative successfully handled the crab bycatch problem during 1986; halibut stocks are at such high levels and the total halibut bycatch is, in fact, under sufficient control (through TALFF PSC's and the king crab/bairdi restrictions on DAH operations) that there is no biological or economic urgency for further interim halibut savings measures.

Alternative 3 is unacceptable because of onerous halibut protection measures which have no biological or economic bases justifying a potential Bering Sea wide closure to the second largest American fishery in the US EEZ. As documented in the EA/RIR, page 42, this measure would cost the joint venture industry some \$12 million in order to produce bairdi, opilio, and halibut savings worth \$830,000. Further, as mentioned above, under Alternative 2 halibut bycatches are controlled by the crab protection measures; e.g., according to preliminary 1986 records of the MRCI flounder fishery through July, the overall halibut incidence was 1.1/MT of groundfish vs about 1.5 during 1985 (per NPFMC, January 1986).

Alternative 4 represents a substantial advance in management strategy and, with several caveats, is our preferred Alternative. We believe the Team has taken a significant step away from the past practice of quick simplistic fixes to complex problems and toward a well-balanced, integrated approach to multi-species fishery management. In addition to solving a host of current problems, Alternative 4 promises to apply over a wide range of fishery development and resource abundance ranges, thus providing the stable management environment your constituency has been so adamantly demanding.

Our first and most serious reservation has to do with the halibut allocation principles which are specified in Alternative 4. While willing to address this issue, we believe that there has been no basis provided to support a measure which will, despite the advice of the RIR to the contrary, significantly impact the ability of the domestic industry to conduct profitable trawling operations. The measure of most concern is the establishment of the so-called Halibut Protection Zone which would be closed to all joint venture trawling for yellowfin sole and other flatfish upon the attainment of the Bering Sea-wide halibut bycatch quota. This zone, if established, closes a very significant portion of the trawling grounds of the Bering Sea without regard for the impact on the groundfish industry. Being mindful of the concern which the halibut industry does have towards bycatch by trawl, pot and longline gear we have looked to the RIR for the rationale for this measure.

We find that the EA/RIR does not provide any data or

analysis that indicates that such regulation of halibut bycatch in the JVP trawl fisheries is necessary or desirable. Furthermore, the EA/RIR does not attempt to explain the basis for the proposed halibut bycatch regulations. With regard to the Halibut Protection Zone, the amendment package does not explain the reason for specifying this broad area to close JVP flatfish fisheries. The RIR does not provide the basis for the proposed halibut PSC limits, it does not compare them to prior halibut bycatch rates in the joint venture fishery, and it does not explain how the proposed standard for determining the relative status of the halibut biomass was derived. Absent the basic data and analysis, it is impossible for the public or the Council to assess the impact of the proposed halibut measures on the JVP flatfish fisheries, or to determine the relative costs and benefits of the proposed management alternatives as compared to the status quo. Consequently, the amendment package provides an inadequate basis for adoption of any of the proposed measures for regulation of halibut bycatch in the JVP flatfish fishery.

Second, the joint venture bycatch rate for halibut is so low without regulation that it is unlikely that direct regulation of halibut bycatch would ever be justified. The joint venture bycatch rate for halibut has been falling for several years. In 1985, the bycatch rate for the entire joint venture fleet was only 0.184% per metric ton. This low rate was achieved without any form of direct regulation. The joint venture rate is actually lower than the rate in the directly regulated foreign fisheries, which experienced a .192% per metric ton rate in 1985. Preliminary data for 1986 indicates that the joint venture fisheries will achieve at least as low a bycatch rate as was achieved in 1985. It is clear, therefore, that as the joint ventures take an increasing proportion of the total BS/AI harvest, the bycatch of halibut will not increase, and could actually decrease. Thus, even without regulation, halibut bycatch will not increase beyond the levels experienced in the 1980's, when the halibut biomass increased to the current historic high levels. Consequently, it is unlikely that any form of direct regulation of the halibut bycatch in the joint venture fisheries could ever be justified.

Third, the proposed regulations for crab bycatch will provide adequate protection of juvenile halibut in Zone 1, so that any additional regulations to control halibut bycatch in that area would be unnecessary. For the foreseeable future, Zone 1 will close relatively early in the fishing year because one of the crab bycatch limits for that zone has been reached. Closure of the zone will also have the added effect of preventing bycatch of halibut in the zone. Zone 1 can only be closed once. There is no need to provide for a redundant measure to close the same zone when a halibut bycatch limit is reached. This is

particularly true since under current conditions, where halibut is at historic high levels and crabs are at historic low levels, it would simply be a mistake if the halibut limits closed Zone 1 before the crab limits. The only potential additional protection that would be afforded by the proposed halibut closure would be closure of the proposed HPZ. However, since virtually no joint venture flatfish fishing takes place in this area, closure of the HPZ would not in fact reduce the bycatch of halibut. Since the crab bycatch regulations will provide adequate protection for halibut in Zone 1, there is no justification for imposing additional PSC limits for halibut that would simply close the same zone.

Should the Council ultimately conclude that halibut savings measures must be implemented, we have included below a more rational approach.

Our second reservation regarding Alternative 4 has to do with the fact that no provision is made in the PSC arrangements to accommodate growth in the DAH fisheries. That growth will be at the expense of TALFF fisheries which also have PSC allowances. As DAH replaces TALFF, the PSC limits associated with foreign directed fisheries must be shifted to the domestic fleets; otherwise, even though additional target tonnage is available, in the absence of additional bycatch allowances to go along with it DAH growth will be curtailed. Specifically with regard to halibut, we offer the following procedure.

IPHC has stated that an overall bycatch of 3100 MT would be acceptable in the Bering Sea. Projecting that TALFF in 1987 will be no more than 300,000 MT, the TALFF PSC limit for halibut will be no more than $.0012 \times 300,000$ or 360 MT. That leaves some 2740 MT of halibut bycatch for domestic fisheries. No more than 500 MT should be expected (or allowed) to be taken by the domestic crab and shrimp fisheries (inferred from EA/RIR Table 2.8), leaving 2240 MT available to the DAH trawl fisheries. With the further expectation that DAP trawlers will, in 1987, take some 10 percent of the groundfish DAH, one might simply write off 10 percent of this 2240 MT -- 224 MT -- to that fishery. That leaves a JVP halibut PSC of about 2000 MT or, at an average of 4 pounds each, 1.1 million individuals. As the DAH industry grows, it will be at the expense of TALFF with its associated remaining 360 MT of halibut PSC, which would also shift to DAH. Further, once TALFF is essentially gone, growth of the DAP industry will be at the expense of JVP with a commensurate shifting of halibut PSC from the latter to the former. Until that situation occurs, there is no need to impose a costly observer program on the DAP industry - it would still be relatively small, up to 584 MT of halibut PSC would have been ascribed to it, only half of its

halibut bycatch dies, and the majority of the groundfish catch (JVP) would be under direct bycatch restriction. Finer precision, with its attendant cost to the DAP industry, is simply not necessary.

Our third reservation concerns the broad ranges for DAH PSC limits (Table 2.3, page 19 of the EA/RIR) and the vague criteria (page 18) for determining specific limits each year. We suggest the following procedure which is both completely consistent with the values in Table 2.3 and would remove a great deal of annual user-user and user-Council conflict. This procedure would establish the relationship between crab population size and PSC limit on a continuum rather than only three very broad brackets, and could be reduced to the simple graphics shown in Figure 1. The resulting regression lines are each fixed by 2 points, determined as follows, and truncated at the lowest PSC values given in Table 2.3.

Upper point x = highest PSC value under "High" column

y = 100% of historical high abundance

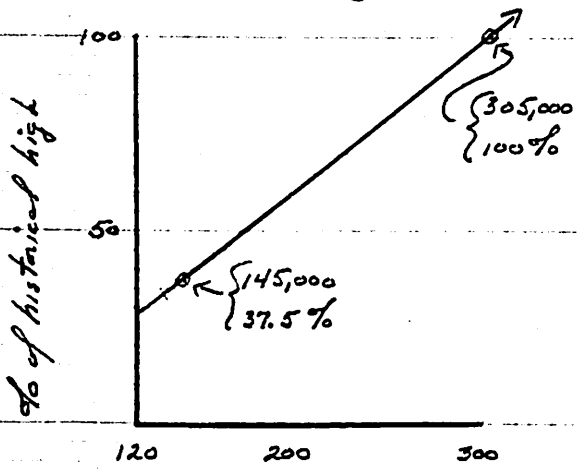
Lower point x = mid-point of PSC range under "Low" column

y = mid-point of "Low Stock Status" bracket (i.e., halfway between 25%-50%, or 37.5%)

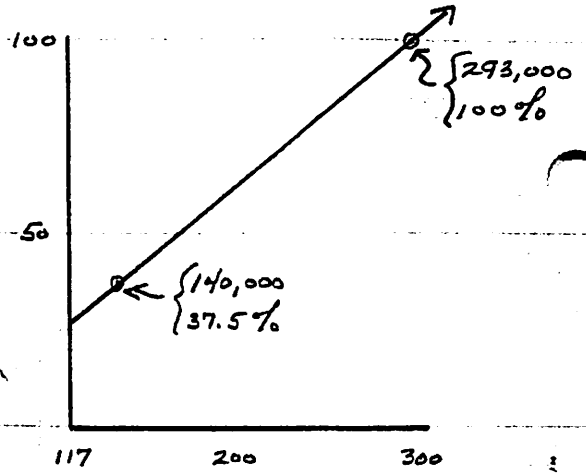
Our fourth reservation (which also applies to Alternatives 2 and 3) has to do with the 160 W - 162 W year-round closure to flounder fishing. We do not object to the intent of the closure but question whether such a rigid provision is the best way -- both for crab protection and flounder utilization -- to achieve the intended result. Application of only the Zone 1 king crab and bairdi PSC limits should accomplish the same thing without running the risk of anomolous crab distributions in which abundance centers shift away from the closed area and into the open portion of Zone 1. Should that occur, the regulations themselves would force the flounder fleets to operate in areas of high crab abundance and prevent them from operating in an area of lower abundance. With only the PSC limit applying, in order for the flounder fishery to maximize its catch it would have the burden of determining in situ, areas of highest crab abundance wherever they may be and avoiding them.

Our fifth concern regarding Alternative 4 is its proposed restriction on the DAH cod fishery. This needs to be reviewed in light of information developed by the researchers on board the vessels participating in the Port

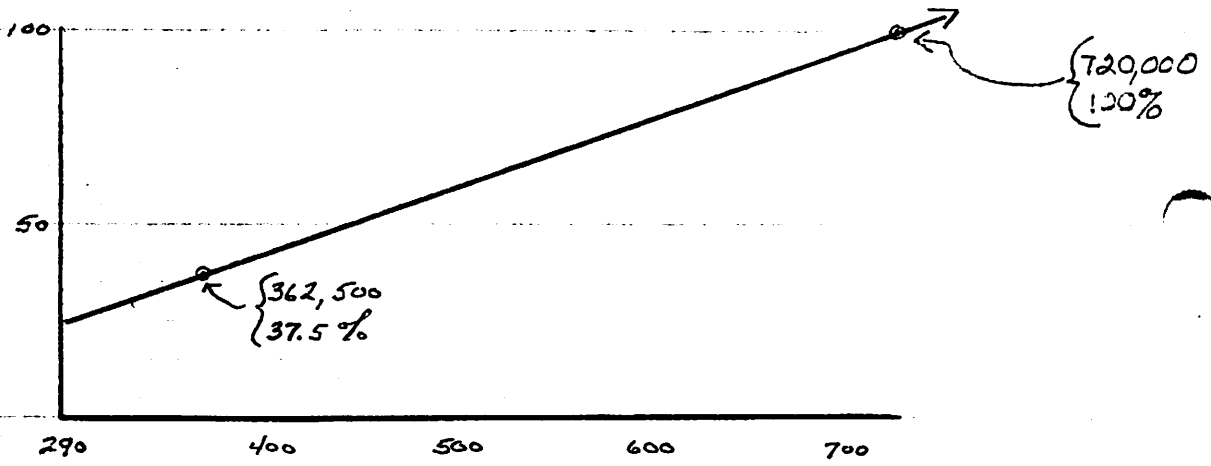
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Red king crab, Zone 1 (1000's)



C. bairdi, Zone 1 (1000's)



C. bairdi, Zone 2 (1000's)

Figure 1-- OAH Foundation Fisheries PSC Limits

Moller fishery this summer. We believe that the information which has been developed demonstrated conclusively that there is not a need for strict limitations on the trawl fishing in this area. The processed information of the researchers indicates a red king crab bycatch rate of .4 crab per ton. Using a mortality rate of 50%, a 0.2 crab per ton mortality is the best and most recent information from this research project.

Given that the Council designated two crab per ton of groundfish acceptable in the area, we believe that the research project has provided information which should alleviate the fears of the Council. Alternative 4 suggests that the crab harvest from this area should be 12,000. Following the principle that a groundfish harvest may be designated which would achieve this amount of bycatch, the research information suggests that the appropriate groundfish tonnage would be 60,000 metric tons. Since this amount is beyond the needs of the DAH trawl fishery for cod in this area, we suggest that the trawl fishery simply be given a season and left alone.

If the Council considers that it is necessary for there to be a limitation of some sort on the fishery, we recommend a groundfish tonnage limitation of 60,000 without a designated season.

Our final reservation is based on the concern that the Council may try to "fine-tune" the described Alternative 4 (a la the "Collingsworth amendment" to the crab/flounder motion during the January 1986 meeting). From our perspective, Alternative 4, even as modified above, is not optimum but can be made to represent a reasonable compromise between resource and various user concerns that we are able to both accept and support in order to put behind us many of the past conflicts and achieve a degree of management stability. Too often, however, the fine-tuning process focuses on a series of individual issues, each in isolation, with the end result bearing little overall relationship to the original.

Alternative 5 is unacceptable because, as described on pages 43-44 of the EA/RIR, it would seriously constrain the domestic trawl fisheries while providing less protection to the prohibited species of concern than Alternatives 2 or 4.

In summary, we support Alternative 4, as we propose it be modified, for the long term. We can also support Alternative 2 as modified for the short term. Alternative 1 is a non-starter; Alternatives 3 and 5 are unacceptable.

Management Problem 2 -- Inadequate Catch Reporting Requirements in DAP Fisheries.

We support Alternative 2. We agree that catch reporting in a reasonable and timely manner is essential for proper management.

Management Problem 3 -- Inadequate Authority for In-season Reapportionment Among Domestic Users.

We support Alternative 2. We agree that in-season field authority, which permits full domestic utilization, should be clearly enunciated.

Management Problem 4 -- Inadequate Authority to Manage In-season Biological Emergencies.

We support Alternative 1 which really is not the status quo. The emergency rule for 1986 and its permanent implementation by regulatory amendment which prohibits retention/targeting of individual species whose TAC's have been reached, and the proposed amendment dealing with crab and halibut by-catches (Management Problem 1) should go a long way to mitigating this problem. We have no basic objection to the management entity having the wherewithal to deal with biological emergencies but we believe that between the FMP as it is being restructured and the Secretary's emergency authority under MFCMA sufficient wherewithal already exists. Further, we cannot envision a groundfish resource emergency of such magnitude and such rapid development that the extraordinary field authority proposed in Alternative 2 would be required.

On the other hand, if the emergency authority contained in Alternative 2 was to be vested with the Regional Director, the door would be open to the doomsayers, however motivated, to demand in-season management gerrymanders that would require at least some understaffed Regional Office appraisal and response, and a trickle-down requirement on potentially affected users to prepare counterarguments. As an industry, we already spend an inordinant amount of time dealing with the Council process, ad hoc management studies, notices of proposed rulemaking, and legislative initiatives; we cannot support further license to deal with non-problems.

A final summary of our views regarding proposed Amendment 10:

- Management Problem 1 -- we support Alternative 4 (as modified).
- Management Problem 2 -- we support Alternative 2.
- Management Problem 3 -- we support Alternative 2.
- Management Problem 4 -- we support Alternative 1.

We appreciate the opportunity to comment on this most important Amendment package and wish to applaud the BS/AI Groundfish Plan Team for preparing a comprehensive and

understandable document. Many of the undersigned will attend the September Council meeting to clarify/embellish upon these comments, if necessary, and to work with the Council family in improving an already excellent Fishery Management Plan.

Sincerely,

R Barry Fisher (SI)
Midwater Trawlers Cooperative

Thorn Smith
N.P.F.V.O.A.

Per Boek
Northern Deep Sea Fisheries

M Stevens
Profish International

W. H. Hankins
M.R.C.I.

[Signature]
Westward Trawlers

Edward J. Evans
Alaska Factory Trawler Assoc.

Al Burch (et al)
Alaska Draggers Assoc.

GARVEY, SCHUBERT, ADAMS & BARER

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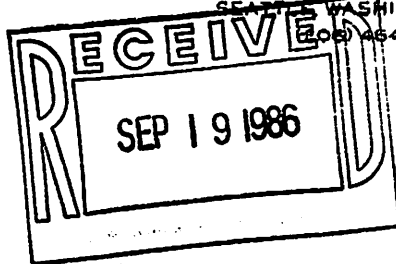
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September 19, 1986

Mr. Jim H. Branson
Executive Director
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

Re: Proposed Amendment 10 to the Bering Sea/
Aleutian Islands Groundfish Plan

Dear Jim:

We are attorneys for the Japan Deep Sea Trawlers Association and the Hokuten Trawlers Association and are writing to you to express the comments of the Japanese trawl industry with respect to proposed Amendment 10 to the Bering Sea groundfish plan. We will limit our comments to Problem 1: Inadequate control of bycatch of crabs and halibut in DAH fisheries.

- I. The amendment package provides no basis in data or analysis for imposing additional bycatch restrictions on the foreign flatfish fisheries.

Problem 1 clearly states that the amendment is concerned exclusively with regulation of bycatch of crab and halibut in the uncontrolled DAH fisheries. The analysis of the problem in the EA/RIR is limited to this issue. Even though there is no data or analysis of the bycatch issue with respect to the foreign fisheries, alternatives 2, 3 and 4 under Problem 1 would nevertheless impose highly restrictive regulations on the foreign flatfish fisheries. These measures would be imposed in addition to the extensive existing regulations that control the bycatch of halibut and crab in the foreign groundfish fisheries. The EA/RIR does not provide any data or analysis that demonstrates that such additional restrictions are necessary. Absent such data and an analysis of the impacts of the proposed restrictions as compared to the available alternatives, there is no basis for imposing any additional bycatch restrictions on the foreign directed fisheries.

II. Additional measures to control the bycatch of crab and halibut in the foreign flatfish fisheries should be imposed through separate PSC limits, rather than through closures when the joint venture PSC limit is reached.

If the foreign flatfish fisheries are to be regulated under Amendment 10, then the Council should adopt an approach similar to the approach the Council took with respect to bairdi. The Council should set separate PSC limits for the foreign flatfish fisheries for each bycatch species and closure zone.

These foreign PSC limits should be computed and allocated as follows:

1. The bycatch rates for each species and the procedure for computing the appropriate bycatch limit for each closure zone should be the same as has been specified for the joint venture fisheries. This would ensure that the bycatch amounts allocated to the foreign fisheries would be at least as restrictive as the bycatch limits imposed on the joint venture fisheries.

2. Bycatch limits should be allocated between foreign nations in direct proportion to the TALFF of flatfish allocated to each foreign nation. The flatfish fishery of each nation would be closed only when that nation reached its own bycatch limit. The bycatch of one nation would not affect the directed flatfish fishery of any other foreign nation. This is the approach adopted by the Council with respect to Bering Sea Amendment 3.

3. Bycatch limits should be computed against final TALFF. Since a large proportion of TALFF is allocated after the beginning of the year from reserve or through reapportionment from DAH, initial TALFF is usually significantly lower than the final TALFF for flatfish. Consequently, in order to provide a PSC limit that is reasonably related to the directed flatfish allocation to foreign nations, PSC limits must be computed against final TALFF. This may be accomplished either by estimating final TALFF at the beginning of the fishing year, or by distributing additional PSC amounts as additional amounts of TALFF are allocated during the fishing year.

The allocation of separate PSC limits to the foreign fisheries is a much more fair and reasonable approach to bycatch management than the options proposed under alternatives 2, 3 and 4, which would not regulate the foreign fishery directly, but would close the foreign flatfish fishery whenever any zone is closed due to the bycatch taken in the joint venture flatfish fisheries. This procedure would violate the Council's existing policy that one segment of the fishing industry should not be closed down by the actions of another segment. Furthermore,

such closures are far less likely to actually reduce bycatch of crab and halibut in the areas of concern than the direct regulation of the bycatch of these species through separate PSC limits. The Council should therefore abandon this approach in favor of the more reasonable option of setting a separate PSC for the foreign fishery.

- A. Closure of the foreign flatfish fisheries when the joint venture bycatch limit is reached violates the Council's existing policy that one segment of the fishing industry should not be closed due to the actions of another segment.

One of the Council's primary policies has been that the actions of one segment of the fishing industry should not be permitted to close down other unrelated operations or fisheries. To allow the actions of one segment to close down everybody else is obviously unfair. Further, such an action sets a precedent that would be very dangerous to the joint venture fisheries. Abandoning existing Council policy as part of Amendment 10, which is the first step in regulating bycatch in the domestic fisheries, would seriously undermine that policy for the future. The Council should not do so. PSC limits could easily be implemented for the foreign flatfish fisheries and are obviously a fairer and more appropriate way to regulate the foreign fishery.

- B. The proposed closures would not be as effective as separate PSC limits to control the foreign bycatch of crab and halibut.

Separate PSC limits for the foreign fishery would not only be fairer and more consistent with the Council's prior policy, they would also be more effective in controlling foreign bycatch. Prior to the closure of any zone due to joint venture bycatch, the bycatch limits for crab and halibut imposed by Amendment 3 would be the only constraint on the foreign flatfish fishery. Since the Amendment 3 PSC limits are much less restrictive than those proposed for joint ventures in the closure zones, these PSC limits would not significantly limit foreign bycatch in these zones. Thus, the foreign bycatch in any of the closure zones would be essentially uncontrolled until the joint venture bycatch limit is reached. As a result, the actual foreign bycatch in a closure zone could be greater than the PSC limit set for the joint venture fisheries. The only reasonable way to prevent such a result is to set specific bycatch limits for the foreign flatfish fisheries for each closure zone. This is the only way to ensure that the foreign bycatch in each zone will not exceed whatever amount the Council determines is reasonable.

III. Conclusion.

There is no justification provided in the amendment package for imposing regulations in addition to the existing Amendment 3 regulations to restrict the bycatch of halibut and crab in the foreign directed fisheries. Foreign incidental catches have been low and are decreasing. While we believe that additional regulation is unnecessary, if the foreign fisheries are to be regulated under this amendment, then foreign PSC limits for each bycatch species for each zone should be established. The proposals in Amendment 10 to close the foreign directed flatfish fisheries when the joint venture bycatch limit for these species is taken are inconsistent with existing Council policy and would, if adopted, constitute a dangerous precedent for the joint venture fisheries. Furthermore, such closures would be less effective in controlling the bycatch of halibut and crab than direct regulation through separate PSC limits. For these reasons, the Council should set separate PSC limits for the foreign fisheries.

Thank you for this opportunity to submit our views.

Very truly yours,

GARVEY, SCHUBERT, ADAMS & BARER

By


Stephen B. Johnson

By


Steven M. Dickinson

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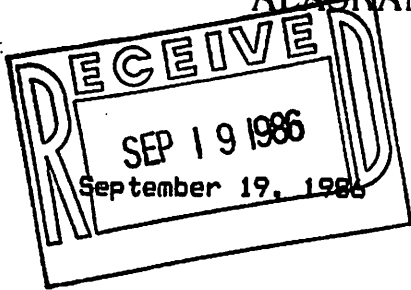
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Re: Amendment 10 to the Bering Sea/Aleutian Islands Groundfish FMP

Dear Council Members, AP Members, SSC Members & Staff:

The following are Alaskan Joint Venture Fisheries' (AJVF) comments on the four management problems addressed under proposed Amendment 10 of the Bering Sea/Aleutian Islands fishery management plan.

Management Problem #1: Inadequate Control of Bycatches of Crabs and Halibut in DAH Fisheries

While Alternative 1, the status quo prior to the emergency rule, is an attractive option in the longterm, we realize that more time is needed in order to determine both the condition of crab stocks as well as the benefits of the closures on crab. Therefore, AJVF basically supports the crab bycatch portion of Alternative 4, as it seems to provide the most flexibility for changing stock conditions.

Halibut bycatch restrictions, regardless of the alternative chosen, should not be included in any alternative. Halibut stocks are in a healthy condition with halibut fishermen enjoying the largest directed fisheries in years. Halibut bycatch rates by joint venture fishermen have been decreasing steadily, even while halibut stocks have increased. Zones 1 and 2 will close when crab caps are reached; thus affording protection for halibut. It doesn't make sense though for halibut caps to shut down an area while halibut stocks are flourishing.

There is always a danger in defining closed areas and zones, as areas of importance may change over time. With regard to Alternative 4, AJVF feels that it is important for zones and closures be viewed as temporary solutions, to be in effect for two years. At that time, the status of crab and an assessment of areas of importance can be made, and appropriate management measures implemented.

The crab bycatch rates as outlined in Alternative 4 seem reasonable and should provide maximum crab protection; they also appear flexible enough to allow for changing stock conditions.

Alternative 2 is unacceptable because of the halibut caps. Alternative 5 is unacceptable.

Management Problem #2: Catch Reporting Requirements

AJVF supports Alternative 2 requiring weekly reports from mothership vessels and catcher/processors regardless of length of time at sea.

The Council and NMFS recognize the need for accurate accounting of fish harvest. In order for this to occur, (1) fish counts must be reported in a timely manner, without the risk of double or under counting; and (2) fish taken on board need to be accurately counted. The latter can only be accomplished by a certified onboard observer.

Thus AJVF recommends that weekly catch reporting as well as an official onboard observer for catch recording, paid for by vessel owner, be a requirement of the FCZ licensing process.

Management Problem #3: Reapportionment of DAH

AJVF supports Alternative 2, "Explicit authorization to reapportion," so that policy on DAH reapportionment will be clearly stated within the FMP.

Management Problem #4: Inseason Management Authority

AJVF supports neither alternative. While the status quo is inadequate, Alternative 1 gives the Regional Director too much discretionary authority. AJVF recommends that the Regional Director's scope of authority not be broadened, but remain the status quo. However, we fully support that any decisions he make be on the basis of the most current biological information.

Thank you very much for the opportunity to comment on the amendment package.

Sincerely,



Annie Burnham
Vice President

PATTON, BOGGS & BLOW

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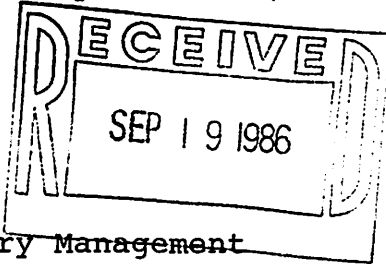
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September 18, 1986



WRITERS DIRECT DIAL

BY FEDERAL EXPRESS

Mr. Jim H. Branson
Executive Director
North Pacific Fishery Management
Council
411 West Fourth Avenue
Suite 2D
Anchorage, Alaska 99510

Dear Jim:

Enclosed are legal comments provided on behalf of the Alaska Crab Coalition ("ACC") concerning the proposed Amendment No. 10 to the Bering Sea/Aleutian Islands Groundfish Management Plan. Would you please append these comments to the submission provided under separate cover by the ACC.

Thank you very much for your cooperation.

Sincerely,

A handwritten signature in dark ink, appearing to read "T.G. Kronmiller". The signature is fluid and cursive.

Theodore G. Kronmiller

TGK:bw

Enclosure

OF COUNSEL

WILLIAM D. HATHAWAY
ALEXANDER M. LANKLER
PENELOPE S. FARTHING
THEODORE G. KRONMILLER
STEPHEN H. LACHTER
JOHN F. JONAS
JOHN S. WHITE

* Not admitted in DC.

LEGAL ISSUES

As in the case of any amendment to a fishery management plan ("FMP"), the proposed Amendment No. 10 to the Bering Sea/Aleutian Islands Groundfish Management Plan ("Bering Sea Plan") is subject to certain procedural and substantive legal requirements. These are found principally in the Magnuson Fishery Conservation and Management Act ("Act") (16 U.S.C. §1801 et seq.), and are explained in Guidelines For Fishery Management Plans ("Guidelines"), which appear in the Code of Federal Regulations (50 C.F.R. §602).

Among the substantive legal requirements, the National Standards For Fishery Conservation and Management ("National Standards") set forth in the Act are of critical importance. (16 U.S.C. §1851(a).) Any amendment and any implementing regulations must be consistent with the National Standards (Id.). In the case of the crab bycatch management measures in the proposed Amendment No. 10,^{1/} at least five of the seven National Standards are relevant.

^{1/} All references to the proposed Amendment No. 10 are intended to refer solely to the crab bycatch management measures therein.

1. National Standard 1 provides, "Conservation and management measures shall prevent over-fishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry." (16 U.S.C. §1851(a)(1)).^{2/}

Under the Act, ". . .the basic goal of management is to protect the productivity of fish stocks". (S. Rpt. No. 94-416, 1975, reprinted in A Legislative History of the Fishery Conservation and Management Act of 1976 ("Legislative History"), Committee on Commerce (1976), at 685; See Joint Explanatory Statement of the Committee on Conference, Legislative History, at 75.) Any FMP should thus be calculated to serve conservation, first and foremost. Where any fish stock is depressed or depleted, and an FMP or emergency rule fails to provide an adequate management response, an FMP amendment is in order.

This is precisely the situation that prevails with respect to C. bairdi and red king crab in the Bering Sea, where the productivity of the stocks is at extremely low levels and must be protected against further impacts from bottom trawling. Such protection can be achieved only by an amendment to the Bering Sea Plan to ensure major reductions of crab mortality in the bottomfish fisheries, particularly where immature crabs and nursery areas are involved. ("Draft Environmental Assessment and

^{2/} Consistent with National Standard 1, a stated purpose of the Act is, "to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery." (16 U.S.C. §1801(b)(4).)

Regulatory Impact Review/Initial Regulatory Flexibility Analysis for Amendment No. 10 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area", August 1986, at 11 ("DEA/RIR/IRFA").)

The Act provides:

The term 'optimum', with respect to yield from a fishery means the amount of fish (A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and (B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor. (16 U.S.C. §1802(18).)

Amendment of an FMP is an appropriate, and often necessary, means to assure the greatest overall benefit to the Nation from a fishery. Taking into account the depressed condition of C. bairdi and red king crab stocks and the absence of adequate conservation measures under the Bering Sea Plan (upon expiration of the prevailing emergency rule (51 F.R. 20652, June 6, 1986)), an amendment is needed to provide the greatest overall benefit to the Nation from the fisheries of the Bering Sea. Under the status quo, crab mortality in the bottom trawl fisheries results in substantial economic loss. (DEA/RIR/IRFA, at 32-46.) That loss would be very greatly reduced by an amendment which would close important areas and limit the number of crabs taken as bycatch in the groundfish fisheries.

Among the available management alternatives, the one providing the greatest overall benefit to the Nation would be

that which assures the greatest protection to the crab resource from trawling operations, while only modestly (if at all) affecting costs and total revenues in the bottomfish fisheries. Indeed, history has shown that measures to conserve crab may be devised in a manner which permits growth in the bottomfish harvest. From 1985 to 1986, with the emergency rule in effect, the bottom trawl catch increased in volume by 64,000 mt, and in ex vessel revenue by \$11.9 million. (DEA/RIR/IRFA, at 39.)

Trawl interests would doubtless cite certain "Findings" and "Purposes" of the Act relating to bottomfish development off Alaska as a basis for resisting crab conservation restrictions on bottom trawling operations in the Bering Sea. However, it is important to note that the pertinent "Finding", (16 U.S.C. §1801(a)(7)) and "Purpose" (16 U.S.C. §1801(b)(6)) in no way excuse a failure to provide for effective conservation of the crab stocks. Rather, key "Findings" and "Purposes" of the Act point to the central importance of conservation. (16 U.S.C. §1801(a)(6), (b)(1).) More importantly, operative provisions and the legislative history of the Act reflect the fact that conservation is the fundamental purpose of the national fishery management program. (16 U.S.C. §§ 1851(a)(1), §1853(a)(1)(A); See Legislative History, at 685.)

2. National Standard 2 provides, "Conservation and management measures shall be based upon the best scientific information available." (16 U.S.C. §1851(a)(2).)^{3/}

National Standard 2 recognizes that scientific information reflects changing circumstances in dynamic fisheries, and improves over time. In responding to these resource changes, conservation should take advantage of improvements in scientific information -- and should not await them. The requirement of National Standard 2 is simply that the best available scientific information be utilized, as management measures are devised to respond to the conservation needs of the fisheries.

The best available scientific evidence relating to C. bairdi and red king crab stocks in the Bering Sea demonstrates that they are depressed. (DEA/RIR/IFRA, at 11.) There is overwhelming evidence that the Bering Sea Plan is inadequate to meet the basic conservation goals of the Act. Scientific information provided to the Council and the National Marine Fisheries Service ("NMFS") by the Alaska Crab Coalition ("A.C.C.") confirms the nature and extent of the problem. Recent studies by NMFS similarly point to the depleted condition of the resource, and to the necessity of improved conservation measures.

Of course, some in the trawl fleet might be tempted to argue that a management response by amendment should await

^{3/} A stated policy of the Congress in the Act is, "to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available. . . ." (16 U.S.C. §1801(c)(3).)

further scientific studies. By way of reply, it must be emphasized that the authority -- and the requirement -- for amendment of an FMP are based on the best scientific information that is "available". (16 U.S.C. §1851(a)(2).) As stated in the Guidelines, "FMP's should be amended on a timely basis, as new information indicates a necessity for change in objectives or management measures". (50 C.F.R. §602.12(d).) It is appropriate and necessary, therefore, to amend the Bering Sea Plan without delay to protect the crab against continued destruction by bottom trawlers.

3. National Standard 5 provides, "Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose."
(16 U.S.C. § 1851(a)(5).)

An essential factor of efficiency, within the meaning of the Act, is the avoidance of waste. Not only resource waste, but also economic waste, should be avoided. (Legislative History, at 686.) Where it is practicable to reduce waste in a fishery, an amendment to an FMP is appropriate.

In the Bering Sea groundfish fishery, the wasteful impact of bottom trawling on crab is well established. (DEA/RIR/IRFA, at 32-47.) Moreover, the economic waste which attends the biological destruction of the depressed crab resource cannot be disputed. (Id.) The proposed Amendment No. 10 would reduce waste of the crab resource and, thus, reduce economic waste in the Bering Sea fisheries.

The Guidelines provide that management measures aimed at efficiency should not simply redistribute gains and burdens without an increase in efficiency. (50 C.F.R. §602.15(b)(2)(i).) The proposed Amendment No. 10 to the Bering Sea Plan would, indeed, have the effect of redistributing gains and burdens among crab fishermen and bottom trawl fishermen. Trawl fishermen would have to submit to restrictions on their operations, and perhaps, would have to accept some increased costs. Crab fishermen could look forward to improved resource conditions and increased revenues, as conservation measures took hold. It is indisputable that, heretofore, the conservation burden has been borne almost exclusively by the crab fishermen and that this inequity must be rectified. It is worth repeating that, despite increased costs, the bottomfish harvest and revenues to bottom trawlers might well actually continue to increase under the amended Bering Sea Plan. In the final analysis, biological and economic waste would be reduced, and efficiency, within the meaning of the Act, would be increased. (DEA/RIR/RIFA, at 47.)

Finally, National Standard 5 prohibits management measures which have economic allocation as their sole purpose. In light of the depressed state of the C. bairdi and red king crab stocks in the Bering Sea, alternatives for the proposed Amendment No. 10 which would reduce the impact of bottom trawling on the crab would serve an important conservation purpose. Consequently, management measures contemplated under the proposed Amendment No. 10 would not have economic allocation as their sole purpose.

For the foregoing reasons, the proposed Amendment No.10 is fully consistent with National Standard 5.

4. National Standard 6 provides, "Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches." (16 U.S.C. § 1851(a)(b).)

The Guidelines state that, "The phrase 'conservation and management' implies the wise use of fishery resources through a management regime that includes some protection against... uncertainties." (50 C.F.R. 602.16(b).) The Guidelines also state that, "To the extent practicable, FMP's should provide a suitable buffer in favor of conservation. Allowances for uncertainties should be factored into the various elements of an FMP". (50 C.F.R. § 602.16(c)(2).) The Bering Sea Plan does not currently provide adequate mechanisms for addressing uncertainties in the groundfish fishery, and it by no means provides a buffer in favor of conservation, although protective measures are warranted by the depleted condition of the crab resource. The promulgation of the emergency rule clearly reflects the relative unresponsiveness of the current management regime to the crab resource crisis. Specifically, the Bering Sea Plan does not address changes in fishing practices which have occurred over the past several years, and which are continuing as the groundfish fisheries develop. These changes have had, and will continue to have, impacts on the crab resource. The proposed Amendment No. 10, however, provides important alternatives for protection of the depressed crab resource under

the dynamic and, therefore, uncertain conditions of the groundfish fisheries. (See 50 C.F.R. 620.16(c)(1).)

5. National Standard 7 provides, "Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication." (16 U.S.C. §1851(a)(7).)

The Act establishes that the obligation to minimize costs and avoid unnecessary duplication is circumscribed by considerations of practicability. Therefore, if it is impracticable to keep costs to a minimum, a management measure may, nonetheless, be deemed consistent with National Standard 7.

In the case of the proposed Amendment No. 10, the various alternatives to the status quo might well result in additional, modest costs to the bottom trawl fleet (although, as noted, revenues may also increase steeply). It is probably not practicable to provide for adequate crab conservation measures, without some additional expense to the trawlers. In the landmark case, Alaska Factory Trawler Association, et al. v. Malcomb Baldridge (sic) and Fishing Vessel Owners' Association, et al., Civ. Action No. C85-2279V (W.D. Wash) (Order, August 28, 1986) ("Alaska Factory Trawlers"), the Court stated with reference to an important study supporting Amendment No. 14 to the Gulf of Alaska Groundfish Fishery Management Plan, "The study also provided a basis for concluding that the amendment was beneficial to the nation as a whole despite the fact that certain interest groups might be harmed". The Guidelines make clear that "management measures may shift costs from . . . one part of the private sector to another. . . ." (50 C.F.R. 602.17(d)(1).)

Similarly, the Guidelines state that "the relative distribution of gains may change as a result of instituting different sets of alternatives, as may the specific type of gain." (50 C.F.R. 602.17(d)(2).) Therefore, increased costs or other harm to the bottom trawlers, and new gains to the crab fishermen as a result of conservation measures which are "beneficial to the nation as a whole" would not be impermissible under the Act.

Finally, management measures need not be the least burdensome in order to pass statutory muster. The Court, in Alaska Factory Trawlers, specifically rejected a contrary argument.

6. The proposed Amendment No. 10 provides for management measures which are authorized by the Act.

The proposed Amendment No. 10 principally involves area closures and bycatch limits, and may include observer requirements. The Act states that an FMP may,

designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear
(16 U.S.C. §1853(b)(2).)

The Act also states that an FMP may,

establish specified limitations on the catch of fish (based on area, species, size, number, weight, sex, incidental catch, total biomass, or other factors), which are necessary and appropriate for the conservation and management of the fishery.
. . . .
(16 U.S.C. §1853(b)(3).)

Further, the Act states that an FMP may,

prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels. . . .
(16 U.S.C. §1853(b)(4).)

Finally, the Act provides that an FMP may,

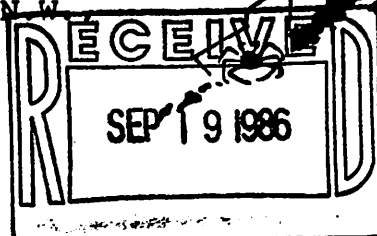
prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.
(16 U.S.C. §1853(b)(8).)

Plainly, the foregoing statutory provisions provide ample authority for the sorts of conservation and management measures contemplated in the proposed Amendment No. 10. It should be added that the Act requires FMP's to contain conservation and management measures "necessary and appropriate for the conservation and management of the fishery". (16 U.S.C. §1853 (a)(1)(A).) Even more stringent conservation measures than those described in the alternatives developed for Amendment No. 10 would be justified in light of the crab resource crisis, and would find full support in the pertinent provisions of the Act.

The issue of observer requirements is currently under study by NMFS. Detailed comments concerning the statutory basis for such requirements will be submitted following a review of the NMFS' study on that subject. At this point in time, it is sufficient to refer to the data collection provision of the Act. (16 U.S.C. § 1853(e).)

Alaska Crab Coalition (A.C.C.)

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DATE: September 16, 1986

TO: James O. Campbell, Chairman
North Pacific Fishery Management Council

FROM: ALASKA CRAB COALITION
Arni Thomson
Executive Secretary

RE: RECOMMENDATIONS FOR AMENDMENT 10 TO THE FISHERY MANAGEMENT
PLAN FOR THE GROUND FISH FISHERY OF THE BERING SEA AND ALEUTIAN
ISLANDS AREA

BACKGROUND OF THE ALASKA CRAB COALITION

The Alaska Crab Coalition is a 100% American owned fishing organization, composed of owners, captains and crews of vessels and companies that are harvesting and processing tanner and king crab stocks in the Eastern Bering Sea and Gulf of Alaska. The ACC began a year ago as a volunteer "Coalition of Concerned Crab Fishermen", to seek legislative protection for depressed stocks of king and tanner crab, which were being severely impacted in the Eastern Bering by "bottom trawling". Out of initial regulatory success in January of 1986, developed realization of the need for creating a new organization to represent the crab industry in Alaska. Now in addition to seeking solutions to the conservation problems facing the crab industry, the ACC is seeking new opportunities for

the fishermen and processors. The association is now corporately chartered in the States of Washington, Alaska and Oregon, with members residing in all of those States.

The membership presently includes the owners of 50 crab vessels, captains, deck men and key industry suppliers. It is now the major organization representing the Bering Sea crab fleet. The vessels represent an investment in excess of \$100 million dollars. In 1986, the Bering Sea crab fleet will deliver over \$110 million dollars worth of product (ex-vessel) to floating and shorebased processors in the State of Alaska. The vessels are manned and supported by over 250 men and women from Alaska Washington and Oregon.

INTRODUCTORY REMARKS:

Before commenting on Amendment 10, it is appropriate that the ACC clarify its position on the management of tanner and king crab resources. Recently, the association submitted a position paper to the NPFMC, supporting State of Alaska management of the total exploitation of Bering Sea crab stocks, under a Joint Statement of Principles with the NPFMC. In making this recommendation, the ACC requested that the Board of Fisheries be given the authority to manage not just the directed pot fishery, but also the bycatch associated with trawl fisheries.

To achieve this goal, the ACC sees the need to endorse the Alaska Department of Fish and Game's "Bottom Trawl Fisheries Management Plan" which requires onboard observers. This program has been devised to monitor bycatch of depressed crab stocks and fully utilized halibut stocks. It is also the purpose of the plan to gather information about the quantitative effects of bottom trawling to the stocks.

In recognition of the capacity for bottom trawl gear to inflict unacceptable mortalities on nondirected species of crab and halibut, the Board of Fisheries has established "pelagic trawl zones" that are closed seasonally or annually to non-pelagic trawl gear. The ACC also endorses the concept of pelagic trawl zones.

In contrast to the Coalition's support of the Board of Fisheries policy, the ACC is critical of the NMFS failure to take the lead in seeking solutions to the conservation crisis facing the Bering Sea crab stocks.

The extent of the crisis facing the bairdi and king crab stocks is well documented in the minutes of the NPFMC hearings of the past year. The NMFS annual Bering Sea crab surveys of the past six years, also document the problem as does the Amendment 10, RIR (August 1986, pp. 22, 23). The abundance of *C. bairdi* has declined to its lowest level since 1975.

Numbers of legal sized male animals are estimated to have decreased from about 210 million in 1975 to about 4.4 million in 1985, the lowest historical record for these estimates (Table 2.6, RIR, p. 23). Preliminary analysis of the 1986 NMFS survey indicate an additional 30% decline in legal harvestable males, although there has been no directed fishery in 1986.

The RIR also documents the low abundance of legal and sublegal red king crab in Table 2.7, p. 23. The estimated numbers of legal male red king crab dropped 78% from 1980 through 1985, from 36.1 million to 2.5 million individuals. This decline coincides with the period the Pot Sanctuary has been opened to trawling. Sublegal male animals have experienced an estimated 58% decrease in abundance during the same time period. The estimated abundance of female animals also is at a record low. Mature female crabs declined from about 17.6 million to 6.8 million from 1984 to 1985. This estimated abundance is substantially below the range of 20 million to 40 million fecund females considered optimal for future fishery production.

Commercial catches of red king crab reflect the declining abundance estimates. In 1980, 130 million pounds were landed. The harvest

decreased to 34 million pounds in 1982. In 1983, the Alaska Dept. of Fish & Game did not open the commercial red king crab season in Bristol Bay due to low abundance estimates. The fishery was reopened in 1984 and landed 4.2 million pounds that year and 4.1 million pounds in 1985. Data from p.23 of the RIR show that the abundance of prerecruit and legal males decreased by 17% and 14% respectively from 1984 to 1985. The 1985 legal male abundance was the second lowest since 1969.

The decline in red king crab stocks has been occurring contrary to cyclical expectations for an increase in abundance. (NMFS, FBVPA population dynamics curve and Kris Poulsen & Associates, Seattle, WA) However, the Preliminary Results of the 1986 Eastern Bering Sea Crab Survey show a marked improvement in the abundance of prerecruit and legal males. Estimated abundance of legal males has increased from 2.5 million animals in 1985 to 6 million animals in 1986. A harvest of 10 million pounds is anticipated for this fall of 1986.

The improvement in stocks of king crab is coincident with 1 year of protection from bottom trawling, as provided under the Emergency Rule of 1986. Under the new regulations, observed bycatch of red king crab has been reduced to 13% (130,000 animals) of the 1985 level (1 million animals).

Referring back to the population dynamics curve, a shortfall of an estimated 15 million legal males have been lost to the king crab fishery since 1983. (Kris Poulsen and Associates) The bulk of this loss is attributed to NMFS observed impact from trawling and the unobserved mortality to crabs encountered by trawl gear, but not caught in the nets. (Wes Johnsen Report to NPFMC, September 24, 1985) The ratio of unobserved mortality to observed bycatch could be as high as 15 to 1. (Dr. Jerry Reeves and Dr. Joseph Terry, NAFC/NMFS Quarterly Report, March 1986)

Conservatively estimated, a loss of 15 million males to the non-directed trawl fishery, represents a loss of revenue since 1983 to the directed fishery of \$240 million dollars. This is based on an average weight of 5 pounds and an average price of \$3.00 per pound for legal males. This is conservative, in light of the predicted price of \$4.00 per pound for the 1986 Bristol Bay season. (Kris Poulsen and Associates)

In concluding these introductory remarks, the ACC hopes the additional scientific information provided with this comment will convince the NMFS to depart from deference to the consolidated trawl fisheries lobby. The record of management experience in the Northeast Atlantic

and in other countries provides the mechanisms and managerial practices, and leaves no excuse for the continued failure of fisheries managers to deal with the conservation/^{crisis}in the crab fisheries of the Eastern Bering Sea.

Particular reference is made here to two important fisheries management studies relevant to the Bering Sea crisis: (1) Fishery Management Techniques in the Northeast Atlantic, P.T. Hagen & O.A. Mathisen, School of Fisheries and Science, University of Alaska, Juneau, 1984; and (2) The Effects of Trawling on Target and Non-Target Species, Susan Blanding, Seattle, WA 1986 (unpublished).

Although the criticism of the Alaska Crab Coalition is severe, it is directly related to the severe condition of the crab resources of the Eastern Bering Sea. The depressed condition of the stocks requires strong measures to insure protection and rebuilding.

Having considered this background information and given the wide experience of the members in Bering Sea crab fisheries, the ACC makes the following recommendations for controlling the bycatch of crab and halibut in the trawl fisheries of the Eastern Bering Sea.

These recommendations represent a combination of the alternatives

available along with additional measures deemed necessary to address the conservation problem.

MANAGEMENT RECOMMENDATIONS:

Total Closure: The area between 160° and 165° W longitude and (to all commercial trawling) south of 58° N latitude to the Alaska Peninsula, to encompass the traditional habitat of now depressed king and bairdi crab stocks.

Partial Closures: It is recommended that Zone 2 as defined in the Emergency Rule of 1986, be redefined with a westward boundary at 172° W longitude, south of 58° N latitude to the Aleutian Islands and bounded on the east by the 165° W longitude line. The westward boundary is consistent with ADF & G 1986 Non-Pelagic Trawl Gear Restrictions (5AAC 39.163 and .164) requiring onboard observers to be present when non-pelagic trawl gear is being operated in Bering Sea waters east of 172° . It is further recommended for this redefined Zone 2, that upon the attainment of one or more PSC limits on red or blue king crab, or bairdi crab, that this area revert to a "pelagic trawl zone."

In regards to the protection of halibut resources in the Eastern Bering Sea, the ACC endorses the establishment of a Halibut Protection Zone, with boundaries as defined by the IPHC. Attainment of

an overall Bering Sea halibut PSC consistent with that level approved by the NPFMC in 1986 would result in closure of the area to trawling.

PSC Limits: It is recommended that PSC limits be fixed at a level not to exceed that passed by the NPFMC in the Emergency Rule of 1986. These limits should be applied to the area east of 172°W longitude and south of 58°N latitude, and bounded on the south by the Aleutian Islands and the Alaska Peninsula. It is further recommended that PSC limits apply to all non-pelagic trawl fisheries in this area, foreign, j/v and domestic, in recognition of the problem not being restricted to a particular fishery, but rests with the methodology.

Cod Exemption Zone: It is recommended that no cod exemption zone be established between 160° and 165°W longitude, landward of the 25 fathom line until more conclusive data is gathered on the concentrations of small juveniles in this area. The recent experience of the unobserved large scale development of the yellowfin sole fishery in the Pot Sanctuary clearly points to the need for a major environmental impact and socio-economic impact analysis, before permitting the entrance of 20 factory trawlers (projected) to engage in an experimental fishery for rock sole.

Onboard Observer Program: Implementation of Alaska Dept. of Fish

and Game Non-Pelagic Trawl Gear Restrictions requiring onboard observers to be present when non-pelagic trawl gear is being operated in Bering Sea waters east of 172°W longitude, is recommended. After sufficient reliable data has been collected to determine times and locations where non-pelagic trawl gear can be operated without significant detrimental impact on prohibited species, such limitations can be relaxed.

The efforts of the Alaska Crab Coalition to reduce the bycatch of crab and halibut in non-pelagic trawl gear and to reduce the impact to the benthic environment, are supported by the following organizations:

United Fishermens Marketing Association	Kodiak, AK
Troll-Pac	Sitka, AK
Fishing Vessel Owners Association	Seattle, WA
Petersburg Vessel Owners Association	Petersburg, AK
Alaska Longline Fishermens Association	Sitka, AK
Alaska Trollers Association	Juneau, AK
Deep Sea Fishermens Union of the Pacific	Seattle, WA

LEGAL ISSUES

As in the case of any amendment to a fishery management plan ("FMP"), the proposed Amendment No. 10 to the Bering Sea/Aleutian Islands Groundfish Management Plan ("Bering Sea Plan") is subject to certain procedural and substantive legal requirements. These are found principally in the Magnuson Fishery Conservation and Management Act ("Act") (16 U.S.C. §1801 et seq.), and are explained in Guidelines For Fishery Management Plans ("Guidelines"), which appear in the Code of Federal Regulations (50 C.F.R. §602).

Among the substantive legal requirements, the National Standards For Fishery Conservation and Management ("National Standards") set forth in the Act are of critical importance. (16 U.S.C. §1851(a).) Any amendment and any implementing regulations must be consistent with the National Standards (Id.). In the case of the crab bycatch management measures in the proposed Amendment No. 10,^{1/} at least five of the seven National Standards are relevant.

^{1/} All references to the proposed Amendment No. 10 are intended to refer solely to the crab bycatch management measures therein.

1. National Standard 1 provides, "Conservation and management measures shall prevent over-fishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry." (16 U.S.C. §1851(a)(1)).^{2/}

Under the Act, ". . .the basic goal of management is to protect the productivity of fish stocks". (S. Rpt. No. 94-416, 1975, reprinted in A Legislative History of the Fishery Conservation and Management Act of 1976 ("Legislative History"), Committee on Commerce (1976), at 685; See Joint Explanatory Statement of the Committee on Conference, Legislative History, at 75.) Any FMP should thus be calculated to serve conservation, first and foremost. Where any fish stock is depressed or depleted, and an FMP or emergency rule fails to provide an adequate management response, an FMP amendment is in order.

This is precisely the situation that prevails with respect to C. bairdi and red king crab in the Bering Sea, where the productivity of the stocks is at extremely low levels and must be protected against further impacts from bottom trawling. Such protection can be achieved only by an amendment to the Bering Sea Plan to ensure major reductions of crab mortality in the bottomfish fisheries, particularly where immature crabs and nursery areas are involved. ("Draft Environmental Assessment and

^{2/} Consistent with National Standard 1, a stated purpose of the Act is, "to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery." (16 U.S.C. §1801(b)(4).)

Regulatory Impact Review/Initial Regulatory Flexibility Analysis for Amendment No. 10 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area", August 1986, at 11 ("DEA/RIR/IRFA").)

The Act provides:

The term 'optimum', with respect to yield from a fishery means the amount of fish (A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and (B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor. (16 U.S.C. §1802(18).)

Amendment of an FMP is an appropriate, and often necessary, means to assure the greatest overall benefit to the Nation from a fishery. Taking into account the depressed condition of C. bairdi and red king crab stocks and the absence of adequate conservation measures under the Bering Sea Plan (upon expiration of the prevailing emergency rule (51 F.R. 20652, June 6, 1986)), an amendment is needed to provide the greatest overall benefit to the Nation from the fisheries of the Bering Sea. Under the status quo, crab mortality in the bottom trawl fisheries results in substantial economic loss. (DEA/RIR/IRFA, at 32-46.) That loss would be very greatly reduced by an amendment which would close important areas and limit the number of crabs taken as bycatch in the groundfish fisheries.

Among the available management alternatives, the one providing the greatest overall benefit to the Nation would be

that which assures the greatest protection to the crab resource from trawling operations, while only modestly (if at all) affecting costs and total revenues in the bottomfish fisheries. Indeed, history has shown that measures to conserve crab may be devised in a manner which permits growth in the bottomfish harvest. From 1985 to 1986, with the emergency rule in effect, the bottom trawl catch increased in volume by 64,000 mt, and in ex vessel revenue by \$11.9 million. (DEA/RIR/IRFA, at 39.)

Trawl interests would doubtless cite certain "Findings" and "Purposes" of the Act relating to bottomfish development off Alaska as a basis for resisting crab conservation restrictions on bottom trawling operations in the Bering Sea. However, it is important to note that the pertinent "Finding", (16 U.S.C. §1801(a)(7)) and "Purpose" (16 U.S.C. §1801(b)(6)) in no way excuse a failure to provide for effective conservation of the crab stocks. Rather, key "Findings" and "Purposes" of the Act point to the central importance of conservation. (16 U.S.C. §1801(a)(6), (b)(1).) More importantly, operative provisions and the legislative history of the Act reflect the fact that conservation is the fundamental purpose of the national fishery management program. (16 U.S.C. §§ 1851(a)(1), §1853(a)(1)(A); See Legislative History, at 685.)

2. National Standard 2 provides, "Conservation and management measures shall be based upon the best scientific information available." (16 U.S.C. §1851(a)(2).)^{2/}

National Standard 2 recognizes that scientific information reflects changing circumstances in dynamic fisheries, and improves over time. In responding to these resource changes, conservation should take advantage of improvements in scientific information -- and should not await them. The requirement of National Standard 2 is simply that the best available scientific information be utilized, as management measures are devised to respond to the conservation needs of the fisheries.

The best available scientific evidence relating to C. bairdi and red king crab stocks in the Bering Sea demonstrates that they are depressed. (DEA/RIR/IFRA, at 11.) There is overwhelming evidence that the Bering Sea Plan is inadequate to meet the basic conservation goals of the Act. Scientific information provided to the Council and the National Marine Fisheries Service ("NMFS") by the Alaska Crab Coalition ("A.C.C.") confirms the nature and extent of the problem. Recent studies by NMFS similarly point to the depleted condition of the resource, and to the necessity of improved conservation measures.

Of course, some in the trawl fleet might be tempted to argue that a management response by amendment should await

^{3/} A stated policy of the Congress in the Act is, "to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available. . . ." (16 U.S.C. §1801(c)(3).)

further scientific studies. By way of reply, it must be emphasized that the authority -- and the requirement -- for amendment of an FMP are based on the best scientific information that is "available". (16 U.S.C. §1851(a)(2).) As stated in the Guidelines, "FMP's should be amended on a timely basis, as new information indicates a necessity for change in objectives or management measures". (50 C.F.R. §602.12(d).) It is appropriate and necessary, therefore, to amend the Bering Sea Plan without delay to protect the crab against continued destruction by bottom trawlers.

3. National Standard 5 provides, "Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose."
(16 U.S.C. § 1851(a)(5).)

An essential factor of efficiency, within the meaning of the Act, is the avoidance of waste. Not only resource waste, but also economic waste, should be avoided. (Legislative History, at 686.) Where it is practicable to reduce waste in a fishery, an amendment to an FMP is appropriate.

In the Bering Sea groundfish fishery, the wasteful impact of bottom trawling on crab is well established. (DEA/RIR/IRFA, at 32-47.) Moreover, the economic waste which attends the biological destruction of the depressed crab resource cannot be disputed. (Id.) The proposed Amendment No. 10 would reduce waste of the crab resource and, thus, reduce economic waste in the Bering Sea fisheries.

The Guidelines provide that management measures aimed at efficiency should not simply redistribute gains and burdens without an increase in efficiency. (50 C.F.R. §602.15(b)(2)(i).) The proposed Amendment No. 10 to the Bering Sea Plan would, indeed, have the effect of redistributing gains and burdens among crab fishermen and bottom trawl fishermen. Trawl fishermen would have to submit to restrictions on their operations, and perhaps, would have to accept some increased costs. Crab fishermen could look forward to improved resource conditions and increased revenues, as conservation measures took hold. It is indisputable that, heretofore, the conservation burden has been borne almost exclusively by the crab fishermen and that this inequity must be rectified. It is worth repeating that, despite increased costs, the bottomfish harvest and revenues to bottom trawlers might well actually continue to increase under the amended Bering Sea Plan. In the final analysis, biological and economic waste would be reduced, and efficiency, within the meaning of the Act, would be increased. (DEA/RIR/RIFA, at 47.)

Finally, National Standard 5 prohibits management measures which have economic allocation as their sole purpose. In light of the depressed state of the C. bairdi and red king crab stocks in the Bering Sea, alternatives for the proposed Amendment No. 10 which would reduce the impact of bottom trawling on the crab would serve an important conservation purpose. Consequently, management measures contemplated under the proposed Amendment No. 10 would not have economic allocation as their sole purpose.

For the foregoing reasons, the proposed Amendment No.10 is fully consistent with National Standard 5.

4. National Standard 6 provides, "Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches." (16 U.S.C. § 1851(a)(b).)

The Guidelines state that, "The phrase 'conservation and management' implies the wise use of fishery resources through a management regime that includes some protection against... uncertainties." (50 C.F.R. 602.16(b).) The Guidelines also state that, "To the extent practicable, FMP's should provide a suitable buffer in favor of conservation. Allowances for uncertainties should be factored into the various elements of an FMP". (50 C.F.R. § 602.16(c)(2).) The Bering Sea Plan does not currently provide adequate mechanisms for addressing uncertainties in the groundfish fishery, and it by no means provides a buffer in favor of conservation, although protective measures are warranted by the depleted condition of the crab resource. The promulgation of the emergency rule clearly reflects the relative unresponsiveness of the current management regime to the crab resource crisis. Specifically, the Bering Sea Plan does not address changes in fishing practices which have occurred over the past several years, and which are continuing as the groundfish fisheries develop. These changes have had, and will continue to have, impacts on the crab resource. The proposed Amendment No. 10, however, provides important alternatives for protection of the depressed crab resource under

the dynamic and, therefore, uncertain conditions of the groundfish fisheries. (See 50 C.F.R. 620.16(c)(1).)

5. National Standard 7 provides, "Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication." (16 U.S.C. §1851(a)(7).)

The Act establishes that the obligation to minimize costs and avoid unnecessary duplication is circumscribed by considerations of practicability. Therefore, if it is impracticable to keep costs to a minimum, a management measure may, nonetheless, be deemed consistent with National Standard 7.

In the case of the proposed Amendment No. 10, the various alternatives to the status quo might well result in additional, modest costs to the bottom trawl fleet (although, as noted, revenues may also increase steeply). It is probably not practicable to provide for adequate crab conservation measures, without some additional expense to the trawlers. In the landmark case, Alaska Factory Trawler Association, et al. v. Malcomb Baldrige (sic) and Fishing Vessel Owners' Association, et al., Civ. Action No. C85-2279V (W.D. Wash) (Order, August 28, 1986) ("Alaska Factory Trawlers"), the Court stated with reference to an important study supporting Amendment No. 14 to the Gulf of Alaska Groundfish Fishery Management Plan, "The study also provided a basis for concluding that the amendment was beneficial to the nation as a whole despite the fact that certain interest groups might be harmed". The Guidelines make clear that "management measures may shift costs from . . . one part of the private sector to another. . . ." (50 C.F.R. 602.17(d)(1).)

Similarly, the Guidelines state that "the relative distribution of gains may change as a result of instituting different sets of alternatives, as may the specific type of gain." (50 C.F.R. 602.17(d)(2).) Therefore, increased costs or other harm to the bottom trawlers, and new gains to the crab fishermen as a result of conservation measures which are "beneficial to the nation as a whole" would not be impermissible under the Act.

Finally, management measures need not be the least burdensome in order to pass statutory muster. The Court, in Alaska Factory Trawlers, specifically rejected a contrary argument.

6. The proposed Amendment No. 10 provides for management measures which are authorized by the Act.

The proposed Amendment No. 10 principally involves area closures and bycatch limits, and may include observer requirements. The Act states that an FMP may,

designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear

(16 U.S.C. §1853(b)(2).)

The Act also states that an FMP may,

establish specified limitations on the catch of fish (based on area, species, size, number, weight, sex, incidental catch, total biomass, or other factors), which are necessary and appropriate for the conservation and management of the fishery.

(16 U.S.C. §1853(b)(3).)

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Further, the Act states that an FMP may,

prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels. . . .
(16 U.S.C. §1853(b)(4).)

Finally, the Act provides that an FMP may,

prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.
(16 U.S.C. §1853(b)(8).)

Plainly, the foregoing statutory provisions provide ample authority for the sorts of conservation and management measures contemplated in the proposed Amendment No. 10. It should be added that the Act requires FMP's to contain conservation and management measures "necessary and appropriate for the conservation and management of the fishery". (16 U.S.C. §1853 (a)(1)(A).) Even more stringent conservation measures than those described in the alternatives developed for Amendment No. 10 would be justified in light of the crab resource crisis, and would find full support in the pertinent provisions of the Act.

The issue of observer requirements is currently under study by NMFS. Detailed comments concerning the statutory basis for such requirements will be submitted following a review of the NMFS' study on that subject. At this point in time, it is sufficient to refer to the data collection provision of the Act. (16 U.S.C. § 1853(e).)

CARVEY, SCHUBERT, ADAMS & BARER

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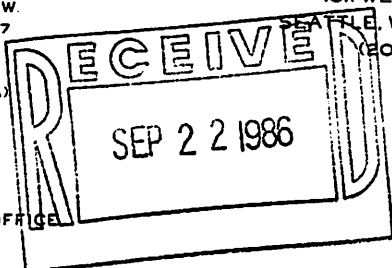
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September 19, 1986

Mr. Jim H. Branson
Executive Director
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

Re: Proposed Amendment 10 to the Bering Sea/
Aleutian Islands Groundfish Plan

Dear Jim:

We are attorneys for the Japan Deep Sea Trawlers Association and the Hokuten Trawlers Association and are writing to you to express the comments of the Japanese trawl industry with respect to proposed Amendment 10 to the Bering Sea groundfish plan. We will limit our comments to Problem 1: Inadequate control of bycatch of crabs and halibut in DAH fisheries.

- I. The amendment package provides no basis in data or analysis for imposing additional bycatch restrictions on the foreign flatfish fisheries.

Problem 1 clearly states that the amendment is concerned exclusively with regulation of bycatch of crab and halibut in the uncontrolled DAH fisheries. The analysis of the problem in the EA/RIR is limited to this issue. Even though there is no data or analysis of the bycatch issue with respect to the foreign fisheries, alternatives 2, 3 and 4 under Problem 1 would nevertheless impose highly restrictive regulations on the foreign flatfish fisheries. These measures would be imposed in addition to the extensive existing regulations that control the bycatch of halibut and crab in the foreign groundfish fisheries. The EA/RIR does not provide any data or analysis that demonstrates that such additional restrictions are necessary. Absent such data and an analysis of the impacts of the proposed restrictions as compared to the available alternatives, there is no basis for imposing any additional bycatch restrictions on the foreign directed fisheries.

II. Additional measures to control the bycatch of crab and halibut in the foreign flatfish fisheries should be imposed through separate PSC limits, rather than through closures when the joint venture PSC limit is reached.

If the foreign flatfish fisheries are to be regulated under Amendment 10, then the Council should adopt an approach similar to the approach the Council took with respect to bairdi. The Council should set separate PSC limits for the foreign flatfish fisheries for each bycatch species and closure zone.

These foreign PSC limits should be computed and allocated as follows:

1. The bycatch rates for each species and the procedure for computing the appropriate bycatch limit for each closure zone should be the same as has been specified for the joint venture fisheries. This would ensure that the bycatch amounts allocated to the foreign fisheries would be at least as restrictive as the bycatch limits imposed on the joint venture fisheries.

2. Bycatch limits should be allocated between foreign nations in direct proportion to the TALFF of flatfish allocated to each foreign nation. The flatfish fishery of each nation would be closed only when that nation reached its own bycatch limit. The bycatch of one nation would not affect the directed flatfish fishery of any other foreign nation. This is the approach adopted by the Council with respect to Bering Sea Amendment 3.

3. Bycatch limits should be computed against final TALFF. Since a large proportion of TALFF is allocated after the beginning of the year from reserve or through reapportionment from DAH, initial TALFF is usually significantly lower than the final TALFF for flatfish. Consequently, in order to provide a PSC limit that is reasonably related to the directed flatfish allocation to foreign nations, PSC limits must be computed against final TALFF. This may be accomplished either by estimating final TALFF at the beginning of the fishing year, or by distributing additional PSC amounts as additional amounts of TALFF are allocated during the fishing year.

The allocation of separate PSC limits to the foreign fisheries is a much more fair and reasonable approach to bycatch management than the options proposed under alternatives 2, 3 and 4, which would not regulate the foreign fishery directly, but would close the foreign flatfish fishery whenever any zone is closed due to the bycatch taken in the joint venture flatfish fisheries. This procedure would violate the Council's existing policy that one segment of the fishing industry should not be closed down by the actions of another segment. Furthermore,

such closures are far less likely to actually reduce bycatch of crab and halibut in the areas of concern than the direct regulation of the bycatch of these species through separate PSC limits. The Council should therefore abandon this approach in favor of the more reasonable option of setting a separate PSC for the foreign fishery.

- A. Closure of the foreign flatfish fisheries when the joint venture bycatch limit is reached violates the Council's existing policy that one segment of the fishing industry should not be closed due to the actions of another segment.

One of the Council's primary policies has been that the actions of one segment of the fishing industry should not be permitted to close down other unrelated operations or fisheries. To allow the actions of one segment to close down everybody else is obviously unfair. Further, such an action sets a precedent that would be very dangerous to the joint venture fisheries. Abandoning existing Council policy as part of Amendment 10, which is the first step in regulating bycatch in the domestic fisheries, would seriously undermine that policy for the future. The Council should not do so. PSC limits could easily be implemented for the foreign flatfish fisheries and are obviously a fairer and more appropriate way to regulate the foreign fishery.

- B. The proposed closures would not be as effective as separate PSC limits to control the foreign bycatch of crab and halibut.

Separate PSC limits for the foreign fishery would not only be fairer and more consistent with the Council's prior policy, they would also be more effective in controlling foreign bycatch. Prior to the closure of any zone due to joint venture bycatch, the bycatch limits for crab and halibut imposed by Amendment 3 would be the only constraint on the foreign flatfish fishery. Since the Amendment 3 PSC limits are much less restrictive than those proposed for joint ventures in the closure zones, these PSC limits would not significantly limit foreign bycatch in these zones. Thus, the foreign bycatch in any of the closure zones would be essentially uncontrolled until the joint venture bycatch limit is reached. As a result, the actual foreign bycatch in a closure zone could be greater than the PSC limit set for the joint venture fisheries. The only reasonable way to prevent such a result is to set specific bycatch limits for the foreign flatfish fisheries for each closure zone. This is the only way to ensure that the foreign bycatch in each zone will not exceed whatever amount the Council determines is reasonable.

III. Conclusion.

There is no justification provided in the amendment package for imposing regulations in addition to the existing Amendment 3 regulations to restrict the bycatch of halibut and crab in the foreign directed fisheries. Foreign incidental catches have been low and are decreasing. While we believe that additional regulation is unnecessary, if the foreign fisheries are to be regulated under this amendment, then foreign PSC limits for each bycatch species for each zone should be established. The proposals in Amendment 10 to close the foreign directed flatfish fisheries when the joint venture bycatch limit for these species is taken are inconsistent with existing Council policy and would, if adopted, constitute a dangerous precedent for the joint venture fisheries. Furthermore, such closures would be less effective in controlling the bycatch of halibut and crab than direct regulation through separate PSC limits. For these reasons, the Council should set separate PSC limits for the foreign fisheries.

Thank you for this opportunity to submit our views.

Very truly yours,

GARVEY, SCHUBERT, ADAMS & BARER

By


Stephen B. Johnson

By


Steven M. Dickinson