


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director 

DATE: June 18, 1990

SUBJECT: Gulf of Alaska and Bering Sea/Aleutian Islands Groundfish Fishery Management Plans

ACTION REQUIRED

Final approval of Amendments 21 and 16 and implementing regulations for Secretarial review.

BACKGROUND

In April, the Council approved Amendments 21 and 16 and the associated draft Environment Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for public review. The amendment document contains six issues and their management alternatives:

- (1) Revise crab and halibut bycatch management measures for the Bering Sea/Aleutian Islands.
- (2) Define overfishing for the Gulf of Alaska and Bering Sea/Aleutian Islands.
- (3) Establish procedures for interim total allowable catch (TAC) specifications for the Gulf of Alaska and Bering Sea/Aleutian Islands.
- (4) Modify authorization language for demersal shelf rockfish management for the Gulf of Alaska.
- (5) Change fishing gear restrictions for the Gulf of Alaska and Bering Sea/Aleutian Islands.
- (6) Expand halibut bycatch management measures for the Gulf of Alaska.

The amendment proposals and alternatives are summarized in item D-3(a)(1). Public comments received by the June 15 deadline and a summary are included as item D-3(a)(2). The Plan Teams' recommendations are included as item D-3(a)(3) and an amendment worksheet is provided as item D-3(a)(4).

Final action on Amendment 21/16 should be taken in three steps:

1. On Wednesday, the Council will identify their preferred alternative for each amendment topic.

2. The Plan Teams and NOAA General Counsel will then revise the amendment text if necessary and prepare the FMP changes and the implementing regulations. It may also be necessary to prepare additional materials for inclusion in the EA/RIR/IRFA.
3. On Friday, the Council will consider the materials prepared by the teams and General Counsel and give final approval to send Amendments 21/16 to Secretarial review.

The EA/RIR/IRFA and draft regulations will constitute most of the formal Amendment 21/16 package to be submitted to the Secretary. The remaining transmittal documents, preamble, etc. will be prepared as soon as possible. The process of Secretarial review will proceed along the following target schedule:

- | | |
|---------------|---|
| June 29: | Final Council approval of Amendment 21/16 |
| July 30: | Submittal of final EA/RIR/IRFA to Secretary of Commerce for review and approval |
| August 5: | Secretarial review begins
60 day public review period begins |
| October 6: | Public review period ends |
| November 10: | Secretarial review ends
Amendments approved or disapproved |
| November 25: | Final regulations filed |
| Jan. 1, 1991: | Amendments 21/16 implemented
Groundfish fishery begins |

SUMMARY

GULF OF ALASKA AND BERING SEA/ALEUTIAN ISLANDS
GROUNDFISH FMP AMENDMENTS 21 AND 16

2.0 REVISE CRAB AND HALIBUT BYCATCH MANAGEMENT MEASURES FOR THE
BERING SEA/ALEUTIAN ISLANDS

Management measures to control the bycatch of crab and halibut in Bering Sea/Aleutian Islands trawl fisheries, implemented through Amendment 12a, expire on December 31, 1990. This chapter presents interim measures to be put in place by January 1, 1991 while the Council develops a more comprehensive bycatch management program. Under Amendment 12a, fixed bycatch caps are apportioned among joint venture and domestic flatfish and 'other' fisheries. Attainment of PSC cap apportionments triggers area closures to that fishery. One alternative would provide for a simple extension of Amendment 12a provisions for one year. Another alternative would extend the basic Amendment 12a provisions, but modify them to create PSC apportionments for rock sole and deepwater turbot/sablefish fisheries, seasonally apportion bycatch caps, and provide for sanctions against vessels which operate with excessively high bycatch rates. These modified measures, in conjunction with a regulatory amendment to postpone the yellowfin sole/other flatfish fishery, will likely allow more groundfish to be harvested prior to the attainment of PSC caps, relative to 1990.

Alternative 1: Status quo (no action); Amendment 12a bycatch management measures expire on December 31, 1990.

Alternative 2: Extend Amendment 12a provisions for one year.

Alternative 3: Modify and add to Amendment 12a provisions, and extend them for one year or an indefinite period.

3.0 DEFINE OVERFISHING FOR THE GULF OF ALASKA AND BERING
SEA/ALEUTIAN ISLANDS

Federal guidelines for fishery management plans require the Council to specify an objective and measurable definition of overfishing for each stock or stock complex covered by its FMPs. This chapter presents alternatives and supporting analyses to meet this requirement. Appendices to the chapter contain technical material used to develop and analyze the alternatives. A nontechnical overview includes definitions of terms and answers a set of commonly asked questions. Seven alternatives are presented. All make use of a maximum fishing mortality rate, a threshold biomass level, or both. In simulations conducted to evaluate the alternatives, Alternative 3 provides both the highest average yield and the lowest yield variability. However, it also provides the least protection at low stock sizes. At the other extreme, Alternative 6 provides slightly lower average yields and higher yield variability than the other alternatives, but it provides the most protection for a stock. Other alternatives give intermediate results.

Alternative 1: Status quo (no action).

Alternative 2: Threshold biomass level.

Alternative 3: Constant fishing mortality rate - no threshold.

Alternative 4: Variable fishing mortality rate - no threshold.

Alternative 5: Constant fishing mortality rate with threshold.

Alternative 6: Variable fishing mortality rate with threshold - Fmsy version.

Alternative 7: Variable fishing mortality rate with threshold - Fmax version.

4.0 ESTABLISH PROCEDURES FOR INTERIM TOTAL ALLOWABLE CATCH (TAC) SPECIFICATIONS FOR THE GULF OF ALASKA AND BERING SEA/ALEUTIAN ISLANDS

The Council finalizes its annual groundfish total allowable catches (TACs) and apportionments among user groups at its December meeting. The fishing year starts on January 1 of each year, but insufficient time is available between the December Council meeting and January 1 for final TACs to be prepared, reviewed and published in the Federal register. During the time between January 1 and when specifications are filed, no authority exists to manage the fishery. Should closure or inseason actions be necessary during the hiatus, the Secretary would have little option but to close the BSAI and/or GOA fisheries until the specifications are made effective. This chapter presents two alternative means for the Council's preliminary (September) specifications to serve as interim specifications until the final specifications are filed with the Federal Register.

Alternative 1: Status quo (no action).

Alternative 2: Extend proposed TAC specifications into a new fishing year as interim specifications, until changed.

Alternative 3: Extend one-fourth of the proposed TAC specifications into a new fishing year on an interim basis, until changed.

5.0 MODIFY THE AUTHORIZATION LANGUAGE FOR DEMERSAL SHELF ROCKFISH MANAGEMENT IN THE GULF OF ALASKA

Current FMP language conveys limited management authority over demersal shelf rockfish (DSR) to the State of Alaska. The authorization language limits state regulatory measures to those which result in smaller areas and quotas than provided for in the FMP. The state has subsequently passed a series of regulations aimed at more precise management of DSR in the southeast outside district. Regulations passed by the state for the directed DSR fishery which are not congruent with the FMP as currently written are weekly trip limits, split seasons, allocation of directed harvest to hook and line gear, and bycatch provisions based upon past catch levels in fisheries for other species. This action has resulted in discrepancies between state and federal DSR regulations in the southeast outside district. Modification of the authorization language would allow for unilateral state management of the DSR resource in both territorial waters and the EEZ wherever DSR are recognized as an FMP species. The state regulations would be subject to Council and NMFS review to assure consistency with the MFCMA and the GOA groundfish FMP. The annual TAC would still be set by the Council through the annual specifications process.

Alternative 1: Status quo (no action).

Alternative 2: Modify the authorization language in the FMP to allow full implementation of state regulations in those federal waters of the eastern gulf of Alaska where demersal shelf rockfish are recognized by the Council as an FMP species group.

6.0 CHANGE FISHING GEAR RESTRICTIONS IN THE GULF OF ALASKA AND BERING SEA/ALEUTIAN ISLANDS

Currently, the BSAI FMP has no gear restrictions and the GOA FMP only restricts legal gear for sablefish and references gear restrictions to protect king crab in the vicinity of Kodiak Island. Specification of legal gear in the FMPs may be desirable, particularly to reduce bycatch of prohibited species. Amended FMPs could contain Council policy and guidance concerning gear restrictions, with specific gear restrictions in implementing regulations. Future changes to gear regulations would be accomplished through regulatory amendments with necessary environmental and socioeconomic analyses as appropriate.

Three specific gear restrictions to reduce bycatch and deadloss are discussed.

Alternative 1: Status quo (no action).

Alternative 2: Specify legal fishing gear in the GOA and BSAI FMPs and provide specific gear restrictions in the implementing regulations.

Three specific measures are presented for Council decision under this alternative:

- A: Require biodegradable panels on groundfish pots.
- B: Require halibut exclusion devices on groundfish pots.
- C: Adopt a modified definition of pelagic trawl gear.

7.0 EXPAND HALIBUT BYCATCH MANAGEMENT MEASURES FOR THE GULF OF ALASKA

Incidental catch and mortality of halibut in the GOA groundfish fisheries is a major bycatch management issue effecting all gear groups. Halibut PSC management is conducted through a framework in the FMP. However, implementing regulations offer significantly less flexibility than the FMP framework. Several measures are analyzed to clarify and more fully implement the existing PSC bycatch framework. These will allow for increased responsiveness, equitability and efficiency in managing halibut bycatch in the GOA.

Alternative 1: Status quo (no action).

Alternative 2: More fully implement and clarify the existing halibut PSC framework.

Two options are presented:

- A: Apportion halibut PSC limits by season.
- B: Set levels of fixed gear halibut PSC limits by longline and pot gear groups, or omit entirely pot gear fisheries from the framework.

Alternative 3: Implement a halibut PSC incentive program.

Three options are presented:

- A: Establish a PSC reserve system.
- B: Establish a halibut bycatch credit system.
- C: Establish a penalty box sanction system.

Summary of Public Comments Received on Amendments 21 and 16
to the Groundfish Fishery Management Plans for the
Gulf of Alaska and Bering Sea/Aleutian Islands

Introduction

Comments from 11 individuals or organizations on the amendment document and alternatives were received through the close of the official comment period on June 15.

The numbered sections below correspond to the chapters of the amendment package as mailed to the Council in May.

2 Revise crab and halibut bycatch management measures for the BSAI

David Fraser: supports alternative 3 with caveats.

James Wexler, Williams, Kastner & Gibbs: supports bycatch management measures which do not unduly discriminate against any gear type. Prefers pooling to vessel by vessel incentives.

Linda Kozak, Kodiak Longline Vessel Owners Association: supports alternative 3; encourages a reduction in halibut bycatch caps.

Donald McCaughran, International Pacific Halibut Commission: supports alternative 3 for a one year period only.

Vivian Lawrence, Makah Tribal Council: supports IPHC comments and recommends alternative 3 be adopted for a one year period.

Kris Norosz, Petersburg Vessel Owners Association: supports an extension of amendment 12a (alternative 2).

Arni Thomson, Alaska Crab Coalition: supports an extension of amendment 12a.

H.A. Larkins, Alaska Factory Trawler Association: supports alternative 3 as a basis for short term bycatch management measures.

Steven Hughes, Midwater Trawlers Cooperative: favors an adjustment of PSC caps and strongly supports vessel incentive program to reduce bycatch rates.

Keith Criddle, University of Alaska, Fairbanks: alternative 2, or alternative 3 without individual vessel sanctions, is preferable if the Council intends to investigate market oriented alternatives.

3 Define overfishing for the GOA and BSAI

David Fraser: presents and supports an alternative which is akin to alternative 4 (variable fishing mortality rate - no threshold).

Chris Blackburn, Alaska Groundfish Data Bank: supports alternative 4 (variable fishing mortality rate - no threshold).

James Wexler, Williams, Kastner & Gibbs: overfishing concepts must consider socioeconomic impacts; clients will offer oral testimony at Council meeting.

H.A. Larkins, Alaska Factory Trawler Association: supports alternative 3 (constant fishing mortality - no threshold).

4 Establish procedures for interim total allowable catch (TAC) specifications for the GOA and BSAI

H.A. Larkins, Alaska Factory Trawler Association: prefers alternative 2.

5 Modify the authorization language for demersal shelf rockfish management in the GOA

Steven Hughes, Midwater Trawlers Cooperative: strongly opposes alternative 2.

H.A. Larkins, Alaska Factory Trawler Association: strongly opposes alternative 2.

6 Change fishing gear restrictions for the GOA and BSAI

Linda Kozak, Kodiak Longline Vessel Owners Association: strongly supports a requirement for groundfish pots to have biodegradable panels and halibut exclusion devices (alternative 2).

H.A. Larkins, Alaska Factory Trawler Association: supports all three elements of alternative 2.

Donald McCaughran, International Pacific Halibut Commission: supports alternative 2, especially biodegradable panels and halibut excluder devices on groundfish pots.

7 Expand halibut bycatch management measures for the GOA

David Fraser: supports further implementation of the PSC framework and adoption of a vessel incentives to reduce bycatch rates (individual bycatch allowances).

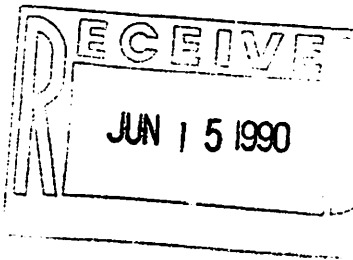
Chris Blackburn, Alaska Groundfish Data Bank: supports alternative 2 to more fully implement the GOA halibut PSC framework and, in principle, a vessel incentive program to reduce bycatch rates.

James Wexler, Williams, Kastner & Gibbs: see generic comments under chapter 2 above.

Linda Kozak, Kodiak Longline Vessel Owners Association: supports alternative 2 (seasonal halibut PSC apportionments to be decided at the December Council meeting, omitting pot gear from PSC framework) and alternative 3 (PSC reserve system).

H.A. Larkins, Alaska Factory Trawlers Association: supports vessel incentives to reduce bycatch rates; prefers a phase-in of a penalty box type system.

Donald McCaughran, International Pacific Halibut Commission: supports option B of alternative 2 to separate bycatch limits for pot and longline gear; does not recommend omitting pots from bycatch limits at this time.



June 15, 1990

Dr. Clarence Pautzke, Exec. Dir.
North Pacific Fisheries Management Council
P.O. Box 103136
Anchorage, AK 99510

Re: Amendment 16, Chapter 2 BSA Bycatch

Dear Clarence,

The review in section 2.2 of the philosophical framework of the bycatch issue is very useful in setting the context for evaluating the alternatives. Especially important are the concepts of impact, control, and agency costs. There are only two justifications for imposing constraining PSC caps on the groundfish fishery. One is if they are necessary for conservation (i.e. to prevent over fishing of the PSC species), which is not maintained to be the case with crab or halibut in this analysis. The other is if there are net benefits to the nation, that is if reduction in impact costs exceed the combined control and agency costs. When the goal of reducing impact cost is accepted as a given, the magnitude of control costs will be a function of the willingness and ability of the nation to expend agency costs. Just as impact costs are viewed as external cost by groundfish fishermen, control costs have been viewed as external cost by the council and the agency. This is short sighted from a national accounting perspective in terms of net benefits. As long as there exists a "perverse mechanism that penalizes those who attempt to reduce bycatch and rewards those who don't", it is irresponsible of managers to impose constraining caps unless it can be clearly demonstrated that impact costs exceed control costs. My comments which follow are made from this perspective.

Section 2.3 Alternatives

Alternative 1 is clearly superior to alternative 2. While the increased impact costs of #1 over #2 are estimated at about \$6 million, 1990 experience demonstrates that the increase control costs will be over \$100 million in foregone catch revenues without accounting for increased operating costs on the actual catch. Alternative 2 is not worthy of consideration.

Alternative 3 will differ functionally from alternative 2 only to the degree to which the federal government is willing to

commit funds for agency costs. This alternative is potentially superior to alternative 1 only if action by the agency corrects the "perverse mechanism" that results in foregone groundfish catches. Even if it does, it will remain questionable whether the combination of increased operating (control) costs and agency costs will be justified by the reduced impact costs, but we can play make believe and hope so. Thus I support alt. 3 with strong caveats.

Section 2.3.3 pg. 2-12 Element For Choice.

1. It is essential the caps expire at the end of 1991. The EARIR has all ready made clear that due to lack of a market mechanism alternative and lack of good data on marginal value that this decision is more political, less objective, less equitable, and more likely to be wrong (pg. 2-8) than it should be. The record in no way justifies these caps, they are being accepted as a political expediency.

2. The RD should have the authority to review vessels performance no more than once per week (but less often at his discretion), however, no vessel should be judged unless they have reached a threshold of participation in a fishery (100 tons observed catch).

3. This must be decided in conjunction with 2 and 4, bearing in mind the program has limited ambitions -- it is targeted at the "dirty dozen". In general I support two times the average, but data should be reviewed to see how this fits with statistical measures such as one standard deviation and for its practical implications.

4. With weekly measurement and a rate of two times the average, I would support one day penalties. With monthly measurement and a rate of three times the average I would support one week penalties (or capital punishment).

5. The penalty should be absolute, not "hit and run" where offenders can sneak off into another fishery or area. I wouldn't even allow them to fish pot gear in the Gulf.

6. There is no reason to exempt vessels with 30% coverage. The only criteria should be a threshold amount (100 tons) of observed tonnage, thus the program would apply to vessels under 60' as well should they be required by the RD to take an observer. This is necessary to maintain equitability of the program. The corollary question is whether ones Y.T.D. rate ought to reflect only observed tonnage or extrapolated to total catch from a target fishery. (the latter method would dilute the impact of a single "dirty" observed tow.)

7. The historic average rates allow a frame of reference for start up operations and they are all ready fairly conservative. These data come from JV fisheries that operated under varying

degrees of constraint. Also, Bardii especially, and Red King crab to some extent have experienced significant population increases which make these historic averages relatively conservative

Section 2.5.1 The Model.

2.5.1.1 Alternative 1

The model is probably at it's most accurate in predicting unconstrained bycatch since the major uncertainties arise with the need to predict rates and behavior in response to closures that push fishermen into undesirable areas. As such it is significant that the impact costs under this alternative are only \$6 million greater than the 12A caps, with most of the increase in red king crab. Even with this increase red king crab bycatch would not exceed 1% of current population estimates. Given the control costs of 12A caps it is clear bycatch regulations can do more harm than good.

2.5.1.2 Alternative 2

The acceptability of this alternative is critically dependant on whether there would be significant amounts of foregone groundfish revenues (and increased operational costs) as a result of constraining 12A caps. As the text acknowledges for case 1 actual bycatch and foregone groundfish catch is better estimated by 1990 reality than by the model. The text seems to give greater weight to the credibility of the model results in case 2. The only variable in case 2 is the delay of JV flatfish. This may or may not result in less foregone JV groundfish. It should not change foregone DAP catch. Thus 1990 reality should still be the better predictor of DAP control costs.

One reason the model fails to predict DAP closures is that it doesn't account for the turbot fishery correctly. In this scenario it attributes 77 tons of halibut catch to the turbot fishery, an order of magnitude less than '90 experience. The model may also be very optimistic about the JV scenario. One acknowledged problem with the model is that it can put an unlimited amount of effort into a time/area cell. Thus it assumes (as have JV industry reps) that with a delayed opening the bulk of the TAC can be taken in 514 with Round Island bycatch rates. Much of the balance is then taken in Zone 1 and the assumption is made that the vast majority of the red king crab cap will go to JV-YFS. In fact the model "allows the JV sole fishery to exceed the cap by 43,000 red king crab (pers. comm. NWAFC staff) in this scenario. If that allocation of king crab is not made to JV then the fishery will be forced in to areas of higher halibut bycatch. Halibut then becomes constraining resulting in foregone JV catch unless halibut PSC is shifted form DAP (resulting in foregone DAP catch). While a delayed JV opening may be helpful it has not been shown that it is a panacea that will make 12A caps workable. What the model does show is that the cheapest way to save halibut is to spend red king crab. Providing another 200,000 red king crab would only have a \$2.4 million impact cost but would go a long way toward allowing this

fishery to operate within the 12A halibut constraint.

2.5.1.3 Alternative 3.

This section refers to three major differences from alt. 2 but overlooks a fourth difference that is essential to resolving equity and efficiency problems. That difference relates to the initial distribution of the caps, which has previously been done proportionally to unconstrained need in a mechanistic fashion. The RD must be given authority to distribute caps (in consultation with council and industry) so as to reach an optimal distribution for the purpose of achieving OY. This is necessary to make seasonal apportionments a useful tool. Paragraph 3 of page 2-23 suggests seasonal apportionments would be done in the same manner as 12A apportionments. If so the first quarter turbot fishery would get 20% of the halibut cap because it "needed" it. This is exactly what we must avoid. A first quarter turbot fishery "needs" a lot of halibut, a third quarter turbot fishery does not. There for we should give no halibut to a first quarter fishery, giving some to a third quarter fishery that "needs" it the least because result in increase likelihood of achieving overall OY.

Seasonal apportionments of PSC provide a way shifting effort in to preferred time periods. It is not necessary to delay the opening of JV flatfish by regulatory amendment, one can simply not allocate any PSC amounts until a certain date.

If authority can be structured as in season authority it could be the mechanism for "hot spot" closures. (i.e. if a zone one flatfish fisheries red king crab bycatch is out of line, zero out its RKC PSC for the remainder of the quarter, with the justification that the fishery will more likely attain TAC/OY at another time within its constraining cap.)

As with alternative 2 there are serious questions about the models optimism in projecting no foregone catch. I would like to submit extensive comments on the model, but it has been undergoing continual revisions and evolution up to the comment period deadline and I received a copy of the new version only yesterday June 14th. I understand a supplement to the EARIR is being produced incorporating new model results thus I would like to reserve the right to comment further on the model, as its outputs play a critical role in justifying PSC caps and balancing impact, control, and agency costs.

Finally we must move toward a system that rewards a fisherman for making decisions that produce desired results, rather than asking the council to make decisions on what constitutes the right area, time of year, time of day, depth of water, type of net, speed of tow, etc. -- ad nauseam. The right set of decisions can only be made with intelligence creatively applied in real time. Individual accountability is the only way to ensure there is incentive to do so. (see my comments on chapter 7).

Thank You,



David Fraser

June 13, 1990

Dr. Clarence Pautzke, Exec. Dir.
North Pacific Fisheries Management Council
P.O. Box 103136
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Re: Amend 16/21 Chapter 3, Over fishing.

Dear Clarence:

Kudos to staff for producing a very accessible paper that allows the lay person to grasp the subject under discussion. While the analysis is comprehensible, I believe the socio-economic analysis is too narrow as the result of two interacting factors. One, it looks at the stocks one at a time rather than as part of an interactive complex. Two, it measures against assumed objective functions that are not necessarily council policy. As a result, there is a bias toward attempting to hold each component of the stock complex or ecosystem in equilibrium.

While our goal is to prevent over fishing (i.e. to maintain the long term ability of individual stocks to produce MSY), it is unlikely that all stocks can simultaneously produce MSY. It is also not necessarily true that there is consensus that long term average yield on a stock by stock basis, should be the most heavily weighted objective function, as council policy. Alternatively one might suggest that long term average yield and limiting yield variability of the groundfish complex as a whole (within the constraint of not over fishing individual stocks) can be inferred (from the 2 million ton cap in the BSA) as the weighted objective function of the council.

This may seem a subtle difference, but I believe it has significant policy impacts, particularly, as regards to those alternatives incorporating thresholds.

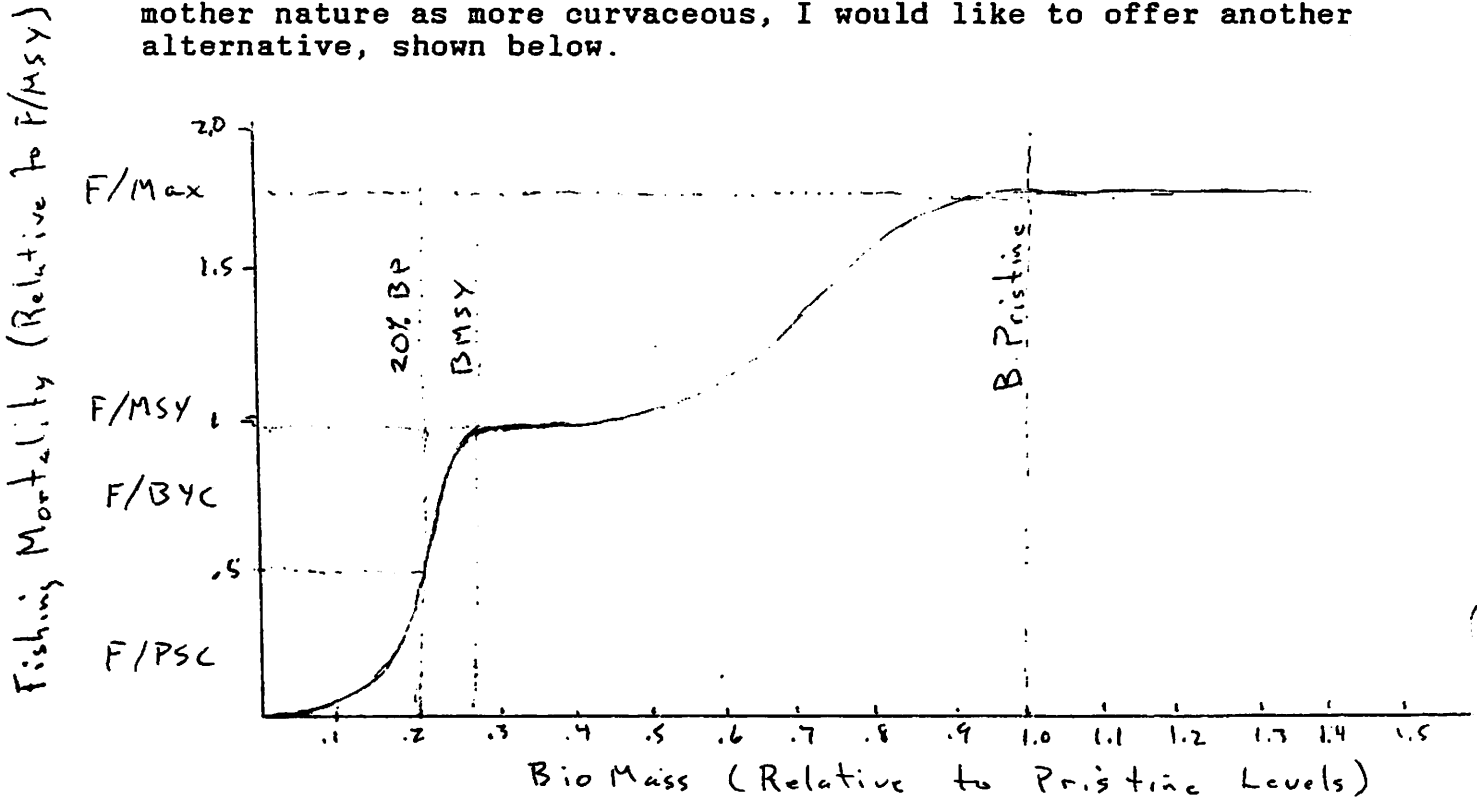
As noted on page 3-24, there is only one case where current practices would be constrained by these definitions (and that case could be accommodated by Alt. 7, which would allow for higher exploitation rates on "bumper crops"). However, if one used highest recent observed biomass in the GOA for either pollack or P.O.P. as a proxy for pristine biomass (granting the validity of such a proxy is questionable), then we are currently near or below the 20% threshold trigger.

The implications of such a scenario have not been adequately examined. Granted the 602 guidelines (page 3-15) provide a mechanism for dealing with a minor component of a mixed stock (i.e. roughey vs. slope rockfish), however, neither P.O.P. nor pollack can be construed as minor stocks. As such, when these

stocks decline to threshold, alternatives 2, 5, 6, and 7 would require a cessation of fishing for that species. Nothing in the text indicates whether this restriction would be limited to directed fishing, bycatch (as per the single species rule in conjunction with the directed fishing definition), or whether it would constitute simple PSC status, or an absolute prohibition on any fishing induced mortality (going beyond PSC status). Given the precedents of managing fisheries by PSC caps even when there is no question of over fishing of the PSC species, it is easy to envision a scenario where by the triggering of the over fishing threshold for pollack requires the closure of all other bottom trawl fisheries in the GOA.

The analysis glosses over this case by measuring the impacts against an objective function of long term yield on a stock by stock basis. Thus, in the foregoing hypothetical case, total pollack harvest over time is not significantly affected by treating a threshold as an on/off switch above which fishing at any exploitation level up to F/MSY is okey-dokey, but below which any fishing constitutes over fishing. Faced with a dynamic ecosystem it seems not improbable that at any one time some individual stock is likely to be below 20% of pristine biomass (note on table 3.3 that $BMSY$ is generally only 25% of pristine biomass). Thus, alternatives under which allowable exploitation falls to zero (# 2, 5, 6, 7) have the potential for significant impacts in terms of foregone harvest of other stocks.

Alternative 3 avoids this problem by means of a constant exploitation rate at all levels of abundance. This approach strikes me as too liberal at the low levels of abundance, and too conservative at higher levels. The graphic presentation of the seven alternatives (page 3.33 figures 3.1 a-d) all share a common characteristic -- straight lines. In that I have envisioned mother nature as more curvaceous, I would like to offer another alternative, shown below.



This proposed alternative is more conservative on the low end than either Alt. 3 or 4. Like Alt. 7 it allows for "cropping" of stocks that are near or above pristine biomass levels (which may serve a positive function in allowing other depressed stocks to recover depending on ecosystem interactions such as predator-prey relationships). Measured against an objective function of annual yield variability on a stock by stock basis it doesn't perform as well as the other alternatives, but it provides for more stability and decreased variability in terms of the groundfish complex as a whole.

While this alternative marginally violates Grant Thompson's constraints A and B, I don't believe it does violence to them, and it does remain within the default constraint C (appendix I, page A 13-14). Though I lack the time and talent to demonstrate these assertions mathematically, I see them as intuitively defensible, and encourage their consideration.

Sincerely,



David Fraser

June 14, 1990

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Re: Amendment 21 GOA Bycatch -- Chapter 7

Dear Clarence:

I wholeheartedly support further implementation of the PSC frame work items 4-7 (page 7-1) with particular emphasis on number five -- allocation of constraining caps demands a concomitant adoption of structure that provides an opportunity to maximize net benefits within that constraint. It is now widely recognized that this goal is only achievable through individual accountability. Of the alternatives set forth in this analysis the "penalty box" option briefly referenced under Alt. 2 is the superior choice. I support this option not only for the reason of do-ability but also because the 2 options under Alt. 3 are flawed half measures that constitute a waste of agency resources which will not accomplish their intended goals. Rather than wasting staff time on these proposals we should move ahead as rapidly as possible to develop individual bycatch accounts (IBA's).

Before discussing IBAs vs. Alt. 3 further I would offer brief comments on options A and B of Alt. 2.

Option A -- Seasonal PSC limits: The analysis overstates the case for the benefits of quarterly allocations. If rates are constant in all quarters then there will be no net gain in tonnage harvested, instead the only difference from status quo will be the creation of four mini "olympic races for bycatch". If, for example, summer rates were worse (as occurred in '89) -- then less groundfish might be harvested than under a single PSC limit. However I support quarterly's because there is a fourth quarter fishery I wish to pursue in the GOA so I take a parochial view of this issue.

Option B -- Separate limits for pot gear: While it is not the intent of the analysis, this is a good place to comment on the presumed council policy of encouraging the development of pot fisheries for groundfish because of its lower bycatch despite the likelihood of serious gear conflict and grounds preemption issues. If the council were consistent it would re-examine the

Amendment 14 phase out of pots for sablefish. As of May 26th 1990 the longline sablefish fleet caught 26,106 tons of sablefish with a bycatch of 7,997.8 tons of halibut in contrast to the bottom trawl fleets 101,895 tons of groundfish with only 2,506.5 tons of halibut bycatch. If there is any fishery in which the council could reduce halibut bycatch by encouraging the use of pot gear it is the sablefish fishery.

Returning to comments on Alt. 3: A fundamental flaw with both the reserve and credit options is that one's incentive to minimize bycatch is tied to an uncertain reward. That is, it is uncertain what TAC's will remain available at the end of the open fishery. This flaw acts in conjunction with the flawed qualification criteria of beating an arbitrarily set preseason rate determined by the council.

There are a number of problems surrounding this mechanism. One of the most glaring is the lack of differentiation of fisheries for various target species. All bottom trawl fisheries (with the exception of deep water flats) are lumped together. This invites a bizarre qualification strategy, as follows; were I a Factory trawler with a desire to fish in the post "open" fishery in the Gulf, I would begin the year fishing pollack with semi pelagic gear (because it has no halibut bycatch but is technically bottom gear), thus earning maximum credit.

Further problems with an arbitrary preseason rate result depending whether it is set liberally or conservatively (which may not be discernable in advance due to fluctuations in halibut abundance and distribution), ignoring for the moment that these effects are compounded by not differentiating target fisheries. If the rate is set low and is hard to beat then the incentive in a credit system is very small. That is, presuming that great effort is required to beat the rate by 20% then the credit you earn will only enable you to catch an additional roughly 20% groundfish, in such case it may well be easier to catch an additional 20% groundfish by ignoring bycatch entirely and fishing at double the rate in the open fishery. Similarly in the reserve system if the rate is too hard to meet it may be a more intelligent business decision to ignore bycatch and maximize catch (leaving the reserve fishery to the "non-local" pollack fishermen who showed up just long enough to qualify).

Conversely if the rate is set high there is another set of problems. In the case of the reserve system there is never any incentive to do substantially better than the published rate, thus if few boats are eliminated and there is no incentive to beat the assumed rate, the program will have required a lot of monitoring without significantly stretching the cap.

Another ineffective aspect of this approach is that the best way to minimize bycatch is to appropriately time the harvest of a target species. However one can only earn credit or qualify for the reserve by fishing for something, not by waiting for the most appropriate time, thus the desired behavior is not reinforced.

The arbitrary preseason rates and the failure to differentiate target fisheries are not the only arbitrary component of the qualification mechanism. A false assumption is made about unobserved vessels having the same rates as other vessels in the

same area. This is simply not true, first of all its unlikely that an unobserved vessel will have any incentive to try to minimize bycatch since he gets a free ride qualification. Second, when two vessels are in close proximity in the GOA (i.e. ten miles apart) it is very possible for one to be in 50 fathoms fishing cod, and the other to be in 500 fathoms fishing idiots, with no correlation in their bycatch rates. Extrapolating to unobserved vessels in the suggested manner for purposes of qualifying for an incentive program cannot be justified.

In short the reserve and credit systems are no more equitable, effective, or efficient than status quo, and they would require as much or more monitoring as would individual bycatch accounts. Therefore -- lets utilize the "penalty box" approach as an interim band-aid measure whose value has all ready been demonstrated and which is do-able for 1991, and then focus on implementing IBA's.

A Proposal For An IBA Alternative

- A Initial distribution: to all vessels equally with a history of participation in the prior year above a threshold (between 500-100 tons) in the GOA. Distribution done annually on one year basis.
- B Reserve: set aside a percentage of the cap (15%?) as an open access pool for vessels without a threshold level history of participation. This sub cap would be administered on a status quo "olympic" basis.
- C Transferability: fully transferable (but note the one year duration)
- D Observer coverage/monitoring: base on current coverage requirements.
 - Above 125' -- base on observed rates
 - Less than 60' -- multiply catch by high end of an assumed rate range -or- use observed rate if voluntary coverage is used
 - 60' to 125'
 - option A: extrapolate observed rate to 100% of catch
 - option B: use observed rate for observed catch and high end of assumed rate range for unobserved catch

Such a system would be efficient, equitable and effective.

--It is efficient in that the market mechanism allows for optimal distribution of a constraining cap since IBA would be transferable.

--It is equitable in that it provides all serious prior participants an equal opportunity to harvest the TAC. It pro-

vides a mechanism for new entrants that is no worse than status quo. If they wish to exceed threshold level of harvest they have the opportunity (equally with everyone else) to secure additional bycatch amounts through the marketplace. It allows for participation and accounting for the bycatch of unobserved vessels supposedly "incapable" of carrying an observer and offers an incentive for becoming "capable".

--It is effective in that it offers the best chance of maximizing harvest within a constraining cap. It depoliticizes the distribution of the cap by target fishery, shortening council meetings significantly. It doesn't demand "real time" monitoring of individual vessels as each vessel knows the amount of its IBA and can be penalized after the fact, shifting the burden of "real time" monitoring from the region to the vessel operator.

--Most importantly it doesn't allow a "dirty" fisherman to shut down a "clean" fisherman, nor does it require the council to make subjective decisions of who is "clean" and who is "dirty".

--Finally, it would allow the council a reality check on the appropriateness of the level of the PSC cap. By monitoring the price of bycatch in the marketplace one could begin to determine whether the cost of reducing bycatch was proportional to the savings provided to the halibut fishery and whether the councils PSC policies actually result in net benefits to the nation.

Hopefully these comments provide a starting place for creating an equitable, effective, efficient individual incentive program.

Thank you.

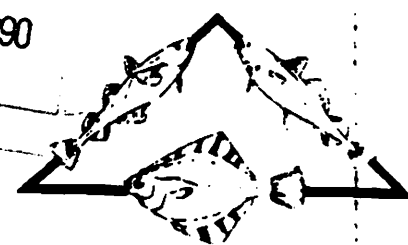


David Fraser

Alaska Groundfish Data Bank

RECEIVED

JUN 15 1990



TO: CLARENCE PAUTZKE, EXECUTIVE DIRECTOR
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

SENT BY FAX: JUST BEFORE 5 P.M. JUNE 15

RE: COMMENTS ON EA/RIR FOR AMENDMENT 21 AND AMENDMENT 18
PART 7.0

7.0 EXPAND HALIBUT BYCATCH MANAGEMENT MEASURES FOR THE GULF OF ALASKA

We very much appreciate all the staff time, effort and thought which has gone into development of this portion of the EA/RIR.

Reading the EA/RIR we feel that we are all in agreement on the overall objective:

A SYSTEM THAT HOLDS EACH VESSEL RESPONSIBLE FOR ITS OWN ACTIONS AND MINIMIZES THE IMPACT OF ANY ENTITY OR GROUP ON OTHER ENTITIES OR GROUPS.

We all also seem to agree that there are two basic components necessary to move toward this overall goal:

1. Timely information release of bycatch information in the most detailed format possible: ideally we would receive rates by day, area, target species and gear.
2. Sanctions and rewards as close to the vessel level as possible.

The EA/RIR also makes clear that the greatest constraints on reaching the overall goal are

1. Inadequate NMFS staffing and equipment.
2. Inadequate data base and analysis time to be able to project bycatch or assist industry in forming regulations which will reduce overall bycatch.

Our following comments are based on the above premises.

ALTERNATIVE 2

SUPPORT FOR OPTION A

We support seasonal apportionment of the halibut PSC and, for the trawl fleet, recommend that the same quarterly caps be used in 1991 as are being used in 1990 for five reasons:

1. Seasonal apportionment prevents fisheries starting early in the year from taking the total cap and precluding fisheries which start later in the year.
2. Seasonal apportionment creates "check points" and encourages clean fishing. This was certainly seen in the Gulf of Alaska during 1990.
3. The roll over of unused apportionment from one quarter to the next acts as a reward.
4. Fishing in time periods when halibut bycatch is highest can be constrained by the apportionment system and fishing in periods when halibut bycatch is lowest encouraged.
5. Seasonal apportionment also helps distribute the catch over time, which is theoretically better for all the species.

SUPPORT FOR OPTION B

We support either alternative under option B as these meets the goal of encouraging clean fishing and preventing one group from impacting a different group.

GENERIC APPLICATION

We feel there ought to be an overall policy which applies to any fishery management unit (species, gear type, season, area or any combination) which demonstrates a halibut bycatch rate below a fixed percentage such as 1% or .5%.

Midwater trawling has the lowest documented bycatch rate, followed by pot fishing and then by bottom trawling in the Western Gulf.

If pot gear is omitted from the framework entirely, so should midwater trawling be omitted. Depending on the percentage level set, some fisheries in the Western Gulf may also be omitted for at least the first part of the year.

POT GEAR - GROUND PREEMPTION PROBLEM

The low level of halibut bycatch documented in Pacific cod pot fishery certainly is an incentive for developing a Pacific cod pot fishery.

However, should the Council through halibut bycatch management methods encourage pot gear, we feel it should AT THE SAME TIME also implement management regulations which mitigate the inevitable grounds preemption problem. In 1980 there were conflicts between trawl and pot fishermen in the Kodiak area.

If there are no mitigating measures, a growing pot fishery could pre-empt the shallow water flatfish fishery, midwater trawl pollock fishery and trawl Pacific cod fishery.

We suggest the following measures be considered:

1. Ban on longlining of pots. As far as we know this method of fishing is not now being used and a ban would prevent potential future problems. Longlining of pots was used in the pot black cod fishery prior to its elimination in the Gulf.

Both longliners and trawlers would face serious gear conflicts were pot longlining to start. There's no way of knowing which way the strings run, no way for a trawler to salvage the string should it tow up one of the pots and an increased likelihood of the longlined-pots cutting off hook and line gear.

2. Set a Pot limit. This would prevent pot vessels from deliberately pre-empting grounds by setting out excessive pots. The limit should equal the number of pots a vessel can run in a day. We understand 80 pots may be the correct amount.
3. Biodegradable panels should be required.

4. Definition of pot gear in place that requires an adequate halibut exclusion opening.
5. Observer coverage arranged for vessels under 60-feet to document that the halibut bycatch in this group is the same as that documented for larger pot vessels. We suggest working with ADF&G to see if that agency can provide observer coverage since most of the small boat fishery will probably occur in state waters and the cost of the mandatory observer program could easily preclude small vessels from this fishery.
6. Area and/or time separation of pot and trawl gear. This option we feel should be explored by the Ad Hoc bycatch committee in consultation with industry.

ALTERNATIVE 3: IMPLEMENT A HALIBUT PSC PROGRAM

This section is difficult to comment on because the data needed to evaluate its effects is not yet available and because we understand NMFS cannot implement either of the options under its current staffing levels.

OBSERVER COVERAGE REQUIREMENTS A PROBLEM

Under the current mandatory observer program payment system, vessels under 125-feet would be precluded from any program which required 100% observer coverage.

The cost is simply unaffordable. Observer coverage is a fixed per trip cost and is not mitigated by additional fishing time.

This situation would change if the observers were being paid for by all vessels through a tonnage fee. Then requiring 100% coverage would not be a financial burden which precluded participation and we would be supportive.

Payment for observers through a tonnage fee would also solve the problem of vessels under 60-feet. They too could be required to meet the observer requirements if they wanted to participate in an incentive program and probably should be required under any circumstances to have some level of observer coverage.

We cannot support any incentive program which requires 100% observer coverage paid directly by the vessel.

SUPPORT FOR OPTION B: HALIBUT BYCATCH CREDIT SYSTEM

Assuming that the observer coverage required is paid for through a tonnage fee and assuming the NMFS could actually implement the program, we support the proposed credit system.

The proposed credit system brings the responsibility for halibut bycatch down to the vessel level and this we feel is by far the best system.

GQA Halibut Bycatch Management - page 4

If the observer coverage required is funded through a tonnage fee, there should be no exemptions for vessels under 60-feet which wish to participate in the incentive program.

Rates: The rate examples given in the EA/RIR are incorrect and should not be used to average with the 1990 observed rates. Those rates are basically the first quarter observed rates seen in the ADF&G program in the Central Gulf of Alaska. They would be dirty rates any time for the Western Gulf and too low for the June-August period in the Central Gulf.

A review of the ADF&G observer data, we feel, should have been more fully used in this analysis as it does give a good general overview for the seasonal and target species distribution of bycatch and so far tracks quite well with the 1990 observed rates in both the longline and trawl fisheries.

In any incentive program rates should be set for all the principle target fisheries. For bottom trawl this would be rockfish, Pacific cod, deep water flounder, shallow water flounder and, perhaps, pollock.

The difference in rates between the major target fisheries, among areas and among quarters is markedly different and should be taken into account when creating a credit system or using any assumed rates to assess unobserved tows.

If this proposal were to be implemented, we ask that the rates to be used be reexamined in consultation with industry.

PENALTY BOX OPTION

This option which is fully developed in the analysis for the Bering Sea, is only mentioned in the Gulf of Alaska section. We understand that this option may be implementable by NMFS and could be applied to the Gulf of Alaska.

In the Gulf of Alaska this program would only have to be implemented for halibut bycatch and therefore would be easier to manage than in the Bering Sea.

It would, until a real credit system is implemented, at least give some protection against truly dirty fishing.

We support this program, provided either the 100% observer coverage requirement is dropped or observer coverage is paid for through a tonnage fee.

If this program were also implemented in the Gulf of Alaska, assuming the observer problem is resolved, we would suggest the following changes:

1. Appropriate directed fishing definitions be developed for the Gulf. The Bering Sea definitions are not directly transferable to the Gulf.

GOA Halibut Bycatch Management - page 5

2. Monitoring be weekly, but sanctions be set weekly or monthly according to the level of dirty fishing.
 - a. A vessel exceeding in one week 3 or more times the average rate for the prior four weeks should be immediately sanctioned.
 - b. A vessel exceeding the average rate by less than 3 times in week should be sanctioned at the end of month if the cumulative monthly rate exceeds 2 times the average rate.
3. Ability to close a target fishery when performance of all participating vessels indicates the bycatch rate cannot be kept below a pre-determined level.

GENERAL COMMENTS

1. The emphasis on the necessity for 100% observer coverage for incentive programs troubles us as we have seen no data to justify this requirement for all vessels in all fisheries.

We would like to explore this assumption further with staff and the technical working groups.

2. We have great respect and admiration for Janet Smoker and regret that she is no longer with NMFS. Her paper in Appendix 2.2 *Overview of Bycatch Monitoring Programs in Alaskan Groundfish Fisheries 1988-1989* is a valuable review of the realities of bycatch management.

However, we disagree that her statement "bycatch rates can and do vary by orders of magnitude from vessel to vessel in the same area and in one vessel over time" indicates that bycatch rates are unpredictable. We feel they are predictable, but only by understanding the variation over time and being familiar with the performance of individual vessels.

Our own inhouse work predicting rates, projecting closures, etc. has been very successful. We used the ADF&G Central Gulf observer data, our familiarity with the fleet and the distribution of halibut in the Gulf of Alaska.

We feel the variations in the Gulf are very predictable and that reliable connections to external factors can be established. Our regret is that so much of the development of bycatch plans, incentive programs, preseason rates, etc., has excluded industry.

We suggest that the staff, council and technical working groups include periodic work sessions with industry to go over the work in preparation. All four groups -- staff, council members, technical working groups and industry -- have different specialized knowledge and experience which should be brought together and utilized while material is in preparation.

Sincerely,



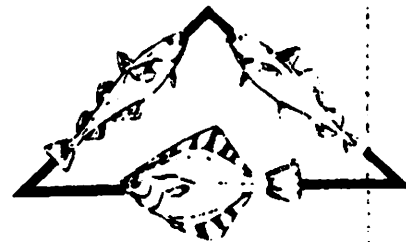
Chris Blackburn, Director
Alaska Groundfish Data Bank

Alaska Groundfish Data Bank

TO: CLARENCE PAULTZKE, EXECUTIVE DIRECTOR
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

SENT BY FAX: JUST BEFORE 8 P.M. JUNE 15

RE: COMMENTS ON EA/RIR FOR AMENDMENT 21 AND AMENDMENT 18
PART 3.0



We appreciate the opportunity to comment on the following:

3.0 OVERFISHING DEFINITIONS FOR THE GOA AND BSAI

We appreciate the work that has gone into developing the overfishing definition options.

While the generic population modeled is helpful in examining the different definitions, it is unfortunate time constraints didn't allow looking at how quotas might have been altered in the past for actual management units such as Central/Western Gulf pollock.

In the long run threshold levels (which reflect existing environmental conditions) with variable exploitation rates may be the best method for conservation of the resource; however, at this point it appears that data is inadequate to realistically use this definition of overfishing.

We also have doubts that this is a case of "one definition fits all species."

We hope that the process of defining overfishing (which is actually refining the current methodology used for assessing biomass and setting quotas) is ongoing.

However, to meet at this time the federal requirement that there be an overfishing definition, we prefer Alternative 4.

A. Alternative 4 Preferred

We favor "Alternative 4: Variable Fishing Mortality -- No Threshold" for the following reasons:

1. There are not adequate empirical data to determine pristine biomass and maximum sustainable yield for 24 of the 27 management categories under Council jurisdiction. Therefore, any overfishing definition based on pristine biomass, thresholds or MSY cannot be implemented.

This alternative does retain the MSY concept, but avoids the problem of defining threshold and having to play with pristine biomass and current environmental conditions.

2. We believe fishing mortality should be variable and reflect not only the relative strength of the biomass, but the age composition as well. There is also some indication that some species may be density dependent. In these cases exploitation rates also should be used to maintain the population below some upper limit to prevent the peak-crash syndrome.

Age composition of the stock is to our minds an important consideration in setting exploitation rates. A declining stock composed of older fish would seem to need greater conservation than a declining stock with a normal age class structure.

Likewise an increasing stock composed of mostly recruit fish may be best managed with a lower exploitation rate than that of a declining stock with a normal age class structure.

Our position appears to be reflected in Jeffrey Fujioka's paper in Appendix III: *A Comparison of Five Harvest Policies Applied to Sablefish in Alaskan Waters*. He states that the variable rate policies "provide greater protection to the population."

Dr. Fujioka also notes that the "best guess" threshold level used for the threshold examples "is difficult to defend as the true threshold biomass." Yet black cod is potentially one of the more stable populations, because of the longevity of the adults, off Alaska.

For shorter lived and more highly variable species we feel any threshold level would be impossible to defend.

B. Additional Comments

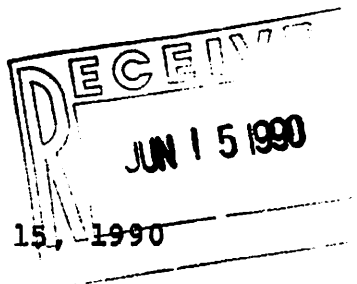
1. Terms like "depressed," "severly depressed" and "high" really seem like just other words for threshold. We feel a more rigorous definition based on age class structure should be used to determine the exploitation rates. Certainly "increasing due to influx of large year class or apparent drop in natural mortality" and "decreasing to seccive year class fallures or disappearance of abnormally large year class" give better management guidance than simply "depressed" or "increasing".
2. Definition of CPUE contains the statements: "It is usually expected CPUE will be highest when biomass is highest. If a stock is fished hard, biomass may be driven down, thereby causing CPUE to fall as well." We feel a caveat should be added that "CPUE may not fall when the fishery takes place on aggregations such as spawning aggregations, despite a decline in overall biomass."

Sincerely,



Chris Blackburn, Director
Alaska Groundfish Data Bank

Williams, Kastner & Gibbs



June 15, 1990

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Mr. Don W. Collinsworth
Chairman
c/o Clarence G. Pautzke
Executive Director
North Pacific Fishery Mgt. Council
P.O. Box 103136
Anchorage, AK 99510

Re: Comments, Amendments 21 and 14, Bycatch Issues,
in the Ground Fish Fisheries Off Alaska

Dear Mr. Collinsworth:

This firm is general counsel to Emerald Seafoods, Seacatcher Fisheries, Inc., Seahawk Pacific Seafoods, Inc., and Swan Fisheries. We make the following comments on behalf of the above companies, which own and operate factory trawlers.

They support implementation of bycatch management measures for the BSAI and GOA, so long as any measures do not unduly discriminate against any gear type. Each and all gear types must share fairly and equitably the conservation burden required to protect certain species. Each company strongly opposes any attempt to utilize conservation measures, including bycatch measures, to in effect accomplish political allocation of the resource. Specific comments follow.

Our clients would recommend that the Council allow pooling of vessels within specified gear types, and allow those pools to divide bycatch as they see fit. The only caveat is that the size of the pool and other participants in the pool, be determined by owners of individual vessels. We believe the industry, and certainly our clients, will resist any efforts to force a vessel with an unreasonably high level of bycatch upon a vessel pool.

Mr. Don W. Collinsworth
June 15, 1990
Page Two

Our clients strongly support an incentive program for vessels that are willing to take measures to diminish bycatch. Obviously, our clients support a system which will restrict or penalize individual vessels that are exceeding individual bycatch levels.

If a vessel by vessel bycatch management system is imposed, with penalties placed upon vessels for exceeding bycatch limits, it is appropriate for the Council to establish an appeal procedure system, which allows vessel owners to contest a decision of the regional director, imposing restrictions on a particular vessel's fishing, because of violation of bycatch standards. The appeal procedure should be a simple procedure, which can be done on an emergency, short notice basis, while the fishing season is still in progress. The vessel owner should be entitled to be represented by legal counsel, if requested. An emergency hearing should be held by telephone conference call, with the hearing taped.

Our clients believe that a reasonable way to allocate the conservation burden associated with bycatch requirements is to consider the relative value of particular fisheries. The national standards of the Magnuson Act preclude any bycatch system which does not consider the best utilization of the ground fish resources of the North Pacific. The Council, therefore, should avoid any system which allows fisheries of limited size and value, which have unacceptably high bycatch rates (e.g. greenland turbot in 1989) to prevent full utilization of high value fisheries, such as pollock and cod.

Our clients believe that any option based upon historical bycatch rates will be difficult, because many components of the ground fish fleet have not had the 100 percent observer coverage. (In fact, any bycatch recommendation appears to be impossible to implement without 100 percent observer coverage.) Our clients are suspect of the historic bycatch rates of the joint venture fishery. Our clients support any required reporting, to implement a bycatch management system, so long as the requirements are applied equally to other vessel types. In particular, the reporting requirements should also apply to vessels that support land based groundfish processors, not simply factory trawlers or other harvest vessels. All catch statistics, as related to an individual vessel, must be kept confidential.

Mr. Don W. Collinworth
June 15, 1990
Page Three

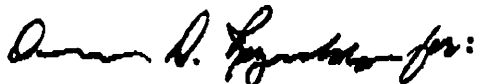
Turning to monitoring of PSC caps, the Council should be guided by its staff's comments that a "reliable methodology for doing so" has not been developed. Therefore, any bycatch system imposed must have some flexibility. We suggest an initial flexibility within a range. Any attempt to impose PSC caps with a fixed point are unlikely to succeed. Care should be taken, in explaining the bycatch proposals, that the public does not perceive the PSC caps as absolutely locked in stone, in the sense that if they are exceeded, by incremental margins, that the fishery is placed at a significant risk.

Turning to the definition of over fishing, our clients strongly agree that application of over fishing concepts must consider socioeconomic impacts. In fact, such consideration is mandated by the Magnuson Act. Unfortunately, much of the socioeconomic information is unavailable. In this regard, the Council is reminded that it is just now taking steps to collect some initial economic impact and value information, in the context of considering possible allocation scenarios for on-shore and off-shore elements of the industry. Therefore, it appears at this time that it is not possible to evaluate in a meaningful way the relative merits of any of the fishing alternatives submitted for public comment. Our clients are further analyzing each of the alternatives, and will provide to the Council in oral testimony, at the June meeting, which alternative best appears to provide the objective and measurable definition of over fishing required by the Secretary, but which also has the best opportunity to meet the Magnuson Act requirements of full utilization, when applied to the North Pacific Ground-fish fisheries.

Finally, our clients want to urge that the Council's bycatch recommendations should be viewed as transitory, since many components of the North Pacific Fishery bycatch history are not well known. If the Council goes forward and implements its full reporting requirements, and 100 percent observer coverage, an adequate statistical base will be developed to refine the bycatch proposals.

Sincerely yours,

WILLIAMS, KASTNER & GIBBS



James A. Wexler

DDR:fmj
cc: Emerald Seafoods, Inc.
Seacatchers Fisheries, Inc.

RECEIVED

JUN 15 1990

**KODIAK LONGLINE
VESSEL OWNERS ASSOCIATION****P.O. BOX 135 • 326 CENTER AVENUE
KODIAK, ALASKA 99615
(907) 486-3781****HALIBUT, SABLEFISH AND PACIFIC COD****June 15, 1990**

Dr. Clarence Pautzke
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL
P. O. Box 103136
Anchorage, Alaska 99510

RE: Comments on Amendments 21 and 16

SENT BY FAX

Dear Clarence,

The KLVOA would like to comment on several portions of the proposed changes to the Gulf and BS/AI management plans as listed in the EA/RIR dated May 16, 1990.

BS/AI CRAB AND HALIBUT BYCATCH MANAGEMENT

We support Alternative 3 which is to extend the Amendment 12a provisions for an indefinite period. We believe that if we are simply managing the halibut bycatch on a year to year basis, it is unlikely that we will be able to address future problems and issues. The very real possibility that regulations passed at the last minute won't be implemented until late in the year is of great concern to the KLVOA.

We do, however, support a speedy reduction in the halibut caps for the Bering Sea. When industry reached a compromise for Amendment 12a, it was clearly understood that the mortality would not exceed 4,000 metric tons. With a cap set at 5,333 metric tons which is also mortality, we believe that a major part of that industry agreement is not being met.

CHANGE FISHING GEAR RESTRICTIONS IN THE GOA AND BS/AI

We strongly support the proposed regulation requiring biodegradable panels on groundfish pots and that halibut exclusion devices be required for groundfish pots.

With the Pacific cod pot fishery beginning to attract many participants in the Gulf of Alaska, it is imperative that this gear be fished in the best manner to promote conservation. The exclusion devices are vital to reduce or eliminate the bycatch of halibut. The concern of lost gear continuing to fish is a real one, but with the biodegradable panels, the conservation concerns are met.

NPFMC
June 15, 1990
Page Two

EXPAND HALIBUT BYCATCH MANAGEMENT MEASURES FOR THE GULF OF ALASKA

We do support that halibut PSC limits be apportioned by quarter for the longline fleet. We recommend that quarterly apportionments be decided at each December meeting for the following year based on fisheries which occur in each quarter, assumed bycatch rates for the quarter, and quarters where bycatch needs would be intensified.

There are several advantages for this type of management. The bycatch limits would be spread out over the year, thus providing a means for the fleet to fish in each part of the year. Information on bycatch rates for the directed fisheries during each quarter would provide invaluable information to determine any changes in seasons which might be appropriate to reduce bycatch.

We also support the concept of an incentive program and feel that active efforts need to be made towards that end. We feel that a reserve makes more sense than a credit system. A pool of vessels (12-15) could be easier to track than individual boats and the vessels within the pool might be able to monitor each other more effectively than the agencies.

The option of omitting pot gear from the PSC Framework is one which we support. Pot gear with appropriate exclusion devices does not incidentally take a significant amount of halibut. While the trawl and longline fisheries may be shut down due to the halibut bycatch, it isn't reasonable to also close down a clean fishery. This fishery should on the other hand, be encouraged as one which is conservation minded.

Thank you so much for considering our recommendations.

Sincerely,



Linda Kozak
Executive Director



MAKAH TRIBAL COUNCIL

P.O. BOX 115 · NEAH BAY, WA. 98357 · 206-645-2205



June 15, 1990

Dr. Clarence Pautzke
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, AK 99510

Dear Dr. Pautzke:

The Makah Tribe has reviewed the Groundfish Management Plan Amendments 16 and 21 package sent out for public review. We have discussed the issue of bycatch management with the staff of the International Pacific Halibut Commission and support the recommendations submitted by the IPHC in its June 5, 1990 letter.

We wish to emphasize that Alternative 3 for Bering Sea - Aleutian Islands bycatch management should be implemented for one year only in that it offers improvements, but is not sufficient for long-term management. As you know, we believe a substantial reduction of the bycatch is required under the Magnuson Act, and because of the treaty and trust responsibilities the federal government owes the Makah Tribe to protect and preserve tribal resources. The recommendations of the IPHC represent a reasonable first step toward fulfillment of the Government's legal obligations.

Thank you for the opportunity to comment on these amendment alternatives. Members of our Staff will be available at the Council meeting should questions arise about our response.

Very truly yours,

MAKAH TRIBAL COUNCIL

Vivian Lawrence by A.J.Z.

Vivian Lawrence,
Chairperson

From : PSBURGVESSELOWNERRASSOC

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JUN 15 1990

Petersburg Vessel Owners Association

P. O. Box 232

Petersburg, Alaska 99833

June 15, 1990

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

Dear Mr. Pautzke,

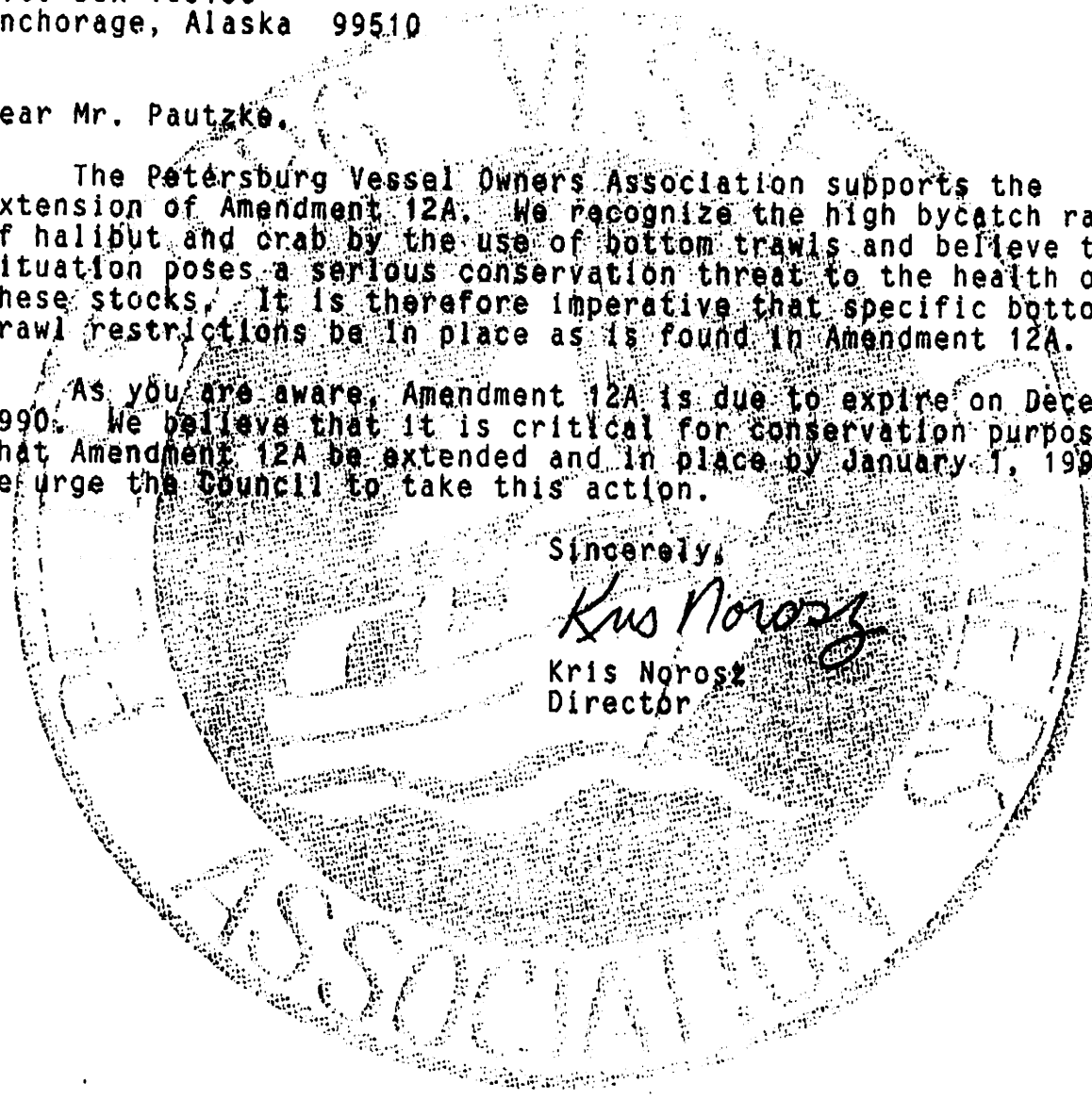
The Petersburg Vessel Owners Association supports the extension of Amendment 12A. We recognize the high bycatch rates of halibut and crab by the use of bottom trawls and believe this situation poses a serious conservation threat to the health of these stocks. It is therefore imperative that specific bottom trawl restrictions be in place as is found in Amendment 12A.

As you are aware, Amendment 12A is due to expire on December 31, 1990. We believe that it is critical for conservation purposes that Amendment 12A be extended and in place by January 1, 1991. We urge the Council to take this action.

Sincerely,

Kris Norosz

Kris Norosz
Director



Midwater Trawlers Cooperative

4055 21st Avenue West • Seattle, Washington 98199

Al Geiser
President
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JUN 15 1990

Steven E. Hughes
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June 15, 1990

MEMBER VESSELS

AJ
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CAPE KIWANDA
CARAVELLE
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EXCALIBUR II
GOLDEN PISCES
HAZEL LORRAINE
IRENE'S WAY
JEANETTE MARRIE
LESLIE LEE
LISA MELINDA
MARATHON
MISS LEONA
MUIR MILACH
NEW JANET ANN
NEW LIFE
PACIFIC CHALLENGER
PATIENCE
PEGASUS
PIONEER
QUEEN VICTORIA
RAVEN
ROSELLA
SEEKER
SLEEP ROBBER
SONNY BOY
VEGA
WESTERN DAWN

Mr. Clarence G. Pautzke
Executive Director
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

Dear Clarence:

RE: GOA Demersal Shelf Rockfish, Amendment 21

MTC previously opposed Amendment 14 which, in part, turned some management authority of SE Alaska demersal shelf rockfish over to ADF&G. MTC continues to oppose the status quo, and more strongly opposes Alternative 2 which, as predicted years ago, would increase ADF&G regulatory authority in the MFCMA.

The MFCMA was formulated in part to establish a 3-200 mile management zone, free of conflicting state regulations and inter-state biases. Alternative 2 is a shining example of how not to manage a resource and sets an extremely bad precedent for again predictable expansion to other areas, species, and fisheries.

The package lacks the obvious Alternative 3: Revert to federal management.

Sincerely,

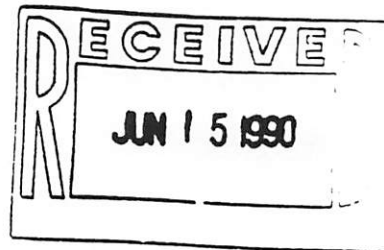
MIDWATER TRAWLERS COOPERATIVE



Steven E. Hughes
Technical Advisor



ALASKA CRAB COALITION



3901 Leary Way (Bldg.) N.W., Suite #6 • Seattle, WA 98107 • (206) 547-7560 • FAX (206) 547-0130

June 14, 1990

Mr. Clarence Pautzke,
Executive Director
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

RE: COMMENTS ON THE PROPOSED AMENDMENT 16 TO THE FISHERY
MANAGEMENT PLAN FOR THE GROUND FISH FISHERY OF THE
BERING SEA/ALEUTIAN ISLANDS ("FMP")

1. Preliminary legal comments by Theodore G. Kronmiller supporting the extension of Amendment 12A, dated June 14, 1990.
2. Correspondence to Senator Ted Stevens, dated June 8, 1990 regarding a bycatch study prepared by Natural Resources Consultants for the Highliners Association that is to be presented at the June 25 - 29, 1990 meeting of the NPFMC.
3. Legal comments submitted to the NMFS on Amendment 12A, BS/AI FMP, dated June 11, 1989 and legal comments submitted to the NPFMC, dated November 30, 1988.

Submitted by,

Arni Thomson
Executive Director

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WRITER'S DIRECT DIAL

*Not admitted in D.C.

June 14, 1990

Mr. Steven Pennoyer
Regional Director
National Marine Fisheries Service
709 West 9th Street
The Federal Building
Room 453
Juneau, Alaska 99802

Dear Steve:

On behalf of the Alaska Crab Coalition ("ACC"), I am providing comments on the proposed Amendment 16 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea/Aleutian Islands ("FMP"). The ACC is a trade association representing the owners of sixty-five vessels which operate in the crab fisheries of the Bering Sea. Although ACC is based in Seattle, it represents vessels which are based not only in Washington, but also in Alaska. In addition, ACC represents four companies which are engaged in the processing of crab.

The comments set forth in this letter are supplemented by the attached memorandum, which was submitted to the National Marine Fisheries Service during the public comment period on Amendment 12A to the FMP. That memorandum is relevant to Amendment 16 to the FMP, because an extension of Amendment 12A is under consideration for adoption as an interim measure for 1991. The rationale provided for Amendment 12A in the relevant Environmental Assessment and Regulatory Impact Review/Initial Regulatory Flexibility Analysis ("EA/RIR/IRFA"), and the other elements of the administrative record for Amendment 12A, have obvious applicability to an interim extension of that measure. Comments in addition to those provided in the attached memorandum are significant only to the extent that information relating to the 1990 fisheries is available and is relevant to Amendment 16, and to the extent that alternatives other than an interim extension of Amendment 12A may be considered.

The EA/RIR/IRFA for Amendment 16 contains information and analysis which support the adoption of Amendment 12A as an interim measure for 1990. However, it must be recognized that the information will be supplemented on the record during the balance of the administrative process and the analysis will be refined. From a legal standpoint, the conservation requirements of the Magnuson Fishery Conservation and Management Act ("Magnuson Act") and of the applicable regulations and guidelines provide a sound basis for the interim extension of Amendment 12A.

The EA/RIR/IRFA reflects new information concerning the actual impacts of the regulations pursuant to Amendment 12A and suggests what consequences might ensue should there be an interim extension. Although the costs are suggested to be high for the trawl sector, it must be remembered that in 1991, season adjustments would reduce bycatch levels in some of the high impact flatfish fisheries, thus allowing greater prosecution of other fisheries. If the trawl sector undertook to exercise some collective good judgment, in a manner similar to that demonstrated by the joint venture fleets prior to this year, the costs could be substantially contained as quotas in the various fisheries would be optimized. In the absence of such responsible behavior, the trawl sector imposes costs on itself. It is not up to the regulatory process to relax management measures in response to the imprudence of certain interests in the private sector. Furthermore, the fact that there are costs does not diminish the significance of the measures from the standpoint of conservation. Any modification of the system to reduce costs must not take place at the expense of the most fundamental principle of the Magnuson Act, conservation of the nation's fishery resources.

The EA/RIR/IRFA reduces the distinction between the various gear types in the area of bycatch to the level of the absurd. There are major differences, and it is these differences that account, in significant part, for the need for trawl restrictions. Therefore, it is impossible to accept the statement, "Trawl, hook and longline, and pot groundfish fisheries use partially non-selective harvesting techniques in that incidental (bycatch) species, including crab and halibut, are taken in addition to targeted species" (page 2-1). The use of bottom trawl techniques is a cause of massive bycatch which can have severely adverse effects on conservation. It is this condition, which is not shared with the other identified techniques, that necessitates specific bottom trawl restrictions as exemplified by Amendment 12A.

It must also be recognized that the lack of observer data and the absence of precision in resource estimates require more, not less, stringent bycatch restrictions.

Conservation, as required by the Magnuson Act, can be assured in no other way.

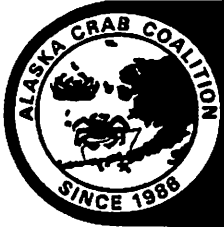
It is expected that a more complete commentary will be provided following action by the Council this month. For present purposes, it is requested that this letter and the attached memorandum be included in the administrative record for Amendment 16.

With best regards.

Sincerely,

A handwritten signature in black ink, appearing to read "Ted", written in a cursive style.

Theodore G. Kronmiller



ALASKA CRAB COALITION

3901 Leary Way (Bldg.) N.W., Suite #6 • Seattle, WA 98107 • (206) 547-7560 • FAX (206) 547-0130

June 8, 1990

Honorable Ted Stevens
United States Senate
522 Hart Senate Bldg.
Washington, D.C. 20510

Dear Senator Stevens:

The following information could be very useful to you as you prepare for floor action on MFCMA Reauthorization, given your strong conservation concerns about the impact of the trawl fisheries in the North Pacific. We are very concerned that neither you nor any of our groups concerned about conservation are surprised or embarrassed by any of the information, or timing and release of it as noted below in this letter. Further, we want to make sure that this information does not get used against your position on Council seats, observer language, or other conservation measures you have worked so hard to get into the Senate draft.

During the past several years, the North Pacific Fishery Management Council has adopted, and the Secretary of Commerce has implemented, vitally important conservation measures for the groundfish fisheries in the Bering Sea and Gulf of Alaska. Among the most significant measures have been those that limit, by time and area closures and prohibited species caps, the bycatch of crab and halibut by the vessels which deploy trawl gear.

Some trawlers have demonstrated that they can operate in a responsible manner. Bycatch impacts and gear conflicts can be minimized. Those trawlers show what can be done, if the effort is made to respect conservation principles and to "fish in consideration of others' fisheries."

Nevertheless, it is a matter of record that most of the principal organizations of trawl vessels in the North Pacific have resisted the imposition of effective bycatch limitation measures. To that end, several of those organizations have sought to direct attention away from their incidental harvests of prohibited species and to place unwarranted onus on other gear groups that experience bycatch which is far less in quantity, is fundamentally different in quality and results in far less mortality.

In furtherance of that strategy, a study by Natural Resources Consultants has been commissioned by certain trawl groups and cited in various industry meetings which are concerned with the bycatch issue. Although requests have been made for release of it, this study has not been released to the public. It has also not been subjected to peer review and objective scientific scrutiny. However, it is our understanding that the study is to be submitted to the North Pacific Council and may be circulated to the Congress, just at the time when very significant decisions are to be made on both regulatory and legislative efforts to address fishery conservation in general, and bycatch management in particular.

This political maneuver is part of a recurring pattern in the strategy of these trawl groups. In the fall of 1988 for example, they were effective in creating an eight month regulatory hiatus on bycatch caps in the Bering Sea. Natural Resources Consultants produced an abbreviated economic transfers paper on crab and halibut bycatch for a trawl coalition petition to the Council for reconsideration of its bycatch vote. Although the trawlers were unsuccessful in getting the Council to change its position, they were successful in postponing the implementation of the caps from January 1, 1989 until September 3rd of 1989.

We know that you, who are so committed to the effective conservation of our Nation's valuable fishery resources, understand the differences between the effects of the various kinds of fishing gear on those resources and on the economics of the fisheries. Trawl operations, much like the foreign driftnet fisheries, very heavily affect non-target species.

In some very important cases, trawl gear takes species which are in severely depressed condition (e.g., king crab stocks), are in significant decline (halibut), are depleted (northern fur seals) or are threatened and may become endangered (Stellar sea lions). The selective fixed gears (the longlines and pots), do not have such impacts.

Furthermore, the bycatch by trawlers of commercial species imposes a heavy cost on other gear groups. On the other hand, the bycatch by selective fishing gear does not impose significant costs on the commercial species of the trawlers.

The fact that bycatch limits are needed in the trawl fisheries is not diminished by the fact that there is some bycatch in other fisheries. Notably, as well, the bycatch in the fixed gear fisheries is carefully regulated, and that is as it should be.

There has been a great deal of talk among the trawl groups about "trawl bashing". Yet, there is no denying the record-

ed bycatch impacts of the trawlers. Equally important, there are other abuses in the trawl sector, including large scale waste through discard of both undersize and oversize target species, now being regularly reported in the press due to their extreme severity. In short, the record speaks for itself, and that record should be heard. (We reference the ten page June 6, 1990 article in the Seattle Weekly.)

We hope that you will approach with healthy scepticism the emerging defense of the trawl fisheries, particularly where the objective, whether stated or not, is to defeat needed conservation measures. Existing measures to conserve crab and halibut must at least be maintained and new trawl bycatch measures are needed to conserve salmon and herring. Efforts to address the taking of marine mammals in the trawl fisheries must also be continued, to address the policies of the Marine Mammal Protection Act.

We are impressed with your leadership in addressing these important issues. We look forward to continuing to support you in your work during the coming months and years.

Sincerely,



Arni Thomson
Executive Director



ALASKA CRAB COALITION

JUN 12 1990

3901 Leary Way (Bldg.) N.W., Suite #6 • Seattle, WA 98107 • (206) 547-7560 • FAX (206) 547-0130

ACTION	ROUTE TO	INITIAL
	Exec. Dir.	
	Deputy Dir.	
	Admin. Serv.	
cc: Hwy. file	Exec. Sec.	Rla
	Staff Asst. 1	
	Staff Asst. 2	
	Staff Asst. 3	
	Economist	
	Sec. Skkr.	
	Sec./Typist	

June 11, 1990

Mr. Clarence Pautzke, Executive Director
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

RE: COMMENT ON BERING SEA/ALEUTIAN ISLANDS GROUND FISH FMP
AMENDMENTS RELATIVE TO CRAB AND HALIBUT BYCATCH

I am enclosing the attached memorandum to Mr. Bert Larkins of Alaska Factory Trawlers Association regarding gear conflicts as they represented a major problem in the winter crab fisheries this year.

This should be one of the considerations in developing the new Bering Sea amendments for 1991. Several of the gear conflicts occurred during the roe rock sole fishery.

Sincerely,

Arni Thomson
Arni Thomson
Executive Director



ALASKA CRAB COALITION

3901 Leary Way (Bldg.) N.W., Suite #6 • Seattle, WA 98107 • (206) 547-7560 • FAX (206) 547-013

June 11, 1990

TO: Mr. Bert Larkins,
Executive Director
Alaska Factory Trawlers Association
4039 21st Ave. W. Suite 400
Seattle, Washington 98199

FROM: Arni Thomson
Executive Director

RE: MEMORANDUM OF RECORDED GEAR CONFLICTS AND POTS LOST
TO DOMESTIC FACTORY TRAWLERS IN THE WINTER BAIRDI
AND OPILIO FISHERY OF 1990 WITH RECOMMENDATIONS

1. Reference correspondence Arni Thomson to Steve Pennoyer, March 1, 1990; Phil Chitwood to Arni Thomson, March 2, 1990. Arni Thomson to Steve Pennoyer, April 25, 1990. Vince Curry (AFTA), April 23, 1990, and Ted Smits (NPFVOA), May 25, 1990
2. Reference historical information on development of East Bering Sea "Pot Sanctuary," 1964 - 1971. Documentation of 100 lost pots to foreign trawlers in 1963 resulted in first bilateral treaties with Japan and USSR in 1964 and establishment of the initial "Pot Sanctuary" (Attachment).
3. To date, the Alaska Crab Coalition has not responded to either Vince Curry's or Ted Smits invitations to attend a meeting to discuss the issue of gear conflicts. However, as you are well aware from the correspondence referenced above to Mr. Steve Pennoyer, the issue of gear conflicts, in particular with factory trawlers, has become a high priority with the ACC. Our delay in responding to invitations to attend meetings is related to the seriousness of the issue, and the fact it is an ongoing problem that is being addressed internally within the association.

In addition to the financial concerns that the crab boat owners have over the loss of the gear and fishing revenues from them, the ACC has a heightened concern over the potential entanglement problems that the lost lines pose for marine mammals and ultimately the regulatory repercussions for the crab fleet. Customarily, when the crab lines and buoys get snagged on the trawl cables and doors, deck men

cut them off at the time the doors are brought on board the trawler. This prevents unnecessary and cumbersome handling of the pots.

The issue first had to be discussed by the Board of Directors, who then called an association meeting to discuss the legal and regulatory possibilities that exist for the boat owners to recover financial losses from the gear lost and protection in the future. The consensus of opinion of the members at the meeting, based on their experiences with the factory trawlers, both this winter and in the past few years, was that protection against gear loss likely rests in additional time and area closures in the Zone 1 and 2 areas, particularly in regards to the DAP rock sole fishery. That is to say, something similar to what the NPFMC is proposing for the JVP flatfish fishery, a delay of season opening date to June 15th. This coincides with the NPFMC acknowledged conclusion of the king crab mating and molting season. It appears the majority of the costly gear conflicts occurred during the rock sole fishery, in Zone 2.

Another reason for the delay in response, is that considerable time is still being spent interviewing and documenting reports of gear conflicts with operators, as they return from the Bering Sea.

Due to the excessive number of gear conflicts this winter, the ACC has developed a gear conflict report form. Below are the documented logbook reports, thus far this year to the ACC office. In most cases, the reports also contain the names of the factory trawlers working the area at the time the pots were lost.

On the very day that the NPFVOA gear conflict meeting occurred, two ACC boat owners came in to the office to document two more unrelated incidents of pot loss and gear conflict. Suffice it to say, that this is an ongoing problem, the extent of which is being recorded within the ACC office. With the crab season closing next week, we should be concluding the interviewing by the close of the month.

4. Logbook documented reports of single line pot gear lost to factory trawlers with mobile trawl gear:

Total pots lost to date in this report: 240.

Arctic Sea, Bering Sea, North Sea: 2/21/90; vicinity of 164 degrees W. long. 55 degrees N. lat. Pots lost: 23.

Early Dawn: 2/21/90; vicinity of 164 degrees W. long. 55 degrees N. lat. Pots lost: 18.

Fierce Contender: 2/21/90; vicinity of 164 degrees W. long. 55 degrees N. lat. Pots lost: 9.

Norseman II: 2/7/90; vicinity of 173 degrees W. long, 57 degrees N. lat. Pots lost: 25.

Deception: 3/8/90; vicinity of 167 degrees W. long. 56 degrees N. lat. Pots lost: 39.

Neptune: 3/8/90; vicinity of 168 W. long. 56 degrees N. lat. Pots lost: 38.

Theresa Marie: 3/5/90; vicinity of 168 degrees W. long. 56 degrees N. lat. Pots lost: 37.

Viking Queen: 3/15/90; vicinity of 170 degrees W. long. 56 degrees N. lat. Pots lost: 4.

Discovery: Approximate date, 3/25/90; vicinity of 170 degrees W. long. 56 degrees N. lat. Pots lost: 12.

KATIE K: 4/9/90; vicinity of 169 degrees W. long. 56 degrees N. lat. Pots lost: 24.

Northwestern: 5/21/90; vicinity of 173 degrees W. long. and 57 degrees N. lat. Pots lost: 11.

4. Additional grounds preemption and gear conflict problems:

Lady Ann: 1/15/90; Western Sector of Zone 1, 163 degrees to 164 degrees W. long. 56 degrees N. lat.; factory trawlers and joint venture flatfish trawlers preempted vessel from setting pots in the area, very high risk that gear would have been lost. Customarily very productive bairdi crab grounds. When vessel came back into the area after trawlers had left, test fishing showed the area was like a desert.

Adventure: 3/16/90; vicinity of 170 degrees W. long. 56 degrees N. lat.; no pots lost. Developed an agreement on the radio, that factory trawlers were not going to come into an identified box that four crab boats were working. It only lasted for one day, then the f.t.'s discontinued communications and moved into the area where the crab gear was located.

Western Viking: 5/14/90; vicinity of 172 degrees W. long. and 56 degrees N. lat. A factory trawler crossed over brown crab longline pot string and drug it over the edge. Operator would not acknowledge on any channel. Chased the vessel for more than two miles, blowing his horn.

5. Additional recommendations for discussion:

- a. Meetings should include operators of trawlers and

4

crabbers and if necessary, longliners, and not just lawyers and association directors, if practical solutions are to be developed. Otherwise, meetings will doubtless be unproductive.

b. Identification of problem areas and fisheries being conducted in those areas.

c. Communications: In several of the recorded incidents, factory trawler operators refused to communicate with crab boat operators, despite repeated requests.

d. Seasonal prohibition on night trawling in areas being fished by both fixed and mobile trawl gear. A prohibition on bottom trawling at night was suggested by a number of trawl boat operators at the April Council meeting, as bycatch rates of crab and halibut are apparently much higher at night. The major problem fishery this winter for crab boats, was the rock sole fishery, a bottom trawl fishery.

e. Involvement of a regulatory specialist from the NMFS would be helpful in discussions about possible solutions (Ron Berg).

There are certainly other considerations that trawl boat operators have and we would welcome those suggestions.

cc: Steve Pennoyer, RD/NMFS/AR
Clarence Pautzke, ED/NPFMC
Ted Smits, NPFVOA
Bob Alverson, FVOA
Theo Mathews, UFA

All reported interference with U. S. fishing activities by foreign fishing vessels in 1964 occurred in the Gulf of Alaska, primarily in the region off Kodiak. Six such incidents were reported by halibut fishermen and most of their complaints were directed at Soviet trawlers. A frequently voiced problem was the occupation by Soviet fleets of established halibut fishing grounds. The Russian trawling fleets have found the edges of Fairweather, Portlock, and Albatross Banks productive for Pacific ocean perch. Quite often our halibut fishermen, upon reaching those grounds, have considered it foolhardy to set their gear amid a mass of trawlers, for loss of gear appeared unavoidable.

Foreign interference with our growing king crab fishery was considerably reduced in 1964. A total of 29 U. S. king crab pots were reported lost to foreign fishing vessels during the year in contrast to over 100 pots reportedly lost in 1963. The losses of 12 pots were attributed to Japanese vessels, 7 pots were charged to Soviet vessels, and the other 10 pots could not be attributed with certainty but were believed lost because of Japanese vessels operating in the area.

The severe curtailment of king crab fishing efforts because of the March 27 earthquake damage in Kodiak no doubt reduced the potential for such conflicts. However, another major factor was the apparent avoidance by the Soviets of the areas of king crab pot concentrations. Following formulation of the United States-Soviet gear conflict agreement in late June, Soviet trawlers apparently refrained from fishing in the designated crab pot areas off Kodiak, although the agreement did not enter into force until late last year. In fact, the only pot losses charged to the Soviets occurred within a pot sanctuary area off Kodiak in November--after the agreed upon pot protection period of July through October.

Japanese trawlers, on the other hand, consistently fished within the pot concentration areas as designated by the United States-Soviet agreement, primarily off southwest Kodiak Island. All the pot losses charged to the Japanese occurred within the areas and period designated by the United States-Soviet pact. Of interest were the arrangements made by the Taiyo Fishing Company, through an Anchorage subsidiary, to compensate United States fishermen for king crab pots lost to Japanese trawlers in the Gulf of Alaska.



Created in 1849, the Department of the Interior—a department of conservation—is concerned with the management, conservation, and development of the Nation's water, fish, wildlife, mineral, forest, and park and recreational resources. It also has major responsibilities for Indian and Territorial affairs.

As the Nation's principal conservation agency, the Department works to assure that nonrenewable resources are developed and used wisely, that park and recreational resources are conserved for the future, and that renewable resources make their full contribution to the progress, prosperity, and security of the United States—now and in the future.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

JUN 11 1990

Northwest Region
Trade & Industry Services Division
7600 Sand Point Way NE
BIN C 15700 (Bldg. 1)
Seattle, WA 98115

June 12, 1990

F/NWR2:KAF

Mr. Theodore G. Kronmiller
Patton, Boggs, and Blow
2250 M Street, N.W.
Washington, D.C. 20037

Dear Mr. Kronmiller:

This letter responds to your Freedom of Information Act (FOIA) request dated May 24, 1990 to Under Secretary Knauss. Your request was forwarded to my office for action because of our administration of a Saltonstall-Kennedy award to the Highliners Association (86-ABH-00042) for a crab bycatch study.

Since the date of the report of the crab bycatch project did not match your request, we inquired of Natural Resources Consultants about possible recent studies of bycatch. It appears that the document you are requesting is a study prepared by the Natural Resources Consultants for the Highliners Association. This study was not financed or directed by NOAA. No copies are in the possession of the National Marine Fisheries Service. I understand this study will be released at the next meeting of the North Pacific Fishery Management Council, scheduled for June 27-29, 1990.

Accordingly, there are no agency records responsive to your request.

Sincerely,

Linda Chaves
Linda Chaves
Chief

cc: AD62 - Sam Stone
F/MB1 - Harold Hagwood
GCNW - Michael Bancroft
F/NWR - Rolland Schmitten
F/TS - James Douglas



PATTON, BOGGS & BLOW

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JOHN L. OBERDORFER

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DOMENICO DE SOLE
TIMOTHY A. VANDERWER, JR.
JOHN F. WOODS
TIMOTHY A. CHIRBA
ROHAIIM BLOWM
MIDDLETON A. MARTIN
GARRET G. HANMISSEN
JAMES B. CHRISTIAN, JR.
DAVID E. OZIM
RONALD S. LIEBMAN
J. KIRK WADE
STUART M. PAPE
JOE ROBERT REEDER
STEVEN M. SHINEBAUM
CLIFF MASSA II
SHAQUL ASI AN
DONALD V. MOOREHEAD

WRITERS DIRECT DIAL

*Not admitted in D.C.

June 11, 1989

Mr. Steven Pennoyer
National Marine Fisheries Service
709 West 9th Street
The Federal Building
Room 453
Juneau, Alaska 99802

Dear Steve:

The following are comments submitted on behalf of the Alaska Crab Coalition ("ACC"), Fishing Vessel Owners Association ("FVOA"), and the Deep Sea Fishermen's Union ("DSFU") regarding the proposed rule to implement Amendment 12A to the Fishery Management Plan for Groundfish Fisheries of the Bering Sea/Aleutian Islands. ACC is a trade association representing the owners of more than seventy vessels which operate in the crab fisheries of the Bering Sea. Although ACC is based in Seattle, it represents vessels which are based not only in Washington, but also in Alaska. In addition, ACC represents three companies engaged in the processing of crab.

FVOA is an organization representing the owners of over ninety vessels engaged in halibut and sablefish longlining in the Bering Sea and Gulf of Alaska. FVOA is based in Seattle, and represents vessels based in Washington and Alaska. DSFU, which is the oldest organization of crewmen and skippers in the North Pacific, is comprised of approximately 400 members in Washington and Alaska.

Based on the reasoning set forth in the attached memorandum, these organizations maintain that there is a sound legal basis on which to approve, and no legal basis upon which to disapprove the amendment. Moreover, they maintain that the adoption of the amendment would accord fully with the policies enunciated by the Council and the Department of Commerce.

In sum, the approval and implementation of Amendment 12A is essential to the conservation of severely depressed crab resources and seriously declining halibut stocks. Amendment 12A serves the principal purpose of the Act, conservation, and is

PATTON, BOGGS & BLOW

Mr. Steven Pennoyer
June 11, 1989
Page 2

consonant with all other legal requirements. Notably, from a practical standpoint, the conservation of crab and halibut due to the imposition of effective bycatch regulations pursuant to Amendment 12A does not have to result in significant costs to the groundfish trawl fleet. The Environmental Assessment and Regulatory Impact Review/Initial Regulatory Flexibility Analysis for Amendment 12A, public testimony before the Council in 1988, and the experience of the foreign fleets in 1983 and the joint venture fleets in 1985, all show that the trawlers are able to adjust their practices to avoid lost fishing opportunities under bycatch limitation regulations. (See, pp. 1, 29, 34-35, 79, 80).

The above-referenced legal memorandum and other relevant documents attached hereto are submitted with this letter in response to the Federal Register notice, dated May 4, 1989, of a proposed rule to implement Amendment 12A. We request their inclusion in the Administrative Record.

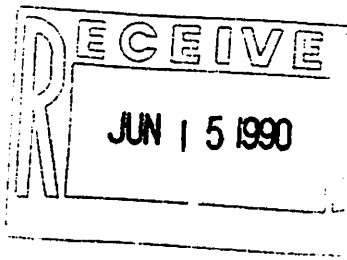
Sincerely,

TGK, bw

Theodore G. Kronmiller

TGK:bw

Enclosure



ALASKA FACTORY TRAWLER ASSOCIATION

4039 21ST AVE. WEST, SUITE 400
SEATTLE, WASHINGTON 98199
(206) 285-5139

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WASHINGTON D.C. OFFICE
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June 15, 1990

Mr. Don Collinsworth
Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, Room 306
Anchorage, Alaska 99501

Dear Don:

This letter responds to the Council's call for public comment on the EA/RIR/IRFA for Amendment 21 to the GOA Groundfish Management Plan and Amendment 16 to the BSAI Groundfish Management Plan.

CHAPTER 2, REVISE CRAB AND HALIBUT BYCATCH MANAGEMENT MEASURES FOR THE BSAI.

As we understand the bycatch amendment process for the BSAI, the primary purpose behind Amendment 16 is to have something in place by January 1, 1991 in order to control bycatch until Amendment 16A can be completed and implemented by April/May, 1991. In other words, Amendment 16 is only a stop-gap for the first 4-5 months of 1991. In this context, AFTA's views on the three alternatives for Amendment 16 described in the EA/RIR/IRFA are as follows:

Alternative 1, status quo (ie., no bycatch measures).

This alternative is inconsistent with our objective of a reasonable and rational bycatch regime, but is preferable over the current version of 12A which is totally unacceptable in view of the disproportionate costs which it imposed on the trawl industry.

Alternative 2, extend Amendment 12A regulations for one year.

In view of the utter disarray of the 1990 BSAI groundfish fishery, caused mainly by the combined effects of the several provisions of Amendment 12A, those provisions must not be simply rolled over for yet another year. The basic defect in Amendment 12A -- that the industry could or would somehow conform itself to

Mr. Don Collinsworth
June 15, 1990
Page Two

12A's bycatch requirements in a way that would allow the groundfish OY to be taken -- has been confirmed by the Council's technical team (RIR, p.2-2) and cannot be expected to correct itself for 1991. In addition to that underlying flaw, the abundance of all PSC species, which has a direct relationship to bycatch rates, has clearly changed since 1988 (the year from which the data came that was used in setting the current PSC caps).

At the time of this writing, DAP bottom trawling for flounders has been closed since March and that for cod and pollock is projected to close by the end of June. Thus, we have every reason to agree with the EA/RIR/IRFA's conclusion that, "the cost to the groundfish fleet of the foregone catch could be in excess of \$100 million in lost gross earnings." (RIR, p.2-3).

All of the DAP closures to date and soon expected, result from the halibut caps. However, if somehow those caps had been avoided, one of the existing king crab or bairdi crab caps, or perhaps the new herring measures would very likely lead to the same end -- an enormous foregone catch of groundfish worth far in excess of any demonstrable savings to the crab, halibut, or herring fisheries.

Alternative 3, Modify and add to the Amendment 12A provisions and extend them for one year or for an indefinite period.

Not realistic as written, but forms the basis for a reasonable, short-term fix. The major objection to this alternative is the fact that neither the PSC caps nor the PSC-related time-area closures are to be reconsidered, thus locking them in for at least another full year.

A better formulation of the third alternative would be to couple (1) a sunset provision (say, as of April 30, 1991) so that the "second amendment" (Amendment 16A) with its more thorough analysis using more recent data, must be completed and implemented in a timely fashion, with (2) a rescission by the Council of the eleventh hour action taken during its April meeting so that a review of caps and zones will be accomplished during the 16A process. In light of the 1990 experience, to be unwilling to even look at an analysis of the current status of PSC species vis-a-vis the costs/benefits of alternative bycatch measures smacks of not wanting one's conclusions to be influenced by facts. Any retention of caps based on status of stocks information which is already two years old, simply ignores the best scientific evidence available. That evidence indicates that the bycatch stocks in question have improved and that an upward adjustment of the caps is in order.

Mr. Don Collinsworth
June 15, 1990
Page Three

We concur with the provisions for adding new fishery units for DAP rock sole and DAP turbot (deep water turbot/sablefish). We would also suggest that another category, Pacific cod, be added -- that is a significant and quite distinct fishery. Further, we recommend that the DAP turbot fishery and any JVP sole/flounder fishery be delayed until at least June 1, 1991.

We also concur with the vessel-by-vessel sanction program, as proposed, with the understanding that this program will be more fully developed (presumably with industry input) in the near future. This program should be managed by NMFS and not left to the industry to administer. A bycatch "pool" system should not be utilized; each pool would still have the problems which underlie 12A, plus such a system would place an unreasonable organizational and administrative burden on the groundfish industry.

Comments on in-season "hot-spot" authority, allocation of pollock TAC's between pelagic and bottom trawls, and night fishing will be submitted during the Amendment 16A process.

Finally, we find the analytical and descriptive portions of Chapter 2 of the EA/RIR/IRFA to be extremely well developed and presented.

CHAPTER 3, OVERFISHING DEFINITIONS FOR THE GOA AND BSAI.

The authors of this chapter have done a most credible job of developing a rational series of alternatives, and of translating a highly technical subject into "lay-speak". Perhaps the most important point of the chapter is the authors' admonition to not confuse the specification of "overfishing" with that of an "optimal harvest policy" -- the former being a safety net, the latter a goal.

Even though all seven alternatives have merit from both the optimal harvest policy and prevention of overfishing perspectives, at this time AFTA prefers Alternative 3. This selection is based entirely on the Team's conclusion (RIR, p.3-27) that, "Alternative 3 performed the best in terms of long-term average yield and yield variability". However, given the biological complexity of this issue, whichever alternative is preferred by the SSC will be acceptable to AFTA.

CHAPTER 4, ESTABLISH PROCEDURES FOR INTERIM TAC SPECIFICATIONS IN THE GULF OF ALASKA AND BERING SEA/ALEUTIAN ISLANDS.

Assuming that the problem which is addressed by this amendment is truly in need of fixing, AFTA favors Alternative No.

Mr. Don Collinsworth
June 15, 1990
Page Four

2. This alternative would extend the proposed TAC specifications into the new fishing year as "interim" specifications. The "interim" specifications would remain in place until changed.

Alternative No. 2 has several advantages over Alternative No. 3. First, it would avoid the confusion which might otherwise arise out of publishing two entirely different sets of specifications for the year. (Alternative No. 3 would involve the publication of one set of initial specifications, based on 1/4 of the TAC's; followed by publication of a second, different set of specifications, based on the full TAC's). The management process is already complicated enough without adding an additional level of confusion to the system.

Second, Alternative No. 3, which simply sets the initial specifications equal to 1/4 of the proposed TAC's for all species, does not take into account the fact that the fisheries for some species are primarily conducted during the first part of the year. Setting the initial specifications at 1/4 of the TAC could, therefore, artificially curtail a fishery if the initial specification was caught before the final specification could be implemented.

The EA/RIR states that the purpose of allocating only a fraction of the TAC specification at the beginning of the year is to avoid an interim specification for a particular species that might exceed the level of TAC which the Secretary eventually implements. There are other ways, already available, which could avoid such an occurrence. First, the Regional Director has field order authority to close fisheries to prevent overfishing; the second, the Regional Director has authority to close directed fisheries and go to "bycatch only" status when the annual TAC for any given species might be exceeded. These two mechanisms are already available to the Regional Director and are sufficient to prevent the eventuality identified in the EA/RIR as underlying the need to divide the TAC as Alternative No. 3 would do.

For all of these reasons, AFTA favors Alternative No. 2.

Chapter 6, CHANGE FISHING GEAR RESTRICTIONS IN THE GULF OF ALASKA AND BERING SEA/ALEUTIAN ISLANDS.

AFTA supports implementation of Alternative 2 as follows:

Option A Biodegradable panels on groundfish pots

Implementation of this regulation is favored as use of pot gear and an associated bycatch mortality problem is on the increase. The lost and abandoned pot gear which "ghost" fishes impacts bycatch stocks with unobserved mortality and indirectly

Mr. Don Collinsworth
June 15, 1990
Page Five

limits other fishermen. This increasing problem must be controlled.

Regulations should specify that only a single layer of cotton twine can be applied to attach the biodegradable panel to the pot. AFTA favors use of cotton twine which will degrade within a maximum of 50 days. Untreated #30 cotton twine may be appropriate, but if it is too thick to degrade within 50 days, another size should be used. Each pot actively fished should reasonably be hauled well within a 50 day period - or should cease effective retention of catch. If necessary, the twine can be replaced when needed. To allow longer soak times with heavier twine, or repeated layers of twine, is counter productive to conservation needs.

Option B Halibut exclusion devises on groundfish pots

Implementation of the NMFS Alaska Region recommended opening is favored (EA/RIR pg 6-4).

Option C New definition of pelagic trawl gear

Implementation of the proposed pelagic trawl gear definition on page 6-6 is supported. This definition is subject to objective review and can be easily enforced. It will allow for effective mid-water fishing during bottom trawl closures and will result in reduced bycatch during such closures.

The cost of modifying existing gear is understated in the EA/RIR. According to gear suppliers the cost per net modification using an insertion of new netting on the boat may be as low as \$1,000, but not many will be converted in this manner. Modification of large nets at the factory can run from \$3,000 - \$10,000. In most cases, substantial modifications will need to be made within the body of an existing net to alter flow characteristics and promote catch efficiency. Nets which are modified are expected to be less effective in harvesting catch than newly constructed pelagic nets, but new construction will cost even more. Construction of new gear designed to accommodate these new features is predicted to cost fishermen from \$20,000 to \$30,000 and up, depending on the size of the pelagic gear.

Chapter 5, MODIFY THE AUTHORIZATION LANGUAGE FOR DEMERSAL SHELF ROCKFISH MANAGEMENT IN THE GULF OF ALASKA.

Management techniques proposed in this amendment package for demersal shelf rockfish, i.e. smaller quotas and smaller management areas (pg. 5-1) merit consideration when scientists perceive them as necessary for legitimate conservation needs. AFTA generally supports using these tools for demersal shelf

Mr. Don Collinsworth
June 15, 1990
Page Six

rockfish in the Southeast Gulf of Alaska EEZ. Unfortunately Alternative 2 goes further than addressing stock management techniques - it is an allocation strategy which violates Magnuson Act national standards and substantive procedural requirements. Alternative 2 was formed by resident Alaskan fishermen to exclusively benefit resident Southeast Alaska longliners and disenfranchise trawl fishermen. We cannot support it.

EA/RIR Failed to Include and Analyze Alternative Proposal.
The amendment package has failed to include a demersal shelf rockfish management alternative submitted by at-sea catcher processors for the 1990 amendment cycle. The proposal would have the NMFS regain direct management authority over demersal shelf stocks in the South East Gulf of Alaska. Further development of the trawl proposal will promote adequate conservation of demersal shelf rockfish stocks, allow continued participation by trawl fishermen in this fishery, and benefit the national interest through higher economic returns. This alternative should have been included for development. AFTA requests this section of the amendment package be returned for development and analysis incorporating this third alternative.

Alternative 2 Violates National Standard 4. Unfortunately, as drafted Alternative 2 promises management measures which unlawfully discriminate between residents of different states. The Alternative 2 proposal was drafted exclusively by Alaska resident longliners sitting on the "Work Group" and the benefits of access fall only to them. Nonresidents had no practical opportunity during development of the Alternative 2 proposal, and none is foreseen in the future, for input into the Alaska state system. Nonresidents are unrepresented on the Alaska State Board of Fish, unrepresented on local Alaska fish and game advisory boards, and played no part in the "Work Group" which originally developed the proposal. The Alternative 2 proposal is an allocation measure intended for a federal resource within the EEZ, but developed entirely outside the Council process and without benefit of substantive due process.

If Alternative 2 is adopted non-resident fishermen including trawlers, will be unfairly frozen out of the state management process until 1993. "No other modifications to the current regulations are being considered by the ADF&G staff at this time. The deadline for submission for proposals to be considered in 1991 was April 10, 1990 so no additional proposals can be submitted for consideration next year. After the 1991 meetings the Board is not scheduled to consider changes to the demersal shelf rockfish regulations again until early 1993". (EA/RIR pg. 5-12) Implementation of the proposal in this manner is patently unfair and discriminatory to non-residents.

Mr. Don Collinsworth
June 15, 1990
Page Seven

Other reasons exist for rejecting Alternative 2. Alternative 2 proposes instituting harvesting inefficiencies such as trip limits which will not provide an off-setting national benefit. Alternative 2 will ultimately trigger new and unnecessary bycatch disputes limiting harvest of the more valuable Gulf-wide slope rockfish fisheries, since both slope and demersal shelf rockfish species are often found intermixed. Federal oversight is needed as the "Work Group" benefiting under this scheme is currently planning to terminate their own catch reporting requirements and increase the size of the proposed rockfish management zones. (EA/RIR pg 5-12) Alternative 2 is simply bad policy.

NMFS Currently Manages Small Quotas and Subareas Successfully. The underlying premise of Alternative 2 - that NMFS is incapable of protecting and managing this resource, is invalid. NMFS currently manages many small quotas below 1,000 MT and has established subareas throughout the North Pacific including: Other Rockfish in the Bering Sea; Other Rockfish in the Aleutians; Sablefish (trawl) in the Bering Sea and Aleutians; separate Sablefish (trawl) quotas in the Western Gulf, West Yakutat, East Yakutat subareas; and Shallow Water Flatfish in the Eastern Gulf. Bering Sea bycatch species are managed through a grid of thirteen separate subareas. Each of these quota allocations within subareas require careful NMFS stock assessment and close monitoring of the fishery. There is no fundamental benefit gained by transfer of management authority over demersal shelf rockfish from the federal agency charged with guarding the national interest, to an state agency inherently concerned with meeting local demands and needs.

5.3.2 Description of the Fishery

The EA/RIR improperly disregards or assumes away the legitimate interest of trawl fishermen in this stock - fishermen who during 1989 landed 33% of these fish (table 5.1). The EA/RIR presents conflicting catch data in several tables, but the fact is non-resident trawl fishermen would have harvested an even greater percentage of the Southeast Gulf resource if they had received adequate notice of openings. The lack of effective notice to nonresidents who are outside the normal focus of state managers demonstrates the kinds of problems that arise from the proposed delegation of jurisdiction to a state authority.

Harvest of demersal shelf rockfish occurs in the longline fishery and trawl fisheries in roughly the same manner - longliners indirectly take demersal shelf rockfish while actively prospecting for halibut and sablefish. Trawlers take demersal shelf rockfish while fishing for higher value slope rockfish and other species groups. In either case the mixed species biomass

Mr. Don Collinsworth
June 15, 1990
Page Eight

produces some demersal shelf rockfish to both gear types. It is inaccurate for the EA/RIR to characterize longline catch as "directed landings" and attempt to discredit trawl catch as "incidental". Catch of demersal shelf rockfish is important to trawl as well as longline gear and should be evenly managed in this light.

Implementation of Alternative 2 will create a new and unnecessary bycatch problem by splitting the rockfish complex between trawl and longline gear. Demersal shelf rockfish will become the new brand of bycatch and management of the issue will be a disaster. In effect the tail will begin wagging the dog as fishermen benefitted by Alternative 2 will seek limits on the demersal shelf rockfish catch of trawl fishermen who actively fish slope rockfish and other species. Little confidence can be placed on the EA/RIR assumption that three of the species, redstripe, bocaccio, and silvergrey may at some future date be reclassified as slope rockfish. Of greater concern is the fact yelloweye, the species bringing highest value from the complex through marketing of at-sea trawl processed product, is not even considered for reclassification. A new bycatch issue will descend upon the fishery as a result of Alternative 2. Lower value to the nation from this resource is guaranteed as a result. The better course is to practice conservative management with a sharing of the resource by trawl and longline gear.

5.5.1 State Regulations

The "Work Group" has proposed modifications to the state demersal shelf rockfish system which should not be adopted. They propose dropping their current logbook requirement "to report the number of fish caught". (EA/RIR pg 5-12) This is a curious proposal in light of the expressed concern for conservation management. Unlike trawlers which catch and process demersal shelf rockfish at-sea and carry 100% observer coverage, the longline fleet has no adequate observer coverage. Clearly the foxes will be guarding the chicken coop under proposed Alternative 2. It would greatly improve the collection of necessary data supporting effective management, if fishermen harvesting this resource carried observers and continued to report the number of fish caught.

The State of Alaska intends to request NMFS shift redbanded rockfish out of the slope category, and into the demersal shelf category. This move will further disadvantage trawl fishermen and others harvesting the slope rockfish complex. Bycatch concerns will be increased. Implementation of Alternative 2 giving Alaska "jurisdiction" over demersal shelf management policy will make it more difficult for non-resident fishermen to assert their rights and avoid discrimination. Similarly, state

Mr. Don Collinsworth
June 15, 1990
Page Nine

jurisdiction under Alternative 2 unnecessarily complicates the management process, as state changes "to the assemblages, will also need to be made to the FMP species groupings". (EA/RIR pg. 5-12)

A combination of the CSEO and NSEO management districts for demersal shelf rockfish into one large area is proposed under Alternative 2. (EA/RIR pg. 5-12) This approach runs contrary to one of the major management needs ADF&G alleges to be necessary in support of Alternative 2 - i.e. management of demersal shelf rockfish in smaller subareas. It is unclear in which direction ADF&G really intends to proceed if they are granted continued exclusive management jurisdiction over demersal shelf rockfish. Until it becomes clear, the state agency should not gain formal jurisdiction and unsupervised control over this national resource.

5.5.2 Economic Considerations

The EA/RIR has omitted consideration of value generated through at-sea processed demersal shelf rockfish. Failure to correct this oversight will skew analysis and possible recommendations resulting in a lower net return to the nation from this fishery. This oversight stems from the EA/RIR reliance on the limited scope of State of Alaska fish ticket data, while ignoring values publicly reported in the world market for at-sea produced trawl product. The facts are factory trawler caught demersal shelf rockfish such as yellow eye, currently pay domestic fishermen ex-vessel equivalent value of \$1.81 to 95 cents per pound - as compared to 70 cents for longline catch. (See Exhibit #1, Bill Atkinson News Letter, May 9, 1990, "Menuke" category)

CHAPTER 7, EXPAND HALIBUT BYCATCH MANAGEMENT MEASURES FOR THE GULF OF ALASKA.

If there is any lesson to be gained from the unfortunate experience under Amendment 12A in the Bering Sea/Aleutian Islands groundfish fishery this year, it is that bycatch caps do not, in and of themselves, provide an incentive for vessels to reduce bycatch. Indeed, the evidence is compelling that caps, standing alone, may actually increase bycatch by penalizing the conscientious fishermen who might otherwise sacrifice some level of operating efficiency in order to keep his individual bycatch rates down.

For this reason, AFTA strongly supports the development of an incentive system designed to make the individual vessel responsible for its own bycatch. Under such a system, the "cleaner" a vessel fished, the longer it would be able to engage

Mr. Don Collinsworth
June 15, 1990
Page Ten

in its directed fishery. The "dirtier" a vessel fished, the shorter its fishing season would be. Such a system would provide the ultimate incentive for fishermen to reduce their bycatch and would, in short order, drive the fishery to a level where bycatch was reduced to a minimum.

Development of an incentive system should, therefore, be given the highest priority. Consequently, AFTA favors Alternative No. 3, which addresses the Gulf of Alaska bycatch issue from that perspective. Successful implementation of an incentive program would address the shortcomings of the status quo (Alternative 1) and may very well obviate the need for measures such as contemplated under Alternative No. 2.

The choice of options (A or B) under Alternative No. 3 is difficult because there has been so little practical experience with incentive programs. It is hard to anticipate exactly what the strong points and weak points of the competing options would be. For this reason, AFTA supports a phase-in approach such as suggested in the EA/RIR, with a "dirty dozen" or "penalty box" option used for 1991. This would provide some incentive for vessels to keep their bycatch within certain levels (e.g. 150% of the fleet average during each week, month or quarter) or else face a "tie-up" period of X days during which they could not fish. In the meantime, NMFS could test Reserve Systems and/or Bycatch Credit Systems on an experimental basis in selected fisheries to see how they work in practice. Such an approach would also provide an opportunity to try other systems which might work as well.

One final comment -- should any class of vessel be exempted from whatever incentive/sanction program is implemented (because of size or gear type), the bycatch from such vessels must not be counted against any PSC cap.

Sincerely,



H.A. Larkins
Executive Director

Attachment
HAL:vlw

5/9/90

ISHINOMAKI BOTTOMFISH SALES PRICES

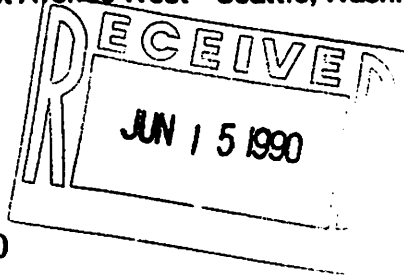
SPECIES	SIZE	CASES	¥/KG	\$/LB	SPECIES	SIZE	CASES	¥/KG	\$/LB	
Factory Trawl "A" - May 10, 1990										
Turbot	L	1,954	¥ 468	\$1.33	POP	15 Under	1	¥ 581	\$1.65	
	M	150	¥ 455	\$1.29		16-20	400	¥ 600	\$1.70	
	S	174	¥ 451	\$1.28			400	¥ 599	\$1.70	
		3,775	¥ 460	\$1.31		233	¥ 596	\$1.69		
Sablefish	4-6	51	¥ 908	\$2.58		21-25	300	¥ 586	\$1.66	
	7-8	50	¥ 912	\$2.59			300	¥ 585	\$1.66	
		30	¥ 910	\$2.59		25-30	1,120	¥ 583	\$1.66	
		50	¥ 908	\$2.58		2x4	435	¥ 505	\$1.43	
		50	¥ 906	\$2.57			120	¥ 421	\$1.20	
		79	¥ 903	\$2.57	Manuka	2-3	1	¥ 0	\$0.00	
	9-10	291	¥ 900	\$2.56		4-6	44	¥ 750	\$2.13	
	11-15	100	¥ 850	\$2.41		7-10	41	¥ 840	\$2.39	
		304	¥ 0	\$0.00		11-12	24	¥ 825	\$2.34	
	18-20	99	¥ 810	\$2.30		13-15	3	¥ 800	\$2.27	
21-25	4	¥ 0	\$0.00		16-20	28	¥ 735	\$2.09		
					21-25	12	¥ 675	\$1.92		
					26-30	2	¥ 640	\$1.82		
Flatfish	2x3	22	¥ 511	\$1.45		2x3	1	¥ 600	\$1.70	
	2x4	188	¥ 340	\$0.97		2x4	4	¥ 465	\$1.32	
	2x5	1,263	¥ 330	\$0.94					\$0.00	
	2x6	55	¥ 298	\$0.85					\$0.00	
									\$0.00	
									\$0.00	
Factory Trawl "B" - May 9, 1990										
Cod	4-6	39	¥ 372	\$1.06	Sablefish	4-6	271	¥ 901	\$2.56	
	7-8	71	¥ 411	\$1.17			7-8	50	¥ 914	\$2.60
	9-10	34	¥ 408	\$1.16				366	¥ 912	\$2.59
	11-15	76	¥ 398	\$1.13			9-10	50	¥ 921	\$2.62
	16-20	24	¥ 365	\$1.04				70	¥ 920	\$2.61
	21-25	1	¥ 325	\$0.92			11-25	164	¥ 850	\$2.41
					16-20	19	¥ 0	\$0.00		
					21-25	35	¥ 0	\$0.00		
Idlots	1x2	8	¥ 1,450	\$4.12	Collarbones	21-25	83	¥ 401	\$1.14	
	1x4	24	¥ 1,390	\$3.95						\$0.00
	1x5	3	¥ 1,290	\$3.66						\$0.00
	2x3	8	¥ 1,210	\$3.44		Arrowtooth	L	599	¥ 248	\$0.70
	2x4	24	¥ 1,200	\$3.41			M	103	¥ 235	\$0.67
	2x5	4	¥ 0	\$0.00			S	69	¥ 235	\$0.67
2x6	3	¥ 0	\$0.00					\$0.00		

Midwater Trawlers Cooperative

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June 15, 1990

MEMBER VESSELS

AJ
ANNIHILATOR
BAY ISLANDER
CAPE KIWANDA
CARAVELLE
COHO
ENDURANCE
EXCALIBUR
EXCALIBUR II
GOLDEN PISCES
HAZEL LORRAINE
IRENE'S WAY
JEANETTE MARRIE
LESLIE LEE
LISA MELINDA
MARATHON
MISS LEONA
MUIR MILACH
NEW JANET ANN
NEW LIFE
PACIFIC CHALLENGER
PATIENCE
PEGASUS
PIONEER
QUEEN VICTORIA
RAVEN
ROSELLA
SEEKER
SLEEP ROBBER
SONNY BOY
VEGA
WESTERN DAWN

Mr. Clarence G. Pautzke
Executive Director
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

Dear Clarence:

RE: Amendments 16 and 16A

In the NPFMC's deliberation of 16/16A and submission of the document for public review, MTC urges the council to reverse its 11th-hour decision to regulate crab and halibut bycatches by existing fixed caps described in Amendment 12A.


MTC supports the setting of caps only when adjusted annually to changes in crab and halibut biomass. Adjusting caps directly to documented variations in prohibited species abundance is a sound management principle. The fixed cap alternative is illogical and will undoubtedly create unnecessary instability in the industry, waste of resources, and economic loss in the long term.

Secondly, MTC strongly supports the proposed vessel-by-vessel bycatch sanction program. This industry can no longer operate without bycatch accountability. Status quo enables a few dirty players to close down entire industry components, resulting in losses of millions of dollars. Bycatch pools are not the answer. Vessels must be independently and individually accountable.

Thanks for receiving these comments.

Sincerely,

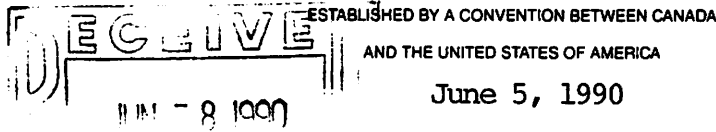
MIDWATER TRAWLERS COOPERATIVE


Steven E. Hughes
Technical Advisor

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INTERNATIONAL PACIFIC HALIBUT COMMISSION



June 5, 1990

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

Dear Clarence:

The Staff of the International Pacific Halibut Commission has reviewed the Amendments 16-21 package recently sent out for public review. Our concerns are for bycatch management in the Bering Sea-Aleutian Islands (BSAI) and in the Gulf of Alaska (GoA), and for gear definitions.

Bering Sea-Aleutian Islands bycatch management

We recommend that Alternative 3 be implemented for one year only. Of the options within Alternative 3, we support sanctions against vessels with unacceptable bycatch rates as the highest priority, and support apportionment of bycatch limits to DAP rock sole and to deep-water trawl Greenland turbot and sablefish. We do not oppose seasonal apportionment of bycatch limits, but are concerned with the possibility of increased bycatch rates if the apportionments force midwater trawling to change to bottom trawling. Alternatives 1 and 2 for BSAI bycatch management are unacceptable, and the Council should eliminate them from consideration. Alternative 1 would provide no bycatch control other than through prohibited species designations. Alternative 2 continues the existing management that helped lead to higher than necessary bycatch rates and to early closures of the BSAI groundfish trawl fisheries in 1990. Alternative 3 offers improvements, but is not sufficient for long term management.

The Council has several choices within the vessel sanctions option. The IPHC staff does not have specific comments on these choices, but we have identified some factors that we hope the Council will take into account. (1) The accounting period for a fishery should be based on the time required to take the bycatch apportionment, recognizing that some fisheries can use up bycatch so fast that sanctions must be applied quickly to be effective. The 1990 JVP flatfish closed for bycatch in short order, while the 1990 DAP Other fishery lasted for months. (2) Likewise, the sanction period should be scaled to the expected duration of the fishery. (3) We prefer that the bycatch rate for sanctions be set pre-season from observer data, so that fishermen will know what standards are expected. A variable rate could be overly influenced by an individual vessel if a small number of vessels are involved. We suggest that the rate be set low enough to discourage fishermen from increasing bycatch rates already achieved. (4) We do not have a comment on whether the penalty should include all trawling or only bottom trawling.

Gulf of Alaska bycatch management

We recommend that the Council adopt Option B of Alternative 2 to separate bycatch limits for pot and longline gear, and adopt Alternative 3 to implement an incentive program to reduce halibut bycatch rates. As with the BSAI, we do not oppose seasonal apportionment of bycatch limits (Option A of Alternative 2), but are concerned that shift from midwater trawl to bottom trawl could increase bycatch rates. We do not support consideration of Alternative 1.

Pot gear appears to have low bycatch rates, based on limited amounts of observer data, but we do not recommend omitting pots from bycatch limits under Option B of Alternative 2 at this time. Until better observer data are available, we would prefer keeping bycatch limits for pots under the management plan. To encourage pot fishing, the Council may wish to omit pots through a regulatory amendment as long as bycatch rates stay below a threshold set by the Council. Alternatively, the Council could set a bycatch limit for pots based on predicted harvest and observed bycatch rates, and roll over unused bycatch to the longline fishery.

The incentive options under Alternative 3 are unfortunately not the same as the incentive program suggested for the BSAI. Trying to implement two different programs may be difficult, especially because National Marine Fisheries Service has indicated that the BSAI program alone probably cannot be fully operational in 1991. To maintain consistency between the two areas, we suggest applying the BSAI program to the GoA. Although the penalty box concept of the BSAI was not addressed in Alternative 3, the need for incentives was well justified. The benefits of the penalty box and the logistic limitations of NMFS were demonstrated in the BSAI section.

Change fishing gear restrictions

We support Alternative 2 to specify legal gear in the BSAI and GoA, and recommend approval of Option A for biodegradable panels on groundfish pots and Option B for halibut excluder devices. We would support Option C for redefined midwater trawl if the Council finds that the change will be beneficial, and that bycatch rates will not increase. Midwater trawls are currently exempted from bycatch restrictions for halibut and crabs, which is appropriate as long as bycatch rates remain low.

Thank you for the opportunity to comment on these amendment alternatives. Members of our Staff will be available at the Council meeting should questions arise about our response.

Sincerely yours,



Donald A. McCaughran
Director

cc: IPHC Commissioners



UNIVERSITY OF ALASKA FAIRBANKS

School of Management
Fairbanks, Alaska 99775-1070

MEMORANDUM

DATE: June 11, 1990
TO: Marcus Hartley, Dick Tremaine, North Pacific Fisheries Management Council
FROM: Keith R. Criddle, Department of Economics, University of Alaska
SUBJECT: EA/RIR/TRFA for Amendment 21/16

Revisions to crab and halibut bycatch management

Alternative 1, allowing the 12a provisions to expire at the end of 1990, will result in substantial economic damage to the crab and halibut fleets. Although retention of halibut and crab is prohibited under this alternative, there is little incentive to avoid prohibited species. If the 12a provisions are allowed to lapse, there will be increased opportunities for vessels to surreptitiously target prohibited species. The additional crab and halibut mortality from bycatch will threaten stock integrity unless directed harvest limits are sharply reduced. Although reduced directed harvests of crab and halibut will result in higher prices, it is uncertain whether the increase in price will offset the decrease in quantity, and it is unlikely that gains and losses will be uniformly distributed.

Alternative 2, extending the 12a provisions for one year, has the advantage of being the simplest alternative to implement. However, because of the excessive fishing capacity in the groundfish fleets, there is no advantage to individual vessels which successful avoid prohibited species. The race for fish becomes more intense as vessels attempt to maximize landings prior to the attainment of the bycatch caps. This race for fish will continue to intensify as new vessels are added to the fleet each year. Although Alternative 2 is not a solution, it is preferable to Alternative 1, and could buy the Council time to develop a solution.

Alternative 3 attempts to address the shortcomings of the first two alternatives, however, it will result in increased agency and control costs. Subdividing the PSC cap among additional fisheries is probably the simplest way of increasing the harvest of groundfish species without exceeding limits on total bycatch. Seasonal apportionments might also result in an increase in groundfish landings, however, if seasonal apportionments concentrate vessels on openings, the race for fish may be accelerated. Sanctions on individual vessels would provide the incentive required to reduce bycatch, however, detection of excessive bycatch and enforcement of sanctions would involve substantial agency and control costs. Although Alternative 3 offers a better long term solution to the bycatch problem, it will be expensive. If the council intends to investigate market oriented alternatives, it would be best in the interim to select Alternative 2, or Alternative 3 without individual vessel sanctions.

North Pacific Fishery Management Council

Don W. Collinsworth, Chairman
Clarence G. Pautzke, Executive Director



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MEMORANDUM

TO: Council, SSC and AP Members

FROM: Hal Weeks, ^{Hal} Plan Team Coordinator

DATE: June 11, 1990

SUBJECT: Plan Teams' Recommendations Concerning Amendment 21/16 Alternatives

Members of the two groundfish plan teams met via conference call on Thursday, May 31 to discuss recommendations for preferred alternatives in the Amendment 21/16 package. The teams' recommendations, and a synopsis of their concerns, follow:

Chapter 2: Revise Crab and Halibut Bycatch Management Measures for the BSAI

The teams view Alternative 3 as preferable to the status quo (no action) or a continuation of Amendment 12a in its present form. Specifically, the teams agree with apportionment of PSC caps by season and the creation of rock sole and deepwater turbot/sablefish fishery categories for apportionments. The teams agree in principle with an incentive program which would penalize individual vessels which fish with excessively high bycatch rates, i.e., the "penalty box" concept. The teams note, however, that the Council must make several policy decisions in structuring such a program as listed on page 2-12 of the EA/RIR document. The economic costs and benefits of such a program may be substantially affected by these decisions.

The teams concur that (1) these bycatch management provisions should be viewed as interim, and (2) bycatch management, and especially vessel incentives to fish with low bycatch rates, should be a priority for the 1991 amendment cycle and beyond. However, the teams do not support a one-year sunset for these provisions; while design, adoption and implementation of a more comprehensive bycatch management program is desirable and should be done as quickly as possible, it should be done when a better product is created and agreed upon, not when other measures arbitrarily expire.

Chapter 3: Overfishing Definitions in the GOA and BSAI

All team members polled favored a definition of overfishing incorporating variable fishing mortality, and a majority of those individuals favored a combination of variable fishing mortality rates with a threshold. Specifically, two team members favored alternative 4, five favored alternative 6, and five favored alternative 7. Concerns regarding the use of a threshold centered on the severity of measures to restrict fishing mortality once the threshold is passed. However, the teams note that overfishing

is a state that fisheries management should make every effort to avoid, and these efforts should include restrictions on fishing mortality well before an overfished state is ever reached.

Chapter 4: Establish Procedures for Interim TAC Specifications in the GOA and BSAI

The teams recognize the need for interim TAC specifications to be in place until final TAC specifications can be published in the Federal Register. In weighing alternative 2 vs alternative 3, team members discussed the need for interim specifications to be conservative - to prevent overharvesting should the Council's December specifications be markedly lower than their preliminary September specifications, vs. the need to allow a fishery wholly prosecuted early in the year to proceed without unnecessary restrictions. Seven team members favored alternative 2, while six favored alternative 3. A possible compromise approach to meet the concerns of all would be to select alternative 3, but with specific provisions for the Council to except specific fisheries/target species for which there is the reasonable expectation that a large percentage of the TAC would be taken in the first few weeks of the fishing year.

Chapter 5: Modify the authorization language for demersal shelf rockfish management in the GOA

After general discussion, and noting that the revised chapter included specific provision for Council and NOAA oversight to assure that proposed changes are consistent with provisions of the MFCMA and the goals and objectives of the FMP, the teams recommend the Council adopt alternative 2.

Chapter 6: Change fishing gear restrictions in the GOA and BSAI

The teams concur that modifying the FMPs to allow gear restrictions to be developed or modified by regulatory amendment is appropriate to permit management to better keep pace with rapidly evolving fisheries. The teams further concur that the three specific measures proposed - biodegradable panels, halibut excluder devices on groundfish pots, and a definition of pelagic trawl gear - are appropriate given our current understanding of the fisheries.

Chapter 7: Expand halibut bycatch management measures in the GOA

The teams concur that both options to more fully implement the existing halibut PSC framework in the GOA (alternative 2) are appropriate, and note that the Council needs to make a policy decision concerning the treatment of pot gear under a halibut fixed gear PSC cap. The teams favor vessel incentives to reduce bycatch rates (alternative 3) in principle. However, they note that the bycatch reserve and bycatch credit options could not be implemented with current NMFS resources. A "penalty box" approach, as under consideration in the BSAI, could be implemented in the GOA as well. However, the teams feel that the analysis of such a measure for the Gulf would be time-consuming and difficult given the large numbers of smaller, unobserved vessels operating in the groundfish fishery in that area.

Table D-3(a)(4) -- Gulf of Alaska and Bering Sea/Aleutian Islands Groundfish FMP Amendments 21 and 16: Alternatives Worksheet.

Proposals/Alternatives	AP Recommendation	SSC Recommendation	Council Preference
2.0 Revise Crab and Halibut Bycatch Management Measures for the BSAI			
Alt. 1: Status quo. Alt. 2: Extend Amendment 12a regulations for one year. Alt. 3: Modify and add to Amendment 12a provisions and extend them for one year or an indefinite period.			
3.0 Define Overfishing for the BSAI and GOA			
Alt. 1: Status quo. Alt. 2: Threshold biomass level. Alt. 3: Constant fishing mortality rate - no threshold. Alt. 4: Variable fishing mortality rate - no threshold. Alt. 5: Constant fishing mortality rate with threshold. Alt. 6: Variable fishing mortality rate with threshold - Fmsy version. Alt. 7: Variable fishing mortality rate with threshold - Fmax version.			
4.0 Establish Procedures for Interim Total Allowable Catch Specifications for the BSAI and GOA			
Alt. 1: Status quo. Alt. 2: Extend proposed TAC specifications into a new fishing year as interim specifications, until changed. Alt. 3: Extend one-fourth of the proposed TAC specifications into a new fishing year on an interim basis.			

5.0 Modify the Authorization Language for Demersal Shelf Rockfish Management in the GOA

Alt. 1: Status quo.

Alt. 2: Modify the authorization language of the FMP to allow full implementation of state regulations in those federal waters of the eastern Gulf of Alaska where demersal shelf rockfish are recognized by the Council as an FMP species group.

6.0 Change Fishing Gear Restrictions for the BSAI and GOA

Alt. 1: Status quo.

Alt. 2: Specify legal fishing gear in the BSAI and GOA FMPs and provide specific gear restrictions in the regulations.

Option A: Require biodegradable panels on groundfish pots.

Option B: Require halibut exclusion devices on groundfish pots.

Option C: Adopt a new definition of pelagic trawl gear.

7.0 Expand Halibut Bycatch Management Measures for the GOA

Alt. 1: Status quo.

Alt. 2: More fully implement and clarify the existing halibut PSC framework

Option A: Apportion the halibut PSC limits by season

Option B: Set levels of fixed gear halibut PSC limits

- by longline and pot gear groups, or
- omit entirely pot gear fisheries from the framework.

Alt. 3: Implement a halibut PSC incentive program

Option A: Establish a PSC reserve system.

Option B: Establish a halibut bycatch credit system.

Option C: Establish a "penalty box" incentive system to penalize vessels with excessively high bycatch rates.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

AGENDA D-3(a)

JUNE 1990

SUPPLEMENTAL

June 22, 1990

Clarence Pautzke, Executive Director
North Pacific Fishery Management Council
P.O. BOX 103136
Anchorage, AK 99510

RE: 1991 bycatch management measures in the Bering Sea/Aleutians Islands area (BSAI).

Dear Clarence:

The Council must make a number of decisions regarding alternatives for 1991 bycatch management in the BSAI that are presented in chapter 2 of the Amendment 21/16 EA/RIR/IRFA.

In concept, the Region endorses Alternative 3 as the preferred alternative for BSAI bycatch management in the BSAI. This alternative would maintain Amendment 12a provisions, with the following three modifications:

- PSC apportionments would be established for the DAP rock sole and deep water turbot/sablefish fisheries;
- PSC limits could be seasonally apportioned; and
- A "penalty box" program would be established to encourage vessels to avoid excessively high bycatch rates.

General Counsel, Alaska Region (GCAK), has raised the issue of whether the two alternatives considered by the Council under prohibited species catch (PSC) limits (no limits vs those established under Amendment 12a) meet requirements under the National Environmental Policy Act (NEPA) that reasonable alternatives to a proposed action be considered. Specifically, the Council failed to consider changes in prohibited species stock abundance or other factors that may justify analysis of alternative PSC limits. Furthermore, GCAK advises that the Council must consider these factors and develop additional analyses on alternative PSC limits before PSC limits proposed under Amendment 16 could be approved by the Secretary of Commerce. Given the need to avoid a regulatory hiatus of PSC caps at the beginning of 1991, GCAK recommends that the Council take the following actions to assure that interim PSC caps are implemented by January 1, 1991.

- Amendment 16 could be adopted by the Council absent PSC cap provisions. Analysis of other proposed actions under Amendment 16 would be based on the assumption that Amendment 12a caps would be extended into 1991 by emergency interim rulemaking. Council consideration of PSC caps would be addressed under Amendment 16a, and the existing draft analysis for Amendment 16a would be augmented to include additional PSC cap alternatives. The revised analysis would go out for public review prior to the September Council meeting so that final Council action on PSC caps and other components of Amendment 16a could be accomplished at that meeting.

- At its September meeting, the Council would recommend the Secretary of Commerce extend 12a caps beyond December 31, 1990 under emergency interim rulemaking to prevent a regulatory hiatus of PSC limits during the Secretarial review of Amendment 16a. Rationale for emergency action would be based on (1) the procedurally defective analysis of PSC cap



alternatives under Amendment 16; (2) legal (NEPA) requirements that additional alternatives be considered by the Council prior to final action on proposed PSC cap amounts; and (3) the need to avoid a regulatory hiatus when Amendment 12a caps expire at the end of 1990.

Notwithstanding the question of PSC limits, the Council needs to make a number of decisions on the following provisions set forth under Alternative 3 of chapter 2.

- Seasonal apportionments of PSC limits. Seasonal apportionments of PSC limits will have allocative effects. The Council could choose to establish such apportionments through a regulatory amendment process, or through the September/December framework process that is normally invoked during the annual specification of TACs. Given the lengthy review and implementation schedule for regulatory amendments, we recommend that the Council consider a framework process. Because framework measures are difficult to analyze and implement in regulations, the Council would have to rely on the preliminary and final SAFE reports to include analyses of effects of proposed seasonal apportionments of PSC limits. These analyses would be referenced in the preliminary and final specification notices used for establishing seasonal apportionments of PSC limits, as well as new groundfish TACs.

- "Penalty box" incentive program. The draft analysis prepared for the "penalty box" incentive program under Alternative 3 cites a number of issues and associated Council decisions that need to be made with reference to this program. The analysis further notes that these issues would be addressed by the NMFS Alaska Region under a separate discussion paper (attached). Necessary Council decisions and NMFS recommendations are summarized below:

(1) Should the "penalty box" approach be applied to all vessels with observer coverage, or just those vessels with 100 percent coverage? For purposes of the proposed incentive program, assumed bycatch rates cannot be applied to vessels without observer coverage (i.e. vessels less than 60 ft LOA), and these vessels would be excluded from the "penalty box" program. NMFS recommends that vessels 60 ft LOA and longer that have observed bycatch rates covering at least two fishing days during a weekly reporting period be included in the "penalty box" checkpoint process at the end of established periods.

(2) What is the appropriate number of "target fishery" categories for 1991 that individual vessels' bycatch rates would be judged against? At its April meeting, the Council adopted a list of ten separate target fisheries within which individual vessels would be placed during each week based on the catch composition of their groundfish harvests. The Council further stated that the actual number of target fisheries employed in the "penalty box" program would be determined by the Regional Director, in consultation with the Council, based on an optimal utilization of resources available to him. Based on that guidance, NMFS recommends that, for 1991, DAP target fishery categories include rock sole, yellowfin sole/other flatfish, Greenland turbot, Pacific cod, bottom trawl pollock, and other groundfish. Joint venture (JV) flatfish would also be included as a separate target fishery category.

(3) What performance standards should be used to identify acceptable vs "excessively dirty" bycatch rates? At its April meeting, the Council requested that bycatch rates 2 to 4 times a fleet average be analyzed to determine an appropriate performance standard. NMFS recommends that the Council adopt the most conservative option (i.e., "excessively dirty" rates would be defined as average rates in excess of two times a fleet average). NMFS intends to conduct more rigorous statistical analyses on bycatch performance standards. These analyses

would be presented to the Council at its September meeting for review and comment. If it desires, the Council could submit a comment to the Regional Director recommending a revision to proposed standards during the 45-day public comment period that will be scheduled under Secretarial review of Amendment 21/16.

(4) Should vessels with average bycatch rates that are determined "excessively dirty", but below historic industry averages be exempted from sanction action? Evidence exists that bycatch rates experienced by JVP fisheries during 1986-1989 may not reflect rates experienced by current DAP fisheries due to differences in fishing practices and/or abundance of prohibited species stocks. NMFS recommends, therefore, that the Council reject historic threshold bycatch rates as domestic bycatch performance standards. If the Council decides, however, to use a threshold rate, it should select one that will encourage the domestic fishery to fish clean.

(5) How soon after a checkpoint could a vessel be suspended if observer information showed excessive bycatch rates? The Council would have to rely on NMFS to suspend a vessel as soon as is possible given data verification and administrative hearing procedures. The initial auditing of observer and other fishery information could take between 1 to 3 weeks, depending on the number of vessels that are preliminary identified as "dirty". Once initial determinations have been made, observer data would have to be verified through the observer debriefing process before the Regional Director could issue a suspension notice to the vessel operator. The Council must recommend whether a vessel that is preliminarily identified as "excessively dirty" should be required to (1) immediately cease fishing and return to a designated port for observer debriefing, hearing, and possible suspension procedures, or (2) return to port at the vessel's convenience, at which time observer debriefing and hearing procedures could proceed.

(6) What length of suspension period would provide a sufficient deterrent to vessels to avoid high bycatch rates? NMFS recommends that a vessel's first suspension be limited to a 10-day period. During this period, NMFS recommends that the vessel must cease all directed fishing for groundfish off Alaska with all gear types. If not otherwise required to do so, NMFS recommends that a vessel be required to carry an observer during the first four weeks of fishing activity following a suspension. NMFS further recommends that if a vessel fails to meet performance standards for one or more prohibited species during a checkpoint evaluation a second time during a 24-month period, the vessel would be suspended for a period of four weeks; three or more failures during a 24-month period would result in a 12-week suspension period for each failure.

(7) Should the "penalty box" program be applied only to bottom trawl operations? NMFS recommends that amendment language in the FMP(s) provide the authority to extend the "penalty box" program to all gear types that catch incidental amounts of species for which PSC limits are established. Implementing regulations, however, would apply the penalty box program to only bottom trawl gear in the BSAI and bottom trawl and hook-and-line gear in the Gulf of Alaska. Under future regulatory amendments, the Council could consider bringing other gear types under the "penalty box" program (e.g., pot or pelagic trawl gear) if observer information indicates that such gear routinely results in bycatch mortality of prohibited species.

(8) Will a hearing process be available for those vessel operators that take issue with the information on which their vessel suspension is based? The Council is obligated to consider a hearing process. NMFS recommends that a vessel operator whose vessel is suspended from participating in directed groundfish fisheries under a system of prohibited species bycatch performance standards be allowed to appeal the suspension to the NOAA Assistant Administrator for Fisheries or a designee. The appeal would be presented at the option of the operator at a hearing before a person appointed by the Assistant Administrator to hear the appeal. The Assistant Administrator would determine, based upon the record, including any record developed at a hearing, if the suspension is supported under the criteria set forth under published performance standards.

(9) Should the provisions of 1991 bycatch management in the BSAI automatically expire at the end of 1991? NMFS recommends that the Council adopt 1991 bycatch management measures without a sunset date to avoid the possibility of a regulatory hiatus at the beginning of 1992. We further recommend that the Council initiate the development of alternative programs that would provide a more long-term, comprehensive approach to bycatch management than what is envisioned for 1991.

The bycatch management measures being considered by the Council are complex. The Council may wish its ad hoc Bycatch Committee to convene during summer months to review progress on measures proposed for 1991 and initiate the development of a more long-term approach to bycatch management.

Sincerely,



Steven Pennoyer,
Director, Alaska Region

Attachment

National Marine Fisheries Service
Fishery Management Division
Juneau, Alaska
June 22, 1990

**DISCUSSION OF SUBOPTIONS UNDER THE "PENALTY BOX"
APPROACH FOR 1991 BYCATCH MANAGEMENT**

The monitoring of prohibited species catch (PSC) to date during 1990 indicates that a relatively small number of vessels can take a disproportionately large share of allocated PSC limits established for the trawl and longline fisheries. In response to this finding and the desire to maximize groundfish harvests for a given PSC limit, the Council endorsed the "penalty box" approach as an alternative for 1991 bycatch management in the Bering Sea and Aleutian Islands area (BSAI) and possibly in the Gulf of Alaska.

This approach was originally presented by the Council's ad hoc Bycatch Committee as an interim measure to sanction vessels with excessively high bycatch rates during the period that a more comprehensive vessel incentive program is analyzed and developed. As such, this program is not intended to provide a comprehensive response to the issue of prohibited species bycatch in groundfish fisheries. This program is, however, directed at vessels which demonstrate excessively high bycatch rates when judged against a system of performance standards. It is intended to increase the opportunity to harvest groundfish TACs before established PSC limits are reached by encouraging vessels to maintain average bycatch rates within acceptable performance standards and discourage fishing practices that result in excessively high bycatch rates. To further encourage vessels to reduce PSC bycatch rates, NMFS recommends that the Council consider amending the Observer Plan to allow for the public release of bycatch rates observed on individual vessels.

Acceptable performance standards would be proposed by the Council and published in the FEDERAL REGISTER for public review and comment as part of the proposed regulations implementing Amendment 21/16. At its April meeting, the Council requested that bycatch rates 2 - 4 times a fleet average be analyzed to determine an appropriate performance standard. NMFS recommends that the Council adopt the most conservative option (i.e., "excessively dirty" rates would be defined as average rates in excess of two times a fleet average). NMFS intends to conduct more rigorous statistical analyses on possible alternative bycatch performance standards. These analyses would be presented to the Council at its September meeting for review and comment. If it desires, the Council could submit a comment to the Regional Director recommending a revision to proposed standards during the 45-day public comment period that will be scheduled under Secretarial review of Amendment 21/16.

The development of the "penalty box" program will require several decisions on the part of the Council and management agencies that have both practical and legal implications. Those decisions that pertain to the "penalty box" program follow:

(1) Can the "penalty box" approach be applied to vessels 60-125 ft LOA that are required to have only 30 percent observer coverage during a calendar quarter?

The "penalty box" approach would be based on observed bycatch rates of individual vessels and standards of performance developed for specified target fisheries, against which a vessel's average observed bycatch rates would be judged. Given the inherent variability of bycatch rates, especially for red king crab, vessels required to have 30 percent observer coverage could be subject to greater probability of being suspended due to sampling error (see Appendix 2.2 of the Amendment 21/16 EA/RIR/IRFA).

The potential problem of sampling error is somewhat alleviated for vessels required to have an observer onboard at all times. While such vessels are still subject to being suspended due to sampling error (e.g. randomly high bycatch rates at the end of a month), the probability of this occurring is reduced because of increased number of observations.

Notwithstanding the problems associated with sampling error, if the Council chose to administer the "penalty box" program to all vessels over 60 ft LOA, we recommend that observer data collected onboard a vessel be used only if two or more days are observed during that week. A weighted average of each vessel's weekly observed bycatch rates would be calculated every four weeks and used to judge that vessel against published performance standards to determine if the vessel's bycatch rates were sufficiently low to continue fishing. This process would be initiated regardless of how much of a vessel's total catch was observed; thus, a vessel operator may want to take on an observer early during an evaluation period to lessen the probability of being suspended based on a randomly high bycatch rate observed during a single tow.

(2) How would observed bycatch rates for individual vessels be judged against a system of performance standards?

Each week, a vessel's observed catch composition would be used to determine the appropriate target fishery category for that vessel. An individual vessel's performance would be based on an average of its weekly bycatch rates of prohibited species. These rates would be judged against performance standards established for vessels participating in the same target fishery. Checkpoints would occur every four weeks for all vessels. Suspensions based on more frequent (weekly) checkpoints would be subject to relatively higher random sampling error and would be too burdensome to implement given the extensive administrative audit procedures that each vessel sanction could entail.

A vessel's monthly bycatch rate for a specified target fishery would be calculated as the weighted average of the weekly observed bycatch rates (number or weight of prohibited species divided by the total observed sample weight of allocated groundfish species). Fleet averages for each PSC fishery category (or defined target fishery) would be calculated at the end of every fourth reporting period. For example, if a 150 ft catcher/processor vessel fished only one week out of a monthly period, the average bycatch rates observed during that week would be compared to the appropriate fleet average for that month. If the vessel's bycatch rate of halibut during that week exceeded twice the fleet average, that vessel would be prohibited from conducting a directed groundfish fishery for a specified period.

Determination of a fleet average may be difficult during a given evaluation period because too few vessels were observed within a specified target fishery. If this situation were to occur, a vessel's performance may be judged against the previous year's bycatch rates until sufficient observer data has been collected for a specified target fishery category to validate the use of inseason averages for vessel checkpoints.

Fleet averages for a particular fishery would be calculated for all vessels fishing within a PSC fishery category (or target fishery) in the entire BSAI management area, rather than for each federal reporting area. For example, a vessel fishing for rock sole in Area 511 would be judged against the average bycatch rate for all vessels fishing rock sole anywhere in the BSAI management area during a four week evaluation period.

During 1991, limitations in observer coverage may restrict the fishery categories that vessels would be judged against. This may result in a specific target fishery taking a disproportionate share of the PSC limit apportioned to a PSC apportionment category (e.g DAP other or DAP flatfish category). Notwithstanding this concern and assuming that a separate PSC apportionment will be established for the DAP turbot fishery, NMFS recommends that, for 1991, DAP target fishery categories include rock sole, yellowfin sole/other flatfish, Greenland turbot, Pacific cod, bottom trawl pollock, and other groundfish. Joint venture (JV) flatfish would also be included as a separate target fishery category. Additional fishery categories could be phased in as sufficient experience with the program is gained, increases to management staff are made, and/or sufficient numbers of vessels participate in the various target fisheries to enable the calculation of valid fleet averages on which to judge individual vessels.

(3) Given a reasonable definition of "excessive bycatch rates," how many vessels could be sanctioned during a single checkpoint evaluation period?

Acceptable performance standards for prohibited species bycatch rates could be those rates that fell within twice a fleet average (the most conservative standard considered by the Council at its April meeting). Appendix 1 to this discussion paper shows the number of vessels that may be sanctioned at this and other levels of acceptable performance standards given the proposed definitions of target fisheries specified in the Amendment 16 EA/RIR. NMFS intends to do further statistical analyses on appropriate fishery definitions and bycatch performance standards. These analyses would be presented to the Council at its September meeting for review and comment.

(4) Should historic industry average bycatch rates (1986 - 1989) be used as threshold rates such that vessels fishing at or below these average rates would not be sanctioned?

Concern exists that bycatch rates experienced by JVP fisheries during 1986-1989 may not represent reasonable rates experienced by current DAP fisheries due to differences in fishing practices and/or abundance of prohibited species. Furthermore, directed JVP fisheries did not exist for sablefish, rockfish, or turbot that would allow for historic bycatch rates to be calculated.

Of greater concern is the potential impact on halibut, crab, or herring stocks, particularly if such stocks have shown recent decline in biomass. Although prohibited species bycatch rates may seem reasonable compared to historic levels, such rates may occur during much more intensive fishing effort for groundfish, resulting in an increasing negative impact on declining stocks of prohibited species.

Given the above, we recommend rejecting a historic threshold rate. If the Council decides, however, to use a threshold rate, it should select one that will encourage the industry to fish clean.

(5) How soon after a checkpoint could a vessel be suspended if observer information showed excessively high bycatch rates?

The "penalty box" program would be based upon observer information that is received on a weekly basis. This information is entered immediately into the observer data base, which can then be queried to identify potentially "dirty" vessels based on bycatch rates observed to date during an evaluation period. At the end of each four week evaluation period, those vessels which exhibited bycatch rates in excess of acceptable performance standards (e.g. more than two times a target fishery's average bycatch rate) would be identified. After a preliminary review of available observer data (one - two weeks), the Regional Director would notify the vessel operator that his operation's average bycatch rate(s) have been preliminarily determined to fall outside standard performance criteria, and request that the vessel cease fishing immediately and proceed to the nearest port designated for observer debriefing. Upon arrival, the vessel operator would have the opportunity to petition NMFS officials for relief from a possible suspension. Upon petition of the operator, the Regional Director would review information presented by the operator, including the vessel's past performance during past evaluations periods. If the Regional Director maintains that suspension action is warranted, the vessel operator will be notified that all directed fishing for groundfish is prohibited for a specified period, starting with the time the vessel ceased fishing after being requested by the Regional Director to proceed to port.

(6) What length of suspension period would provide a sufficient deterrent to vessels to avoid high bycatch rates?

NMFS believes that vessel suspensions resulting from sampling error will be unavoidable. Notwithstanding this concern and the novelty of the program in general, we recommend that a vessel's first suspension be limited to a 10-day period. During this period, the vessel must cease all directed fishing for groundfish off Alaska with all gear types. The intent of the extended area closure would be to prevent a sanctioned vessel from simply moving its fishing operation from one management area to another.

After a period of being suspended from groundfish operations, a vessel would be required to carry an observer during the first four weeks of fishing activity following the suspension. If a vessel fails to meet performance standards for one or more prohibited species during a checkpoint evaluation a second time, during a 24-month period, the vessel would be suspended for a period of four weeks; three or more failures during a 24-month period would result in a 12-week suspension period for each failure.

(7) Should the penalty box program be applied only to trawl operations, or should the program be applied to all gear types used in directed fisheries for groundfish that catch incidental amounts of prohibited species for which PSC limits are established?

Because reducing prohibited species bycatch in all groundfish fisheries is desirable, NMFS recommends that the Council consider extending, in the FMPs, the "penalty box" program to all gear types that catch incidental amounts of species for which PSC limits are established. Implementing regulations, however, would apply the penalty box program to only bottom trawl gear in the BSAI and bottom trawl and hook-and-line gear in the Gulf of Alaska. Under future regulatory amendments, the Council could consider bringing other gear types under the "penalty box" program (e.g., pot or pelagic trawl gear) if observer information indicates that such gear routinely results in bycatch mortality of prohibited species.

(8) Will a hearing process be available for those vessel operators that take issue with the information on which their vessel suspension is based?

Yes. A vessel operator whose vessel is suspended from participating in directed groundfish fisheries under a system of prohibited species bycatch performance standards may appeal the suspension to the NOAA Assistant Administrator for Fisheries or a designee. The appeal may be presented at the option of the operator at a hearing before a person appointed by the Assistant Administrator to hear the appeal. The Assistant Administrator will determine, based upon the record, including any record developed at a hearing, if the suspension is supported under the criteria set forth under published performance standards.

If a vessel operator chooses to ignore a notice of suspension, he would be cited under 15 CFR PART 904 and civil proceedings would be initiated for the assessment of civil penalties or imposition of a permit sanction. Appropriate hearings and appeals procedures are set forth under civil procedure regulations.

(9). Should the provisions of 1991 bycatch management in the BSAI automatically expire at the end of 1991?

Certain proposed alternatives for 1991 bycatch management may be more acceptable to some industry members if such measures have a sunset date. Experience has shown, however, that sunset dates often commit the Council to amending an FMP before significant new information is available, or before management agencies have gained sufficient experience with a particular set of management measures to be in a position to replace them with an improved program.

Lack of a sunset date for 1991 bycatch management measures will not preclude the Council from taking steps to develop alternative methods for bycatch management in 1992 or beyond. We recommend, therefore, that the Council adopt 1991 bycatch management measures without a sunset date to avoid the possibility of a regulatory hiatus at the beginning of 1992. We further recommend that the Council initiate the development of alternative programs that would provide a more long-term, comprehensive approach to bycatch management than what is envisioned for 1991.

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AGENDA D-3(a)
 JUNE 1990
 SUPPLEMENTAL

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

June 21, 1990

Don W. Collinsworth, Chairman
 North Pacific Fishery Management Council
 P.O. Box 103136
 Anchorage, Alaska 99501

Dear Don:

We have reviewed the draft EA/RIR/IRFA for proposed amendments 16 and 21 to the Fishery Management Plans for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Groundfish of the Gulf of Alaska, respectively. We also received comments from the Central Office on these amendments. Discussion and public testimony during the June 25-29, 1990 Council meeting could surface information that would influence our views on the amendments. Nonetheless, at this time we wish to make the following comments on the various alternatives:

Revise crab and halibut bycatch management measures for the BSAI
 -- We favor alternative 3, which would modify and add to the Amendment 12a provisions and extend them for an indefinite period. The added provisions include (1) apportionment of PSC allowances among five trawl gear target fisheries listed in the analysis, rather than four as currently in Amendment 12a; (2) the ability to apportion seasonally the PSC allowances; and (3) establishment of a "penalty box" sanction program to encourage vessels to fish at lower rates.

As stated in previous correspondence, we find that vessel incentive programs to reduce bycatch rates are necessary in conjunction with any prohibited species catch (PSC) limits. For 1991, however, we support the penalty box program rather than establishment of PSC reserve or credit programs. These incentive programs may be practical in the future with improved availability of quality observer data. Depending on the future development of groundfish quota systems, the real answer to reducing bycatch rates might be found in transferable, retained quota shares of bycatch.

Overrushing definitions for the GOA and BSAI -- Any of the alternatives other than the status quo would appear to satisfy the 602 Guidelines requiring objective and measurable definitions of overfish.

Establish procedures for interim TAC specifications in the Gulf of Alaska and Bering Sea/Aleutian Islands -- We support Alternative 3, which would make available at the beginning of the fishing year one-fourth of each preliminary TAC resulting from



JUN 21 '90 15:25 N.M.F.S.-AK(907)586-7131

P. 3/3

the Council's September meeting. Because final TAC resulting from the Council's December meeting could be markedly lower than the preliminary TAC, we believe this alternative to be superior, as it places a conservative limit on the amount of each TAC that may be harvested prior to the implementation of final TAC specifications. Nonetheless, we recognize that in some cases, e.g. the roe rock sole fishery, harvests could be constrained if a TAC would have been harvested prior to a final TAC being implemented.

Modify the authorization language for demersal shelf rockfish management in the Gulf of Alaska -- We believe that FMP authority to give regulatory deference to the State of Alaska management of the demersal shelf rockfish fishery in the Eastern Regulatory Area depicts the way the fishery is currently managed. We, therefore, support alternative 2. Because the State regulations would not be Federalized as they are for the king crab FMP, we suspect that the State could only apply its regulations to State-registered vessels. General Counsel may want to comment on this at the June Council meeting.

Change fishing gear restrictions in the Gulf of Alaska and Bering Sea/Aleutian Islands -- We wish to emphasize that, under this amendment, specific gear restrictions would be deleted from the FMP text. Both FMPs would, however, contain text to discuss gear generally, but regulations would contain restrictions that accomplish the goals and objectives of the FMPs. Future gear changes then could be accomplished by regulatory amendments in the same way that season changes are accomplished. We support the changes as proposed, i.e., biodegradable panels on pot gear, halibut exclusion devices in pot gear, and the large mesh/parallel line definition for pelagic gear. The latter is intended to release crab and halibut that might be caught when pelagic gear comes in contact with the bottom.

Expand halibut bycatch management measures for the Gulf of Alaska -- We support parts of both alternatives 2 and 3. Based on experience gained under the 1990 emergency rule that apportioned PSC quarterly, we support option A of Alternative 2 to provide authority for seasonal apportionments of halibut PSC limits. Under option B of alternative 2, pot gear might not be included under halibut PSC restrictions. Given existing observer data that show zero or very low halibut bycatch rates in pots and the above requirement that pot gear would be equipped with halibut exclusion devices, this option seems reasonable. We suggest that the FMP framework stipulate that the option be retained to impose a halibut PSC on pot gear but leave it out of regulations for 1991. If future information shows that halibut bycatch rates are higher than now believed, a regulatory amendment could be developed to impose a PSC on pot gear.

Under Alternative 3, we do not support a PSC reserve or credit program at this time for the same reasons that we do not support these programs in the BSAI. We have provided these reasons to the Council and to the Council's Ad Hoc Bycatch Committee. In summary, we do not have resources to test and fully implement either program for 1991. We note that page 7-6 in this chapter makes reference to the BSAI penalty box incentive program. If the Council adopts a penalty box type program for the BSAI, it might do the same for the Gulf of Alaska, too. We recommend this approach.

Sincerely,



Steven Pennoyer,
Director, Alaska Region

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

DIVISION OF COMMERCIAL FISHERIES

AGENDA D-3(a)

June 1990

STEVE COWPER, GOVERNOR

Supplemental

P.O. BOX 3-2000

JUNEAU, ALASKA 99802-2000

PHONE: (907) 465-4210

June 22, 1990

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

Dear Don:

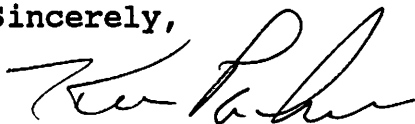
We have reviewed the June 15, 1990 comments to the Council by the Alaska Factory Trawlers Association (AFTA) regarding the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for Amendment 21 to the fishery management plan for groundfish of the Gulf of Alaska.

Specifically we wish to address their comments regarding Chapter 5, which is the State of Alaska's proposal to expand their management authority for Demersal Shelf Rockfish in the Eastern Gulf of Alaska. Though a few of the points raised are valid concerns, by and large they show an astounding misunderstanding of both the Council and Board of Fisheries processes as well as clear misunderstanding of issues and information conveyed in the Chapter. The conclusions which they present are often so off the mark that they can easily mislead the reader.

In order to clarify this issue, I have had my staff prepare an extensive response to AFTA's comments on Chapter 5 and attached it to this letter.

Best wishes on resolving the many important issues before the Council this week.

Sincerely,



Ken Parker
Director Commercial Fisheries

Attachment

**STATE OF ALASKA RESPONSE TO THE AFTA LETTER TO THE COUNCIL
DATED JUNE 15, 1990 REGARDING DSR MANAGEMENT**

There are a number of points addressed in the Alaska Factory Trawler Association (AFTA) letter to the Council regarding the State of Alaska's proposal to expand their management authority for demersal shelf rockfish (DSR) in the Eastern Gulf of Alaska (Chapter 5 of the EA/RIR for Amendments 21/16 to the GOA BS/AI Groundfish Management Plans). Some of them are valid points of concern, but certain others are erroneous and misleading. This response will deal with those issues point-by-point.

1. "(Alternative 2) is an allocation strategy which violates Magnuson Act national standards and substantive procedural requirements. (It) was formed by resident Alaskan fishermen to exclusively benefit resident Southeast Alaska longliners and disenfranchise trawl fishermen."

-- Alternative 2 was drafted by the State of Alaska in response to a current inconsistency between state and federal regulations for DSR in the Southeast Outside District. The current state regulations outlined in the alternative were adopted by the Alaska Board of Fisheries after extensive public review by both resident and non-resident fishermen. The language of alternative 2 of the DSR management proposal provides for NMFS and Council oversight of specific regulations to assure compliance with national standards.

The intent of the proposal was not to disenfranchise anyone, but to provide for a viable directed fishery while taking into account the fragile nature of the DSR resource. According to all data sources available, the 10% trawl bycatch allowance in the state regulations would provide for continued fishing for other species without constraint. They would, however, preclude trawlers or any gear groups other than those using hook-and-line gear from targeting on DSR. Does this proposal violate national standards any more than the other directed fishery regulations in place for the Gulf of Alaska at this time? Sablefish, halibut, crab, and salmon are all allocated to specific gear groups under current federal regulations.

2. "The amendment package has failed to include a demersal shelf rockfish management alternative submitted by at-sea catcher processors for the 1990 amendment cycle."

-- According to Council records, the State of Alaska proposal was the only one received regarding DSR for the 1990 amendment cycle. Records show that AFTA submitted a proposal in 1988 which was put on the extended cycle and then subsequently dropped in 1989 as the result of a recommendation from PAAG.

3. "Further development of the trawl proposal will promote adequate conservation of demersal shelf rockfish stocks, allow continued participation by trawl fishermen in this fishery, and benefit the national interest through higher economic returns."

-- The DSR resource in the Southeast Outside District is considered to be fully utilized by the existing directed longline fishery and the bycatch in the slope rockfish trawl, halibut longline, and existing hook-and-line fisheries for other species. To stay within the annual TAC limit, any additional harvest by trawl vessels would result in a reduction of directed longline harvest and compromise the bycatch allowances in the halibut fishery. This would very likely result in a gross waste of fish on the grounds since halibut fisheries will continue to harvest DSR whether the TAC has been reached or not.

According to 1989 fish ticket records, trawl vessels landed only 1.6% of the 390 t of DSR caught in the Southeast Outside District. Of their total reported catch of DSR, nearly 86% was silvergrey rockfish which is a minor component of the directed longline harvest.

Bycatch provisions for DSR in the State regulations are much more liberal than Federal regulations for sablefish in the non-directed longline fisheries. According to available data, the 10% of non-target bycatch allowed in state regulations provides for a virtually unrestricted opportunity for trawl vessels to target on other rockfish assemblages without being constrained by DSR bycatch concerns.

It is hard to imagine how the roughly 6 t of DSR reported landed by trawl vessels in the Southeast Outside District during 1989 "benefits the national interest through higher economic returns".

4. "Alternative 2 violates National Standard 4. etc."

-- The only part of this statement that is true is that non-resident fishermen were not included in the work group that made recommendations for regulatory changes to the Alaska Board of Fisheries in 1989. Non-residents have an equal opportunity to present their point of view in the state regulatory process and are free to submit proposals for regulatory change. In fact, all proposals submitted to the Board are considered. In the Council process the proposals are screened and only those few that make it through the review process are considered. That is why the 1988 AFTA proposal was dropped during the 1989 amendment cycle.

The state regulation restricting DSR harvest to hook and line gear was passed after the joint Board/Council meeting in Sitka in 1984. It has since been liberalized at the recommendation of the ADF&G staff to allow for relatively unrestrictive bycatch by other gear types to minimize waste of this valuable resource.

5. "Nonresidents had no practical opportunity during development of the Alternative 2 proposal, and none is foreseen in the future, for input into the Alaska state system."

-- The Council review process provides an opportunity for extensive non-resident review of this proposal. NMFS and Council oversight of future modifications as specified in the proposal will include non-resident participation. Also, the Board process is open to all interested persons, and many non-residents submit proposals and participate in the Board and Advisory Committee deliberations as well.

6. " non-resident fishermen will be frozen out of the management process until 1993."

--This is not true. The Alaska Board of Fisheries will convene early in 1991 to discuss Southeast Alaska groundfish regulations. Both resident and non-resident fishermen will present testimony during that meeting. The Board meets on a biennial cycle and will consider proposals for changes to groundfish regulations again in 1993. A major difference between the Board and Council process is that the Board will consider all proposals submitted by their specified deadline. Both resident and non-resident fishermen are treated equitably in the Board process. To do otherwise is contrary to both State and Federal law.

7. "Implementation of the proposal in this manner is patently unfair and discriminatory to non-residents."

-- The biennial cycle adopted by the Board is not designed to discriminate against anyone. Rotating between fisheries in this manner is a means by which the Board can adequately consider all proposals submitted during the time they have allotted to meet each year. We fail to see how this has a discriminatory impact exclusively on non-resident fishermen. Again, it should be noted that the AFTA proposal submitted in 1988 was placed on the extended cycle and then summarily dropped by the Council in 1989. In the Board process that proposal would have been considered and addressed.

8. "Alternative 2 proposes instituting harvesting inefficiencies such as trip limits which will not provide an off-setting national benefit."

-- To the contrary, the purpose of the trip limit regulation was to spread out the harvest of fish over a longer season. This was done to minimize the risk of evolving into a derby fishery with the resultant decrease in resource value and the over-capitalization associated with shortened seasons and a race for fish. This provision also assures that TAC is available when the market conditions are most favorable. Based upon available

information, this regulation does not constrain the majority of vessels engaged in the DSR fishery, but would preclude one or two large operators from taking the very small DSR TAC in a short time interval. This minimizes the risk that the existing fleet would be displaced resulting in an economic hardship on those individuals currently depending on income from this fishery.

The trip limit and split season provisions of the State regulations also serve as means of controlling the harvest. The landings can be more accurately recorded, minimizing the risk of exceeding the annual harvest objectives.

9. "trigger new and unnecessary bycatch disputes limiting harvest of more valuable Gulf-wide slope rockfish fisheries, since both slope and demersal shelf rockfish species are often found intermixed."

-- There is no evidence to support the statement that slope and DSR rockfish are intermixed to a large extent. The port sampling records (table 5.3) from shore-based rockfish landings show that less than 2% of the rockfish landed in the directed DSR fishery are from the slope assemblage. The fish ticket records (table 5.2) show that trawlers reported that only 0.4% of their total rockfish landings from the Southeast Outside District during 1989 were from the DSR assemblage and none of them were the higher-value yelloweye rockfish. That table also shows that trawlers landed only 1.6% of all DSR reported from that area during 1989. An examination of foreign trawl observer data from the Southeast Outside District shows that over two years of fishing only 6.7% of the rockfish landed were from what is now known as the DSR assemblage. There are few instances where the ability to manage by area and gear type is so clearly defined.

There is no evidence that the current state regulations included in Alternative 2 would trigger a bycatch dispute. The state bycatch allowances are more than adequate to cover several times the reported bycatch in the trawl fisheries for slope rockfish.

10. "Federal oversight is needed as the "Work Group" benefiting under this scheme is currently planning to terminate their own catch reporting requirements and increase the size of the proposed rockfish management zones."

-- The proposals referred to here are from the staff for consideration at next year's Board meeting, not from the Work Group. The current state logbook requirements are much more rigorous than the federal logbook requirements. The state regulations currently require number and estimated weight of all fish by species from each set. Federal requirements call for estimated discard by species to the nearest metric ton and do not require any set-by-set accounting of the retained portion of the catch. Dropping the requirement to account for the number of

fish by species for each set can hardly be considered "terminating their own catch reporting requirements". The state logbook requirements are still more stringent than the federal logbook requirements, but only apply to the directed DSR fishery.

The proposal to consolidate the northern and central southeast outside management areas does not diminish the State's ability to manage the rockfish resource. The two remaining State management areas are still much smaller than the Federal Southeast Outside Regulatory District. The very small northern area is left over from a negotiated settlement with the Board and Council in 1984 when we were trying to define the northern boundary of the Sitka area fishery as it was being conducted at that time. It is too small for practical independent management even at the state level. Consolidation with the much larger Central Southeast Outside Area will make overall management of this resource easier for all concerned.

11. "NMFS Currently Manages Small Quotas and Subareas Successfully."

-- It is indisputable that NMFS does manage some fisheries by small quota and subarea. However, it is quite likely that no other resource in the state is so potentially vulnerable to localized depletion or would take so long to recover once depletion occurs. State management is not just a function of setting an annual quota for an area and tracking landing data, but rather involves a dynamic day-by-day monitoring program which includes port sampling, skipper interviews, logbook reporting, etc. We are not aware of any instance where NMFS has closed a portion of a designated management area short of the annual TAC or seasonal apportionment for conservation reasons. The state has exercised that capability in the directed DSR longline fishery on several occasions to spread out the effort in an attempt to minimize the risk of localized depletion. Under the state system adequate bycatch in other fisheries is still allowed when the directed fishery is closed. That is often not the case under Federal management.

12. " The EA/RIR improperly disregards or assumes away legitimate interest of trawl fishermen in the stock - fishermen who during 1989 landed 33% of these fish (table 5.1)

-- AFTA obviously misinterpreted table (5.1). The incidental column of the table includes all DSR in the ADF&G regional fish ticket database for all of Southeast Alaska waters that were not reported as having been landed on a state miscellaneous saltwater finfish longline permit card. The vast majority of the incidental harvest listed in this table is from the halibut longline fishery. Other fisheries include lingcod dinglebar, sablefish longline, and a minimal amount of trawl landings. Table 5.2 is an accounting of all fish ticket records from the

Southeast Outside District in the state-wide fishticket database at the NMFS regional office. It shows that only 1.6% of all DSR landed in 1989 was reported from trawl gear. As stated earlier, all of the trawl-caught DSR reported were the lower-value silvergrey and bocaccio.

13. "In either case the mixed species biomass produces some demersal shelf rockfish to both gear types."

-- This claim is irrefutable. As in any natural system there is some overlap of habitat distribution between organisms. However, as pointed out in number 9 above, there appears to be a great deal of natural segregation of the rockfish assemblages by area and gear type. According to fish ticket data summarized in table 5.1 longliners caught 378 t or 97.2% of all DSR reported in the Southeast Outside District in 1989. Trawlers reported landing of less than 7 t or 1.6% of the DSR in that area. DSR represented nearly 74% of all rockfish landed by longline gear and only 0.04% of the rockfish landed by trawl gear. This hardly indicates that the resource should be "evenly managed" for both gear types as suggested by AFTA. In fact to do so would require a major reallocation of this resource away from the current user group.

14. "Of greater concern is the fact yelloweye, the species bringing highest value from the complex through marketing of at-sea trawl processed product, is not even considered for reclassification. A new bycatch issue will descend upon the fishery as a result of Alternative 2."

-- According to personal communication with area processors, Southeast area yelloweye are generally considered by Japanese technicians as too dark to be accepted into the high-value Japanese menuke market. They generate their own round fresh fish market at approximately \$0.70 per round pound first ex-vessel or from \$1.00 to \$1.20 per round pound first wholesale FOB Ketchikan (personal communication Bob Waldrop, Silver Lining Seafood, Ketchikan, Alaska). Those fish that are filleted are generally worth approximately \$3.50 to \$4.00 per pound retail in local markets. It is difficult to directly compare the value of the shore-based rockfish fishery with any of the dressed frozen fish market categories listed on the Atkinson report. That list represents Japanese wholesale market prices of frozen dressed products from species other than DSR. The POP prices might more closely represent the expected Japanese market value of most species of DSR H&G and frozen.

Regardless, there is no evidence that yelloweye rockfish, or any other DSR rockfish for that matter, constitute a major portion of the trawl-caught rockfish landings in Southeast Alaska. Yelloweye rockfish do not show up in any of the 1989 trawl fish ticket records from the Southeast Outside District (table 5.2). Also, the foreign observer data shows that yelloweye rockfish

represent only 0.5% of all rockfish landed from that area during 1980 and 1981. The fish were considered to be much more abundant in the area at that time than they are now.

15. "State Regulations" etc.

-- The intent of the proposed change in the logbook requirement is presented in number 10 above. The requirement to report number of fish by species by set was unique to the state regulations for the directed DSR fishery and not required in other fisheries. It is difficult to see how anyone can realistically expect an exact accounting of all fish caught by number from any fishery. The State logbook regulations as proposed are still more stringent than the Federal logbook requirement. Therefore, the claim of decreased information under the state system as stated in the AFTA letter is not supported.

The State agrees that managers would benefit from better observer coverage of the DSR fishery and all other fisheries. However, the State does not have an observer program in place and most of the longline vessels participating in this fishery are exempt from observer coverage under federal regulations.

The shift of redbanded rockfish into the DSR category seems justified based upon the fact that the U.S. factory trawlers only reported 320 pounds from the Southeast Outside District in 1989. At the same time, 96.7% of all redbanded rockfish reported was caught by longline gear (Table 5.2). This species only comprised 0.4% of the foreign trawl catch from the area during 1980 and 1981 (Table 5.4). Redbanded rockfish also showed up as a regular component of the shore-based directed longline fishery samples (Table 5.3).

The state is also proposing to shift silvergrey rockfish, redstripe rockfish, and bocaccio from the DSR category to the slope rockfish category. According to the species composition reported on the fish tickets, trawlers would stand to gain much more from that adjustment than they would lose from transferring redbanded rockfish into the DSR category. The attempt here is to establish a set of regulations that will minimize the overlap between harvesting techniques. We feel that these adjustments will help in that regard. As with other regulations, these proposed changes will have to be approved by the Board and are subject to NMFS and Council oversight for compliance with national standards.

16. "this approach runs contrary to one of the major management needs ADF&G alleges to be necessary in support of Alternative 2 - i.e.(sic) management of demersal shelf rockfish in smaller subunits."

-- The justification for consolidating the three State outside management areas into two areas is discussed in number 10 above. The resulting areas are still much smaller than most areas managed under the Federal system and each would be roughly half the size of the Southeast Outside District as managed by NMFS.

17. " The EA/RIR has omitted consideration of value generated through at-sea processed demersal shelf rockfish."

A major reason for that omission is that very few DSR have been reported from the trawl landings in the Southeast Outside District. Therefore the value of the hook and line fishery is real and the value of the same product reallocated to the catcher-processor trawl fleet is unknown and speculative at best. Table 1 below shows the reported landings of yelloweye rockfish by gear type in the Southeast Outside District from 1986 through 1989. Since all landings are required to be reported on fish tickets, we have to assume that this is a complete record.

Table 1. Reported landings of yelloweye rockfish in metric tons round weight by gear type in the Southeast Outside District, 1986 - 1989.

YEAR	LONGLINE	TRAWL	OTHER HOOK-AND-LINE	TOTAL
1986	316.3	t*	2.9	319.3
1987	521.2	1.5	2.7	525.4
1988	379.2	44.2	2.8	426.2
1989	281.9	-0-	3.9	285.8
TOTAL	1,498.6 (96.3%)	45.8 (2.9%)	12.3 (.8%)	1,556.7

* Trace = 83 pounds round weight

As you can see from the table, trawl gear accounted for only 2.9% of all yelloweye rockfish landed in the Southeast Outside District over the past four years. Only one of the four years (1888) shows any significant trawl landings of yelloweye rockfish. This renders any claim of economic dependence of the trawl fleet on this resource suspect and strengthens the ADF&G viewpoint that DSR can be managed effectively by regulations allocating the directed fishery to a particular gear type. Yelloweye rockfish, and most other DSR species, are found on rocky bottom with very high vertical relief. Most of the population is presumed to be invulnerable to directed trawl effort because of their habitat.

The economics of the fishery are discussed in number 14 above. It should be further pointed out that it is not equitable to compare the value of round fish bled at sea which are landed at shore-based plants and shipped fresh to domestic markets with J-cut frozen at sea product destined for Japanese markets. In the first place, there are costs associated with dressing, freezing, storing and transporting the processed fish that are not required in the shore based fishery. Secondly, to compare the first wholesale value of the two products you need to divide the round product price by the conversion factor from round to J-cut to determine the comparable value of the usable product. When the conversion factor is considered, the first wholesale value of the shore based product doubles to \$2.00 to \$2.40 per pound FOB Ketchikan for comparable product. The fish are even more valuable FOB Seattle. That comparison suggests that the product from shore-based fisheries may actually be more valuable than the at-sea processed product indicated in the Atkinson news letter.

This information coupled with the fact that so few DSR are landed by trawl vessels, diminishes the AFTA claim that the trawl-caught product is more valuable or that the EA/RIR analysis is flawed.

TEXT TO AMEND THE GROUND FISH FISHERY MANAGEMENT PLANS

ESTABLISH QUARTERLY APPORTIONMENTS FOR POLLOCK IN THE CENTRAL/WESTERN REGULATORY AREAS

In Section 4.2.1, paragraphs (3) and (4) are renumbered as (4) and (5), and a new paragraph (3) is added to read as follows:

(3) The annual TAC established for pollock in the combined Central and Western Regulatory areas shall be divided into four equal quarterly apportionments. Shortfalls or overages in one quarter's apportionment shall be added to, or subtracted from, the subsequent quarter's apportionment.

PROHIBIT POLLOCK ROE STRIPPING IN THE GULF OF ALASKA

A new section 4.3.1.2, General Restrictions, is added. The old Section 4.3.1.2, Catch Restrictions, is renumbered as 4.3.1.2.1, a new section 4.3.1.2.2, Processing restrictions, is added, and the old section 4.3.1.3, Gear restrictions, is renumbered as 4.3.1.2.3. Organization, and text of the new section 4.3.1.2.2, follows:

- Section 4.3.1.2 General Restrictions
- Section 4.3.1.2.1 Catch Restrictions - text unchanged
- Section 4.3.1.2.2 Processing Restrictions

Roe stripping of pollock is prohibited, and the Regional Director is authorized to issue regulations to limit this practice to the maximum extent practicable. It is the Council's policy that the pollock harvest shall be utilized to the maximum extent possible for human consumption.

- Section 4.3.1.2.3 Gear Restrictions - text unchanged

PROHIBIT POLLOCK ROE STRIPPING IN THE BERING SEA/ALEUTIANS

Bering Sea/Aleutian Islands FMP

In Chapter 2.0, Section 2.1 ("History and Summary of Amendments"), add to the summary:

Amendment 14 on _____, 1990:

- (1) prohibited roe stripping of pollock; and established Council policy that the pollock harvest is to be used for human consumption to the maximum extent possible;
- (2) apportioned the pollock TAC into two components: roe-bearing and non roe-bearing. The percentage of the TAC allocated to each component shall be determined annually during the TAC specifications process.

Add a new Section 14.4.9, Utilization and Apportionment of the Pollock TAC, as follows:

14.4.9 Utilization and apportionment of the pollock TAC

Roe stripping of pollock is prohibited, and the Regional Director is authorized to issue regulations to limit this practice to the maximum extent practicable. It is the Council's policy that the pollock harvest shall be utilized to the maximum extent possible for human consumption.

The pollock TAC shall be apportioned into two components: roe-bearing and non roe-bearing. The percentage of the annual pollock TAC apportioned to each component shall be determined annually during the groundfish specifications process. A notice of the final apportionments will be published in the Federal Register with the Council's other final groundfish specifications by January 1 or as soon as practicable thereafter.

The following factors shall be considered when setting or changing seasonal apportionments of the pollock TAC:

- (1) estimated monthly pollock catch and effort in prior years;
- (2) expected changes in harvesting and processing capacity and associated pollock catch;
- (3) current estimates of and expected changes in pollock biomass and stock conditions; conditions of marine mammal stocks, and biomass and stock conditions of species taken as bycatch in directed pollock fisheries;
- (4) potential impacts of expected seasonal fishing for pollock on pollock stocks, marine mammals, and stocks of species taken as bycatch in directed pollock fisheries;
- (5) the need to obtain fishery-related data during all or part of the fishing year;
- (6) effects on operating costs and gross revenues;
- (7) the need to spread fishing effort over the year, minimize gear conflicts, and allow participation by various elements of the groundfish fleet and other fisheries;

- (8) potential allocative effects among users and indirect effects on coastal communities;
and
- (9) other biological and socioeconomic information that affects the consistency of seasonal pollock harvests with the goals and objectives of the FMP.

BERING SEA/ALEUTIAN ISLANDS PROHIBITED SPECIES MANAGEMENT

Changes to Relevant Sections of the Bering Sea/Aleutians FMP

In Chapter 2.0, Section 2.1 entitled "History and Summary of Amendments," add the following:

Amendment 16, on _____, 1989:

- (1) Extended the effective date of Amendment 12a (originally scheduled to expire December 31, 1990) with the following three changes:
- Prohibited species catch (PSC) apportionments would be established for the DAP rock sole and deep water turbot/sablefish fisheries;
 - PSC limits could be seasonally apportioned; and
 - An interim incentive program is established to encourage vessels to avoid excessively high bycatch rates.

In Chapter 14 entitled "Management Regime" in Section 14.4.2, "Prohibited Species" replace the text in Subsection E, PSC limits and time/area Closures for DAH Fisheries with:

The PSC limits and area closures for DAH fisheries expire on December 31, 1991.

In Chapter 14, entitled "Management Regime," the following sections are amended:

Section 14.4.2.1 Bycatch Limitation Zones, subsection C:
Remains as amended under Amendment 12a.

Section 14.4.2.2 Prohibited Species Catch Limits

The following PSC limits established under Amendment 12a are extended through December 31, 1991:

- A. The DAH fishery for Pacific cod south of a straight line approximating the 25-fathom depth contour in the Crab and Halibut Protection Zone identified in 14.4.2.1 C is limited to a PSC of 12,000 red king crab.
- B. The DAH trawl fisheries are limited to a PSC of 1,000,000 C. bairdi Tanner crab and to a PSC of 200,000 red king crab in Zone 1 in any fishing year.
- C. The DAH trawl fisheries are limited to a PSC of 3,000,000 C. bairdi Tanner crab in Zone 2 in any fishing year.
- D. Two PSC limits for Pacific Halibut for DAH trawl fisheries are established: a Zone 1 & 2H limit of 4,400 mt and a BSAI-wide limit of 5,333 mt.

In Chapter 14, entitled "Management Regime," section 14.4.2.3 is added as follows:

Section 14.4.2.3 Procedure for establishing bycatch quotas for target fishery categories and the seasonal allocation thereof.

The PSC limits for prohibited species apply to DAH (DAP and JVP) trawl fisheries for groundfish that are categorized by target species or species groups. Fishery categories will be implemented in regulations by the Secretary of Commerce, after consultation with the Council, and are intended to optimize groundfish harvests under the PSC limits established under section 14.4.2.2, while preventing specific target fisheries from taking a disproportionate share of those PSC limits.

Target fishery categories eligible for separate apportionments of PSC limits and seasonal allocations of prohibited species catch limits may be determined annually, if necessary, by the Secretary of Commerce, after consultation with the Council using the following procedure:

(1) Prior to the September Council meeting. The Plan Team will prepare for the Council a preliminary Stock Assessment and Evaluation Report under Section 11.3 which provides the best available information on estimated prohibited species bycatch and mortality rates in the target groundfish fisheries, estimates of bycatch amounts, recommendations for apportionments of PSC limits to DAP, JVP, and TALFF by target fisheries, and an economic analysis of the effects of the apportionments.

(2) September Council meeting. While setting preliminary groundfish harvest levels under Section 11.3, the Council will also review the need to control the bycatch of prohibited species and will, if necessary, recommend preliminary target fishery categories among DAP, JVP, and TALFF and appropriate apportionment of PSC limits to those target fisheries in a manner that will optimize total groundfish harvest under establish PSC limits, taking into consideration the anticipated amounts of incidental catch of prohibited species in each fishery category. The Council will also review the need for seasonal allocations of the PSC limit apportionments.

The Council will consider the best available information in when recommending fishery apportionments of PSC limits and seasonal allocation of those apportionements, including that contained in the preliminary SAFE report prepared by the Plan Team. Types of information that the Council will consider relevant to target fishery categories and seasonal allocation of fishery bycatch quotas include:

- (a) Seasonal distribution of prohibited species;
- (b) Seasonal distribution of target groundfish species relative to prohibited species distribution,
- (c) Expected prohibited species bycatch needs on a seasonal basis relevant to changes in prohibited species biomass and expected catches of target groundfish species,
- (d) Expected bycatch rates on a seasonal basis,
- (e) Expected changes in directed groundfish fishing seasons,
- (f) Expected actual start of fishing effort, and
- (g) Economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

The Council will release the recommended target fishery categories and seasonal allocations, if any, for a minimum 30-day public review.

(2) As soon as practicable after the Council's September meeting, the Secretary will publish the Council's recommendations as a notice in the FEDERAL REGISTER. Information on which the recommendations are based will also be published in the FEDERAL REGISTER or otherwise made available by the Council. Public comments will be invited by means specified in regulations implementing the FMP.

(3) Prior to the December Council meeting. The Plan Team will prepare for the Council a final Stock Assessment and Evaluation Report under Section 4.2.1 which provides the best available information on estimated halibut bycatch rates in the target groundfish fisheries, recommendations for apportionments of PSC limits among DAP, JVP, and TALFF by target fisheries and gear types and also an economic analysis of the effects of the apportionments.

(4) December Council meeting. While setting final groundfish harvest levels, the Council reviews public comments, takes public testimony, and makes final decisions on apportionment of PSC limits among fisheries and seasonal allocations, using the same factors (a) through (e) concerning seasonal allocations of the PSC limits. The Council will recommend its decisions, including no change for the new fishing year, to the Secretary of Commerce for implementation.

(4) As soon as practicable after the Council's December meeting, the Secretary will publish the Council's final decisions as a notice in the FEDERAL REGISTER. Information on which the final recommendations are based will also be published in the FEDERAL REGISTER or otherwise made available by the Council.

ESTABLISHMENT OF THE PENALTY BOX IN THE BERING SEA/ALEUTIANS

14.4.2.4 Incentive programs to reduce bycatch rates of prohibited species

The Secretary of Commerce, after consultation with the Council, may implement by regulation measures that provide incentives to individual vessels to reduce bycatch rates of prohibited species for which PSC limits are established under section 14.4.2.2. The intended effect of such measures is to increase the opportunity to harvest groundfish TACs before established PSC limits are reached by encouraging individual vessels to maintain average bycatch rates within acceptable performance standards and discourage fishing practices that result in excessively high bycatch rates.

In Chapter 14, entitled "Management Regime," section 14.4.3.4, "Implementation of Time and Area Limitations" remains as amended under Amendment 12a.

OVERFISHING DEFINITION IN THE GULF OF ALASKA

A new section, 4.2 Overfishing, is added. Sections 4.2 through 4.4 are re-numbered as 4.3 through 4.5.

4.2 Overfishing

Overfishing is defined as a maximum allowable fishing mortality rate. In no case shall the Council allow ABC or TAC to be set in violation of the overfishing definition.

The maximum allowable fishing mortality rate will be set at F_{msy} for all biomass levels in excess of the biomass yielding maximum sustained yield (B_{msy}). For lower biomass levels, the maximum allowable fishing mortality rate will vary linearly with biomass, starting from a value of zero at the origin and increasing to a value of F_{msy} at B_{msy} , consistent with other applicable laws.

If data is unavailable to calculate F_{msy} , the maximum allowable fishing mortality will be set equal to the natural mortality rate.

OVERFISHING DEFINITION IN THE BERING SEA/ALEUTIANS

A new section, 14.3 Overfishing, is added. Sections 14.3 through 14.7 are re-numbered as 14.4 through 14.8.

14.3 Overfishing

Overfishing is defined as a maximum allowable fishing mortality rate. In no case shall the Council allow ABC or TAC to be set in violation of the overfishing definition.

The maximum allowable fishing mortality rate will be set at F_{msy} for all biomass levels in excess of the biomass yielding maximum sustained yield (B_{msy}). For lower biomass levels, the maximum allowable fishing mortality rate will vary linearly with biomass, starting from a value of zero at the origin and increasing to a value of F_{msy} at B_{msy} , consistent with other applicable laws.

If data is unavailable to calculate F_{msy} , the maximum allowable fishing mortality will be set equal to the natural mortality rate.

MODIFY THE AUTHORIZATION LANGUAGE FOR DEMERSAL SHELF ROCKFISH MANAGEMENT IN THE GULF OF ALASKA

Section 3.1 would be changed to read as follows:

The TAC for demersal shelf rockfish in the Eastern Regulatory Area is specified by the Council each year. The State of Alaska will manage State registered vessels fishing for demersal shelf rockfish in the Eastern Regulatory Area with Council oversight. Under this oversight, the State's management regime for demersal shelf rockfish in the Eastern Regulatory Area will be directed at managing these rockfish stocks within the TAC specified by the Council. Such State regulations are in addition to and stricter than Federal regulations. They are not in conflict with the FMP as long as they are (1) consistent with specific provisions of the goals and objectives of the FMP, and (2) result in a total harvest of demersal shelf rockfish in the Eastern Regulatory Area at a level no greater than that provided by the FMP. Such State regulations will apply only to vessels registered under the laws of the State of Alaska.

Regulatory changes proposed by the Alaska Board of Fisheries, which are related to the management of demersal shelf rockfish will be reviewed by NOAA and the Council prior their adoption to assure that any such proposed changes are consistent with the goals and objectives of the FMP.

Under Council oversight, the following categories of regulations are authorized by the FMP to be applied by the State to vessels in the demersal shelf rockfish fishery:

The directed fishing standard for demersal shelf rockfish, inseason adjustments, seasons, seasonal apportionments of quotas, gear specifications, trip limits, directed fishing quotas, and management areas.

The following categories of regulations will be maintained as Federal regulations, unless specifically exempted, that must be complied with by Federally permitted vessels in this fishery:

Notices establishing preliminary and final TACs, definitions (except the directed fishing standard for demersal shelf rockfish, relation to other laws, permits, recordkeeping and reporting, general prohibitions, penalties, harvest limits, prohibited species catch limits, measures to manage designated prohibited species, and observer requirements.

ESTABLISH PROCEDURES FOR INTERIM TAC SPECIFICATIONS IN THE GULF OF ALASKA AND BERING SEA/ALEUTIAN ISLANDS

In Section 4.2.1.1, paragraph (3) is changed by adding the following sentence:

"The Secretary will implement one-fourth of the preliminary TACs and apportionments thereof on or about January 1 of each year on an interim basis. They will be replaced by final TACs as approved by the Secretary following the Council's December meeting.

CHANGE FISHING GEAR RESTRICTIONS IN THE GULF OF ALASKA

In Section 4.3.1.3 Gear restrictions, the first and last paragraphs are deleted and a new first paragraph is added to read as follows:

"Gear types authorized by the FMP are trawls, hook-and-line, pots, jigs, and other gear as defined in regulations. Further restrictions on gear that are necessary for conservation and management of fishery resources and which are consistent with the goals and objectives of the FMP are found at 50 CFR Part 672. In addition, the following gear or area limitations apply as follows:

subsequent paragraphs area unchanged

EXPAND HALIBUT BYCATCH MANAGEMENT MEASURES FOR THE GULF OF ALASKA

Section 4.2.3.1 is retitled and changed to read,

Section 4.2.3.1 Procedure for establishing prohibited species catch mortality limits for halibut, and seasonal allocations thereof.

PSC mortality limits and seasonal allocations of halibut will be determined annually, if necessary, by the Secretary of Commerce in consultation with the Council using the following procedures:

(1) Prior to the September Council meeting. The Plan Team will prepare for the Council a preliminary Stock Assessment and Evaluation Report under Section 4.2.1 which provides the best available information on estimated halibut bycatch and mortality rates in the target groundfish fisheries, estimates of halibut PSCs and apportionments thereof needed for DAP, JVP, and TALFF by target fisheries and gear types and also an economic analysis of the effects of the apportionments.

(2) September Council meeting. While setting preliminary groundfish harvest levels under Section 4.2.1, the Council will also review the need to control the bycatch of halibut and will, if necessary, recommend preliminary halibut PSC mortality limits (PSCs) and apportionments thereof among DAP, JVP, and TALFF. The Council will also review the need for seasonal allocations of the halibut PSCs.

The Council will make preliminary recommendations to the Secretary about some or all of the following:

The following text in paragraphs (1)-(5) is unchanged

- (1) The regulatory areas and districts for which PSCs might be established;
- (2) PSCs for particular target fisheries and gear types;
- (3) Seasonal allocations by target fisheries, gear types, and/or regulatory areas and district;
- (4) PSC allocations to individual operations;
- (5) and types of gear or modes of fishing operations that might be prohibited once a PSC is reached.

The Council will consider the best available information in doing so, including that contained in the preliminary SAFE report prepared by the Plan Team. Types of information that the Council will consider relevant to recommending preliminary PSCs and which may be found in the SAFE report, include:

[no change except to reference "halibut" instead of "bycatch species"]

- (a) Estimated change in biomass and stock condition of halibut,
- (b) Potential impact on halibut stocks,
- (c) Potential impacts on the halibut fisheries,
- (d) Estimated bycatch in years prior to that for which the halibut PSC is being established,
- (e) Expected change in target groundfish catch,
- (f) Estimated change in target groundfish biomass,
- (g) Methods available to reduce halibut bycatch,

- (h) The cost of reducing halibut bycatch, and
- (i) Other biological and socioeconomic factors that affect the appropriateness of specific bycatch measures in terms of objectives.

Types of information that the Council will consider in recommending seasonal allocations of halibut include:

- (a) Seasonal distribution of halibut,
- (b) Seasonal distribution of target groundfish species relative to halibut distribution,
- (c) Expected halibut bycatch needs on a seasonal basis relevant to changes in halibut biomass and expected catches of target groundfish species,
- (d) Expected bycatch rates on a seasonal basis,
- (e) Expected changes in directed groundfish fishing seasons, and
- (f) Expected actual start of fishing effort,
- (g) Economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

The Council will release the recommended preliminary PSCs and seasonal allocations, if any, for a minimum 30-day public review.

(2) As soon as practicable after the Council's September meeting, the Secretary will publish the Council's recommendations as a notice in the FEDERAL REGISTER. Information on which the recommendations are based will also be published in the FEDERAL REGISTER or otherwise made available by the Council. Public comments will be invited by means specified in regulations implementing the FMP.

(3) Prior to the December Council meeting. The Plan Team will prepare for the Council a final Stock Assessment and Evaluation Report under Section 4.2.1 which provides the best available information on estimated halibut bycatch rates in the target groundfish fisheries, recommendations for halibut PSCs and apportionments thereof among DAP, JVP, and TALFF by target fisheries and gear types and also an economic analysis of the effects of the apportionments.

(4) December Council meeting. While setting final groundfish harvest levels, the Council reviews public comments, takes public testimony, and makes final decisions on annual halibut PSC limits and seasonal allocations, using the same factors (a) through (i) concerning PSC limits, and the same factors (a) through (e) concerning seasonal allocations of the PSC limits. The Council will recommend its decisions, including no change for the new fishing year, to the Secretary of Commerce for implementation.

(4) As soon as practicable after the Council's December meeting, the Secretary will publish the Council's final decisions as a notice in the FEDERAL REGISTER. Information on which the final recommendations are based will also be published in the FEDERAL REGISTER or otherwise made available by the Council.

ESTABLISHMENT OF A PENALTY BOX IN THE GULF OF ALASKA

Section 4.2.4 Inseason adjustment of time and area, is redesignated as Section 4.2.5, and a new Section 4.2.4 is added to read as follows:

Section 4.2.4 Incentive programs to reduce bycatch rates of halibut .

The Secretary of Commerce, after consultation with the Council, may implement by regulation measures that provide incentives to individual vessels to reduce halibut bycatch rates of halibut for which PSC limits are established under Section 4.2.3.1. The intended effect of such measures is to increase the opportunity to harvest groundfish TACs before established PSC limits are reached by encouraging individual vessels to maintain average bycatch rates within acceptable performance standards and discourage fishing practices that result in excessively high bycatch rates.

CHANGE GEAR RESTRICTIONS IN THE BERING SEA/ALEUTIANS

Section 14.4.4 Gear restrictions. Change text to read,

"Gear types authorized by the FMP are trawls, hook-and-line, pots, jigs, and other gear as defined in regulations. Further restrictions on gear that are necessary for conservation and management of fishery resources and which are consistent with the goals and objectives of the FMP are found at 50 CFR Part 675.

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Draft Proposed Roe Stripping Rule: GOA

Language added is underlined, deleted is in [brackets], and stars (*) indicate unchanged intermediate language.

1. In § 672.7, a new paragraph (e) would be added to read as follows:

§ 672.7 General prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it shall be unlawful for any person to do any of the following:

* * *

(e) Retain pollock roe on board a vessel in violation of § 672.20(i) of this Part.

2. In § 672.20, paragraph (a)(2) would be revised to read as follows:

§ 672.20 General limitations.

(a) Harvest limits.

* * *

(2) Total allowable catch (TAC). The Secretary, after consultation with the North Pacific Fishery Management Council (Council), will specify the annual TAC for each calendar year for each target species and the "other species" category, and will apportion the TACs among DAP, JVP, TALFF, and reserves. TACs in the target species category may be split or combined for purposes of establishing new TACs with apportionments thereof under paragraph (c)(1) of this section.

(i) The sum of the TACs specified must be within the OY range of 116,000 to 800,000 mt for target species and the "other species" category. Initial reserves are established for pollock, Pacific cod, flounder, and "other species," which are equal to twenty percent of the TACs for these species or species groups.

(ii) The TAC of pollock for the Central and Western regulatory areas will be divided in four equal calendar quarters. Within any fishing year, any unharvested amount of a quarterly allowance will be added to the quarterly allowance of the following quarter. Within any fishing year, harvests in excess of a quarterly allowance will be deducted from the quarterly allowance of the following quarter.

* * *

3. In § 672.20, paragraphs (c)(1), and (2) would be revised to read as follows:

§ 672.20 General limitations.

* * *

(c) Notices.

(1) Notices of harvest limits and PSC limits.

(i) As soon as practicable after October 1 of each year, The Secretary, after consultation with the Council, will publish a notice in the Federal Register specifying preliminary annual TAC, DAP, JVP, TALFF, reserves, and applicable PSC amounts for each target species, "other species" category, [and] species determined to be fully utilized by the DAP fisheries, and quarterly allowances of pollock. The preliminary specifications of DAP will be the amounts harvested during the previous year plus any additional amounts the Secretary finds will be harvested by the U.S. fishing industry for delivery to U.S. processors. The preliminary specifications of JVP will be the amounts harvested during the previous year plus any additional amounts the Secretary finds will be harvested by the U.S. fishing industry for delivery to foreign processors, subject to reductions to accommodate increasing DAP. These additional amounts will reflect as accurately as possible the projected increases in U.S. processing and harvesting capacity and the extent to which U.S. processing and harvesting will occur during the coming year.

(ii) Public comment on these amounts will be accepted by the Secretary for 30 days after the notice is filed for public inspection with the Office of the Federal Register. The Secretary will consider timely comments and, after consultation with the Council, specify the final PSC limits and annual TAC for each target species and the "other species" category and apportionments thereof among DAP, JVP, TALFF, and reserves, and quarterly allowances of pollock. These final amounts will be published [as a notice] in the Federal Register as soon as practicable after [on or about] January 1 of each year. These amounts will replace the corresponding amounts for the previous year.

(2) Notices prohibiting directed fishing. If the Regional Director determines that the amount of a target species or "other species" category apportioned to a fishery or quarter, with respect to pollock, is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. The amount of a species or species group apportioned to a fishery or quarter, with respect to pollock, is the amount in Table 1 or, if applicable, Table 2, as these amounts are revised by inseason adjustments, for that species or species group, as identified by regulatory areas or district and as further identified according to any allocation of TALFF, the apportionment for JVP, the apportionment for DAP, the quarterly allowance of pollock and, if applicable, as further identified by gear type. In establishing a directed fishing allowance, the Regional Director shall consider the amount of that species or species group or quarterly allowance of pollock which will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached before the end of the fishing year or, with respect to pollock, before the end of the quarter, he will prohibit directed fishing for that species or species group in the specified

regulatory area or district. No person may engage in directed fishing in violation of an applicable notice. If directed fishing is prohibited, the amount of any catch of that species or species group equal to or greater than the amount which constitutes directed fishing may not be retained and must be treated as a prohibited species under paragraph (e) of this section.

* * *

4. In § 672.20, a new paragraph (i) would be added to read as follows:

* * *

(i) Allowable retention of pollock roe. Pollock roe must comprise no more than ten percent of the total round weight equivalent of pollock and other pollock products retained onboard a vessel at any time during a fishing trip.

(1) Assumed product recovery rates used to extrapolate round weight equivalents. The following product recovery rates will be used to calculate round weight equivalents:

- (A) Pollock surimi - 15 percent;
- (B) Pollock fillets - 18 percent;
- (C) Pollock minced product - 17 percent;
- (D) Pollock meal - 17 percent; and
- (E) Pollock headed and gutted - 50 percent.

(2) Other product recovery rates.

Recovery rates for products not listed under paragraph (i)(1) of this section must equal or exceed the product recovery rate established for pollock surimi.

(3) Fishing trip.

For purposes of this paragraph, a vessel is engaged in a single fishing trip when commencing or continuing fishing any time after [insert effective date of rule] until the transfer or offloading of any pollock or pollock product or until the vessel leaves the regulatory area where fishing activity commenced, whichever comes first.

Draft Proposed Roe Stripping Rule: BSA

Language added is underlined, deleted is in [brackets], and stars (*) indicate unchanged intermediate language.

1. In § 675.7, new paragraph (f) would be added to read as follows:

§ 675.7 General prohibitions

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

* * *

(f) Retain pollock roe on board a vessel in violation of § 675.20(j) of this Part.

2. In § 675.20, paragraphs (a)(2), (7), and (8) would be revised to read as follows:

§ 675.20 General limitations

(a) Harvest limits

* * *

(2) Total Allowable Catch (TAC). The Secretary, after consultation with the North Pacific Fishery Management Council (Council), will specify the annual TAC for each calendar year for each target species and the "other species" category, and will apportion the TACs among DAP, JVP, TALFF, and reserves. TACs in the target species category may be split or combined for purposes of establishing new TACs with apportionments thereof under paragraph (b) of this section. The sum of the TACs so specified must be within the OY range of 1.4-2.0 million mt for target species and the "other species" category.

(i) The TAC of pollock in each subarea will be divided, after subtraction of reserves, into two allowances. The first allowance will be available for directed fishing from January 1 through April 15. The second allowance will be available for directed fishing from June 1 through the end of the fishing year. Within any fishing year, unharvested amounts of the first allowance will be added to the second allowance, and harvests in excess of the first allowance will be deducted from the second allowance.

(ii) The annual determination of the TAC for each target species and the "other species" category, the division of the pollock TAC into seasonal allowances, the exceeding of these species' TACs through the apportionment of reserves, and the reapportionment of surplus domestic annual harvest (DAH) to total allowable level of foreign fishing (TALFF) will be based upon and be consistent with two types of information:

(A) Biological condition of groundfish stocks as set forth in the resource assessment documents prepared annually for the Council. These documents will provide information on historical catch trend; updated estimates of the maximum sustainable

yield of the groundfish complex and its component species groups; assessments of the stock condition of each target species and the "other species" category; assessments of the multi-species and ecosystem impacts of harvesting the groundfish complex at current levels given the assessed condition of stocks, including consideration of rebuilding depressed stocks; and alternative harvesting strategies and related effects on the component species group.

(B) Socioeconomic considerations that are consistent with the goals of the fishery management plan for the groundfish fishery of the Bering sea and Aleutian Islands area, including the need to promote efficiency in the utilization of fishery resources, including minimizing costs; the need to manage for the optimum marketable size of a species; the impact of groundfish harvests on prohibited species and the domestic target fisheries which utilize these species; the desire to enhance depleted stocks; the seasonal access to the groundfish fishery by domestic fishing vessels; the commercial importance of a fishery to local communities; the importance of a fishery to subsistence users; and the need to promote utilization of certain species.

* * *

(7) Notices. As soon as is practicable after October 1 of each year, the Secretary, after consultation with the Council, will publish a notice in the Federal Register specifying preliminary TAC and apportionments thereof into Reserve, DAP, JVP, and TALFF amounts for each target species and for the "other species" category for the next calendar year, and seasonal allowances of pollock. Public comment on these amounts will be accepted by the Secretary for a period of 30 days after the amounts have been published in the Federal Register. The Secretary will consider all timely comments when determining, after consultation with the Council, the final annual TAC, initial TAC and apportionments thereof [DAH, and initial TALFF] for each target species and the "other species" category, and seasonal allowances of pollock, for the next year. These figures will be published as a notice in the Federal Register as soon as practicable after December 15 and made available to the public through other suitable means by the Regional Director.

(8) If the Regional Director determines that the amount of a target species or "other species" category apportioned to a fishery, or a seasonal allowance of pollock, is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. The amount of a species or species group apportioned to a fishery is the amount annually specified under paragraph (7) of this section [under Table 1], as revised by inseason adjustments, for that species or species group, or seasonal allowance of pollock as identified by subarea and as further identified according to any allocation for TALFF, the apportionment for JVP, the apportionment for DAP and, if applicable, as further identified by gear type. In establishing a directed fishing allowance, the Regional Director shall consider the amount of that species or species group or seasonal allowance of pollock which will be taken as incidental catch in directed fishing for other species in the same subarea. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached before the end of the fishing year or, with respect to pollock, before the end of the fishing season, he will prohibit directed fishing for that species or species group in the specified subarea. No person may engage in directed fishing in violation of an applicable notice. If directed fishing is prohibited, the amount of any catch of that species or species group equal to or greater than the amount which constitutes directed fishing may not be retained and must be treated as a prohibited species under paragraph (c) of this section.

* * *

3. In § 675.20, new paragraph (j) would be added to read as follows:

§ 675.20 General limitations

* * *

(j) Allowable retention of pollock roe. Pollock roe must comprise no more than ten percent of the total round weight equivalent of pollock and other pollock products retained onboard a vessel at any time during a fishing trip.

(1) Assumed product recovery rates used to extrapolate round weight equivalents. The following product recovery rates will be used to calculate round weight equivalents:

- (A) Pollock surimi - 15 percent;
- (B) Pollock fillets - 18 percent;
- (C) Pollock minced product - 17 percent;
- (D) Pollock meal - 17 percent; and
- (E) Pollock headed and gutted - 50 percent.

(2) Other product recovery rates.

Recovery rates for products not listed under paragraph (j)(1) of this section must equal or exceed the product recovery rate established for pollock surimi.

(3) Fishing trip.

For purposes of this paragraph, a vessel is engaged in a single fishing trip when commencing or continuing fishing any time after [insert effective date of rule] until the transfer or offloading of any pollock or pollock product or until the vessel leaves the regulatory area where fishing activity commenced, whichever comes first.

* * * * *

AMENDMENT 16, CHAPTER 2, BSAI BYCATCH MANAGEMENT MEASURES

For the reasons set out in the preamble, 50 CFR Parts 611 and 675 are proposed to be amended as follows:

PART 611--[AMENDED]

1. The authority citation for Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq., 16 U.S.C. 971 et seq., 22 U.S.C. 1971 et seq., and 16 U.S.C. 1361 et seq.

2. Section 611.93 is amended by retaining paragraph (b)(5) to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *

(b) * * *

(5) Receiving groundfish prohibited. (i) Whether or not a nation receives a notice under paragraph (b)(3)(ii) of this section, receipts of U.S.-harvested groundfish that are composed of yellowfin sole and "other flatfish" in the aggregate in any amount greater than or equal to 20 percent of the total amount of groundfish received is prohibited in any bycatch limitation zone or area defined in § 675.2 of this Title when the JVP bycatch allowance pertaining to such bycatch limitation zone or area, as specified under § 675.21 of this Title, has been attained.

(ii) Whether or not a nation receives a notice under paragraph (b)(3)(ii) of this section, receipts of U.S.-harvested groundfish that are caught with bottom trawl gear and composed of pollock and Pacific cod in the aggregate in any amount greater than or equal to 20 percent of the total amount of groundfish received is prohibited in any bycatch limitation zone or area defined in § 675.2 of this Title when the bycatch allowance pertaining to such bycatch limitation zone or area, as specified under § 675.21 of this Title, has been attained.

* * * * *

PART 675--[AMENDED]

3. The authority citation for 50 CFR Part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

4. In § 675.2, the three definitions for "bycatch limitations zones" are retained, and the definition of "statistical area" continues to incorporate paragraphs (f) and (g) as follows:

§ 675.2 Definitions

* * * * *

Bycatch Limitation Zone 1 (Zone 1) means that part of the Bering Sea Subarea that is south of 58°00' N. latitude and east of 165°00' W. longitude (Figure 2).

Bycatch Limitation Zone 2 (Zone 2) means that part of the Bering Sea Subarea bounded by straight lines connecting the following coordinates in the order listed (Figure 2):

North latitude	West longitude
54° 30'.....	165° 00'
58° 00'.....	165° 00'
58° 00'.....	171° 00'
60° 00'.....	171° 00'
60° 00'.....	179° 20'
59° 25'.....	179° 20'
54° 30'.....	167° 00'
54° 30'.....	165° 00'

Bycatch Limitation Zone 2H means that part of the Bering Sea Subarea bounded by straight lines connecting the following coordinates (Figure 2):

North latitude	West longitude
54° 30'.....	165° 00'
56° 30'.....	165° 00'
56° 30'.....	170° 00'
55° 42'.....	170° 00'
54° 30'.....	167° 00'
54° 30'.....	165° 00'

Statistical area means any one of the eleven statistical areas of the Bering Sea and Aleutian Islands management area defined as follows (Figure 2):

* * *

(f) Statistical area 516 - that part of Statistical area 511 that is south of 58° N. lat. and between 162° and 163° W. long.;

(g) Statistical area 517 - that part of Statistical area 513 that is south of 56°30' N. lat. and between 165° and 170° W. long.;

* * *

5. In § 675.7, paragraphs (c) and (d) are retained as follows:

§ 675.7 General Prohibitions.

* * * * *

(c) Use a vessel:

(1) To fish with trawl gear in that part of Zone 1 closed to fishing with trawl gear in violation of § 675.22 (a) of this part unless specifically allowed by the Secretary as provided under § 675.22 (b),(c), and (d) of this part;

(2) To fish with trawl gear in that part of Zone 1 closed to fishing with trawl gear at any time when no scientific data collection and monitoring program exists or after such a program has been terminated; or

(3) To fish with trawl gear in that part of Zone 1 closed to fishing with trawl gear without complying fully with a scientific data collection and monitoring program; or

(d) conduct any fishing contrary to a notice issued under § 675.21 or ~~675.26~~ of this part.

* * * * *

6. In §675.20, add the phrase "or PSC allowance" after the phrase "PSC limits" in paragraph (e)(1)(iii) and after the phrase "PSC limit" in both places where it appears in paragraph

(e)(2)(ii).

7. In § 675.20, paragraph (e)(4) is revised to read as follows:

§ 675.20 General limitations

* * * * *

(e) * * *

(4) The adjustment of a TAC or PSC limit or PSC allowance for any species under paragraph (e)(1)(iii) of this section must be based on the available scientific information concerning the biological stock status and harvest of the species in question and on the Regional Director's determination that the currently specified TAC or PSC limit or PSC allowance is incorrect. Any adjustment to a TAC or PSC limit or PSC allowance must be reasonably related to a change in biological stock status, except that a PSC limit or PSC allowance may be adjusted if it was incorrectly specified or to allow redistribution of uncaught PSC allowances among fisheries.

8. Paragraph § 675.21 (a) is effective through December 31, 1991, and new paragraphs (b) and (c) and figure 2 are added to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

(a) PSC limits.

(1) The PSC limit of red king crab caught while conducting any domestic trawl fishery for groundfish in Zone 1 during any fishing year is 200,000 red king crabs.

(2) The PSC limit of Tanner crab (C. bairdi) caught while conducting any domestic trawl fishery for groundfish in Zone 1 during any fishing year is 1 million animals.

(3) The PSC limit of Tanner crab (C. bairdi) caught while conducting any domestic fishery for groundfish in Zone 2 during any fishing year is 3 million animals.

(4) The primary PSC limit of Pacific halibut caught while conducting any domestic fishery for groundfish in the Bering Sea and Aleutian Islands Management Area during any fishing year is an amount of Pacific halibut equivalent to 4,400 metric tons.

(5) The secondary PSC limit of Pacific halibut caught while conducting any domestic fishery for groundfish in the Bering Sea and Aleutian Islands Management Area during any fishing year is an amount of Pacific halibut equivalent to 5,333 metric tons.

(b) Apportionment of PSC limits.

(1) Apportionment to fishery categories. The Secretary, after consultation with the North Pacific Fishery Management Council (Council), will apportion each PSC limit into bycatch allowances that will be assigned to each fishery, specified in paragraph (b)(3) of this section, based on its proportional share of the anticipated incidental catch during a fishing year of prohibited species for which a PSC limit is specified and the need to optimize the amount of total groundfish harvest under established PSC limits. The sum of all bycatch allowances of any prohibited species will equal its PSC limit.

(2) Seasonal apportionment fishery bycatch allowances.

The Secretary, after consultation with the Council, may allocate fishery bycatch allowances on a seasonal basis. The Secretary will base any seasonal allocation of a fishery's bycatch allowances on the following types of information:

(i) Seasonal distribution of prohibited species;

(ii) Seasonal distribution of target groundfish species relative to prohibited species

distribution:

- (iii) Expected prohibited species bycatch needs on a seasonal basis relevant to changes in prohibited species biomass and expected catches of target groundfish species;
- (iv) Expected bycatch rates on a seasonal basis;
- (v) Expected changes in directed groundfish fishing seasons;
- (vi) Expected actual start of fishing effort; and
- (vii) Economic effects of establishing seasonal prohibited species allocations on segments of the target groundfish industry.

(3) The Secretary will publish PSC limits, bycatch allowances, and seasonal allocations annually in the notices required under § 675.20 (a)(6) of this part. Public comment will be accepted by the Secretary for a period of 30 days after the first publication of the amounts. See Table 2 for purposes of this paragraph.

(4) For purposes of this section, ~~six~~ domestic fisheries are defined as follows:

(i) "DAP flatfish fishery" means DAP fishing operations which retain, on a weekly basis, yellowfin sole and "other flatfish" in the aggregate in an amount greater than or equal to 20 percent of the total amount of other groundfish retained.

(ii) "DAP rock sole fishery" means DAP fishing operations which retain, on a weekly basis, rock sole in an amount greater than or equal to 20 percent of the total amount of other groundfish retained.

(iii) "DAP turbot" means DAP fishing operations which retain, on a weekly basis, Greenland turbot and arrowtooth flounder in the aggregate in an amount greater than or equal to 20 percent of the total amount of other groundfish retained.

(iv) "DAP other fishery" means DAP fishing operations which retain, on a weekly basis, any combination of groundfish species which does not qualify the fishery as a "flatfish, rock sole, or turbot fishery."

(v) "JVP flatfish fishery" means JVP fishing operations which deliver, on a weekly basis, yellowfin sole, rock sole, and "other flatfish" in the aggregate in an amount greater than or equal to 20 percent of the total amount of other groundfish delivered.

(vi) "JVP other fishery" means JVP fishing operations which deliver, on a weekly basis, any combination of groundfish species which does not qualify the fishery as a "flatfish fishery."

(c) Attainment of a PSC allowance.

(1) By the DAP flatfish, rock sole or Greenland turbot fisheries or the JVP flatfish fishery:

(i) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch either of the PSC allowances of red king crab or *C. bairdi* in Zone 1 while participating in either the DAP flatfish, DAP rock sole, DAP Greenland turbot or JVP flatfish fisheries as defined in paragraph 675.21 (b)(3), the Secretary will publish a notice in the FEDERAL REGISTER closing Zone 1 to vessels engaging in that directed fishery for the remainder of the fishing year.

(ii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the PSC allowance of *C. bairdi* in Zone 2 while participating in either the DAP flatfish, DAP rock sole, DAP Greenland turbot, or JVP flatfish fisheries as defined in paragraph 675.21 (b)(3), the Secretary will publish a notice in the FEDERAL REGISTER closing Zone 2 to vessels engaging in that directed fishery for the remainder of the fishing year.

(iii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the primary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands

Management Area while participating in either the DAP flatfish, DAP rock sole, DAP Greenland turbot, or JVP flatfish fisheries as defined in paragraph 675.21 (b)(3), the Secretary will publish a notice in the FEDERAL REGISTER closing Zones 1 and 2H to vessels engaging in that directed fishery for the remainder of the fishing year.

(iv) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the secondary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in either the DAP flatfish, DAP rock sole, DAP Greenland turbot, or JVP flatfish fisheries as defined in paragraph 675.21 (b)(3), the Secretary will publish a notice in the FEDERAL REGISTER closing the entire Bering Sea and Aleutian Islands Management area to vessels engaging in that directed fishery for the remainder of the fishing year.

(2) By the "DAP other fisheries" and "JVP other fisheries"

(i) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch either of the PSC allowances of red king crab or *C. bairdi* in Zone 1 while participating in either the "DAP other fishery" or the "JVP other fishery" as defined in paragraph 675.21(b)(3), the Secretary will publish a notice in the FEDERAL REGISTER closing Zone 1 for the remainder of the year to DAP or JVP vessels, which ever is appropriate, using bottom trawl gear in the combined directed fishery for pollock and Pacific cod, such that these two species must comprise less than 20 percent of the aggregate catch of the other fish or fish products retained at the same time on the vessel during the same trip, as defined in section 675.20 (i)(2).

(ii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the PSC allowance of *C. bairdi* in Zone 2 while participating in the "DAP other fishery" or "JVP other fishery," the Secretary will publish a notice in the FEDERAL REGISTER closing Zone 2 for the remainder of the year to DAP or JVP vessels, which ever is appropriate, using bottom trawl gear in the combined directed fishery for pollock and Pacific cod, such that these two species must comprise less than 20 percent of the aggregate catch of the other fish or fish products retained at the same time on the vessel during the same trip, as defined in section 675.20 (i)(2).

(iii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the primary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "DAP other fishery" or JVP "other fishery," the Secretary will publish a notice in the FEDERAL REGISTER closing Zones 1 and 2H for the remainder of the fishing year to DAP or JVP vessels, which ever is appropriate, using bottom trawl gear in the combined directed fishery for pollock and Pacific cod, such that these two species must comprise less than 20 percent of the aggregate catch of the other fish or fish products retained at the same time on the vessel during the same trip, as defined in section 675.20 (i)(2).

(iv) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the secondary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "DAP other fishery" or "JVP other fishery," the Secretary will publish a notice in the FEDERAL REGISTER closing the Bering Sea and Aleutian Islands Management area for the remainder of the year to DAP or JVP vessels, which ever is appropriate, using bottom trawl gear in the combined directed fishery for pollock and Pacific cod, such that these two species must comprise less than 20 percent of the aggregate catch of the other fish or fish products retained at the same time on the vessel during the same trip, as defined in section 675.20 (i)(2).

Table 2 -- 1989 Prohibited Species Catch Allowances

<u>Fisheries</u>	<u>Zone 1</u>	<u>Zone 2</u>	<u>Zones 1+2H Primary</u>	<u>BSAI-wide Secondary</u>
Red king crab, animals				
DAP flatfish fisheries				
DAP other fisheries				
JVP flatfish fisheries				
JVP other fisheries				
<u>C. bairdi</u> Tanner crab, animals				
DAP flatfish fisheries				
DAP other fisheries				
JVP flatfish fisheries				
JVP other fisheries				
Pacific halibut, metric tons				
DAP flatfish fisheries				
DAP other fisheries				
JVP flatfish fisheries				
JVP other fisheries				

9. Section 675.2 is amended by retaining paragraphs (a) through (e) to read as follows:

§ 675.22 Time and area closures.

(a) No fishing with trawl gear is allowed at any time in that part of Zone 1 in the Bering Sea Subarea that is south of 58°00' N. latitude and between 160°00' W. longitude and 162°00' W. longitude (see Figure 2) except as described in paragraph (c) of this section.

(b) No fishing with trawl gear is allowed at any time in that part of Zone 1 in the Bering Sea Subarea that is south of 58°00' N. latitude and between 162°00' W. longitude and 163° W. longitude during the period March 15 through June 15 except as described in paragraph (d) of this section.

(c) The Secretary may allow fishing for Pacific cod with trawl gear in that portion of the area described in paragraph (a) of this section that lies south of a straight line connecting the coordinates 56°43' N. latitude, 160°00' W. longitude, and 56°00' N. latitude, 162°00' W. longitude, provided that such fishing is in compliance with a scientific data collection and monitoring program, established by the Regional Director after consultation with the Council, designed to provide data useful in the management of the trawl fishery, the Pacific halibut, Tanner crab and king crab fisheries, and to prevent overfishing of the Pacific halibut, Tanner and king crab stocks in the area.

(d) During the period March 15 through June 15, the Secretary may allow fishing for Pacific cod with trawl gear in that portion of the area described in paragraph (b) of this section that lies south of a line connecting 56°00' N. latitude, 162° W. longitude and 55°38' N. latitude, 163°00' W. longitude, provided that such fishing is in compliance with a scientific data collection and monitoring program, established by the Regional Director after consultation with the Council, designed to provide data useful in the management of the trawl fishery, the Pacific halibut, Tanner crab and king crab fisheries, and to prevent overfishing of the Pacific halibut, Tanner and king crab stocks in the area.

(e) If the Regional Director determines that vessels fishing with trawl gear in the areas described in paragraphs (a) and (b) of this section will catch the PSC limit of 12,000 red king crabs, he will immediately prohibit all fishing with trawl gear in those areas by notice in the FEDERAL REGISTER.

* * *

10. Figure 2 is revised effective through December 31, 1991 to read as follows: [insert figure 2]

11. A new section 675.26 is added as follows:

Section 675.26. Vessel Incentive programs.

(a) Vessel incentive program to reduce prohibited species bycatch rates. Except as otherwise provided, this section applies to all vessels that have been issued a Federal groundfish permit under section 675.4 and harvest groundfish with bottom trawl gear.

(1) Overview. No person may fish from a vessel in the directed fishery for groundfish in any Federal reporting area off of Alaska for the period specified in paragraph (a)(5) of this section if the vessel's average observed bycatch rate of a prohibited species for which PSC limits are established under section 675.21 exceeds acceptable performance standards during the evaluation period specified in paragraph (a)(3).

(2) Target fishery categories. For purposes of paragraph (a) of this section, the species

composition of a vessel's observed groundfish catch during any two or more days of a weekly reporting period will be used to determine what bottom trawl target fishery category that vessel will be judged against at the end of the evaluation period specified under paragraph (a)(3). As soon as is practicable after October 1 of each year, the Secretary, after consultation with the Council, will publish a notice in the Federal Register specifying preliminary target fishery categories for the next calendar year that will be used to judge individual vessels' prohibited species bycatch rates. Public comment on these categories will be accepted by the Secretary for a period of 30 days after the categories have been filed for publication in the Federal Register. The Secretary will consider all timely comments when determining, after consultation with the Council, the final target fishery categories for the next year. These categories will be filed for publication as a notice in the Federal Register as soon as practicable after December 15 and made available to the public through other suitable means by the Regional Director.

(3) Application of vessel performance standards for prohibited species bycatch rates. (i)

Observed bycatch rates of prohibited species for vessels with two or more observed fishing days during a weekly reporting period will be used to calculate that vessel's average bycatch rate during that reporting week.

(ii) At the end of each weekly reporting period, the Regional Director will compare each vessel's observed average bycatch rate for the past 4-week period for each prohibited species for which PSC limits are established under paragraph 675.21 will be judged against either (A) the average observed bycatch rates calculated for the past 4-week period for the target fishery category within which a vessel is placed under paragraph (a)(2), or (B) the 4-week average bycatch rate observed in a vessel's target fishery category during the same approximate period of time during the previous year, if the Regional Director determines that current year observer data is insufficient to calculate a statistically valid moving 4-week average for a target fishery category.

(iii) Vessels that exhibit an average observed bycatch rate for the past 4-week period for a prohibited species in a target fishery that is more than two times the average bycatch rate for the past 4-week period for that target fishery category will be preliminarily determined to have an excessive bycatch rate for that prohibited species.

(4) Vessel notification of excessive bycatch rates. If the Regional Director preliminarily determines that a vessel's average bycatch rate for the past 4-week period for a prohibited species is excessive, the Regional Director will notify the vessel operator or owner that the vessel has been preliminarily determined to fail minimum performance standards established under paragraph (a)(3) and request that the vessel cease fishing immediately and proceed to the closest designated port for observer debriefing. If, after observer debriefing, the vessel is still determined to have exhibited an excessive average bycatch rate for a prohibited species, the Regional Director will issue the vessel a notice of suspension.

(5) Vessel suspension. (i) Failure of a vessel to meet acceptable bycatch performance standards established for two or more prohibited species during an evaluation period will result in two or more consecutive suspension periods being assessed against the vessel.

(ii) The duration of a suspension period for a vessel's first failure to meet the acceptable performance standard established for a prohibited species during a weekly checkpoint will be 5 days. A vessel's suspension period will increase to two weeks for a second failure to meet the acceptable performance standard established for the same prohibited species, and to six weeks

for each successive failure within a moving 12-month period.

(ii) During a suspension period, a vessel is prohibited from fishing in the directed fishery for groundfish in any Federal reporting area off of Alaska.

(6) Appeal procedures. (i) A vessel operator or owner whose vessel is subject to a suspension under paragraph (a)(5) may petition the Regional Director to review the vessel's history of observed prohibited species bycatch rates. The Regional Director may revoke a suspension notice if the operator demonstrates that the vessel has not exceeded acceptable performance standards during any of the 12-months immediately preceding the 4-week period which caused the suspension.

(ii) A vessel operator or owner may appeal a notice of suspension under paragraph (a)(5) or (a)(6) of this section to the Assistant administrator. Appeals must be filed in writing within 48 hours of suspension and must contain a statement setting forth the basis for the appeal. Appeals must be filed with the Regional Director, Alaska Region, NMFS. The appeal may be presented at the option of the vessel operator or owner at a hearing before a person appointed by the Assistant Administrator to hear the appeal. The Assistant Administrator or a designee, will determine, based upon the record, including any record developed at a hearing, if the suspension is supported under the criteria set forth in these regulations. The decision of the Assistant Administrator will be the final decision of the Department of Commerce.

(7) Additional observer requirements. If not otherwise required to do so under section 675.21, a vessel must have an observer on board during the first two weeks of fishing activity following a suspension period that resulted from two failures to meet bycatch performance standards for a prohibited species during the previous 12-month period. A vessel must have an observer onboard during the first four weeks of fishing activity following a suspension period that resulted from three or more failures to meet bycatch performance standards for a prohibited species during the previous 12-month period.

GOA REGULATIONS IMPLEMENTING GEAR RESTRICTIONS

(1) In Section 672.2, the definition of pelagic trawl is revised and a definition of a jigging machine is added as follows:

Section 672.2 Definitions

* * *

Pelagic trawl means a trawl which has stretch mesh size openings of at least 1 meter, or parallel lines with spaces of at least one meter, starting at the fishing line and extending aft for a distance of at least 10 meshes and going around the entire circumference of the trawl, and is tied to the fishing line with no less than 0.3 meter (12 inches) between knots around the circumference of the net, and which does not have bobbins or roller gear attached to the foot rope.

Jigging machine means a device with a non-buoyed, non-anchored line with hooks attached.

* * *

(2) Section 672.24 Gear limitations is changed by redesignating paragraph (b) as paragraph (c) and retitling it to read Gear allocations, redesignation former paragraph (c) as paragraph (d) and adding a new paragraph (b) to read as follows:

Section 672.24 Gear limitations.

* * *

(b) Gear restrictions. -- (1) Each pot used in the groundfish fisheries must have a biodegradable panel at least 18 inches in length that is parallel to, and within 6 inches of, the bottom of the pot, and which is sewn up with untreated cotton thread of no larger size than #30.

(2) All pots used in the groundfish fisheries must have rigid tunnel openings that are no wider than 9 inches and no higher than 9 inches, or soft tunnel openings that are no wider than 9 inches in diameter.

(c) Gear allocations * * *

(d) Trawls other than pelagic trawls * * *

REGULATIONS IMPLEMENT BSA GEAR RESTRICTIONS

(1) In Section 675.2, the definition of pelagic trawl is revised and a definition of a jigging machine is added as follows:

Section 675.2 Definitions

* * *

Jigging machine means a device with a non-buoyed, non-anchored line with hooks attached.

Pelagic trawl means a trawl which has stretch mesh size openings of at least 1 meter, or parallel lines with spaces of at least one meter, starting at the fishing line and extending aft for a distance of at least 10 meshes and going around the entire circumference of the trawl, and is tied to the fishing line with no less than 0.3 meter (12 inches) between knots around the circumference of the net, and which does not have bobbins or roller gear attached to the foot rope.

* * *

(2) Section 675.24 Gear limitations is changed by redesignating paragraphs (a) and (b) as (c)(1) and (c)(2), redesignating paragraph (c) as paragraph (d), redesignating former paragraph (d) as paragraph (a) and adding new paragraphs (b) and (c) to read as follows:

Section 675.24 Gear limitations

(a) Marking of gear

* * *

(b) Gear restrictions. -- (1) Each pot used in the groundfish fisheries must have a biodegradable panel at least 18 inches in length that is parallel to, and within 6 inches of, the bottom of the pot, and which is sewn up with untreated cotton thread of no larger size than #30.

(2) All pots used in the groundfish fisheries must have rigid tunnel openings that are no wider than 9 inches and no higher than 9 inches, or soft tunnel openings that are no wider than 9 inches in diameter.

(c) Gear allocations

The following Text from previous paragraphs (a) and (b) are unchanged

(1) In the Bering Sea subarea, defined at Sec. 675.2 of this part, hook-and-line and pot gear may be used to take up to 50 percent of the TAC for sablefish; trawl gear may be used to take up to 50 percent of the TAC for sablefish.

(2) In the Aleutian Islands subarea, defined at Sec. 675.2 of this part, hook-and-line and pot gear may be used to take up to 75 percent of the TAC for sablefish; trawl gear may be used

to take up to 25 percent of the TAC for sablefish.

(d) Sablefish closures. * * *

In Section 672.20, paragraph (c)(1) is relabeled and changed to read as follows:

Section 672.20 General Limitations.

(c) Notices.

* * *

(1) (A) Notices of proposed and interim harvest specifications. After consultation with the Council, and as soon as practicable after October 1 of each year, the Secretary will file a notice in the FEDERAL REGISTER proposing these specifications of annual TAC, DAP, JVP, TALFF, reserves, and applicable PSC amounts for each target species, "other species" category, and species determined to be fully utilized by the DAP fisheries. They will reflect as accurately as possible the projected changes in U.S. processing and harvesting capacity and the extent to which U.S. processing and harvesting will occur during the coming year. Public comment on these amounts will be accepted by the Secretary for 30 days after the notice is filed for public inspection with the Office of the Federal Register. By January 1 of each year, the Secretary will publish a notice of interim specifications implementing one-fourth of preliminary specifications and apportionments. The interim specifications will remain in effect until superceded.

(B) Notices of final harvest limits. The Secretary will consider comments received on the proposed specifications during the comment period and, after consultation with the Council, will specify the final annual TAC for each target species and the "other species" category and apportionments thereof among DAP, JVP, TALFF, and reserves. These final specifications will be published as a notice in the FEDERAL REGISTER on or about January 1 of each year and supercede the interim specifications.

REGULATIONS TO IMPLEMENT THE HALIBUT PSC SEASONAL APPORTIONMENTS.

In 50 CFR Section 672.20(f)(2), paragraph (i) is changed, paragraphs (iii) and (iv) are renumbered as (iv) and (v), and a new paragraph (iii) is added to read as follows:

Section 672.20 General limitations

(f) Halibut

* * *

(2) * * *

(i) As soon as practicable after October 1 of each year, the Secretary, after consultation with the Council, will publish a notice in the FEDERAL REGISTER specifying the proposed halibut PSC limits for JVP vessels and DAP vessels by trawl and hook-and-line gear. Each halibut PSC may be apportioned among the regulatory areas and districts of the Gulf of Alaska. Each halibut PSC may be allocated by season. Public comments on the proposed halibut PSC limits and seasonal allocations thereof will be accepted by the Secretary for 30 days after the notice is filed for public inspection with the Office of the FEDERAL REGISTER. The Secretary will consider timely comments in determining, after consultation with the Council, the final halibut PSC limits and seasonal allocations thereof for the next year. A notice of these final halibut PSC limits and seasonal allocations will be published in the FEDERAL REGISTER as soon as practicable on or about January 1 of the new fishing year and will also be made available to the public by the Regional Director through other suitable means.

* * *

(iii) The Secretary will base any seasonal allocations of the halibut PSCs on the following types of information:

- (a) Seasonal distribution of halibut,
- (b) Seasonal distribution of target groundfish species relative to halibut distribution,
- (c) Expected halibut bycatch needs on a seasonal basis relevant to changes in halibut biomass and expected catches of target groundfish species,
- (d) Expected bycatch rates on a seasonal basis,
- (e) Expected changes in directed groundfish fishing seasons, and
- (f) Expected actual start of fishing effort,
- (g) Economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

* * *

REGULATIONS TO IMPLEMENT THE GOA PENALTY BOX

Add a new section 672.26 as follows:

Section 672.26. Vessel Incentive programs.

(a) Vessel incentive program to reduce halibut bycatch rates. Except as otherwise provided, this section applies to all vessels required to have a Federal groundfish permit under section 672.4 that are using bottom trawl gear defined at section 672.2 to participate in target fisheries and with gear types specified in paragraph 672.26

(1) Overview. No person may fish from a vessel in the directed fishery for groundfish in any Federal reporting area off of Alaska for the period specified in paragraph (a)(5) of this section if the vessel's average observed halibut bycatch rate for which PSC limits are established under paragraph 672.20(f) exceeds acceptable performance standards during the evaluation period specified in paragraph (a)(3).

(2) Target fishery categories. For purposes of paragraph 672.26 (a), the species composition of a vessel's observed groundfish catch during any two or more days of a weekly reporting period will be used to determine what target fishery category by trawl and hook-and-line gear in paragraphs 672.26(a)(i) and (ii) will be judged against at the end of the evaluation period specified under paragraph (a)(3).

(i) Trawl gear. Target fisheries are for deepwater flatfish, shallowwater flatfish, arrowtooth flounder, Pacific cod, pollock, other rockfish of the genera Sebastes and Sebastolobus, and other groundfish managed under this part.

(ii) Hook-and-line gear. The target fishery is for Pacific cod.

(3) Application of vessel performance standards for halibut bycatch rates. (i) Observed bycatch rates of halibut for vessels with two or more observed fishing days during a weekly reporting period will be used to calculate that vessel's average bycatch rates for that reporting week.

(ii) At the end of each weekly reporting period, the Regional Director will compare each vessel's observed 4-week average halibut bycatch rate for each prohibited species for which PSC limits are established under paragraph 672.20(f) against either (A) 4-week average observed bycatch rates calculated for the target fishery category within which a vessel is placed under paragraph (a)(2), or (B) the 4-week average bycatch rate observed in a vessel's target fishery category during the same approximate period of the previous year if current year observer data is insufficient to calculate a statistically valid moving 4-week average for a target fishery category.

(iii) Vessels that exhibit a 4-week average observed halibut bycatch rate in a target fishery that is two or more times the 4-week average bycatch rate for that target fishery category will be preliminarily determined to have excessive bycatch rates

(4) Vessel notification of excessive halibut bycatch rates. If a vessel's 4-week moving average bycatch rate for halibut is preliminarily determined to be excessively dirty, The

Regional Director will notify the vessel operator or owner that the vessel has been preliminarily determined to fail acceptable performance standards established under paragraph (a)(3) and, if necessary, request that the vessel proceed to a designated port for observer debriefing as soon as is practicable. If, after observer debriefing, the vessel is still determined to have exhibited excessive bycatch rates, the Regional director will proceed to issue the vessel a notice of suspension.

(5). Vessel suspension. (i) The duration of a suspension period for a vessel's first failure to meet acceptable performance standards for halibut during a weekly checkpoint will be calculated as 3 days X (vessel's average rate divided by the target fishery average rate). A vessel's suspension period would increase to one week X (vessel's average rate divided by the target fishery average rate) for the second failure to meet acceptable performance standards and to two weeks X (vessel's average rate divided by the target fishery average rate) for successive offenses within a moving 12-month period.

(ii) During a suspension period, a vessel is prohibited from fishing in the directed fishery for groundfish in any Federal reporting area off of Alaska.

(6) Appeal procedures. (i) A vessel operator or owner whose vessel is subject to a suspension under paragraph (a)(5) may petition the Regional Director to review the vessel's history of observed halibut bycatch rates. The Regional Director may revoke a suspension notice if the operator demonstrates that the vessel has not exceeded acceptable performance standards during any of the 12-months immediately preceding the 4-week period which caused the suspension.

(ii) A vessel operator or owner may appeal a notice of suspension under paragraph (a)(5) or (a)(6) of this section to the Assistant administrator. Appeals must be filed in writing within 48 hours of suspension and must contain a statement setting forth the basis for the appeal. Appeals must be filed with the Regional Director, Alaska Region, NMFS. The appeal may be presented at the option of the vessel operator or owner at a hearing before a person appointed by the Assistant Administrator to hear the appeal. The Assistant Administer or a designee, will determine, based upon the record, including any record developed at a hearing, if the suspension is supported under the criteria set forth in these regulations. The decision of the Assistant Administrator will be the final decision of the Department of Commerce.

(7) If not otherwise required to do so under section 672.21, a vessel must have an observer on board during the first four weeks of fishing activity following a suspension.

Council Discussion of Amendments 21/16 and 16a
North Pacific Fishery Management Council Meeting
June 28-30, 1990 and August 7, 1990

NOTE: To save time and space, the formality of seeking and being granted recognition by the Chairman has not been transcribed for each speaker.

CM = Council Member

June 28, 1990

Larry Cotter (CM): . . . Could we have a review perhaps by Mr. Pennoyer, his staff, regarding the letter dated June 22nd, regarding 1991 bycatch management measures in the Bering Sea. There's some issues raised in here that I think the public is going to want to comment on and I think it would be helpful if we had an overview.

Steve Pennoyer, Director, NMFS-Alaska Region: I presume you're referring, Mr. Cotter, to the first part of the letter. The latter part of the letter refers to all the individual, penalty box, and bycatch incentive measures which is going to come out in public testimony and staff reports later. So, I assume you're talking about the first part.

Cotter: Correct.

Pennoyer: I'll let Jon (Pollard) summarize exactly what his rationale was, but in looking at the measures passed by the Council as alternatives in Amendment 16 to the Bering Sea for 1990 and the fact that two alternatives were examined in terms of caps, either the status quo, which when 12a went away is no caps, or in essence the 12a caps. General Counsel felt that in fact you had not examined all the other alternative things that may have happened to the bycatch species and prohibited species, since the 12a caps were imposed and that in fact the examination of alternate caps, or the effect of using alternate caps needed to be examined to make the amendment whole. We have some suggested possible ways of remedying that problem, which I'll get into in a minute as soon as Jon elaborates on what I just said.

Jon Pollard (NOAA General Counsel): The problem is that Amendment 12a, which is currently in place, expires and any follow-up amendment is a new regulation. It's not an extension of an existing regulation or amendment, so the Magnuson Act, National Environmental Policy Act, and other applicable law require the analysis and identification of alternatives to solve the problem and the analysis must also include the effects of those alternatives. The General Counsel, after consulting with the Central Office of the General Counsel felt that the Council's decision to preclude any discussion of alternate caps or alternate means of arriving at a reasonable balance between bycatch and target fisheries was not supported in the record. The purpose, I believe, was simply

that there wasn't time to do an exhaustive analysis. In our opinion that wasn't an appropriate justification to preclude further discussion of alternate caps.

Pennoyer: I should emphasize that General Counsel nor National Marine Fisheries Service is implying that you have to choose other caps. That simply you examine the information available and choose the alternative based on that information. We're also not suggesting that we create a situation where there's a hiatus in 1991 caused by the absence of something done at this time while we're waiting further analysis. A suggested course of action would be to send Amendment 16 forward absent the PSC cap provisions. At the same time, to send forward an emergency rule in essence extending the drop-dead date on 12a caps into 1991. In the meantime, the analysis for cap alternatives could go forward in Amendment 16a, be discussed by the Council in September. Action on that amendment would then supplant what was done in the emergency rule. So we're very keenly aware of the fact we don't want a hiatus in 1991. We're aware of the fact we don't want a hiatus caused by an emergency rule that we tried to get into effect a month or so before the start of the season, and we believe by moving forth in this manner we could remedy what is viewed as a deficiency in our analysis at the present time. At the same time, assure that we don't have a unregulated fishery in '91.

Cotter: . . .First of all, it sounds as if you have reached a conclusion that the process is flawed at this point at least relative to our ability to pick between the two choices on the cap, is that accurate?

Pollard: Yes, it's a procedural flaw that would preclude selecting between the two options at this time.

Cotter: And, the second question is, a couple of years ago when we went through something similar to this, at least in terms of trying to implement a emergency rule to implement on an interim basis PSC caps until the Secretary approved and/or implemented caps being put into effect by an amendment, we weren't able to do it. And we went several months without any caps being in place. This suggests that that's not going to be the case this year. What has changed?

Pennoyer: I think the situation you're referring to was initiated somewhat later in the process. We're looking at something that was initiated either at the September meeting or maybe even prior to that; we're still discussing that option. It gives us a considerable period of time to have something in place at the start of the year. I think it's changed because we were trying to do a whole package as I recall by emergency rule, including caps and everything else and while you had passed the amendment we were trying to do it basically at the last minute, a new process, we had not had that particular amendment in place before. And what's changed is that I think that everybody would have to realize that an unregulated situation would not be acceptable and I think that the system recognizing what we're trying to correct would accommodate that.

Cotter: One last question, and that is, in listening to your explanation, Mr. Pollard, you spoke to Council's failure to arrive at a reasonable balance, or a decision not to look at differing numbers that would allow the Council to arrive at a balance, something to that effect, and the implication was that the sole reason chosen not to look at alternative PSC caps was because of time elements. In the event that during the course of this meeting the Council can clearly establish that there were other reasons in addition to time elements, would that have a bearing on our ability to reach a decision on the two cap options that we have before us today?

Pollard: That's a good question, Larry. I'd have to wait and listen to the record as it unfolds.

Cotter: O.K., thank you.

Collinsworth: Anything else, anything further?

June 29, 1990

[Discussion of Amendment 21/16]

TAPE 68

Don Collinsworth (Council Chair): . . . Let's move then to those items under D-3 that have been identified that we need to take action on to keep our amendment program on track for '91.

Hal Weeks (NPFMC Staff): The first item under the amendment package is the Bering Sea bycatch management measures for that area. I would refer you to the summary prepared at D-3(a)(1) in your document. In essence, the management measures to control the bycatch of crab and halibut in the Bering Sea/Aleutian Islands as implemented through Amendment 12a expire at the end of this year. Under this amendment, fixed bycatch caps are apportioned to broad fisheries categories and attainment of a PSC cap triggers area closures to that fishery. The chapter presented presents interim measures to be put in place by January 1st of 1991 while the Council develops more comprehensive bycatch management programs. One alternative in this package would be a simple extension of the Amendment 12a provisions for a period of one year. Another alternative developed by the Ad Hoc Bycatch Committee and the Advisory Panel with the assistance of industry would be to extend the basic 12a structure but apportion the caps among additional fisheries categories, including a DAP rocksole and a DAP deepwater turbot and sablefish fishery. It would allow for seasonal apportionment of those PSC caps and it would provide for the penalty box-type of incentive program to reduce bycatch rates, which has been discussed. It is believed that these modified measures would increase the amount of groundfish harvested for the same amount of total bycatch. I have Dr. Terry from the Alaska Fisheries Science Center here with me and he can discuss our analytical results and our modeling efforts.

Joe Terry: The bycatch prediction model developed by Terry Smith, with some modifications, was used to provide the estimates of the effects of the different alternatives that are included in Chapter 2 of the document that was mailed out to you in May. Since then the model has been changed to replace the quarterly time steps with monthly time steps and in that process an error was made in the interpretation of the Zone 1 and 2H halibut closures. That error has been corrected and there are now new summary tables of the effects on our estimates of bycatch in groundfish catch for the different alternatives. This is a hand-out that is being distributed right now.

Larry Cotter (CM): While that's being passed out, what page does the replacement table correspond to . . .

Terry: Table 2.14, 2.15, and I believe. . . they're tables that summarize, again, bycatch, catch, estimates of bycatch impact costs, and effects on gross and net revenue in the groundfish fleet for the different alternatives. The first

table gives estimates of the absolute values, the second table has estimates of the change between Alternative 1, that's the status quo, that's the expiration of 12a regs, and the 3rd table summarizes the projected closures. Again, the first column, Alternative 1, indicates what we would expect to happen if 12a regs were not in place and if the flatfish fishery started the first of the year. The second column indicates what would happen with the 12a caps in place, but again with the flatfish fishery starting at the first of the year. The third column is 12a caps but with a flatfish fishery delayed until May 15, that's the JV flatfish fishery. And the fourth column would be the same situation, but with reduced bycatch rates due to the incentive program, the penalty box approach. Basically, what it shows, comparing the second and third columns in terms of bycatch, it's projected that postponement of the JV flatfish fishery will reduce the bycatch of red king crab and bairdi but would result in a small increase in halibut catch. In both cases, though, the total halibut catch is projected to be below the Bering Sea-wide cap. There in the third and fourth columns, again, the difference is we're assuming lower bycatch rates for the incentive program, there's savings of bairdi and halibut. I think basically what the model shows is what sort of common sense suggests, that if you postpone the flatfish fishery to times when there's lower rates for crab, the crab bycatch is going to go down. What it also demonstrates is that, again, when you solve one problem it may be at a cost of another. So, again the projection is that the postponement of the JV fishery will reduce crab bycatch but result in some increase in halibut bycatch. And, again, in the last column, if you have lower bycatch rates you have lower bycatch and/or higher groundfish catch.

Collinsworth: Questions for clarification, please? Mr. Cotter, then Mr. Alverson.

Cotter: Joe, do any of these have the penalty box approach incorporated?

Terry: The last column does, and that's the difference between the 3rd and 4th column. We're assuming lower bycatch rates in the 4th column. It's difficult to estimate what the effects of a penalty box will be. This is based on one set of assumptions about what the reductions in bycatch rates would be as a result of the penalty box.

Bob Alverson (CM): Joe, I'm a little bit confused on the . . .there's a couple of questions I have in regards to the proposed option to change the date on the flounder fisheries. If we have a later fishery, I've heard that the yellowfin sole joint venture people claim that they have a lower bycatch of halibut as well as the crabs, but that's not what I'm hearing from you or necessarily seeing in these results. Can you clarify my confusion, or . . .

Terry: I think what happens is that when the JV fishery is postponed, then their requirement for halibut is reduced and the caps are apportioned based on estimated needs in the absence of the caps, so if the JV requirement is reduced, then the other fisheries would receive larger caps, so the other fisheries would be permitted to operate

in Zones 1 and 2 longer, so the savings from the JV fishery would be offset in the case of halibut by increased operation and bycatch from the domestic fisheries.

Alverson: One more question. Does this also assume a change in the turbot fishery as well. . . is that included as flatfish or. . .

Terry: Yes, the assumptions about when and where the fisheries would occur are based on what industry said and the turbot fishery would occur later in the year.

Collinsworth: Any further questions of staff for clarification? O.K., Council, let's refer then to Agenda item D-3(a)(1), the summary, and look at what's referred to as Chapter 2, Revised Crab and Halibut Bycatch Management Measures for the Bering Sea and Aleutian Islands. The staff has provided us an explanation on Alternatives 1, 2 and 3, have provided us data; we have an AP report that addresses and makes a recommendation, and we've heard a good deal of public testimony. I think we're in a position now to proceed to have a motion put before the Council to adopt an alternative. We can then use that motion to modify the alternative as the Council wishes by amending it. Is there anyone who wishes to offer a motion?

Bob Mace (CM): I have a real feel for Alternative 3 with a penalty box and I'm prepared to move the AP's recommendation, but before that I would like to review, or have Steve (Pennoyer) review the administrative chores involved in administering this, if it is possible and doable, and if it is, then I would move to adopt the AP recommendation.

Steve Pennoyer (CM & NMFS Regional Director, Alaska): The AP recommendation we're talking about now, we're talking about just the penalty box part, because we also have the discussion of the caps under here and there's some other elements that need to be discussed as well. The agency did propose, actually, the penalty box solution and I don't think the AP changes. . . although we'll probably want to comment on how some of those would work specifically, there's some mechanical problems and some choices that have to be made in a type of penalty and why one might be better than another, but I don't think that their recommendation does too much disservice to our ability to handle a program we suggested in the first place. They have tuned it a little bit differently, but in terms of the overall impact on agency administration, I don't think that changes. Our assumptions are based on, and the degree to which we can do this, is based on anticipated budget increases in 1991 and I'll have to say that, but providing we get what seems to be in the cards now, I think we can handle this. Obviously in any new program starting the first of the year you have some ups and downs, but from the standpoint of handling a penalty box in 1991, particularly with some season delays involved that are built into this, I think we can handle it.

Mace: I'll have to formally moved that we adopt the AP recommendation to revise crab and halibut bycatch management measures for the Bering Sea/Aleutian Island area.

John Peterson (CM): And I'll second that motion.

Collinsworth: We have a motion before us and seconded. The AP recommended that the Council adopt Alternative 3 with modifications: a penalty box procedure would be established similar to that provided by the AP industry workgroup and that the caps in Amendment 12a will sunset after 1991 and shall be reviewed and adjusted based on changes in biomass populations of PSC and target groundfish species. That is the proposition before us. Discussion please.

Pennoyer: If you want to start with any one piece of it I guess I would suggest that perhaps the staff go through my discussion of penalty box versus what the AP suggested and show you the comparison so you can make some choices. We need as much guidance on the regulations that would be used to implement this program as possible at this meeting, but there are still frankly some bits and pieces that are under consideration. And as we publish these regs, they go out to public review, the public and you will still have some chance to comment on them in September, or whenever our next meeting is, before the final adoption of the rule. However, we would like to get as much guidance in general at this meeting as possible, so I guess I might suggest that perhaps Sue Salvesson could lead us through the letter I wrote to Clarence compared to the AP recommendations and just see where the decision points are.

Cotter: As Sue is coming up to do that, Mr. Pennoyer, you said that we would get another bite at this apple, so to speak, at the next Council meeting. . .

Collinsworth: . . .at the regulations. . .

Cotter: At the regulations. Does that mean that we would then be revisiting the penalty box approach for fine-tuning purposes and would have the latitude to make additional changes then, or. . .

Pennoyer: You would have the ability to comment on the regulations as everybody else does and the Secretary could take those comments into account in the final characterization of them. Obviously, if he gets too far afield in changing it you run into other problems of whether the public understood what was going on and so forth. But within the scope of the program as we have defined it you would have the chance to comment and you could do it at a formal meeting.

Cotter: Does that mean then that if we can't settle on a particular number in a particular spot and instead reflected a slight range we could do that now and then comment on the choice that you might pick later on?

Pennoyer: It would be best to pin it down as far as possible here so people knew what we were dealing with when it goes out to public review and during the comment period people knew what they were looking at. I don't think the option here is to just sort of identify huge ranges and then later pick in between them.

Cotter: This isn't what I'm suggesting. The AP motion has some ranges in it, that's what I was speaking to.

Collinsworth: I think we have to narrow those because the implementing regulations, our review will essentially be to see if the regulations accomplish our intent, so we need to pin that down as closely as possible.

Pennoyer: That's correct. Then after we go through the penalty box I would come back and revisit the cap question for you as well.

Sue Salvesson (NMFS Staff, AK Region): Probably the easiest way to do this would be to go through Steve's memo item by item and then highlight differences between regional recommendations and the AP proposal. First decision the Council needs to make is how will the penalty box approach be applied to vessels with less than 100% observer coverage. You've heard from the SSC their concern that the penalty box may augment potential bias in observer data that's collected from vessels with only 30% coverage. That's also a potential problem with vessels of 100% coverage. That aside, both the AP and the Region recommend that 30% vessels be brought into the penalty box program. The AP was unable to recommend what type of triggering criteria during any one week would result in that vessel being brought into the penalty box program. We recommend then that if the vessel has at least two observed days during a week, that that vessel's observed data be included to determine that vessel's average weekly bycatch rates and those rates would be included in the penalty box checkpoint. The next issue the Council needs to decide is what is the appropriate number of target fishery categories for 1991. The AP, at your last meeting, recommended about ten categories. We feel that we can implement most of those basically. The target fishery categories would include the rock sole, the yellowfin sole, the flatfish category, Greenland turbot, Pacific cod, bottom trawl pollock, and then other groundfish. Each week a vessel's observed catch composition would be used to determine the appropriate target fishery category that that vessel would be checked against during a checkpoint evaluation. The next issue is what performance standards would be used to identify acceptable versus unacceptable bycatch rates. Again, at your last meeting the Council recommended that staff review bycatch rates between two and four times a fleet average. The Region recommended that we take the most conservative stance at this point in time. We've been unable to do an extensive statistical analysis on what performance standards should be used. We intend to do that further and come back to you in September

with the results of those analyses. Now, the AP recommended that whatever rate that we choose to trigger, either the acceptable or unacceptable rate, that that rate be based on a vessel's moving four-week average. We had initially recommended that we have set checkpoints, that would be every four reporting periods. I think that there would be no problem in implementing the AP's proposal and it is probably an improvement over what we had initially recommended.

Cotter: So, the AP. . .they didn't recommend two times. . .

Salveson: They were unable to come up with a specific recommendation also. Again, I think the problem we're facing right now is lack of time to do an adequate analysis on what would be an acceptable rate. And you probably would want to tie your triggering criteria with the length of suspension period. The more lenient you are in terms of triggering criteria, probably the longer your suspension period would be. The lower your triggering criteria, the more vessels you're going to kick out and perhaps you want to have a little more lenient period.

Peterson: You're talking about a moving four-week average. Would you be able to make a determination before four weeks have expired?

Salveson: No. I believe that at the beginning of the year, or when a vessel first enters the fishery, we're going to have some problems with coming up with adequate averages. For example, at the beginning of the year, after four weeks have passed you will have a four-week average of a particular target fishery bycatch rate. If a vessel should choose to enter the fishery, say during week 4 or week 3, at the end of that week that vessel's average bycatch rate for the past four weeks, even though only one week was fished, would be compared to the past four weeks of the fleet average. Again, so when a vessel first enters the fishery it's going to be clean. If it happens to have start up problem and it's dirty, it doesn't have time to dampen out any high bycatch rates and when it is judged against the fleet average it could be kicked out. The longer a vessel fishes or the more weeks that it fishes during any 4 period probably the greater chance . . . to damp out any excessive rate within any one day and any one week.

Alverson: The requirement suggested for two days a week being observed per vessel, there's a number of these smaller vessels, this is basically require a 100% coverage on these smaller vessels. It's going to be difficult to share expenses. I think some of them are using groups of three to try to reduce the cost during a month of having an observer. What. . .does it present that much of a problem if the Council were to have this provision as well as an option to the fleet that if they could put up to three vessels together with a observer on the 30% requirement and have them act as a group and be treated as group on their average based on the observed rates?

Salveson: If I understand your question correctly, what we're saying is that during a week if a vessel has [changeover to Tape 69—not sure if there are words lost in changeover] at least two. . . [unintelligible]. . . of observed coverage they would be. . . [unintelligible]. . . with the penalty box evaluation period or checkpoint at the end of that week. So if you have a group of three vessels that have one observer and each vessel has an observer on at least two days during that week, all three vessels would be brought in under the program. In any one week if a vessel has only one day observed coverage, we're recommending that vessel not be included in the checkpoint program during that week.

Alverson: Well, that's not quite what I was suggesting. What would happen if three vessels in this category, 60 to 125 feet, were to have one observer, logistically it's going to be impossible for them to trade this guy around two days a week on each boat, so if one week or one trip the observer's on that boat, maybe he's on five days of that week and the other two boats don't have any observed coverage and then they rotate the guy around, play pass the observer, how does that work in this proposal here?

Salveson: Well, under the existing proposal what that would result in is if you have three vessels, probably. . . the vessels that don't have at least two observer days during a week would not be included in the evaluation period at the end of the week. They would not be judged.

Alverson: What would happen to them, then?

Salveson: They'd be excluded. We cannot bring vessels into this program if they don't have observer information on which to gauge their bycatch rates. They would continue to fish, they would be exempted from the judgement process and they wouldn't be penalized.

Alverson: But during this time frame that these vessels are sharing the observer within three months at least, or within a month's period of time, you've got some coverage on them to get an idea based on their 30% requirement. Can't they be cranked in at a later date to be penalized? Maybe the time frame you look at them is longer as opposed to the people with 100% observer coverage.

Salveson: That's a possible consideration. . . it was designed. . . well, if you wanted to go in the AP route, they were looking at a weekly checkpoint process, O.K.? And for those weeks that you don't have observed bycatch rates, obviously you have nothing to work against. We did have an alternative where we would have monthly checkpoints rather than weekly and a vessel would be judged on the basis of its average bycatch rates during that month.

Ron Hegge (CM): Sue, since our observer requirements are up for review and revision this year can you provide the requirements for this type of approach to the Council for consideration?

Salveson: This approach assumed that the observer coverage may not change although definitions of observer trips or the ability to release administratively confidential information should probably be put into the observer plan. You've already heard testimony on the public release of bycatch rates and that's what we're talking about, the bycatch rates. There's also been some discussion on how to redefine a observer day in that right now an observer day is essentially a period of time from which fishing gear is first deployed until a vessel returns to port, which means a vessel can have an observer out there for a lot of days, get credit for an observer, but then no real fishing is observed. What we would probably like to see is a re-definition of observer day such that you only get credit for an observer when you're actively fishing that day. Therefore, 30% coverage is pretty much 30% coverage of fishing effort. And, therefore when you have an observer on board, that coverage would be more applicable to a penalty box type program.

Cotter: Sue, what are we, what's the rate being measured against. Is the rate being measured against total catch, including that which may be discarded? Or is it being measured against retained catch, and if it's being measured against total catch including that which is being discarded, what information do we base that on since the observer isn't observing discards.

Salveson: The bycatch rates are based on observed samples extrapolated out to observed hauls. We would not take into consideration the total estimated catch of a vessel during a week. It's just the observed catch and the bycatch rates observed during those hauls or sets is what would be used to estimate a vessel's average bycatch rate.

Cotter: And that's observed total catch, including that which will may subsequently be discarded.

Salveson: Right. It's observed. . .right, total catch.

Cotter: That's based upon the observer's observations and not reports that are provided from the operation itself.

Salveson: That's correct. I think we would probably rely on the vessel operators estimate of total haul weight when estimating out species compositions and this sort of thing.

Alverson: Do we know what percentage of the harvest is done by vessels 60 to 125 feet?

Salveson: Yes, we have that information. I don't have it right here, maybe Ron Berg might have that information here; if we don't we can certainly get that very easily.

Alverson: I'd appreciate it.

Collinsworth: Mr. Pennoyer, with regard to the penalty box concept and the application and the disparity between the AP and the proposed procedures and your letter, is there. . .do you have a list of kind of the incremental pieces that you would like to have the Council address?

Pennoyer: I think Sue is starting to try to approach that. Perhaps we could just take them one at a time and you could just highlight each one of these numbers and then. . .she sort of went through four or five at once and maybe we can just go back and take one at a time, make a decision, go on, and when we're done have a list of what we've done and go back and see how it compares. There's a few things the AP recommended we didn't have in our letter and would have to be. . .

Collinsworth: That's precisely what I'd like to do, yes.

Pennoyer: Sue, do you think we could just start with number one and do it that way?

Salveson: Certainly.

Collinsworth: If you would like a few minutes to get your thoughts on that I'd be happy to give you a few minutes because I'd like to make sure that we address each of the points that are pertinent and do it in an order that. . .kind of a logical order. Would you like to have five minutes to think about that or are you prepared to. . .

Salveson: Well I think we can continue. If you want go item by item, again referring back to Steve's memo to you, you can go through each item, highlight the issue, highlight the AP's recommendation versus NMFS's recommendation to generate Council discussion on that issue, prior to making a decision.

Peterson: There's the letter which has numbered items, then there's another paper, 'discussion of suboptions,' - which one are you referring to?

Salveson: The cover letter. Actually, the numbering refers to the same thing, the discussion paper in some cases has a little more expanded discussion on those particular items, but they can be cross-referenced.

Henry Mitchell (CM): Just for clarification. We'll do each item, then we'll discuss that and vote on it and then go to the next one and then at the end we'll just review the whole thing. . .

Collinsworth: The whole package, then at that point once we've got the whole package together then we can take a motion on that. . .

Salveson: Starting on issue number one, 'Should the penalty box be applied to vessels with less than 100% observer coverage?' I've reviewed for you basically some of the potential bias that may be entered into the system by doing that, but that may be necessary if you want to bring in vessels less than 125 feet into the program. The Regional recommendation at this point in time, lacking quantitative information to do otherwise, is to recommend that you take a conservative stance at this point in time. We will initiate more extensive statistical analyses and bring that information back to you in September in terms of whether or not observer information based on two days observed bycatch versus some other triggering criteria may be appropriate for the 30% covered vessels.

Cotter: This is a pretty important decision when you think about it. If the individual just has two days in a week and that individual is fishing seven days, those two days might be the wrong two days, of course. Is two days sufficient for legal standard to shut somebody down?

Salveson: The reason why two days was picked, that's basically 30% coverage of a week and the Council did choose to accept 30% coverage in general for these vessel categories and that's why two days was selected versus some other. . .

Cotter: I don't know this for sure, but it seems to me that if a vessel has coverage on it, whether it's a 30% vessel or a 100% vessel, during the time that it has coverage on it it's got an observer there and why not just count that time when the observer is on board that vessel observing it. I recognize there's probably the time when the observer's not on there and how you deal with that, but observer's probably on there for more than two days.

Salveson: Depends. For some 30% vessels that are smaller vessels that make day trips, they may take an observer on and off during the week, they have the option of 30% coverage during a 3-month period and they may choose to take that coverage sporadically during a month, a day here and a day there. I'd just like to mention one other point. The AP also considered having a minimum amount of sampled catch versus a minimum amount of observed days as a triggering criteria. And of course you'd have to weigh the fact that a triggering amount would be different for a large vessel versus a small vessel.

Pennoyer: Mr. Cotter, would you mind reiterating your point. I'm not sure how likely it is anybody's going to get sanctioned on a two-basis if we deal with a sort of monthly process. Are you worried that they should have more than two days or that we cover people that only have one day, or. . .

Cotter: Well, I think that vessels that have observers ought to participate in the penalty box program, so I guess the question is how do we do that and one of the concerns I had and I don't know if it's legitimate at all, was if you based it on two days during the course of a seven-day fishing week, is that a significant enough amount of information relative to the entire fishing week to conclude that the vessel should be shut down.

Pennoyer: I guess if it isn't significant enough, then 30% coverage is not going to do it. We're basically stuck with the fact that we've got some vessels at 30%. We're facing a lot of variation in that category. . . [unintelligible]. . . also as a corollary is we're facing a lot of time they're not covered and they could be fishing at a far different rate but I don't know how we deal with that except to sort of live with it and I think the recommendation was to have at least some minimal time during a week that you didn't go below that and the two days was our. . .

Cotter: I'm not saying it's a bid idea. I was just. . .

Alverson: Steve or Sue, did you have any discussions internally of perhaps seven or eight days a month as opposed to two days a week, of what that would gain or lose in the process for this vessel size category?

Salveson: We did discuss that and what the Region recommended was that during a four-week period a vessel's average bycatch rate during that period would be determined and checkpoints, or vessel evaluations, would only occur at the end of a four-week period, let's say once a month. And that differs from the AP's recommendation. Their recommendation is that a vessel would be judged at the end of each week based on the prior four weeks' average bycatch rates for that vessel. And if that vessel only fished one week during the past four weeks, that rate would be used to judge that vessel. Now with the Region's recommendation that could also happen, of course. If at the end of an established checkpoint period a vessel only fished three days out of that total month, or two days out of that total month, those two days' observed bycatch rates would be used to judge that vessel, even if they fished all four weeks unobserved. Again, we can't bring a vessel into this program unless we have some observer data.

Rick Lauber (CM): On these smaller vessels that would be going out for a relatively short time and then coming back, my understanding is your days start when they commence actual fishing, not counting running time and so forth, that of course seems reasonable. But, if that's the case and it's going to be. . . you think it would be one-

third, or 30% of the time, two days a week, in actuality wouldn't that approach, as far as fishing time, more like 50% of the actual fishing time, because of time running to and from and unloading and so forth? Wouldn't you be observing. . .if it was two days of fishing a week, more than 30% of the fishing?

Salveson: This is, again, going back to what we may recommend as a change to the observer plan in that a vessel's observer trip or an observer day would be re-defined such that running time or down time, once fishing equipment has been deployed, would not count towards that vessel's credited 30% coverage. It's only those days that fishing gear is actively deployed or retrieved. Does that answer your question?

Lauber: Well, I think it partially does, but maybe it raises another one. How does that. . .let me think this through; let me ask it later. Move on.

Mace: I have a thought. You've indicated that you're going to go back and assess some of these ideas and come to us in September with what you think is doable and what isn't, or what would be the best alternative. Now, I have some problems with the Council attempting to vote on each one of these issues with that caveat that you've mentioned. You're going to come back and take a look at what the AP has suggested and what maybe some of the people around the Council have suggested and so I'm wondering if it wouldn't be appropriate for us to adopt the concept that you have recommended here, with the requirement that you come back in September, look at these other suggestions and either modify or stick with your original intention.

Salveson: I'm sorry---I did not mean to relay that we question the doability of some of these things. We think that most of them, if not all of them, are technically doable. The question is whether or not some of the performance standards that we're recommending are the appropriate ones, and it's not a matter of doability, it's a matter of adequate statistical analyses supporting a particular decision the Council wishes to make, or supporting what goes out in final rulemaking.

Cotter: What I've got before me is the letter from Mr. Pennoyer and then the AP minutes, the back page, or the attachment. Aren't we talking about a couple different things here, really. One of them is the moving average, the AP approach to determining the time frame for average versus the NMFS approach. We could probably take that up separately. The AP approach is outlined in #2, and that would be the one that's contained in the motion right now, so if we wanted to buy that, then there's no change that we need to make here. The other issue is how we want to treat vessels less than 125 feet that have observers. And the question would be do they or do they not participate in a penalty box program in an incentive program. That's the first question and the second question is, if so, under what basic standard, and your recommendation to us has been that, yes, they ought to participate and if so, the standard would be two days a week when they're being observed. Maybe what we could do is, in

this regard, follow Mr. Mace's idea and view the issue of the vessels 125 feet and over separate and apart from the vessels less than 125 feet and ask that you do the type of analysis or whatever it is that you're talking about doing, for the vessels that have 30% coverage and we can take a look at that in September. But otherwise, we would just be agreeing that, without additional action, that the AP recommendation on the continuing four-week averaging would apply and that would apply to the vessels at least in the 125 foot and over category.

Salveson: My only comment is that we would probably need further guidance for proposed rulemaking that would initiate, or that would set forth the Council's proposal for a triggering criteria. And, say two days a week, that would have to be in regulations under proposed rulemaking. Again, that could be changed pending Council comment after the September meeting to something that you may feel more appropriate after you receive further information from NMFS.

Cotter: So, then you would need the Council to amend the motion, because the AP did not touch on that, so the Council would need to amend the motion to determine that for the vessels that are in the 30% coverage category, that the triggering mechanism for them would be two days of observer coverage in a particular week would bring them into the ball game for the penalty box.

Salveson: I'd amend that one step further and say for any vessel, a vessel at 100% coverage that just starts a fishery such that it only has two days activity in that fishery would have the same problem, so it'd be for any vessel that has two or more days. . .

Cotter: Would then participate in a penalty box program. Mr. Chairman, I so move. Would you like me to articulate it more clearly? [Yes. . .] I move to amend the motion so that any vessel which on a weekly basis has two or more observer days would participate in the penalty box program.

Blum: Second.

Collinsworth: I have a motion and second to amend the main motion.

Cotter: It's my understanding that, based on the conversation that we've had, that the agency is going to be doing some analysis during the course of the summer and at the September Council meeting will be in a position to offer comment in the event that an alternative approach may be more appropriate.

Collinsworth: I want to make sure that I am clear, what would be before the Council in September; would it be the proposed regulations, or . . . it's my understanding it would be the proposed regulations and we would have an opportunity to comment on the regulations. Is that right? Or is that wrong?

Jon Pollard, NOAA General Counsel: That would be correct. The proposed regulations would be issued. The public, including the Council, would have an opportunity to comment on those and the Secretary could then, in his final regulations respond to comments received and alter the substance of the proposed regs.

Collinsworth: Part of the Secretarial review process, that's what we'll have before us. I wanted to make sure that everybody understands that and that we're not going to have this issue back before us within an array of new data and new sets of options and alternatives, so . . . can't put off until September many of these decisions. Further discussion on the motion that we have before us?

Peterson: I wonder if Larry would repeat the motion please.

Pautzke: We're going to put it up on the screen for you; we need to get the lights turned down.

Mace: This is an amendment, isn't it?

Collinsworth: Yes, this is an amendment to your motion, Mr. Mace, which was to adopt the AP proposal. This is an amendment to that.

Cotter: Just to make sure that I and everybody else understand the practical effect of this motion, I'd like to ask a question or so, if I may. For those vessels that are less than 125 feet and are participating in 30% observer program, if this motion is adopted and the regs implemented, then next year sometime, if a vessel is carrying an observer and is in that category and has the observer for two or more days, then the vessel begins to participate in an incentive program, and in the event that the observations establish that that vessel has been fishing in the dirty range, the penalties that are applicable would apply to that vessel and that vessel; would presumably be shut out of the fishery for whatever that length of time is. At the conclusion of that time the vessel could come back in and may or may not be carrying an observer at that time, so it may or may not then be participating in the program. Once again, is that correct?

Salveson: That is correct. I'd just like to follow up that the Region did make a suggestion, that once a vessel has been suspended that they must, when they resume fishing after that suspension period, they must take on an observer, whether or not they are required to do so under the observer plan, for the next four week period.

Alverson: What does the word "can" do to this motion? I mean, does that mean. . .

Blum: "Can" was not in the motion that I seconded.

Pennoyer: Yes, this is not a voluntary program.

?: "would" . . . "will"

[Miscellaneous comments]

Cotter: Sue, your last comment, the recommendation is not included in this motion.

Salveson: Just one minute of background information. A lot of the penalty box program in regulations that . . . [unintelligible]. . . are based on a similar program in the tuna fishery with relating to porpoise mortality and in that particular program they had a clause that required a vessel to take an observer on board for a certain period of time after that vessel resumes fishing after a suspension period. That's simply an idea for consideration. I don't know that we necessarily recommend that. It shouldn't be for the smaller vessels, because it's almost a double penalty for them.

Cotter: Well, that was my concern, and I think we need to be fair here and have those vessels participate in the program. I think the four week rolling average is a good idea, but in the case of some of these small vessels, it may make it impossible or very, very difficult for that vessel to [Change to Tape 70] every get out of the trap of having a chance to begin to accrue some catch history to counteract. . .

Blum: What does that have to do with this motion?

Cotter: What it has to do with this motion is that in the discussion. . . I just want to make sure that implementing regulations do not implement that provision that Ms. Salveson articulated a moment ago.

Blum: That item, I believe, is a discussion item further on this morning or this afternoon.

Cotter: I have not seen that item.

[Miscellaneous comments]

Collinsworth: Any further discussion on the amendment to the main motion? Are there any objections? No objections, then we'll proceed.

Salveson: The second item is what is the appropriate number of target fishery categories that vessels' bycatch rates would be judged against, and you have recommended at your last meeting, ten or eleven categories, and I believe the AP did concur with what the Region recommended for 1991, which is pretty much the PSC apportionment categories, breaking out, however, Pacific cod and bottom trawl pollock in the DAP other groundfish fisheries and that is based on our findings that the Pacific cod fishery does have a significantly different bycatch rate of halibut than that observed in the bottom trawl pollock fishery. I want to highlight one other thing and maybe Jon Pollard can provide some direction on this. I drafted up some very rudimentary regulations that have yet to be reviewed but in that I attempted to framework the process by which target fishery categories are determined so that prior to the beginning of each year the Regional Director, in consultation with the Council, would come up with a list of target fishery categories that then could change from year to year in order to react to certain situations or developments in the groundfish fishery that are unanticipated at this point in time.

Pollard: Sue, would the process much like the TAC specification process, September, public comment, and then final action in December for implementation by the Secretary?

Salveson: Right.

Pollard: That would seem to be a possibility; I can't think of anything that would preclude that, offhand.

Collinsworth: I think it would be appropriate to have a motion, yes, I mean, if your motion is to amend the main motion which is the AP's. . .

Peterson: Do we need a motion?

Collinsworth: If it is different than the AP's recommendation or if we want to add dimension or clarify, then it would be appropriate. . .to amend by clarifying the AP's. . .or specifying. . .

Cotter: Well, I'm a little embarrassed, because I'd be more than happy to make the motion, but unfortunately I was reading while the explanation went on and didn't. . .what I heard, somebody else ought to make the motion; I did not hear it.

Pennoyer: Just to get it on the record, then, I move that the categories specified in my letter to Clarence of rock sole, yellowfin sole, and other flatfish, Greenland turbot, Pacific cod, bottom trawl pollock and other groundfish, be the categories to which the penalty box would apply in 1991.

Alverson: Second.

Collinsworth: Is there clarification on the AP's recommendation, Dave [Fraser]?

Dave Fraser (AP Member): The context of the AP's discussion was on page, I think it's 2-11 of your EA/RIR. There's a list of target fishery rules for identifying target fisheries based on catch composition. That, multiplied by the three PSC species gives you your 27 potential cells. The context of our discussion was that the Regional Director, based on available resources, would make the determination of what the optimal number of cells that he could monitor would be and we did not discuss it as a decision that would be made and binding, in December, as Mr. Pollard explained, as a part of the TAC specification process; I think we, as I understood it and the context of the discussions of the workgroup, thought of it as a little more dynamic than that. That, if for instance you had a situation like occurred in 1990 where you did not anticipate a turbot fishery problem. You would go into the year not intending to monitor a turbot fishery, but if all of a sudden you see that there's activity in that cell that creates a potential problem that that fishery is going to constrain, or be constrained, then the Regional Director would have authority to monitor that cell so that. . . Now we didn't get real elaborate in that discussion, but it was within the context of what's mentioned in the EA/RIR of optimal utilization of the resources available to the Regional Director, and not knowing his budget up front, we did not pick a particular list of cells that would be active.

Cotter: To summarize, then, what you wanted to do, is make sure that the Regional Director had some flexibility to take a look at these cells in season and if a particular problem occurs someplace, to zero in on it. [Correct] And, Sue, that was also a recommendation from yourself, was it not?

Salveson: My recommendation was a little bit different in that the determination of target fishery categories would not occur inseason, but rather it's an activity that would occur prior to the beginning of the year. I just want highlight one other point. Within any PSC apportionment category. . .let's take for example the DAP groundfish other category. You have one PSC limit that applies to all fisheries in that category. The more you broker out separate target fisheries within a category, the fewer vessels you are going to kick out because, judged against their peers, they may not be dirty, as in the turbot fishery, the fewer vessels you're going kick out and you're undermining the concept of lowering average bycatch rates within a PSC apportionment category.

Fraser: . . .discussed, is that it appeared in the letter from the Regional Director that they were talking about the "other" category as combining the remaining cells and that was something that we discussed and very definitely did not want a situation where the Atka mackerel fishery was combined with the perch fishery so that a group of perch fishermen may have a very different bycatch rate, legitimately, from mackerel fishermen, and one group would end up kicking out the other. The cells would be as defined in the EA/RIR. There is an "other" cell, but that has got a particular definition to it in the EA/RIR. It would not change as apparently in the Region's letter by being expanded to pick up those fisheries that were not in the active list, and become active in itself.

Cotter: Mr. Chairman, aren't you glad this isn't complicated? . . . Mr. Pennoyer, you would have inseason authority under some of the amendments that we're projecting coming on line, 16a, some authority to go in and address hot spots that may occur, so you'd have some flexibility to address those. I think that Ms. Salvesson's idea is a good one to make sure that the Region has some flexibility on an annual basis to tinker with some of these definitions to the extent necessary rather than having to go through a plan amendment process again and we ought to provide that authority to them.

Collinsworth: Mr. Pennoyer, would you wish to modify your motion to put some caveat that in addition the Regional Director may. . .whatever?

Pennoyer: Change categories inseason?

Collinsworth: Expand the number of categories, or to allow you to have some flexibility to . . .

Pennoyer: Expand or contract the number of categories, depending on the situation?

Collinsworth: Yes, based on empirical observation of the way the fishery is being conducted and . . .

Pennoyer: Right now I'm not sure what criteria we would use for frameworking that authority. We're going to be discussing this under the hot spots in September and maybe we can cover that way at that time. I talked to Jon a minute ago and we're not exactly sure how we would structure that legal authority at this moment. I don't mind the concept, I'm just not sure how to do it right now. Maybe we can deal with that in 16a if it's required in terms of the hot spot stuff for next year as Larry suggested.

Mace: Mr. Pennoyer, you did not include JV flatfish as a separate category, but you did in your letter. Did you mean to exclude it?

Pennoyer: Flatfish are covered, but if DAP or JVP would be separated automatically I think by the way the class of categories are set up, yes we did mean to.

Salveson: That is. . . under item 2, the last line, JV flatfish would be included as a separate target fishery category.

Collinsworth: Is the motion on the overhead accurate?

Pennoyer: May I ask a question of Sue, clarify for me, too. The "other" category, I think Dave's comment was "other" category in the plan includes certain fish and not others, and our "other" category seems to include everything else that isn't included in the first categories, so what was our intent in that regard?

Salveson: The "other" category refers to the PSC apportionment categories which are defined somewhat differently than the "other fishery" category for TAC purposes.

Pennoyer: Would you elaborate on his fears between Pacific ocean perch and Atka mackerel, then?

Salveson: I'm sure there are differences. Atka mackerel is a fairly clean fishery; rockfish. . . [unintelligible]. . . Again, I just want reiterate my point that within any single target fishery you could argue statistically different bycatch rates relative to other target fisheries. But the more you broker out separate target fisheries within a PSC category, all those fisheries are sharing the same amount of halibut bycatch quota, greater probability of not kicking out certain vessels, therefore you're undermining your whole intent of reducing overall average bycatch rates within a particular PSC category and you may be back to where you were again this year.

Terry: You have a trade-off here between trying to reduce bycatch rates and treating. . . and just making comparisons between comparable fisheries. The more you lump together, the more problem you have with some fisheries having low bycatch rates considering what they're doing being compared to others that have lower bycatch rates even yet because it's a different type of fishery, so I think in terms of equity it makes sense to break it out as much as reasonable. The intent of the AP was you'd compare comparable fisheries.

Alverson: Steve or Sue, we have a motion on the floor. What in addition to that would you recommend that we provide?

Collinsworth: The possibility may be some flexibility language for the Regional Director to deal with the "other" category should empirical observations prove that there's a problem that is developing within one species in the other category.

Pennoyer: Could you give us a few minutes, Mr. Chairman? I think we have a discussion underway and I'd like to hear what it is.

Collinsworth: Let's just take a break in place for three or four minutes here.

Pennoyer: Mr. Chairman, trying to summarize a sometimes confusing conversation we had, I think it breaks down to the fact that everything here is fine except the "other" category. The "other" category contains a combination of fisheries and if we do that in the penalty box in an aggregate form, it means that some of the fisheries that characteristically have higher bycatch rates, a small number of vessels may find themselves continuously sanctioned. Our proposal, I think, since we can't at the moment pick out participation and decide whether there are enough vessels in the category really to work with it, is to break out the two fisheries that may have high bycatch rates we'd be concerned about--sablefish and rockfish--and forget the rest of "other;" don't try and lump everything that might pop up into this category. So, for the public comment period, we would break out sablefish and rockfish, add those categories to this list; take the public comment and then decide whether to group them back together again or how we would approach it. We're happy with the categories, the other categories that are up here I think are fine. It's the "other" category that kind of fouls us up because we don't know exactly what's going to pop up in it. Sablefish and rockfish have been identified as two fisheries of concern; I guess we would proposed that we add those to the list, send it out for public comment, and proceed from there.

Collinsworth: O.K., then would you give the staff the language, or . . .

Pennoyer: That's it, just get rid of "and or groundfish."

Collinsworth: O.K., we now have, with the approval of the second, the maker has modified his motion; second approve?

Pennoyer: You need to remove the words, "and other groundfish."

Alverson: I seconded it . . .

Cotter: A question of Mr. Pennoyer. What's left in that "other" category? And, what other critters are out there?

Pennoyer: I think at this stage, pretty much Atka mackerel. I'm not sure whether "other miscellaneous" would be in there, but it's probably not enough in volume to concern yourself with and in terms of the overall, how the bycatch in the Atka mackerel fishery, is a clean fishery.

Blum: What advantage does this have over the AP recommendation? And what disadvantage does the AP recommendation have over this?

Salveson: This is essentially the AP recommendation with the exception that it doesn't include a "other groundfish" category. We can go back between now and September. . .remember we've only got six months' of observer information we're working on here, and we're making the assumption that the remaining species in the other groundfish category will not contribute significantly to halibut bycatch, but again, we can look at the information we have to date and if that information warrants, again, an additional category from what's listed here for 1991, that could be included in the public comment. Again, another difference is that we're recommending that this process be frameworked. Each year, during the September-December process you can revisit this list, add to it, delete from it, based on your previous year's experience with it, rather than having just a static list from which you must work from.

Blum: A comment before we broke by Joe, I believe it was, was that there is a trade-off between splitting out and lumping and I'm going to vote against the motion. I'm more comfortable with the approach that the AP has taken in that it provides more opportunity and more flexibility to address individual fishery problems as opposed to lumping them, that makes one clean fishery in a lump pay for a dirty fishery that has to be in that same lump, and I think the flexibility provided in the AP proposal is more in tune with what this Council desires than this proposal.

Pennoyer: Sue, what is the difference between the two. I don't think we've lumped that much extra; what. . .

Salveson: I don't think. . .we haven't lumped anything. We just deleted one category and that's the "other groundfish" category. We've broken out every species the AP recommended to be looked at as a separate target fishery.

Collinsworth: Plus, this moves closer to, I think, addressing the AP's concern.

Salveson: The only fishery now that may not be broken out would be Atka mackerel and that's essentially a clean fishery that information to date indicates we don't need to worry about.

Blum: Clean fishery by all gear types?

Salveson: The Atka mackerel;. . .it's a trawl fishery, yes.

Peterson: Where would arrowtooth flounder fit?

Salveson: I believe the arrowtooth flounder is with the Greenland turbot.

Mitchell: Call for the question.

Collinsworth: Is there any objection?

Blum: I object.

Collinsworth: Motion will show one objection, Mr. Blum. The motion passes. What is the next decision point, please.

Salveson: The next decision is what performance standard are you going to use to determine what is acceptable and unacceptable average bycatch rates. The AP has recommended that a vessel be judged on its moving, four-week average bycatch rate, as it relates to a moving, four-week average of a particular target fishery category within which that vessel is placed. And that vessel would be judged at the end of each week. The question is, what is going to be the triggering criteria to determine whether a vessel is clean or dirty. We have a number of possibilities. You can have between two and four, even six times an average fleet rate; you can have a standard deviation from the mean. Again, at this point we have been unable to do extensive statistical analyses on what may or may not be appropriate. The region recommends that we follow, I think, the AP recommendation in terms of using moving average rates, take a conservative stance with regard to a triggering criteria, i.e., two times. If a vessel exceeds two times the fleet average it would be determined to be excessively dirty, and come September if additional information indicates that we want to go a different route, or if the Council should go a different route, you certainly have the option to do so under public comment.

Collinsworth: All right. In order to . . . we would need to . . . select a multiple, or a rate, because the AP's recommendation gave us an example but did not select, so we would need to amend the AP motion to make it specific as to what the appropriate rate would be. We've heard a recommendation from NMFS, a conservative rate of two times.

Cotter: I move to amend the AP recommendation, outlined in #3 of their report, to read, "Excessive bycatch rate is defined as a multiple of the fleet average, two times the average."

Blum: Second.

Cotter: Very quickly, I would have preferred to have perhaps even a lesser amount, but I think there's a couple of factors that come into play. This is a penalty box approach, not a real bona fide type of incentive program, and number 2, the type of penalties that are applied against the vessels for exceeding the rate are probably going to be proportionate to the definition of what's dirty. In other words, if you have four times the rate, then you might have a very substantial penalty whereas if you do it at two, you have a lower initial penalty and it seems to give the vessels a chance to get the warning and make some changes in a reasonable fashion.

Collinsworth: Is there any objection to the motion?

Mitchell: Object.

Collinsworth: Mitchell objects; motion passes. Let's go ahead, Sue.

Salveson: Following Mr. Pennoyer's cover memo to you, item four, the issue was raised whether or not vessels would be judged against not only a fleet average, but also a historic industry average and if a vessel met that . . . or if a vessel's average rates were lower or equal to an industry average, they would not be suspended. The AP recommended that historical joint venture observer data rates be used as a threshold triggering criteria, noting that joint venture fisheries between '86 and '89 exhibited a fairly conservative bycatch rate and that that would provide essentially a safety net target that a vessel could gauge itself against at any time during a fishery. The Region expresses some concern, whether or not average rates observed in the JV fisheries would reflect rates experienced by current DAP fisheries due to any number of different circumstances. But if the Council does decide to use a threshold historical rate, we just recommend that the Council select one that will encourage the domestic fishery to fish clean.

Cotter: A point of clarification? The issue here, then, is whether on one hand there would be a rolling average bycatch rate against which vessels will have their weekly average measured, or a threshold rate. And, if they are higher than, if they are excessively dirty, by the rolling average yet still below the historical average, they're O.K. and they're not kicked out? That's the question?

Salveson: That's right. It's not an either/or situation; it's basically, if they exceed current year averages but they are below historical rate averages they still would not be kicked out.

Cotter: The NMFS recommendation is to ignore the threshold and go with the current year average?

Pennoyer: That's the preferred alternative for us.

Cotter: I move to amend the AP report to incorporate the preferred alternative from the National Marine Fisheries Service.

Alverson: Second.

Peterson: What is the preferred alternative again, now?

Pennoyer: The preferred alternative by us is to use the current information, not to set a threshold that excuses vessels that may otherwise be dirty under current practices but would be excused because they were less than the JV past rate.

Collinsworth: Any further discussion? Are there any objections? Motion passes.

Salveson: I hesitate to, but I think I will, bring up a point that relates to your previous motion determining performance standards and excessive rates, and I just want to highlight for you some discussions that we've had in our office. That, if during the year there is insufficient vessel activity in a particular target fishery to calculate a statistically valid average rate, would the Council consider using the previous year's average bycatch rate observed in that target fishery during that same period of time, on which to judge a vessel?

Peterson: Well, it would seem to me this should work on an anchor wench ratchet type, where it goes down, but not go up, and I guess the problem I have with using the historical rate is based on the possibility and the hope certainly that there will be some improvements in fishing gear and techniques that might achieve a much lower rate. **[Change to Tape 71]** Now, whether you don't have enough data to calculate a new moving average, I suppose using the old average as a maximum would be acceptable, but I would hope that would not be the case.

Collinsworth: I think from my perspective that would be an acceptable procedure. Essentially what you're looking at is kind of an exception here where we do not have enough fishing activity to develop a statistically significant base to judge the performance against, and if you want to have something as a substitute, then I'm satisfied with this proposal.

Blum: Could we correct that by simply adding the word "most" in front of current up there, "most current information rates would be used"? Most statistically accurate, current information rates would be used, and that would give the flexibility?

Lauber: We wouldn't get in a situation where everybody opens with a 3-day suspension, would we, if the last current rate was last year and was . . . shut it all down and . . .

[Miscellaneous comments]

Cotter: This situation is going to occur what, in a fishery where there is one or two vessels participating?

Salveson: That's correct. Or, alternatively, at the beginning of the year when the fishery is just starting up and you just have, again, you're right, a couple of vessels.

Cotter: I guess that raises the other question and perhaps the turbot fishery last year is a good example, where there may be a very few number of vessels participating in the fishery and they're all, . . . some of them may be cleaner than others, but the rate is excessively high, or at least it's generating a very high bycatch overall comparatively. Is that addressed elsewhere in this program?

Salveson: Larry, you referenced the turbot fishery and someone says that's been taken care of -- they have their own PSC now, their own bycatch quota.

Pennoyer: Mr. Chairman, those items you bring up are going to happen and we're going to try to address them by season changes, hot spot closure authority, or by separate PSC caps in which you set a lower cap. It's going to be really tough. I mean, the cod fishery just characteristically has higher bycatch rates than a pollock fishery and nevertheless if you lump them in, then you're going to be sanctioning a lot of cod vessels that may be fishing clean for a cod operation but not for a pollock operation, so in this case you're measuring the Greenland turbot boats against each other and you're taking care of the problem, hopefully, by the smaller PSC cap and maybe a seasonal change when we get into it.

Cotter: I know we need to get moving, but at some point are we going to talk about how we allocate between these different fisheries. Because that mechanism, I mean we've got all these defined fisheries now and we're going to need to allocate the PSC between those fisheries in some fashion or another, are we not?

Salveson: The PSC will be allocated among the five PSC categories that are laid out in this amendment and that's DAP rocksole, DAP yellowfin flatfish, DAP turbot, DAP other, JV flatfish. That's it. And then, within the DAP other groundfish, we have now separated out Pacific cod, bottom trawl pollock, rockfish and sablefish, target fisheries that are not given their own separate PSC bycatch quota.

Pennoyer: Not necessarily.

Salveson: The PSC limit will be allocated to the specified PSC fishery categories.

Cotter: I'll study it some more over lunch.

Collinsworth: O.K., where do we . . . continue to move then.

Salveson: Item five. How soon after a checkpoint evaluation will a vessel, or could a vessel, be suspended? There is one decision point in this that we need Council input on. Just a little bit of background information first. We will receive weekly observer reports from each vessel that has an observer on board. We will verify that information and calculate fairly quickly those vessels that are preliminarily determined to be dirty. At that point, the Regional Director would notify the vessel operator that his vessel has failed the standard performance criteria and has been preliminarily determined excessively dirty. Now at this point, the Council needs to decide whether or not the Regional Director would request that that vessel cease fishing immediately and come to a designated port for observer debriefing, or whether that vessel be notified that he's been dirty and request to come to a designated port as soon as is practical. Once that vessel reaches port, the observer needs to be debriefed and after that period, which should happen quickly, the Regional Director would either continue and issue that vessel a suspension notice if it is warranted based on observer debriefing material. The question before you now is, whether or not a vessel must cease fishing immediately or whether it must proceed to port as soon as practical.

Mitchell: I move that he do it immediately.

Peterson: I'll second that.

Collinsworth: I was trying to see where the AP addressed this.

Salveson: I don't think the AP addressed this. I'm not sure they discussed this. They were cognizant of the implication here. It's obvious that if a vessel has to cease fishing immediately and come to port that could be a day and a half, two-day run to Dutch, then they're sitting there for another day, maybe longer, while final determinations are made, that the potential impact on the vessel may be greater than if a vessel just comes to port when it is more convenient for that vessel.

Collinsworth: Seems like an added incentive. The motion would be to amend the main motion to include the motion to require the vessel to return to port immediately.

Mitchell: I would move to amend the main motion to say that the vessel would immediately have to return to port.

Collinsworth: Is there a second to that. . .

Peterson: Yes, I seconded it.

Mace: I'm not a lawyer, but this vessel comes to port and runs a couple of days and they hold a hearing and he's not guilty. Then what happens? False arrest, or what. . .this is, as Sue pointed out, is pretty heavy stuff and. . .[unintelligible]. . .you ought to allow them to come in at their convenience although they have to quit fishing.

Pollard: This is an issue that we talked over with Dept. of Commerce attorneys in Washington under tort liability and Equal Access to Justice Act, and we came to the determination that if the agency had a reasonable basis when it commenced the action to bring the vessel into port for a preliminary determination and debriefing, if the basis was reasonable, then there would be no liability under Equal Access to Justice Act. However, this obviously does increase the exposure of the government to suits of this kind. It would depend, once again, though, on the circumstances surrounding [unintelligible] action and the determination that the agency made.

Peterson: Well, it seems to me that the option presented was they come in as soon as practicable. Could be the end of the season before it's practicable to come in.

Collinsworth: Further discussion on this motion?

Mitchell: Call for the question.

Collinsworth: Are there any objections?

Cotter: I object.

Collinsworth: The motion is approved with one objection, Mr. Cotter.

Cotter: But not for the reasons you think, Henry.

Collinsworth: Please proceed, then.

Salveson: The next item for you to consider is what length of suspension period would provide a sufficient deterrent to vessels to avoid high bycatch rates. NMFS recommended that if a vessel exceeded acceptable performance standards for one or more prohibited species during an evaluation period, that vessel would be suspended for a ten-day period for its first failure. During this period the vessel would cease all directed fishing for groundfish off of Alaska. NMFS recommended also that if a vessel failed to meet performance standards for one or more prohibited species during a subsequent evaluation period the vessel would be suspended for a period of four weeks. Three or more failures during a 24-month period would result in a 12-week suspension period for each failure. Now, the AP had an alternative proposal. They would judge a vessel separately for each prohibited species bycatch rate. The duration of the first offense for, say, exceeding a halibut bycatch performance standard would be three days. The second offense for exceeding a halibut bycatch standard would be one week. They further recommended that you consider increasing the suspension period by the ratio of that vessel's rate to the fleet average. . . [speaking to Joe Terry. . . the acceptable rate, that's right; well, that's the fleet average. Terry: No, fleet average. . . unintelligible. . . not at microphone]. . . Salveson: O.K., Yes, that's what I meant. So, if a vessel's rates were four times a fleet average, the ratio, its suspension period would be multiplied by two. Let me reiterate one more time. Take a suspension period, you multiply that by the ratio of the vessel's observed bycatch rate to the acceptable performance standard, which in this case is two times the fleet average. So they are further penalized by the amount that they exceed the acceptable performance standard.

Mitchell: I would understand this better if there were some specific examples shown on paper.

Blum: . . . [unintelligible]. . . hand out from the AP.

Salveson: If I may further clarify the AP's position, they also suggested, again as I mentioned earlier, that a vessel would be judged separately for each prohibited species, so that the first failure for halibut, they'd be shut off for three days; the second failure for halibut, they'd be shut off for one week; the third or more failure, they would be shut off for a two-week period. They'd be judged separately for red king crab and for bairdi.

Cotter: The NMFS recommendation; it's not clear. Is it cumulative suspensions?

Salveson: Yes, the NMFS recommendation is cumulative suspensions for all species combined.

Peterson: It just seems to me that the two penalties, the one in the AP and the one. . . [unintelligible]. . . one is very harsh and one is very lenient and I would make something in between but I don't know what it would be. It seems the AP, at 3 days suspension, I don't think that's very significant, but. . . the vessel can come into port, he's got a couple, three days off and that's great. The ten-day and the first, the initial violation could be one of those

instances where a trawler picked up a ball of crab, for example, without having any chance to. . .so I would think something in between. I think one is too difficult and one is too lenient.

Alverson: Sue, to interpret the AP, if you had a boat fishing in Zone 1, could he be over on red king crab and halibut and then you'd have two separate penalties, correct?

Salveson: Well, I had discussed this with Dave Fraser prior to this meeting and we're a little bit unclear as to what the AP consensus would be on that. When I talked to Dave his position was that two separate suspension periods, consecutive suspense periods, would be assessed against that vessel, that it would not be concurrent. For example, if this was a first offense for both prohibited species that have one three-day suspension for halibut followed by another three-day suspension for red king crab.

Alverson: Thank you.

Blum: How would NMFS handle that? Under the National Marine Fisheries Service proposal, how would that be handled?

Salveson: We would have one suspension period; well, our proposal was a 10-day suspension period for the first offense.

Hegge: Sue, this is under the Bering Sea plan, but as I read it it would effectively prohibit someone from going to the Gulf and continuing fishing, is that correct?

Salveson: Yes, that's correct.

Hegge: Second is, if they received a suspension, followed the suspension, felt they couldn't change their bycatch and decided to switch gear types or go to, say, midwater trawl, they would still be held under the obligation to carry the observer and comply?

Salveson: If they switched to a different gear type after the suspense period, they would have to comply with the observer plan as currently set forth in regulations.

Hegge: But also there's some sort of penalties that go along with it after they come back in, isn't there? The 10-day period, or something?

Salveson: Again, the recommendation that a vessel carry an observer after a suspension period, was patterned after a similar penalty program for a different fishery. I believe the intent for putting this in here is simply an alternative the Council may want to consider. I don't know that NMFS strongly recommends that all vessels that have been suspended must carry an observer for an additional four-week period.

Hegge: Maybe if it had language if they went back into the same fishery, or continued on in the same fishery.

Salveson: . . . [unintelligible] . . . Council's option.

Lauber: Can we prohibit them from engaging in any fishing, period?

Salveson: Yes, sir. Well, let me back off a little bit. The NMFS recommendation is that all further directed fishing for groundfish would be prohibited.

Lauber: Any place?

Salveson: Off Alaska, yes.

Lauber: Any place.

Salveson: Any directed fishery for Alaskan groundfish, yes. Obviously, if he wanted to go down to Washington, fish hake, he maybe could do so.

Lauber: Wherever it may roam?

Salveson: Within those areas within federal jurisdiction.

Lauber: That's not what I'm driving at. What about the Donut Hole?

Pennoyer: We haven't got to that topic yet, Mr. Chairman, and you were going to ask for a legal opinion as to whether we could regulate U.S. vessels fishing in the Donut Hole. I think it comes under that category. We had within the jurisdiction of the Council; if that includes the Donut Hole, that would include the Donut Hole.

Lauber: Well, if we act on this before we know that, then I'm kind of on a Catch 22. If we're going to have a . . . if we go with . . . if we would go with the NMFS recommendations on suspension, a 3-day suspension may not

be worth your while to make the run; but if you're talking about a four-week or 12-week suspension, it sure would be worth your while to consider alternative areas to fish and one of them that's not too far for some people might be the international waters of the Bering Sea, fishing for fish that we might consider to be Alaskan groundfish.

Pennoyer: I think there are questions how whether you reduce the penalty to avoid that, but whether you can avoid having boats going to the Donut Hole and fish for pollock we're concerned about. The idea was that a vessel could not simply get a penalty and therefore just skip over to another area and start fishing again, which in essence would not be much of a penalty.

Lauber: Well, Mr. Chairman, for the purpose of this thing, could we have this motion read that they cannot fish anyplace? And then if that anyplace does not include the Donut Hole, then I guess it wouldn't be effective.

Pollard: I'm prepared at this meeting at some point to go into some detail about the Council's and the Secretary's regulatory authority beyond the EEZ in international waters adjacent to its geographic area. At this point, if you'd like me to go into that, I will, but perhaps as an alternative you might want to leave this open, express your intent, and deal with it. . . come back to it later after I've discussed it. This will take several minutes to go through.

Pennoyer: If your intent is to prohibit groundfish fishing on areas of concern off Alaska and your jurisdiction includes the Donut Hole, then that would include that. If your intent is that it be fishing anywhere, off California, Washington, Oregon or anywhere else, then you're maybe on a little bit different ground. Your intention is he can't fish off Alaska, and I don't see that intent as stopped by this ruling. . . .[interrupted. . .can't hear him]. . . Donut Hole, fine; if you don't, then you don't.

Lauber: If the term 'off Alaska' would or could include---the suspense is killing me Mr. Pollard---if we would or could, if we say off Alaska, then fine, that's all I'm asking for. If this language covers the Donut if we can cover the Donut, then . . .[interrupted]. . .

Peterson: . . .that could be sorted out by simply identifying as those fisheries under the jurisdiction of this Council.

Lauber: Then we'll find out later what's under the jurisdiction of the Council. All right.

Collinsworth: Does anyone wish to offer a motion?

Cotter: I move the adoption of the NMFS recommendation.

Peterson: I'll second that.

Cotter: I think this is really a significant action if this Council goes ahead and implements this. This is very, very serious, it's a very serious program and the implications to a vessel that is not going to fish cleanly are potentially severe, justifiably so in my opinion. I think we ought to approve this; however, I am concerned with the third sentence and would move to amend the motion to delete the third sentence of that paragraph, "If not otherwise required to do so, NMFS recommends that a vessel be required to carry an observer during the first four weeks of fishing activity following a suspension."

Hegge: Second.

Cotter: Earlier, when Mr. Blum correctly asked why I was talking about something at the wrong time, we were talking about the vessels that have coverage. . . vessels under 125 feet that have 30% coverage, and that what we're doing with those vessels, at least as we've taken action thus far, is we're going to. . .if they have two days of observer coverage during a week, then they are now going to participate in the penalty box program. What this does, is it says that if vessels in that category happen to get suspended because they have exceeded the rate, then when they come back off their suspension and start to fish again for the next four weeks, they have to carry an observer with them 100% of the time or they can't operate. So they go from being a 30% observer coverage vessel to 100% observer coverage vessel during that time period and I think that's a little bit excessive and onerous on those size vessels and particularly since what we're talking about with those vessels is determining. . .you know, all they have to do is have coverage for two days out of that seven days and that's what they take the test based on. So, that's my concern.

Collinsworth: Any further discussion on Mr. Cotter's amendment.

Lauber: I would like to see the additional observer coverage on either after the second offense and maybe for a shorter period of time, maybe a couple of weeks, and after the third offense for the four weeks. I can understand not requiring the four weeks after the initial blip where somebody makes the mistake, and I would like to see it on at least the third offense--something's wrong, and we ought to be monitoring it.

Collinsworth: Mr. Cotter do you wish to take that as a friendly suggestion and amend your motion?

Cotter: I would suggest that after the second offense the vessel be required to carry an observer for two weeks, after the third and subsequent offenses the vessel be required to carry an observer for four weeks.

Collinsworth: Is that acceptable to the second? Mr. Hegge?

Hegge: Yeah, I guess so, except it isn't in the context I seconded it, but I'll accept it. I seconded the motion because I, first off, I think our observer requirements are going to be changed quite a bit. It's not really going to be feasible to get an observer two days a week. I don't see that working for vessels, so I think there's going to be some considerable change in that and I'm not sure I'm opposed to a person being required, regardless of vessel size, to have 100% coverage after a penalty. What I was concerned about is that if a person recognizes the error of his ways and goes into another style of fishing I don't think he should be penalized with a 100% coverage. If he decides he cannot fish within the required level at bottom trawl and decides to go midwater, I think he should go back to his regular requirements again.

Dyson: Just a comment. I think while we all desire to stop the dirty fishing, we don't want to make this program so tight that you can't harvest the TAC because you're afraid of setting your gear down. It's very possible when you see the sign on the bottom and set your trawl down, you could get some real bad bycatch and get in the penalty box. And, another point, I don't know that I agree that if you get out of one fishery that you couldn't go into another that had absolutely had no bycatch problem, such as a pot fishery. Why would you want to put him out of business so he can't fish anymore because he makes a mistake. That seems to me to be a pretty severe penalty. [Change to Tape 72]

Alverson: These requirements for additional observer time on a vessel, 60 to 125, I think is too burdensome and it not only represents a loss of fishing time and income for the time the vessels are laid up, which is the real impetus, but not financially fair thereafter. We have an observer program; these people come under it for this penalty box provisions; I believe our observer program already adequately already includes them with some type of observer observation and I won't vote for this amendment, Larry.

Cotter: What do you think it ought to be, Bob?

Alverson: I don't think there is any need for requiring additional observer coverage on the vessels. We have an adequate observer program to accommodate that.

Collinsworth: Is there any further discussion on this motion?

Pennoyer: Are we voting on the total motion, including the observer coverage, or you want to separate that into pieces, or . . . it's the total motion with observer coverage plus the length of suspension.

Collinsworth: Mr. Cotter's main motion was to adopt the National Marine Fisheries Service position, or recommendation on this. He then modified that by the motion that you see on the board and we're dealing with the motion that is on the board.

[several persons say "no"]

Blum: Mr. Chairman, excuse me. He modified a sentence within the NMFS recommendation that is not on the board, but is soon to be on the board. The third sentence. . .

Peterson: The third sentence, which reads, "If not otherwise required to do so, NMFS recommends that a vessel be required to carry an observer during the first four weeks of fishing activity following a suspension."

Blum: What it now says is a observer would be required after the second offense for a two-week period, and after the third and subsequent offenses, for a four-week period.

Salveson: I'd just like to highlight for you the AP's recommendation that instead of a 24-month accounting period, it would be a moving 12-month accounting period. Also, the AP recommended that suspensions would apply such that a vessel would be prohibited from fishing in all fisheries under Council jurisdiction, rather than just the directed groundfish fishery.

Mitchell: I'd like this clarified. What are we voting on as far as the thing? What's on the board there? Four weeks for three failures or more? Is that what we're voting on?

Cotter: No, no, no, Henry.

Mitchell: Well, that's what's up there.

Cotter: Henry, do you have Steve Pennoyer's letter?

Mitchell: Yeah, I'm looking right at it, but I'm looking at this on the board and I'm assuming that we're voting on what's on the God-damn board, so put what we're voting on on the board!

Collinsworth: We'll recess until one o'clock. The Council will have an executive session commencing as soon as the room is cleared. Thank you.

-----Lunch Break-----

Collinsworth: While we're getting back together, Larry, might you work with our staff there to get the motion that we had up on the . . .clarified?

Cotter: I was even thinking about starting over, Mr. Chairman.

Collinsworth: That would be wonderful.

Cotter: And then we could separate the issue.

[Miscellaneous comments]

Collinsworth: O.K., Mr. Cotter, you wish to withdraw your motion?

Cotter: Yes, I do.

Peterson: Which one?

Cotter: The combined motion, . . .

Peterson: Both of them.

Cotter: Well, it ended up. . .I had made a motion and at the suggestion of. . .I combined it, I withdraw it, the whole thing.

Collinsworth: All right. The main motion then would be to amend the AP motion by referring to the National Marine Fisheries Service document, item 6, and deleting. . .which sentence?

Pautzke: Changing sentence three.

Collinsworth: Changing sentence three?

Cotter: What I would like to do is. . .I've withdrawn my motion. I offer a new motion. The new motion is to amend the main motion by adopting item number six of the National Marine Fisheries Service letter in its entirety.

?: Second.

Cotter: I did that so that we could then have this to work off of. We can amend that middle sentence and vote it up or down, and work through it.

Collinsworth: O.K., we now have by reference, National Marine Fisheries Service letter, item six. We now have that before us as the main motion. . .have before us as an amendment to the main motion. Is there anyone who wishes to offer any amendment to the amendment.

Peterson: I would like to reduce the penalty days in the NMFS: first suspension, 5 days; the second suspension, two weeks instead of four; and the third, or more, violations to six weeks suspension.

Alverson: Second.

Peterson: That is 50 percent, just half of what NMFS has proposed.

Lauber: That's the motion we've got, O.K.?

Peterson: This is an amendment to Mr. Cotter's motion.

Collinsworth: Mr. Cotter's motion is to adopt number six of the NMFS. . .

Peterson: Oh, O.K., the whole thing, the whole paragraph.

Dyson: It gives a little leeway and a little freedom that a fisherman wouldn't have a couple of bad days and get charged out of this thing, so I think it's a realistic approach and I favor it.

Lauber: I would vote for it at this point and reserve final motion depending on whether or not we can impose some type of observer coverage. If we can't get the observer coverage I would like to go back to the original motion, so I would support it at this point, assuming we're going to get some observer coverage.

Peterson: I'd like to correct what's on the board. The third, or subsequent, suspension would be six weeks suspension.

Cotter: I'll vote for the motion. I think, though, that we need to be cognizant that we're going to have an analysis done and at the September meeting we may discover that these numbers may need to be adjusted in one direction or the other and offer comment at that time.

Mace: I'm going to support it with the provision that there's an opportunity to make another amendment. I'm concerned about the two-year period; I'd rather make that one year.

Pennoyer: As the originator of item six I'm also going to support it. I think when we dealt with this we were dealing with both the standard performance and the penalty, and if you set one stiff I think you can set the other a little bit less and give a person time to adapt to the program. I too agree that this would probably be preferable, the amendment as written would probably be preferable.

Mitchell: I really don't think that it's enough and I would prefer having a range, and that range be from what has been proposed here up to the original proposal and that be left to the option of the hearing officer.

Collinsworth: Any further discussion? Roll call vote, please.

Pautzke:	Mr. Dyson	Yes
	Mr. Hegge	[couldn't hear his vote]
	Mr. Lauber	Yes
	Mr. Mace	Yes
	Mr. Mitchell	No
	Mr. Pennoyer	Yes
	Mr. Peterson	Yes
	Mr. Alverson	Yes
	Mr. Blum	Yes
	Mr. Collinsworth	Yes
	Mr. Cotter	Yes

Pass.

Collinsworth: All right. Now, we have paragraph six in the National Marine Fisheries Service letter amended as on the board.

Pennoyer: I have one further amendment I'd like to make in our original proposal. As Sue Salvesson said, this observer requirement was taken out of the tuna situation and we had not specified whether the person goes back into the same exact fishery, or some other fishery. He might be fishing midwater trawl gear. I don't think it fits

exactly now, and I think we can rely on the observer program and whatever modification we make of it to satisfy our requirements for observer coverage. I think it comes out more at this stage as a double penalty than as a specific method of reducing bycatch, so I would recommend we drop that sentence entirely.

Lauber: But take it up, consider it, under observers? We could. . .

Pennoyer: I'm not sure how we're going to do it under observers, exactly. I guess my statement was if we don't think the observer coverage on 30% boats is adequate we'd deal with that question under the observer program. All we're doing is getting a person to put an observer on when he comes back in, regardless of what fishery he's going into; it doesn't say, yes, to go back into that same specific fishery you've got to have an observer; if you don't, you don't. He may be fishing gear that doesn't have a bycatch. It's not specific enough to accomplish a bycatch reduction goal when it does come across more as a penalty, an additional penalty to the closure.

Lauber: I don't know that we can call it a penalty, but it goes along with the penalty section. Technically I don't know that being on probation is a penalty as such, but it's a form of assisting a person who has had a problem not get back into another problem and maybe you're thinking of it being a penalty. The other problem I have with it is that if there are a few people that have a problem and we don't have this observer coverage for at least the second and third offense, that then there might be more of a temptation to say, well let's just go 100% observers on every day and that will solve all the problems, so in other words we're providing in that case, maybe you don't want to call it that, but we're providing a penalty for people who are clean operators. I just think we give somebody a break and certainly if we're going to reduce it from 24 months to 12 months I think that we should have some type of observer coverage after the second offense.

Pennoyer: I have one other practical consideration if I could bring it up, and that is the fact that I'm not sure the observer program can accommodate a whole bunch of sort of random events of boats in and out of penalty situations that then have to have an observer available immediately to go back fishing. And, I think we're going to end up with a lot more people hung up on an observer not being available; . . .granting waivers, or them not able to go out, and I think that's going to make it difficult. Now the observer coverage within the 30% group, they plan it, they have to plan when they're going to take the observer and the contractor has some time to set up that planning. I think this is going to make it very difficult.

Collinsworth: Well, what we're looking at here, at least if we move forward with an amendment. I certainly have a similar feeling as Mr. Lauber does. . .we're looking at a second offender; I mean, a first offender is not put under any jeopardy, he goes back into the same kind of program. If he's a second offender or a third offender, and there is some transaction delay in getting an observer on board or something, I think that that may be warranted within

the system. I think Mr. Lauber suggests that it's essentially kind of like a probationary period to help these people get through some difficulties.

Cotter: Maybe there's a . . . I think there's some merit to both sides and maybe there's a middle ground here. Often times don't the accompanying regs include some language that provides the authority to the Regional Director or the government to take other measures as may be appropriate and if we were to attach that type of language into this type of situation for these vessels in the 30% class, it may be that a vessel that the first time they're dirty had a bycatch rate that was not two times in excess, but ten times in excess. Well, that vessel may have a lot more of a problem that is 2.1 times the base rate and you may want to pay more attention to the super dirty vessel the next time around and have them take an observer with them for a few days. Couldn't you provide yourself with that type of latitude and doesn't that get at what Mr. Lauber and Dr. Collinsworth are saying?

Pennoyer: The observer plan gives us that type of latitude now, to place an observer on any vessel in a situation we think is required. But, if you want it as a standard thing, then it's a little bit different. What we've used that authority for is to sample areas that we need sampling, to deal with fisheries coverage when we don't think the coverage provided by the current plan is adequate, such as below 60 feet, and that type of thing, it's not just a sort of a standard sampling operation, but we do have that authority. I guess your answer was, if somebody's going back into a fishery, which I'm not sure how we'd know, that he was dirty in before and if it's a problematical fishery we could put an observer on board, yes.

Cotter: Well, what I was saying is, you've got a vessel and the vessel had an observer and it got thrown into the penalty box game and it flunked and so it payed the price, was on the beach for five days or ten, or whatever the penalty is. You take a look at the degree to which that vessel was dirty and you kind of reach a judgement call whether or not the vessel is barely dirty. It may be that you don't have to saddle him with an observer. On the other hand, if he was many, many times dirty, then there may be a value in having an observer to help clean it up.

Collinsworth: Just a personal observation. I think we may be trying to develop such a sensitive program that we're getting variations. We've got variations for second, third and fourth offenses, you've got variations within the degree of how bad you were when you committed the penalty that put you in the box. I think that we could go on and on with this and I'm not sure that that degree of refinement is something that we can expect to put into the system as we initiate it.

Alverson: Well, I'm just trying to get some sense, particularly in the 60 to 125 foot category for their problems of trying to order an observer. I know what some of their problems are and I could see a guy being on the deck for the second two-week period and then being shoreside another month because there were no observers

available. I think we have to be aware that our observer program is beginning to fractionate within the private sector, the people that are supplying observers, and we may lose two or three major companies by next year because of the way our industry is compressing itself. I didn't hear a second to Steve's suggestion to remove this sentence, was there? If not, I have a proposed amendment.

Collinsworth: Mr. Pennoyer. . .that's an amendment to the main motion.

Alverson: I didn't hear a second.

Cotter: I didn't hear a motion.

Collinsworth: I thought I heard a second.

Pautzke: There was no move, really.

Pennoyer: Then I move to remove that sentence requiring an observer from the item six.

Mace: Second.

Collinsworth: Now we have a motion before us to amend the main motion by . . .

Pennoyer: Can I make one further comment? I think Mr. Cotter's right. We have the authority to do this. But one thing we don't know yet, how this 30% observer coverage is working. Probably aren't going to know it; aren't going to know how people did it, what the coverage was, coverage within quarters, coverage within weeks, coverage within fisheries, until the end of this year. I guess what I'm suggesting is that we not do this as a mandatory item in this penalty, probation, whatever, sequence; leave it up to us to try and work with it, come back to you with further recommendations that might include some amendments in the observer plan that are going to change the way we do the 30% coverage in the future. I can't promise that, but we just don't know yet and we'll just try and deal with it. You've got a penalty box, you've got sampling already required; you've got penalties that deal with three species of bycatch over a large number of cells. There's lots of opportunities for somebody to get nicked and I think that's probably adequate at this stage.

Lauber: I think it's most interesting to find myself reading a memorandum from a man by the name of Steve Pennoyer and I'm arguing with the same man about the difference. When he asked for four weeks on the first offense, when a person would only be ashore for three days and didn't find a problem getting an observer then,

we're only asking for a second and third offense and a person would have two weeks to find an observer and they're sure as hell not going to have a lot more to do than look for observers. So, I still speak for the motion and support the original Steve Pennoyer.

Pennoyer: It just proves you should never write anything down.

Collinsworth: Any further discussion on the motion before us? Roll call, please.

Lauber: We're voting to take this out of the motion? [someone said, yes] O.K., so a vote in favor. . .I want to vote no, right?

[Miscellaneous comments]

Pautzke:	Mr. Lauber	No
	Mr. Mace	Yes
	Mr. Mitchell	No
	Mr. Pennoyer	Yes
	Mr. Peterson	No
	Mr. Alverson	Yes
	Mr. Blum	No
	Mr. Collinsworth	No
	Mr. Cotter	Yes
	Mr. Dyson	Yes
	Mr. Hegge	[not present for vote]

Collinsworth: The motion fails. Mr. Lauber, do you wish to offer an amendment?

Lauber: I spent four lifetimes counting votes and I can tell you my motion isn't going to get six, so. . .Mr. Pennoyer spent a long time counting votes, too, so I. . .no, I don't have any motion to make. I'm beat.

Mace: I'd like to move that the length of time be changed during a 12-month period rather than a 24-month period on the last sentence.

?: Second.

Mace: For a couple of reasons. Number one, I think that it's going to be administratively a lot cleaner. Number two, I think 24 months is a form of double jeopardy. We'll be very likely changing regimes, bycatch caps, things of that nature, so I think it's a lot cleaner to stay with a 12-month interval.

Pennoyer: I'd second that, but would you accept as a friendly recommendation. The AP recommended a 12-month rolling average, so it wasn't necessarily a calendar year; it was a 12-month period.

Collinsworth: Would that be acceptable, Mr. Mace, a 12-month rolling average rather than a straight 12-month fishing season?

Mace: Whatever is administratively cleaner, I. . . [tape seems to have cut out here; no answer to whether or not he concurred]

Collinsworth: Further discussion? Are there any objections?

Blum: Mr. Chairman, I'm not sure what was done; they're still trying to get the motion up on the wall. People need to speak up so that people can hear, please.

Pautzke: I think people need to speak up. Essentially, you're changing all the 24-month references to 12, a rolling 12-month period.

Mace: One observation, Mr. Chairman, there are two 24-month periods mentioned there; I think we should change both of them to 12 months.

[miscellaneous comments while motion being prepared for overhead screen]

Collinsworth: Have we got it now, does that look like it? All right, now what we're voting on is the change where it now shows 12 months; in the previous format it showed 24 months.

Pautzke: It's rolling 12 months. . .

Collinsworth: Changed to a rolling 12 months; that's what we're voting on.

Pennoyer: The second 12 months ought to be a rolling 12 months, too.

Collinsworth: Yes, that's right. Any further discussion on the motion? Is there any objection? The motion now shows as amended. Any further amendments.

Lauber: Can we see what it says, roll it back? Probably shouldn't do this, but I . . . don't want to be tricky, but I think since that reads . . . we're voting on Cotter's motion? Move to amend the motion by adopting . . .

Collinsworth: Yes, that's correct.

Lauber: And then the motion to take out the observer requirements failed on a 5-5 vote, so technically the four weeks are still in there, and I want to be a good loser, Mr. Pennoyer, and actually you probably better. . . you've got four weeks for the first offense and four weeks for the second offense and four weeks for the third offense now, 'cause your motion to withdraw it failed on a 5-5 tie. That what you want?

Pennoyer: No, Mr. Chairman, it's not.

Cotter: I would move to amend that sentence to read, "if not otherwise required to do so, NMFS recommends that it have the authority to place an observer on a vessel following suspension, if it deems it appropriate.

Mitchell: Second.

Collinsworth: Well, speaking personally, I sure would like somebody to put the zero, two and four on the table again, because I'm more comfortable with that, that providing a bit more direction than simply leaving it up to NMFS to determine whether or not they'll put someone on a vessel after a period of suspension. I think that they need more guidance than that. I'm sure that one of the things that we're looking for is . . .

Mitchell: I withdraw my second.

Collinsworth: . . . is fair and consistent application of these decisions and consistency, I mean it would seem to me that the Regional Director would have to promulgate some policy or something that they could assure that there's a consistent application of which vessels they would or would not put an observer on.

Cotter: Well, just so that we can see what else is coming, I'll withdraw the motion and . . .

Alverson: I would move that in that sentence under discussion, that it read, "If not otherwise required to do so, NMFS recommends that a vessel be required to carry an observer during the first four weeks of fishing activity following suspension after the third violation during a rolling 12-month period."

Pennoyer: Second.

Collinsworth: Discussion, please.

Alverson: This particular provision I think meets somewhere in the middle of where people are talking, at least I hope, and in particular to the vessels in the 60 to 125 foot class I think addresses some of their fairness issues in terms of the costs of trying to secure observers in a timely manner as well as just the monetary cost to their operations. Those are my primary concerns with the amendment that I proposed.

Collinsworth: Roll call, please.

Pautzke: Clarification, Mr. Chairman. This was after the third suspension that would happen. Could they have more than three suspensions? I guess they could have a fourth suspension, couldn't they? Or fifth, or sixth if they were really bad guys.

Cotter: Do you mean, Bob, that for the third and subsequent suspensions. . .

Alverson: Yes. . .

Peterson: Says three and more failures.

Alverson: I just couldn't conceive of some. . .

Pautzke:	Mr. Lauber	Yes
	Mr. Mace	No
	Mr. Mitchell	No
	Mr. Pennoyer	Yes
	Mr. Peterson	Yes
	Mr. Alverson	Yes
	Mr. Blum	No
	Mr. Collinsworth	Yes
	Mr. Cotter	Yes
	Mr. Dyson	Yes
	Mr. Hegge	Yes

Pass.

Collinsworth: We're back now to the amended paragraph six. Any further amendments to be offered?

Blum: A matter of query? Would it be permissible under the rules to amend that which has just been passed, that same sentence to say after the second violation, a two-week observer, or have we taken care of that issue for

its entirety by the motion that was just passed? The reason I voted no is I wanted to do the zero, two and four. If I've lost that opportunity, I can live with that. If not, I would make the motion I have discussed.

Collinsworth: The motion did not deal with the second week, or the second suspension; it dealt only with the third so I would consider a motion to be in order.

?: Second it.

Blum: I think it's appropriate to have some additional observer coverage after a second violation. I think that's indicative of a vessel operation that needs some scrutiny and while I don't think so after the first violation, I do . . . and that's the purpose of the amendment, is to give that little additional incentive.

Collinsworth: Any additional discussion? Roll call please.

Pautzke:	Mr. Mace	No
	Mr. Mitchell	Yes
	Mr. Pennoyer	No
	Mr. Peterson	Yes
	Mr. Alverson	No
	Mr. Blum	Yes
	Mr. Collinsworth	Yes
	Mr. Cotter	Yes
	Mr. Dyson	No
	Mr. Hegge	Yes
	Mr. Lauber	Yes

Pass.

Collinsworth: We now have the amended main motion before us, or amended amendment to the main motion. Is there any further discussion on the amendment? If there is no further discussion on the main motion we'll move to the vote. Roll call, please.

Pautzke:	Mr. Mitchell	Yes
	Mr. Pennoyer	Yes
	Mr. Peterson	Yes
	Mr. Alverson	Yes
	Mr. Blum	Yes
	Mr. Collinsworth	Yes
	Mr. Cotter	Yes
	Mr. Dyson	Yes
	Mr. Hegge	Yes
	Mr. Lauber	Yes
	Mr. Mace	Yes

Collinsworth: Is there anything further on this issue, encompassed in paragraph six?

Salveson: The next item you need to consider is whether or not the penalty box program would be applied only to bottom trawl operations in the Bering Sea. I believe the main impetus for this whole program are fishery closures resulting from prohibited species catches triggering area closures for certain fisheries. NMFS recommends therefore that the penalty box program be only applicable to those fisheries and gear types to which PSC restrictions apply. In the Bering Sea that's bottom trawl gear. We also recommend, however, that you may want to put into the FMP itself the authority to extend the penalty box program to all other gear types that catch incidental amounts of species for prohibited species limits are established, although for 1991 we recommend only that this provision be implemented by regulation for bottom trawl gear only in the Bering Sea.

Collinsworth: And, did the AP address that?

Salveson: The AP did not have a specific statement on that in their minutes summary.

Blum: I would move adoption of the National Marine Fisheries Service recommendation for item number 7.

Cotter: Second.

Collinsworth: As an amendment to the main motion. Any further discussion, or any discussion?

Mitchell: Well, I sort of misunderstand this. Are they recommending that we're frameworking the others coming in or that we're going to do it in the future under a regulatory amendment. Shouldn't we framework it in saying that we're noting that we're giving ourselves authority to do this under future regulatory amendments to apply to all gear types and all PSCs?

Pennoyer: That's in essence what you're doing.

[miscellaneous comments, all speaking at once]

Mitchell: If that's the intent, I can support it.

Lauber: Yeah, that says that.

Collinsworth: Is there any further discussion on this motion? Is there any objection? The motion to amend the main motion has been adopted.

Salveson: Item number 8, will a hearing process be available for those vessel operators that take issue with the information on which their vessel suspension is based? I can give you a summary of what we've recommended; perhaps Jon Pollard could give you a more succinct summary of what we envision. . .or, I'll do it Jon, if you want me to. All right, I'll lay out what we have envisioned to date. We feel that we are obligated to have a hearing process under APA procedures and we'd recommend that a vessel operator whose vessel is suspended from participating in the directed groundfish fisheries be allowed to appeal the suspension to the NOAA Assistant Administrator for Fisheries, or a designee. This appeal would be presented at the option of the operator at a hearing before a person appointed by the Assistant Administrator to hear the appeal. And the Assistant Administrator would determine based upon the record, including any record developed at the hearing, if suspension is supported under the criteria set forth under the published performance standards and the Assistant Administrator's decision would be the decision of the Department of Commerce.

Cotter: I move to amend the motion by incorporating a hearing process outlined in item number 8.

Alverson: Second.

Pollard: It might suit the Council if it so chooses to leave this language broad to allow the National Marine Fisheries Service and NOAA to develop a hearing process that is both expedient and thorough. I don't know what that might be right now but maybe if you left it broad we could develop it and you could look at it again during the Secretarial review process.

Cotter: Perhaps I can re-phrase my motion to move that the Council incorporate an expedient and broad hearing and appeals process.

Collinsworth: Are you suggesting, Mr. Pollard, that the adoption of Mr. Cotter's motion would be constraining? Or is it broad enough to do what you've suggested.

Pollard: I believe it is, as written. I just. . .

Collinsworth: So if we adopt Mr. Cotter's motion, the concern you expressed will be addressed?

Pollard: That's correct.

Collinsworth: So we don't need a change unless you wish to change it?

Cotter: No need to change.

Collinsworth: Discussion? Are there any objections?

Hegge: I have one question. I guess it goes backwards a little bit, but this we're putting together now is for the Bering Sea however I imagine we're going to be doing this one the same. Are the Gulf and the Bering going to be viewed the same as far as the cumulative violations and suspensions and so on and so forth, likewise the appeals?

Salveson: Yes. I think in design the program would be very similar in both areas. You may have different target fishery categories in the Gulf of Alaska, but in terms of standards performance criteria and suspension periods would be developed in much the same way.

Hegge: Suspensions would apply to both areas?

Salveson: Yes. When you're suspended, you're suspended from fishing activity both in the Gulf and Bering Sea.

Hegge: What about these vessels that in the interim we are not applying this process to in the Bering Sea but they might receive sanctions in the Gulf?

Salveson: If they receive a sanction they are prohibited from fishing anywhere, regardless of whether or not there's a concurrent program in one of the other management areas.

Collinsworth: Any further discussion on the appeals process? Is there any objection to adopting the motion? No objection, then the amendment to the main motion has been approved.

Salveson: The last item you need to consider is whether or not the penalty box provision, if not Amendment 16, Chapter 2 in general, would expire at the end of 1991. Both NMFS and the AP recommend that these measures do not have a sunset date to avoid the possibility of a regulatory hiatus at the beginning of 1992.

Blum: So as I understand it, if we stay with the AP we have covered this to the degree that both National Marine Fisheries Service and the AP desire it. Is that correct?

Collinsworth: Yes.

Alverson: This, as I interpret NMFS's recommendations, does that include all aspects of including Amendment 12a provisions and everything, or does this motion only apply, or this section that you're referencing only apply to the penalty box?

Salveson: I believe our position is. . .it's a little confusing, but this is our recommendation for all of Chapter 2, not just the penalty box.

Alverson: Is that also the Advisory Panel's intent?

Salveson: No, it's not. The Advisory Panel restricted their comment to the penalty box program only.

Alverson: I would move that the National Marine Fisheries Service recommendation that the Council adopt 1991 bycatch management measures without a sunset date to avoid the possibility of regulatory hiatus at the beginning of 1992 be an amendment to the main motion.

Mace: Second.

Collinsworth: If you would, in speaking to the motion, it would help to clarify the difference between your motion and the AP.

Alverson: As I understand the National Marine Fisheries Service suggestion and that of the Advisory Panel, the Advisory Panel's only addressed the penalty box concept and did not address the other aspects of Amendment 21 and other actions under Alternative 3. I would suggest you look, if you turn a couple of pages over to the broader scope of NMFS arguments on this subject, and I'll just read this into the record. It indicates "the lack of a sunset for 1991 bycatch management measures will not preclude the Council from taking steps to develop alternative methods for bycatch management in 1992 or beyond. We would recommend, therefore, that the Council adopt 1991 bycatch management measures without a sunset date to avoid the possibility of a regulatory hiatus at the beginning of 1992." In addition to this, Mr. Chairman, as you know we are having difficulty getting through agenda items at our Council meetings; without adopting this type of amendment at this time we can expect for the June meeting of 1991 this entire package, other than the penalty box under the Advisory Panel's recommendation, the entire package being before us again. I believe Alternative 3 is a sound enough foundation that we can begin amending from and to under a normal regulatory process that we have set up for ourselves so that we don't have to go through such a major and elaborate amendment process. This is the third one we've gone

through in a matter of three and a half years and with all of the other major issues that are on our agenda, I think we need to consolidate our actions and I think that this will help do it.

Salveson: Mr. Chairman, I was corrected by the AP that they only recommend a sunset of the PSC caps; all other provisions they do endorse not having a sunset to them.

Collinsworth: So, the only difference is with regard to the penalty box, is that correct. . . between Mr. Alverson's motion and the . . .

Salveson: No. The only difference is with respect to the caps.

Collinsworth: O.K., further discussion on the motion? Is there any objection? The amendment is approved. Sue, is there anything further.

Salveson: No, sir. I'm done.

Collinsworth: All right. I think what we need to do and I'm not sure that I am prepared to lead this, maybe we need a few minute break. I think we need to go back. . . we proposed a . . . the main motion is to adopt the AP report, and we've made a number of modifications and I don't know if there's anything in the AP report that is inconsistent with what we did and that we may need to make any modifications in it, you see what I'm getting at. . . if there's anything we need to excise from it or to clarify. I don't believe there is, but I . . .

Cotter: Along those lines, I did have one question and that is on the AP attachment, item number 8, the question is whether item number 8 was dealt with by us when paragraph number 7. . .

Collinsworth: Advisory Panel number 8?

Cotter: Yes. Advisory Panel number 8, whether we dealt with that under NMFS item number 7. I think we did, but . . .

Collinsworth: Yes, we did. I think we're clear with the board. We now have the main motion before us. Any further discussion on the main motion as amended.

Cotter: Just as a point of clarification. Are we now beyond the penalty box situation and we're back to the remainder of Alternative 3?

Pautzke: We're adopting the AP recommendations.

Cotter: O.K. There's two parts to the AP recommendation. Part A is the penalty box and . . .

Collinsworth: Yes, we're dealing with only that. . . I think we're dealing with only that part.

Cotter: I thought we approved that a minute ago.

Collinsworth: Wait a minute. . .

Peterson: I thought we had a main motion and we were amending that and this has to do with the penalty box only.

Blum: Yes.

Cotter: We're done with that, are we not?

Collinsworth: It was the AP recommendation on bycatch that referred to. . .

Pautzke: Mr. Mace, seconded by Mr. Peterson, supports AP recommendations on bycatch, and I had crossed out penalty box because I think Mr. Mace wanted to include their whole program.

Cotter: I understand that, and if you look at the AP recommendation, it's basically broken into two parts: Part A, penalty box; Part B, caps. I thought I heard you call a few minutes ago for a final vote on the penalty box portion of it and that's why I was asking, are we now on to the caps, or are we still back on penalty box.

Collinsworth: No, I think we're on penalty box. I mean, we are just concluding penalty box.

Pautzke: Aren't you back to the main motion, which is to adopt the AP recommendations with all these changes, and the AP recommendations means Alternative 3, plus the penalty box, plus the caps.

Blum: So we're ready to deal with amendments to the caps provision. . .

Cotter: If that's the case, I think before we . . . well, I think we need to have a discussion with General Counsel regarding the advice that is contained in the letter from Mr. Pennoyer regarding what the Council can or cannot do regarding these caps.

Pollard: To go over this ground again, the first thing to keep in mind is that the 12a Amendment expires on its own on December 31st. . . [Change to Tape 74]. . . of this year, it sunsets and any amendment here would not be an amendment to that amendment, but a new amendment that stands on its own. When looking at the range of alternatives laid out in the environmental assessment and RIR, General Counsel. . . excuse me, and also in light of public comment received, General Counsel determined that for the reasons given that the alternatives of status quo, which would be no caps, and 12a, which would be the 12a caps reimplemented, didn't cover the entire range of reasonable alternatives when those reasonable alternatives to solve the problem might run from zero to caps that are totally unconstraining. I guess what we decided was that some additional analysis of different caps or inquiry into different caps would be required. What those might be, I don't know, but to go out with zero and one specific numbers when the purpose of the amendment is trying to achieve a broad balance between competing fisheries, seemed to us in our opinion to be narrow. That's what we determined.

Alverson: Mr. Pollard, this sentence in the third paragraph of this letter, it says "Specifically the Council failed to consider changes in prohibited species stock abundance. As these comments relate to halibut, the Council was informed and advised at its April Council meeting that there was a joint study being done by IPHC and National Marine Fisheries Service that would not be completed until later in the fall of this year. We were basically informed that there was no analysis to look at additional numbers until that time. We would not have had any basis to make a decision at this Council meeting any better than we would have had at April, so how. . . this does not apply to our halibut situation in terms of the information before us and the analysis going on.

Pollard: That specific comment related more to bairdi, but I think the other circumstances are that once again, a new, and as if for the first time you are trying to arrive at a reasonable balance between these competing fisheries and to come out with zero and a specific number without considering other possible balances seem to be a overly narrow approach to solving the problem.

Alverson: We have status quo, which is. . . [unintelligible]. . . don't we?

Pollard: I believe you have two approaches with respect to caps. Alternative 1, which is status quo, that's the zero; and Alternatives 2 and 3 which are fixed numbers that have been implemented in Amendment 12a, without any analysis of bycatch caps that might be greater than 12a and arrive at a slightly different balance of competing needs. The 1989 fishery was conducted in a way that might be relevant, excuse me, the 1990 fishery was

conducted in a way that might be relevant to your consideration. And, that's some of the circumstances you'd have to taken into account. The General Counsel isn't making any statements about any of the caps themselves, just that the range of analysis identifying those alternatives, analyzing the environmental effects of those alternatives is overly narrow.

Cotter: I don't know about the rest of the Council members, but I certainly didn't make my decision in a vacuum. Bob's touched on the halibut issue and I think there's plenty of reasons why if the halibut cap is going to modified it ought to be modified down, I think there's some testimony from the Halibut Commission that indicates declining stocks, certainly the Canadians have a great concern regarding halibut and if anything that might go down. But be that as it may, given activity during 1990, to reduce that program might cause some severe hardships. We're talking about bairdi and red king crab. Certainly there have been changes in population, just as there have been in the case of halibut, but I think one thing that all of has learned now is you just can't look at bycatch in terms of a numerical cap. The absence or presence of incentives for clean fishing probably has as much to do with whether or not caps are sufficient as the number themselves. It's been my feeling consistently for a number of years now that changes in the caps need to be tied to the implementation of some type of incentive program. We have not been at that point where we could do something like that. We don't have enough time to analyze all of these things. Significant changes in caps is going to require significant staff time; we're already stressed out in terms of staff time. A major change in bycatch caps may require a social impact analysis or assessment. Where are we going to get people for that? I think that the Council has to be given some latitude to use its wisdom in deciding what items we're going to pursue and what we're not and I think this begins to take it away from us. And lastly, it's not as if this Council is ignoring the caps. The schedule that we've established brings the cap issue up before us in next year's amendment cycle, at that time, presumably coupled with a comprehensive clean fishing program, a lot of which we made a good start on that today. So I don't agree that we need to. . . I don't know if General Counsel is right or wrong, I don't think that we should be required to have to make that analysis.

Alverson: Jon, we have an analysis that I assume was done by National Marine Fisheries Service and handed out to us under agenda item. . .says "revised tables," and it gives Alternatives 1a, 1b, Alternative 2 and Alternative 3; and three of the four options suggest halibut catches coming in below the 5300 metric ton cap that is in our proposal. Are you suggesting that we should have looked at lesser numbers than the 5300? Because under this, we probably could ask for a 4400 ton cap instead of 5300 tons; is that the type of analysis you're suggesting should have been done.

Pollard: What I'm suggesting is that the enviropmental assessment that was prepared for this amendment identified three alternatives and solicits public comment on those and seeks to involve the public in submitting

information on those alternatives. Alternative 1 has PSC of zero; Alternatives 2 and 3 have PSC limits that are specific numbers, not a range, and in an earlier meeting, I might be mistaken because I didn't attend this meeting, but I believe it was in April, but the Council voted to reject consideration of alternatives that would have provided for implementation of caps that were either greater or less than the 12a caps, except for the zero in status quo, which is always an alternative. What I'm saying is that the issue isn't to General Counsel's mind at this point whether re-implementing the caps that were in 12a ought to be a preferred alternative, the issue is whether there are other reasonable alternatives to solve the problem and if so, NEPA and the EPA require identification of those reasonable alternatives and an environmental analysis which explains and analyzes the effects on the human environment of each of those alternatives and seeks to involve the public in the decisionmaking on those alternatives and, in that respect, General Counsel feels that the existing environmental assessment and RIR is deficient.

Cotter: I think this is a very dangerous type of precedent that's being established here. Yes, it's true, that at the April Council meeting the Council did decide not to look at other cap alternatives other than what's contained in this EA/RIR. The fact of the matter is, that that was the decision by the Council at the January Council meeting, and it was only at the April Council meeting that somebody stepped forward and suggested that we look at the range of other changes in the caps and some folks thought that was a good idea and others didn't. And some of the folks who didn't think it was a good idea didn't think it was a good idea because we thought that there also might not be sufficient time to get a good job done either. The record on this is not just contained in a few comments during the April Council meeting. The Council went through a deliberative process in reaching its conclusion and I think you folks are second-guessing us. I think this is a big mistake.

Alverson: What if we can't think of a better alternative?

Pollard: The issue is not whether there is a better alternative, Mr. Chairman, the issue is whether there are other reasonable alternatives to solve the problem of allocational. . .[interrupted]. . .

Alverson: What if we can't think of an additional reasonable alternative? The penalty box I think is the beginning of an evolution towards bringing the problem closer to each company's company level and there may be an evolutionary process over the next couple of years; I don't know anything this Council's done that we got it right the first time, and that is the crux and the heart of this whole new package going back to National Marine Fisheries Service. We could have a whole litany of ranges of caps, but without a penalty box it'll be meaningless based on this last year's performance of the fleet.

Blum: I believe the motion that's on the floor contains the statement, "The caps in Amendment 12a will sunset after 1991 and shall be reviewed and adjusted based on changes in biomass populations of PSC and target groundfish species." If we adopt that motion it seems to me that we have fulfilled all the requirements that the Council needs to fill. If the Secretary doesn't like it, or General Counsel advises the Secretary that it's deficient, then they can bounce it back. But I think sitting here and trying to cobble up one or two additional alternatives would be a horrendous waste of our time. We've had the AP review this, we've had the Council, as Mr. Cotter and Mr. Alverson have pointed out, spend an awful lot of time in the last year plus talking in one form or another about this problem. And the AP has given us a recommendation; I think we ought to move forward and if it is deficient we will be so told and we can deal with that. I think trying to insert something in addition would simply be going down a blind alley.

Pennoyer: I agree with Mr. Blum. The concept is not to sit here and dream up alternative caps. The concept was to find a way that between now and September you could look at the analysis of the prohibited species stock levels, look at how that might influence your judgement on the caps that you proposed, and deal with it in September. The procedure proposed was to by emergency rule make sure that some caps, 12a caps, were in place on January of 1991 to avoid a possible legal challenge, by going through the analysis of alternatives which you would look at in September. Your September judgement could very well be for a number of reasons, some of which have been stated here absent other analysis on the record that you want to stay with exactly what you've got. As Mr. Alverson pointed out, halibut have gone down. We don't know in total, data's not there, but there's indication that the stock has gone down. I'm not sure that means you want to go down, but it has. Tanner crab have gone up fairly substantially; king crab have gone up but maybe not as substantially. All those things may influence you to not make any change at all. So, it's not proposed by General Counsel, or NMFS, that you deal with alternative caps here. We were trying to find a way that you could get out of a potential box in terms of the way this was structured by suggesting a procedure, not suggesting that you adopt a different cap.

Collinsworth: Are you saying that what we should say is zero and the caps that we've got presently, plus 10%, plus 20%, minus 10%, minus 20%, have an analysis done on those and then make a decision in September?

Pennoyer: The analysis suggested before was something that Joe Terry had commented on in April; our ability to do it, and it was a lot less rigorous than that. It was more simply looking, I believe it was looking at the '88 biomass levels and discussing how alternatives and the caps might be affected by those. At that stage, we said we could do the analysis, it didn't seem as rigorous as closed areas, and could have had that ready for public review and consideration at the September meeting. You would have to pick some type of a range, that's true, to go out to public review.

Blum: I go back to what I said, and I didn't mean by using the word cobble to annoy you. But, if you read what the AP has said, it said, the motion is on the floor, is that the Amendment 12a caps will sunset after 1991. Then you read the letter that you sent to us and it says on the first page, After January 1, 1991, Amendment 16 could be adopted by the Council; I assume that's what we're doing, analysis of other proposed actions under Amendment 16 would be based on the assumption that Amendment 12a caps would be extended into 1991, that's "B" of the AP recommendation. It seems to me this action fulfills the spirit if not the exact wording of the General Counsel provision.

Cotter: I don't think so.

Blum: You don't? They want us to do more?

Cotter: Well, as I read this motion, item B extends for one year 12a caps. As I read Mr. Pennoyer's letter, that paragraph you were referring to, that portion of Amendment 16 absent the caps moves forward; that portion of 16 that includes the cap lingers behind for additional analysis, is before us in September for final action; emergency action takes place January 1 to extend the caps until the new ones or the new decision that we make take in September or December is implemented. Correct?

Pennoyer: That's correct, Mr. Chairman.

Cotter: I appreciate what Mr. Blum is saying. . .

Peterson: It seems to me that there is a part of this that's not being considered. In the memo from Mr. Pennoyer, this paragraph goes on to say Council consideration of PSC caps would be addressed under Amendment 16a.

Pennoyer: That's correct. That's the amendment you're sending forward for September final adoption.

Peterson: That is what we'll be sending out for public review for consideration at this meeting.

Cotter: That's what I said, Mr. Chairman. As I understand it, all of Amendment 16, except for the caps, goes forward from this meeting. The caps goes into 16a and is before us in September for final action, O.K., if we go with this approach. And we would have to determine what type of caps we're going to have analyzed during the course of the summer. And, I'm opposed to that. We had this discussion at the April Council meeting. If we want to start looking at caps, and I agree that we ought to take a look at them, but I think we need to do it in a comprehensive fashion that takes a look at all the ingredients that become applicable. Those are caps, changing

them based on population, time/area closures, bona fide incentive programs, all those things are ingredients that go hand in glove with the change in the caps. And to just go forward with a change in caps is piece-mealing this thing and I reject your conclusions that we're forced to do that.

Collinsworth: All right. We've had our advice from General Counsel, so we've heard that. We have also put on the record issues that we think that may counter General Counsel's concerns and specified the degree to which the Council has dealt with this issue. I think that we should now proceed. And, we could proceed in a number of ways. Just as a technical point, under "B", Alternative 3, the AP's recommendation in B said caps in Amendment 12a will sunset after '91. Mr. Alverson suggested that said that we made a decision that all provisions will not sunset.

Pautzke: That was in paragraph of the NMFS letter here, which was a recommendation that they not sunset; so it nullified this Part B. . .

Collinsworth: So we'd have to amend this to say the caps in Amendment 12a shall be reviewed after 1991 and adjusted based on. . .we want to get that on the record and get the sunset out of it, just say that they will be . . . [can't hear]. . .

Alverson: Sounds good.

Pennoyer: While it may seem inconsistent with the previous comment, I think our fear is that you'd create a hiatus, and regardless of what we're doing here, we can always review it, the Bycatch Committee can continue to meet, come up with a better way of doing things and recommend something completely different, but you don't have an automatic sunset so we're backed in to an automatic emergency rule procedure. So I think that that was the basis for our recommendation; I don't think that we ought have automatic sunsets.

Collinsworth: O.K. So, since we have made the decision, as I specified, would that be accepted as an editorial change? [Yes] O.K., so that under the AP report, where it says the /Council adopt Alternative, under B, it will read, "The caps in Amendment 12a should be reviewed after 1991 and adjusted on the basis of changing the biomass, etc."

Alverson: Well, after 1991 would be. . .completed 1991 season; I assume you would want review during 1991, is that right, or. . .so we can address the '92 season.

Blum: What about review the '91 and beyond.

Cotter: I think that's the intent, Mr. Chairman, and. . .

Alverson: Well, I just wanted to get that on the record.

Cotter: We've already established, too, that we intend on our bycatch management schedule to take up the caps in next year's cycle.

Blum: So for editorial purposes, what we agreed to, Mr. Chairman, was a 1991 and beyond.

Collinsworth: Fine.

Lauber: Just a clarification. In this "B" section, I reading it. . .if I've punctuated it or something, it read. . .the caps in Amendment 12a, or put that in parentheses, will sunset after 1991. . .shall be reviewed and adjusted based. . ., am I reading it correct that way? In other words, . . .

Blum: We have stricken at this point sunset.

Lauber: Is the "will sunset after '91" just an informational phrase or does it have some significance?

Alverson: It doesn't any more.

Blum: We have stricken it.

Collinsworth: Either way, it doesn't.

Pautzke: Can I read it to be like this here, there's a few word changes that are significant. "The caps in Amendment 12a will not automatically sunset after 1991, but shall be reviewed and may be adjusted based on changes in biomass populations," and so on. Is that what you want to do?

Collinsworth: That's better language, yes. All right, we now have the main motion before us. Is there any further discussion.

Pennoyer: This is the main motion, the total motion?

Collinsworth: It's Mr. Mace's motion to adopt Alternative 3 as modified by the AP recommendations as we have amended them.

Pennoyer: Just . . . I very much want a penalty box; I very much want a framework to manage bycatch; I don't want to be in the position I was this year. I want to have a manageable situation. I am probably not going to vote for this simply because I've been advised that we may have problem of approvability. But I want to make it very clear on the record. . .

?: Problem with what?

Pennoyer: Problem with approvability. But I want to make it very clear that I want the penalty box and the rest of the items in here to go forward.

Alverson: What's does provability. . .

Pennoyer: Approvability. General Counsel has advised that based on the cap treatment the total package may not be approvable and so for that reason I'm going to vote against the amendment but I wanted to make it very clear on the record it's not because I'm against penalty boxes and incentive programs and that sort of thing.

Blum: Steve, I guess putting you a little bit on the hot spot. That says that any time General Counsel advises you of something you must vote against, or must vote with that advice? I don't think is. . .

Pennoyer: No, I don't think it says that Mr. Chairman. I'm not sure we're taking the best procedure here. That does not mean that I'm going to blindly follow advice all the time.

Peterson: I have some difficulty with the words, the adjective, that says reviewed and may be adjusted. I think the AP's intent was to review and adjust. I think we have ample evidence that these caps aren't working and there needs to be something done with them.

Collinsworth: I think the permissive is that the data and all that comes before us may compel us to the same solution. On the other hand, it may not; I think it just gives you the opportunity to make adjustments.

Blum: To further that thought a bit, don't we also have a problem dictating what future Councils will do since Council members change.

Collinsworth: . . .they can always change it.

Cotter: Mr. Pennoyer, let's say there's an approvability problem and let's say it's not approved. What happens?

Collinsworth: Well, there's an administrative process. I mean, it's a question of severability and whether the program will stand without the provision or whether the provision is such an integral part that the whole amendment would fail. The Secretary, upon their review, would make that determination and so notify the Council and we would have a time to respond, but that. . .

Cotter: I'm not sure that's. . .[unintelligible]. . .we've got caps, and if the Secretary disapproves that portion of the plan that deals with the caps, and there's no caps in effect, then where are we? We are at the September meeting and the Secretary has disapproved the plan; the caps are sunseting, we're out of sequence on the amendment cycle. I'd just like you to spell out what the choice is, and then I'd like to take a break for a moment.

Alverson: Could I ask. . .

Collinsworth: Well, if it's just to clarify or elaborate his question and not to. . .

Pollard: Mr. Chairman, what you said is correct. If the Secretary found that a part of the [Change to Tape 75] submitted amendment was unapprovable for some reason and that part severable from the rest of the amendment, the Secretary would send back to the Council the severed disapproved part of the amendment with reasons why it was unapprovable. The Council would have an opportunity to fix the defect, submit it to the Secretary and instead of a 95-day review process, the review process would be shortened to 60 days.

Pautzke: But, you can't sever an integral part of an amendment that the Council sends forward without the Council giving them that option, I don't think, can you? You never have in the past, where you've chosen to sever a particular item, . . .

Pollard: Typically, the Secretary would consult with the Council.

Alverson: Steve or Jon, in our next meeting, in September, if under 16a we provide a provision to analyze and look at caps, changes, but stay with our motion at this time. We could still provide an emergency action at that time that would amend this provision, would it not?

Pennoyer: Yes, certainly you could do that, and you could ask for the analysis and deal with it in 16a; that could happen. In fact, that's not dissimilar to what we were proposing. Now if you send it forward, even if it was severed. . . [unintelligible]. . . it backs you up a couple of months; it forces the use of an emergency rule, but I think the emergency rule would be put in place; I don't think you'd have a hiatus on January 1st, but you would have to specify here the analysis you wanted, of some sort, to go forward for the September meeting, including a review of the data on the stock status and all that type of information. You could do that. You could send this on as is and at the same time request the analysis. 16a is to either supplement or supplant what's in Amendment 16, so certainly you could do that.

[miscellaneous comments; everyone talking at once]

Collinsworth: We now have the main motion before us, don't we?

Blum: Mr. Chairman, part of my reason for taking a break is I would like to ask Steve if there's something concrete they could come back to suggest. The words that he has in the paragraph are difficult for me to determine what it is we might ask to be analyzed. If he or staff thought that through and would give us a couple of suggestions, we might be able to get over this hurdle. But if we're going to deal with vague words that we have to come up with something to analyze, that's what my concern and objection is.

Collinsworth: We'll take a ten-minute break. I just thought we could pass this motion and deal with it under 16.

-----Break-----

Collinsworth: Reconvene. Mr. Blum, do you have a motion to offer?

Blum: No. I provided people with an opportunity and they have failed me. Steve, do we have a motion?

Pennoyer: Mr. Chairman, I thought the opportunity provided was going to be under 16a. If you want it as part of this motion, . . . we can't do the analysis now anyway.

Collinsworth: Let's take it up with 16a and proceed to vote on this motion, which is, under Chapter 2, Alternative 3, as recommended by the AP, as modified by our amendment process. Without any further discussion, proceed to a roll call vote, please.

Pautzke:	Mr. Pennoyer	Abstain
	Mr. Peterson	Yes
	Mr. Alverson	Yes
	Mr. Blum	Yes
	Mr. Collinsworth	Yes
	Mr. Cotter	Yes
	Mr. Dyson	Yes
	Mr. Hegge	Yes
	Mr. Lauber	Yes
	Mr. Mace	Yes
	Mr. Mitchell	Yes

Passed.

Collinsworth: O.K., staff then, Hal?

[The Council proceeded to review and consider other chapters of the amendments, i.e., overfishing definitions; procedures for interim TACs, rockfish regulations, and fishing gear restrictions. The last issue was covered under Chapter 7 - Expand Halibut Bycatch Management Measures in the GOA, which is transcribed below]

Tape 79

Collinsworth: All right, then, let's proceed to Chapter 7 at this point.

Weeks: Chapter 7 deals with expanded halibut bycatch management measures for the Gulf of Alaska. There are two independent alternatives in this chapter. Currently, with the exception of this year, halibut PSC management in the Gulf is managed through a framework in the fishery management plan. However, the implementing regulations are much less flexible than the FMP framework and with some of the current concerns with respect to bycatch and some of the ideas on how that should be addressed, there is some ambiguity in terms of whether the measures to accomplish certain remedies are authorized under the FMP and could be adopted through regulatory amendment. Specifically, it is unclear whether the halibut PSC limit could be apportioned seasonally and it's also unclear in terms of whether a DAP PSC limit could be split between different gear groups. So, Alternative 2 specifically addresses the clarification of the framework with respect to these two topics. Then, on the following page, Alternative 3, which is an independent item, addresses the adoption of an incentive system in the Gulf of Alaska to reduce halibut bycatch rates. The issue is largely the same as for the Bering Sea and Aleutian Islands and the opportunity to fully harvest groundfish TACs while remaining within a PSC cap. There are three options presented: a PSC reserve and a bycatch credit system--these were originally surfaced in April. They were removed from the Bering Sea chapter at Council instruction. There is also the option to put in place

a penalty box system such as the Council has adopted for the Bering Sea. I believe the Region has some very strong feelings with respect to what type of a system they can implement.

Ron Berg (NMFS Region Staff): First of all, on Alternative 2, you might recall that at the December Council meeting the Council implemented the 750 and 2,000 ton fixed PSC limits for halibut for fixed gear and for trawl gear in the Gulf of Alaska, for one year only. By doing so, they set aside the framework regulations by which they rely through that September-December process, to establish halibut PSC limits and which also then established the amounts that are apportioned to DAP and JVP and also apportioned to trawl gear and to fixed gear. When December 31 rolls around this year, we'll actually have. . .this particular amendment will have expired, and the old framework comes back on line which means that you would be establishing those PSC limits. Under the status quo here, if you do nothing under this amendment package, you'll still be able to do that, you'll be able to apportion the PSC limits to DAP and JVP and those limits would be regulatory area and would be by trawl gear and by fixed gear. You can still do that. But if you adopt Option A of Alternative 2, you'll have the authority then to apportion those PSC limits by season and you'll recollect that right now we have an emergency rule that the Council recommended that apportions those PSC limits by season. So, under this Option A, if you adopt that you would have the authority next year to do the same and it could be the quarterly apportionments you did this year or it could be some other combination. That decision would be made during the September-December process. Under Option B you would have the authority to take pot gear and split the PSC, separate for pot gear or exempt it completely, but it would no longer be part of the fixed gear which is combined with hook and line gear. That's also what the emergency rule we're operating under for 1990 does, and which the Council also will consider as an emergency rule agenda item at this meeting, whether to exempt pot gear for the rest of the year, when you get to that agenda item.

Pennoyer: A question for clarification. Ron, what you're saying is that this would provide the authority to do that also during the September-December process, that it's not a choice that has to be made now? Is that frameworked as well?

Berg: Yes, that's right. They would be doing that during that September-December process.

Pennoyer: This amendment would just allow for that.

Berg: Yes. So, under Alternative 2, those options, A and B, more fully implement what the Council has done for this year by allowing. . .giving us authority to do it in subsequent years. Now, with respect to Alternative 3, now the Region sent to the Council a letter which commented on the amendment package at large, but also stated that for the same reasons that we had commented back in April to the Ad Hoc Bycatch Committee with respect

to incentive programs, we do not recommend establishing a reserve or a credit system for 1991. On the other hand, the Council heard Sue's report on the penalty box program. We recommended that the Council might consider for the Gulf of Alaska the penalty box program as it did for the Bering Sea. When the Council voted for and adopted the AP motion with respect to the Bering Sea penalty box program, item 8 in the AP report also included adoption of the penalty box program for the Gulf of Alaska with the following target fisheries: shallow water flatfish and deepwater flatfish, arrowtooth flounder, Pacific cod, bottom trawl pollock, all the rockfish species combined, and then if it was not one of those it would be one of the "other" species--Atka mackerel, sablefish, all other species would be combined into "other" species. Part of the AP's motion also was to have a penalty box program apply to hook and line gear as well as bottom trawl gear. It's my understanding that since the Council had adopted the AP motion, they also adopted item 8 for the Gulf of Alaska.

Collinsworth: O.K., thank you, Ron. Does anyone wish to . . . just referencing the AP report, "By unanimous vote the AP recommended the Council adopt Alternative 3 with some explicit conditions: (a), that pot gear should have a separate PSC cap, (b), that the PSC penalty box system should be established in the short-term with the ultimate goal to get a better (more positive) bycatch incentive system in place, and (c), seasonal apportionment of PSC limits."

Mace: I move that we adopt the AP recommendations on halibut bycatch management measures for the Gulf of Alaska.

Dyson: Second.

Collinsworth: We have before us a motion that would adopt Alternative 2, with three additions, (a), (b), and (c) as noted in the AP report. Discussion please?

Alverson: What would we set as a PSC cap for pot gear when we have no history under our belt of what those numbers might generate?

Berg: We also had submitted a letter to Steve Davis on the pot rates to date which . . . [unintelligible]. . . indicated that the bycatch rate of halibut to a ton of groundfish is about seven tenths of a percent. Given that information we recognize that the bycatch is a very small amount. We have records where zero halibut was caught. On the other hand, with respect to accounting for total mortality there's the argument that some small PSC amount could be applied. On the other hand, this entire selection, if the Council decides to adopt the option to actually establish a PSC instead of exempting it, the numerical amount would be decided upon during the September-December

process and it could be ten tons, a hundred tons, some small amount which would accommodate some accountability, or they could adopt and exempt pot gear completely from the PSC accountability.

Alverson: Is there a way, Ron, that the Council can keep this as an option and perhaps keep it at zero until such time that we determine it's a problem. Is that option within the scope of this Alternative 2?

Berg: Yes, Bob, that's correct. The FMP language could be still constructed such that if the Council decided not to actually have in a regulation a PSC for pot gear, the FMP can still provide the authority for it.

Cotter: Just to follow up on that and then a question. It's my understanding then that the Council during the September-December process could go ahead and not establish a cap for the pot gear but still account for total mortalities that may accrue from the pot gear.

Berg: Well, that's true. . .

Cotter: O.K., then I'll just move on to the next question, if that's true. The AP motion that you referred to earlier on the Bering Sea, I was looking at number 8 on the target fisheries. Is that just trawl fisheries?

Berg: Yes, those are Gulf of Alaska target fisheries.

Cotter: Yeah, trawl fisheries so that. . .

Berg: Well, those are target fisheries, but part of the recommendation was for hook and line as well as trawl penalty box program.

Cotter: There's no sablefish fishery listed on here.

Berg: So therefore it's combined with other species. The traditional hook and line target fisheries, of course, are rockfish and Pacific cod and sablefish to date and those would be. . .the AP did not address that, but those would be target fisheries the Council could consider under a penalty box program for the hook and line fishery.

Alverson: I was under the impression that when we dealt with this, which was number 8 of the AP, which was number 7 in the letter from Steve Pennoyer, we adopted the wording from National Marine Fisheries Service; maybe I'm in error in that, but the wording there says "implementing regulations, however, would apply the

penalty box program to only bottom trawl gear in the Bering Sea and bottom trawl and hook and line gear in the Gulf of Alaska." Now, that's what I thought we adopted. Did we or didn't we?

Berg: That's correct, Mr. Chairman.

Alverson: That's correct?

Hegge: Ron, you mentioned that sablefish is exempt right now from the penalty box program in the Gulf. Given the short time period and the rapid movement of the fishery would it even be a good one to be a candidate for it, because taken I think the West Yakutat, it was 14 days; by the time you got information people might be through fishing. Same way in the Eastern Gulf. I mean if there was ever one you couldn't track, that seems like it.

Berg: We actually only have about 14% observer coverage in the hook and line fishery in the Gulf of Alaska this year. On the other hand, part of the reason for our hook and line closure now are the dirty rates. . . [unintelligible]. . . observer data that we did have, and that's a fishery that's prosecuted by a large number of vessels and it's true that a lot of those are below the 30% category. But there are many there still between 60 and 125 feet and we have data as trial runs in a penalty box program which shows that we could identify those vessels too as being twice a rate or three times a rate of the observed vessels that were in the program. And with respect to vessel incentives, therefore, we viewed the hook and line black cod fishery as being a candidate for a penalty box program also.

Hegge: Are there other options that we could implement, such as depth restrictions, or. . . , I guess depth restrictions was one of the most notable that was testified about. I guess one of the reasons I don't think that the penalty box particularly works in sablefish is it's aggravated even more by the fact that a very small number of the fleet is covered by observer coverage and we do have a very rapid derby system. The fish is caught up in the deep and the tendency is to go into the shallower, and it just kind of snowballs the effort. I guess if people stay out in the deep they're going to have a low bycatch and if they go in high they're going to have many, many times over as we saw in the observer program this year and without the accompanying depth restriction I just don't see anything working.

Berg: The number of vessels that made hook and line landings last year in the Gulf of Alaska, there were about 128 vessels between 60 and 125 and there were 11 vessels over 125 feet that were in the hook and line fishery, actually making landings, that would be cod as well as black cod, but black cod predominated, and to the extent that they would be encouraged say, to not put lines in the shallow end of the depth strata, to keep it in deeper water, certain behavior changes like that, that's something the Council would have to consider.

Hegge: Do we have the authority under this right now to put a depth restriction with it?

Berg: Well, we can do a depth restriction even independent of the penalty box program. It could be combined with the penalty box program as an associated regulation. The problem with depth restrictions is that they're difficult to enforce in the Gulf of Alaska, albeit when you have 100% coverage on a vessel you can always tell at what depth say 100% of the time the vessel is at for that time, but for the other vessels, the 30% vessels, is really 30% coverage through a calendar quarter, it's difficult to enforce a depth restriction without the observer on board.

Hegge: I guess I really am troubled by the penalty box on the sablefish. I think that given that the vast majority of the boats are either unobserved or 30% coverage the opportunity is there for everybody to end up in the penalty box just because of what we heard here, people. . . [unintelligible]. . . off the shallow end or any kind of drift or anything, and it just. . . everybody'd be in the penalty after the first week.

Collinsworth: O.K., does anyone wish to offer an amendment to the motion that was made?

Alverson: In regards to the depth restrictions, I suppose we could ask after the motion is passed to look at a regulatory amendment that addresses that.

Collinsworth: That would be, I think, in order.

Cotter: I'm looking at the AP motion which is before us, "a PSC penalty box system should be established in the short term;" I'm not sure what we're voting on. Does that apply to longline and bottom trawl, what are the groups, I'm not sure.

Peterson: This was listed under the halibut bycatch management measures. I assume it's halibut we're talking about.

Cotter: Well, I assume we're looking at halibut, but are we looking at both longline and bottom trawl? Are the.

[Chairman Collinsworth asked for Dave Fraser to clarify AP motion]

Collinsworth: Dave, thank you for coming in. A question of clarification with regard to the AP recommendation, Chapter 7, Expanded Halibut Bycatch Management Measures. Mr. Cotter, would you articulate your question?

Cotter: My question simply is, what does it mean? Does it cover longline and trawl? If so, what fisheries, same program that was outlined for the Bering Sea?

Collinsworth: He's referring to the . . . a PSC penalty box system should be established in the short term. . . and curious what the AP's recommendation was with regard to which species and which gear.

Fraser: It was my understanding that for those species that are governed by PSC caps, which is only a halibut cap in the Gulf of Alaska, but those fisheries governed by the halibut cap in the Gulf of Alaska would be covered by a penalty box system, basically like this but we realize that the volume of catch in the longline fishery might require different thresholds of participation. We had discussed 100 ton of participation in a fishery before you'd be judged in a trawl fishery. Obviously, a hundred ton of sablefish is a lot of catch; a different level of participation. . . the program might need some adaptation, it wouldn't be a straight translation if you were going to use it in the longline fishery, but the basic framework of the penalty box system should be used there.

Collinsworth: Was there any discussion in the AP about perhaps the difficulty of a penalty box type system when you have a very condensed, short fishery and the opportunity for feedback of information and the time frame in which to implement it?

Fraser: We didn't get into much detail on the application within a longline fishery. It seemed like from the direction we were getting from staff and whatnot, that the alternative before us in the Gulf was implementing a framework system that would allow the application of bycatch incentive programs and that the structure of the alternative was a little different than it was in the Bering Sea so that the final decision was not as necessary at this meeting, but I'm getting into some subjective reporting here.

Collinsworth: O.K., thank you.

Alverson: Dave, was there any discussion in regards to a penalty system in the smaller sector of the under 60 (ft) vessels. From the data base from the IFQ discussion I would guess that in Southeast and East Yakutat, 60-70% of the quota is landed by limit seiners and smaller, all of which don't have observer coverage. Was that addressed?

Fraser: It was in a couple of different ways. Under a different agenda item, under the observer program, I think there's a motion of the AP that discussed expanding the observer coverage to a smaller size of vessel for limit seiners and I don't have that part of the report here and I'm not sure just what the vote was on it, but we also discussed it in the sense that we did anticipate that, I think in point 6 here it says the program would apply to all

vessels with observed catch. The Regional Director has the authority to put observers on vessels less than 60 feet; if he so chose those vessels would be subject to the penalty box program.

Collinsworth: O.K., at this point we're going to recess. I'd like to have the Council members keep fresh on your mind where we are on this issue and be prepared to move forward either to a vote on this motion or to offer an amendment when we come back and modify it in some way. So, we'll recess until seven o'clock and we'll convene promptly at that time.

-----Dinner Break-----

Change to Tape 80

Collinsworth: O.K., Council, let's return to Chapter 7. We have a motion to adopt the AP recommendation. The AP had recommended Alternative 2 with some explicit additions. There are three of them, a, b, and c. That's the motion before us. When we recessed for the supper hour I asked for you to continue to think about this issue and be prepared either to speak to it or offer amendments when we reconvened. Can anybody give me a hand with that?

Alverson: Mr. Pollard, I have a question in regards to this as it applies to longline activity. Can we specify within the context of how advertise this, that the longline portion could be adopted, but implemented at such time that the Council felt it had a better program. As it's constructed right now in black cod I'm not sure that if this was a reg they had to comply with, it would be fair or work with the size vessels we have in that fleet. But I'm not so sure that in the future it might not be a useful tool. Can you help me on that?

Pollard: I'm not as familiar with the FMP as Mr. Berg is, but I believe that Amendment 14, which sets up the framework for prohibited species catch limits for halibut in the Gulf would allow for the establishment of halibut PSCs by gear type, area and fishery. Unfortunately, up to now, the part of the FMP that speaks to setting PSC limits by fishery has not been implemented by regulation, so a regulation would be necessary first to implement that particular part of the FMP.

Alverson: I'm referring to the penalty box.

Pollard: I'm sorry.

Collinsworth: Basically what he's saying is, can we go ahead with it, specify. . . give us the framework in the amendment to allow us to implement it at some future time when additional information or data is available that will allow us to configure a program.

Pollard: Would you be thinking that you'd like to implement it through a pre-season framework process like the TACs, or more of an inseason type action? I could see a fairly simple procedure for setting up a pre-season process, but I think inseason might be much more difficult, to try to identify criteria that would trigger the implementation of that kind of approach in a timely manner.

Pennoyer: I don't think we could do it inseason; I don't think you'd have the data inseason to make that judgement or. . . [unintelligible]. . . the criteria. You'd have to look at the data and then do pre-season.

Mace: Actually, the motion is based upon the AP's recommendation and we haven't really heard, at least I haven't, the AP's intent with respect to this. Did they intend to include hook and line gear immediately as well as trawl gear, or what was the drive on it, does anyone know?

Cotter: I thought we had that answered just before dinner. I can't recall it exactly, except that I think that it was fairly nebulous, they didn't really get into in depth. I have a motion, Mr. Chairman. I move to amend item (b) as follows, replace the language with "Apply the Bering Sea halibut PSC penalty box system to the following Gulf of Alaska trawl fisheries." I've got them written out, but they are in essence the ones recommended by the AP in the appendix, item #8.

Hegge: Second.

Cotter: Very quickly, to the motion. I did not run this by Oscar so I'd look to see whether or not this met with his approval. I did talk to Mr. Hegge and Mr. Alverson and both of them indicated that the longline situation in the Gulf of Alaska, given the composition of the vessel size classes and the speed with which the fisheries are prosecuted are such that a penalty box system is probably not the best type of system to use down there. So therefore the motion would exclude that gear group from that type of system and the motion would include the trawl industry, assuming that that's what the trawl industry desires.

Peterson: I'd like to amend the amendment. I move to include hook and line gear in the penalty box program adding both Pacific cod and sablefish.

Blum: Second.

Peterson: And I'd like to speak to that if I could. I think the hook and line fishery also has a bycatch problem that needs to be observed and I think there needs to be a penalty box system for that fishery as well. The problem with observers, I believe, can be resolved by decreasing the size down to say 55 or 56 feet or maybe some other length that would cover the bulk of the fleet. And I think with reference to the short seasons in order to develop a rate that would be acceptable you would use the most recent information available, even if it's last year and the penalty, if the season is over by the time the penalty is assessed, apply it the following season. So there are ways of doing this and I think it is important to have the same system apply to the hook and line fishery as well as the trawl fishery.

Alverson: Sometimes I think there's a tendency in the industry now, if you've got an observer, by God, he's got to have an observer; this program. . .the other system's got to have the program, and I don't know, regardless of the peculiarities of the different industries. We put 100% coverage on surimi operations when they probably don't need it, etcetera. And, this system may work at some future time in the longline industry and that's why I asked the question I did to Mr. Pollard initially and I'd ask again. Mr. Pollard, can we come up wording that frameworks this into a pre-season situation that the Council could look at it at the December meeting, or the September meeting for the upcoming season, if there was some program that fit the hook and line industry. Rather than mandating that it go immediately into effect January 1st of 1991.

Pollard: I think that's entirely possible, particularly if there is some criteria that the Council might identify that might make application of this program appropriate for longline gear.

Alverson: I would move to amend Mr. Peterson's motion to provide that an amendment be amended that would provide a framework penalty box program for the hook and line industry that could be determined pre-season by the Council.

Peterson: Would you have an effective date--to be effective no later than. . .

Alverson: Well, no later than the following season.

Peterson: Well, which season?

Alverson: Well, with the framework, if I could speak to the motion, Mr. Chairman, my intent is that hopefully this framework would be adopted January 1st, 1991. The Council could review during the 1991 season what it may or may not do with a penalty box system for hook and line operations and at the December meeting of 1991,

could impose one. The earliest I see it being functionally being utilized on the hook and line industry would be the '92 season.

Peterson: The '92 season.

Alverson: Correct.

Collinsworth: Is there a second to the motion? The motion fails for the lack of a second.

Pennoyer: I am concerned that we have something in place to take care of an incentive program of some kind to avoid halibut bycatch catches in the longline fisheries in the Gulf of Alaska. We went way over this year; we left fish on the table, well, we're still discussing how far over, but we went over and we left fish on the table, and I think we need to have something in place. Now when we ran the statistics on the number of vessels that might be involved in any type of a penalty box program we came out with the fact that I think that we could actually do it. True, seasons are shorter. True, there's not going to be the same type of thing for some vessels as some that are fishing longer seasons in the Bering Sea, but we need to have something. Now, I've heard depth restrictions and other methodology that might help solve it but I still think this is worth a try and unless convinced otherwise by my colleagues, intend to vote for it.

Hegge: I recall we went through a very lengthy deliberation here earlier in the week about ITQs and we heard a lot of testimony and we heard a lot of testimony that traditional methods hadn't been tried. And, looking at this penalty box as it applies to longline fisheries I think that ITQs would be less complicated. I just don't think that they offer any solutions. We have got serious problems in the fishery, a very clean, by most standards, P. cod longline fishery which operated below the published rate, was shut down in a matter of three weeks, three short weeks of extremely high bycatch rates and no program that we're going to implement is going to stop that. Sure it'll penalize the people that did it, but that doesn't serve any purpose. Our idea is to be able to complete these fisheries and to be able to stop problems. If you want to apply penalties, you can apply penalties. We have an opportunity here to notify the public that they are going to be under the restrictions that are available to us through open access--depth restrictions, trip limits, hook limits, time and area closures, season openings--they're all there and available for us and without any great elaborate plan. And I think they're somewhat more tested.

Cotter: Just a couple of comments. I'm sure Mr. Pennoyer is concerned that we need to move as quickly as possible in the direction of some type of incentive program for the longline industry. I'm just a little concerned that Mr. Hegge and Mr. Alverson's concerns are accurate, that given the size of the fleet and the substantial numbers of vessels that are below 60 feet, etcetera, etcetera, that this type of a program just might not be the

right program. One of the problems I had with Mr. Alverson's motion that failed for lack of a second was that he was talking about 1992 and if we're going to put a framework in place it might be something that we could look at for 1991, but I don't know if it's possible to put something together in time for '91. I would remind the Council that, again, the Bycatch Committee is supposed to bring back to us a management program that incorporates clean fishing and that'll be before us in June for final action next year and implementation the following year. Lastly, this is longliners and they have to live or die by their own sword. I haven't seen them coming and asking for more halibut PSC this year because they took too much, so . . .

Lauber: I don't know, several meetings ago, or whatever, we had testimony from people in the trawl industry that were talking about the problems they were in and one of the things they pointed out to us, and I thought it was significant, was that we had not provided them with the tools to do the things that they had wanted to do. It's one thing to complain because someone overfishes, or has a so-called dirty fishery, but it's difficult for an organization or any group of fishermen to control the whole industry unless you give them, for lack of a better term, the tools. And, I don't think any one of us want to do something that's going to be detrimental to the industry, be it longline or trawl or whatever it might be. But, I also have to think that I don't want to be part of a situation I'm in now where people are suffering because maybe they didn't come to us with the right questions or ask us to do the right things, or whatever, but we need to do something. And, as indicated, the fixed gear fishery can overfish and they may not be crying to us, but I'm sure that deep inside they're hurting because some of them certainly are and it makes it very difficult for me because two people on this Council that know the most about this industry don't want to do this. But I would hope that you could tell me something else we could do, because I don't want this to happen again and I don't know exactly how we're going to keep it from happening, unless we provide them with some tools and whatever that is, I'll be happy with. But I'd feel more comfortable if we'd start working towards something. Now, tell you one of the reasons I think that, if we start working towards something and then they don't like, it might be an incentive to come up with something better. But without an incentive maybe they'll just go along with the situation as it is and we'll have a similar problem again next year.

[tape cuts out - seems to have not recorded for a few moments. . .]

Alverson speaking. . . [cut-out]. . . reach the goals of reducing bycatch. I really don't think some of the Council members or the trawl industry have ever been in an industry where they've got to compete with 600 to 700 boats on the grounds. And they know what that means, on a ribbon of fishable . . . it's just like if anybody's been participating in the gillnet fisheries in Bristol Bay - you've got people lined right up behind each other to take that place on the edge; it's the same scenario and a penalty box. . . what's happened is the fleet, the best grounds are covered with the lowest bycatch. And then between 200 to 150 you've got the trawl fleet going back and forth so the longline fleet doesn't set their gear there, so they set from 150 fathoms in and you get nothing by bycatch

and you've got as many boats on the inside as you've got on the outside and you put this program in, recognizing at 30% coverage, those boats without any people on it are just going go fish like hell in the shallow water and the only people you're going to screw over are the people that are legally taking their turn in the barrel with an observer. And my hope was that this program would be available when IFQs become available to us, then it makes sense. But to impose this type of penalty box program on the size and the complexion of the fleet you have now, you don't have enough jail space. Maybe this is an alternate limited entry program that we could impose, but I don't see this program working in the open access fishery that we have now. But having a framework so that we could utilize in the future I think makes sense. Now, what for '91? The longline industry is looking at a depth restriction or walling off Seward Gully. Those are requests coming in 'cause Seward Gully is where a lot of boats went in shallow and nailed a lot of halibut sifting to get their black cod. We've heard well depth restrictions aren't enforceable. I talked to Commander Kyle and the issue on the depth restriction is to make the fleet close. . . you know, you may not be exact, but if you can keep the guy from fishing in 150 fathoms in shallow you've accomplished your goal with a depth restriction. We'd like to see the quarterly allocation as the trawl industry has in the Gulf of the PSC. We believe if NMFS had been able to run their numbers and stopped at the 60 or 80% level when they were supposed to, the fleet could have caught their breath and figured out a problem for this year. But the numbers came in so fast that National Marine Fisheries Service couldn't do that. So, there's proposals to decrease the amount available in the earlier [Change to Tape 81] quarters so that that becomes more manageable and also to look at using a July 1st, possibly, opening date or split season for the black cod industry so they can take better advantage of the separation of black cod and halibut in the summer months. Those options are available to the Council in December. I'm not sure what this program does for the longline industry going into the '91 season. I haven't been convinced, knowing the complexity of that, knowing that almost 70% to 80% of the production's never going to be observed because in Southeast-East Yakutat-West Yakutat and Southeast because the vessels are all under 60 feet in length.

Blum: The AP recommendation is the recommendation we're working with in large part. That recommendation as I read the report was a unanimous recommendation that included members of the longline industry, at least on the list of panel members that were present sometime during the week. I assume that the issue was fairly substantially discussed in front of the AP and this was the conclusion that they reached. One of the things that I think we need to be cognizant of is we're talking about competitive advantage and competitive disadvantage and if we treat one sector of the industry substantially different from another sector of the industry where we are giving competitive advantage and competitive disadvantage. I get a little concerned when we hear terms from this Council like 'screw over'. I don't think we're in the business of screwing over anybody; I think we're in the business of trying to do the best we can do with the tools that we've got. If we get better tools we'll do better. I think this amendment is a reasonable approach. If the industry can show that there's a better approach, this Council's prepared to be responsive and I think we ought to move forward with it.

CDR Joe Kyle (CM): I just wanted to speak briefly to the point of depth restrictions and it's been mentioned that it's unenforceable. And, I would disagree that it's unenforceable. It has enforcement problems, but many things that we wind up implementing wind up having enforcement problems and I do just want to say we could enforce depth restrictions. That's all.

Dyson: Speaking about the trawl bycatch in the Gulf of Alaska, as you know we had a quarterly allocation and that is a good system, one of the best systems that we've devised up 'til now and we would have had enough bycatch to last us through our quarter but one boat came in and caught half the quota for that quarter and so that's why I think to get rid of those kind of efforts that the penalty box might look pretty good, but I think the quarterly will take care most of it because that's the firing point; you get a chance to sit back and see what you're doing and see if you've got enough bycatch left to see you through your next quarter and even that quarter and so I think we put a lot of emphasis on that quarterly allocation of the PSC.

Hegge: In answer to Mr. Blum, when the AP delivered their report I asked them if they had talked about longline sablefish and they said that they had not, that they went over it a little. We have two members of the AP I think that would mention that. I want to answer to Rick. Rick, we have in our handout from the NMFS Alaska Region, after the 23rd of June it shows the week-by-week bycatch in the longline fishery. From the weeks of April 14th to the 28th of April we took 570 tons of mortality, according to this. Through the entire rest of the year, until the closure, excluding that time, we wouldn't even have half of our bycatch in. You take out those three weeks when the fleet went in shallow black cod fishing and they caught almost the entire bycatch. We need a cure to the problem, we don't need to be penalized or put in the penalty box. You know, I asked Steve Hughes for some meaningful information from industry. He brought it back. He said halibut displays strong seasonal variations in depth distribution. Deep water in winter, inshore migration during the Spring, shallow during the summer. You don't catch them if they're not there. We're fishing with hooks, that's the traditional thing that they bite on. If we get put in there when the halibut are down there we're going to catch 'em. The only way avoid it is to take us away from them. And this is a solution, you know, that's meaningful, it's something that matters to industry and solves a problem.

Collinsworth: Speaking personally, I think that we need an incentive program to move forward with a management regime that compels cleaner fishing in the longline fishery. I think that we could probably design a system for longline fishery for Pacific cod. I think we're going to have trouble with sablefish. It is such a very short fishery, relatively short compared to a trawl fishery in the Bering Sea that can last, in the extreme, for months, and it's going to be very difficult to develop a program that's going to be very effective there. And, until we can... and I'm persuaded by the comments of Mr. Hegge and Mr. Alverson that I don't sense any intent at all to avoid or be exempted from this effort to get into a program to try to solve this bycatch problem through an

incentive approach, but I do think that the sablefish fishery because of its nature this particular approach that may be applicable to many of the other fisheries is not in this case at this time. I think you can do it with cod, but sablefish, I'm really concerned that we can do it and make it meaningful with the shortness of the season and the kind of penalty arrangement that we have talked about. I mean, you're talking about a very large potential portion of the season if you get thrown in for even the first violation type penalty. Much more of a loss of a portion of the season that if you were fishing pollock in the Bering Sea. And so, it's disparate in that regard and I think that there are enough differences that we should go at this and not just try to lump it, but go at it in a way of trying to design something that is more applicable to the sablefish fishery. I'd be happy to vote on a motion to start the longline fishery in a penalty box type program for cod and then do some other things to be proactive to reduce the bycatch in '91, such as depth restrictions or any other mechanisms that we can come up with at a time that we can evaluate what other kinds of incentives may be put in place.

Peterson: I would like to have either Mr. Hegge or Mr. Alverson tell us then what sort of an incentive program would work on black cod.

Hegge: Mr. Peterson, I don't know if you need to call it an incentive program. We have a cap that is probably far more than we need if we're restricted. We're forced into a derby situation and I guess you need to protect us from ourselves. Trawlers have said it, everyone that has gotten into trouble has said it. If you send. . . you know, when we operated over the foreign countries we applied restrictions to them. The Japanese longliners could not go inside of 500 meters. They did a very clean fishery. We came out trying to equal them in our cleanliness, but you know, you didn't limit our numbers, you didn't limit our area, and put into the time frame and the competition, we didn't do very well.

Alverson: Well, I'm going to dump this one right back in John's lap. The longline industry has begged this Council for the last five years for a limited access system, for what reason? The crowding on the grounds, the crowding on the grounds. Five consecutive years, and John you haven't supported one limited entry program that the Council's ever endorsed, let alone the ITQ system before us and we see that as the major out in this, and if you're not going to support that major tool, I suggest you come up with a solution for us, but this isn't it.

Peterson: Well, what is it?

Alverson: Give us an IFQ program coupled with a depth restriction.

Peterson: I think that's a different issue.

Collinsworth: It seems to me that we've heard a couple things. We've heard depth restrictions. We've heard quarterly allocations, somebody I think mentioned some lay-up provisions or something. . .later seasons, there are some ideas here that perhaps if they were developed would result in a reduction of bycatch and that's where we're trying to get.

Peterson: If I may, in order to speed this process along, I would be willing to withdraw sablefish from my motion, providing the second agrees to that and that we then begin a discussion on incentive programs for the sablefish fishery that may be better tailored to that fishery.

Collinsworth: Approval of the second? [Affirmative reply] All right, then it would be include hook and line gear for Pacific cod.

Pennoyer: I'd like Mr. Hegge to comment on the grounds crowding problem relative to a depth restriction. I know we've had a fair amount of testimony about a later season opening, avoiding halibut to a great degree, but if we have such a grounds crowding problem I'm not sure about the enforceability, degree of enforceability relative to how we're going to restrict people from fishing in shallow water. But if we've got all those vessels out there with a major grounds crowding problem, and we have a depth restriction on that, what do we end up with?

Hegge: I agree that it's a problem and there's no question it's a problem and I guess if you looked at Steve's. . .how many of you have this, it was handed out at the very first of the meeting. If you look. . .

Peterson: Mr. Chairman, I wonder if we could perhaps vote on this motion on P. cod first before we get into sablefish?

Collinsworth: Your point of order is well taken, Mr. Peterson. Let's focus on the amendment to the motion before us, which is an amendment.

Alverson: Well, I don't understand why frameworking the same program for black cod to utilize in the future if it's something that works, why the rest of the Council members don't feel that that's appropriate, you know, based on my original motion that didn't get a second. We just went through a discussion of why isn't black cod included, and I tried to get black cod included into a program and I would still like that tool if it makes sense down the road.

Collinsworth: Mr. Pennoyer, you might, or Ron, might clarify for us. Even if you put a framework, I don't know exactly what Mr. Alverson is trying to do, except I think I understand, and that is to describe kind of a vehicle, a framework, I guess, that is not filled in, that it says something about a penalty box program, put it in the

amendment, start that moving forward, and then bring back the details in September and then try to work from September through the December meeting to implement something in December that can start for the '91 season. I think that's the concept that he's proposing. Now I don't know whether that's necessarily doable or not.

Pennoyer: Mr. Berg has an answer, he assures me.

Berg: With respect to implementing the penalty box program for trawl gear and for cod longline, that's what we would put into regulations implementing the FMP which we'd also have another look at in September. However, with respect to adding other gear types, the FMP could still have a structure to include other gear types in the future, for example, sablefish hook and line gear. And then we would implement that through a regulatory amendment in the future. I don't believe that the September -December framework process to try to implement something which is so major with respect to equity problems, enforcement problems, would be the right procedure.

Collinsworth: O.K., basically what I hear is that while it might make some sense in a conceptual way, the administrative process that we must undertake is not going to allow us to get to where Mr. Alverson wishes to go.

Alverson: Call for the question.

Collinsworth: Is there any objection? Hearing no objection, then the . . .Mr. Cotter's amendment to the main motion is amended. Further discussion on Mr. Cotter's motion.

Peterson: Which motion is that?

Pautzke: . . .[unintelligible]. . .apply to Bering Sea halibut, plus now the hook and line for P. cod in the Gulf to the penalty box.

Collinsworth: O.K., further discussion on the motion to amend? Is there any objection?

Mitchell: I object.

Collinsworth: The motion passed; Mr. Mitchell objects.

Cotter: A question and then perhaps a motion. Does this amendment, if it goes through, it allows us to separate the PSC between gear groups--longline, trawl, and pot. Within the longline gear group, do we now have the authority to apportion the PSC that's allocated to that gear group by target fishery, or would we need to designate that?

Berg: The FMP already includes authority to allocate to individual fisheries by gear type, but the regulations, so that would be another regulatory amendment that you would have to implement to the authority in regulations.

Cotter: May I ask the question, then, if I were to move now to have this amendment to allow apportionment, to allow us to apportion, the longline halibut cap to the following longline target fisheries: sablefish, Pacific cod, and other, is that sufficient to give us that authority?

Berg: Yes, if you direct us to do a regulatory amendment we would proceed working on that. With respect to the timing of it, if you want to get it in effect by January 1 you would not have the opportunity to see it as a draft in September. We would work on it, get it into the Federal Register and then, hopefully, in September, at your September meeting, you could look at it in a Federal Register form of proposed rulemaking.

Pennoyer: Ron, in terms of the numbers . . . [unintelligible]. . . are you just talking about just getting the authority to do it, or the actual numbers being picked for the '91 season. If the numbers were to be picked for the '91 season for those categories, would they have to be picked now or is it something we could framework into the September-December process.

Collinsworth: Well, we have to specify the PSCs before you can make apportionments, . . .

[several people talking at once]

Cotter: The amendment that's going forward now doesn't set the caps, it just gives us the authority by gear group.

Pennoyer: I was trying to find out, Mr. Chairman, if that would be in place in time for you to do that through your specification process for '91. A regulatory amendment doesn't go through in two months.

Berg: Well, that's correct. It takes a while to get those through, too, but the regulatory amendment would not set numbers. We would be relying on the September-December process to allocate PSC. To actually get the

authority, to get it in place, in order to utilize that December decision process, is something we would have to start working on right now in order to get that authority and so it would be close to make it to December.

Pennoyer: But, it would be doable to do it in December with this regulatory amendment?

Berg: Yes.

Cotter: But that would be a motion separate and apart from this, correct?

Pennoyer: Separate and apart from this?

Cotter: From this amendment package. The question is, should I make the motion now or should I wait for us.

Pennoyer: Might as well do it now.

Berg: It's not part of the Amendment 21 package so I think it would be a separate motion.

Collinsworth: So it's not now, is that right?

Berg: Right.

Collinsworth: All right, where. . . advice from staff, legal counsel, anyplace, where can we take up the issue that we were just addressing with regard to measures that may be implemented for the '91 season for sablefish to reduce bycatch, such as quarterly apportionments, depth restrictions, lay-up periods, whatever may come about, and when, I mean, how do we get that started, because I think that's important to the procedure. I'm not sure that we're going to specify all of those things tonight, but I think we ought to identify the kinds of management measures that we would have analyzed and we'd probably have to use an emergency process to get those in place for '91, but we should the administrative and analysis soon.

Cotter: Mr. Chairman, some of those items are contained in this very amendment package. What some of the things that this package does, if we pass it out, it allows us to designate by gear groups, PSC, it allows us to establish, to apportion that seasonally, among those gear groups. . .

Collinsworth: I understand that. I'm talking about other measures such as depth restrictions, principally.

Pautzke: We can already do seasons, I think. It's the depth restriction one that's hanging.

Peterson: But incentives is what we're looking for, or disincentives, either one.

Hegge: Going back to this graph, and I assume it's correct, because it . . . very clear, but April 28th we had 184 tons of mortality; the 5th of May, which granted was a halibut opening but a lot of people fished, we had 59; the next week everybody was back out fishing; we had 31 tons of mortality. This is so classic along with what the Halibut Commission tells us, what experience tells us, the fish move out of the deep and into the shallow. I guess I would really ask if you want nothing else, look at an opening somewhere around May 1st or something. It's very, very indicative.

Cotter: If I may, very quickly, if we can vote on this amendment package and get Amendment 16 out of the way, then there are two regulatory amendments that we could take up to get us to initiate the depth restriction process and to initiate the apportioning within the longline cap, and that would probably get us, I think, where you want to go.

Berg: With respect to the depth restrictions, we've been going through the FMP to find where they fit and the problem is that they don't. It's not something which is already provided for by tools within the FMP, so that would be a brand new amendment cycle to start in October unless the Council were to consider an emergency rule. The other measures, like seasons, to set the season back, that's frameworked where we can do that by regulatory amendment and of course quarterly apportionments are part of this Amendment 21 that you're looking at now.

Collinsworth: All right, under Chapter 7 we have a motion before us to adopt the AP proposal, Alternative 2, and it has been amended. Any further discussion on that? Is there any objection? All right, that motion has passed. Anything further, Hal?

Weeks: Not on the Amendment 21/16 package. It's your discretion if you would wish to discuss related requests for regulatory amendments at this time or another time.

Collinsworth: That's D-3(b). Steve, is this a must-do?

Pennoyer: Yes it is. We've got to start those right away. But, again, before we leave the Gulf, is it our intention to come back to it and talk about these other measures, which are also maybe are must-do's? I think we ought to complete the Gulf of Alaska bycatch thing if we can now while it's fresh in our minds. When you go to the regulatory amendments you're shifting back to the Bering Sea again.

Collinsworth: All right. I don't understand what you want us to take up at this point.

Pennoyer: Well, I think Mr. Cotter had some suggestions, but we still have adopted nothing to slow the sablefish fishery down in 1991 and while I agree that there are some problems with the penalty box and ultimately withdrew my support for Mr. Peterson's withdrawn motion, we still have nothing in place and I think we need to put something there that will try and assure that the sablefish fishery goes slower in '91 than it went this year. I think Mr. Cotter has a couple of amendments that he was going to offer and I think we ought to do them now rather than switch back to the Bering Sea.

Collinsworth: All right, let's do that.

Cotter: The first one is, I move that we develop a regulatory amendment to allow the Council to apportion the longline halibut cap in the Gulf of Alaska to the following target fisheries: sablefish, Pacific cod, and other.

Hegge: Second.

Collinsworth: Mr. Cotter, would you care to speak to your motion while it's being put up?

Cotter: Very briefly, Mr. Chairman, all this does is it gives us the authority within the longline halibut PSC cap in the Gulf to apportion the PSC cap out among those fisheries so that it brings some accountability to the three main target fisheries themselves--sablefish, Pacific cod, and other, so that one fishery when it reaches its cap is not going to shut the others down.

Hegge: I'm not sure, can we add on a depth restriction or season.

Collinsworth: Not on this one, but that's still before us as an option. Is there any further debate on this option? I think it's fairly straight forward. Are there any objections? [None articulated] Did you have another motion you wish to offer?

Cotter: Well, there are two other subjects. The first one has to do with changing of seasons, does that require regulatory amendment and do we have to specify the date that we wish to change the season to?

Pennoyer: That would be very helpful.

Cotter: Before that motion is made perhaps Mr. Hegge or Mr. Alverson could advise what is the most appropriate season opening date, recognizing that this will be back before us for final action later. If you want a regulatory amendment you need to pick a date in order to get the analysis started.

Hegge: I'd say May 1st.

Alverson: Well, we went through the May 1st analysis and May 1st basically didn't do anything in terms of the data base that came forward to the Council. There was very little evidence that there was any difference between that and the month preceding preceding it. The data did show a change when you got into June-July, and I've talked to a number of people in the industry that think that the following concept on openings may work. If you were to have the April 1st opening, start the season, and have all areas close at that point when Southeast-East Yakutat quota is taken and reopen July 1st. The idea behind this is that when the Southeastern area is closed so quickly, within 14 to 18 days, it folds about 150 boats right on top of the existing fleet to the west and if you look at those numbers that Hegge's been talking about, the first three weeks is not a problem and that's because the fleet is spread over about twice as many miles as they are when it closes down and then they fold right on top of each other into the Central Gulf and the Western Area and you get a tremendous amount of that fleet moving into Seward Gully and into the shallows. That's the type of fishery that when I've talked to people in Petersburg and from the Seattle fleet, think might work. And, I'd propose that as an option for consideration.

Blum: Concisely make a motion?

Alverson: I would move that a regulatory action be developed on the season for the black cod fishery in the Gulf of Alaska, that would terminate all black cod fisheries [Change to Tape 82], longline fisheries in the Gulf of Alaska at the close of the Southeast-East Yakutat and West Yakutat; when those all three areas have closed, in those areas, all other areas in the Gulf would be terminated until July 1st.

Blum: I'll second it for discussion purposes.

Hegge: I'm not sure that the figures agree with your dates there, Bob. The first week it went to 243 tons and I think that probably the only way that's going to work is if you put a depth restriction with it and is that a possible amendment?

Alverson: Well, as Larry said, there's two issues here. I support a depth restriction on a separate motion.

Collinsworth: We have to deal with that. . .

Cotter: Depth restriction requires a plan amendment.

Collinsworth: This is a regulatory amendment we're talking about.

Blum: Bob, I believe this proposal was for longline, was it not?

Alverson: That's correct.

Cotter: For analytical purposes, it might be good to move ahead with this. It provides us with some flexibility, at least in the decisionmaking process and provides us with the opportunity to make the decision to make the change if we so desire.

Hegge: Under that context, could I offer an amendment, that they analyze for halibut bycatch on the basis of the observer data, and other, both April 1st and May 1st openings.

Collinsworth: Can we do that, Mr. Pennoyer?

Pennoyer: Yes, I believe so, Mr. Chairman.

Alverson: I would accept Ron's request as a friendly amendment.

Peterson: Will you please repeat what the motion is now?

Collinsworth: Does the second accept that?

Blum: Yes, Mr. Chairman.

Collinsworth: Mr. Alverson, does that comport with your. . .

[There is a silence here where I believe the motion may have been reiterated, but nothing on tape]

Alverson: Yes, I think that is exactly. . . what Ron and I are suggesting.

Collinsworth: Further discussion?

Dyson: . . . [unintelligible]. . . I guess they don't know what. . . [unintelligible]. . . if East Yakutat and Yakutat is closed down and everything else is closed down, too, wouldn't you be apt to get a lot of boats rushing down in that area to help you catch those fish.

Alverson: That's why all areas would close.

Dyson: To start with, that's what I was thinking. You might get more effort down there than you would if you just left it alone to follow its own course.

Alverson: There isn't any more room down there.

Dyson: Well, I don't know. I just asked the question. I've never done that fishery, so I don't know.

Alverson: Well, that would come out in the examination and the public testimony. I don't believe so, Oscar, but.

Peterson: I really don't know what effect this would have not being that familiar with it, but I don't see that there's any incentive in this to the individual fisherman to fish clean and I think that's what we're trying to develop. There isn't a direct incentive program in this. It is an attempt to provide a situation where the fleet is not as concentrated and to provide a time of a secondary opening when the black cod have separated from halibut. There is not an incentive but there's about three things that this does subtly that this does for the fleet to help them minimize their bycatch.

Mace: What's the timing for getting this out; it comes up for public, or for release in September, would that be the schedule, for public review?

Pennoyer: It'd be in the comment period, Secretarial review comment period, for public comment. The Council would comment on it just like the public would at your September meeting. It would be your comments that you would be giving us at that time and I wanted to ask a question, Mr. Chairman, if I could. I understand what you're trying to get at, Mr. Alverson. I think that may well work. What are the advantages of that over something that gets you off the halibut period, like a May 15th opening, or even June 1st?

Alverson: Well, I don't think a May 15th opening does it. I think if you want a single opening, I think you move to July 1st, July 15th and have a fishery during the time when . . . you know, we've only got a 2½ month fishery

right now. The best time, the best price would be July 1st through September, but that's not going to be politically acceptable I don't think.

Pennoyer: I had heard that the June 1st opening would do it in some people's opinion, but maybe we should put that up there for analysis as well and take a look at it.

Alverson: Sounds like a good idea, whatever works.

Pautzke: Mr. Pennoyer, then you're planning on analyzing this and sending the package out for public review before the Council has a chance to take a look at it and what we would do is be in the comment period by the time we hit it in September.

Pennoyer: If it's a regulatory amendment process, that's the way it would work.

Berg: It's going to be a regulatory amendment, all right, but all we have to do is beat next April 1 with respect to getting the regulation in place. That's different from trying to get it in place on January 1, so it's possible maybe they could look at it as a draft at the September meeting and then it goes out for review.

Collinsworth: That would be very good, if we could see it as a draft. That solves a little bit of the problem I was starting to have.

[Call for the question]

Collinsworth: Are there any objections? The motion is passed.

Peterson: I have another motion which I think would be either an incentive or disincentive, one or the other, but I think it would provide information that would help develop an incentive program, and that is the observer coverage for the black cod fleet in the Gulf include vessels down, from 55 feet to 125 feet, and then the larger, the would be in the 30% . . . [interrupted by several people talking at once]

Collinsworth: Just a moment, Mr. Peterson. I want to make sure we're dealing with this under the right agenda item and I don't think we are. We would deal with this under the observer program.

Peterson: I didn't know observer was an action item; my thought was if we're going to any kind of an incentive plan we need to have the observer coverage, that's why I thought it might fit here, Mr. Chairman.

Collinsworth: Please advise, . . . Steve? Does it fit here or does it fit someplace else.

Pennoyer: I believe that's under the observer plan is when you take that up, Mr. Chairman, for all the various reasons, you would change the observer plan this might just be one of them.

Lauber: John just wants to make sure we get to it while he's still on the Council.

Cotter: There was one last item, I think, in the list of things to look at. This would require a plan amendment; I don't know what type of burden that would place on staff, and so I'm uncertain whether to move or not, but the motion would be to commence development of a plan amendment to implement depth restrictions in the Gulf of Alaska longline sablefish fishery.

Blum: Second.

Cotter: The reasons are fairly obvious. There's crowding on the grounds and gear is being forced to be used in depths where halibut predominate so this if implement would certainly provide an inducement to minimize bycatch. The question I have, though, is to the staff, and that is what are we looking at in terms of impact upon staff to do this. Theoretically if we had a draft back by September we could take final action by December, do an emergency rule, and it could be in effect by the season opening next year, but I don't know whether that's doable with the staff.

Collinsworth: These analyses are always far more complicated than I imagine they are, and certainly I want to hear from staff, but I just can't imagine that this is going to be that complicated. You're talking about a stand-off distance, we're talking about moving back into a more conventional practice in potentially reducing bycatch. I don't know, that's probably too naive.

Berg: The normal cycle would have been submit them in October and then you would direct the team to look at it, to start the analysis in January, and then we would be back here in April 1991 for 1992, but again since the season doesn't start until April 1, it seems to me that it still go forward as part of the existing schedule in October and then the Council could look at it in January 1991 and there'd be a way then to implement a depth restriction, perhaps by emergency rule, to implement the direction the analysis was going after the Council had looked at the problem statement in January of 1991.

Peterson: Move the season back and we could implement it by emergency regulation by June 1.

Cotter: Just listening to that, it doesn't play right in my mind. We're going to see a problem statement in January; I think we could write a problem statement right now. What we would see under that schedule is a draft EA in April, final action in June, we'd do an emergency rule at some point. We don't know whether the season would open April 1st, May 1st, May 15th or June 1st. I guess the real question in my mind is how much work does it take? Is it possible to do a draft by September without burdening you relative to your other tasks? If the answer's yes, then we've got to look at something else.

Berg: The answer's no, Mr. Chairman. . .with respect to the other workloads, and albeit the particular example you're looking at a heavy action in itself, but there's a lot of actions, some of which are heavy and some of which are more minor, . . . and . . .

Collinsworth: So your answer is you do not have the resources to do it.

Berg: Right.

Collinsworth: O.K. Just say no.

Hegge: How about maybe? I think we're getting some meaningful things here--a depth restriction, one more thing, a hook restrictions, we might have some comment and some good things to carry us through until we do put another program in if we need one, and you know, we've researched these somewhat in our sablefish management; I don't think they require all that much background. They've been talked about for years, they're in the RIRs to some degree.

Peterson: Did we vote on a hook restriction?

Hegge: It was commented in there considerably.

Alverson: Is this still on the . . .is this withdrawn? We don't have any motion on the floor?

Cotter: Withdrew the motion.

Mitchell: The question of hook restrictions; I guess you could do that, it would be that hard to study. But that doesn't solve the problem of grounds preemption. You're still using the same line covering the same ground and spacing your hooks out.

Alverson: Ron, would you speak to that issue?

Hegge: Yeah. We heard a lot of testimony that people were dumping a hundred skates. State of Oregon did a research; people were having up to 80,000 hooks on the boat and going out preempting the grounds. And, with a hook restriction, you would have only so much fishable gear on the boat and that wouldn't take place. You would have much less crowding, much less waste, it would answer a lot of problems, I think.

Mitchell: You could accomplish the same grounds preemption by using the same length of line. . .

Collinsworth: I'm not interested. . .I'm sorry, Mr. Mitchell. . .I think we can discuss that, but basically it seems to me that we don't have the staff resources to engage a plan amendment process, or to initiate a new one at this point. Now, are there any other regulatory amendment proposals to come before us at this time. Otherwise, we're going to move on. I'm wondering if something's coming from the huddle.

Hegge: The depth restriction's erased? Or are they huddling about that?

Collinsworth: I have no idea what they're huddling about.

Pennoyer: I admit to Mr. Cotter's concerns that this whole system may come together because, depending on emergency rules as we know is a chancy operation, but I believe we have the opportunity of putting this in your next year's amendment cycle and with you sending it out, deciding on a . . .[unintelligible]. . .doing the analysis by April, putting it out to public review, adopt in June. In the meantime you instruct us at that point that because of the situation you want it adopted by emergency rule, which between April and June we would work on. So, I think it could come together. I can't promise you all the pieces do, but this is an important piece of your plan; I would not just give up on it because it seems like the dates don't quite match up. We can do that; at worst, maybe you do it inseason, though I think we could get it in place before the season, depending on when the season opens.

Cotter: Well, I would resubmit my motion; move to commence development of a plan amendment for the 1991 amendment cycle to implement depth restrictions in the Gulf of Alaska longline sablefish fishery.

?: Second.

Mace: The point I'd make is that there could be a lot of competition for staff time on plan amendments when we set priorities later this fall, that may not be the highest one. It may not be possible to do it. . .

Pennoyer: I promise you, when you commence, nothing is going to commence for quite a while. The next several months this staff, because of inseason management actions, doesn't have time to answer the phone and because of the results from this meeting and other factors that I have to take into account, when you say commence, we're going to start thinking about it and along about some time this winter we'll start commencing on it, and so there'll be plenty time of think about that. We have your desires; if you decide at some point that we want to change priorities, we won't have wasted a lot of work because we're not going to do anything for the next several months.

Collinsworth: I think the language is adequate. You can commence slowly.

Pennoyer: Thank you, Mr. Chairman, I assure you that's what we'll probably do.

Mitchell: We could add into that same. . .that study of hook restrictions and also of staggered date openings to be divided between the fleet.

Pennoyer: We could leave the rest of this for the normal consideration by your normal committees and so forth and prioritization of work and on down the line. You may have a lot more good ideas that come up from the public and elsewhere and between now and January and then you make your decision in January as to which ones we're going to analyze, so I don't think we have to load it up with a lot of other ones.

Collinsworth: Is there any further discussion? Is there any objection? Is there anything further now with regard to Chapter 7?

[End of Council discussion on this agenda item at this time]

North Pacific Fishery Management Council
Discussion of BSAI Amendment 16a Analysis
June 29, 1990

Tape 84

Collinsworth: [Discussing what next to take up on agenda]. . .The Amendment 16a? All we have to do is approve that for public review, is that correct?

Pennoyer: You have some components in it you have to discuss and originally when we had planned on a July meeting I thought it was possible to get it done by September, but since we switched it to August, I don't think that's any longer possible. In other words, if you tried to do it in August, send it out for public review in time for the September meeting, I'm not sure there's time enough. Clarence - you want to comment on staff, the ability of getting that done.

Pautzke: Depends on what you're going to add to 16a, because you had discussed. . .

Blum: One item; I have one item to add.

Collinsworth: I don't want to take up time dealing with this if there are other more pressing issues, I don't know how long it's going to take us to deal with it.

Blum: If my one addition is a question, I would say what it is. What it is, is to cover the PSC caps issue raised by General Counsel. I would propose we have staff look at 50, 100, and 150% of 12a levels and that has the concurrence of the Regional Director that that would cover that need and that's the only thing I have to add.

Collinsworth: Well, that would be the purpose, to develop the analysis.

Blum: The full motion would be the Council requests staff to analyze bycatch PSC caps at 50, 100 and 150% of 12a levels, put the analysis out for public review for consideration for adoption as part of Amendment 16a in September.

Cotter: I recognize that we need to deal with that and the concern that I have is what that analysis is going to look like before we send it out to public review, whether or not the scope of the biological and economic and social work that accompanies those changes is going to be sufficient to send out. I guess we can go ahead and do that

and if we don't like it in September we can hold it over or something, and perhaps send the rest of the package on? We'll have that flexibility in September?

Pennoyer: Send the rest of the package out? No, you need to adopt it in September.

Cotter: Well, what I'm saying is in the event that we accept Mr. Blum's recommendation and add that additional item to the package, and we do the analysis, send it out for public review, we're scheduled for final action September, if at that time we take a look at that portion of the analysis and decide that we don't think that that's sufficient, can we take action on the remainder of the package and send that on and if necessary we can hold off action on the cap portion.

Pennoyer: You could, you would still have to deal with. . . may have to deal with something by emergency in terms of next year on caps, but the alternative is open to you to do just what you said -- you could send the rest of 16a on and hold the balance for December consideration.

Cotter: Except, the only reason we would have to do something on caps for next year would be in the event that the Secretary disapproves the actions that we've taken at this meeting.

Pennoyer: That's correct, and you're sort of covering yourself on that by putting it in 16a and getting the option of looking at it at that time.

Alverson: If Joe didn't have a second for that, I second it.

Collinsworth: All right t. The record will show Mr. Alverson seconded Mr. Blum's motion. Discussion, please? Mr. Blum, did you wish to speak. . . I guess you've already spoken. . .

Blum: I think we spoke earlier, I'm just covering the base that needed to be covered.

[talking in the background, can't hear]

Fraser: Mr. Chairman, the AP report. The AP reviewed the draft Amendment 16a package which proposes expansion of the bycatch management measures in the Bering Sea and Aleutian Island area. The AP unanimously approved a recommendation to send this amendment out for public review. The AP also unanimously supports adding to both Alternatives 2 and 3 the option of individual bycatch accounts described below.:

Proposal for Individual Bycatch Accounts

- A. Initial Distribution - To all vessels equally with a history of participation in the prior year above a threshold between 500 to 100 tons in the GOA. This is lifted out of a letter referring to adding this alternative to the GOA, but it's in reference to the Bering Sea here. Distribution done annually on a one-year basis.
- B. There would be a reserve set aside percentage of the cap, 15% as an example, as an open access pool for vessels without a threshold level history of participation. This subcap would be administration on the status quo olympic system basis.
- C. Fee Transferability--be fully transferable but note that it would be for a one-year duration.
- D. Observer coverage and monitoring would be based on current observer coverage requirements.
 - Above 125' -- based on observed rates.
 - Less than 60'--multiply the catch by high end of an assumed rate range or use observed rate if voluntary coverage is used.
 - 60' to 125'--one option would be to extrapolate the observed rate to 100% of the catch;
Option B -- use observed rate for observed catch instead of high end of assumed rate for the range for the unobserved catch.

Collinsworth: Thank you. I think, while we appreciate the AP's recommendation, we've been advised informally that undertaking that effort would exceed the available resources that we have. If we were to do that, something else is going to have to drop by the wayside, so just wanted to advise the Council of that. We have Mr. Blum's motion before us. Any further discussion? Is there any objection? Hearing no objection, the motion passes. Now, is there anything else we have to do with 16a?

Mace: I want to raise a question, Mr. Chairman. This particular amendment is still restricted to bottom trawl only for bycatch and there are other gear types out there that are involved in bycatch, including the longline fishery, and I'm wondering why there isn't an option for the public to discuss and review that? [silence] And, I don't hear any answer.

Mitchell: Hasn't been written.

Pennoyer: Mr. Chairman, it wasn't requested. The Bycatch Committee, as I remember although the Chairman can contradict me if I'm wrong, had decided that we'd put that in abeyance for next year and at the time we came out with our recommendations, which I think the AP largely mirrored, we didn't deal with any gear by trawl in the Bering Sea as I recollect, so it was not requested for analysis or for the staff to work up, and that's why it's not in front of you.

Cotter: There's only so much we can handle.

Collinsworth: Yes. The Chair would entertain a motion to send Amendment 16a out as amended.

Mitchell: So moved.

Blum: Second.

Collinsworth: Is there any objection? All right, it's about 9:40 p.m. . . . [on to other agenda items]

North Pacific Fishery Management Council
Additional Discussion of BSAI Amendment 16a

September 30, 1997

Tape 90

Peterson: Mr. Chairman, I regret, but I think the need to do this, but I moved to reconsider the action we took on Amendment 16a.

Mitchell: Second.

Peterson: I think we inadvertently let something drop through the cracks in the floor and I'd like to correct that. It has to do with not including other gear types in this amendment.

Collinsworth: We have a motion before us to reconsider. Are there any objections? We now have brought back before us the Agenda item, D-3(c), Amendment 16a. Would you like, John, to speak further to your reasons for bringing this back before us?

Peterson: Yes. Amendment 16a covers in my opinion as I read it and look at it, trawl fishery only. We are aware that a substantial development in pot fishing will occur in the Bering Sea; we know very little about bycatch from pot fishing, but it would seem to be that there will be a bycatch of crab and halibut in an extensive pot fishery or even a longline fishery for Pacific cod in the area. I believe, in my opinion, that hook and longline and pot groundfish fisheries should be included in this analysis.

Pennoyer: The only question I would have would be one of staff in terms of getting the analysis in time to get it out to public review so we actually do 16a in September, and I guess I'm not sure what analysis is going to be required, but if Hal or Clarence could clarify that.

Pautzke: Let me just start out and say that right now what you've got in 16a is the hot spots, the midwater trawl, you've got herring bycatch that's in there as a second chapter, and then you added late yesterday an analysis of 50, 100 and 150% of the 12a caps. And, I'm not sure if we have staff time to do it or not. I guess Hal has been thinking about it; it seems to me we have not touched at all the pot fishery or an analysis of it for 1991; I'm not sure we've done much spade work on it. I think the Council's thought in April when they were putting together what they wanted for 16a is that there would be a comprehensive program developed over the summer for the next annual management cycle, and I'm not sure that this is the straw that's going to break the camel's back as far as

analysis is concerned, but I do know that we're going to. . . [unintelligible]. . . all summer anyway, so maybe Hal can fill us in on whether this is the last straw or not.

Weeks: Yes, Mr. Chairman, this is the anvil which will do it. As Mr. Peterson correctly pointed out, we don't know much about fixed gear fishing in the Bering Sea; it would be a very complicated and difficult analysis. One month to do it would not do it justice and we've got plenty of other things to keep us busy.

Pautzke: You've got 16 and 21 that you need to get out of the office and on to Secretarial review; you need to get ready for your August meeting, and frankly I don't know how we're going to get this kind of a thing done.

Alverson: John, when the Bycatch Committee looked at the issues in 16 as they relate to trawl, based on a long history of observer data of what was going on from the joint venture fishery and somewhat into the domestic operations, at this point and I think at the point of deliberations in the Bycatch Committee, there was no data base to look at in terms of what bycatch was in the post fishery that is basically non-existent up til this year, and the hook and line industry, this is the first year for observer data for the domestic fleet--I haven't seen any information from the observer program on the hook and line operations, codfish operations. Maybe there's something to analyze, but John do you have any caps in mind, or any data base.

Peterson: If I could respond to that. This is in hopes. . . anticipating what is going to be a problem, or what I suspect will be a problem. Obviously these pot fishing vessels must have observers aboard so data can be collected. It seems to me the second requirement would be that the regional direction should be given the authority to take inseason action in the event bycatch is higher than it should be. Here we're setting caps and those caps are going to be eroded by a substantial pot fishing operation. If we're really interested in protecting those bycatch species, the crab and the halibut, I think this should be done rather than wait until there's a big problem--hey, we've got to do something; why can we not put it in place now. . . [Change to Tape 91]

Unfortunately, Tape 91 is blank. I have checked with Alaska Sound Labs who contracts to tape our meetings; their master copy of this particular tape is also blank, probably because of operator error during the meeting.

Secretary's notes for the remainder of this discussion indicate that the Council realized that there was insufficient staff time and referred the issue to the Bycatch Committee to determine how it would fit in to future bycatch programs. The Committee was asked to report back to the Council at the August extension of this meeting.

August 7, 1990

Tape 5

Collinsworth: . . . The next item would be D-3(c), Amendment 16a.

Pautzke: Hal Weeks will lead us through this. I'd refresh your memory that, at the June meeting you passed a motion to send 16a out as amended and 16a at that time had several different items in it and they're on the reverse side of 3(c). They have a herring item in it; they have an allocation of pollock to midwater trawl gear; hot spot closure authority for the Regional Director, and before you made your main motion sending it out as amended you added the 50, 100 and 150% PSC cap analysis. Hal will bring you up to date. We wanted to bring back that analysis to you at this meeting. He'll bring you up to date on where it's at so we can send the thing out for public review after this meeting.

Weeks: Dr. Pautzke just gave an excellent summary of events. I would only add that in addition to the additional tasking by the Council in June, the Council adopted the SSC's recommendations that all of the assumptions, the algorithms, and procedures in the models being used for both the herring part of this analysis and the crab and halibut portion of the analysis be merged and that a sensitivity analysis be performed. This has proven to be quite a mouthful. The work is ongoing. I discussed the status with Joe Terry last week concerning crab and halibut and we anticipate that we'll be able to send this document out for public review likely at the end of next week. That would still enable the 30 days of public review and comment prior to the September council meeting. Fritz Funk was not available last week, I could not confirm parallel status for the herring chapter with him. What this means, Mr. Chairman, is that plan team review, SSC review, Council review, will all have to be concurrent with public review for this document, but we are still going to make every effort to have this available for you for a September decision that would result in, assuming approval by the Secretary, implementation in March or April of '91.

Collinsworth: What is the action that the Council needs to take at this point?

Pautzke: Well, we were hoping to have the new analysis of the caps available for your review, but trying to merge the herring caps and how they would affect the halibut caps and crab caps and how they would all interact became a big problem with the model. So, really what we need to do is have your concurrence that when the analysts get done with this, which should be within the next week and a half or so we will send it out for public review so that you can still make your final decision on 16a in September so that it becomes active during 1991 sometime. We just don't have the analysis for you now because of those problems encountered. So, essentially we're looking

for concurrence with your motion you already in June to send 16a out for public review. We were hoping we could have the analysis for you, but we don't, but it will be available in about a week or ten days.

Cotter: When we get to the September meeting and we take this issue up, a good portion of the analysis relies upon the model and I saw yesterday, but I have not had a chance to review, a working critique of the model by Marine Resources Company or something like that, and I would appreciate that perhaps at the September meeting that the staff or the plan teams might be prepared to discuss the applicability of the model and what its shortcomings are and that type of thing so we don't have to get into a big debate over it.

Collinsworth: The Chair would entertain a motion to concur in the process that was outlined by Mr. Pautzke to process this issue.

?: So moved.

Peterson: I second.

Blum: I'm looking at the agenda item as it is laid out in the documents that were mailed to us in July and I see D-3(c) and D-3(e) being unshaded. Which of those are you referring to, if either of those, in the discussion that you've just had, Clarence?

Pautzke: We're on D-3(c), Amendment 16a; the Pribilof proposal we haven't gotten to yet.

Collinsworth: Any discussion on the motion before us.

Mace: When will this analysis be done?

Collinsworth: They said in about ten days.

Weeks: Yes, Joe Terry indicated the end of next week but as I said I was not able to contact Fritz Funk to get his concurrence with that for the herring. That's our target.

Collinsworth: Any further discussion on the motion? Are there any objections to the motion? The motion passes. Is there any further business with regard to D-3(c)?

Weeks: No, sir.

[Secretary's note: I could find no evidence that the Bycatch Committee reported back to the Council on this subject in August]

[End of this agenda item]

North Pacific Fishery Management Council
Council Discussion of Regulatory Amendment to Delay 1991 Yellowfin sole/Other flatfish fishery season opening date; and to allow for higher retention of yellowfin sole and other flatfish in directed rock sole fisheries. Agenda D-3(b), June 1990 Council Meeting

June 29, 1990

Tape 82

Collinsworth: Please walk us through quickly, D-3(b). We have an opportunity to complete this section I think rather expeditiously if we give our full attention to Hal.

Weeks: Under your tab D-3, a to c, and behind the yellow sheet is your action memo for D-3(b). The topic is a regulatory amendment to delay the yellowfin sole and other flatfish fishery in the Bering Sea and Aleutian Islands and to change the directed fishing definition to allow increased retention of yellowfin sole in a rock sole fishery. In the course of your April deliberations and discussion of how to address the overall Bering Sea bycatch picture, it was suggested that a delay in the yellowfin sole fishery from its January 1 start until some point in the range of May 15 to June 15 might be appropriate, and you requested that a draft regulatory amendment be prepared for the Council's review. In addition, it was pointed out that an increase in allowable retention of yellowfin sole and other flatfish in the rock sole fishery would minimize the amount of discard waste due to the directed fishing definition. Ron Berg has prepared the draft regulatory amendment for your inspection and this has been passed out to you and we would appreciate Council guidance in terms of a specific date for the start of the yellowfin sole and other flatfish fishery and the proportion of yellowfin sole and other flats that could be retained in an early roe rock sole fishery.

[tape cuts out; missed some comments]

[comments relating to where to find the document being discussed]

Collinsworth: O.K., Ron, we've got it.

Berg: As Hal presented, at the last meeting the Council requested, in order to solve a serious management problem with respect to Bering Sea halibut and red king crab bycatch, that we would actually delay the start of a flatfish season, except for rock sole, until May 15, also considering June 15 as another possible starting date. We were expected to look at the effects of the season change not only on the crab and halibut but also on salmon and herring. And we did so, based on current JVP data that was experienced in this last flatfish fishery, which closed on January 25 when they reached the red king crab cap in zone 1. We also used then the historic '86-88 joint venture data in the flatfish fishery where we had to look at second, third and fourth quarter rates; we didn't

have observer data at that time. The industry has already talked to you several times about what happens with these starting dates. If you start that fishery in the first quarter and if they start in Zone 1 where they're pretty much restricted because of ice further north, they experience a very high red king crab rate. Potentially, then the Zone 1 would close, as it did this year, and fisheries then get moved over to Area 2H, which is Area 517, and also possibly Area 515, and when that happens they start getting high bycatch rates of halibut. As a result, this year for example, using joint ventures to illustrate, they left about 126,000 tons of flatfish on the table with about a \$19 million value. We looked at the May 15 and June 15 dates and since then the industry is recommending an April 1 starting date. We made some assumptions that if they were to start May 15 that perhaps they would not even go into Zone 1 at all because the ice then would have melted far enough north where they could fish in Area 514. And, Area 514 is an area where they have quite a high groundfish catch in terms of tons per hour that can be caught. For example, 7½ tons per hour compared to a second quarter in 511, back in Zone 1, would have been around 6. So, somewhat better fishing for flatfish up there in Area 514. If that were the case, then, we thought that they might be able to take an awful lot of flatfish catch in Area 514 and perhaps then would wait until much later in the year to even go into Zone 1, in which case the red king crab cap if it were available at that time, would still be available to help support flatfish fishing for the rest of the year, therefore maximizing the amount of codfish they'd be able to get for the year, both in Area 514 and also in 511, by waiting to go into 511 til later in the year. Probably the worst thing to do is to have any kind of change which encourages them to go into area 517 to the west earlier because that's where they'll typically experience high halibut bycatch rates maybe during most times of the year. It's interesting that under the status quo, if it wasn't for the red king crab bycatch in Zone 1, letting them fishing in Zone 1 would probably be superior to the other alternatives, because the high bycatch rates in Zone 1 keeps their halibut rates down in Zone 1 because it's not a scratch fishery. So, they pick up their flatfish quickly and therefore get a lot less tonnage of halibut. So, if it wasn't for the red king crab problem, that'd be a good idea. As it is, if they're fishing up in the area of Round Island and places like that, around May 15, they also have high flatfish catch rates and the data then show that they also have low halibut catch rates up there because it's not a scratch fishery either. The problem is that there are some small herring bycatches that can be experienced out there in Area 514 on a May 15 opening because the flatfish have gone up to spawn and also to feed on herring eggs and herring congregate around the area of Round Island and have peak spawning around May 15 and so those two come together. On the other hand the data show that the bycatch rates are reasonably small, at least based on historic joint venture data, about .2% bycatch rate in 1987 and .3 in 1988. Now, because of herring, however, we looked at the June 14 starting date as the Council requested us to do also, and of course then you would really minimize the herring bycatches if you were up there because herring would have left that area for the most part and probably would have migrated clockwise around into the southern part Bristol Bay or might not even be in the area perhaps on a June 14 starting date. So, with respect to our original assumptions, it really depends now on industry input. We know that they would like now, rather than a May 15 starting date, based on what we've heard at this meeting, they'd rather start on April 1, still the second quarter. Of course,

they'll probably be starting in Zone 1 perhaps at that time of year, but their red king crab catches are markedly reduced even if they start on April 1 compared to May 15. So, either April 1 or May 15 [Change to Tape 83] you would probably have the same result with respect to the extent of the red king crab catches. On the other hand, they'll still be catching some in Zone 1 which means that their cap would start to be depleted earlier than we thought might happen. We thought that if they went up into Area 514 to begin with they would then be catching lots of codfish, perhaps get a lot of their markets satisfied and then move into Zone 1 later where then they would be supported by the red king crab cap at that time. Other than that, if we can answer questions about some of the data. On the information we gave to you, on page 8 is a table; it fairly well summarizes bycatch rates that we used in this whole analysis on a, about one page of paper. What we don't want to see happen, or what we would recommend not happen, is that, of course, the status quo. If red king crab PSC were to be instituted as a cap again under Amendment 16a for next year, for sure they would probably catch the red king crab cap rapidly and that would force them over into areas to the west, Area 517, and catch their halibut too fast, and as a result a lot of flatfish would be foregone. So, at this time, the paper recommends May 15 for a starting date.

Collinsworth: O.K., you can reference, Council, the AP minutes. The AP considered a regulatory amendment for 1991 for yellowfin sole/other flatfish fishery. After a staff presentation, some discussion and a brief industry meeting, the AP voted 12 to 1 to recommend to the Council there be a April 1 opening of the yellowfin sole/other flatfish fishery in 1991 and that would be accomplished by a seasonal apportionment of PSC caps rather than with a regulatory amendment.

Berg: Mr. Chairman. With respect to implementing the starting date with a seasonal apportionment of a PSC cap. . . both FMPs were established to allow season starting dates be changed by regulatory amendment and at the time the industry preferred that method because of the analyses that go forward through proposed and final rulemaking. That to us is the correct way to implement a season starting date; that is what the FMPs require, to use a regulatory amendment. The process of using quarterly apportionments, or season apportionments and therefore specifying the first quarter to be zero, is a technique that would probably accomplish the same, yet it doesn't comport with what the FMPs had contemplated, nor does it agree necessarily with what the industry expected when they first had approved 18 and 13 in the previous amendment cycle.

Collinsworth: Is there anyone who wishes to offer a motion?

Mitchell: I would offer a motion to start on June 15th. . . [Silence]. . . If nobody seconds my motion I'm going to be very made because you're going to make a big mistake here and I want to explain why.

Cotter: I'll second your motion.

Mitchell: Thank you. A number of those boats move into Area 514 in late April, early May. They will experience a very high bycatch of herring moving onshore and there's no doubt in my mind about that. Additionally, I believe that as the herring leave most of the spawning areas around Kalukuk(?) and those areas after May 10th to the May 15th period, if that fishery's still going at that time they'll hit them on the way out, so I think you will experience a pretty high bycatch of herring, so that is a concern. Also, there's a small halibut fishery there and I don't know what the rates are as far as halibut or what they've experienced so far this year starting on June 15th, but I sure would be interested in knowing what information they have from the grounds right now about what the bycatches have been, cause they're operating out there right now.

Pennoyer: Ron may want to correct me in terms of the accuracy of the data, or have additional data, but our past information has shown that you run into a real conflict here. You want to minimize red king crab bycatch; you want to minimize halibut bycatch, you fish in 514. And what we got from the joint venture fisheries when they were setting up their current information is you want to start sometime, as early as the ice is out in April, and any time after about June 15 to July 1st you run into increased halibut bycatch rates in that area, so you've got a dilemma. I would point out, however, that with herring we are going to deal with herring caps and other things to do with herring under Amendment 16a, and I just don't know how we're going to bring all these things together. If you want to minimize red king crab bycatch early in the year, preserve it for later fisheries on cod or whatever, and you want to minimize halibut bycatch, again, early in the year, you want fisheries to take place to a large degree in 514 and I don't know how we're going to get around that and what the joint ventures, definitely in terms of the data they presented us to try and set up this fishery they've got going now, is they wanted to start as early in April as possible and then go on into somewhere mid-June. They thought late June and July were times when you would have quite an increase in halibut bycatch rate, so I don't know how we accomplish all these objectives at once.

Mace: I would like to offer a substitute motion to delay the start of the fishing season for flatfish other than rock sole throughout the Bering Sea/Aleutian Islands management unit, until May 15.

?: Second.

Mace: And, if I may speak to that, Mr. Chairman. This is the preferred alternative of the NMFS report; it is also recommended by Midwater Trawlers Cooperative which is a group that is certainly involved in a major share of that fishery.

Cotter: The problem that we've got, as Mr. Pennoyer pointed out, is a real problem and it isn't just limited to herring, unfortunately. I think there's some Togiak king salmon that are not in good shape either, that come in

at that time of the year. I was just wondering if there was some way that we could fashion an opening for a period of time in 511 and 516 that then closes and then reopens, you know, 514 on June 15, and try and pick some windows to try and dance our way through this thing so that we miss the herring and minimize the king crab problem. I think the one thing we need to do is probably close Zone 2, or at least Areas 513 and 517 to flatfish fishing just to keep us from getting into a big halibut problem again.

Peterson: I think I can support Mr. Mace's motion. As Mr. Pennoyer pointed out, no matter when you start it you're going to have problems and those fish move from season to season. They're not always in the same place, it's not a constant thing where you can bank on them being where they're supposed to be. They do move and they're in different places at different times of each year. And that is one of our major concerns. But another concern that we have to take into consideration is whether fishing is good for the industry and I'm looking at this letter from Midwater Trawlers, the people who catch the fish, and they're indicating they'd like to have May 15th opening. Most of their members support that, and I think that's a significant request and I would support that motion.

Blum: I was impressed with the AP's vote on this, and that was an April 1st opening. Twelve to one is a fairly good vote out of the AP. I thought Dave Fraser's presentation of yesterday, I think it was, favoring again I believe an April 1st opening and talking about the movement of the fleet, the movement of the ice and the movement of the fishery and rather than this Council sit and try to micro-manage these little blocks and little units, it sounded to me like the industry was capable of doing that if the opening gave them the flexibility to do that. If the opening doesn't give them the flexibility, then they're forced into doing things that they're uncomfortable with. I'm on the horns of a dilemma between April 1st and May 15th. I would reject June 15th if we get to that point.

Mitchell: Well, Mr. Peterson said those fish are always moving. They probably are always moving to an extent, but I think almost anybody can tell you that these yellowfin sole, at least in 514 pretty much following those herring in and then stay around for a while chomping on all the herring eggs in the area; that's the reason they're in there, and some of them are feeding on small sand lance or whatever you call them up in this country, and it's hard to say. I don't know what the fleet movements are going to be; I'd love to have industry tell me exactly what the fleet movements are going to be if they start on April 1. I have no idea what they're going to be. I think it's all speculation and as far as the business about the vote -- there was one person there from Western Alaska; there was nobody else from Western Alaska or anybody representing Bristol Bay at that meeting. It doesn't surprise me the vote was twelve to one.

Pennoyer: I was enquiring about the average ice-out date for 514 and I think if you open April 1st you are spending a month in Zone 1 at least before you get into 514 in most years. As I followed the logic we got, you fish some in Zone 1, you just don't go over your red king crab bycatch allowance and then by the time you've used up the red king crab bycatch allowance it's time to move into 514. The corollary question is do you want to use up the red king crab allowance or do you want to use it later in the year for other things if you don't have to use it. I don't know--I don't know what dates balance what on this, sliding scale between April 1st and May 15th, or if April 15th's better; two weeks in Zone 1; it kind of depends on how you allocate the red king crab bycatch cap, for one thing.

Alverson: I seconded this motion, primarily because of longstanding comments and analysis done by consultants for Midwater Trawlers, for various other people in this industry, for the Soviet joint ventures when they were dominant in this industry on yellowfin sole, that basically said May 15 basically minimizes significantly our halibut and crab problem. Now, it also indicates in this analysis a number of reasons why May 15 is superior. There is potential herring problem, but I believe the Council voted for. . . I remember it was Option 2, to protect walrus in that area. That keeps the yellowfin sole fleet a distance, a significant measure, away from the inshore area up in the sensitive herring grounds. I don't know if this analysis was done with that walrus closure in mind, but I remember the debate from the fleet that that significantly would keep them out of herring grounds and with that in mind, I think this is supportive for a May 15th opening, keeping a herring bycatch to a minimum.

Cotter: I remember a couple of years ago we were trying to put together a voluntary program for the joint venture fleet in that area and we were working with ADF&G staff from Bristol Bay and we were trying to define herring corridors for the vessels to move through, and develop some system of notifying the vessels where the herring were so they could avoid them, and it was pretty impossible to do that; they were well spread out. So, I don't think that Mr. Alverson's conclusion is accurate. But more importantly, we've got Amendment 16a coming forward and in that amendment we're going to consider whether or not we're going to establish a herring PSC cap, and in the event that such a cap is established and in the event that the cap is based on population, then it's likely; to be a fairly low cap because those stocks are declining and those year classes are not going to show back up one of these days. And we may be setting up a situation here if you go ahead and adopt this motion where you're forcing the fleet to fish in the area where they're going to experience enough bycatch of herring to shut themselves down. And, I think it's probably better to go with Mr. Mitchell's alternative. The other thing is the king crab will be done molting by that time as well and there's a benefit to that, too.

Hegge: I support the last motion. I read in the comments supplied by Steve, June 15 is getting too late and May 15th is offered as is with Midwater Trawlers is a time that minimizes bycatch and I do support it for those reasons.

Mitchell: One suggestion. Couldn't we framework this, like between April 1 and June 15, and based on information available the Regional Director could declare the openings for the various areas. That seems to be the most flexible way to go and just stay away from what could be a terrible bycatch. We're going to have better information from observers; I think that's the most logical thing to do.

Alverson: Well, in response to that, I believe that the yellowfin flounder fishermen right now have 22 floaters, processors up there, and they need something more than a time frame to operate in and around. I believe setting a date specific is the more appropriate thing for the industry and I think the data in this document, Larry, suggests that if I'm not entirely correct, I'm at least partially correct.

Cotter: Well, if I recall correctly, they're catching a lot of yellowfin sole up there right now and I think the report we heard the other day was they intend to catch a whole lot more of it up there before this year is over. . .

Pennoyer: Mr. Chairman, I'm afraid the bad news on the other side of that is they may be closing down by this weekend because of halibut.

Mitchell: Well, maybe they shouldn't fish in the area at all.

Pennoyer: Well, one of the points they made early on was that fishing this late in that area they did not know if they could keep their rates down despite a very intensive incentive program that they've put into place, and apparently that happened. So, it may mean that still again, the best time is earlier in there--sometime after ice out and sometime before the time we're into now.

Alverson: Well, if this news is the way it's going to be that Steve has suggested, I believe at the April Council meeting the yellowfin sole fishermen wanted to start in May, but because of the inability to secure observers were delayed. And if you're just going to get into a bigger halibut problem later on in a June opening like they're experiencing now, it's going to defeat the purpose.

Cotter: We need to put that halibut into perspective. Remember, they started out with 22 tons of halibut and I don't know how much they've used and what the rate is and whether or not halibut is as big a problem in this area now as it is in other areas at other times; it just happens to be a problem because they don't have any left.

Pennoyer: The MRC rate quoted to us when they started earlier, in 1988, would have allowed them to take literally tens of thousands of tons of yellowfin sole. Now grant you, that's only one sample, but it was from earlier

in the year and I think, again, the information that we have indicates the later you go in 514, the more halibut you're going to catch.

Collinsworth: Do we have the data on what the bycatch of herring in 514 is in May?

[person talking away from microphone; can't hear]

Collinsworth: I couldn't hear what he was . . .

Pennoyer: My other staff member has it by week.

Berg: These data from 1988 joint venture fisheries show that in Area 514 in the month of May there was 157 tons of herring taken. If I can expand on that, the RIR that we prepared for this particular regulatory amendment, in 1986 they took 105 tons of herring while catching 94,000 tons of flatfish, and in 1987 they took 380 tons of herring while taking 137,000 tons of flatfish. That's what generated the .2 and .3% rates in those two years.

Collinsworth: And that's for the month of May?

Berg: Yes.

Collinsworth: Any further discussion on the substitute motion?

Blum: I'm not sure who made the motion, but would the maker of the motion consider May 1st instead of 15th?

Mace: I made the motion and I said May 15th.

Mitchell: I'll support May 1st.

Blum: I would offer a substitute to the substitute motion. . .

Collinsworth: I don't know what the parliamentary procedure is on that, but I don't believe you can do that, I don't know. Can't do it. Let's vote on this one and then see what happens. Roll call, please.

Pautzke:	Mr. Collinsworth	No
	Mr. Cotter	No
	Mr. Dyson	No
	Mr. Hegge	No
	Mr. Lauber	Yes
	Mr. Mace	Yes
	Mr. Mitchell	No
	Mr. Pennoyer	No
	Mr. Peterson	Yes
	Mr. Alverson	Yes
	Mr. Blum	No

Fails.

Blum: I would offer a substitute motion to set the opening of the Bering Sea/Aleutian Island yellowfin sole and other flatfish fishery to May 1st.

Pennoyer: Second.

Collinsworth: Would you like to speak to your motion, Mr. Blum?

Blum: I believe that the information is that there's probably no absolutely perfect date, this date seems to be that which would provide the greatest opportunity to maximize harvest of species that we wish to have harvested and minimize impact on those species that we do not wish to have harvested.

Cotter: I know that this may cause some concern for folks out in Western Alaska given their concern over the herring. I'm prepared to vote for this motion, but I think the Council ought to make it clear that it's our intent that the industry that's prosecuting this fishery will make every effort possible to develop measures to avoid herring and cooperate and communicate with the local people out there, etc.

Collinsworth: Any further discussion on the substitute motion? Is there any objection? Mr. Mace objects; is there any further objection? Motion passes. That carries the main motion.

Berg: Mr. Chairman, the second part of this project was to look at the directed fishing definition for yellowfin sole in a rock sole fishery. That was brought up also in April and the Council requested us to look at that. The point of it is that during the DAP fishery for rock sole there can be a fairly high natural rate of bycatch of yellowfin sole, up to, say, 35%, and under the directed fishing rule as we close the flatfish fishery off except for rock sole, skippers would have to discard yellowfin sole in amounts that were over 20% of the amount of rock sole retained. In the developing kurimi market they mentioned that they wanted to be able to retain as much of their natural bycatch of yellowfin sole as they could. We took a look at the data and the data varied a lot in the

sense that that fishery moves from west to east in Area 511 and has a very low bycatch rate on the west side of 511, as they approach the east side they get very high bycatch rates, up to, say, 35%. We recommend, therefore, that rather than discard yellowfin sole, even though there might be occasions where they don't need large amounts, that the directed fishing rule be changed to allow them to retain up to 35%. This is a case where we don't have a conservation problem with yellowfin sole. The fact they're able to top off catches against a rock sole amount retained on board is more of a matter of economics. They would be able to retain the amounts, develop it, say, in a kurimi fishery, and we're not causing a conservation problem on yellowfin sole. So, with that respect, the document you have in front of you also recommends increasing that directed fishing definition from 20% up to 35%.

Collinsworth: All right, thank you, Ron. I don't see any AP comment on that particular issue. Was there any, Dave? [Negative response]

Cotter: I move to adopt Alternative 2 to change the directed fishing standard for yellowfin sole from 20% to a higher percentage, e.g., 40% as measured in the rock sole fishery.

Hegge: Second.

Peterson: What percent?

Cotter: I read from the document, the proposal is to change the directed fishing standard for yellowfin sole from 20% to a higher percentage, e.g., 40%, as measured in a rock sole fishery. [Change to Tape 84] Having made that motion, I'd like to ask Mr. Berg a question if I may. Ron, is that sufficient, to leave it in a range like that and this amendment leaves you folks the capability to set it as appropriate?

Berg: Well, talking to some of the industry at this meeting as to what an appropriate bycatch level ought to be, what I heard mostly was 35% and even though our discussion paper talks about an upper level using the example of 40%, we're recommending 35% based on some of the industry input as well as from the bycatch data that we did look at. We want a point value.

Cotter: I'll modify my motion with the approval of my second, to say, change the directed fishing standard for yellowfin sole from 20% to 35%.

Collinsworth: Approval of the second?

Hegge: Yes.

Collinsworth: Discussion on the motion? Is there any objection? Mr. Mitchell objects; motion passes.

[End of this agenda item]

[End of this Transcription]