

M E M O R A N D U M

TO: Council, SSC and AP  
FROM: Jim H. Branson  
Executive Director  
DATE: January 23, 1984  
SUBJECT: Bering Sea/Aleutian Islands Groundfish

*ACTION REQUIRED*

*Possible Council action on Amendment 6, Fishery Development Zone.*

BACKGROUND

I. Amendment 6, Fishery Development Zone

On December 8, 1983 you received Bill Gordon's disapproval letter on Amendment 6, the Fishery Development Zone. On January 16, 1984 I mailed to you a number of items for your consideration on this issue:

- (1) a detailed analysis of the reasons NMFS gave for this disapproval;
- (2) a memo on possible Council actions at this meeting;
- (3) the Environmental Assessment and Final Regulatory Flexibility Analysis; and
- (4) comments on Point 5 of the disapproval letter (SSC only).

As discussed in the January 16 memo, the Council appears to have four possible courses of action with respect to the amendment.

- (1) Do nothing - drop the idea of the FDZ and forget the amendment.
- (2) Resubmit the amendment as is after reviewing the Environmental Assessment and Regulatory Impact Review you received in the last Council mailing. We mailed a "Dear Reviewer Letter" to the groundfish mailing list on January 13, advising that the RIR and EA were available. We mailed both documents to all commentors on Amendment 6. Pat Travers said that these actions should eliminate any problems with procedure, should you decide to resubmit the amendment at this meeting.

If the Council approved the amendment for resubmission at this meeting it would be in effect by May 31. Foreign fishing will begin in the FDZ on June 1 if the amendment is not in place.

- (3) The Council could send the whole amendment package as it now exists out for public review again, postponing a decision on resubmission until the March meeting. However, it would mean that there would be foreign fishing in the FDZ for at least two months this summer.
- (4) The Council may wish to revise all of the documents to meet some or all of the suggestions and reasons for disapproval in the NMFS letter. We could probably revise the document, although we will need specific advice from the SSC on what, if any, revisions are appropriate. The extra work would probably delay mailing the public review package and a Council decision might have to wait until May. This would postpone implementation until at least October.

Council assessment and response to the broader implications of the disapproval of Amendment 6 would be useful at this meeting. Washington is substituting its value judgements on scientific and management matters for those of the Council and everyone else in this region in addition to acting as a Court of Appeals for those who did not win their way through the Council process. The idea that we need to assess the impacts on foreign fisheries of Council actions and that those impacts might affect the development of the U.S. industry is disturbing and needs discussion and clarification.

## II. Reducing prohibited species in the Bristol Bay Pot Sanctuary. Report from industry workgroup.

A working group of industry members affected by the domestic catch of prohibited species in the Bristol Bay Pot Sanctuary met in Seattle on December 16 and January 10. I attended both meetings.

I understand that we will receive a report from the group at this meeting on their search for a solution to this problem.

RECEIVED JAN 23 1984

AGENDA D-5  
INFORMATION ONLY

CARIBBEAN FISHERY MANAGEMENT COUNCIL

Suite 1108 Banco de Ponce Building • Hato Rey, Puerto Rico 00918

P.O. Box 1001, Hato Rey, P.R. 00919

Telephones: FTS (809) 753-4926, 753-4927, 753-4928, Comm. (809) 753-6910

Telex: "Carifish" 385-790

ACTION	ROUTE TO	INITIAL
		MJ

January 13, 1984

Mr. William G. Gordon  
Assistant Administrator for Fisheries  
National Marine Fisheries Service, NOAA  
Washington, DC 20235

Dear Bill:

On December 15, 1983, Joe Campos, Miguel Rolón and I met with Paulo A. Da Cunha, President and Partner of Codfish Corporation, of Ponce, Puerto Rico. The idea was to familiarize him with the Council while familiarizing ourselves with his fish processing operation.

The key element of our conversation is Da Cunha's claim that Codfish Corporation is experiencing a very difficult situation because of unfair competition from the Canadians. According to him, the Canadians are dumping their "bacalao" and manipulating the Puerto Rican market in such a way that it is almost impossible for Codfish Corporation to compete in Puerto Rico under the present circumstances. As a consequence, most of Da Cunha's regular sales are in nearby countries, especially in the Dominican Republic.

He feels that the situation of under-pricing, dumping, and manipulation of the market by the Canadians is possible because their operations are fully subsidized by their Government. Da Cunha explains it in terms of "I am competing with the Canadian Government".

To illustrate his point, Da Cunha stated that he was forced to reduce substantially their output and, as a result, to limit their original working force of 60 employees to 25.

To make things worst, the Puerto Rican Government has refused to grant them tax exemption which they applied for on the basis of local laws. As this fish-drying operation is eligible for tax-exemption, it is difficult to explain why their request was rejected. He feels that this action reflects the pressure from the Canadians. The granting of tax exemption has no immediate economic effect on them as they are not obtaining any profits but, if granted, it will represent the moral backing of their operation by the Puerto Rican Government and would alert the Canadians in this respect.

In response to a direct question, he said that the firm will necessarily have to go into bankruptcy within a few months if they cannot solve their marketing problems (emphasis supplied).

Codfish Corporation is bringing most of their raw material from Alaska. At the present time, they are buying from Trident Corporation and Johansen

Mr. William G. Gordon

Page 2

January 13, 1984

Enterprises for a total of around 300,000 pounds monthly, on the basis of their actual market. These amounts could be increased substantially. The raw fish imported is cod, wet-salted.

Da Cunha has not been silent on this. He said that he has been in touch with the Draggers Association, in Kodiak, and with the Alaskan Resources Corporation (ARC) and also with Mr. Philips William, from the office of Senator Ted Stevens, trying to get some help in his fight with the Canadian's interests. He claims that Bob Hayes is well familiarized with the situation.

We have no way of determining if Da Cunha's appreciation of the situation is correct. As a way of an example, we don't know if his marketing strategy is the most adequate for the Puerto Rican market. Nevertheless, it is a fact that Canadian financial and commercial interests in Puerto Rico are very powerful and that they could develop a good strategy to beat Da Cunha's competition and, possibly, to eliminate Codfish Corporation from the market, which seems to be their goal. It is my personal appreciation, however, that Da Cunha's operation, besides being a positive factor in the economic growth of Puerto Rico, could be of great help to the Alaskan and New England fisheries. Thus, it is also a positive factor in accomplishing the purposes of the Magnuson Act and NMFS/NOAA policies by increasing the domestic market and the export possibilities for fish harvested by U. S. fishermen.

We have no specific suggestions at this point on how to deal with the situation, but I would like to suggest that you and/or Bob Hayes visit with Da Cunha and try to develop some kind of strategy to deal with this problem. Your planned February visit for the Council meeting will be a good opportunity although might result a little late in view of the situation. Being aware of your interest in fostering this fish-drying operation, we have no doubts that you will assist them in all possible ways.

By the way, Da Cunha expressed great interest in participating in a S/K funded project that will make possible the training of Puerto Rican fishermen in cod fishing in the New England area (a project similar to the Taiyo project of a few years back, but addressed to cod) under the guidance of Portuguese master fishermen.

We would like to hear from you on these issues.

Best personal regards.

Sincerely yours,



Omar Muñoz-Roure  
Executive Director.

cc Mr. Jack Brawner  
Mr. Robert Hayes  
Mr. Jim Branson ✓  
Mr. José A. Madera  
Dr. Leonard Shapiro  
Council Members (T.)

Armstrong Byrd  
& Associates, Inc.

RECEIVED JAN 27 1984

ber 16, 1983

Copy to  
+ hold  
never handed  
out

Mr. Robert W. McVey, Director  
Alaska Region, National Marine  
Fisheries Service  
Room 453, Federal Bldg  
709 West Ninth Street  
Juneau, AK 99802

SUBJ: Proposed Amendment 6 to  
BSA Groundfish Mgmt Plan

Dear Mr. McVey:

We are agents for the Korean Fishing Fleet under the Governing International Fisheries Agreement between the Republic of Korea and the United States of America. We wish to offer, on behalf of our client, the Korea Deep Sea Fisheries Association, comments on the "proposed rule" cited above in response to the invitation in the Federal Register of October 7, 1983.

Amendment 6 would establish a triangular area extending out into the Bering Sea based on a straight line extending from the eastern edge of Unimak Island to the Akutan Pass. In this area, no foreign fishing would be allowed, although properly permitted foreign floating processors involved in taking deliveries from American fishing vessels under "joint ventures" would be permitted to enter. In discussions within the North Pacific Fisheries Management Council, the concept was referred to in verbal shorthand as one of a "hunting preserve" -- but it was never made clear on the public record precisely for whom or for what purposes the "preserve" was being established.

The Korean Fleet opposes the proposed amendment for the reasons summarized below:

- The proposed "zone" has no purpose related to the management of the fisheries resources of the area for appropriate conservation and utilization. In the United States Economic Zone off Alaska, there are several areas where fishing by foreign fleets is restricted under the terms of regulations or negotiated arrangements which discriminate in favor of domestic American fishermen. With the recent actions under Amendment 1 to the Fisheries Management Plan for Groundfish of the Bering Sea and Aleutian Islands Area, American fishermen are permitted

to fish openly in several areas abutting the proposed "zone" which had previously, at least ostensibly, been closed under certain conditions to both domestic and foreign fishermen. Nevertheless, each of these discriminatory measures, including those under amendment 1 noted above, have some coloration of justification as management measures related (albeit in some cases only distantly) to conservation of the fishery resources of the area.

Although the purposes of the proposed amendment 6 are unclear and the explanatory materials accompanying the amendment are meretricious, it is clear that the proposed "zone" has nothing to do with conservation of fishery resources and is instead related entirely to the protection of at least some elements of the American fisheries community. The protection of American business interests is not mentioned in the Governing International Fisheries Agreement in force between the Republic of Korea and the United States of America as a proper objective for United States fisheries management activities. The Korean Fleet, accordingly, reserves its right to request of the Government of Korea that the amendment be made the subject of diplomatic consultations under the terms of the GIFA. Since the role of the GIFA is protected under American constitutional law, it would appear that the amendment cannot be implemented solely on the authority of the Department of Commerce in the same manner as the usual management measures related to conservation.

• Opportunity for the presentation of opposing points of view have not been made available in accordance with the relevant provisions of American administrative law. The comments of other parties at interest, including those of concerned American interests, will undoubtedly cite the specifics of the unhappy history whereby public opportunities for comment have been denied in defiance of normal and legitimate practice. The Korean industry has a record of cooperation with the North Pacific Council and the Alaskan authorities concerned with fisheries. The Korean industry cannot say that all decisions arrived at by the Council have been agreeable to their views. But on previous occasions, Council decisions have been made on the basis of wider comment and review of supporting documentation which met higher standards of disclosure and frankness.

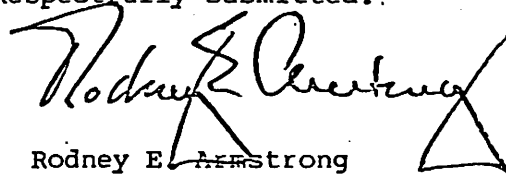
• The proposed amendment violates "National Standard 5" of the Magnuson Act: "(no management measure) shall have economic allocation as its sole purpose." It thereby threatens the Korean joint ventures with American fishermen. A more open review process for the proposed amendment would no doubt have revealed the actual motivation for the proposed "zone," which appears to be protection of a single shore-based processing plant located on Unimak Island. Domestic maneuverings by American business interests would not normally be a subject for comment by a foreign industry. In this case, however, there is an impact to be anticipated upon the joint ventures which the Korean Fleet conducts with American fishermen. The goal of the establishment of the "zone" appears to be the concentration of fisheries resources in the proximity of the "Trident" plant in such a way that American fishermen will be forced to deliver their surplus catches over and above those which can be handled by foreign joint venturers to the "Trident" plant. Presumably, the American shore-based plant's management thereby hopes to lower the price which it would have to pay for bottomfish. It is doubtful if this effort will be successful. Given proper approvals by the American licensing authorities, foreign joint venturers would send more of their processing vessels to the "zone" in order to conduct their purchasing expeditiously. It is very clear that the next step in the development of the shore-based processor's "hunting preserve" will be attempts to interfere in the joint venture licensing process by prevailing upon the United States licensing authorities and the North Pacific Fisheries Management Council to reduce or eliminate permits for joint venture activity in the proposed "zone." We assume that American fishermen involved in joint ventures would resist such interference, and thus it seems unlikely that the goals of the shore-based processor will in fact be served by this effort at perversion of the regulatory process.

Mr. Robert W. McVey  
"Comment" dated Nov 16, 1983  
Page four.

Armstrong, Byrd  
& Associates, Inc.

We are most hopeful that this amendment will be remanded for further and more mature consideration by the North Pacific Fisheries Management Council. The Korean Fleet assumes that the Department of Commerce will review the broader implications of this amendment should it become available as a precedent available to all shore-based processors. The Korean Fleet is confident that such a review, perhaps in consultation with the foreign affairs agencies of the United States Government, will lead to a rejection of the "hunting preserve" concept.

Respectfully submitted:



Rodney E. Armstrong  
Agent for the  
Korean Fishing Fleet.

REA/sf



LAW OFFICES  
GARVEY, SCHUBERT, ADAMS & BARER

30TH FLOOR  
THE BANK OF CALIFORNIA CENTER  
SEATTLE, WASHINGTON 98164  
(206) 464-3939

TELECOPIER  
(206) 464-3939 (DAY)  
(206) 464-2947 (NIGHT)  
TELEX: 32-1037 (LEX SEA)  
CABLE: LEX-SEATTLE

WASHINGTON, D.C.  
1000 POTOMAC STREET N.W.  
WASHINGTON, D.C. 20007  
(202) 965-7880

PORTLAND  
1800 ONE MAIN PLACE  
101 S.W. MAIN  
PORTLAND, OREGON 97204  
(503) 228-3939

SAN FRANCISCO  
SUITE 2801  
ONE EMBARCADERO CENTER  
SAN FRANCISCO, CALIFORNIA 94111  
(415) 788-5135

PLEASE REPLY TO SEATTLE OFFICE

BROCK ADAMS\*  
BILL ALBERGER\*\*  
MARGARET A. ALLEN  
JOHN R. ALLISON\*  
KENNETH M. ARGENTIERI\*\*  
SHARON S. ARMSTRONG  
STANLEY H. BARER\*  
JAMES A. BEALL\*\*\*  
BOBBE J. BRIDGE  
M. JOHN BUNDY  
ALAN A. BUTCHMAN\*\*  
JOSEPH H. DETTMAR\*\*\*\*  
CHRISTINE E. DINDALE  
JONATHAN A. EDDY†  
MICHAEL D. GARVEY\*  
PETER R. GILBERT††  
STUART P. HENNESSEY  
JOHN K. HOERSTER†††  
BARBARA L. HOLLAND  
D. DOUGLAS HOPKINS

SHERMAN H. JENSEN  
STEPHEN B. JOHNSON\*  
CHERYL C. KEETON  
JAMES G. KIBBLE  
THOMAS M. KILBANE, JR.  
JONATHAN A. KROMAN  
BRIAN A. MORRISON  
JAMES R. OFFUTT\*\*  
A. DANIEL O'NEAL\*  
KERRY E. RADCLIFFE  
BRUCE A. ROBERTSON†  
E. CHARLES ROUTH  
MARK A. ROWLEY  
KENNETH L. SCHUBERT, JR.\*  
MARY A. SHEEHAN\*\*  
ALAN P. SHERBROOKE  
JOHN M. STEEL  
GARY J. STRAUSS  
DONALD P. SWISHER

\* WASHINGTON STATE AND DISTRICT OF COLUMBIA BARS  
\*\* DISTRICT OF COLUMBIA BAR  
\*\*\* OREGON STATE AND DISTRICT OF COLUMBIA BARS  
\*\*\*\* VIRGINIA STATE BAR  
† WASHINGTON STATE AND CALIFORNIA STATE BARS  
†† DISTRICT OF COLUMBIA AND NEW YORK STATE BARS  
††† OREGON STATE AND WASHINGTON STATE BARS  
ALL OTHERS WASHINGTON STATE BAR

January 26, 1984

Mr. James O. Campbell  
Chairman  
North Pacific Fishery Management Council  
P.O. Box 103136  
Anchorage, Alaska 99510

Re: Amendment to the Bering Sea/Aleutian  
Island Groundfish FMP

Dear Mr. Campbell:

The Japan Deep Sea Trawlers Association and the Hokuten Trawlers Association oppose further Council consideration of proposed Amendment 6 to the Bering Sea/Aleutian Islands Groundfish FMP. There is not now and never has been a need for that amendment. The Secretary of Commerce properly rejected it on both substantive and procedural grounds. While the Council possibly could correct the procedural defects and eventually resubmit a revised amendment, the substantive problems cannot be cured.

1. Amendment 6 Is Not Needed.

If there ever was a need for Amendment 6, events have eliminated that need. The domestic groundfish fishery in the Bering Sea and Aleutian Islands has come of age. Domestic fishermen are harvesting substantial quantities of groundfish in the Bering Sea and Aleutian Islands without the alleged benefits of the proposed fishery development zone (FDZ) and plan to expand their efforts

Mr. James O. Campbell  
January 26, 1984  
Page 2

very substantially in 1984. When Bart Eaton first proposed the creation of a "FDZ" in 1981 (in part as a measure to encourage the domestic Pacific cod fishery), the domestic catch of groundfish in the total Bering Sea/Aleutian Islands was approximately 95,000 metric tons, approximately 25,000 tons of which was Pacific cod. Domestic fishermen now plan to take over 500,000 metric tons in 1984, including over 130,000 tons of Pacific cod. If they accomplish this goal, they will have increased both their Pacific cod catch and their total groundfish catch more than 500% without the so-called benefits of an FDZ.

The domestic industry plans for 1984 revealed to the National Marine Fisheries Service and to the Council in December 1983 dramatically demonstrate the quantum growth of the domestic groundfish fishery over the past several years. The domestic industry now plans to harvest the following amounts of groundfish from the Bering Sea/Aleutian Islands in 1984:

1984 DAH Projections

<u>Species</u>	<u>DAP</u>	<u>JVP</u>	<u>DAH</u>
Pollock (BS)	18,200	253,000	271,200
Pacific Cod	104,400	27,200	131,600
Yellowfin Sole	1,360	36,500	37,860
Other Flatfish	1,360	22,000	23,360
Atka Mackerel	230	19,430	19,660
All Others	7,330	11,235	18,565
Totals	132,880	369,365	502,245

Source: 49 Fed. Reg. 1066 (Jan. 9, 1984).

The dramatic growth of the domestic groundfish fishery is readily seen by comparing annual catch data from 1980 to 1983 with 1984 projected harvests:

Mr. James O. Campbell  
January 26, 1984  
Page 3

1979-1984 Domestic Harvest

<u>Year</u>	<u>Domestic Catch</u>	<u>Domestic Catch As Percentage of 1981 Harvest</u>
1980	38,786	40.8
1981	95,162	100.0
1982	129,405	136.0
1983	244,396*	256.8 (10 months only)
1984	502,245**	527.8

\*through Oct. 31 only.

\*\*projected as of January 9, 1984.

Sources: Alaska Dept. of Fish & Game computer printouts; 49 Fed. Reg. 1066 (Jan. 9, 1984).

The plan maintenance team in its July 15, 1982 comments on proposed Amendment 6 expressed doubts "that the FDZ will be much of a stimulus" and correctly concluded that the controlling factors for development of a domestic groundfish fishery "are not likely to be strongly related to whether the FDZ is established or not." In his December 8, 1983 letter rejecting Amendment 6, Bill Gordon questioned the need for creating an FDZ and concluded that Amendment 6 violated National Standard No. 7, which requires that plans and amendments "minimize costs by avoiding unnecessary fishery management measures." As recent history demonstrates, Mr. Gordon and the PMT are absolutely right.

2. The Defects in Amendment 6 Have not Been Corrected.

The rejection letter pointed out several substantive defects in Amendment 6 and the record in support of it. Even if the Council opts to revive Amendment 6, it must address these substantive issues and resolve them properly before reconsidering the amendment. Some of these issues which must be confronted include the following:

a. If there are legitimate problems which Amendment 6 seeks to address, will the Council now consider with an open mind whether there are less burdensome alternatives for solving these problems? To date, there has been no serious consideration of whether the perceived benefits, if any, of Amendment 6 can be achieved in any manner short of closing an area to foreign fishing.

Mr. James O. Campbell  
January 26, 1984  
Page 4

b. Will the Council address the issue of the costs to foreign fishing interests and require that these costs be analyzed in the Regulatory Impact Review (RIR) and other supporting documentation? This analysis is necessary to meet the requirements of E.O. 12291, the Regulatory Flexibility Act, Section 102(2)(C) of the National Environmental Policy Act, and the requirements of National Standard No. 7 ("minimizing costs").

c. The RIR (even in its November 1983 version--which did not become available to the public until mid-January 1984) is not based upon the best scientific information available, as required in National Standard No. 2. Mr. Gordon specifically raised several significant issues concerning the RIR and its methodology, which need to be addressed before any further action is taken to resuscitate Amendment 6. Some of these questions and concerns strike at the heart of the fundamental assumptions upon which the amendment appears to be based, such as whether decreasing foreign fishing will have any impact on the CPUE for U.S. fishermen.

d. Mr. Gordon raised issues which remain unanswered concerning precisely which groups should be permitted or excluded from any so-called FDZ, and which groups the amendment seeks to benefit.

-- Is the purpose of Amendment 6 to protect shore-based processors? If so, is a measure which may primarily encourage and benefit floating processors appropriate to accomplish this goal?

-- Is the measure aimed at protecting fishing operations targeting on certain groundfish species such as cod? If so, then how does substitution of domestic fishermen targeting on other species for their foreign counterparts provide this protection?

-- Is the measure designed to protect certain gear types? If so, does substitution of domestic fishermen with competing gear types for their foreign counterparts accomplish this protection?

-- Is the measure designed to protect domestic at-sea processors? If so, is it necessary, given the relatively small capacity for domestic at sea processing which now exists?

-- Is the measure intended to protect joint venture operations? If so, why is it supported by the shore-based processors and opposed by domestic fishermen operating in the joint ventures?

-- Is the measure intended as a precedent for later measures designed to divide the ocean into exclusive zones protecting the monopolies of narrow segments of the fishing

Mr. James O. Campbell  
January 26, 1984  
Page 5

industry at the expense of all other user groups? If so, then the measure should be so labeled and should be considered on that basis.

3. The Procedural Problems Have Not Been Eliminated.

Bill Gordon's principal concern was that "the public was not given an adequate opportunity to make informed comment to the Council before it adopted the amendment." He also noted that even after Council approval, Council staff amended the principal analytical document justifying the amendment, and that this amended RIR was not even available to the public during the formal comment period initiated by the Secretary of Commerce. The Council will not have cured the procedural defects which plagued it before unless it allows the affected public the opportunity to comment on the amendment before the Council takes final action on it.

The Council has not yet provided an opportunity for informed comment on this amendment. The notice dated January 13, 1984 indicated that the Council will decide at the present meeting "whether to resubmit the amendment as is, revise and resubmit the amendment, or postpone and/or drop the proposed amendment." Although the notice did include a copy of the RIR as redrafted in November 1983, it neither included a copy of Mr. Gordon's rejection letter nor any information concerning how the Council (or its staff) propose to meet the objections raised. While we were informed that the Council staff has proposed an analysis which may respond to the rejection letter and which may include recommendations for action, this staff analysis has not been made available to us or to the interested public in advance of the meeting. In addition, no decision has been made concerning whether to revive the amendment and, if so, whether and how Mr. Gordon's objections to Amendment 6 will be addressed. Under these circumstances, the public cannot now "make informed comment" on whatever action the Council may ultimately propose to take.

4. Conclusion.

Proposed Amendment 6 should not be revived. The Amendment is not needed and would serve no useful purpose. The Council should devote its scarce resources to more important matters. The Council has not taken any steps to cure the many substantive defects in the Amendment record. If the Council should choose to revive Amendment 6, it must cure the many substantive defects in

Mr. James O. Campbell  
January 26, 1984  
Page 6

it and then provide the interested public with adequate opportunity to comment on the revised amendment package, including the RIR in whatever form it eventually takes, before finally deciding whether to approve the amendment and to resubmit it to the Secretary of Commerce.

Very truly yours,

GARVEY, SCHUBERT, ADAMS & BARER

By  
Donald P. Swisher

DPS:dr