

M E M O R A N D U M

TO: Council, SSC, and AP members

FROM: Jim H. Branson *CSP*
Executive Director

DATE: May 19, 1981

SUBJECT: Gulf of Alaska Groundfish Fishery Management Plan

ACTION REQUIRED

Mostly informational, but Council may need to discuss a proposed schedule of FMP revisions recommended by the PDT.

BACKGROUND

The GOA Groundfish FMP has been amended ten times. The next amendment may include a complete revision of the FMP into a multi-year framework plan which incorporates provisions addressing the problems of incidentally caught prohibited species. The PDT may have available at this meeting, its intended revisions to the plan and a proposed schedule of events.

Amendment #10 which restricts foreign trawling in the Eastern Regulatory Area began Secretarial Review on April 20, 1981. The amendment should be implemented by December 1981 according to the schedule developed by NMFS [Item E-5(a)]. This schedule only applies to amendments not requiring SEIS's or RIA's. These additional documents may lengthen the review process.

Amendment #9 implementing the Lechner Line around Kodiak was approved by Leitzell last February. A Notice of Proposed Rule-Making will be published in the Federal Register about June 16th. NMFS promises to have the final regulations in place by the start of the king crab season on September 15 [item E-5(c)].

JP

MAY 8 1981

AGENDA E-5(a)
May 1981

ACTION	ROUTE TO	INITIAL
	Exec. Dir.	
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TENTATIVE SCHEDULE*
for Approving and Implementing Amendment 10 to the
Fishery Management Plan for Gulf of Alaska Groundfish.

DATE	EVENT
April 20 - June 18	Secretarial Review (60-days)
June 10	Assistant Administrator for Fisheries approves the amendment and the proposed regulations.
June 17	Administrator of NOAA concurs on the approval.
June 18	Regulations sent to DOC Assistant Secretary for Regulatory Review.
	End of 60-day Secretarial Review.
June 19-29	Department of Commerce review of proposed regulations.
June 30 - July 10	OMB review of proposed regulations (10 days).
July 17	Proposed rules published in the <u>Federal Register</u> .
July 18 - Sept 30	45-day public comment period on proposed regulations.
October 5-9	Preamble and Final Regulations prepared by the Region and submitted to NMFS Washington Office.
October 12-23	NMFS Washington Office reviews and clears final rules.
October 26-30	NOAA reviews Action Memorandum and Final Rules.
November 2-11	DOC Asst. Sec. for Regulatory Reform reviews and clears final regulations.
November 12-21	OMB 10-day review
November 23	Final rules filed with the Federal Register.
November 26	Federal Register publishes Final Regulations. Begin 30-day APA delayed-effectiveness period.
December 27	Final regulations become effective.

* Schedule assumes that the amendment will be approved or partially disapproved.

Fishery Management Operations Branch
NMFS, Alaska Region
May 20, 1981

TENTATIVE SCHEDULE
For
Implementing Amendment 9 to the
Fishery Management Plan for the Groundfish of the Gulf of Alaska

August 28, 1980 - February 18, 1981	175-day Secretarial review
May 22 - June 2	Department of Commerce 10-day review of proposed rule
June 3 - 12	OMB 10-day review of proposed rule
June 16	Proposed rule published in the <u>Federal Register</u>
June 17-July 31	45-day public comment period on proposed rule
August 3 - 7	Preamble and Final Rule prepared by the Region and submitted to NMFS Washington Office
August 7 - 17	NMFS Washington Office reviews and clears final rule
August 18 - 24	NOAA reviews Action Memorandum and Final Rule
August 25 - September 3	10-day period for DOC Assistant Secretary for Regulatory Reform review and clearances of Final Rule
September 4 - 14	OMB 10-day review
September 15	<u>Federal Register</u> publishes Final Rule . Effective when filed; APA 30-day delayed- effectiveness period waived.

MAY 20 1981



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of General Counsel
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DATE: May 22, 1981

TO : GC - Mary Beth West
GCF - Jay S. Johnson
F/AKR - Robert W. McVey
NPFMC - Jim H. Branson
NPFMC Members

FROM: GCAK - Patrick J. Travers *Pat*

SUBJ: Legal Analysis of Amendment 10 to the Fishery Management
Plan for the Gulf of Alaska Groundfish Fishery

INTRODUCTION

At its meeting of February 26-27, 1981, the North Pacific Fishery Management Council (Council) adopted Amendment 10 to the Fishery Management Plan for the Gulf of Alaska Groundfish Fishery (FMP). The amendment would introduce three changes to the FMP's management measures. The amendment has been forwarded to NMFS for review and approval by the Assistant Administrator pursuant to section 304(a)-(b) of the Magnuson Act. Section 304(b) provides, in part:

The Secretary shall review any fishery management plan, and any amendment to any such plan, prepared by the Council and submitted to him to determine whether it is consistent with the National Standards, the other provisions of this Act, and any other applicable law.

The following discussion will first describe the amendment and summarize the rationale for each change in the FMP's management regime. The compliance of the amendment with the National Standards, with other provisions of the Magnuson Act, and with other applicable law will then be discussed in turn.



DESCRIPTION OF AND RATIONALE FOR THE PROPOSED AMENDMENT

Amendment 10 would modify the fishery management regime in the Eastern Regulatory Area of the Gulf of Alaska (lying between 132°40' and 147°00' West longitude) in three ways:

(1) The OY for Pacific ocean perch in the Eastern Area is reduced from 14,400 mt to 875 mt; and DAH is set at 500 mt, DAP at 300 mt, JVP at 200 mt, TALFF at 200 mt, and reserve at 175 mt.

Rationale: Data produced by the Northwest and Alaska Fisheries Center and the Japan Fishery Agency indicate that the reductions in Pacific ocean perch harvests that have been imposed since implementation of the Magnuson Act have failed to alleviate the depressed condition of Pacific ocean perch stocks in the eastern Gulf of Alaska. The deterioration in the condition of these stocks appears, on the basis of catch per unit of effort data, to have continued. Pacific ocean perch was badly over-harvested by foreign fleets in the Gulf of Alaska during the pre-Magnuson Act period. This species is long-lived, attaining a maximum age of 30 years and not reaching reproductive maturity until the age of 8 years. It bears live young, rather than laying eggs, and is much less fecund than most other groundfish species. As a result of these characteristics, the rehabilitation of an overfished Pacific ocean perch stock is at best both difficult and lengthy, and the success of protective management measures cannot be determined for several years. The current OY for the Eastern Area of 14,400 mt is far below the Pacific ocean perch MSY that is attributable to that area, and was intended to provide a moderate rate of rehabilitation while allowing a limited fishery to take place. Because it has not had the intended result, the Council, upon the recommendation of its Scientific and Statistical Committee (SSC), decided that OY should be reduced even further to 875 mt. Reassessment in light of actual experience of the extent to which Pacific ocean perch would be utilized by United States fishermen and fish processors resulted in the specification of the DAH, DAP, JVP, TALFF, and reserve amounts set forth above.

(2) Foreign trawling in the Eastern Area is prohibited between 123°40' and 140°00' West longitude, and is permitted year-round between 140°00' and 147°00' West longitude only with pelagic trawls equipped with properly functioning recording net-sonde devices.

Rationale: This area closure and gear restriction have the purposes of (a) reducing gear conflicts between foreign trawlers and United States fishermen, especially longliners; (b) preventing grounds preemption by foreign trawlers in the area of the Gulf of Alaska frequented most heavily by United States longliners; and (c) reducing the incidental foreign trawl catch of halibut, a species of great economic importance to United States fishermen of the area. The closed area is the portion of the Eastern Area that is immediately adjacent to Southeast Alaska and is therefore especially attractive to local United States fishermen. It is already closed to foreign longlining under existing provisions of the FMP. The FMP currently prohibits trawling in the entire Eastern Area from January 1 through February 16; and only pelagic trawl gear may be used between February 16 and June 1 and in December. As a practical matter, no foreign trawling takes place during the periods when pelagic gear must be used.

(3) A communications code of visual signals designed to prevent gear conflict with and grounds preemption by foreign vessels is appended to the FMP.

Rationale: Language difficulties have frequently hindered communication between United States and foreign fishermen concerning the existence or imminence of gear conflicts or grounds preemption. Preestablished nonverbal visual signals would facilitate such communication, and help prevent the problems to which it relates.

COMPLIANCE OF THE AMENDMENT WITH THE NATIONAL STANDARDS

Before approving Amendment 10 pursuant to Magnuson Act section 304(a)-(b), the Assistant Administrator would have to find that it is consistent with the seven "National Standards for Fishery Conservation and Management" set forth in section 301(a) of the Magnuson Act ("National Standards"). This discussion will assess the extent to which the proposed changes just described would comply with the National Standards.

National Standard 1: Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.

The most significant legal issue raised by the amendment concerns this national standard. The Eastern Area OYs for flounders and other flatfish would not be reduced under the amendment. Most of these flatfish are currently caught with

bottom trawls, which would be banned under the amendment. It is generally agreed that the pelagic trawls that the amendment would allow in the Eastern Area cannot catch anything near the current flatfish OYs in the course of a year. There is currently no significant directed longline fishery for the flatfish species in question, although they are taken incidentally in relatively small amounts in operations targeting on sablefish and turbot. These circumstances raise the issue whether the measures prescribed in the amendment would violate the requirement of National Standard 1 that they achieve, on a continuing basis, the OY from each fishery.

It appears that a foreign or domestic longline fishery targetting on these flatfish species and large enough to take the Eastern Area OYs of these species is physically feasible, and that such fisheries have developed in other parts of the United States and in other countries. The groundfish market does not appear to have any characteristics that would render such a fishery so unprofitable as not to have any chance of economic viability. Thus, while the amendment would prevent foreign vessels from taking the OYs of these flatfish species by trawl gear, it would leave the way open for either foreign or United States fishermen to harvest these OYs by longline. It should be noted that several of the flounder and sole species in question are high quality food fish for which there is higher demand in the United States than for other groundfish species. It would thus be reasonable to expect that these fish will not remain unutilized.

On this basis, I have concluded that the pelagic trawl requirement would not violate this national standard.

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

The amendment does not raise significant issues under this requirement. No serious allegation has been made that the information relied upon by the Council in developing the amendment was not the best available.

National Standard 3: To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range and interrelated stocks of fish shall be managed as a unit or in close coordination.

The amendment appears to satisfy this requirement. While it focuses upon the Eastern Area of the Gulf of Alaska, the Council was cognizant of the effects that additional restrictions there might have on fishing patterns in other areas of the Gulf.

National Standard 4: 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.

The amendment does not raise any issues under this standard. It neither distinguishes among residents of different states nor allocates or assigns fishing privileges among various United States fishermen. Its burdens would be borne almost entirely by foreign fishermen.

National Standard 5: 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.

The amendment appears to satisfy this national standard. As was discussed above, it will not necessarily reduce efficient utilization of flatfish. By depriving foreign vessels of the option of using bottom trawls during part of the year in the Eastern Area, it may encourage them to convert to pelagic trawls and distribute their fishing effort more evenly over the year. Currently, Japanese vessels decline to fish during periods when pelagic trawl gear must be used, concentrating their efforts during the June 1 - December 31 period when bottom trawls may be used.

National Standard 6: Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources and catches.

The amendment raises no significant issues under this national standard.

National Standard 7: Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

The amendment raises no significant issues under this national standard.

COMPLIANCE OF THE AMENDMENT WITH OTHER PROVISIONS OF THE MAGNUSON ACT

The amendment does not appear to raise significant issues under provisions of the Magnuson Act other than the National Standards.

COMPLIANCE OF THE AMENDMENT WITH OTHER APPLICABLE LAW

National Environmental Policy Act

Approval and implementation of Amendment 10 would not, in my view, be a major Federal action significantly affecting the quality of the human environment and requiring preparation of an environmental impact statement under NEPA. While the OY reduction and trawl limitations imposed by the amendment are expected to have beneficial effects on Pacific ocean perch and halibut resources, their impacts on the environment as a whole do not seem to be significant, or different in kind from the impacts anticipated at the time the original FMP was approved. An environmental assessment supporting this conclusion has been prepared on the amendment. Mike Stanley has reviewed the environmental assessment and found it legally adequate.

Executive Order 12291 and the Regulatory Flexibility Act

The amendment and its implementing regulations would not appear to be a "major rule" for purposes of Executive Order 12291, and would therefore not require the preparation of a regulatory impact analysis under that order. Implementation of the amendment would not result in an annual effect on the economy of \$100 million or more and will not cause a major cost or price increase to consumers, individual industries, government agencies, or geographic regions. By conserving fishery resources and increasing their availability to the United States fishery industry, it should have beneficial impacts on competition, employment, investment, productivity, innovation, and the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because it is directed primarily at foreign fishing operations, implementation of the amendment will not have a significant economic impact on a substantial number of United States small entities. It will probably have an adverse impact on a substantial number of foreign small entities, but this impact

should probably not be considered "significant." The amendment would reduce the total TALFF for the Eastern Area by only 3 percent, an amount that could be made up with previously unused TALFF in other areas. Even the reduced flatfish catches that would result from the pelagic trawl gear restriction is not considered significant by NMFS staff when compared with the total resources that remain available to foreign vessels.

Paperwork Reduction Act of 1980

This amendment does not contain a collection of information requirement, and does not involve any agency in conducting or sponsoring the collection of information.

Coastal Zone Management Act of 1972

Because Pacific ocean perch in the Gulf of Alaska occurs both inside and outside the three-mile limit, it is likely that the protective measures imposed by the amendment for the benefit of this species in the FCZ will affect the abundance of Pacific ocean perch within three miles. Thus, implementation of the ammendment will "directly affect" the Alaska coastal zone within the meaning of CZMA section 307(c)(1) and its implementing regulations. I am preparing a determination that such implementation will be carried out in a manner that is consistent, to the maximum extent practicable, with the Alaska Coastal Management Program. This determination will be submitted to the Alaska Office of Coastal Management for review and concurrence.

ENFORCEABILITY OF THE AMENDMENT

The NMFS Regional enforcement staff has informed me that pelagic trawl gear restrictions like that prescribed by the amendment are very difficult to enforce. As a practical matter, it is apparently almost impossible for an enforcement agent to tell whether a vessel has deployed pelagic or bottom-trawl gear unless the agent is actually on the foreign vessel monitoring the trawl operation electronically.

cc: DGC - Jim Brennan
GCF - Thorn Smith
F/AKR11 - Ron Berg
NPFMC - Jeff Povolny

FILE NO.: 501-10.8(9)