

NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

DATE:

3/27/80

I wish to testify on:

AGENDA TOPIC: akutan Bottom Fish

AGENDA Numbers: _____

Time required for presentation: ~~20~~ ²⁰ minutes

NAME: E. A. Gene Ruthford


MAILING ADDRESS: 40 Icicle Seafoods, Inc.
4241 - 24th ave west
Seattle, wa. 98199

Agenda Item F-3
March, 1980

MEMORANDUM

DATE: March 24, 1980

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

FROM: Jim H. Branson, Executive Director 

SUBJECT: "Akutan-Akun Island" Joint Venture Fishing Restrictions

ACTION REQUIRED

Review NMFS response to our earlier joint venture "Akutan/Akun Closure" permit restriction and comment if appropriate.

BACKGROUND

In January we submitted two recommendations for restrictions on joint venture permit applications; (a) a herring time and quota restriction and (b) a 12-mile closure around Akutan and Akun Island to joint venture foreign processing. In February we followed with a telegram encouraging a more expeditious review of the matter. Both are attached (Attachment 1).

We received a reply from Terry Leitzell (Attachment 2) commenting on their (a) rejection of the herring restriction and (b) the delay (through publishing in the Federal Register for comment) of the "Akutan/Akun Island restrictions" on foreign processing. Lacking information on "localized stocks" in the BSAI draft FMP, Leitzell states "We could not conclude that the area restriction is necessary to prevent substantial harm to a fishery resource."

In response to an earlier Council request the BSAI management plan .
drafting team has summarized information on groundfish in the vicinity
of Akutan and Akun Islands (Attachment 3) and has concluded (in a March
11th letter to Branson) . . . "There is no compelling biological justification
for the (Akutan/Akun) closure."

Attachments

3/27/80 F-3
Rec'd from
Gene Ruthford
Icicle Seafoods, Inc.

INTRODUCTION

My name is Gene Ruthford, presently Senior Vice President of Icicle Seafoods, Inc., and I am appearing on behalf of Icicle Seafoods to bring you up to date on our bottom fish operation in the Bering Sea at Akutan, to inform you of recent actions we have taken in Washington D.C. and to comment upon what we believe is a key issue before the Council.

Icicle Seafood Operations at Akutan

1. Icicle present investment in facilities is in excess of 15 million dollars.
2. What facilities can do. Volume potential for one floating processor is about 300,000 lbs. per day and about 3 million lbs. storage capacity.
3. Alaskan employees hired. Total employees is about 100 people. We have actively solicited Alaska residents for employees. We now have our personnel director in Anchorage trying to hire Alaskan people.
4. Value added benefits to Alaska is 16¢ per lb., or 3 million lbs. equals \$480,000.00.
5. Effect on local revenues
 - A. City of Akutan Tax 1/4 of 1% = \$600.00
 - B. State of Alaska Tax 1% = \$2,400.00
 - C. Plus wages paid = \$270,000.00
 - D. Revenue to fishermen = \$240,000.00
6. Effect on City of Akutan
 - A. Brought not only tax revenues, but supplied labor opportunities and business for supplies and needs of about 100 employees for about 3 months.
 - b. Created our interest in eventually building a shore processing plant in Akutan.

Testimony

7. Foreign exchange benefits to U.S.A. and Alaska. Created about \$1,000,000.00.
8. Total outlay (costs) - about \$1,480,000.00.
9. Type of boats involved. Seven small draggers in 60 to 80 foot class bottom and mid-water trawlers and one larger dragger combination boat 110 feet class.
10. Produced 3,233,302 lbs. of various species, mostly cod about 90 % of total.
11. Yield was about 52% on cod from round weight to dressed headsoff weight.
12. Plant experience was very valuable to us for future operations. Trained our crews and gave us expertise in catching, handling, dressing, freezing, packing and shipping.
13. Finished product was frozen, dressed, headsoff packed in 25 Kg. double envelope cartons.
14. Previously product sold in European markets
15. Also sold in domestic market to explore potential.

We have accomplished in the Akutan operation exactly what we set out to do, namely:

- A. We have developed a market for Alaska bottom fish.
- B. We have proven to the world that when handled properly, Alaska seafood is as good as, or superior to, any produced anywhere in the world.
- C. We are convinced that even though we operated at a loss this year, it is and can be a viable operation in the future.
- D. We expect to return in the fall of 1980 to conduct a larger operation for a longer period of time.
- E. We are convinced that the Alaska bottom fish must be protected and conservation practiced to insure a lasting resource.
- G. Overfishing in any one area can be dangerous.
- H. We recognize that to protect certain species, during the final spawning cycles, the fish should not and cannot be harvested without endangering the life cycle. This is the reason we terminated our Akutan operation now, because of the advanced spawning of Cod.

Icicle Support of Joint Ventures in Washington D.C.

On March 3rd, Icicle testified before the House Subcommittee on Fisheries and Wildlife Conservation and the Environment, Washington, D.C., concerning House Concurrent Resolution 273.

The purpose of our testimony was to show the fishing industry support of the Congress in its efforts to deal effectively with the Soviet Union in response to the invasion of Afghanistan and to support continued joint venture operations, including those of the Soviet Union and Marine Resources.

Testimony

Attached is a copy of the testimony given on that occasion. As you know, we have always supported the joint ventures as an effective interim way to provide support to United States fishermen. The point is that we have always recognized that there can be a benefit to the United States fishing industry associated with joint ventures operations, even though that benefit can never be as great as that provided by an entire domestic operation such as ours, which is 100% U. S. operated. These benefits should be taken advantage of.

We plan to continue our support of joint venture operations; we see them as a fundamentally sound concept during the transition to a fully developed United States fishing industry. By definition, joint venture operations have a terminal existence and once their usefulness has served the intended purpose of aiding the development of our industry, they must be phased out of existence. Consequently, it has always been our position that joint venture operations should be watched very closely in order that they only receive an amount of fish that is surplus to the needs of the United States fish processing industry and so that their operations in no way harm the United States fishing industry.

This is, of course, why we requested the area closure for our operations in Akutan and were so grateful when the Council voted to provide us a certain degree of protection. The importance of Council actions to manage the fisheries to

Testimony

assure United States industry development cannot be overstated. The Council is essentially the key player in the evolution of a healthy fully developed United States fishing industry.

Icicle Support of the Council in Washington, D.C.

As you are all aware, comments from the public on the proposed modification to the foreign processing permits issued with respect to their operation in the Bering Sea were due on March 20th. The proposed modifications appeared to be an attempt to implement the Council's decision to close the area around Akutan to foreign factory ships operation. As you are also aware, the National Marine Fisheries Service has delayed in imposing the area restriction. We see this as an unwarranted intrusion into the Council's authority to manage those fisheries over which it has jurisdiction. Attached is a copy of the comments that we filed in support of the Council's decision.

We apologize for these comments being so lengthy, but we felt that it was necessary, because there was considerable support in fact and reason for the Council's decision. Additionally, we believed it was necessary to counter certain misimpressions that the joint venture proponents have initiated concerning the Council's procedures and its ability to manage those fisheries over which it has jurisdiction. In spite of the length of the comments, I would hope that you will read them. In short, the comments conclude that there is no reason why the Council's decision should not be implemented.

Testimony

It was a necessary and appropriate action that was contemplated by the Congress when it passed the FCMA and Public Law 95.354 and shows the leadership of this Council to deal with important issues that can greatly affect the industry.

I understand that the Council can still file comments with respect to its action. We strongly urge that it do so. It is extremely important that the full scope of the Council's deliberations with respect to this issue be made a part of the record before the National Marine Fisheries Service. I know that this would be a time consuming task, but it is critical that the Council let Washington know that it can correctly and effectively manage the fisheries. You have been appointed to do this job; you know what we are doing; there is no reason why your judgment should not be implemented.

The Key Issue Today, the Autonomy of the Council

The key issue facing the Council today is whether it is going to be allowed to effectively manage the fisheries. It appears that the National Marine Fisheries Service is attempting to have critical decisions concerning the fisheries made in Washington, rather than in the regions. We support the autonomy and independence of the Council, not because we see it as a body that always goes our way (we certainly have not had all our proposals adopted), but rather because we would rather have those directly involved with the industry -

Testimony

earning their livelihood in the industry and close to the area so greatly affected by the final fishery management decision - having the final say so.

The attempt of the National Marine Fisheries Service to regulate the fisheries is amply demonstrated by its effort to have the area restriction issue handled as a permit condition rather than as an amendment to a fishery management plan. As we understand it, the Council is only in a position of offering its recommendations with respect to permit conditions, whereas if the same concept were to be included in a fishery management plan it could not be rejected in Washington unless the concept were legally insufficient. It would appear that the best way for the Council to protect its authority to manage the fisheries is through the fishery management plan process. Through the plan process, there is far less likelihood of intervention from Washington, a result we would certainly like to see be achieved.

I might add that, for example, if the area restriction were implemented in a fishery management plan, the Council would not have to give up any flexibility that it has to deal with that type of issue. As it is now, the Council makes a recommendation and sends it to Washington, where if it is to be implemented, an administrative proceeding is initiated.

Testimony

It takes essentially the same type of administrative proceeding to implement a plan. That is, the Council would still have the flexibility to create plans and amend plans and not have to face any type of additional procedures. There are no expedients in having Washington regulate the fisheries through some vehicle other than a fishery management plan.

We believe that it would be in the best interest of the Council and the fisheries over which it has jurisdiction to have the area restriction included as an item in the appropriate fishery management plans and strongly urge that this course of action be followed. We are confident that there are no legal barriers to taking this course of action, and that this course of action would, at this time, be the most meaningful way to show Washington that the Council fully intends to exercise rightful control over those fisheries over which it has jurisdiction.

Thank you for providing me the opportunity to speak to you today. I would be pleased to respond to any questions.

North Pacific Fishery Management Council

Clement V. Tillion, Chairman
Jim H. Branson, Executive Director

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

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



Telephone: (907) 274-4563
FTS 271-4064

January 17, 1980

Mr. Terry Leitzell
Assistant Administrator for Fisheries
National Marine Fisheries Service
3300 Whitehaven Street, Page Bldg. 2
Washington, D. C. 20235

COPY

Dear Terry,

As indicated to you in my letter of December 19th, "Joint Ventures", the Council did consider conditions for those permits at the continuation of its December meeting on January 10th and 11th. They developed two recommendations that they would like to have included as permit restrictions on any joint ventures authorized for the Bering Sea, including the current operation by Marine Resources Incorporated.

We recommend that foreign processors not be allowed to receive fish from American fishing vessels within 12 miles of Akun and Akutan Island, both located in the Eastern Aleutians just west of Unimak Pass. It appears that there will be fairly heavy fishing in that area by US trawlers fishing for American processors during the early part of 1980 and probably thru the fall and early winter, with a break during the salmon and king crab seasons June through September. The Council is concerned that the additional pressure in that rather small area that could be exerted by American fisherman delivering to foreign processors could impact local stocks adversely. The US processors, primarily Icicle Sea Foods in Akutan and other shore based plants at Unalaska, will be accepting deliveries from six to eight US trawlers. The two joint ventures authorized to operate in the Bering Sea will be operating with from seven to sixteen US trawlers. Seven for Marine Resources Incorporated and eight or nine with KMIDC. Pacific cod will be the preferred target species for all of these operations and the Council feels that the effort should be spread as much as possible to avoid over fishing on localized stocks.

The closure around Akun and Akutan Island will not prohibit any American fisherman from fishing in that area. But because American fisherman delivering to foreign processors depend on transferring codends and can not or do not like to tow them very far they will probably not work where the foreign processors can not be close along side. The recommended closure should not hamper the US joint venture fishery since the processor is highly mobile and there is a great expanse of good fishing area in the Bering Sea still available for their operation. That includes areas where they can fish in the lee of many islands, delivering to the processor three miles off shore. That mobility is not available to US fisherman delivering to shore based plants.

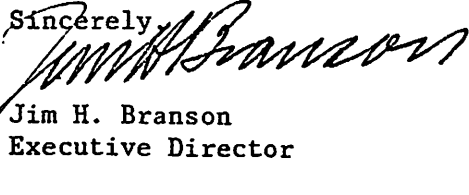
The second permit restriction recommended by the Council is that joint ventures should be allowed to receive no more than 5,000 metric tons of herring in 1980 prior to April 1st. The recently revised herring PMP allows up to 6,000 tons of herring for joint venture processors but the Council believes that some caution should be used in the early part of that fishery. The remaining 1,000 tons available after April 1st will in any case probably be needed for incidental catch through the summer and fall months. Again this recommendation should not hamper in any way the current joint venture operations. The only venture thus far who proposes to take any herring is the Marine Resource Incorporated operation and they have requested only 4,900 tons. The KMIDC venture does not propose to take any herring in a directed fishery; although they will take some incidentally in their pollock and cod fishery.

No other restrictions were proposed by the Council. Joint venture processors will be able to operate to within three miles of the shore in virtually all areas of the Bering Sea except Akun and Akutan Island. The one and a half percent limitation on sable fish bi-catch is satisfactory to the Council and they do not believe it will be an impediment to the joint venture operation. In addition the Council has recommended some relaxation of the "Winter Halibut Savings Area" restrictions on American catch between the first of the year and May 31st. The two recommendations made by the Council for permit restrictions should avoid any undesirable impacts on the resource by the American fishery. Having once endorsed the concept of joint ventures the Council feels that they should be restricted only as necessary to protect the resource and that no artificial impediments should be placed in the way of a successful operation by those American fishermen.

Representatives of both joint ventures and of the American processors involved in bottomfish in the Bering Sea and the Gulf of Alaska were present at the Council meeting on January 10 and 11th. All of them testified on this subject. While none of them were completely satisfied with the Council decisions none were unduly upset. We do not expect any objections to the Council's recommendations from any those operators, either shore based or joint venture, or from the fishermen involved in those operations.

As a final note the Council asked me to remind you that we expect to have the herring FMP in place by approximately November 1, 1980, and that that will have some effect on the numbers currently used in the herring PMP. Up dated data will be used in the FMP based on resource surveys and catches during the first half of 1980.

Sincerely,


Jim H. Branson
Executive Director

North Pacific Fishery Management Council

Clement V. Tillion, Chairman
Jim H. Branson, Executive Director

Mailing Address: P.O. Box 3136DT
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VIA TELEGRAM and TELECOPY

February 13, 1980

Mr. Terry Leitzell (F)
Assistant Administrator for Fisheries
National Marine Fisheries Service
3300 Whitehaven Street, Page 2
Washington, D.C. 20235

Dear Terry:

I was surprised and dismayed to learn that no action has been taken on the Council recommendations to modify the joint venture applications to prohibit joint venture processing and support activities within 12 miles of Akun and Akutan Islands in the Aleutians.

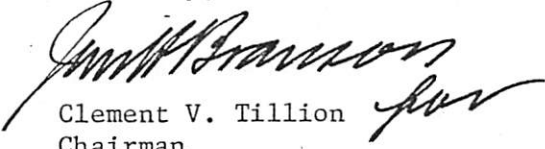
We reviewed the applications and proposed time and area closures to joint venture processors on December 10, 11, and January 7, 8. We forwarded our recommendations on December 19 and January 17. I understand they are being processed hesitantly and slowly.

Yesterday I learned from Bob Thorstenson of Icicle Seafoods that a Russian ship (18 SYZD VLKSM) is lying four miles off Akun Island. If there is to be any benefit from the closure you cannot wait until the fishery is over to modify the permits.

A conservative approach to heavy fishing on nearshore stocks is necessary and the recommended permit restrictions will further that approach.

I urge you to act expeditiously so that the benefits of the closure will be felt this season.

Sincerely,


Clement V. Tillion
Chairman

C.V. Stevens
Graull
Young



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
 National Marine Fisheries Service
 Washington, D.C. 20235

MAR 4 1980

FILE	ACT	INFO	ROUTE TO	F/CM7-A1B
			Exec. Dir.	
			A. Exec. Dir.	<i>MIF</i>
			Adm'n. Off.	
			Exec. Sec.	
			Writer/1	
			Writer/2	
			Sec. Recep.	
			Sec. Typist	

Mr. Clem V. Tillion
 Chairman, North Pacific
 Fishery Management Council
 Suite 32, 333 West Fourth Avenue
 Anchorage, Alaska 99510

Dear Clem,

This letter replies to your letter and telegram of February 13 on implementing area restrictions on foreign joint venture vessel operations in the Bering Sea and Aleutian Islands groundfish and herring fishery in 1980. The North Pacific Fishery Management Council's recommendations and reasons therefor were summarized clearly by Jim Branson in his letter of January 17, which you referenced. The first modification would close the area within 12 miles of Akun and Akutan Islands to foreign vessels which support U.S. fishermen. The second would reduce the amount of herring foreign processing vessels may receive from U.S. vessels before April 1 by 1000 m.t.

forward

We reviewed the Council's recommended modifications and your point that the restrictions on the foreign processing vessels could be of benefit only if they are applied well before April 1. However, as you observed, we moved in a cautious manner because of the precedential nature of the proposed restriction. Although the Council stated that overfishing on localized stocks (of Pacific cod) would occur if up to 24 vessels fished in waters adjacent to Akun and Akutan Islands, there is no reference to localized stocks of Pacific cod in the Bering Sea and Aleutian Islands fishery management plan. Lacking this base, we could not conclude that the area restriction is necessary to prevent substantial harm to a fishery resource.

A finding of substantial harm would be necessary to apply the restriction effective immediately under §611.3(i)(2)(vii) procedures of the foreign fishing regulations. Thus, procedures for modifying foreign fishing permits for purposes of conservation and management specified in Section 611.3 (i)(2) of the foreign fishing regulations have been followed. The proposed modification is described in the enclosed notice which was published in the FEDERAL REGISTER on February 22. The notice contains a summary of the reasons underlying the proposal and requests comments on the conservation and management basis for the modification.



Section 611.3(i)(2)(ii) outlines procedures owners of the affected vessels must follow in submitting comments or requesting a hearing. Agents of the Soviet Union and the Republic of Korea were notified of our action and the applicability of Section 611.3(i)(2)(ii) procedures on February 19. I will review their comments and any other public comments we receive prior to March 21 in making a decision on this permit modification. The Department of State and the U.S. Coast Guard also have been asked to comment.

In the case of the herring recommendation, although the recent Federal District Court's decision effectively invalidated the Bering Sea and Aleutians Islands herring fishery, we did act on the recommendation. That recommendation was rejected because a sufficient herring reserve exists in the plan which could be reapportioned to the domestic annual harvest to cover any incidental herring taken later in the year in the pollock and Pacific cod fisheries.

If the Council wishes to add any comments, I would appreciate receiving them within 30 days of your receipt of this letter.

Sincerely yours,

William G. Jordan
Terry L. Leitzell *for*
Assistant Administrator
for Fisheries

Enclosure

Dated: February 19, 1980.

Winfred H. Meibohm,
Executive Director, National Marine
Fisheries Service.

[FR Doc. 80-5571 Filed 2-21-80; 8:45 am]

BILLING CODE 3510-22-M

Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The National Marine Fisheries Service and the U.S. Fish and Wildlife Service will hold a joint meeting to discuss implementation of the Emergency Striped Bass Study as authorized by the amended Anadromous Fish Conservation Act, (Pub. L. 96-118).

DATE: The meeting will convene at 10 a.m. March 3, 1980, and adjourn at approximately 5 p.m. The meeting is open to the public, however space is limited to 25 persons.

ADDRESS: The Best Western Philadelphia Airport Inn, at the Philadelphia Airport, Pennsylvania Airport.

FOR FURTHER INFORMATION CONTACT: Regional Director, Northeast Regional Office, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930, Telephone: (617) 281-3600.

Dated: February 19, 1980.

Winfred H. Meibohm,
Executive Director, National Marine
Fisheries Service.

[FR Doc. 80-5570 Filed 2-21-80; 8:45 am]

BILLING CODE 3510-22-M

Proposed Foreign Fishing Permit Modifications

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/Commerce.

ACTION: Proposed modification of foreign fishing permits for "joint ventures".

SUMMARY: Permits issued to the Government of the Republic of Korea (ROK) and to the Government of the Union of Soviet Socialist Republics (U.S.S.R.) for vessels of these nations to receive U.S. harvested Bering Sea and Aleutian Islands groundfish and herring, are proposed to be modified under 50 CFR 611.3(i)(2). The National Oceanic and Atmospheric Administration (NOAA) is seeking comments on the conservation basis for the proposed modification.

DATES: Comments must be received by March 20, 1980.

ADDRESS: Send all comments to: Mr. Terry L. Leitzell, Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington,

D.C. 20235. (Please mark "BSA joint venture permit modifications" on envelope.)

FOR FURTHER INFORMATION CONTACT:

Mr. Alfred J. Bilik, Fishery Management Officer, F/CM7, National Marine Fisheries Service, Washington, D.C. 20235, Telephone: (202) 634-7432.

SUPPLEMENTARY INFORMATION: Under section 204(b) of the Fishery Conservation and Management Act of 1976, as amended by Pub. L. 95-354 (the FCMA), the Secretary of Commerce * * * may approve (foreign) applications to receive U.S. harvested fish unless the Secretary determines, on the basis of views, recommendations, and comments * * * and other pertinent information, that United States fish processors have adequate capacity, and will utilize such capacity, to process all United States harvested fish from the fishery concerned."

Section 303(b)(2) of the FCMA provides that any fishery management plan may designate zones where, and periods when, fishing shall be restricted. Foreign fishing permits for joint ventures were issued on January 8, 1980, for one ROK vessel and 10 U.S.S.R. vessels. Another ROK vessel was permitted on January 17, 1980. The permits authorize the vessels to engage in activities in support of U.S. harvesting vessels in the fishery conservation zone (FCZ) in the Bering Sea and Aleutian Islands (BSA) groundfish and herring fishery. (The permits also authorize similar activities in the Gulf of Alaska groundfish fishery.) The amounts of U.S. harvested fish that the foreign vessels may receive from U.S. vessels, and other conditions and restrictions, are specified with the permits.

The permits were issued after the North Pacific Fishery Management Council recommended approval of the corresponding applications at a public meeting on December 12-14, 1979. At that time the Council noted that it intended at its January meeting to discuss restrictions which might be attached to such permits. The Council wanted to avoid delaying U.S. fishermen who planned to begin fishing for the Soviet vessels about January 1. If additional restrictions were endorsed by the Council at its January meeting, the restrictions could be added to the permits at a later date.

The Council met again on January 10 and 11 to continue consideration of additional conditions for the Soviet and ROK permits. Two permit conditions were recommended at the Council meeting and submitted to the Secretary on January 17:

(1) Foreign processing vessels should not be allowed to receive fish from U.S. vessels within 12 miles of Akun and Akutan Islands in the eastern Aleutian Islands.

Although this restriction would be placed on the foreign vessels, it effectively would reduce U.S. fishing in the vicinity of certain domestic processors' facilities because U.S. joint venture fishermen would prefer to remain in close proximity to their processing vessels. Thus, only six to eight U.S. trawlers would operate in the area (landing groundfish for U.S. shore-based processors) rather than up to 24 trawlers which could work the fishing grounds if foreign processors also operated in the area. This limitation would result in reduction of fishing effort on localized stocks, principally for Pacific cod. The Council believes the restriction will not hamper the U.S. joint venture fishery because the foreign processing vessels are highly mobile and there is a great expanse of good fishing area still available in the Bering Sea.

NOAA has received two written comments on the proposed area restriction on the foreign processing vessels. A representative of some domestic processors has urged NOAA to effect the area restrictions immediately, arguing that procedures specified under 50 CFR section 611.3 of the foreign fishing regulations are not applicable. Under these procedures, proposed modifications of foreign fishing permits are published for a 30-day public review and comment period. A representative of U.S. joint venture fishermen urges rejection of the Council's recommendation on the grounds that it is a discriminatory measure with no rational basis and it violates the National Standards specified in the FCMA.

Following consideration of these comments, NOAA has concluded that the procedures specified in § 611.3(i)(2) of the foreign fishing regulations apply to this permit modification because foreign fishing includes operations in support of vessels of another nation. The Council's recommendation contains measures which effectively allocate an economic benefit between two groups of U.S. fishermen. NOAA believes that a permit condition or restriction which effects such an allocation may be imposed, provided that:

(a) The measures are reasonably calculated to promote conservation and management;

(b) The measures do not seriously adversely affect the U.S. fishermen involved; and

(c) Reasonable alternatives are available for the U.S. fishermen who may be adversely affected.

Before imposing the area restriction proposed by the NPFMC, NOAA is seeking additional comments on the restriction, judged against the three criteria listed above.

(2) The Council also recommended that the foreign processing vessels should be allowed to receive no more than 5,000 metric tons (mt) of herring prior to April 1. The remainder of the JVP (amount of the U.S. harvest estimated as surplus to the usage of domestic processors, and available for delivery to foreign processing vessels), i.e. 1,000 mt, will be needed for incidental catch during the summer and fall months for the groundfish fishery.

The Council believes that an allowance of 5,000 mt from January to April 1 will be sufficient for U.S. fishermen to conduct a directed herring fishery for the Soviet processing vessels.

(Note.—Soviet vessels may not themselves catch any fish in the BSA fishery because no allocation for catching fish in the BSA fishery has been made to the Soviet Union. However, some Soviet vessels are authorized to receive U.S. harvested fish from U.S. vessels in the BSA fishery.)

The Soviet application requested a total of 4,900 mt of herring and so the Council believes this restriction would not limit U.S. fishermen.

The Bering Sea and Aleutian Islands Trawl and Herring Gillnet fishery preliminary fishery management plan estimated a total domestic annual harvest (DAH) of 33,200 mt of herring. The DAH specifies 27,000 mt for U.S. landings for domestic processors (DAP), 6,000 mt for U.S. joint venture fishermen (JVP), and 200 mt for a domestic subsistence harvest (NPF). Moreover, the plan reserves 2,000 mt of herring for uncertainties in the U.S. harvest. The amount reserved may be apportioned to the DAH if needed; otherwise it may be made available for foreign fishing.

NOAA understands the Council's concern that a U.S. harvest of herring in excess of 5,000 mt during the period January to April 1 could adversely affect the conduct of a U.S. pollock and Pacific cod fishery later in the year if the allowance for incidental catch of herring in that fishery is diminished below 1,000 mt. However, NOAA believes that a sufficient amount has been reserved for such a contingency. Moreover, the plan provides for periodic reassessments and reapportionments between DAP, JVP, and NPF based on the performance of U.S. harvesters. Thus, NOAA has concluded that the restriction proposed by the Council to limit the U.S. harvest

of herring to 5,000 mt from January to April 1 is not necessary at this time.

The proposed conditions and restrictions being considered for the subject Soviet and Korean permits are included in the following list of conditions and restrictions.

Since this proposed amendment constitutes a potentially adverse modification of the permits under 50 CFR 611.3(i)(2), public comments on the proposed amendments are being solicited from the foreign nations and other interested persons.

Signed in Washington, D.C. this 15th day of February 1980.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

Other Activities Authorized and Additional Conditions and Restrictions Applicable to Permits for Joint Venture Vessels Participating in the Bering Sea and Aleutian Islands Fishery

SUPPORT ACTIVITIES AUTHORIZED:

Fishery support operations in the FCZ, as discussed in section 611.10 of the Foreign Fishing Regulations, by these vessels in support of vessels of the United States harvesting fish in the FCZ are authorized in the Bering Sea and Aleutian Islands groundfish fishery subject to the following additional conditions and restrictions (which may be modified under § 611.3):

(a) Restrictions on Receipt of Fish.

(1) If the Assistant Administrator finds that the amount of any species of fish harvested by vessels of the United States in any fishing area identified in Parts 4A and 4B, Appendix I of § 611.20 of the foreign Fishing Regulations and received in the FCZ by foreign fishing vessels from vessels of the U.S. has reached the current amount specified, as it may be revised under § 611.93(b)(3) and § 611.95(b)(3), as "joint venture processing" (JVP) for the species and fishing areas in Parts 4A and 4B, Appendix I, no further fish harvested by vessels of the United States in that fishing area may be received in the FCZ from vessels of the United States. The fishery closure procedures of § 611.15(c) of the Foreign Fishing Regulations apply.

(2) Retention of sablefish is limited to incidental amounts resulting from this U.S. trawl fishery. No sablefish may be received from a U.S. longline fishery. The amount of sablefish harvested by vessels of the United States in any fishing area which may be retained by the above vessels shall not exceed 1.5 percent of all fish received. This percentage limitation on retention shall apply to the initial 1,000 mt of fish received in the FCZ from vessels of the

U.S. and each 5,000 mt increment thereafter. (For example, if the amount of sablefish harvested by vessels of the U.S. and delivered to and retained by the above foreign vessels in the FCZ reaches 15 mt before receipt by the foreign vessels of the initial 1,000 mt of all fish, no further sablefish may be retained until the initial 1,000 mt of all fish is received. A 75 mt limitation on retention of sablefish applies to each succeeding 5,000 mt of all fish received.)

(3) Any prohibited species (shrimp, scallops, salmon, steelhead trout, Pacific halibut, and Continental Shelf fishery resources) or part thereof which is received shall be treated in accordance with § 611.13 of the Foreign Fishing Regulations as if it was caught by vessels of the foreign nation.

(b) Area Restrictions. (1) Except as noted in (2) below, processing of U.S. harvested fish and other operations in support of vessels of the U.S. may be conducted in the FCZ of the Bering Sea and Aleutian Islands in accordance with § 611.93(d)(1)(i) and § 611.95(d)(1)(i) of the Foreign Fishing Regulations. Processing of foreign harvested fish and other operations in support of foreign vessels may be conducted only in accordance with § 611.10(b) of the Foreign Fishing Regulations and in the areas and during the times specified in § 611.90(c)(2) of the Foreign Fishing Regulations.

(2) Processing of U.S. harvested fish and other operations in support of vessels of the U.S. may not be conducted in the FCZ of the Bering Sea and Aleutian Islands within twelve nautical miles from the baseline used to measure that part of the territorial sea adjacent to Akun and Akutan Islands of the eastern Aleutian Islands.

(3) The closed areas specified in § 611.93(d)(1) do not apply to operations in support of vessels of the U.S.

(c) Reporting Requirements. Each vessel shall report its projected times and positions for commencing and ceasing operations in support of vessels of the U.S. not less than 7 days prior to such projected times. These reports shall be submitted in the manner prescribed in § 611.4(b).

(d) Fishery Closures. Operations in support of vessels of the U.S. are not subject to the fishery closure provisions of § 611.15(a) (3) and (4).

[FR Doc. 80-5678 Filed 2-21-80; 8:45 am]

BILLING CODE 3510-22-M



Agenda F-3
March 1980
ATTACHMENT 3

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest and Alaska Fisheries Center
Resource Ecology and Fisheries Management
2725 Montlake Blvd. East
Seattle, WA 98112

January 29, 1980

F/NWC2:LLL
HAL

TO: Mike Hershberger, Staff Assistant
North Pacific Fishery Management Council

FROM: Loh-Lee Low *Law*
REFM Division, NWAFC

SUBJECT: Groundfish resources around Akutan and Akun Islands

Enclosed are five figures summarizing information on groundfish in the vicinity of Akutan and Akun Islands. Highlights of these figures are shown as follows:

Figure 1: Commercial catch by all nations by 1° longitude x $1/2^{\circ}$ latitude statistical blocks. These catches are averaged for 1977 and 1978. Each statistical block is about 30 by 30 nautical miles. You should note that the areas immediately next to the two islands have been closed to foreign fishing a good part of the year. Otherwise, fish catches are expected to be higher, as noted farther north. Predominant species are pollock (85 - 90%), cod (3-4%), flounders (1 - 5%), rockfishes (<1 - 5%), and sablefish (<1 - 2%).

Figure 2: Same as in Figure 1 except that the numbers represent Japanese catches averaged over a 5-year period (1972-76). Catches by other nations are not known in the same statistical detail but are expected to total less than 10% of Japanese catches. Species composition on the north side of the Aleutian Islands is very similar to the composition for 1977-78. On the south side, rockfishes (11%) and sablefish (15%) were more abundant during 1972-76 than during 1977-78.

Figure 3: Catch rates (in kg per hour trawled) by a NMFS research vessel during August 1979. The 18 stations sampled by the vessel were selected systematically for scientific estimation purposes and may, therefore, not be truly representative of educated commercial fishing operations. For example, in one station out of 18 stations sampled, the catch rate was unusually high (6.85 metric tons per hour). The species composition was also unusual (69% cod, 15% pollock, and 2% Pacific ocean perch). The average catch rate for all the other 17 stations combined was comparatively low (0.27 mt per hour) and the catch composition was 44% pollock, 11% cod, and 4% sablefish.

Figure 4: This figure shows the average catch rate by an experimental commercial trawl survey by NMFS trawlers along the continental slope



north of Akutan and Akun Islands during June 1974. Catch rates averaged 3.15 mt per hour (6,938 lbs per hour) and the species composition was 64% pollock and 5% cod.

Figure 5: Same as in Figure 4 except for the area south of Akutan and Akun Islands. The average catch rate for this experimental commercial trawler was 3.52 mt per hour (7,758 lbs per hour). The species composition was 74% pollock, 11% cod, and 7% Rex sole.

In summary, the vicinity of Akutan and Akun Islands is one of the more important fishing grounds in the Bering Sea/Aleutian Region. Most of the area has been closed to foreign fishing either because of time-area closures during December 1 - May 15 associated with the "Winter halibut savings area" of proximity to U.S. coastline. The area is also known to be an important wintering area for halibut and other groundfishes for the Bering Sea/Aleutians stocks.

Figure 1
 COMMERCIAL CATCHES--ALL NATIONS COMBINED

Average Catch in metric tons within statistical blocks
 1977 and 1978

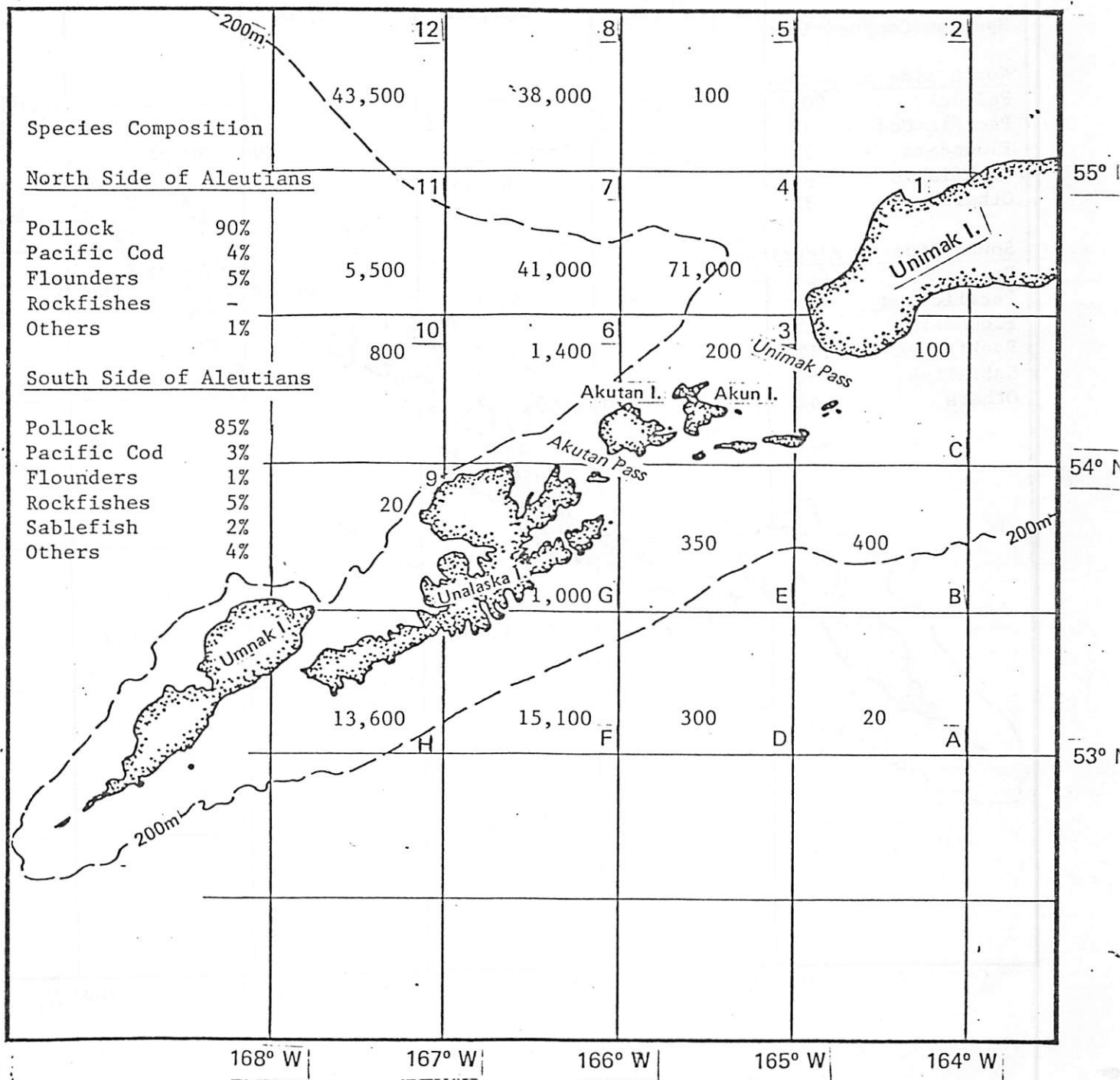


Figure 2

COMMERCIAL CATCHES--JAPAN ONLY

Average catch in metric tons within statistical blocks
1972 to 1976

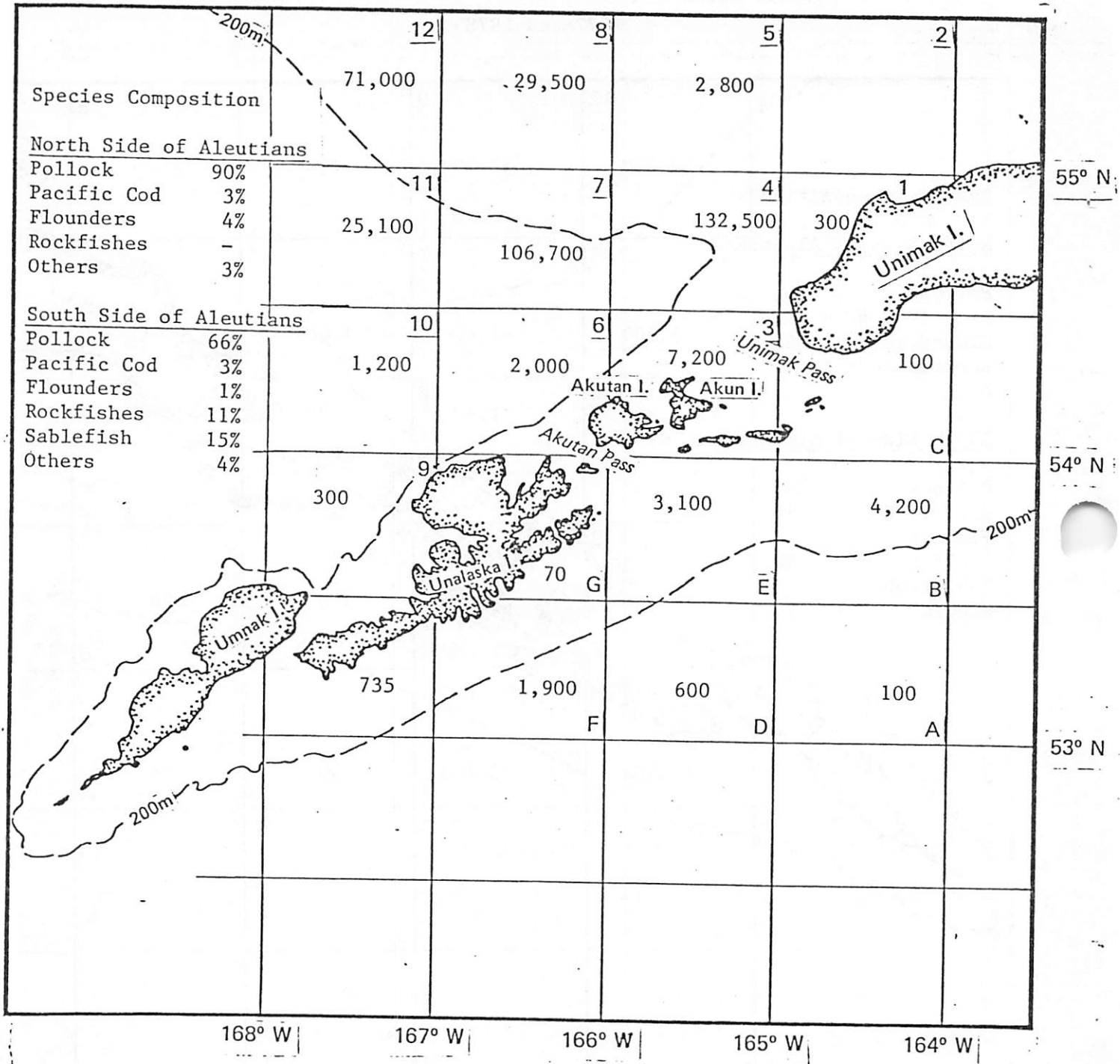
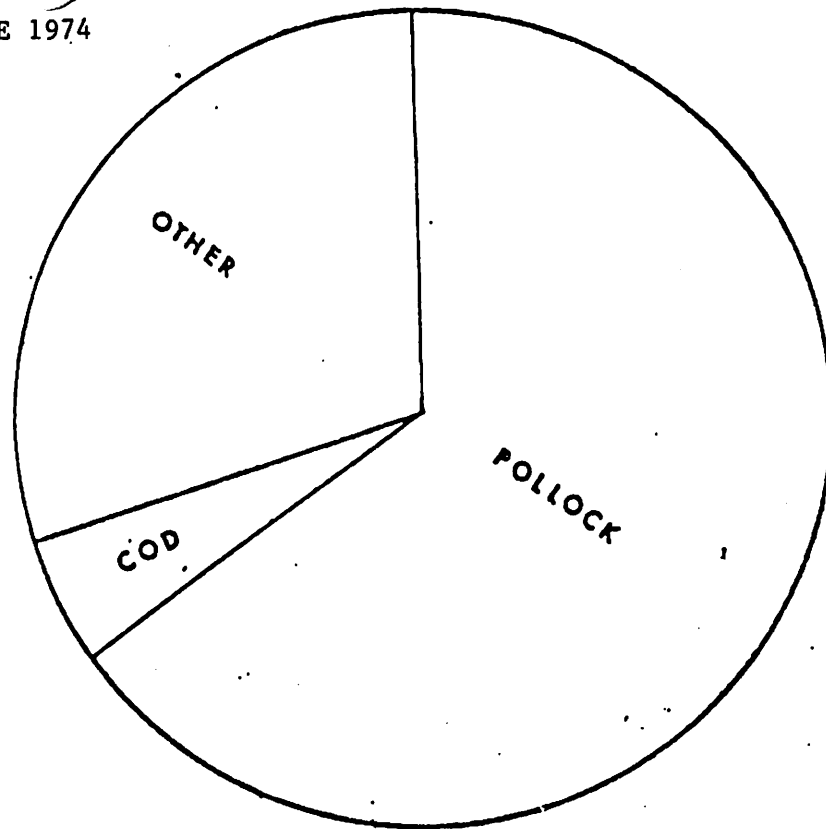
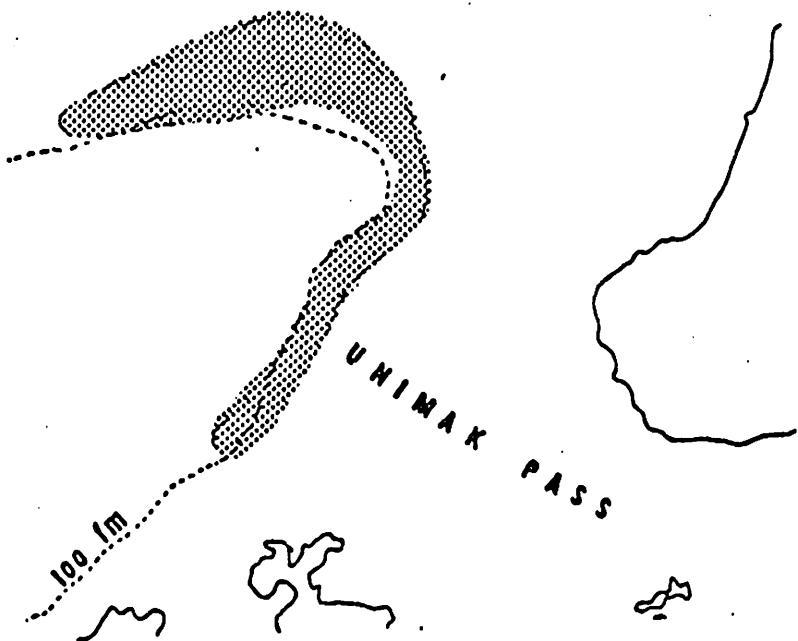


Figure 4
 EXPERIMENTAL COMMERCIAL OPERATION BY NMFS--JUNE 1974

Depths 72-132 fm.
 Total catch 95,938 lbs.
 Hours trawled 14.0
 Avg. catch/hr 6,938 lbs.



21



POLLOCK (64%)
 4,428 lbs/hr
 18.0 inches
 99% marketable

COD (5%)
 349 lbs/hr
 21.0 inches
 99% marketable

SNOW CRAB
 93 lbs/hr

KING CRAB
 8 lbs/hr

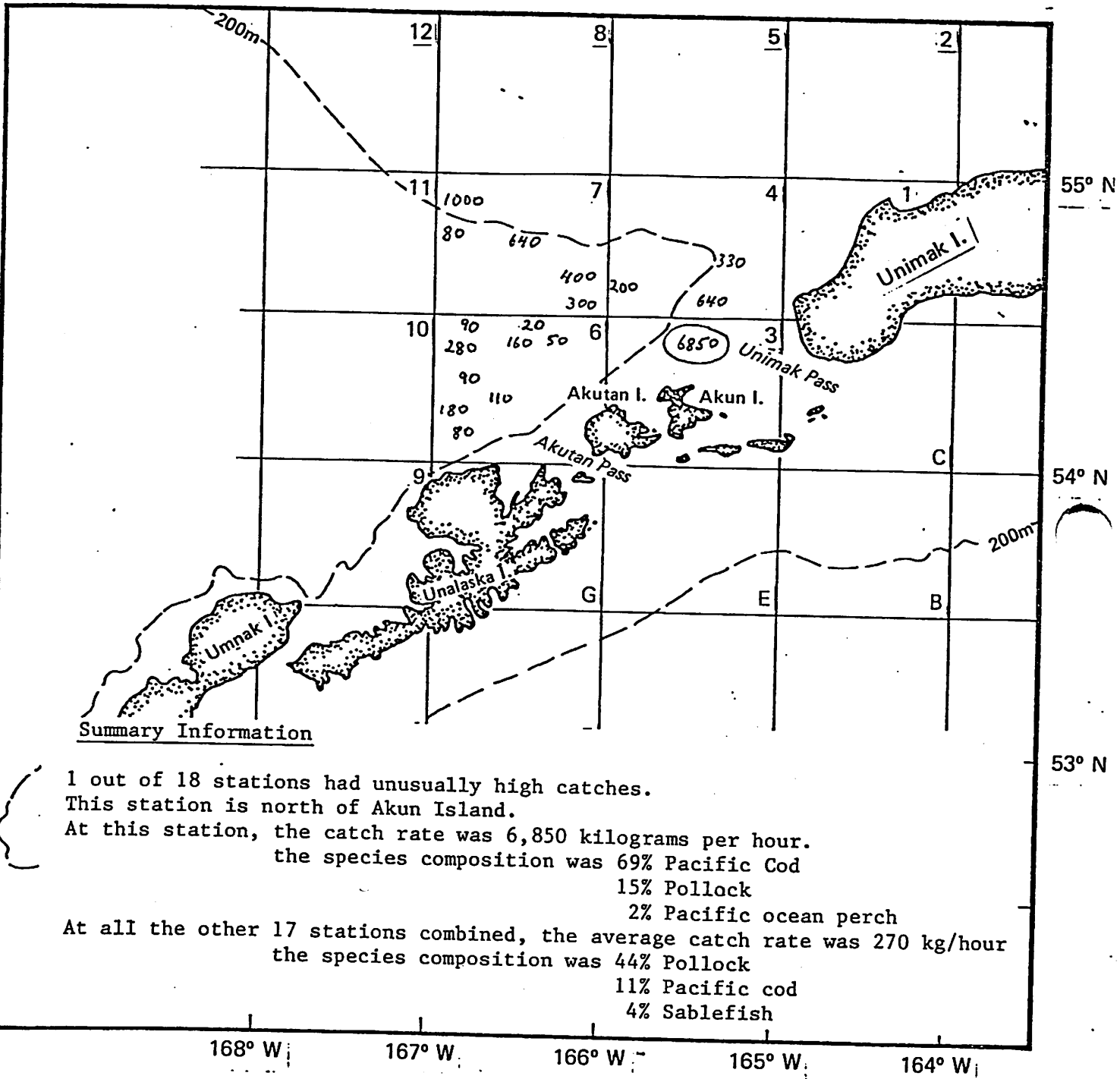
HALIBUT
 10 lbs/hr
 18.0 inches

Figure --Total catch, catch rates, and species composition from depths where commercial concentrations of groundfish were located in the shaded area north of Unimak Pass, June 1974. Sizes of fish indicate the average length and percentage of marketable fish by weight.

Figure 3

TRAWL SURVEY BY NMFS
August 1979

Catch rates in kilograms per hour trawled
(All Species Combined)



Summary Information

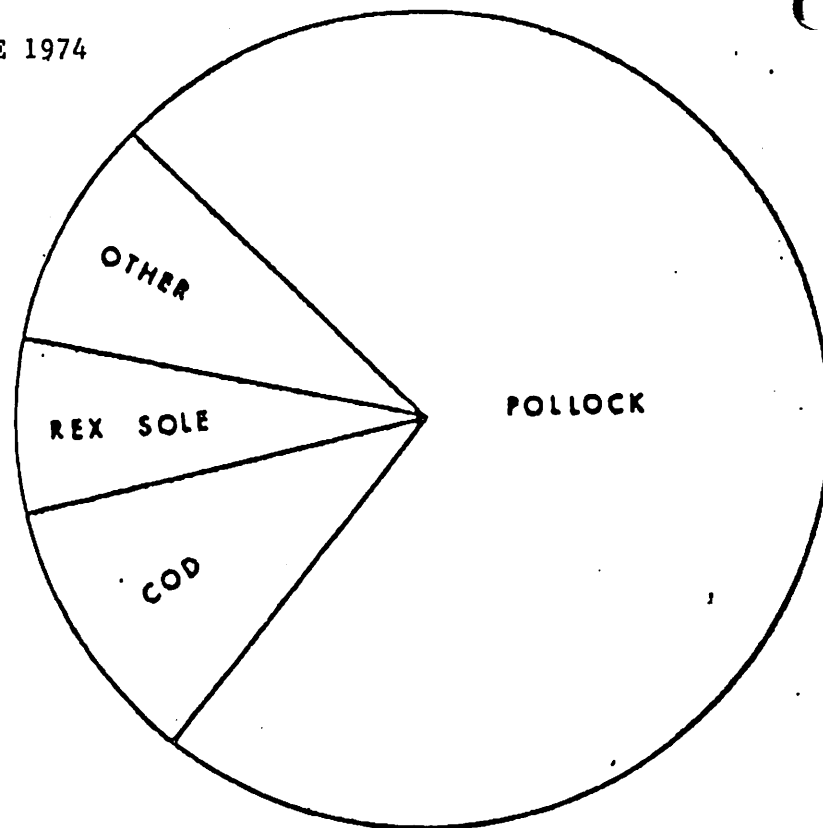
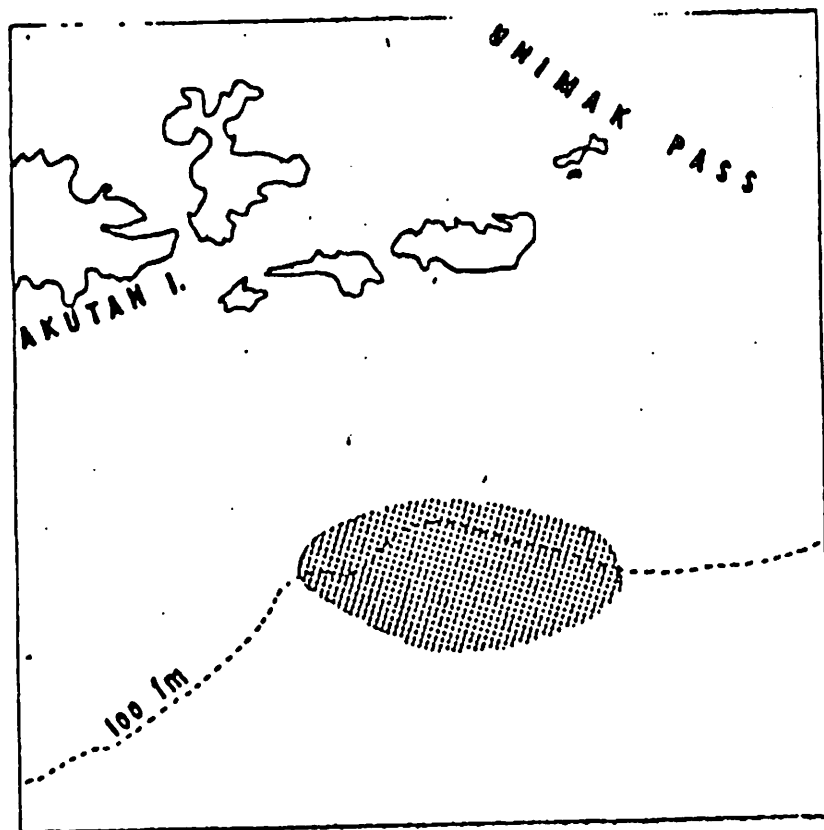
1 out of 18 stations had unusually high catches.
This station is north of Akun Island.

At this station, the catch rate was 6,850 kilograms per hour.
the species composition was 69% Pacific Cod
15% Pollock
2% Pacific ocean perch

At all the other 17 stations combined, the average catch rate was 270 kg/hour
the species composition was 44% Pollock
11% Pacific cod
4% Sablefish

Figure 5
 EXPERIMENTAL COMMERCIAL OPERATION BY NMFS--JUNE 1974

Depths 74-127 fm.
 Total catch 174,349
 Hours trawled 21.4
 Avg. catch/hr. 7,758



POLLOCK (74%)
 3,721 lbs/hr.
 20.4 inches
 98% marketable

COD (11%)
 841 lbs/hr.
 22.0 inches
 99% marketable

SNOW CRAB
 0 lbs/hr.

KING CRAB
 0 lbs/hr.

REX SOLE (7%)
 512 lbs/hr.
 15.0 inches
 95% marketable

HALIBUT
 95 lbs/hr.
 20.5 inches

Figure 5.--Total catch, catch rates, and species composition from depths where commercial concentrations of groundfish were located in the shaded area southeast of Akutan Island, May 1974. Sizes of fish indicate the average length and percentage of marketable fish by weight.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest and Alaska Fisheries Center
Resource Ecology & Fisheries Management
2725 Montlake Boulevard, E.
Seattle, Washington 98112

March 11, 1980

F/NWC2:LLL

Jim H. Branson, Executive Director
North Pacific Fisheries Management Council
P.O. Box 3136 DT
Anchorage, Alaska 99510

Dear Mr. Branson:

This is to report on important issues covered during the March 5-6, 1980 meeting of the Bering Sea/Aleutians Groundfish PDT in Seattle. Participants who were present and affiliated with the FMP development were:

PDT Members:	Loh-Lee Low (Leader) Richard Bakkala Steve Hoag
AP Representatives:	Bob Alverson Al Burch Jeff Stephan
Council Review Group:	None
SSC Review Group:	Richard Marasco Ed Miles Larry Hreha
Council Staff:	Mike Hershberger

Notable public participants were Dayton Lee Alverson, representatives of Japanese fishing interests (McGregor, Hastings, Johnson), and Jake Phillips.

Nine categories of amendments to the Bering Sea/Aleutians Groundfish FMP, as listed in Table 1, were considered by the PDT. Most of these proposed amendments apply to the 1981 year but some current issues were discussed as well.

Current Issues

1. Resolve problem of high incidental catch of salmon and herring in the foreign trawl catch.
 - a. Salmon: No amendment is proposed for 1980.



- b. Herring: The PDT intends to remain silent on this issue because the members question the effectiveness of enacting time-area closures to control herring catches. The PDT feels that justifications for such time-area closures are best addressed by the herring PDT with, perhaps, input from the groundfish PDT.

2. Re-examine concept of area closures:

- a. Misty Moon Ground: The PDT agrees with the Council decision to do away with this closure.
- b. Winter halibut savings area: The PDT recommends that these areas be retained and remain closed, as before, for foreign fisheries.
- c. Bristol Bay pot sanctuary: The PDT recommends that this sanctuary be closed to foreign fisheries as before.

3. Address Processor Preference for Akutan/Akun 12-mile closure:

The PDT considered this preference from a biological point of view only. There is no compelling biological justification for such a preference.

4. Re-examine definitions for POP and other rockfishes:

The PDT recommends that the same system as that for the Gulf of Alaska be adopted. Phil Rigby will be devising that system.

5. Evaluate and examine the OY's for pollock and yellowfin sole:

For 1981, the PDT proposes that a multiple-species concept be applied to determine OY for the entire groundfish complex. So far, ABC's and OY's have been based on individual species assessments as described in Annex I, "Derivation of Acceptable Biological Catch" in the FMP. The PDT assumes that the same individual species assessments in Annex I, which has now been updated, be applied to derive ABC's for 1980. Under this assumption, ABC's for 1980 are the same as listed in Table 2.

In Table 2, ABC's have increased from 1979 to 1980 for pollock (+200,000 mt), yellowfin sole (+52,000 mt), Pacific cod (+61,300 mt), other rockfish (+6,600 mt), and other included species (+15,200 mt). Decreases are noted for turbot (-19,000 mt), other flatfish (-1,000 mt), Pacific ocean perch (-7,150 mt), and sablefish (-1,300 mt). The net effect is an ABC increase of 306,650 mt (from 1,559,150 mt in 1979 to 1,865,800 mt in 1980).

In the past, the Council has set $OY = ABC$. If the same principle is used, then OY for 1980 will increase for 5 species groups and decrease for 4 species groups listed above. This again assumes that ABC's will be based on individual species assessments. For 1981, the PDT has proposed a better procedure to determine ABC's. Therefore, it recommends that any OY amendments made for 1980 be made with the 1981 procedure as guideline.

Amendments for 1981

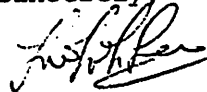
Amendments for 1981 are contained in a lengthy draft which is being revised for submission to the Council during the March meeting. The package contains new concepts to:

- (1) derive a multiple year, multiple species approach in which MSY, OY and reserve apply to the groundfish complex as a whole,
- (2) control the incidental catch of prohibited species by establishing by-catch limits and imposing economic disincentives to the take of these species.
- (3) to modify the Regional Director's authority to manage the fisheries.

In the draft amendment package that is being prepared, all the items addressed in Table 1 will be covered. Since these proposals are rather lengthy, I will not outline the recommendations of the PDT as I have for current issues.

Bert Larkins and myself would like to explain the entire 1981 package to the SSC, AP, and Council, if appropriate, at the upcoming Council meeting in March. Therefore, I wish to request that you include our presentation on the appropriate agenda of the SSC, AP, and Council.

Sincerely



Loh-Lee Low
Bering Sea/Aleutians Groundfish PDT
Leader

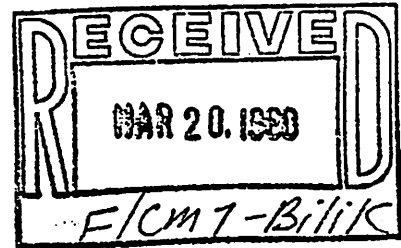
Attachments

cc: F/NWC2 - Bert Larkins
PDT Members

Attachment 1-b contains the list of proposed amendments, where they originated and their disposition.

ICICLE SEAFOODS, INC.

4241-21st AVE. WEST - 4th FLOOR
SEATTLE, WASHINGTON 98199
(206) 282-0968
TELEX 32-0938 PFICICLE-SEA.



March 20, 1980

Terry Leitzell
Assistant Administrator for Fisheries
National Marine Fisheries Service
Washington, D.C. 20235

RE: BSA Joint Venture Permit Modifications

Dear Mr. Letizell:

These comments are in response to the National Marine Fisheries Service notice regarding proposed modifications to foreign factory ship permits that had been issued to such vessels authorizing the receipt of United States harvested fish in the Bering Sea and Aleutian Islands that appeared at 45 Federal Register 11869 on February 22, 1980.

The Icicle Seafoods Operation

Icicle Seafoods is an Alaskan corporation 80% of the stock of which is held by Alaskans with most of the remaining stock being held by Seattle employees of the company. Approximately 50% of the stock is held by fishermen and the remainder is held by employees and retired employees and fishermen. The only foreign shareholder is an employee in the company's Tokyo sales office who holds 2/100 of 1% of the total issued and outstanding shares of stock. All the directors and officers of the company are United States citizens and there are no arrangements or understandings through which the

control of the company is exercised by anyone other than the officers and directors.

After Public Law 95-354 was enacted, in the summer of 1978, Icicle Seafoods contracted for the construction of two barges to process Alaskan bottom fish, as well as those species traditionally processed by Icicle Seafoods, such as herring, salmon, and crab. The barges cost more than \$15 million. Each barge is 265 x 55 feet, can employ 140 people and has a three-million-pound frozen seafoods storage capacity. Icicle Seafoods assessed the economic viability with respect to the barges on the basis of expected year-round operations in the emerging bottom fish fishery. On April 17, 1979, the first barge was delivered and was quickly moved to the Bering Sea to engage in fish processing operations.

On January 10, 1980 one barge was moved to the Unimak Pass area of the Bering Sea to engage in bottom fish processing operations. Some processing workers for the operation were recruited through Alaska State offices in Anchorage. Fishermen delivering to the Icicle Seafoods operation have been able to acquire the technology necessary to harvest bottom fish efficiently. The fishermen are paid 8 cents/lb. for Pacific Cod and 5 cents/lb. for Pollock. In addition, Icicle Seafoods provides ice, limited machine shop and repair service, and makes price adjustments commensurate with the final market value of

the product delivered. Icicle Seafoods plans to conclude these initial bottom fish operations by April 1, 1980, and to follow the fishermen through the herring, salmon, and crab seasons, and then plans to be back on the grounds in the Unimak Pass in late October or early November when these other fisheries will be closed.

By the time Icicle Seafoods ceases operations this spring in Unimak Pass, it will have processed approximately two million pounds of bottom fish. If the operation had been working at capacity during such periods, approximately five million pounds would have been processed. The fish is sold to Joint Trawlers Ltd. of Gloucester, Massachusetts, who in turn has sold the product in Europe. Icicle Seafoods is selling the bottom fish at 32 cents/lb. and consequently should earn over \$600,000 from its winter bottom fish operation, which of course contributes a like amount to the nation's foreign exchange.

The Conservation Requirement

It appears that the National Marine Fisheries Service (NMFS) has taken the position that a resource conservation reason is necessary to support the imposition of the North Pacific Fishery Management Council (NPFMC) recommendation to close a certain area to foreign factory ship operations, even though such an interpretation of the Fishery Conservation and Management Act of 1976, as amended (the "FCMA") has not been the subject of

interpretive rule making.¹ For the reasons stated below, we believe that such an interpretation is inconsistent with the FCMA, cannot be supported by reason and consequently is an inappropriate criteria to judge whether the NPFMC-recommended area closure should be imposed.

What the FCMA says about conservation.--The FCMA does not treat conservation as an abstract concept. Rather conservation is defined in conjunction with the term management. There is no definition of the term

¹We are unaware of any interpretive rule-making proceeding which concluded that a conservation rationale is necessary before an area or other type of restriction may be imposed on a foreign factory vessel engaging in the processing of United States harvested fish. In the preamble to the Gulf of Alaska Ground Fish Fishery Management Plan regulations that appeared at 44 Federal Register 64412 on November 7, 1979, NMFS stated "that restrictions may be appropriate if there is also a conservation related rationale for imposing the restrictions." Most recently, the National Fisherman in the April, 1980 issue at page 86, quoted Terry Leitzell as saying "any such permit condition must have some resource conservation purpose." Nonetheless neither of these pronouncements rank as rules and have any force or effect.

conservation by itself in the FCMA.² The combined definition makes sense as it is not the purpose of the FCMA merely to conserve fish but rather to conserve fish in order that they may be utilized in some manner.

The FCMA inextricably combines conservation with utilization by mankind, as it should. Conservation thus cannot be viewed pursuant to the FCMA unless it is done

²The FCMA defines "conservation and management" as follows:

The term "conservation and management" refers to all of the rules, regulations, conditions, methods, and other measures

(A) which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining, any fishery resource and the marine environment; and

(B) which are designed to assure that—

(i) a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis;

(ii) irreversible or long-term adverse effects on fishery resources and marine environment are avoided; and

(iii) there will be a multiplicity of options available with respect to future uses of these resources. FCMA Sec. 3(2).

Note that in the reported Senate version of the FCMA, only the term conservation was defined but that the terms conservation and management were stated as being interchangeable. S. Rept. No. 94-416, 95th Cong. 1st sess. 20 (1975).

in the context of how the conserved species is to be utilized. A fisheries biologist or other fisheries manager who merely speaks in terms of conservation as preserving fish in the sea without relating to where the fish are to be found in order that they can be utilized in some manner is not really talking about conservation. Such a limited view concerns preserving fish from extinction, but not conservation as the term is used in the FCMA. For example, if a fishery biologist believes he has appropriately managed a herring resource because there is an abundant resource many miles out to sea, he is mistaken if a native population of Eskimos that has traditionally harvested the herring is unable to reach the resource. The Eskimos in effect have been deprived of the resource. From their point of view herring is extinct. Similarly so, no conservationist would maintain that Kodiak bears were conserved if they could be found only in zoos in the United States and other nations but none could be found on Kodiak Island. No one could effectively argue that the return of a run of Atlantic salmon to a stream without such runs for 40 years due to pollution abatement is not a conservation achievement even though that run does not contribute a measurable number to the universe of salmon existing in the North Atlantic.

The FCMA defines conservation and management in terms of any "fishery resource," which means "any fishery,

any stock of fish, any species of fish, and any habit of fish." FCMA Sec. 3. (9). The term "stock of fish" is defined as "a species, subspecies, geographical grouping, or other category of fish capable of management as a unit." FCMA Sec. 3. (22). In our herring example it would appear mandatory the herring would have to be managed in such a manner that the Eskimos would not be deprived of the resource. Otherwise the herring could not be said to be conserved in a "geographic grouping" to assure that "a supply of food" could be taken by the Eskimos. The conservation purpose of the FCMA is not merely to preserve fish in an indiscriminate manner so that one can merely proclaim that they are not extinct. Rather fish must be managed so that they can be utilized and so "there will be a multiplicity of options available with respect to future uses of these resources."

It was a finding of the FCMA that "[m]any coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the over fishing of fishery resources at an ever increasing rate over the past decade." FCMA Sec. 2(a)(3). And that "[t]hese fishery resources contribute to the food supply, economy, and health of the Nation. . . ." FCMA Sec. 2(a)(1). And lastly that "[a] national program for the development of fisheries which are underutilized or not utilized by the United States fishing industry, including bottom fish off Alaska, is necessary to assure that our citizens benefit

from the employment, food supply, and revenue which would be generated thereby." FCMA Sec. 2(a)(7) (Emphasis added). Consequently it was a purpose of the FCMA "to encourage the development of fisheries which are currently underutilized or not utilized by the United States fishing industry, including bottom fish of Alaska." FCMA Sec. (b)(6). And Congress included as one of the policies of the FCMA "to assure that the national conservation and management program . . . is responsive to the needs of interested and affected States and citizens. . . ." FCMA Sec. 2(c)(3).

There can be no question that the FCMA requires those fishery resources found in the fishery conservation zone to be conserved in order that they may be utilized by citizens of the United States. The benefits to be derived by this utilization are of course increased employment, food supply, improved balance of trade, increases in local revenues, etc. Any criteria that focus on conservation merely as a concept to preserve fish without providing for utilization and the associated benefits are inconsistent with the FCMA, overly narrow in scope and irrational.

As a legal matter this issue was directly faced in the settlement of the law suit in which Icicle Seafoods participated against NMFS and Terry Leitzell. The Stipulation of Settlement unequivocally states that the FCMA does not prohibit the imposition of an area restriction,

such as that recommended by the NPFMC, merely for developmental (economic) reasons. The issue was negotiated among NMFS lawyers and Department of Justice lawyers, approved by the Departments of Commerce and Justice, presented to and approved by the court where it was entered as an order of the court. NMFS cannot now conclude that the FCMA requires it to find a conservation rationale before it imposes an area restriction, to do so would be a violation of the court order for which contempt proceedings could be brought. NMFS could not even engage in rule making at this time and attempt to reach such a conclusion through regulations. The judiciary has been involved with respect to this issue and has given its approval to the agreed upon interpretation of the FCMA.

The reason why a preservation of fish criteria makes no sense.--The reason the FCMA does not require a preservation of fish criteria for the imposition of an area restriction on foreign factory ship operations is because it would make no sense to do. Once fish have been reduced to capture and their handling procedures established on ship board, the manner and where the fish are to be processed are highly irrelevant to the preservation of the fish. If it is a goal to preserve a species of fish in a particular area, this goal can always be accomplished by directly controlling the harvesting operations. That is, fishermen could be kept out of a particular area or be required to use a particular harvesting and handling technique in order that the fish be preserved.

For example, if it is the goal of a fishery management team to reduce the harvest of Pacific Cod in a particular area, the most effective way to do so would be to limit the amount of Cod that could be harvested in such an area. Additional measures could even include limiting the number of vessels that would be permitted to harvest in such area. Preventing a fish processor from being in the area is a rather obtuse management technique that could only indirectly have the desired effect. The point is not that regulating processing operations has no effect on where harvesting operations will occur but that there is always a better way to control where such harvesting operations are to occur; namely, by regulating them directly. Any fishery biologist or fisheries manager that seeks to preserve a particular species in a particular area by controlling a processing operation must recognize that it is at best an indirect way to manage the preservation of any species.

This is exactly why the FCMA does not require a preservation of the species rationale for imposing restrictions on foreign factory ship operations. Fish can be preserved by more direct and effective means. The reason the FCMA allows restrictions to be placed on foreign factory ship operations is to protect United States fish processors from unfair foreign competition. It was recognition of the wide economic discrepancy between foreign

and United States fish processing operations that caused Congress to pass Public Law 95-354.

It was evident immediately without appropriate legal authority to regulate these "joint ventures" between foreign processing vessels and U.S. fishermen that the U.S. fish processing industry would face an uncertain future and would have to compete for all species within our fishery conservation zone with a foreign fleet operating on a significantly different cost basis. One potential outcome to this situation would be significant damage to the domestic processing industry.

S. Rept. No. 95-935, 95th Cong.
2d Sess. 2 (1978) (Emphasis added)

The key point is that virtually none of these benefits will flow to the American economy and the American consumer if foreign processing vessels operating within the FCZ receive U.S. harvested fish. Due to the absence of minimum wage, safety, and anti-pollution laws, which have been enacted to preserve the quality of life in America, these foreign processing vessels can outbid U.S. fish processors. In fact, foreign fish processors operating within the U.S. 200-mile zone often pay their workers only 30 cents per hour while, according to the May 1978 Employment and Earnings Report of the U.S. Department of Labor, the average U.S. wage for seafood processing in February and March of 1978 was \$4.54.

H. Rept. No. 95-1334, 95th Cong.
2d Sess. 6 (1978) (Emphasis added)

An area restriction should be imposed to effectuate these goals rather than seeking to preserve a species of fish.

The often quoted provision of the Senate Report on this topic is worth repeating on this occasion.

The Secretary of Commerce, when issuing permits to foreign processors, should include appropriate and detailed conditions and restrictions on the operation of the vessel within the fishery conservation zone. These measures should ensure compliance with the conservation and management principles of the FCMA, the objectives of this bill, and other applicable law. Thus, for example, as long as the interests of the U.S. harvesters are not significantly affected, the Secretary may consider imposing geographical

restrictions on the areas in which foreign processing vessels may operate in order to foster the development of temporarily vulnerable or developing onshore processing facilities.

Senate Report at 4 (Emphasis added)

The point is that geographic area restrictions were intended to be placed on foreign factory ship operations to protect United States fish processors rather than to preserve any species fish. NMFS should foster the development of United States fish processors, such as Icicle Seafoods, as stated by the Senate Report, rather than imposing an irrelevant preservation criteria to the imposition of geographic area restrictions.

Conclusion, the conservation requirement.—We have shown that any conservation requirement has to be considered in conjunction with how the conserved resource will be utilized by citizens of the United States and that conservation means more than preservation of any particular species of fish. Consequently the NMFS attempt to have a preservation of the species rationale for imposing the NPFMC-recommended geographic area restriction is unwarranted and without basis in the FCMA. Also the attempt is in violation of a court order, an improper attempt at interpretative rule making and nonsensical.

A conservation principle that has as its purpose utilization of a particular species of fish in a particular location for the benefit of United States citizens, which does not adversely affect the species involved, has been

expressly contemplated by the Congress when they enacted the FCMA. At this time when Icicle Seafoods developed a United States fish processing operation in the manner intended by Congress, NMFS should foster and protect its operation. And those species of fish found near its operation should be conserved and managed in a manner that benefits the Icicle operation. The suggestion that foreign vessels have a right to operate in that area is abhorrent to the FCMA and common sense. The only relevant criterion is whether the area restriction would significantly adversely affect those fishermen that choose to make deliveries to the foreign factory ships.

How the Area Restriction Would
Protect Icicle Seafoods

The proposed area restrictions would protect Icicle Seafoods in the exact manner contemplated by Congress. It would prevent any foreign factory ships from competing unfairly in the same area in which Icicle Seafoods has initiated its operations. As Congress has clearly stated, the foreign factory ships operate on a far different cost basis than do United States fish processors and can simply outbid United States fish processors. This is exactly what the Soviet Union operation is doing with respect to Pacific Cod. They are paying 9 cents/lb. whereas Icicle is paying 8 cents/lb. (We are unable to quantify whether the additional items of value which Icicle provides to its fishermen makes up for this difference.)

Although Icicle is quite pleased with its bottom fish operation they have yet to reach a break-even point. Joint Trawlers is very satisfied with the quality of Icicle's Alaskan Cod and is hopeful that once its excellent quality is recognized in Europe that it can be marketed for a more appropriate price. Alaskan Cod compares quite favorably with Icelandic Cod and is superior in all respects to Atlantic Pollock, and once these differences are more widely recognized it is believed that significant market opportunities will be available for Icicle Seafoods bottom fish products. Certainly until Icicle is beyond this vulnerable period of development of its bottom fish operation it deserves the protection that Congress intended NMFS provide.

The area restriction would protect the Icicle Seafood operation by forcing foreign processing operations away from the comparatively small area in which Icicle is operating. Inasmuch as the Icicle operation is not highly mobile it is effectively forced to operate in fixed locations for extended periods of time, whereas the foreign factory ship operations are of course highly mobile and can choose to fish in many different areas during the same period of time. As will be discussed in greater detail later, there is a vast and abundant resource of bottom fish, including Pacific Cod, available to the foreign processors in many other locations where vessels of the United States could safely and successfully operate.

The Icicle operation has not been receiving enough fish and consequently has not been working to capacity.³ The presence of the Soviet Union factory ships and the market they offer has adversely affected the Icicle operation. Moving this market would greatly enhance the ability of Icicle to operate its barge at the desired capacity. It must be remembered that the proposed area restriction would not restrict in any way fishing vessels of the United States. They would continue to be able to fish wherever they may choose, including within the area closed to the foreign factory ships. They could fish wherever they choose and once the fish have been reduced to capture they could choose to deliver it to either a United States or foreign processor, provided of course that there has been a determination that surplus fish are available which can be sold to foreign processors.

On March 3, 1980 Walter T. Pereyra testified before the House Subcommittee on Fisheries and Wildlife Conservation and the Environment on behalf of Marine Resources and stated that the Soviet factory ships were going to target upon Pacific Cod. According to Edgar A. Best, fisheries biologist (report attached), a more plentiful

³From the time Icicle Seafoods initiated its operation on January 10, 1980 through the first week in March, Icicle had received one-quarter million pounds whereas through the same period it had a capacity of four million pounds.

resource of Pacific Cod exists outside the proposed closed area.⁴ Indeed Ted Evans, who testified on behalf of Marine Resources before NPFMC at the January 8, and 9, 1980 meeting, stated that a vast resource existed outside the proposed closed zone in which they had successfully conducted operations in the past. The motivation of the Soviet operation appears quite clear, that is, not to operate where the fish are but to operate where the only United States fish processor has initiated its operations.

At the same hearing before the House Subcommittee, Morris D. Busby, Acting Deputy Assistant Secretary for Oceans and Fisheries Affairs, Department of State, stated that the Soviet Union was not engaging in the joint venture operations for economic reasons but rather that they were doing it for political reasons. Since the Soviet Union has invaded Afghanistan President Carter has stated that he in effect failed to recognize the resolve of the Soviet Union to dominate the world. Icicle Seafoods cannot and should not have to compete against a world power that is prepared to suffer economic losses to have its vessels close to the shores of our nation for political reasons. Icicle Seafoods, of course, is a private organization

⁴Also see a report by Richard Bakkala and Terry Sample entitled Higher Abundance of Pacific Cod Expected in Eastern Bering Sea in 1980-82 (copy attached) and the Northwest and Alaska Fishery Center memorandum to Mike Hershberger, Staff Assistant, NPFMC (copy attached).

and must rely upon its ability to survive economically without any government largesse. NMFS cannot expect Icicle Seafoods to survive against the economic power of the Soviet Union. Rather, Icicle should be afforded the level of protection that NPFMC unanimously voted to give it.

Moreover, there can be no doubt that the Soviet Union is intent upon engaging in predatory practices in our 200-mile fishery conservation zone. We have been informed by staff personnel of the Coast Guard and the NPFMC that the Soviet Union processing vessel Sulak has been cited for underlogging 25 metric tons of herring on January 20-21, 1980. The purpose and effect of such actions are obvious and need not be restated here.

Lastly, it is important to note that the Icicle Seafoods operation is exactly the type of operation that is necessary to aid this nation's dangerous economic situation. Construction of the Icicle barges took place in the United States and some workers for the processing operation came from the Alaskan State offices in Anchorage. The Icicle operation has added real productivity to our nation and, due to the European sales, contributed positively to our balance of trade. All this economic activity and these benefits have accrued to the nation without the government having to grant a subsidy or print yet another batch of dollars. The Icicle operation represents real development and deserves the protection of the

United States government. Icicle Seafoods is not asking for handouts or to be bailed out like Chrysler, but is asking merely to be afforded the protection that Congress intended it should receive.

Due to President Carter's new economic policy that was announced last Friday on March 14, it would appear that the fishing industry should not expect any economic aids to foster the development and growth of the industry. It cost nothing to impose the area restriction. The government can effectively aid this industry and its development without spending any money. Perhaps this is the best reason, at this time, for the NMFS to do what the NPFMC has unanimously recommended that it do.

The NMFS Criteria for Judging

In the notice regarding the proposed permit modifications NMFS indicated that it would judge whether to impose the area restriction based upon three criteria.⁵ We will address these criteria in order, but first we believe that it is essential to address the presumptions of NMFS that appeared in the notice.

⁵These criteria are:

- (a) the measures are reasonably calculated to promote conservation and management;
- (b) the measures do not seriously adversely affect the U.S. fishermen involved; and
- (c) reasonable alternatives are available for the fishermen who may be adversely affected.

The NMFS notice stated:

Although the restriction would be placed on the foreign vessel, it effectively would reduce U.S. fishing in the vicinity of certain domestic processors' facilities because U.S. joint venture fishermen would prefer to remain in close proximity to their processing vessels. Thus, only six to eight U.S. trawlers would operate in the area (landing groundfish for U.S. processors) rather than up to 24 trawlers which could work the fishing grounds if foreign processors also operated in the area.

This statement presumes that all joint venture fishermen would abandon all fishing efforts in the closed area. It must be remembered that the restriction in no way directly affects the harvesting efforts of any vessels of the United States. The restriction does not discriminate between any class of United States fishermen, they would remain unrestricted in where they might choose to fish. While it is true that those U.S. fishermen that choose of their own free will to make deliveries to foreign processors may also choose to engage in their harvesting operations in close proximity to the foreign processors, any such fisherman would not be prevented from fishing in the proposed closed area and delivering to United States fish processors or any foreign processor for that matter wherever located.

The point is that it is unfair to conclude that a certain number of United States fishermen will automatically fish in different areas in order that they can continue to make deliveries to foreign processors. They are free to choose where they will fish and where they will deliver

any fish that are harvested. If the goal of the area restriction was merely to reduce the harvesting effort in the proposed closed area, that goal could have been achieved by more direct means; namely, the traditional methods of directly limiting vessel time on the grounds or limiting the number of vessels in the area involved. We would agree that some vessels may choose to fish in other areas if the area restriction is imposed, but believe that such action cannot be considered as an action that directly affects the fishermen involved.

The NMFS notice also stated, "The Council's recommendation contains measures which effectively allocate an economic benefit between two groups of fishermen." The notice then continues and states that nonetheless the restriction could be imposed if the three criteria are met. This seems to incorporate national standard 4 of the FCMA.⁶ In addition, the NMFS notice cites section 302 (b)(2) of the FCMA regarding authority to designate zones where fishing can be restricted. The proposed area

⁶National standard 4 is as follows:

Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (b) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges. FCMA Sec. 301 (a)(4).

restriction is not being imposed as part of a fishery management plan but rather as part of the permit-issuing process under section 204 of the FCMA.

Section 204(b)(7) of the FCMA authorizes the imposition of area restrictions in addition to those included in any fishery management plan or preliminary fishery management plan. The national standards for the development of fishery management plans are not applicable in the present proceeding. NMFS has a wider degree of discretion and authority under its permit-issuing authority than it or a fishery management council does with respect to the development of fishery management plans. The purposes and policy of the FCMA are more appropriate guidelines for NMFS to be considering when it is imposing an area restriction beyond what has been provided in a fishery management plan. We believe the purposes and policy of the FCMA previously cited and the agreed upon interpretation of the FCMA as stated in the Stipulation of Settlement make it clear that the NPFMC-recommended area closure is both necessary and appropriate.

Nonetheless the proposed area closure meets the requirements of national standard 4. It does not discriminate between residents of different States as fishermen from any state can choose to fish where and for whomever they will even if an area is closed to foreign processors. Secondly it is not an allocation or an assignment of fishing privileges among United States fishermen. It could

be argued that it is an allocation or assignment between United States and foreign fish processors, but not among United States fishermen. As the Senate Report which accompanied the FCMA stated when addressing the issue of allocations among United States fishermen: "Resource management is essentially a [series] of allocations-- allocations among present users, allocations between present and future users, and allocations between public and private interests. There are simply not enough fish to go around and the line must be drawn somewhere."

S. Rept. No. 94-416, 94th Cong. 1st Sess. 31 (1975).

National standard 4 concerns allocations among United States fishermen, not among processors nor among United States and foreign interests.

When a management measure directly allocates a resource among competing domestic interests there is no question that a standard like that of standard 4 would be appropriate. Under the present circumstances, where NMFS has a duty to protect the United States fishing industry, the concerns are completely different and any standard such as standard 4 is inappropriate and should not be applied. The standards to be applied between competing United States and foreign interests are not the same as between competing United States interests. One of the corner stones of the FCMA is that fishermen should have the right to harvest fish to the exclusion of foreign interests. No one would argue that under the FCMA,

NMFS should not discriminate against foreign interests or allocate a privilege in a manner that only United States citizen interests are allowed to take advantage of the privilege. The point is simply that different standards apply to the issue at hand and those standards are the purposes and policy of the FCMA which have been cited earlier.

Reasonably calculated to promote conservation and management.--It has already been demonstrated that this criterion must relate to more than a preservation of the species type of rationale. And as was cited in the Senate Report above, management is essentially a series of allocations. There can be no doubt that the proposed area restriction will promote utilization of Pacific Cod by Icicle Seafoods and allocate an area to Icicle in which foreign interest cannot operate. As processing is included within the term fishing under the FCMA⁷ a management measure which allocates processing rights is a management measure within the meaning of the FCMA.

⁷This point was clarified when the FCMA was amended by the enactment of Public Law 95-354 and appears to be beyond question at this point. Even the Department of State witness at the aforementioned House hearings regarding the Soviet Union Governing International Fisheries Agreement testified that joint ventures could not be permitted to operate if the GIFA were terminated because under the FCMA the term fishing includes processing.

To a great degree the proposed management measure is much like the management measure specified in §611.90(c)(2) of the Foreign Fishing Regulations; namely, that foreign vessels are prohibited from harvesting within 12 miles of the United States. Such a management measure allocates an area exclusively to vessels of the United States. It does not regulate an amount of fish that may be caught in such area by vessels of the United States. No one appears to question the appropriateness of this management measure.

The proposed closed zone is a similar management measure. It would allocate an area exclusively to United States fish processors without directly regulating an amount of fish that may be caught in such area by vessels of the United States. There is no substantive difference between these two management measures. They both have the same effect; that is, to move foreign interests into an area in our 200-mile zone in which there is less likelihood that they will adversely affect any segment of the United States fishing industry.

A management measure that promotes the utilization of a species of fish by United States interests is within the meaning of the term "conservation and management" as such term has been defined in the FCMA. The effect the measure may have upon the preservation of the species of fish involved will be discussed elsewhere in this comment.

The proposed closure would not seriously affect the U.S. fishermen involved and there are reasonable alternatives for the U.S. fishermen who may be adversely affected.--

We have chosen to comment on the second and third criteria together, as the distinction between them is somewhat fleeting and consequently difficult to grasp. Criterion (b) appears to be concerned that the proposed area restriction not significantly adversely affect the United States fishermen involved in the manner stated in the aforesaid Senate Report. Criterion (c) appears to be concerned that those who are adversely affected (but perhaps not significantly so) have reasonable alternatives. Logic leads one to the conclusion that if United States fishermen have an alternative area where they can successfully operate they will not be significantly adversely affected. As previously mentioned, the proponents of the Soviet Union operation stated before the NPFMC that a vast abundant area existed outside the proposed closed zone in which they had successfully conducted operations in the past and were unable to come forth with any reasons how their operations could be harmed by the proposed area closure. Indeed the only fishermen that could be harmed are those with smaller vessels who do not have the capability to travel great distances from shore and could be greatly harmed if NMFS failed to impose the area restriction.

There seems to be no question anymore that management measures may be imposed even if they adversely affect fishermen

that choose to harvest and make deliveries to foreign processors; provided, however, that the management measure does not significantly (or as NMFS states, seriously) adversely affect those fishermen involved. Mr. Pereyra in his recent testimony before the House Subcommittee on Fisheries indicated that the Soviet Union processing operation takes deliveries from large and medium-size American trawlers and in addition to targeting on Pacific Cod planned to target on Yellowfin Sole in the Central Bering Sea. There appears to be no question that the vessels of the United States that have chosen to make deliveries to Soviet Union processors have the ability to engage in operations in open waters great distances from any port, roadstead or harbor, whereas a smaller class or vessels is making deliveries to the shoreside United States processors. These vessels, of course, do not have the same capabilities as larger vessels and must remain closer to shoreside support operations.⁸

Average catch data for the nation of Japan from 1972 to 1976 and for all nations combined for the years

⁸The vessels making deliveries to the Icicle Seafoods operation range from 75 to 105 feet and have not been specifically designed to engage in trawling operations to produce consumable seafood. The vessels generally have been used to harvest bait for other fisheries and for other purposes. These limitations, of course, make these vessels more suitable for operations conducted close to shore.

1977 and 1978 show that the most productive bottom fish areas in the vicinity of Akutan and Akun Islands are outside the proposed closed area.⁹ Statistical block 4, the area bounded by 166°x165° W longitude and 55°x54 1/2° N latitude, appears to be the most productive statistical block with the next westernmost block, statistical block 7, 167°x166° N longitude and 55°x55 1/2° N latitude, being the next most productive block. The attached charts from the NMFS Northwest and Alaska Fisheries Center state these results and most importantly also show that the statistical blocks closest to the Islands of Akutan and Akun are substantially less productive than statistical blocks numbers 4 and 7.

The alternative for those fishermen with large and medium-sized vessels that would still choose to make deliveries to the Soviet Union processing vessels would be to engage in harvesting operations in the most productive bottom fish statistical blocks in the area. The proposed area restriction would not prohibit the Soviet Union factory ships from operating in almost all of statistical block 4 and in all of block 7. If certain fishermen choose to work in close proximity to these foreign factory vessels in these statistical areas they could do so and would be less than 12 miles from Akun Island. That is not to say

⁹See Memorandum of Northwest and Alaska Fishery Center, previously cited in footnote 4, and attached.

that such fishermen themselves would have to operate 12 miles from Akun Island. They, of course, could fish directly within Unimak Pass and deliver their catch to the Soviet Union factory vessels just a couple of miles away. Or alternatively, such fishermen could conduct their operations within close proximity to the Soviet Union vessels, outside 12 miles and engage in harvesting operations in the most productive grounds available. Either of these alternatives could not significantly adversely affect these United States fishermen. Indeed it would appear that significant benefits may be capable of being achieved if one would choose to operate in statistical blocks 4 and 7 and had the availability of a processor in such blocks where deliveries could be made. Obviously, the Icicle Seafoods barges cannot operate in such blocks.

It cannot be argued in any rational way that the proposed area restriction would force the United States fishermen that choose to make deliveries to the Soviet Union vessels to operate in less protected consequently less safe fishing grounds. The Unimak Pass itself is well known for its rip tides and any vessel operator can testify to the dangers of operating a vessel in the vicinity of land masses and the varying bottom depths that are encountered close to shore. An operation conducted closer to shore is not necessarily a safer operation. Moreover, under current law the Soviet factory vessels cannot take deliveries at sea within the boundaries of any state, in this case

three miles. FCMA Sec. 307(2)(A). Thus under current circumstances the deliveries must be made in open waters three miles from any port, harbor or other protected area. There is no substantial difference between making these types of transfers three miles out to sea or 12 miles out to sea. Indeed it may be somewhat safer if the transfers were to occur outside 12 miles.

Conclusion, the NMFS criteria.--It has been demonstrated that conservation and management measures must related to how a resource is to be utilized and that the proposed area restriction tends to provide for utilization of the species involved in the manner intended by Congress; namely, totally by United States citizens. Moreover it has been shown that the only relevant criterion is whether the proposed area restriction would significantly (seriously) adversely affect those United States fishermen that choose to continue to make deliveries to foreign processing vessels and that the proposed restriction in no manner adversely affects such fishermen as there are eminently reasonable alternatives available to them.

The Marine Resources Company (MRC) Postion

By letter dated February 7, 1980, Richard N. Sharood submitted a statement on behalf of "Marine Resources Company and the fishermen associated with the Bering Sea/Gulf of Alaska joint venture who are members of the National Federation of Fishermen affiliated organizations" commenting on

the NPFMC-recommended area closure. The MRC statement in our view is seriously misleading and inaccurate as it concerns the actions of the NPFMC that lead to the recommendation of the area closure. The conclusion that the NPFMC action was "a discriminatory management measure which has no rational basis" is totally unwarranted and cannot be supported from the NPFMC record with respect to this issue nor is the MRC statement backed by an analysis of any judicial or administrative law principles. Rather, the MRC statement is in great part conclusionary and when an attempt is made to base conclusions upon premises often the premises are not established by fact, reason or law.

The NPFMC procedures and record supporting the action.--The NPFMC first became aware that the United States fish processing industry was desirous of having protected areas established as contemplated by Public Law 95-354, in September of 1978, shortly after passage of the law. At regularly scheduled meetings of the NPFMC early in 1979 the issue also was presented. While the June 20, 1979 letter of Icicle Seafoods was the most complete presentation of the area closure concept, it certainly was not the first occasion in which the concept was presented to the NPFMC. Since the June 20th letter the concept has continually been before the NPFMC for its consideration as either an amendment to the Bering Sea or Gulf of Alaska fishery management plans or as a recommendation associated with its approval of foreign processing vessel

permits. This activity reached its peak at the December 1979 and January 1980 meetings of the NPFMC with respect to its consideration of foreign processing permits for the 1980 season. The concept of the Akutan and Akun closure area was not brought for the first time in a motion before the NPFMC as Mr. Sharood states, but rather was included within the scope of the area closure concept from the very beginning.

At the December 1979 and January 1980 meetings of the NPFMC extensive presentations were made with respect to the closure area issue by both proponents and opponents to the closure. Ample opportunity was available for each side to present its economic and conservation views with respect to the issue before the NPFMC and its advisory panels. Neither side was burdened with having to prove its case by some degree of proof as suggested by Mr. Sharood. Rather, the NPFMC viewed the record in its entirety in a very methodical way and on the basis of the record as a whole and the members' significant experience in the fishing industry, decided unanimously that it was necessary and appropriate to close an area to foreign processing vessels to protect the infant developing United States fish processing industry and for certain conservation reasons that will be addressed later.

The NPFMC action was deliberate and in the final analysis solidly based upon the facts before it. Perhaps the reason MRC is upset with the NPFMC action and procedures is only due to its lack of success before that body. Indeed, when

the NPFMC inquired of those representing MRC whether they would be harmed by the imposition of the area closure, they could not articulate any adverse consequence that would befall their operation or those United States fishermen making deliveries to their operation. It appears that MRC did not and does not have a rational basis to oppose the area restriction. While this may have caused MRC to become somewhat frustrated, it does not support its attack on the NPFMC.

The first great error in the MRC statement.--The MRC statement immediately presumes that the national standards apply to the permit approval process without even examining the FCMA on such a point. The national standards relate exclusively to the preparation of fishery management plans and any regulations promulgated to implement any such plan. FCMA Sec. 301(a). As addressed earlier in this comment additional discretionary authority is provided to NMFS in the permit issuing process under the FCMA. FCMA Sec. 204(b)(7)(D). Even if a fishery management plan did not address the issue of an area restriction, NMFS could choose to impose one on a permit if, for example, it determined it was necessary and appropriate to do so "in order to foster the development of temporarily vulnerable or developing onshore processing facilities." However, and more importantly, as will be shown later, the national standards, even if they were to apply, would not be a barrier to the imposition of the NPFMC-recommended area closure.

The second great error in the MRC statement.--At page 2 of the statement a conclusion is quickly reached that the area closure would be "a direct limitation on the fishing areas available to U.S. fishermen fishing for Marine Resources." Mr. Sharood argues that there is a limitation due to the technology employed, specifically the cod-end transfer technique employed in the Soviet Union operation. Then on page six of the statement he concludes that there is some sort of high mystical burden "for closures which apply to certain members of a class of United States fishermen whereas other U.S. fishermen of this class using exactly the same type of gear and seeking the same species of fish have no such restrictions." Mr. Sharood cannot have it both ways. Needless to say, this leap from distinction and special treatment due to the cod-end technology to discrimination among members of the same class of fishermen defy reason and certainly shatter Mr. Sharood's entire argument. The error is either ignoratio elenchi (irrelevant conclusion) or petitio principii (begging the question). Fundamental principles of logic require any arguments committing such errors to be discarded.

The third great error in the MRC statement.--At page two of the statement it is also concluded that the proposed closed area is productive, safe, familiar and thus "easier to fish." It has already been shown earlier in this comment that such conclusions are not supported by NMFS data and do

not take into account that deliveries by law are limited to at sea locations that are unprotected; thus the area closure would present no change in that regard, and safer locations are not necessarily those close to shore--again a case of petitio principii.

The national standards.--Mr. Sharood states that national standard 2¹⁰ is most applicable to this proceeding then hastily concludes that the NPFMC recommendation "was based on no scientific information and such information, albeit incomplete, is available." What Mr. Sharood fails to indicate is that the term "scientific information" includes more than just information about preservation of a species of fish. The Senate Report to the FCMA states: "The term 'scientific information' is meant to include not only biological and ecological data but also economic and sociological information as well." Senate Rept. No. 94-416 94th Cong. 1st Sess. 32 (1975). Certainly nobody directly involved with the NPFMC proceedings would suggest that there was an absence of economic and sociological information presented to the NPFMC with respect to this issue. In addition, ample information was presented concerning the effect the restriction could have upon certain species found in the proposed closure including

¹⁰National Standard 2 is as follows: Conservation and management measures shall be based upon the best scientific information available.

information from the Alaska Department of Fish and Game, which supported the closure.

National standard 4 has been discussed in some detail earlier in this comment and the points made there will not be repeated here. Mr. Sharood again makes a logical error in his analysis of standard 4. He has presumed that the closure would be an "unprecedented deprivation to U.S. fishermen or productive fishing grounds to preserve them for fishermen who are fishing for one company." The action is not unprecedented; an area was closed to the Soviet Union factory vessels in the Pacific Whiting fishery off the Coast of California, Oregon, and Washington during the 1979 season. A preservation of the species rationale has never been articulated with respect to such closure. In addition, as previously stated, there is nothing associated with the proposed closure that would prevent fishermen from making deliveries to any processor, albeit a domestic or foreign processor. There simply would be no restrictions on any vessels of the United States as to where they can engage in harvesting operations.

The suggestion that because certain fishermen choose to utilize the cod-end transfer technique they will be discriminated against if an area is closed to foreign processing vessels makes no sense. There simply would be no barrier to prevent such fishermen from harvesting wherever they may choose and hauling the net on deck and delivering the catch to shoreside processors. They could choose to operate in such a manner, which of course would be no different from those fishermen currently making deliveries to Icicle Seafoods. The fishermen are free to choose how they will fish, where they will fish, and to

whom they will make deliveries. There would not be any discrimination associated with the closure.

Moreover, the choice is not merely to protect "one company" as Mr. Sharood states, but rather to give priority to the only United States fish processing operation in the area involved. One cannot forget the three-tiered system established by Public Law 95-354, under which operations like that of Icicle Seafoods are to be given a preference over partly foreign operations like that of MRC.

Lastly, national standard 5¹¹ is addressed by Mr. Sharood. The presumption made is that the proposed closure "has economic allocation as its sole criterion." As discussed above, allocations between United States and foreign interests are the cornerstone to the FCMA and are not improper. Standard 5 concerns measures which promote efficiency and provides with respect to such measures that economic reasons cannot be the only criterion to promoting efficiency in the utilization of a fishery resource. In addition, the NPFMC did find and express benefits other than economic protection which could result from the area closure.

The floating barge issue.--Mr. Sharood argues that the Icicle Seafood floating processing barges "cannot

¹¹National standard 5 is as follows: 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.

qualify for any form of protective measure even if a conservation basis can be shown to exist." Mr. Sharood is quick to direct his discussion to the visions of selected members of Congress, yet does not address what the law says. The FCMA defines "United States fish processors" to include "vessels of the United States used or equipped for, the processing of fish for commercial use or consumption." FCMA Sec. 3(25). Mr. Sharood's argument is specious.

The Conservation (Preservation) Purpose

Notwithstanding Icicle Seafood's position that the presence of a preservation element is not a legal requirement, but at best only one which may be required as a matter of discretion by NMFS, Icicle nevertheless presented ample testimony before the NPFMC regarding the presence of such an element, from which the NPFMC could and did reasonably find that a preservation of species of fish purpose was served by the proposed area closure.

The record of the December 12-14, 1979 and January 8-10, 1980 NPFMC meetings reflects that NMFS legal counsel Patrick Travers and Michael Stanley both advised that in order to impose the area restriction, the NPFMC should find that a preservation element is present to support the restriction. Indeed, members of the NPFMC discussed with the attorneys the necessity of a preservation element during the open portion of the meeting of December 12-14. NMFS legal counsel

expressly responded to a question regarding whether or not the testimony as a matter of law established a preservation element by indicating that that was a question for the NPFMC to determine, presumably as a matter of fact.

Considerable testimony had been presented to the NPFMC through representatives of Icicle Seafoods calling attention to the preservation benefits to be derived from the reduction in mortality to incidentally caught Halibut and also to the general benefit to be derived from reducing excessive trawling concentration on the inshore fishery stocks immediately surrounding Akutan and Akun. In short, since a number of fishermen were committed to fish for the Icicle operation and would be operating in the 12-mile area, the concentration of vessels fishing for foreign factory vessels in exactly the same area, according to the testimony as well as simple common sense, could result in overfishing of the localized stocks, and result in at least a temporary, if not a permanent reduction of the quality of fishing in that area.

Part of the testimony presented to the NPFMC referenced the work of James Blackburn, a biologist studying Halibut mortality under a grant from the NPFMC. That work and the 50 percent Halibut mortality rate on non-cod-end operations are more extensively discussed in the Report of Edgar Best referred to earlier and attached.

Even more detailed evidence regarding the conservation issue was made a part of the record before the January 8-10 meeting of the NPFMC. Specifically, Icicle Seafoods submitted a written request outlining the potential impact on overfishing of local stocks as well as the Halibut mortality issue, which submission was transmitted to each NPFMC member for consideration at the meeting. In addition, witnesses Allen Ottness and Kim Suzlie as well as James Seeley testified on behalf of Icicle as to the economic benefit as well as the preservation benefits to be derived for inshore fishery stocks and Halibut stocks, resulting from this area closure. Witnesses for the opposing point of view were also heard extensively on the preservation point and contended that the conservation benefit was small, and generally opposed the imposition of area restrictions.

It is particularly noteworthy that no witness testified on behalf of MRC that no preservation benefit would be derived from the reduction of concentration on these particular fishery stocks, and from the avoidance of increased mortality with incidentally caught Halibut.

The criterion suggested by NMFS is that an economic allocation not be the sole basis for the imposition of an area restriction. It follows according to the analysis of NMFS, that at least as a matter of policy, some preservation benefit should derive as well. The record before the NPFMC

contains more than adequate testimony, which is essentially uncontroverted by the opponents, that some preservation benefit would derive from the proposed area restriction. The fact that it is also economic in nature in no way deprives it of effectiveness.

In light of the specific advice given to the NPFMC by NMFS legal counsel at both the December and the January meetings, alerting it to the position of NMFS that a preservation benefit should be found, and in light of the discussion on the record by NPFMC members regarding the necessity to find a preservation benefit and, an honest reflection on the part of NPFMC members including of course those members who are fisheries biologists, on the record as to whether a preservation benefit had been adequately proved, it is uncontrovertible that the NPFMC had before it the issue of whether the proposed area restrictions contained a preservation element. On the basis of the evidence before them and their extensive experience in the fishing industry, all members of the NPFMC, including the fisheries biologists, found a preservation purpose to the proposed area closure and voted unanimously to recommend NMFS impose such a restriction.

The transmittal letter of the NPFMC to Mr. Leitzell regarding the conditions and restrictions amply sets forth the findings of the NPFMC. That letter expressly states "The Council is concerned that the additional pressure in that rather small area that could be exerted by American

delivering to foreign processors could impact local stocks adversely. . . . Pacific Cod will be the preferred target species for all of these operations and the Council feels that the effort should be spread as much as possible to avoid overfishing on localized stocks." It is evident from the letter of the NPFMC that the specific testimony regarding preservation was focused upon and the NPFMC made an express finding of fact that the preservation element was present. The attached Report of Edgar A. Best strongly supports the findings of the NPFMC. There can be no question that the judgment of all the members of the NPFMC with respect to this issue was correct and deserves to be implemented.

Also, included in the NPFMC record is a resolution of the Alaska Department of Fish and Game acknowledging the conservation benefit resulting from avoiding undue concentration on inshore fishery stocks, and declaring support for the area closure. This resolution from another body with expertise in this area was presented to the NPFMC and provides an additional evidentiary base for the NPFMC's decision. We submit that the expertise of these regional bodies with experience and familiarity with the area in question is entitled to considerable respect from NMFS, and that the NPFMC decision should be rejected only if there is no evidence to support it. Here the record before the NPFMC demonstrates that considerable evidence regarding preservation was presented and expressly found valid.

Conclusion

NPFMC Chairman Clement Tillion commented after hearing some of the testimony, if he were a competitor of Icicle Seafood's immobile shore-based operation, and if he were allowed to do so, he would come in and fish the inshore grounds near Icicle bare as quickly as he could and then would move off with his floating processing vessels to a more advantageous location. The insight of his statement indicates that the economic and preservation elements of the area closure as a "conservation and management" measure perhaps cannot and should not be completely separated.

I sincerely hope that the importance to the United States fishing industry of a favorable resolution of this issue will be recognized and that NMFS will not find any barriers to imposing the NPFMC-recommended area closure.

Sincerely yours,
ICICLE SEAFOODS, INC.

Robert M. Thorstenson
VHM

Robert M. Thorstenson
President

RMT/vvm
attachments (3)

BIOLOGICAL IMPLICATIONS OF THE 12 MILE
AREA CLOSURE PROPOSED BY THE NORTH PACIFIC COUNCIL

Prepared for submission to the
National Marine Fishery Service
on behalf of Icycle Seafoods

BY: Edgar Best, Consulting Biologist
to Icycle Seafoods

INTRODUCTION

The authorization of any new fishery with substantial increases in the vessel numbers involved in harvesting has the potential of impacting the fishery stock of the target species. This is particularly true with respect to species targeted upon in limited areas where there is likely to be a large concentration of harvesting vessel operations. The extent to which the reduction in stocks in those localized areas necessarily reduces the overall stock of the species is, of course, dependent upon the size of the area and the range of the bulk of the stock. Whether or not the reduction or the total elimination of relatively small localized stocks can be said to have a significant impact on the entire stock of a species, the predominate view of sound conservation practice calls for the preservation of a species over the widest area of its natural range, and its continued availability to the largest possible number of diverse users. There are numerous examples of such conservation measures being put into place to protect particular areas and the presence of certain species on those grounds from destructive overfishing. In the vicinity of the grounds in question both the Halibut

Savings Area, and the area closure to trawling on the Halibut Grounds in the Gulf of Alaska prior to halibut season are examples of this approach.

The operation of the Soviet joint venture off of Akutan Island in the Bering Sea, as found by the North Pacific Council, possesses the potential to irrevocably reduce, and certainly the potential to reduce in the short term, the stock of Pacific cod (*Gadus Macoocephalus*) in proximity to the island.

The location of Icicle Seafood's processing barge at Akutan results in the operation of several U. S. trawlers fishing for Icicle in the immediate vicinity of the shore plant. The practical range of these vessels is limited by the necessity that they run to shore to unload their catch at one fixed location. Thus, these fishermen are highly dependent upon the continued availability of adequate stocks on the grounds adjacent to the shoreside operation for which they fish. The introduction of foreign processing vessels and numerous additional trawlers fishing for such vessels in the same area in which the Icicle vessels are operating can result in increasing considerably the number of fish taken on these grounds. Certainly such reductions will have a short term effect on the size of the stock of Pacific cod in the area, and an effect on the viability of the U.S. fishery operations dependent on it. Whether such reductions will

have any long term effect on the entirety of the Pacific cod stock in the Bering Sea or on the particular grounds in question is a subject on which little data thus far has been collected.

An analysis of this question requires some description of the Bering Sea cod resource.

Description of the Cod Resource

The Pacific cod (*Gadus macrocephalus*) is found throughout the shelf areas of the Bering Sea. It ranges northward to St. Lawrence Island but does not enter the Chuckchi Sea. The Pacific cod also occurs in the western Bering Sea as far north as the Gulf of Anadyr. It has been reported from depths as great as 500 m but is generally fished commercially between 80 and 260 m.

Harvest

The reported catch of cod from the entire Bering Sea by all nations reached a peak of 74,613 metric tons (mt) in 1970. The most recent information available reported 58,948 mt in 1976. The catch has fluctuated around this level in the intervening years. For the most part, this poundage represents incidental catches while fishing for pollock (*Theragra chalcogramma*). Little effort has been directed solely at cod.

The catch of cod reported by the Japanese from east of 170°W reached nearly 28,000 mt in 1969, and then

declined to 15,300 mt in 1975 (Forrester et. al., 1978; International North Pacific Fisheries Commission, 1979). Bakkala and Samples (unpublished) report Japanese catches exceeding 1,000 mt in several statistical blocks (a statistical block is 1° of longitude by 1/2° of latitude) along the 200 m curve between Unimak Island and the Pribilof Islands and beyond in 1978.

Concentrations Of The Stock

According to Bakkala and Samples two of the statistical blocks (543166 and 543166) which had catches of over 1,000 mt in 1978 have their southern boundaries about 12 nautical miles north of Akun Island, west and adjacent to Akutan Island. These two prime statistical blocks are thus beyond the Icicle "window" and completely available to the Soviet factory ships. The two statistical blocks (540165 and 540166) in which the 12-mile "window" requested by Icicle falls yielded catches of less than 1000 mt in 1978, and thus cannot be said to constitute an allocation of the most advantageous areas. Recent NMFS studies of the area adjacent to Akutan confirm the existence of strong statistical areas beyond the 12-mile window. (January 29, 1980 NMFS Report, "Groundfish Resources Around Akutan and Akuon Islands".)

Although 1980 has been colder and the ice cover has extended farther south than in recent winters, it has not been south of 57°N, leaving considerable area to be fished without moving close to the Aleutian chain of Islands.

Biomass

The average biomass of cod estimated from commercial catches from the eastern Bering Sea was 663,000 mt for the period 1967-1971. Individual years ranged from 495,000 mt in 1968 to 2,500,00 mt in 1964 (Salveson and Dunn, 1976). Biomass estimated from National Marine Fisheries Service (NMFS) research cruises in the eastern Bering Sea were 65,000 mt in 1975 and 102,000 mt in 1976 (Bakkala and Smith 1978).

Maximum Sustainable Yield (MSY)

With little solid information from which a calculation of MSY could be made, the most recent catch was used as a basis for a preliminary estimate of the MSY and ABC. (Allowable Biological Catch). This estimate for cod is 58,700 mt.

Catch Rates

For the eastern Bering Sea as a whole, the catch rates for cod during NMFS research cruises have increased from 2.0 pounds per hour in 1975, to 14.4 pounds per hour in 1979. In 1979 catch rates exceeded 100 pounds pounds per

hour at a large number of the stations in the survey area with catches exceeding 500 pounds per hour not uncommon. In 1975, catches exceeded 100 pounds per hour only occasionally. (Bakkala and Sample, unpublished). Unfortunately, there is no similar information on catch rates specifically within the 12-mile "window".

Age in Harvest and Year Classes

Bakkala and Samples (unpublished) report that 3-year old cod make the largest contribution to the biomass. They reported that 3 and 4 year old fish contribute heavily to the commercial catches while the contribution of 5 and 6 year olds was relatively small.

Information collected during the 1978 and 1979 NMFS research cruises, indicates that the 1977 and 1978 year classes appear to be of above average strength while the 1979 year class is small. The 3 and 4 year old fish of the 1977 and 1978 year classes are expected to make major contributions to the fishery during 1980, 1981, and 1982. The weak showing of the 1979 year class as 0-year fish suggests a decline in 1983 unless subsequent years produce above average numbers of recruits. (Bakkala and Sample, unpublished). Thus the need for conservation of areas important to the domestic fishery during this period becomes even more apparent.

DESCRIPTION OF THE AKUTAN AREA

Resources in the Area

Although extensive surveys have been made of the Bering Sea flats and along the 200 m edge to the westward by several United States agencies as well as foreign nations, little information, if any, has been published for the area adjacent to the Aleutian Islands. Presumably, the species composition should be similar to that found along the 200 m edge between Unimak Island and the Pribilof Islands. The bottom type is probably a little harder and rockier, associated with the volcanic nature of the islands rather than the softer, sedimentary bottom type found on the Bering Sea shelf. This substrata may be more suitable for accumulations of rockfish (*Sebastes* spp.).

No information other than the general surveys referred to above is available on expected catch rates for the window area. Precisely because accurate data on the Pacific cod biomass in the area around Akutan is currently lacking, the harvesting concentration there should not be increased through foreign processing vessels at this time, particularly where the data indicates the better statistical blocks to be outside of the 12-mile area adjacent to Akutan. A better determination of the size and age distribution of the resource in that area can best be made after some period of domestic fishery has yielded more extensive data. To

treat conservatively with the resource within this area will tend to assure its continued availability to the domestic fishery, while data is collected. An aggressive policy toward harvesting the resource of this area, particularly in light of the trend with the 1979 class, may well result in at least a temporary depletion of the area in which the Akutan based domestic fishery must concentrate.

Migration Pattern of Cod

There has been no tagging of cod in the Bering Sea. Tagging studies carried out off the Washington coast (Gosho, 1976) and in British Columbia (Ketchen, 1967) report a limited seasonal movement with little if any interchange between stocks. Some tags were recovered near their release site after a year at liberty. This suggests a homing instinct and would limit any interchange between areas.

A seasonal movement from the continental edge between Unimak I. and the Pribilofs onto the flats has been inferred from the records of commercial fishing operations. The cod stocks in the Akutan area, however, would not necessarily have the same pattern of seasonal movement. They are located on a different part of the continental edge and face in a different direction. In this situation they may have a limited local movement. If the cod stocks in the Akutan area do not exhibit seasonal migration patterns, then the combined U. S. and joint venture fishing activities near

shore may well deplete the existing resource. Only the results of the first year's fishing efforts could provide the necessary and sufficient information on any seasonal movements. In short, a heavy reliance on migration to replenish the heavily fished area adjacent to Akutan certainly would not result in avoidance of short term reduction of stocks, and the data does appear to assure even long term replacement, particularly in light of the potential for replacement by other species discussed below.

If overfishing does occur, the migration pattern and homing instinct reported above will permit only limited interchange (or repopulation) if any, from adjacent areas. Quast (1972) suggested that depleted Pacific Ocean Perch (*Sebastes alutus*) stocks may be replaced with faster growing, faster reproducing, and less desirable species. While Pacific cod is a fast growing, highly fecund species, the chance of replacement by pollock is possible by sheer weight of numbers.

HALIBUT CONSERVATION

The operation of joint ventures which rely on a cod end transfer method of operation also inevitably has an effect on the survival rate of incidentally caught species such as halibut. Observers on Japanese processing ships accepting transferred cod ends gave subjective estimates of survival of halibut ranging from zero to ten percent. The

total catch to be sorted on mother ships often exceeded 400,000. Because of the time required to sort the catches, halibut, when found, were usually dead. (Hoag 1975)

In his studies Hoag tagged all halibut sorted on deck apparently in excellent to poor condition, and most of those judged to be dead. Based on tag recoveries, the average survival rate of fish in all condition categories was 28 percent for fish less than or equal to 80 cm and 55 percent for fish over 80 cm. He recalculated the survival rate of fish less than 80 cm. Based on the recovery of fish in the excellent category, he estimated it to be 52 percent. "Though the correct values are unknown and may differ from those in the example, I concluded that the average survival of small fish was higher than 28 percent and was probably close to 50 percent." (Hoag, 1975, p.13). Time on deck or in the hold before release was the most important factor to affect condition. The time prior to release was influenced by the size of the catches, which varied from 500 pounds to 10,000 pounds. Bell (1956) also reported that the species composition of the catches influenced survival. Many of the catches observed contained dogfish (*Squalus acanthias*) whose rough skin and spines physically injured the halibut. Similar injuries have been noted in catches containing large numbers of king crabs (*Paralithodes cantschatica*).

The attitude of the fishermen sorting the catch can also be a major factor in the survival of incidentally caught halibut, as well as the size of the individual halibut and the time delay. The drop of halibut and other species into the hold of factory ships is also likely to increase mortality.

The survival rate of about 50 percent among halibut sorted immediately on deck of trawlers is also in keeping with the findings of James Blackburn's research recently reported to the North Pacific Council.

What is clear is that the larger the catch and the longer the time on the deck or in the hold of a factory ship required for sorting, the lower the survival rate of Halibut. Close proximity of halibut to other species, particularly rockfish, in the confinement of a cod end also is likely to reduce their survival rate. However, no actual physical analyses have been conducted in the "window" or other relevant areas.

The 12-mile window lies within the International Pacific halibut Commission (IPMC) statistical area 48. Commercial halibut fishing in that area started in 1952, and removals reached a peak of 640,000 pounds in 1960. Since then they have ranged from 150,000 to 270,000 pounds in recent years. (Myhre et al., 1977). Juvenile halibut have been trawled from the inside waters of Akutan Island and from shallow water along the coast of Unalaska Island. Most

of the halibut caught during the observer program on foreign vessels in the Bering Sea were between 35 and 60 cm in length and between 4 and 6 years old. This is well below the current minimum allowed size of 82 cm.

Of course it might be observed that multiple exposures to the trawl, (that is an individual halibut being recaptured after a successful release, and again subjected to a statistical mortality rate of 50 percent) may increase the percentage loss of halibut resulting from this bicatch exposure. This potential further supports the advantage of spreading the trawling effort over a wider area, as the likelihood of multiple exposures is increased by concentrating a large number of vessels on relatively small grounds where captured fish are released.

While it can be said that the protection of incidentally caught halibut from an unnecessarily high bicatch mortality would be a salutatory conservation objective on all grounds, it cannot be denied that this conservation benefit would derive in the 12-mile "window" around Akutan. Since a prevalence of juvenile halibut appears in that area, and from Hoag's studies they seem to be more susceptible to bicatch mortality, that area would appear worthy of added protection. While additional statistical exposures may reduce the 50 percent savings rate, the reduction of concentration in the trawling fleet

resulting from the Icicle "window" would probably reduce such an impact. Thus, the introduction of the 12-mile "window", and its on-deck unloading of the trawl would contribute to the conservation of halibut in the area.

CONCLUSION

The above analysis of the impact of the 12-mile area closure on both Pacific cod and halibut indicates that a reduction of the concentration of trawlers operating in the area is likely to have some benefit on the numbers of both Pacific cod and halibut present in the area. It may be suggested by some that this contribution to stocks is minimal due to the small size of the area in which these savings are attained, so that the conservation benefit is negligible. Because of the absence of data in this particular area, a accurate conclusion with respect to these points cannot be drawn at this time and the more careful approach to the stocks in the area would call for providing some level of protection until the data could be accumulated.

Assuming, however, that the savings of halibut or the cod resource are relative minor, when viewed from the perspective of the totality of the stocks, it should not be concluded that the benefits derived are not conservation measures. The fishermen fishing for Icicle in this

relatively limited area as well as Icicle Seafoods require the presence of adequate stocks in order to be able to operate, and the preservation of these localized stocks would by no means be viewed a "small benefit" to them. Conservation must be viewed from the perspective of the beneficiaries of the continued availability of a resource, and even if only a relatively small area is protected for that resource, Icicle Seafoods and the fishermen involved with its operation are dependent upon its continued existence, there is added importance to assuring the continued vitality of that portion of the resource.

VITA

Edgar A. Best

CURRENT ADDRESS

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Seattle, Washington 98115
Phone: Office (206) 634-1838
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PERSONAL

Birth Date: August 17, 1925
Marital Status: Married, one daughter
Military Status: Veteran

EDUCATION

B.S. - Fisheries - University of Washington, Seattle,
Washington, 1953.

Graduate studies, no degree
University of Washington
Humboldt State College, Arcata, California

PROFESSIONAL EXPERIENCE

1978 to present Senior Biologist
International Pacific Halibut Commission
P. O. Box 5009, University Station
Seattle, Washington 98105

In charge of age determination section.
Responsible for the collection and processing of material to determine the age composition of the commercial halibut landings.

1965 - 1978 Biologist
International Pacific Halibut Commission
P. O. Box 5009, University Station
Seattle, Washington 98105

In charge of small halibut investigation.
I was responsible for the chartering of a commercial trawl fishing vessel to carry out a program designed to estimate the relative abundance of small halibut and their association with other demersal species in the Bering Sea and Gulf of Alaska.

1964 - 1965

Biologist IV

California Department of Fish and Game
Sacramento, California

In charge of an ecological survey of the Pt. Arguello, California area. The purpose of the survey was to determine the commercial and recreational value of the area surrounding the Vandenberg Air Force Base.

1955 - 1965

California Department of Fish and Game
Sacramento, California

I began this phase of my career as a Biologist I in the trawl investigation and worked up to Project Leader at a Biologist III. My first assignment was in Eureka to make biological Observations, collect log book information, and maintain contact with the northern California trawl fleet. In November 1957 I was promoted to Project Leader and transferred to Menlo Park. I was appointed Assistant Supervisor of Northern California Investigations in November 1958. In May 1959 I was appointed as California's Biologist member to the International Groundfish Committee - State Department. During this time period I also participated in short training periods in the shrimp and oyster fisheries and as Assistant Chief, Marine Resources Branch in Sacramento Headquarters.

1953 - 1955

California Department of Fish and Game
Sacramento, California

Worked on a brown trout research and management project in the high Sierra.

1953 - 1953

Fish Commission of Oregon
Clackamas, Oregon

Did stream survey work and participated in a mark and recovery program for the Coastal Salmon Project.

CONSULTING

1967

Fisheries Research Institute
University of Washington

Helped establish a program to monitor the effects of the Atomic Energy Commission activities around Amchitka Island, Alaska.

1976

Mathamatical Sciences Northwest
Bellevue, Washington

Compiled a literature search on the distribu-
tion of groundfish in relation to simulated
oil spills in selected locations in the Gulf
of Alaska, Bering Sea, and Arctic Ocean.

PROFESSIONAL AFFILIATIONS

American Institute of Fisheries Research Biologists
Pacific Fisheries Biologists

COMMERCIAL FISHING EXPERIENCE

Prior to and summers while attending the University of
Washington I was employed as a commercial fisherman,
principally in the Puget Sound purse seine salmon fishery.
I also participated in the otter trawl fishery off the
Washington-British Columbia coast as well as in an ex-
perimental otter trawl fishery for king crab in the Bering
Sea.

HIGHER ABUNDANCE OF PACIFIC COD EXPECTED IN EASTERN BERING SEA IN
1980-1982

by Richard Bakkala and Terry Sample

Some 75 years before foreign fleets began to exploit groundfish resources off Alaska, U.S. fishermen were exploring the eastern Bering Sea for Pacific cod. The fishery started on a regular annual basis in 1882 and reached a peak during World War I when an estimated 12,000-14,000 mt were harvested. Following this peak, the fishery gradually declined until it was terminated in 1950. Throughout its history, the fishery was conducted mainly from sailing schooners and fishing was by handlines from one-man dories.

There is presently renewed interest in the cod resource of the eastern Bering Sea, this time by the U.S. trawl fisheries. A domestic processor is now operating at Akutan Island in the eastern Aleutian Islands, and joint venture operations for cod between U.S.-Soviet and U.S.-Korean interests are under way or planned. The timing of these operations corresponds to a period of apparent improvement in the cod resource. Resource Assessment surveys by the Northwest and Alaska Fisheries Center (NWAFC) have revealed two abundant year-classes of juvenile Pacific cod which are anticipated to significantly increase the abundance of the resource in the eastern Bering Sea in 1980-82.

The surveys were conducted by the Center's Resource Assessment and Conservation Engineering Division under the direction of Dr. Murray Hayes. The Division conducts annual trawl surveys in the eastern Bering Sea, most of which have been limited to the southeastern Bering Sea, with the primary purpose of assessing the condition of the king crab resource. Groundfish are also studied during these surveys; however, the usefulness of these area specific surveys for assessing wide-ranging species such as pollock and Pacific cod are limited. More extensive surveys were carried out during the summers of 1975 and 1979 that sampled major portions of the eastern Bering Sea continental shelf. Data from these larger surveys provide the basis for the predicted increase in abundance of cod.

The sampling gear in 1975 was a modified eastern trawl with an 83-foot headrope and 112-foot footrope with a mean effective path width of 56 feet and a mean vertical opening of 7.5 feet. During the 1979 survey, 400-mesh eastern trawls were used having a 71-foot headrope, 94-foot footrope and a mean effective path width of 40 feet and a mean vertical opening of 5.6 feet. The survey periods also differed with the 1975 survey extending from August to October and the 1979 survey from late May to August. In addition, there were differences in environmental conditions between 1975 and 1979 which may have caused variation in the availability of cod to the trawl gear in the two years. Some of the change in the distribution and abundance of cod between the two surveys may be attributed to these factors, but their contribution to the overall changes is believed to be relatively small.

Figure 1 shows the observed distribution and relative abundance of cod during the 1975 and 1979 surveys. Very marked differences are apparent

between the two years. During the 1975 survey, catch rates were generally low and only occasionally exceeded 100 lbs/hour trawled, with cod absent in catches over a large portion of the survey area. The highest catch rates in 1975 were mainly restricted to the outer continental shelf, generally near the shelf edge. In 1979, cod were taken at most sampling stations, and catch rates exceeding 100 lbs/hour trawled were encountered over a large portion of the survey area; catch rates exceeding 500 lbs/hour were not uncommon. Mean catch rates from the overall survey areas indicate that abundance of cod increased about 7-fold between 1975 (2.0 lbs/hour) and 1979 (14.4 lbs/hour).

Also of interest is the change in distribution of cod between the two years. In 1975, an absence of cod is apparent in the central shelf area from near the Alaska Peninsula to St. Matthew Island, while in 1979, this area was observed to have major concentrations of cod (Figure 1). This shift in distribution may be related to the marked differences in environmental conditions between the two years. Bottom water temperatures in 1975 were low, with a tongue of cold water of less than 2°C covering the central shelf area approximating the location where cod were absent or in low concentrations. In 1979, the 2°C isotherm was restricted to the northern Bering Sea with bottom water temperatures in the central shelf region ranging from 2°C to more than 6°C.

The abundance of cod in the eastern Bering Sea has been relatively stable since the early 1970's based on foreign fishery statistics and survey data of the NWAFC. Significant increases in their abundance were first observed in 1978. The reason for this increase has been the recruitment of two consecutive year-classes (those spawned in 1977 and 1978) having above average strength. These year-classes were first observed in NWAFC surveys during 1978 as age 0 and age 1

fish, and again in 1979 as age 1 and age 2 fish (Figure 2).

Pacific cod are a fast growing species and have a high annual natural mortality rate. Evidence from the foreign fishery indicates that the biomass of cod reaches a peak in the Bering Sea at age 3, and that by age 5 and 6 only a small portion of the original numbers survive. The 1977 and 1978 year-classes are, therefore, expected to make their major contribution to the fishery as 3 and 4 year-olds during 1980-1982. Based on the 1979 NWAFC survey data, the abundance of the 1979 year-class is low (Figure 2), and unless 1980 produces a strong year-class the overall abundance of cod may decline again in 1983.

Based on the survey data in 1979, the average weight of age 3 cod is 3.2 pounds, and age 4 fish 8.4 pounds. Mean weights of cod taken in 1978 by various types of trawlers in the Japanese commercial fishery ranged from 3.2-6.6 pounds.

The distribution of annual catches of cod by the Japanese fishery in 1978 is illustrated in Figure 3. These catch data are probably more representative of the distribution of adults than the NWAFC survey data which samples all age groups. The largest catches by the Japanese fishery (greater than 1000 mt) were taken along the shelf edge between Unimak Pass and St. George Island in the Pribilofs and in the northern Bering Sea.

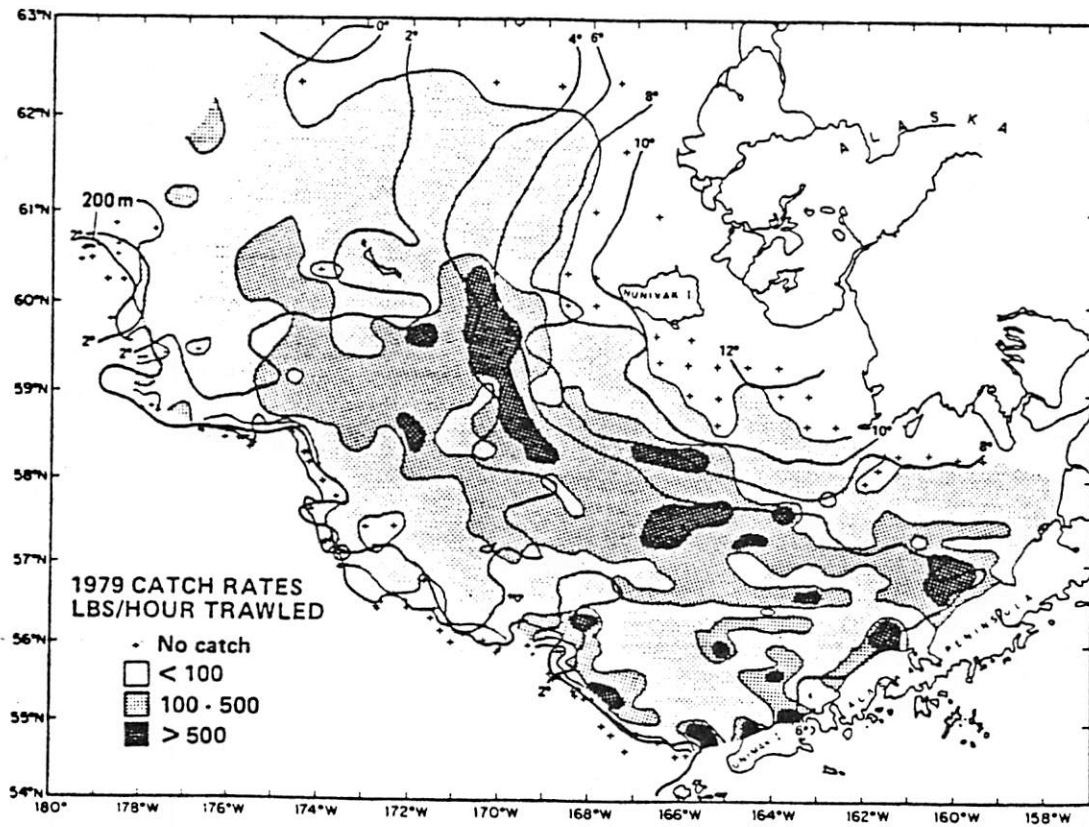
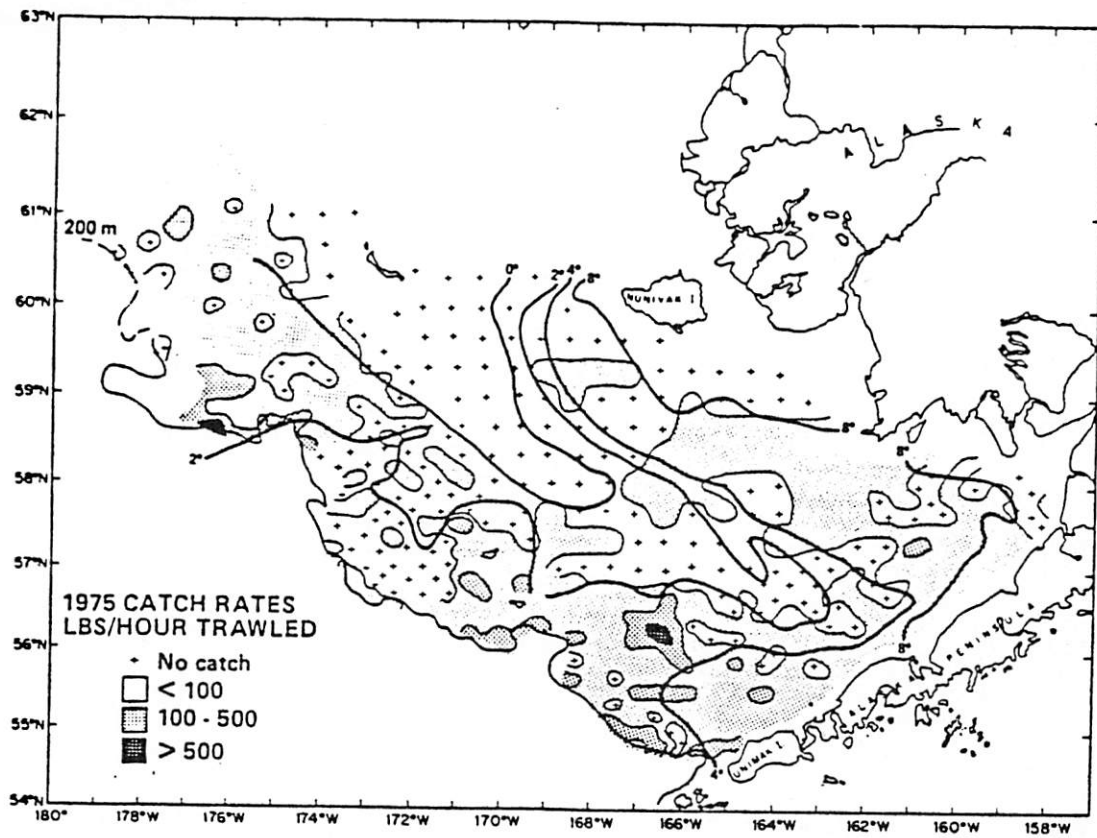


Figure 1.--Distribution and abundance of Pacific cod in the eastern Bering Sea as shown by NIAFC trawl surveys in 1975 and 1979.

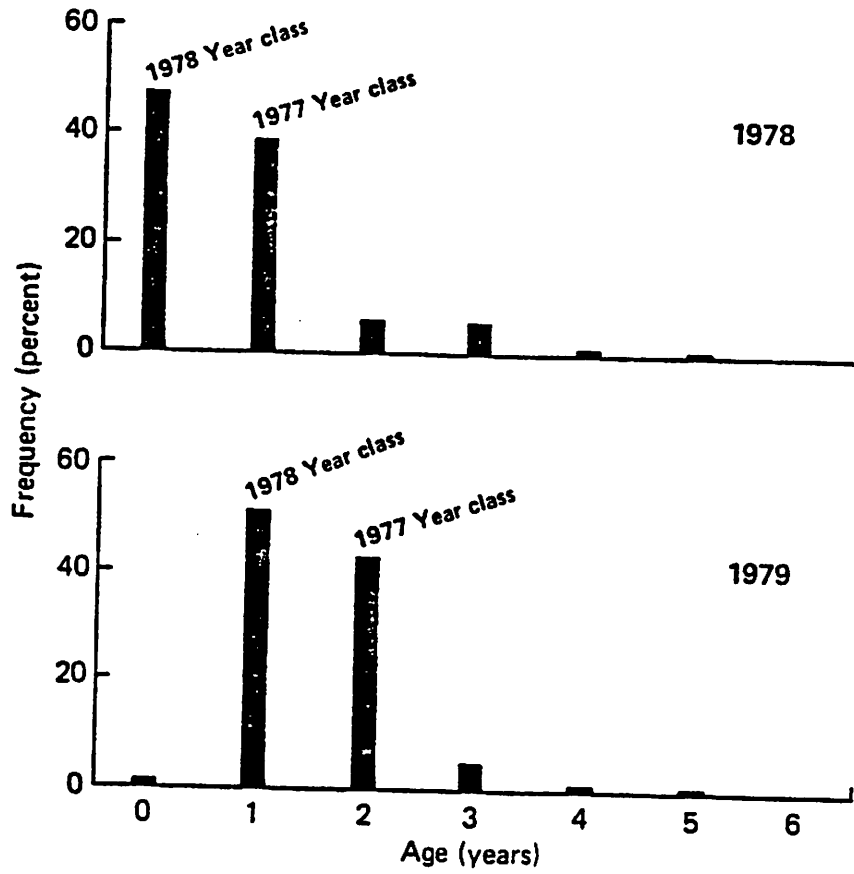


Figure 2.--Age composition of Pacific cod in the eastern Bering Sea as shown by NWAFC trawl surveys in 1978 and 1979.

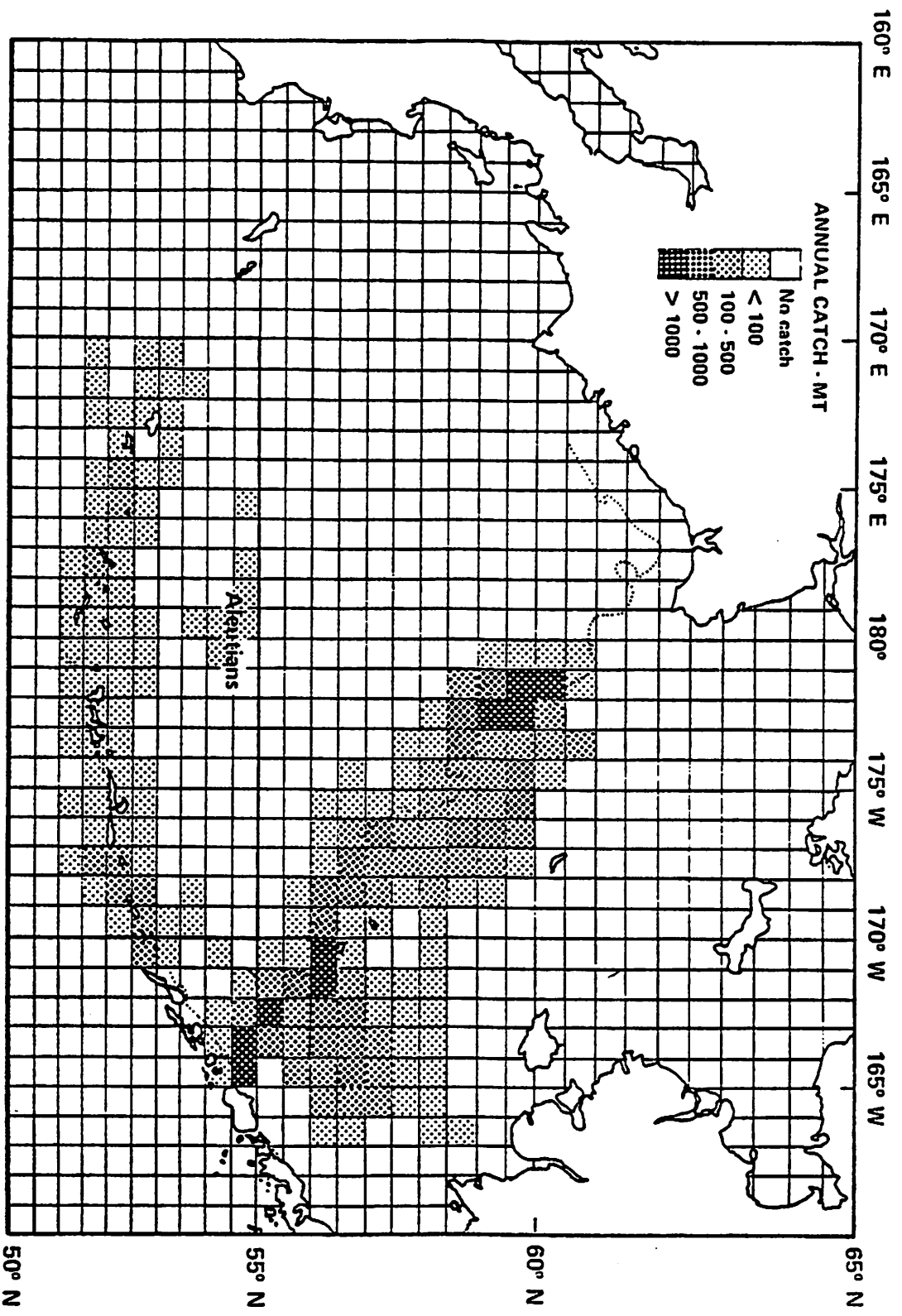


Figure 3.--Distribution of catches of Pacific cod by Japanese trawl fisheries



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest and Alaska Fisheries Center
Resource Ecology and Fisheries Management
2725 Montlake Blvd. East
Seattle, WA 98112

January 29, 1980

F/NWC2:LLL

WAL

TO: Mike Hershberger, Staff Assistant
North Pacific Fishery Management Council

FROM: Loh-Lee Low
REFM Division, NWAFC *Low*

SUBJECT: Groundfish resources around Akutan and Akun Islands

Enclosed are five figures summarizing information on groundfish in the vicinity of Akutan and Akun Islands. Highlights of these figures are shown as follows:

Figure 1: Commercial catch by all nations by 1° longitude x $1/2^{\circ}$ latitude statistical blocks. These catches are averaged for 1977 and 1978. Each statistical block is about 30 by 30 nautical miles. You should note that the areas immediately next to the two islands have been closed to foreign fishing a good part of the year. Otherwise, fish catches are expected to be higher, as noted farther north. Predominant species are pollock (85 - 90%), cod (3-4%), flounders (1 - 5%), rockfishes (<1 - 5%), and sablefish (<1 - 2%).

Figure 2: Same as in Figure 1 except that the numbers represent Japanese catches averaged over a 5-year period (1972-76). Catches by other nations are not known in the same statistical detail but are expected to total less than 10% of Japanese catches. Species composition on the north side of the Aleutian Islands is very similar to the composition for 1977-78. On the south side, rockfishes (11%) and sablefish (15%) were more abundant during 1972-76 than during 1977-78.

Figure 3: Catch rates (in kg per hour trawled) by a NMFS research vessel during August 1979. The 18 stations sampled by the vessel were selected systematically for scientific estimation purposes and may, therefore, not be truly representative of educated commercial fishing operations. For example, in one station out of 18 stations sampled, the catch rate was unusually high (6.85 metric tons per hour). The species composition was also unusual (69% cod, 15% pollock, and 2% Pacific ocean perch). The average catch rate for all the other 17 stations combined was comparatively low (0.27 mt per hour) and the catch composition was 44% pollock, 11% cod, and 4% sablefish.

Figure 4: This figure shows the average catch rate by an experimental commercial trawl survey by NMFS trawlers along the continental slope



north of Akutan and Akun Islands during June 1974. Catch rates averaged 3.15 mt per hour (6,938 lbs per hour) and the species composition was 64% pollock and 5% cod.

Figure 5: Same as in Figure 4 except for the area south of Akutan and Akun Islands. The average catch rate for this experimental commercial trawler was 3.52 mt per hour (7,758 lbs per hour). The species composition was 74% pollock, 11% cod, and 7% Rex sole.

In summary, the vicinity of Akutan and Akun Islands is one of the more important fishing grounds in the Bering Sea/Aleutian Region. Most of the area has been closed to foreign fishing either because of time-area closures during December 1 - May 15 associated with the "Winter halibut savings area" of proximity to U.S. coastline. The area is also known to be an important wintering area for halibut and other groundfishes for the Bering Sea/Aleutians stocks.

Figure 1
 COMMERCIAL CATCHES--ALL NATIONS COMBINED
 Average Catch in metric tons within statistical blocks
 1977 and 1978

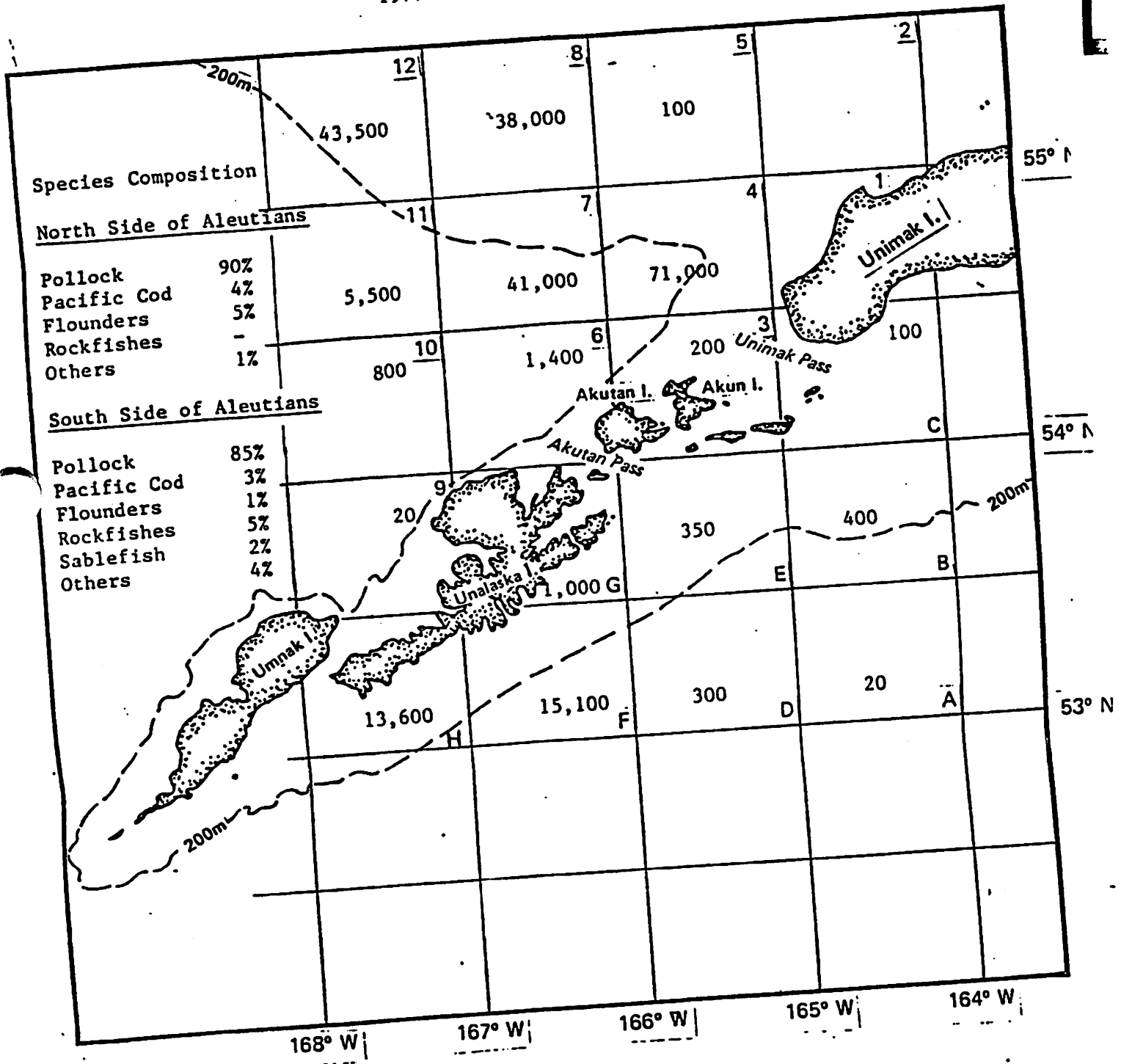


Figure 2

COMMERCIAL CATCHES--JAPAN ONLY

Average catch in metric tons within statistical blocks
1972 to 1976

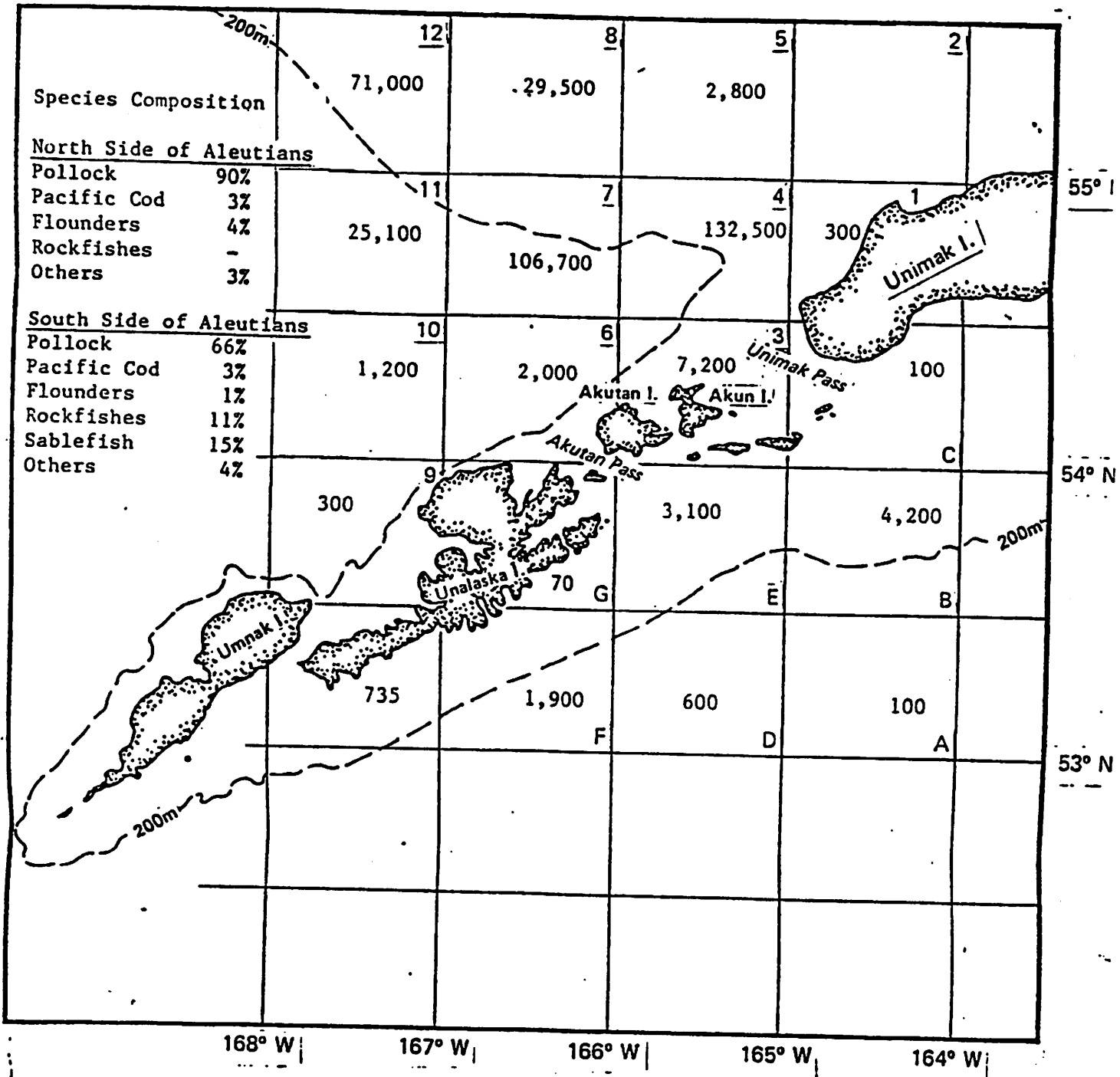
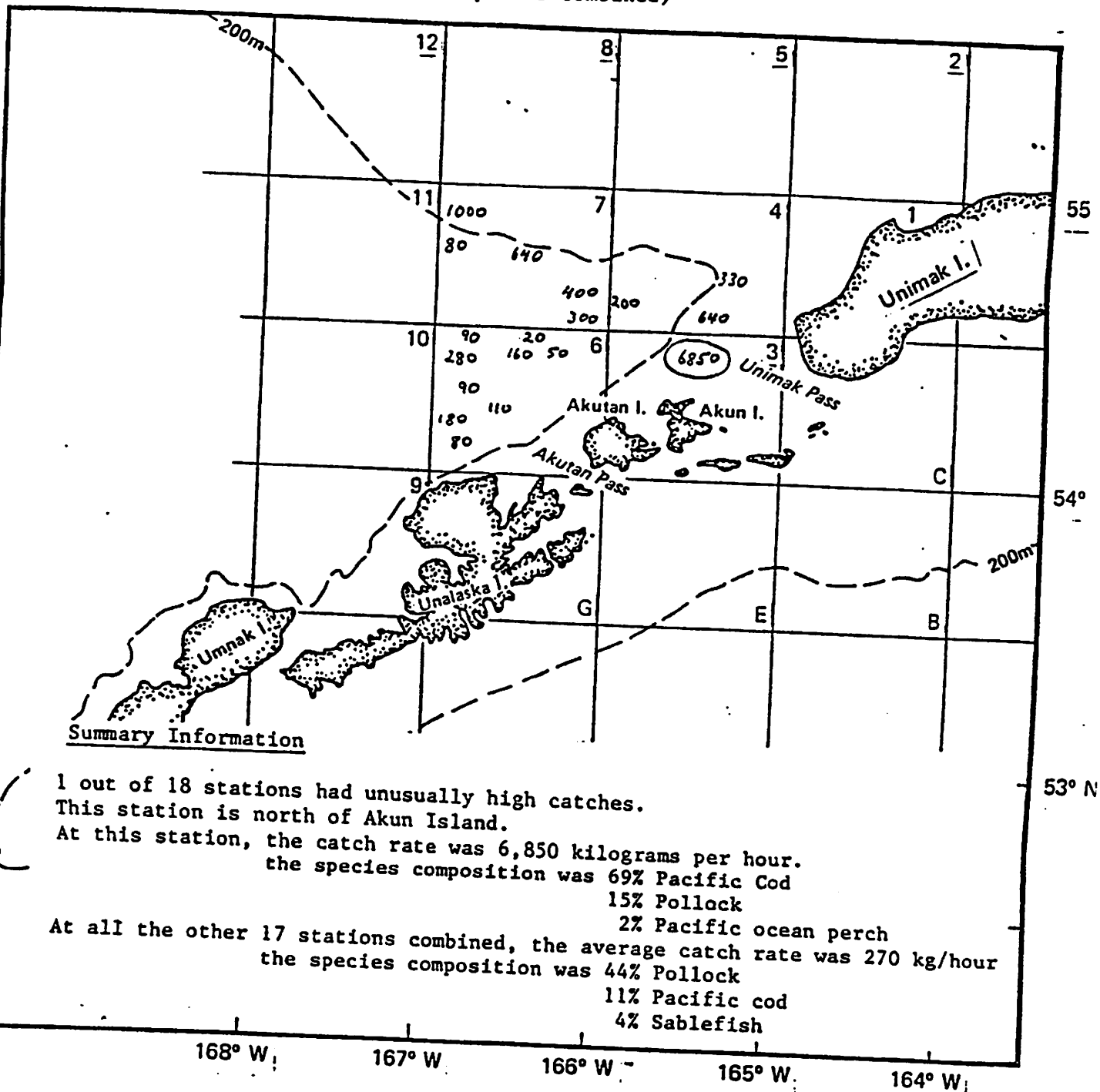


Figure 3
 TRAWL SURVEY BY NMFS
 August 1979

Catch rates in kilograms per hour trawled
 (All Species Combined)



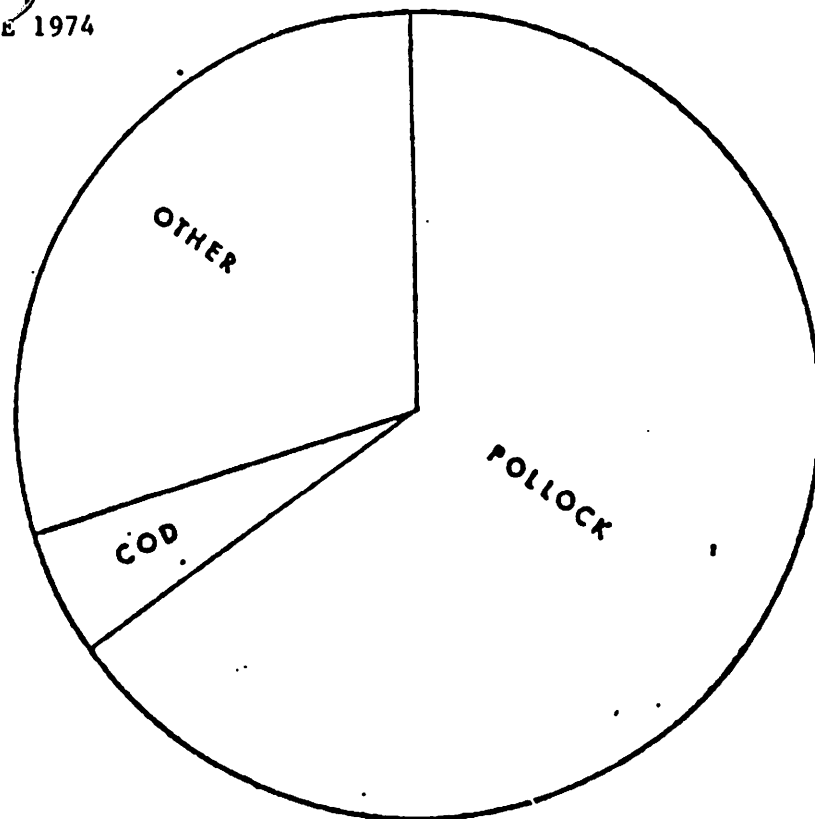
Summary Information

1 out of 18 stations had unusually high catches.
 This station is north of Akun Island.
 At this station, the catch rate was 6,850 kilograms per hour.
 the species composition was 69% Pacific Cod
 15% Pollock
 2% Pacific ocean perch

At all the other 17 stations combined, the average catch rate was 270 kg/hour
 the species composition was 44% Pollock
 11% Pacific cod
 4% Sablefish

Figure 4
EXPERIMENTAL COMMERCIAL OPERATION BY NMFS--JUNE 1974

Depths 72-132 fm.
Total catch 95,938 lbs.
Hours trawled 14.0
Avg. catch/hr. 6,938 lbs.



POLLOCK (64%)
4,428 lbs/hr
18.0 inches
99% marketable

COD (5%)
349 lbs/hr
21.0 inches
99% marketable

SNOW CRAB
93 lbs/hr

KING CRAB
8 lbs/hr

HALIBUT
10 lbs/hr
18.0 inches

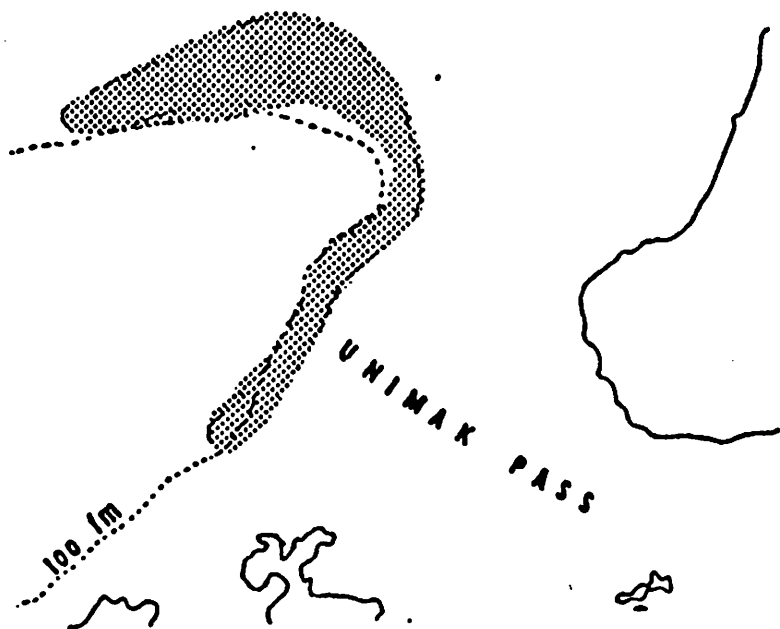


Figure --Total catch, catch rates, and species composition from depths where commercial concentrations of groundfish were located in the shaded area north of Unimak Pass, June 1974. Sizes of fish indicate the average length and percentage of marketable fish by weight.

Figure 5

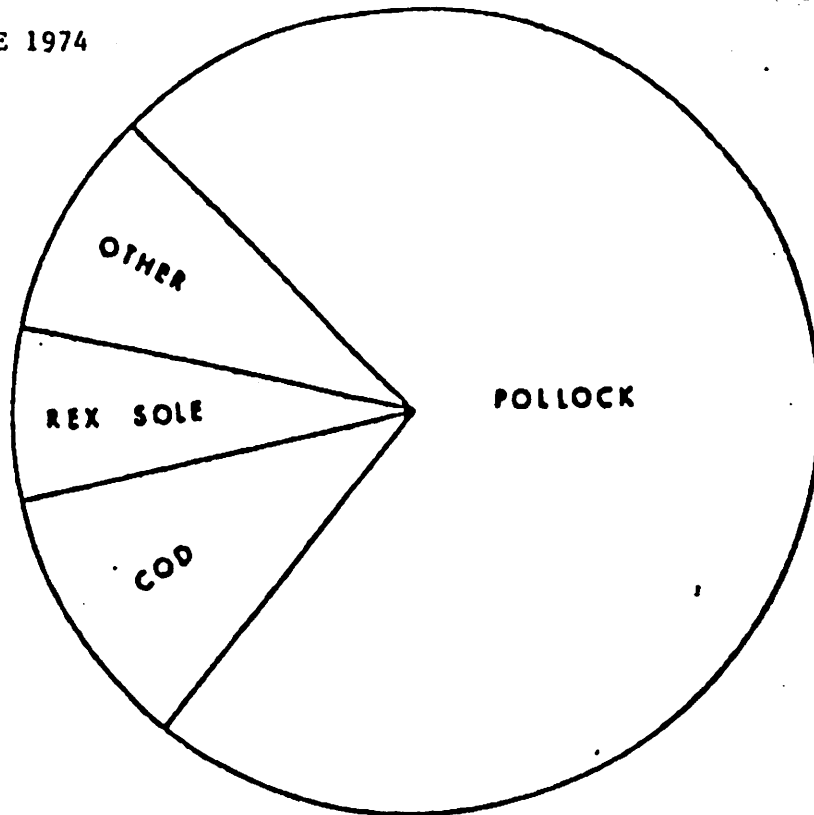
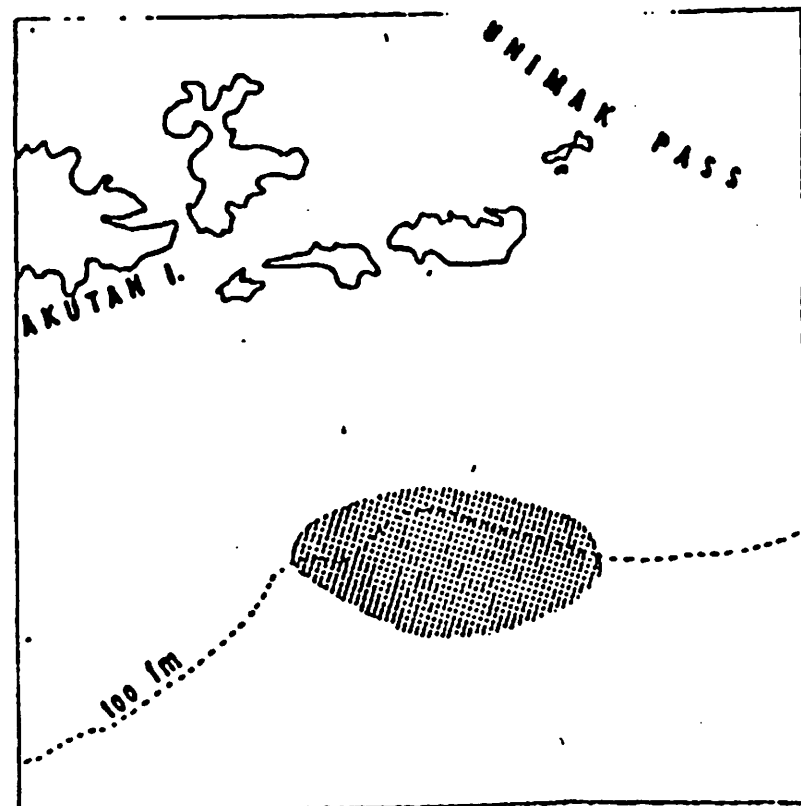
EXPERIMENTAL COMMERCIAL OPERATION BY NMFS--JUNE 1974

Depths 74-127 fm.

Total catch 174,349

Hours trawled 21.4

Avg. catch/hr. 7,758



POLLOCK (74%)
5,721 lbs/hr.
20.4 inches
98% marketable

COD (11%)
841 lbs/hr.
22.0 inches
99% marketable

SNOW CRAB
0 lbs/hr.

KING CRAB
0 lbs/hr.

REX SOLE (7%)
512 lbs/hr.
15.0 inches
95% marketable

HALIBUT
95 lbs/hr.
20.5 inches

Figure 5. ---Total catch, catch rates, and species composition from depths where commercial concentrations of groundfish were located in the shaded area southeast of Akutan Island, May 1974. Sizes of fish indicate the average length and percentage of marketable fish by weight.