


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director



ESTIMATED TIME
1 HOUR

DATE: April 14, 1998

SUBJECT: Salmon FMP

ACTION REQUIRED

Initial Review of an amendment to revise the definitions of overfishing, MSY, and OY for the Salmon FMP.

BACKGROUND

The Magnuson-Stevens Act changed the definition of optimum yield and overfishing. The NMFS issued guidelines (published in the Federal Register on August 4) for the Councils to amend their plans to meet these provisions for National Standard 1. National Standard 1 states that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

An analysis was prepared to examine alternative definitions of overfishing, maximum sustainable yield (MSY), and optimum yield (OY), in accordance with the proposed rule. Several alternatives were considered including establishment of minimum spawning escapement goals, optimum spawning escapement goals, a maximum exploitation rate, and updated management policies. Of these alternatives, only the policy change was deemed to be a reasonable alternative for mixed stock salmon fisheries. Hence, the alternative examined were as follows:

Alternative 1: Status Quo. Do not revise the FMP with new definitions for overfishing, MSY, and OY.

Alternative 2: Update FMP with new Magnuson-Stevens Act language and State management policies regarding overfishing, optimum yield, and maximum sustainable yield. Since the last time the FMP was amended to define overfishing, the Alaska Board of Fisheries has further refined their policy on sustained yield and rebuilding of depressed salmon stocks.

An Executive Summary of the analysis is attached as Item D-5(a).

Executive Summary

This Environmental Assessment/Regulatory Impact Review (EA/RIR) addresses alternatives for meeting the NMFS proposed guidelines drafted in response to the Magnuson-Stevens Act provisions for National Standard 1. National Standard 1 states that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. The Act did not change the standard, but did change the definition of optimum yield and overfishing.

The Magnuson-Stevens act also requires the Secretary of Commerce to establish advisory guidelines (which shall not have the force and effect of law), based on the national standards, to assist in the development of fishery management plans. Proposed guidelines were published in the Federal Register on August 4. This document examines alternative definitions of overfishing, maximum sustainable yield (MSY), and optimum yield (OY), in accordance with the proposed rule.

Several alternatives were considered including establishment of minimum spawning escapement goals, optimum spawning escapement goals, a maximum exploitation rate, and updated management policies. Of these alternatives, only the policy change was deemed to be a reasonable alternative for mixed stock salmon fisheries. Hence, the alternative examined were as follows:

Alternative 1: Status Quo. Do not revise the FMP with new definitions for overfishing, MSY, and OY.

Alternative 2: Update FMP with new Magnuson-Stevens Act language and State management policies regarding overfishing, optimum yield, and maximum sustainable yield. Since the last time the FMP was amended to define overfishing, the Alaska Board of Fisheries has further refined their policy on sustained yield and rebuilding of depressed salmon stocks.

The revised policies proposed as the new overfishing definition, under Alternative 2, appear to be more conservative than the previous definition, and appear to satisfy the NMFS guidelines. The salmon escapement goal policy adopted by ADF&G ensures that annual spawning escapement requirements are met. Additionally, the Alaska Board of Fisheries policy for management of mixed stock salmon fisheries is consistent with sustained yield of wild fish stocks.

The revised definition of OY is more conservative than the old definition. This is because OY must be less than MSY, to account for economic, social, and other factors. Prior to this Magnuson-Stevens Act revision, OY could exceed MSY.

None of the alternatives is expected to result in a "significant regulatory action" as defined in E.O. 12866.

None of the alternatives are likely to significantly affect the quality of the human environment, and the preparation of an environmental impact statement for the proposed action is not required by Section 102(2)(C) of the National Environmental Policy Act or its implementing regulations.

Language from the Magnuson-Stevens Act 1996.

Optimum Yield: The term 'optimum', with respect to the yield from a fishery, means the amount of fish which --

- (a) will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;
- (b) is prescribed as such on the basis of maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor; and
- (c) in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.

Overfishing: The terms "overfishing" and "overfished" mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.


UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

D-5

April 16, 1998

Richard B. Lauber, Chairman
 North Pacific Fishery Management
 Council
 605 W. 4th Avenue
 Anchorage, Alaska 99510-2252

RECEIVED
 APR 17 1998
 N.P.F.M.C.

Dear Rick,

Under the provisions of the North Pacific Fishery Management Council's (Council) April 1990 Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska (Plan), the Council has conditionally deferred regulatory management of the salmon fisheries in the EEZ off the coast of Alaska to the Alaska Department of Fish and Game (State). The Plan provides for reviews of State regulations by the Secretary of Commerce and allows any member of the public to appeal a State statute or any regulation issued by the State for the salmon fisheries in the EEZ off the coast of Alaska. The deferral acknowledges the State's extensive management program and the fact that the southeast Alaska chinook fishery, both in State waters and in the EEZ, is subject to the governance of the United States/Canada Pacific Salmon Treaty. The conditions of the Council's deferral to the State require that the State's regulatory management regime be in accord with the terms and provisions of the Pacific Salmon Treaty, the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) and other applicable law, and the objectives of the Council's Salmon Plan.

It is also appropriate to point out that the Ramsey v. Kantor 9th Circuit Court Decision (96 F.3d 434, 1996) included the southeast Alaska salmon fishery. The decision settled several questions of statutory interpretation involving the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA). It addressed the way in which these two statutes interact in coastwide salmon fishery management, including management in and off Alaska pursuant to the Plan. Regarding the Alaska salmon fishery, the Ramsey court concluded that 1) the decisions of the Council and NMFS to continue deferring regulation of the ocean salmon fishery to the State of Alaska constituted "major Federal action" under NEPA, and 2) NMFS had violated NEPA by unlawfully failing to prepare and environmental assessment (EA) and/or environmental impact statement (EIS) for the decisions to maintain the deferral to Alaska.

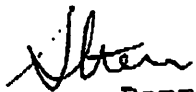
In 1997, the State of Alaska submitted to NMFS its salmon fishery management program for the years 1997-2003, along with a



biological assessment prepared according to Section 7 of the ESA describing the effects of the fishery on listed salmon. Also in 1997, an EA was prepared pursuant to the NEPA on the federal action of continuing the deferral to the State (copy enclosed). A Finding of No Significant Impact (FONSI) determination for that action was made on March 27, 1998. The FONSI determination applies for two years or through the 1998-99 winter troll season. The action is further conditioned in that the plan is to be analyzed as part of the broader EIS being prepared for Pacific coastwide salmon fisheries pursuant to Ramsey v. Kantor.

NMFS will soon review the State's 1998 management program for consistency with the salmon Plan, the MSFCMA, and other applicable laws. NMFS will also resume formal consultations under Section 7 of the ESA for the 1998 summer troll fishery and the 1998-99 winter troll fishery. A biological opinion and incidental take statement are required to conclude the consultations. Following these actions, we will notify the Council in writing of our determinations of consistency. If our determination is in the affirmative, the deferral to the State will continue undisturbed under the FMP.

Sincerely,


Steven Pennoyer
Administrator, Alaska Region

cc: ADFG Benton, Koenings, Sands
F/NWR Stelle, Robinson, Dygert, Rutter
NPFMC Pautzke (w/copy of EA)
GCAK Pollard