

M E M O R A N D U M

TO: Council, SSC, and AP Members
FROM: Jim H. Branson
Executive Director
DATE: July 7, 1982
SUBJECT: Herring FMP Revision

ACTION REQUIRED:

Review State request for amendment; approve/disapprove revision.

BACKGROUND

The Herring FMP was submitted March 17, 1982, for Secretarial review and implementation. The review period has been postponed until the draft proposed regulations and Regulatory Impact Review (RIR) are prepared. These documents are now ready to be submitted; however, General Counsel has advised us that serious legal problems face the FMP if we attempt to implement it in its present form. The major concern regards overfishing if a major portion of OY is allowed to be taken offshore. Pat Travers will explain his legal analysis and the problems he foresees.

The Herring Plan Maintenance Team (PMT) has prepared a report outlining the issues raised by the State of Alaska. The report is basically a statement of issues, how the FMP currently addresses those issues, and alternative approaches. This report was sent to Council family on June 30 but is included here for reference as agenda item D-2(a).

The preliminary harvest figures and biomass estimates are contained in a report from ADF&G [D-2(b)].

6/29/82

FINAL HERRING PMT REPORT

Introduction

The Herring Plan Maintenance Team (PMT) met June 9-10 and examined several issues that were raised at the May Council meeting. The PMT was directed to review the procedures for establishing the Optimum Yield (OY) and to determine if the current method of allocation is consistent with the objectives of the FMP and the priorities of allocation identified. Other issues raised by the State of Alaska are addressed in this report and alternatives to the current measures are provided for Council consideration. This PMT report is not intended to be an FMP amendment. It is a description of the issues, a review of the measures incorporated in the FMP, and alternatives to those measures. The PMT recognizes the Council has addressed these issues in the past, and most were discussed in a PDT report at the April 1980 meeting.

The major issue is to reduce the likelihood of an offshore fishery and to reduce the amount of any offshore allocation.

The State has requested the Council to formally prohibit foreign fishing for herring. The management measures now in the Plan establish the conditions under which a foreign allocation would be available but it is highly unlikely that those conditions will occur given current U.S. fisheries and stock conditions.

The State has requested that the Allowable Incidental Catch (AIC) be removed from the Herring FMP and included only in the Bering Sea/Aleutian Islands Groundfish FMP. The State has asked for clarification of how the Aleutian Islands/Alaska Peninsula stock unit is handled by the FMP and its relationship to the initial offshore food and bait allocation.

A. Optimum Yield/Offshore Allocation

The PMT believes that the current FMP procedures allow only two adjustments to the Allowable Biological Catch (ABC) in the formulation of OY: AIC is subtracted, and the ABC for Nelson Island is subtracted.

The State has suggested that this approach is too restrictive and has provided an alternative method of determining OY. An additional approach has also been provided by Team members.

Alternative 1: Status Quo

The portion of the Optimum Yield available to the offshore fishery is based upon the ABC and the results of the inshore fishery. OY is determined annually following the inshore fishery by the following procedure:

1. Review the ABC

ABC is computed by formula based on the ratio of current biomass to MSY biomass. The formula is

$$ABC = \frac{\text{current biomass}}{\text{MSY biomass}} \times .2 \times \text{current biomass} + 2,000 \text{ mt}$$

2. Subtract the AIC from ABC

AIC is to be part of the OY of the Bering Sea groundfish fishery, and must therefore be excluded from herring OY.

3. Subtract from ABC that portion of ABC attributable to subsistence stocks

The inshore subsistence fishery of Nelson Island is closed to commercial fishing by State regulation. Subtracting the Nelson Island component from ABC complements the State management measures and provides a measure of protection to this important subsistence fishery.

Of this OY, 2,000 mt is allocated to the offshore domestic food and bait fishery for harvest beginning July 1. The remainder is available to the inshore fisheries. To avoid overfishing, State managers should subtract 2,000 mt from the harvest guideline inshore. The amount harvested inshore is subtracted from OY, and the remainder is available for subsequent harvest. Due to seasonal distribution of the herring stocks this remainder is available only in offshore waters.

Alternative 2: Evaluate the level of utilization in the inshore fishery (State Proposal)

The State's position is that the Council should review and evaluate the quantity and quality of utilization of the herring resource by the inshore fishery in determining the final OY. This should be done on an annual basis.

An example of how this might be done is presented here:

When the annual biomass estimate is at least 122,000 mt (50% of the MSY biomass) the inshore fishery exploitation rate should fall between 10 and 20 percent. A harvest within this range will be considered sufficient utilization of the resource and there will be no allocation to the offshore fishery. However, if a substantial socioeconomic benefit can be achieved through additional harvests offshore, an offshore allocation not to exceed the remaining ABC may be made. A substantial socioeconomic benefit will be determined through an evaluation of the following:

- * The need to promote efficiency in the utilization of herring resources.
- * The world marketing demand for protein sources.
- * The opportunities for diversification by the harvesting and processing sectors.
- * Impacts on the subsistence resource and fishery.
- * The labor forces and industry dependence on the herring resource.

Any offshore allocation will be made subject to the following guidelines:

1. The overriding concern of any offshore allocation is to minimize the likelihood of overfishing a discrete stock which has been exploited in the inshore fishery. Special attention must be given to stocks utilized by subsistence fishermen who receive the highest priority

under this FMP so that their harvest opportunity is not significantly reduced by a high seas mixed-stock fishery.

More specifically, the Council should consider at least the following factors:

- a) condition of the subsistence stock and performance of the inshore fisheries
 - b) distribution of the catch among the spawning stock groups
 - c) spawning success
 - d) recruitment
2. The amount of allocation of the surplus should be dependent on biological factors in addition to population size.

The Council should consider at least the following biological factors in establishing an offshore allocation:

- a) age composition of the population
- b) spawning success
- c) recruitment

Should the inshore fishery exploitation rate fall below 10 percent, then an allocation to the offshore fishery may be made to raise the overall exploitation rate up to 10 percent. Beyond 10 percent the additional offshore harvest should be based on criteria discussed earlier in this proposal.

However, in order to address biological concerns about overfishing or the potential socioeconomic benefits of not allowing an offshore fishery, the Council may allow the overall exploitation rate to remain below 10 percent.

When the annual biomass estimate is below 122,000 mt (50% of the MSY biomass) no offshore allocation will be made. The purpose of this measure is to rebuild the inshore spawning stocks to MSY levels.

Alternative 3: Minimal Text Modification

This text is designed to be inserted in the FMP after the OY formula to provide additional flexibility.

In some years additional modification of OY may be required to account for biological, ecological and socioeconomic factors that cannot be readily addressed in quantitative terms. The PMT in their recommendation of the final OY will consider any pertinent and appropriate factors and will include a description of the relevancy of these factors to management in their recommendations to the Council.

It is difficult to describe specific non-quantitative factors and relevant management options; however, the PMT should consider factors within the following general areas:

- a) condition of the subsistence stock and performance of the fishery
- b) distribution of the catch among the spawning stock groups
- c) age composition of the population

- d) relationship between harvest capacity and remaining OY
- e) economic relationships/impacts between inshore and offshore fisheries
- f) spawning success
- g) recruitment

B. Total Allowable Level of Foreign Fishing (TALFF)

Alternative 1: Status Quo

The FMP states that allocation to foreign fisheries will be made only if there is no intent or capability by domestic fishermen to utilize the entire OY.

Utilization of the herring resource is based on the following priority system:

- a) subsistence
- b) domestic inshore (primarily roe) fisheries
- c) domestic offshore (food and bait) fisheries
- d) foreign offshore fisheries

Alternative 2: No TALFF (State Proposal)

The State feels that there is adequate domestic harvest and processing capacity to fully utilize the Bering Sea herring resources. There is no need to provide for a foreign fishery. A natural disaster or environmental circumstance which prevents domestic utilization of OY is not grounds for allocating to foreign fishing interests. Herring should be included in the category with other domestic fisheries such as salmon and king crab.

Alternative 3: No TALFF unless inadequate domestic harvest is demonstrated over at least two sequential years.

Ice conditions or other factors may prevent full domestic utilization of the herring resource although the desire and capacity exist to harvest the entire OY. TALFF will not be allocated unless there is a demonstration that OY exceeds DAH and DAP for more than one year.

C. Allowable Incidental Catch (AIC)

Alternative 1: Status Quo

AIC is an allocation to all groundfish trawling interests as the maximum quantity of herring they will be allowed (in the absence of TALFF or remaining OY). It is designed to reduce the incidental catch of herring without unnecessarily restricting normal trawl operations. If a nation exceeds its AIC it is automatically excluded from all or part of the Herring Savings Area for the remainder of the fishing year.

AIC is described in the Herring FMP and will be implemented through both the Herring and Groundfish FMP's.

Alternative 2: Delete AIC from the Herring FMP and Insert pertinent discussion into the Bering Sea/Aleutian Islands Groundfish FMP (State Proposal)

The Herring FMP addresses the incidental catch of herring by groundfish trawl operations. Because it is the groundfish operations that will be restricted by AIC regulations, it would be more appropriate to address AIC in the Bering Sea groundfish FMP instead of in the Herring FMP. This would be a more direct approach and would emphasize to the groundfish fisheries that they will be held accountable for the "cleanliness" of their fishing operations. This is also the approach used for other species such as salmon, halibut and crabs.

D. Aleutian Islands/Alaska Peninsula Stocks and preliminary offshore allocation

Aleutian Islands Component

The Bering/Chukchi Sea management unit includes all waters adjacent to the northern coast of the Aleutian Islands and all waters adjacent to the southern coast of the Aleutian Islands west of 170°W longitude. In order to account for unsurveyed herring spawning biomass along the Aleutians, the FMP provides that 2,000 mt be added in the determination of ABC. This figure is based on the average annual herring harvest that occurred in this area in the 1930's. It is not clear at this time whether or not herring that utilize these waters in July and August represent part of the Bristol Bay stock that has migrated west along the chain following spawning, a separate stock that spawns along the chain, or a mixture of the two.

Two issues have been raised with respect to this component of the population. First, if these fish represent a separate stock and do not winter in the central Bering Sea or in an area where they would likely be subjected to harvest by the trawl fisheries, then it may not be appropriate to increase ABC and thereby increase any surplus that may be available for harvest offshore. Second, in 1981 a summer commercial herring food fishery occurred in the vicinity of Dutch Harbor/Akutan. A harvest of approximately 700 tons resulted and a much more intensive effort is expected this year. Although most of this fishery will most likely occur in state waters, some effort may occur in the FCZ. While the FMP now provides for a 2,000 mt initial allocation to the domestic food and bait fishery that is available for harvest July 1 south of 60°N latitude, it is possible that future development of this fishery could be affected by limiting the harvest to this amount, i.e., if no additional allocation were made. The State has asked for clarification of the Council's intent on these issues.

The following options address these issues:

Alternative 1: Status Quo

The current procedure adds 2,000 mt to the central Bering Sea ABC to adjust for unsurveyed stocks in the Alaska Peninsula/Aleutian Islands area. Although these stocks may not migrate to the central Bering Sea wintering grounds the FMP allows this 2,000 mt to be harvested anywhere in the management unit.

Alternative 2: Redefine the management unit to exclude waters adjacent to the Aleutian Islands

A redefinition of the management unit to exclude (potentially) local stocks would remove the 2,000 mt adjustment from OY. In lieu of federal management the State would manage this area.

Alternative 3: Establish procedures to develop an OY for Aleutian Island stocks

The FMP would be structured to deal with the Alaska Peninsula/Aleutian stocks as a single stock management area. This goes back to the original intent of the FMP drafters to manage each stock individually, and may be the only stock for which this procedure is applicable. Offshore harvest would be managed through the FMP.

Initial Allocation to a Domestic Food and Bait Fishery

Alternative 1: Status Quo

The FMP provides an initial allocation of 2,000 for a domestic food and bait fishery in the FCZ which is available for harvest beginning July 1 south of 60°N latitude and August 1 north of 60°N latitude. This provision was for the purpose of permitting the harvest of herring for bait with the anticipation that such a harvest would occur primarily near the Aleutians. While the intent may have been to permit primarily a bait harvest in the Aleutians area, the FMP also provides for the 2,000 mt to be taken anywhere in the management unit.

Alternative 2: Restrict the harvest of this allocation to south of 56°N latitude (State proposal).

If a 2,000 mt offshore fishery is to be allowed under this FMP for bait in the Aleutians area, harvest should be restricted to the Aleutians area (south of 56°N). This would have the additional benefit of utilizing local herring stocks rather than mixed stocks and would reduce the likelihood that over-fishing could occur on Nelson Island and other fully utilized stocks to the north.

Alternative 3: The Council will assume that this 2,000 mt has been taken for bait although unreported.

Reporting of herring harvested and used for bait will be difficult to enforce and monitor. The FMP could be amended to reduce OY by an assumed harvest. This would simplify management but would require that no food fishery be allowed in the area.

JUL 19 1982

D-2 Supplemental



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		July 16, 1982	

Jim Branson, Executive Director
 North Pacific Fisheries Management Council
 Post Office Box 3136 DT
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Dear Jim:

Enclosed is our proposed adjustment to Bering/Chukchi Sea Herring FMP to help solve the question of a directed off-shore fishery. From our phone conversation this morning I understand that you will forward copies to the Advisory Panel and Scientific and Statistical Committees on Monday. During the council deliberations on this FMP I hope that this adjustment will be considered and I certainly will be available to offer further comments.

Best regards,

Mick Stevens
 Operations Manager

MS/kr
 Enclosures

cc: William Gordon
 Robert McVey



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PROPOSED ADJUSTMENT OF BERING/CHUKCHI SEA FMP

PURPOSE: To resolve the present conflicts about procedures for allowing or not allowing an offshore domestic fishery for herring. This Proposal is a compromise approach intended to balance the interests and concerns of the parties on both sides of this question. This amendment if accepted may also substantially reduce the likelihood that the plan will be contested in court of law by one or both of the parties.

TEXT: In the first three years following the implementation of this FMP an offshore domestic fishery at the minimum level of 5000 tons will be authorized on an experimental basis. The fishery will be authorized for the period October through April and shall be conducted north of 56° 00' N latitude in Bering Sea. If on a year by year basis the inshore fishery significantly underharvests the resource then the Secretary/Council/Regional Director may increase the allocation to the domestic offshore fishery up to a maximum limit of 50% of the relevant final OY. At the end of this three year period the impact and benefits of this experimental offshore fishery will be evaluated to determine the future of such an allocation approach.

Note: Criteria for the evaluation of the fishery following the three year experimental period could be listed if necessary, or deferred until prior to time of evaluation.

RATIONALIZATION:

1) Proposal suggests a rather moderate level for the offshore fishery. Some minimum quantity must be assured to give the industry a confident base from which to plan. With the many conservative factors already incorporated into the plan for determining biomass estimates, setting exploitation rates and other management measures this level of allocation seems quite defensible from a biological point of view.

PROPOSED ADJUSTMENT OF BERING/CHUKCHI SEA FMP
(continued)

RATIONALIZATION:

- 2) The allocation is not permanent. After three years it may be eliminated or modified if necessary.
- 3) If evidence exists or can be generated thru monitoring of the limited offshore fishery, while it is in process, that there is a significant adverse impact on some discrete spawning stock then the Council/Regional Director/Secretary may have in season control and make changes.
- 4) The domestic trawler fleet is in dire need of any and all kinds of markets, particularly as a result of the very poor prospects over the next few years for sustaining income from the crab fisheries.
- 5) The council has established a precedent for allowing a "domestic fishery on an experimental basis" in an area of domestic concern over species composition. The Bering Sea/Aleutian Island FMP provides for domestic trawling "on an experimental basis" within the pot sanctuary.
- 6) Given the lack of significant risk in conducting an offshore fishery at moderate levels the ultimate justification for this experimental fishery is the opportunity to generate useful data. Nobody can argue that many of the most difficult problems associated with finalizing this plan result from lack of data. An offshore fishery offers the very best opportunity to generate some of this needed data. Fishery managers must of course base their decisions on the best data available. Responsible management however should seek out and encourage the generation of this data so that the largest possible base of objective information is available for consideration.

16 July, 1982

PROPOSAL OF THE ALASKA REGION, NATIONAL MARINE FISHERIES
SERVICE, FOR MODIFICATION OF THE NORTH PACIFIC FISHERY
MANAGEMENT COUNCIL'S HERRING FISHERY MANAGEMENT PLAN

As a result of recent legal advice provided by the NOAA Office of General Counsel, Alaska Region (GCAK), we have concluded that the Fishery Management Plan for Herring of the Bering and Chukchi Seas (FMP) adopted by the North Pacific Fishery Management Council (Council) must be modified in certain ways before it can be approved and implemented by the NOAA Assistant Administrator for Fisheries under the Magnuson Act. The points upon which GCAK found the FMP to be legally vulnerable were rather specific, albeit important. We therefore do not believe that a wholesale revision of the objectives and structure of the FMP, such as that proposed by the State of Alaska, is necessary in order to address the legal impediments to its approval and implementation. Based upon our own scientific analysis and the advice of GCAK, we specifically reject the position that these impediments can be removed only by reducing to practically zero the possibility of any offshore directed herring fishery.

The following proposed changes to the FMP are designed to address specifically the problems raised by GCAK that seem to present serious obstacles to the FMP's approval and implementation. These concern primarily the significant possibility that the FMP's current provisions for a directed offshore herring fishery may fail in certain circumstances to "prevent overfishing" as required by National Standard 1 of the Magnuson Act. Our proposed changes would place restrictions on the occurrence and extent of a directed offshore herring fishery that we believe would, when properly implemented, prevent overfishing of any herring stock covered by the FMP. The overfishing that must be prevented under National Standard 1 has been defined by NOAA to mean "a level of fishing mortality that jeopardizes the capacity of a stock to maintain or recover to a level at which it can produce maximum biological yield or economic value on a long-term basis under prevailing biological and environmental conditions." Our belief that the limitations on an offshore directed herring fishery suggested below, together with the FMP's existing limitations on the incidental catch of herring by the Bering Sea/Aleutians groundfish fishery, will prevent overfishing as so defined is based on past experience with offshore herring fisheries in the area much larger than any that would be authorized under the FMP as we propose to change it, and on the opportunity provided by the annual inshore migration of herring to assess the possible short-term effects of any limited offshore fishery that has been allowed and to impose any additional restrictions on that fishery that may be necessary to assure that herring stocks maintain or recover to optimum levels.

This proposal also suggests the clarification of the FMP's provision of 2000 mt of herring for an offshore "food and bait" fishery. This fishery is apparently distinct from the directed trawl fishery that has been the focus of greatest concern in discussion of the offshore harvest of herring. The current provisions of the FMP are unclear, and perhaps outdated, about the location of this "food and bait" fishery (whether inside or outside the territorial sea, and whether limited to the Aleutians or more widely dispersed throughout the management area), about the identity of the stocks on which it targets (whether discrete stocks spawning in the Aleutians or part of the Togiak stocks), and about the uses to which its harvest is put (relative amounts of food and bait, amounts sold to foreign and domestic purchasers). In the absence of this information, the impact of the "food and bait" fishery on herring resources in the management area cannot be assessed.

In order to prevent unnecessary delay in further consideration of the FMP by the Council and the Assistant Administrator, the following suggested changes have been designed to address these two legally troublesome areas, along with some less important ones that have been brought to our attention, while leaving most of the current version of the FMP unchanged. The following describes the substance of each of our proposed changes. If the Council approves of them, we will work with the Council and State of Alaska staffs, as well as interested private persons, to devise corresponding modifications of the text of the FMP.

Addition of a TALFF Specification Equal to Zero

The State of Alaska has proposed that the FMP be changed to provide that herring TALFF be equal to zero. This would eliminate any possibility under the FMP of a foreign directed offshore herring fishery. It would not affect the allocation between foreign and domestic fishermen of the allowable incidental catch (AIC) of herring in the Bering Sea/Aleutians groundfish fishery as a component of the OY of that fishery. If the other changes to the FMP that we are proposing should be adopted, it would be unlikely that OY would ever exceed the domestic annual harvest (DAH) of herring by inshore and offshore United States fishermen. We would therefore concur in the specification of herring TALFF as zero if the other changes we are suggesting are made to the FMP. This respecification of TALFF would have to be accompanied by a detailed explanation why OY is unlikely ever to exceed DAH. We emphasize that the fact that United States fishermen may fail to harvest the entire OY solely because of factors beyond their control, such as weather or overly conservative inshore management, does not in itself excuse the Council and NOAA from apportioning the unused OY to TALFF. Once OY has been specified, it is the actual extent to which United States fishermen

will harvest it, and not merely their professed "intent" to do so, that determines whether a TALFF must be apportioned. Because our proposed changes would make the FMP's herring OY specification quite restrictive, and would relate it to the actual performance of the inshore herring fisheries, we consider it unlikely that OY under the FMP as changed would exceed DAH.

Modification of the FMP's Statement of Priority Among the Fisheries Taking Herring

The current version of the FMP prescribes the following order of priority for apportioning the herring resource among the fisheries that utilize it: (1) inshore subsistence fishery; (2) inshore commercial fishery; (3) offshore domestic fishery; (4) offshore foreign fishery. This is not, however, the actual order of priority provided for by the FMP's management measures. These require that the AIC be apportioned to the Bering Sea/Aleutians groundfish fishery each year regardless of the amounts, if any, that are assigned to the other fisheries by the State of Alaska and NOAA for the same year. Thus, it is the Bering Sea/Aleutians groundfish fishery that actually has first priority in the annual apportionment of the herring resource under the FMP, a priority which is limited, however, by the amount of the AIC. We consider this limited priority to be consistent with the purposes, policy, and national standards of the Magnuson Act, in light of the tremendous economic importance of the groundfish fisheries off Alaska which is expressly recognized in the Act; and of the small amount of herring, about 2000 mt, which is assigned to the AIC. We agree with the State of Alaska that the limited priority of the groundfish fishery in the apportionment of the herring resource under the FMP should be stated clearly in the FMP's text, in order to prevent confusion of users and reviewers of the FMP. We also suggest (1) that AIC be specified as either the currently prescribed fixed percentage of the Bering Sea/Aleutians OY for target and other groundfish species or the herring ABC as calculated under the FMP, whichever is lower; and (2) that an amendment to the Bering Sea/Aleutians groundfish FMP providing for inclusion of the AIC in the OY of the Bering Sea/Aleutians groundfish fishery be prepared and submitted concurrently with the revised version of the FMP for approval and implementation by the Assistant Administrator. The first of these suggestions is intended to ensure that closure of the herring savings area to groundfish trawling takes place before the herring ABC, from which the AIC is apportioned, is exceeded when herring stocks are at low levels of abundance. It might even be desirable to set AIC at zero when the herring ABC is less than the normally applicable fixed percentage of the target and other groundfish OY. Adoption of the second suggestion would eliminate the confusion that is sure to result if the AIC is specified as a component of the groundfish OY only in the herring FMP.

In light of the additional restrictions we are proposing on any directed offshore herring fishery, we do not believe it necessary to change the FMP's objectives to disfavor such a fishery in the manner proposed by the State of Alaska. We therefore support retention of the objectives set forth in the current version of the FMP.

Clarification of the FMP's Provisions for a 2000 mt Initial Apportionment to an Offshore Food and Bait Fishery

The FMP currently provides for an initial apportionment of up to 2000 mt to vaguely described "current domestic food and bait fisheries." Based upon discussions with State of Alaska and Council staff, we understand that the fisheries referred to in this provision are believed to take place off the Aleutians and almost exclusively in State waters. The FMP does not, however, require that the 2000 mt assigned to these fisheries be taken only in the area of the Aleutians. Thus, all or part of this 2000 mt could be taken outside the Aleutians area, especially after August 1, when directed offshore herring fishing north of 60° North latitude would open under the current version of the FMP. This causes us concern, because this 2000 mt apparently is intended to correspond to the 2000 mt added to herring ABC to represent Aleutians stocks the abundance and other characteristics of which have not yet been assessed. If, in fact, the fisheries to which this 2000 mt is apportioned may take place in areas other than the Aleutians, they could end up targeting on Togiak and other northern herring stocks, leaving the unassessed Aleutians stocks unutilized. Furthermore, there appears to be significant evidence that the herring found in the Aleutians as far west as Dutch Harbor do not, in fact, belong to separate Aleutians stocks, but rather to stocks spawning around Togiak. In order to ensure that these fisheries do not cause overfishing of the Togiak and northern herring stocks, it may be necessary to limit them to the Aleutians area by regulation. To the extent that these fisheries may not target on discrete Aleutians stocks, even if confined to the Aleutians, the herring ABC should not be increased to account for such stocks. Otherwise, the impact of these fisheries on the Togiak and other northern stocks may be underestimated. These matters should be clarified, and appropriate changes to the FMP made, before it is resubmitted for approval and implementation.

To the extent that the 2000 mt initial apportionment to these fisheries is retained in any revision of the FMP, we suggest that it be recognized expressly in the FMP's statement of priority of apportionment among the fisheries using herring.

Modification of the FMP's Herring OY Specification

Based upon GCAK's legal advice, we believe that the specification of herring OY set forth in the FMP must be changed to prevent any offshore directed herring fishery that may take place from resulting in overfishing. We concur in the suggestion of the State of Alaska that the herring OY include only those herring authorized to be taken in directed fisheries in the FCZ. This will not only simplify greatly the text of the FMP, but also recognize the fact that the FMP cannot bind the State of Alaska in its management of the inshore herring fisheries and the great differences between those fisheries and any that would take place in the FCZ.

We suggest that the herring OY be calculated in the following manner. Herring ABC would be calculated as currently provided in the FMP, subject to our preceding suggestion concerning the 2000 mt now added to ABC to represent unassessed Aleutians stocks. From this amount would be subtracted the amounts currently provided in the FMP: the AIC, the 2000 mt apportionment to existing domestic food and bait fisheries (if retained), an amount corresponding to the Nelson Island stock, and the actual amount of herring harvested by the inshore subsistence and commercial fisheries. The remainder, if any, would be multiplied by .5. If the product were less than 2000 mt, or if the herring biomass were less than one-half the MSY biomass, then there would be no directed offshore fishery for herring, and the herring OY would equal zero. If the product were greater than 2000 mt, it would normally constitute the herring OY up to a maximum herring OY amount that would be an absolute ceiling on the offshore directed herring fishery. While further discussion is necessary before this maximum amount can be specified, we believe that it is between 5000 and 10,000 mt. There would be a strong presumption that the amount calculated by the NMFS Regional Director as just described would be the herring OY for the year. In exceptional circumstances, the Regional Director could specify a herring OY lower than this amount if he found a serious problem to be raised by any of the following factors: (1) condition of the several spawning stocks of herring; (2) herring spawning success and escapement; (3) age composition of the herring population; (4) recruitment to the spawning stocks of herring; (5) distribution of preceding inshore and offshore harvests among the several spawning stocks of herring. In determining the herring OY, the Regional Director would consult with the Council, and would to the extent possible provide an opportunity for prior public participation in the decision.

We are suggesting an OY threshold of 2000 mt because any amount less than this could be harvested by a directed herring trawl fishery within the normally prescribed fishery reporting period of one week. If this occurred, damage to the herring resource might already have occurred before

the Regional Director even had the information necessary to consider a closure of the fishery. The 50 percent reduction factor and the 5000 to 10,000 mt range from which we suggest that the maximum herring OY be selected are, in our judgment, and based upon our knowledge of the effects of past offshore herring fisheries in the area covered by the FMP, quantities that can normally be relied upon to yield a herring OY the offshore directed harvest of which will not cause overfishing of herring stocks. In what we believe will be the rare instances in which this is not the case, the exercise of the Regional Director's authority to reduce the herring OY specification based on the factors listed above will be available to prevent overfishing.

Minor Clerical, Factual, and Stylistic Changes to the FMP

We would not object to the inclusion of clerical corrections, the correction of incorrect factual information or addition of new information, or the making of minor stylistic changes in the FMP before it is resubmitted to the Assistant Administrator for approval and implementation. We urge, however, that such changes not rise to the level of a wholesale revision of the FMP, a process that in our view would only lead to nonproductive conflict and delay.

McVey motion on Herring FMP, July 21, 1982

I move that the Herring FMP be withdrawn from active Secretarial review for revisions as follows:

1. That the optimum yield for the directed herring fishery in the FCZ, subject to the following limitations, be defined as 50 percent of the remainder of the herring ABC as defined in the current version of the FMP, after subtracting

- (a) the Allowable Incidental Catch of herring in the Bering Sea/Aleutian Islands groundfish fishery (AIC);
- (b) an initial apportionment to an offshore food and bait fishery, if any;
- (c) an amount corresponding to the Nelson Island stock; and
- (d) the actual amount of herring harvested during the current fishing year by the inshore commercial and subsistence fisheries.

The limitations on this OY are as follows:

- (a) If the amount so calculated were less than 2,000 mt, or if the current herring biomass were less than one-half the MSY biomass, OY would equal zero.
- (b) Under no circumstances would the OY for the directed herring fishery in the FCZ be greater than [an amount between 5,000 mt and 10,000 mt].
- (c) In exceptional circumstances, the amount calculated above may be further reduced if NMFS, in consultation with the Council, finds a serious problem resulting from any of the following factors:
 - (1) condition of the several spawning stocks of herring, with special focus on the availability for subsistence harvest;
 - (2) the abundance of spawning herring and their spawning success;
 - (3) age composition of the herring population;
 - (4) recruitment to the spawning stocks of herring;
 - (5) distribution of preceding inshore and offshore harvests among the several geographical groups of spawning herring.
- (d) This procedure for determining the offshore herring fishery OY will be reviewed at the end of three years.

2. That TALFF for the directed herring fishery in the FCZ be specified as zero.

3. That the FMP's provisions on the initial apportionment to a food and bait fishery be clarified based on the latest available information.