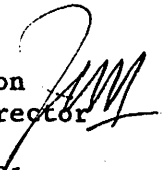


M E M O R A N D U M

TO: Council

FROM: Jim H. Branson  
Executive Director 

DATE: April 21, 1981

SUBJECT: Salmon FMP history and update

BACKGROUND

The Fishery Management Plan for High Seas Salmon Off the Coast of Alaska East of 175°E Longitude (Salmon FMP) was implemented by emergency regulations in May 1979 and was published in the Federal Register June 8, 1979. Final regulations were published in September 1979. The FMP established the fishing season to run April 15 - October 31, limited fishing to east of Cape Suckling and established MSY and OY.

In May 1980, Amendment No. 1 was implemented by emergency regulations. The amendment required fishermen to retain the heads on all troll-caught salmon and reduced the number of gurdies allowed to 4 south of Cape Spencer and to 6 north of there. The proposal to eliminate hand trolling in the FCZ was disapproved by the Secretary. Final regulations were implemented on September 8, 1980.

Amendment No. 2 was approved by the Council at the March 1981 meeting and submitted to the Secretary. This amendment reduces the season to May 15 - September 20 for chinooks and reduces OY by 15%. OY now ranges from 248,000 - 272,000 chinooks. The heads-on all fish regulation has been rescinded and heads will now be retained on fin-clipped (tagged) fish only. Hand troll vessels will be limited to 2 gurdies, treble hooks will no longer be allowed, and fishermen will be required to report their catch before leaving Alaskan waters to sell elsewhere.

Emergency regulations will open the fishery May 15 and final regulations are expected July 17. The amendment is on schedule at this point except that the proposed reporting requirement has been initially disapproved.



APR 21 1981

STATE OF WASHINGTON		ACTION	ROUTE TO	INITIAL
DEPARTMENT OF FISHERIES			Exec. Dir.	
115 General Administration Building • Olympia, Washington 98504			Deputy Dir.	(SCAN) 234-6600
			Admin. Off.	
			Exec. Sec.	
April 15, 1981			Staff Asst. 1	
			Staff Asst. 2	
			Staff Asst. 3	
			Economist	
			Sec./Bkkr.	
			Sec./Typist	

The Honorable Malcolm Baldrige  
Secretary of Commerce  
Commerce Building  
14th Street between Constitution  
Avenue and E Street NW  
Washington, D.C. 20230

SUBJECT: Minority report by the Washington Department of Fisheries on regulations adopted by the North Pacific Fishery Management Council for the 1981 troll fishery off the coast of southeastern Alaska

Dear Secretary Baldrige:

The Washington Department of Fisheries is pleased that the North Pacific Fishery Management Council (NPFMC) has recognized and begun to respond to some of the serious chinook resource problems associated with the southeastern Alaska troll fishery. As you may be aware, this Department has attempted to positively contribute to this process, with our work culminating in a March 1981 analysis presented to the Council. This analysis is enclosed for your reference.

Based on this analysis and a review of the Council's 1981 regulatory proposals, we conclude that: (1) these measures fail to respond to the severe conservation problems derived from this fishery coastwide; (2) they do not adequately meet minimum management needs with respect to Columbia River brights; (3) they fail to meet the legal requirements associated with implementation of federal treaties in Washington and Oregon; and (4) such regulations are not in accord with FCMA national standards. We feel these regulatory measures will be deficient for the following reasons:

1. Serious conservation problems currently exist for nearly every chinook stock harvested in the southeast Alaska troll fishery, such that failure to meet natural spawning escapement goals for these lower U.S., Canadian and southeastern Alaska stocks in 1981 will be the rule rather than the exception (Figure 1, page 8, enclosed). The magnitude of these conservation problems dwarfs Klamath River fall chinook problems recently addressed by the Pacific Fishery Management Council.



2. The 1981 NPFMC regulatory proposals are oriented toward a long-term rebuilding schedule for southeast Alaska chinook stocks. Our analysis of upper Columbia River bright fall chinook indicates the season options chosen would increase the 1981 adult terminal return of this stock by only 3 percent above the preliminary 1981 forecast (page 3, enclosed). With no change in 1981, we have predicted that adult bright returns to the Columbia River will decline by 10 percent compared to 1980. Thus, with the season options chosen, we now predict a 7 percent decline. Consequently, the NPFMC measures are insufficient to halt the continuing trend of declining bright run size to the Columbia River.

Quantitative assessment is not available for other lower U.S. chinook stocks (such as upper Columbia River springs and summers, and Washington coastal springs, summers, and falls) which have serious conservation problems. Their ocean distribution, however, is quite similar to upper Columbia River brights. Therefore, the best estimate is that any benefits to these lower U.S. stocks resulting from the 1981 NPFMC regulation package would also be insignificant. Thus, for these other stocks we also expect no measurable increase in terminal returns but rather that further run size declines are quite possible.

The 1981 NPFMC proposal embraces the desire to minimize short-term socio-economic impacts on the southeast Alaska troll fishery. But failure to significantly respond to current critical conservation problems will jeopardize resource viability necessary for long-term sustenance of the southeast Alaska fishery as well as immediate viability of 1981 lower U.S. treaty Indian and non-Indian terminal area fisheries. We feel the plan you have been asked to approve, then, violates the first and third national standards for fishery conservation and management, namely that (1) "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery", and (2) "To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination".

3. A significant change in harvest sharing of upper Columbia River brights among U.S. groups has occurred in recent years. The Alaska fishery has almost doubled its proportion of the U.S. harvestable surplus (41% to 77%, page 4, enclosed). This change has resulted from severe allocation and conservation restrictions of the Columbia River net fisheries while concurrent harvest rate increases have occurred in the southeast Alaska troll fishery. As a result, Columbia River chinook fisheries have been displaced by the northern

The first part of the report is a general introduction to the subject of the study. It discusses the importance of the problem and the objectives of the research. The second part is a detailed description of the methods used in the study. This includes a description of the subjects, the experimental design, and the data collection procedures. The third part is a presentation of the results of the study. This includes a description of the data and a discussion of the findings. The final part is a conclusion and a discussion of the implications of the study.

The results of the study show that there is a significant difference between the two groups. The first group performed significantly better than the second group on the task. This suggests that the intervention had a positive effect on performance. The results also show that there is a significant correlation between the two variables. This suggests that the two variables are related in a meaningful way. The findings of this study have important implications for the field of research. They suggest that the intervention used in this study is effective and that the two variables are related in a meaningful way.

The study was limited in several ways. First, the sample size was relatively small, which may have affected the generalizability of the findings. Second, the study was conducted in a laboratory setting, which may not be representative of real-world conditions. Third, the study did not control for several potential confounding variables. Despite these limitations, the study provides valuable insights into the relationship between the two variables and the effectiveness of the intervention.

In conclusion, the study found that the intervention had a positive effect on performance and that there is a significant correlation between the two variables. These findings have important implications for the field of research and suggest that the intervention used in this study is effective. Further research is needed to explore the relationship between the two variables and the effectiveness of the intervention in more detail.

The authors would like to thank the following people for their assistance in conducting this study: [Name], [Name], and [Name]. The authors also would like to thank the following organizations for their support of this study: [Organization], [Organization], and [Organization].

ocean fishery. We estimate that a 55 percent reduction in the 1981 southeast Alaska chinook harvest (measured from the 1980 catch level of approximately 320,000) would be required to return U.S. harvest sharing of upriver brights to the pre-1977 balance. We believe that a similar pattern exists for Washington coastal chinook stocks.

The proposed 1981 NPFMC regulations would not appreciably alter this catch sharing picture, and would result in an inequitable allocation of these stocks to the southeastern Alaska troll fishery. This allocation is not in accord with the fourth FCMA national standard since it is: (1) not "fair and equitable" to all U.S. fishermen; (2) not "reasonably calculated to promote conservation"; and (3) not "carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges".

4. Your agency has been a defendant in recent litigation initiated by Columbia River treaty Indian tribes. This litigation contends Pacific Fishery Management Council (PFMC) chinook management inadequately provides treaty Indian harvest opportunity for fall chinook stocks originating above Bonneville Dam as mandated by the "Columbia River Plan". Primary defense has been based on different ocean catch distributions between Bonneville Pool hatchery (tule) stocks (heavily contributing to Washington ocean fisheries) and upriver brights (predominating in northern British Columbia and southeast Alaska troll fisheries). Despite the fact that Washington ocean fisheries and non-Indian Columbia River net fisheries have been severely curtailed to provide additional in-river treaty Indian harvest opportunity, a significant Indian catch deficit has accrued. In addition, a significant hatchery surplus occurred in 1980 on the tule stock. This surplus resulted, in large part, from the depressed status of the upriver bright stock, which determines the allowable in-river harvest rates on both brights and tules. Increased harvest rates in the southeast Alaska troll fishery, then, have seriously restricted Columbia River net fishery harvest opportunities on both stocks thereby exacerbating Columbia River conservation and allocation problems. We estimate that a 1981 southeast Alaska chinook harvest reduction of 29 percent would be required to increase the upriver bright terminal run to a level where hatchery tule stocks could be fully harvested (pages 4-5, enclosed). The 1981 NPFMC season and harvest level reductions proposals before you are inconsistent with 1981 management measures adopted by PFMC to address this same allocation problem.

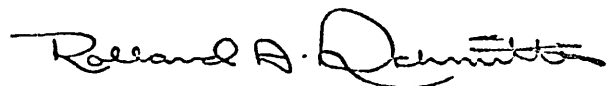
The Honorable Malcolm Baldrige  
April 15, 1981  
Page 4

5. The existence of a large, and to date, uncontrolled Canadian troll fishery has been stated as a reason for moderation in U.S. attempts to address basic chinook salmon conservation needs. We feel this philosophy is inappropriate justification for failure to control the major U.S. ocean harvester of many critically depressed, viable U.S. chinook stocks. The 1981 NPFMC management proposals definitely weaken our credibility with the Canadian government regarding the seriousness of chinook conservation problems in the northern British Columbia and southeast Alaska troll fisheries despite our own efforts to meet specific conservation problems with respect to Fraser River chinook.

We have suggested that a maximum 1981 chinook harvest level of 227,000 in the southeast Alaska fishery would be a first step toward solving basic chinook conservation and allocation problems. Our analysis indicates that a 24-day chinook closure in June, in addition to the proposed season (May 15-September 20), would be necessary to accomplish this reduction. This would require, of course, delay of the all-species opening until July 1. While this season structure is the best pre-season plan for restricting harvest, we believe an automatic, in-season mechanism to close the southeast Alaska fishery is needed in the event 227,000 chinook are harvested prior to September 20, 1981.

We urge you, then, to adopt more adequate regulatory controls commensurate with current coastwide chinook stock status, and which make a significant step toward solution of current allocation problems between U.S. user groups. As always, we are available for further clarification or amplification of these issues.

Sincerely,



Rolland A. Schmitt  
Director

RAS:nb

Enclosures





## Salmon Quota To Remain Same

MOSCOW (Kyodo) — Japanese and Soviet government negotiators Saturday agreed to set Japan's salmon catch quota in Northern Pacific this year at 42,500 tons, the same level as last year's.

The agreement came after Japan proposed to pay ¥4 billion by way of cooperation in Russian fishery projects. Japan paid ¥3.75 billion last year under a similar arrangement.

Protocols on the accord are expected to be signed Monday.

Japan had sought a quota amounting to 45,000 tons, while the Soviets initially offered only 40,000 tons, or 2,500 tons less than that for 1980.

As for Japan's financial assistance to Soviet fishery programs, the Soviets had asked Japan to pay ¥4.17 billion in exchange for a catch quota amounting to 40,000 tons. They hit upon a compromise plan after lengthy negotiations that started April 6, according to Japanese delegation sources.

Calculation (B) is likely to be correct. Most fishery quotas are given in metric tons.

$$(A) 42,500 \text{ tons} \times \frac{2000 \text{ lbs}}{\text{ton}} = 85,000,000 \text{ lbs}$$

if metric tons: (newspaper does not specify units) then

$$(B) 42,500 \text{ tons} \times 2205 \frac{\text{lbs}}{\text{ton}} = 93,712,500 \text{ lbs}$$

$$4 \text{ billion yen at } 214 \text{ yen/dollar (quote as of 04/24)} \\ = \$18,691,589$$

$$\text{calculating cents per pound (A) } \frac{\$18,691,589}{85,000,000 \text{ lbs}} = 21.99 \text{ cents/lb}$$

$$(B) \frac{\$18,691,589}{93,712,500 \text{ lbs}} = 19.94 \text{ cents/lb}$$



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Office of General Counsel  
P.O. Box 1668, Juneau, Alaska 99802  
Telephone (907) 586-7414

FILE NO. 502-10.8(18)

DATE: April 17, 1981

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

FROM: GCAK - Michael A. D. Stanley

SUBJ: Legal Analysis of Proposed Amendments to the Fishery  
Management Plan for the High Seas Salmon Fishery Off  
Alaska

#### INTRODUCTION

At its meeting of March 24-27, 1981, the North Pacific Fishery Management Council (Council), adopted amendment 2 to the Fishery Management Plan for the High Seas Salmon Fishery off Alaska (FMP). While it theoretically governs all salmon fisheries in the fishery conservation zone (FCZ) off Alaska, the FMP deals in detail only with the troll fishery off Southeast Alaska, which targets on chinook and coho salmon. Amendment 2 would replace the current stated objectives of the FMP with a new set of objectives, and would introduce six changes to the FMP's management measures. The amendment has been forwarded to NMFS for review and approval by the Assistant Administrator pursuant to section 304(a)-(b) of the Magnuson Act. Section 304(b) provides in part:

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



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

#### DESCRIPTION OF AND RATIONALE FOR THE PROPOSED AMENDMENTS

The amendment to the FMP adopted by the Council, and the reasons asserted in support of the changes to the management regime, are as follows (a more detailed description can be found in the amendment package, including the regulatory impact review/regulatory flexibility analysis (RIR/RFA)):

(1) Management Objectives. The Council intends to replace the set of management objectives in the current FMP with a reformulated set of management objectives which are believed to be necessary to address continuing problems in the management of the salmon troll fishery off Southeast Alaska. The new management objectives appear in the amendment package and are not set out here. Many of the objectives are essentially refinements or restatements of existing objectives, with notable exceptions: (1) One of the new objectives is to "control and reverse recent trends of expanding effort and catch in outer coastal and offshore Southeast Alaska waters," in contrast to the current objective of only controlling such offshore expansion; (2) allocations among user groups are to be accomplished "as directed by the Alaska Board of Fish and Game, and North Pacific Fishery Management Council," rather than as under the existing objective "without disrupting present social and economic structures;" and (3) fishery management techniques should be developed "which will allow full utilization of salmon returning to supplemental production systems [hatcheries] while providing necessary protection for intermingling natural runs which must be harvested at lower rates," an objective not stated in the existing FMP.

Rationale: The Council and others giving input into this reformulation of management objectives share an overriding concern with the continuing shift of troll effort out of "inside" waters, where the stocks are somewhat segregated and amenable to localized management, and into "outside" waters, where the stocks are mixed and difficult to manage rationally. Consequently, the new management objectives are aimed at not only controlling but reversing offshore expansion, stating as well specific spawning goals

that to be achieved require such curtailment of offshore effort.

(2) Optimum Yield Reduction. The amendment will reduce the current chinook acceptable biological catch (ABC) and optimum yield (OY) ranges in the east management area by 15 percent to provide for an ABC and OY range of 243,000-272,000 chinook. The upper limit of the OY range is a harvest ceiling.

Rationale: The rationale for reducing the chinook OY by 15 percent is to provide additional protection to depressed chinook stocks and to ensure that interception of non-Alaskan stocks is not increased. The consensus appears to be that the 1980 catch of 320,000 chinook, which was at the upper limit of the OY range, was too high to allow maximum production from some river systems and also to rebuild the more seriously depressed natural stocks.

The Alaska Department of Fish and Game (ADF&G) established escapement goals for Southeast Alaska chinook stocks at 66,000-80,000 chinook per year, based on the maximum observed number of spawning fish since the 1950's. The actual escapement of these stocks since 1978 has ranged from 25,000-34,000 chinook, less than half the spawning escapement goal. Spawning escapement goals for non-Alaska stocks, including Columbia River "Bright" fall chinook stocks, also have not been met. Thus, the Council decided a reduction of the ABC/OY was necessary; the question then was how much.

The Council considered a range of proposals for reducing the chinook ABC/OY from 10 to 30 percent, the difference being the rate of rebuilding. The Council also considered the degree of reallocation to the Canadian fisheries of stocks foregone by a harvest reduction, and the socioeconomic impact of various degrees of harvest reduction to the Southeast Alaska troll salmon fishery and the many local communities dependent on that fishery. The 15 percent ABC/OY reduction was determined to be the best balance between conservation and management objectives and potential short-term negative socioeconomic impact to affected fishermen.

(3) Shortened Season. The amendment will change the season for chinook, chum, pink and sockeye salmon from April 15 - October 31 to May 15 - September 20. The season for coho will remain June 15 - September 20.

Rationale: The one-month delayed season opening is an integral part of achieving the ABC/OY reduction, with particular benefit to mature Southeast Alaska chinook. These fish are spring chinook which return to spawning streams in May and June, and it is estimated that escapement would increase by about 8,800 chinook within 3 - 5 years.

The earlier season closure on September 20 is designed to coincide with the closure for coho, thus preventing additional late season fishing for chinook. The reduced OY for chinook is expected to have been taken by that date, if not earlier, in which case a closure by field order will be necessary.

(4) Hand Troll Line Limit. The amendment places a limitation on the amount of gear a hand troller may use to fish for salmon in the FCZ to a maximum of two lines and gurdies (the spool by which each line is retrieved) or four sport poles.

Rationale: The two line or four sport pole gear restriction for hand trollers is designed to spread the burden of conservation of chinook and coho salmon stocks proportionately between hand and power trollers. Power trollers currently are restricted to four lines, except when on the Fairweather Grounds where six lines may be used. Many power trollers are capable of fishing eight or ten lines, although many traditionally fished only four or six lines. This restriction on a power troller's efficiency was justified by the need to reduce effort and harvest on mixed stocks of chinook and coho salmon in the FCZ as a response to severely declining chinook stocks and an excessively high offshore coho harvest. It is also believed to facilitate in-season management by slowing down the rate of harvest, thereby giving managers more time to react to catch trends.

The majority of hand trollers, whether in the FCZ or State waters, traditionally have used two lines or several sport poles. Most hand troll vessels are small and physically capable of no greater amount of gear. There is, however, a small but increasing number of hand trollers who recently have been using more than two lines. These are primarily people who failed to qualify for power troll limited entry permits, but who have been using the lack of limited entry and line limits for hand trollers as a means to compete with power trollers. Thus while the "highliner" power troller has been restricted to the four lines the fleet historically used, the "highliner" hand troller has not been so limited in use of gear. Restricting hand trollers to two lines comports with historical hand troll

line use, and allocates the conservation burden among hand trollers and power trollers in an equitable manner.

(5) Reporting in Alaska. The amendment would require fishermen intending to sell their catch outside of Alaska to submit an Alaska fish sales ticket or equivalent information to ADF&G at an Alaskan port prior to leaving Alaskan waters.

Rationale: The FMP contemplates that the salmon troll fishery will be managed to achieve ABC/OY by a combination of measures established prior to the fishing season and in-season adjustments based upon the latest information on stock abundance and fishery performance. In order to facilitate in-season management, the FMP currently requires persons selling their catches outside Alaska to send an Alaska fish ticket or equivalent document to ADF&G within one week of sale. This requirement has never been complied with, and what little information that is submitted for outside landings is too late to be of any use in-season (in 1980, ADF&G received one fish ticket in October for a sale of fish in Washington State that occurred in July.) The amendment requires persons intending to sell their catches outside Alaska to report their fish to ADF&G prior to leaving Alaskan waters. Although outside landings of late are estimated to have involved only 20-30 vessels selling 8,000 - 12,000 chinook, the number of troll vessels with freezing capacity is increasing steadily and the potential exists for a much greater portion of the catch to be sold outside Alaska, if it becomes economically profitable.

(6) Landing Fin-Clipped Salmon With Heads On. The amendment requires fishermen to land all fin-clipped chinook and coho salmon with heads on.

Rationale: This requirement is a return to the landing requirement in effect in 1979. During 1980, all salmon were to be landed with heads on in order to achieve a greater recovery of coded-wire tags than experienced in 1979 and earlier. Although tag recoveries were better in 1980, the regulation imposed an economic burden on trollers by reducing hold space, increasing handling expenses and decreasing quality of fish that had to be reglazed after checking for tags. Trollers testified that they were willing to do a better job of watching for and making available fin-clipped fish if the old requirement was reinstated. The Council intends to use 1981 as a trial period during which tag recoveries, and the effectiveness of the less restrictive landing requirement, are evaluated.

(7) Treble Hook Ban. The amendment will prohibit the use of treble hooks in the FCZ.

Rationale: The Council received a large amount of public testimony, much of it contradictory, on whether treble hooks should be prohibited in order to reduce hooking mortalities to undersized chinook salmon. Scientific literature is also inconclusive. The Council finally decided to adopt a ban on treble hooks, with the intent to reduce shaker mortality although there was no certainty as to results. The Council in large part was influenced by a similar provision adopted by Alaska for adjacent State waters.

#### COMPLIANCE OF THE AMENDMENT WITH THE NATIONAL STANDARDS

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

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

The Council has expressed serious concerns regarding the current OY for chinook salmon of 286,000 to 320,000 fish. While recognizing that the data are somewhat inconclusive and inadequate, the Council believes that many of the stocks contributing to the fishery are still seriously depressed, and that with the current OY escapements are too low to rebuild them. The Council has therefore adopted a number of measures to reduce the chinook catch, the primary one being a reduction in the ABC/OY of 15 percent. Other measures include shortening the chinook season, thereby curtailing expanding early and late season effort, line limits, and limited entry.

"Overfishing" is defined in the Guidelines for Development of Fishery Management Plans at 50 CFR 602.2(b)(1) as:

A level of fishing that results in a reduction in the capacity of a management unit to produce maximum biological yield on a sustained basis for specified habitat and environmental conditions.

The "management unit" here would appear to be all salmon in the FCZ and the issue is whether the level of fishing, either currently or as proposed, constitutes overfishing in the sense that the capacity of the management unit to produce maximum biological yield is being reproduced.

The first question relates to the fact that at the current level of effort some depressed chinook stocks are not being rebuilt. In isolation, these stocks are probably being overfished. Viewed in the context of the whole management unit, however, which includes other healthy stocks, there is a question whether the "overfishing" of component stocks that are in bad shape results in overfishing of the whole management unit. A draft of the proposed revision to the Guidelines for Development of Fishery Management Plans (draft guidelines) suggests that there may be different types of overfishing, including "conscious overfishing" which may be allowed of some weak stocks in a fishery where there are also strong stocks. It is thus difficult to conclude whether, as a legal matter, the failure to rebuild depressed chinook stocks at the existing level of effort, including the 286,000 - 320,000 OY, is overfishing or not. It is safe to say, however, that this National Standard implies the exercise of caution when the potential for overfishing exists.

The Council believes that, apart from the status of depressed chinook stocks and the impacts upon them from the current level of fishing effort, escapements are also too low in the sense that some river systems are not experiencing maximum production. The abundance of potential salmon streams in southeastern Alaska, and the fact that there is virtually no degradation of these waters, suggests that failure to produce the number of salmon the systems are capable of is a result of overfishing, rather than some other factor. ADF&G escapement goals, based on the maximum number of spawning fish observed since the 1950's, are more than double current escapements. This failure to attain maximum production would appear to constitute overfishing as defined above.



Thus, the current level of effort and harvest in the troll salmon fishery probably does not prevent overfishing, primarily because it seems to reduce the capacity of the management unit to yield maximum biological production and, to a less clear extent, because of the impact on depressed chinook stocks. Allowing this existing level of effort and harvest to continue would likely be held inconsistent with this National Standard.

The 15 percent ABC/OY reduction, coupled with the other management measures, is designed to result in a rate of rebuilding of chinook stocks that will achieve escapement goals in the early 1990's. The ABC/OY reduction is thus expected to increase the capacity of the management unit to produce maximum biological yield. Although a faster rate of rebuilding (a larger OY reduction) would achieve the escapement goals earlier, and thus prevent overfishing to a greater extent, the Council determined that a faster rate would not be "optimum" due to the adverse socioeconomic impact to affected fishermen. Thus, the amendment would appear to prevent overfishing while achieving optimum yield, and is consistent with National Standard 1.

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

The proposed reduction of the chinook OY would appear to satisfy this requirement. Data from 1980 show that escapements to some systems continue to be below levels needed for maximum production and below levels needed to rebuild the more seriously depressed natural stocks. The Council recognizes that data inadequacies still exist and make difficult the application of common analytic techniques in developing seasonally adjusted OYs. However, as the Guidelines for Development of Fishery Management Plans, 50 CFR Part 602, section 602.2(c)(3), point out, a lack of complete scientific information does not prevent a Council from acting. Under the current circumstances, the Council believes the sound management approach is to reduce the harvest by increments until a measurable improvement is observed.

The measures intended to reverse the shift of troll effort offshore - the revised management objective, the line limits, etc. - also essentially comply with this standard. An analysis of this shift prepared by an employee of the Alaska Region, NMFS, who is also a member of the Plan

Development Team, entitled "A Brief Analysis of the High Seas Salmon Off the Coast of Alaska Optimum Yield as a Descriptor of Stability," shows that despite the OY in the FMP and adherence to it for 1980, there was still a net increase in the offshore catch of chinook of 35,846 fish. Other data from ADF&G also show this shift of effort.

The measures requiring submission of a fish ticket prior to leaving Alaska and for retaining the heads on fin-clipped salmon will facilitate compliance with this National Standard. Most vessels landing salmon outside Alaska do not now submit the required fish ticket, and enforcement is hindered by confidentiality requirements of the various states. For those out-of-state landings where fish tickets are submitted, the submission is usually much later than one week after delivery, and too late to be of use for in-season management. Requiring a fish ticket to be submitted prior to leaving Alaska should improve the quantity and quality of catch data for landings outside Alaska. Although last season's requirement that all salmon be landed with heads on showed an improvement in recovery of coded-wire tags compared to recoveries in 1979, the Council believes that returning to the previous requirement will not necessarily result in poorer data since trollers have assured better compliance on their part. If data gathering suffers during this one-year trial period the Council likely will return to the 1980 requirement for landing all salmon with heads on.

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

The range of the two principal species of salmon caught in the troll fishery, chinook and coho, includes waters under the jurisdiction of the State of Alaska, and for chinook includes as well waters under the jurisdiction of the States of Washington and Oregon and the Pacific Fishery Management Council. With the amendment, the management measures for the FCZ will be identical with those in adjacent waters of Alaska, with the exception of the OY, which the State reduced only 12 percent instead of 15 percent. The correlation between State and Federal management under this amendment is better than at any time since the FMP went into effect and, with the demonstrated ability to coordinate in-season management, indicates that the stocks originating in Alaska are being managed throughout their range.

The chinook stocks originating in Washington and Oregon, which are primarily caught in the FCZ, are managed as a unit to a lesser degree than the Alaska chinook stocks. This is due to the fact that there are two different Councils involved, and because of the intercepting Canadian fishery. Serious questions are thus raised as to the practicability of "management as a unit" for these stocks. The measures that have the intended effect of reducing the trend of increased effort in the FCZ, particularly the OY reduction, will nevertheless facilitate management measures being undertaken by the Pacific Fishery Management Council, and to that extent constitute management of the species as a unit throughout their range. These measures were at least partly based upon information about the status of non-Alaskan stocks after they leave the waters off Alaska. Therefore, the amendment appears to be consistent with National Standard 3.

National Standard 4: Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

None of the management measures in the amendment discriminate against residents of different States in violation of the first sentence of this National Standard. The only one which may impact to a greater degree residents of States other than Alaska is the requirement for reporting catches prior to leaving Alaska. However, this applies to all persons, including Alaskans, who desire to sell their fish outside Alaska. To the extent there is any differential impact, the need to have timely data on all catches in the FCZ would provide a rational basis for the difference. Indeed, it could be argued that failing to require persons who land their catches outside Alaska to submit fish tickets prior to departing is discriminatory to Alaskans who must report to ADF&G and submit to vessel and hold inspections.

The amendment does not contain any of the limited entry options discussed in our earlier legal memorandum, which eliminates many potential problems under this National Standard. The only measure that may raise issues here is the two-line limit for hand trollers.

Initially, there is a question whether this National Standard even applies since the two-line limit is not really an allocation, which under the second sentence must be fair and equitable, but is really only a gear restriction. The draft guidelines define "allocation" in terms of "direct and deliberate distribution of access to a fishery," and the two-line limit would not appear to fall within the scope of an allocation. For purposes of this analysis, however, we will discuss the fairness of this gear restriction.

As discussed above in the rationale for the two-line limit, it was noted that the Council's intent in adopting this measure was to distribute equitably the conservation burden between power trollers and hand trollers. The former group has already been limited to four lines, which nearly approximates the power troll fleet's historical usage. The four-line limit for power trollers (which is really what must be compared to the hand troll line limit, since the six-line limit on the Fairweather Grounds is an exception that is immaterial to hand trollers who do not fish there) has restricted power trollers who, absent the limitation, might fish six, eight or even ten lines. Power trollers have borne the burden of this four-line limit and its restriction on their efficiency as part of the effort to reduce the harvest on mixed stocks of chinook and coho in the FCZ.

The two-line limit for hand trollers would have nearly the same impact on them as the four-line limit had on power trollers. The fleet would be limited to using the amount of gear that most of them historically have used. Some hand trollers who have used more than two lines would, to be sure, be restricted, but this is really no different than the restriction on power trollers who might be inclined to use more than four lines. Both groups are suffering a roughly equivalent reduction in gear. Thus, it would appear that the two-line limit does in fact equitably distribute the burden of conservation to the hand trollers, and satisfies the requirement of this National Standard. Indeed, it might be argued that not to subject hand trollers to this line limit would be unfair to power trollers.

The foregoing also indicates that the different line limits are probably not in violation of the Equal Protection Clause of the U.S. Constitution. Since neither a "fundamental right" or "suspect class" is involved, the distinction between hand trollers and power trollers need only be shown to have a rational basis and be reasonably related to a legitimate government purpose. Conservation of fishery resources, particularly stocks in poor shape, is

certainly a legitimate government purpose, and restricting the two fleets to their approximate historical line usage, thus preventing additional effort, would be reasonably related to that purpose. Moreover, the fact that both groups are limited essentially to their traditional fishing pattern, with both suffering a roughly equivalent gear reduction, would seem to provide the rational basis for the distinction between them.

It is thus my opinion that applying the two-line limit to hand trollers is consistent with National Standard 4, and does not result in a violation of equal protection.

National Standard 5: Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose.

The reformulated management objectives appear to be an improvement to the FMP relative to its promotion of efficiency. One of the new objectives urges full utilization of hatchery stocks, which should maximize the benefits from those fish. A potential problem with the new objectives, however, is allocation as directed by the Council and Board of Fisheries. Here, the Board's policy of allocating 80 percent of the troll catch to power trollers and 20 percent to hand trollers would constitute solely economic allocation contrary to this National Standard and the Magnuson Act. We have advised the Council that in making its allocations, it cannot follow the Board's 80/20 policy. The Council basically agrees with that position, and it is thus likely that this potential legal problem will not arise.

The shortened season would appear to promote efficiency, particularly because it is integral to the ABC/OY reduction. Fewer fish will be taken overall, and can probably be taken within the May 15 - September 20 period. More specifically, the delayed opening should prevent premature closing of fishing for chinook, which, if allowed to happen, might impinge on the coho harvest that occurs somewhat later in the season.

The two-line limit for hand trollers (and indeed the four-line limit for power trollers) raises a question of whether the amendment fails to promote efficiency. The specific concern is that with a harvest quota, there may not need to be any gear restrictions and that people should be

allowed to fish as they please until the quota is taken. The Council considered this approach but ultimately was persuaded that gear restrictions were still necessary to avoid concentration of effort in specific areas and at specific times that might adversely affect certain stocks. Distributing the harvest over a longer time span would also, as discussed above, prevent a premature achievement of the chinook OY that might hinder taking the coho OY, and would facilitate in-season management by slowing down the harvest rate. Thus, although the line limits do impose some inefficiency on the trollers, there is justification for doing so. My conclusion is that the line limits are not inconsistent with this National Standard.

The requirement for reporting catches prior to leaving Alaska will tend to impose some inefficiency on the troll fleet, but it is not expected to be too burdensome since not that many vessels sell their catches outside Alaska, and most of those that do would be coming into port anyway for fuel and supplies for the trip south. Also, the Council found that the alternatives to this requirement - radio reporting, or the existing reporting by mail - were not practicable. Radio reporting previously has been used by the State of Alaska but there were problems with transmission of accurate and complete information. Also, there is some question whether the confidentiality of these data mandated by the Magnuson Act can be preserved with radio reporting. The alternative of reporting by mail, as is now required, is also impracticable as experience the last two years has shown.

The requirement for landing fin-clipped salmon with heads on is also consistent with this National Standard. It is less restrictive, and less inefficient, than the 1980 requirement for landing all salmon with heads on, which passed muster under this National Standard.

The ban on treble hooks may, according to some trollers, be inefficient, but others testified that it would not hinder their operations and might in fact help lower hooking mortalities to undersized chinook. About all that can be concluded, is that the ban is not inconsistent with this National Standard.

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

None of the proposed amendments would appear to be inconsistent with this National Standard.

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

Many of the measures in the amendment impose additional burdens or restrictions on troll fishermen in the FCZ, and compliance with them will likely be more costly for individual fishermen. However, these burdens and restrictions may be necessary to prevent overfishing and promote achievement of the OY as required by National Standard 1. Thus, it is not practicable to minimize costs by declining to implement the amendment.

The amendment also tends to minimize duplication in the sense that, with the exception of a smaller State reduction in ABC/OY, the management regime in the FCZ and adjacent State waters is identical. The amendment thus appears to be consistent with this National Standard.

#### COMPLIANCE OF THE AMENDMENT WITH OTHER PROVISIONS OF THE MAGNUSON ACT

Section 303 of the Magnuson Act specifies required provisions which must, and discretionary provisions which may, be included in the FMP. The required provisions are stated in subsection (a) and are generally satisfied by the FMP and the amendment. In the past, one of our concerns has been to assure that an FMP include an adequate summary of the information used in specifying MSY and OY. The amendment appears to be satisfactory in this regard. It contains catch data from 1980, a discussion of why a 15 percent reduction in OY is needed, and a fairly detailed analysis of the condition of stocks originating outside Alaska, particularly upper Columbia River "brights." Even more complete information supporting the OY specification is contained in the RIR/RFA and supplemental environmental impact statement.

The previous legal memorandum on the proposals for the amendment discussed at length the requirements for limited entry under section 303(b)(6). The Council decided not to expand its limited entry provisions this year, and thus no issues arise under that section.

The conclusion, then, is that the amendment complies with other provisions of the Magnuson Act.

#### COMPLIANCE OF THE AMENDMENT WITH OTHER APPLICABLE LAW

(1) NEPA. The National Environmental Policy Act and its implementing CEQ, DOC, and NOAA regulations, appear to require a supplemental environmental impact statement (SEIS). An SEIS was prepared, which we reviewed and found to be lacking in certain respects. The principal problem area was the description of the alternatives to the proposed action - the "heart" of an EIS (46 FR 18018) - which we felt was inadequate. We discussed the SEIS with regional NMFS personnel and concluded that through inclusion of added information, and particularly with extensive cross-referencing to relevant portions of the amendment and the RIR/RFA, the problem could be rectified. Presumably the SEIS has been improved accordingly, although we have not seen it to determine if this is so.

(2) Endangered Species Act. Approval and implementation of the amendment would not be an action that "may affect" endangered or threatened species or their habitat within the meaning of the regulations implementing section 7 of the Endangered Species Act of 1973. Thus, consultation procedures under section 7 will not be necessary for these amendments.

(3) Coastal Zone Management Act. The State of Alaska Office of Coastal Management has already concurred in finding the original FMP to be consistent with its Coastal Management Program. With respect to the amendment, that office has informed us orally that another consistency determination is not needed, although it was not clear if that position was premised on the existence of the previous consistency determination for the FMP, or whether it was based on a decision that the amendment was not a Federal action directly affecting the Alaska coastal zone. Although we are not entirely sure we agree with the State's position, we are relying on its assertion for our conclusion that the Council has fulfilled its responsibilities relative to the CZMA in Alaska.

However, concerns have been expressed about the need for a consistency determination from the States of Washington and Oregon, since there are salmon passing through their respective zone which are resources of the coastal zone and which may be affected by the amendment (and the FMP for that matter). This issue was raised rather late in the process,



but the NMFS regional staff appears willing to comply and send a consistency determination to the appropriate office in each State.

(4) E.O. 12291/Regulatory Flexibility Act (RFA). The Assistant Administrator for Fisheries, in an advance copy of an action memorandum pertaining to E.O. 12291 and the RFA, indicated his determination that the amendment was both "major" under the order and "significant" under the RFA. A regulatory impact review/regulatory flexibility analysis (RIR/RFA) has therefore been prepared for the amendment. (Although entitled a regulatory impact review, the document is really a regulatory impact analysis for purposes of the interim procedures NMFS has established for implementing the executive order.)

The RIR/RFA appears to do a good job of analyzing the benefits, costs, net benefits of and alternatives to the amendment. In particular, all the alternative OY's are examined to determine the relative costs and benefits of each potential reduction. The analysis concludes that the 15 percent OY reduction provides the earliest break even point, which suggests that the amendment does indeed maximize net benefits to society as required by section 2(c) of the executive order.

The RIR/RFA may be slightly deficient in that it does not state specifically the number of "small entities" to which the proposed rule applies. However, the FMP clearly indicates that there are about 950 power trollers who are regulated, and about 2150 hand trollers. These are the levels at which the Alaska Commercial Fisheries Entry Commission has frozen the fleets. Thus, in light of the known fact that 3,100 small entities are affected, the failure to specify that number in the RIR/RFA would not seem to be a significant problem. Moreover, as to the number of small entities who are subjected to the new reporting requirements (RFA, §603(b)(4)), the RIR/RFA clearly states that it will apply primarily to the 20 - 30 vessels landing salmon outside Alaska.

My conclusion, then, is that the RIR/RFA substantially complies with E.O. 12291 and the Regulatory Flexibility Act.

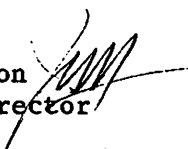
(5) Paperwork Reduction Act. The requirement to report catches of salmon at an Alaska port prior to leaving Alaskan waters would appear to constitute a "collection of information" as defined in this Act. Thus, pursuant to 44 USC 3507, the proposed regulations should be submitted to the Director of the Office of Management and Budget for

approval. Assuming that it will take sixty days to obtain that approval (either expressly or by failure of the Director to act), the Assistant Administrator should consider seeking authorization under section 3507(g) for collection of that information during that time.

cc: GCF - Thorn Smith, Mike Rubinstein  
NPFMC - Jim Glock  
ADF&G - George Uetermohle  
F/AKR11 - Bill Robinson

M E M O R A N D U M

TO: Council

FROM: Jim H. Branson   
Executive Director

DATE: April 21, 1981

SUBJECT: Herring FMP history and update

BACKGROUND

The Preliminary Fishery Management Plan (PMP) for Trawl Fisheries and Herring Gillnet Fishery of the Eastern Bering Sea and Northeast Pacific was published in the Federal Register on February 15 and implemented on March 1, 1977. The PMP was extended through 1978 and 1979 and extended with amendments in 1980. Herring became a prohibited species for foreign fishermen following a court suit in early 1980.

A draft FMP for Bering-Chukchi Sea Herring was made available for public review in October 1979. Since that time, the draft FMP and draft EIS have undergone extensive review and revision. The Council made final approval of the document in December 1980 and approved corrections to the text at the March meeting. Final editing has been completed and the FMP, EIS and Regulatory Impact Analysis (RIA) will be submitted when typing is completed. The FMP should be implemented before the 1982 fishery begins, but may not be in time for the winter trawl fishery in 1981.

The FMP gives first priority to subsistence fisheries and second priority to domestic inshore commercial fisheries. If OY is large enough, a directed offshore fishery will be allowed which may include a TALFF. The FMP provides a formula for determining Allowable Incidental Catch (AIC) of herring by foreign trawl operations for groundfish. When a nation's allocation of the AIC is harvested, the Regional Director may exclude that nation's trawl vessels from all or part of the Herring Savings area, which is described in the Plan.

KING CRAB FMP HISTORY

January, 1977	Work on FMP begins
August, 1979	First draft reviewed by Council
May 22 - July 22, 1980	DFMP undergoes further revisions
September 14, 1980	DFMP and DEIS sent to SOC for review
December 11, 1980	DFMP and DEIS are returned for lack of preferred option
December 12, 1980 - March 27, 1981	Preferred options determined by Council
March 27, 1981	Council receives NPFMC/BOF Joint Statement of Principles and Bering Sea/Aleutian Islands Management Framework
April 1, 1981	Board of Fisheries accepts Joint Statement of Principles  Board formally adopts Bering Sea/Aleutian Islands Management Framework as a State of Alaska FMP
May 27-29, 1981	Council review of Board action  Council adoption of Joint Statement and Management Framework

# North Pacific Fishery Management Council

Clement V. Tillion, Chairman  
Jim H. Branson, Executive Director

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## M E M O R A N D U M

TO: Council, SSC and AP members

FROM: Jim H. Branson  
Executive Director

DATE: April 20, 1981

SUBJECT: Alaska Board of Fisheries decisions regarding management of domestic king crab fisheries in the Bering Sea/Aleutian Island area.

Attached is a statement by the Alaska Board of Fisheries supporting their recent decisions regarding regulatory changes for the king crab fisheries in the Bering Sea/Aleutian Island area. You will recall that in the Joint Statement of Principles there is a requirement for the Board to provide the Council a statement explaining the basis for any change in regulation. The procedure described in the joint statement then calls for the Council to review the Board's statement in order to determine if the proposed regulations can be expected to attain the objectives outlined in the "Management Framework." The attached document is an example of the content and format that the Board wishes to use in order to fulfill this requirement. Any changes in this statement should be discussed at the May meeting.

ALASKA BOARD OF FISHERIES  
DECISIONS REGARDING  
MANAGEMENT OF DOMESTIC KING CRAB FISHERIES  
IN THE  
BERING SEA/ALEUTIAN ISLANDS AREA

March, 1981

During its March 1981 meeting, the Alaska Board of Fisheries adopted the Joint Statement of Principles on the Management of Domestic King Crab Fisheries and the Bering Sea/Aleutian Islands (BS/AI) King Crab Fishery Management Framework. These documents, which were prepared in cooperation with the North Pacific Fishery Management Council, clearly define the roles of both entities in the management of the domestic king crab fishery in the BS/AI area. In addition, the Board adopted a revised Policy Statement on King Crab Resource Management which applies to the king crab fisheries statewide.

In conformance with the above mentioned documents and recognizing its responsibility for the management of the domestic king crab fisheries in the BS/AI area, the Board received public testimony, ADF&G and NMFS staff recommendations, and considered and discussed at length issues related to regulations controlling fisheries during its March 1981 meeting. The decisions of the Board are presented in summary.

#### Norton Sound Fishery

Resource assessment surveys conducted in 1975 and 1976 for OCS environmental impact studies first identified a significant concentration of red king crab in the Norton Sound area. Since 1977 a regulated commercial fishery has been conducted each summer with annual harvests of 0.5 to 2.5 million pounds. During 1980, ADF&G conducted a tagging program in the Norton Sound fishery. The 1981 population is estimated to be 12 million pounds of legal males. Utilizing the procedure outlined in the Management Framework, the acceptable biological catch was determined to be 5 million pounds. The Board considered harvesting the legal population at a high exploitation rate as the ADF&G study indicates that the population is primarily composed of large, post recruit crab subject to high natural mortality losses. However, the Board decided to use a conservative exploitation rate due to the incomplete data base available for this new fishery and the need to protect a near-shore subsistence fishery. The guideline harvest level is set at 2 to 5 million pounds, reflecting these concerns. To further enhance subsistence fishing, the Board closed an area extending approximately 15 miles offshore in the northern and eastern portion of Norton Sound to commercial fishing from July 15 through September 3. The commercial fishery should be able to obtain the harvest while protecting the subsistence opportunities of local residents.

#### Adak Fishery

The Adak fishery began in 1961 with a harvest of 2.1 million pounds of red king crab. Increased effort quickly raised the production to a record high of 21.2 million pounds during the 1964-65 season. With the expansion of the Dutch Harbor

king crab fishery, production fell sharply to a low of 5.9 million pounds in 1966-67. The following six years saw stable production between 14 and 18 million pounds per season. Since the 1972-73 season, catches of crab declined and remained at low levels. Since 1975-76 the fishery has been conducted largely on an exploratory basis through fishing seasons which have occurred after the major king crab fisheries and prior to the Tanner crab fisheries.

ADF&G presented the Board with information gained from the 1981 Adak commercial fishery that the stocks appear to be increasing. Also, at the time of the March 27, 1981 closure fishermen began to encounter soft shell crabs. Industry expressed interest in a year round fishery for the area.

Since the fishery appears to be recovering from its former depressed levels and there is interest by the industry to resume normal commercial operations in the area, the Board decided to establish a commercial season of November 1 to February 15. This season, which is similiar to the season in place before the fishery crashed in the mid-1970's, should afford the industry the opportunity to harvest the 0.5 to 3.0 million pound harvest quideline while protecting the crab during biologically sensitive periods in their life cycle.

### Dutch Harbor Fishery

In past years, the Dutch Harbor king crab fishery (Area O) experienced a sudden influx of large vessels to the fishery after the closure of the major southeastern Bering Sea king crab fishery. This situation proved to be a management problem for the Department since it was difficult to monitor effort in the several districts which comprise the Area O fishery. The Board addressed this problem through the establishment of fishing district registration requirements. After the designation of the Area T exclusive registration area this past season, managers noted that the Area O fishery was much slower paced and the number and size of vessels decreased. The Department recommended the elimination of district registration since it was no longer necessary to adequately monitor the fishery and assure that appropriate exploitation rates are achieved on various population segments. Given these circumstances, district registration requirements placed an unnecessary burden on both the fleet and the Department. The Board concurred by deleting the regulations requiring district registration.

### Bering Sea Fishery

The Bering Sea fishery (Area Q) includes the blue king crab fisheries near the Pribilof, St. Matthew, and St. Lawrence Islands and the red king crab fishery in Norton Sound. All of these fisheries are relatively minor in comparison to the Bristol Bay (Area T) fishery. Designated as a non-exclusive registration area, vessels fishing Area Q can freely transfer in and out of the fishery.

ADF&G identified two problems associated with this fishery. During the 1979-80 season, regulations allowed fishing to begin for red crab (an incidental species) in the Pribilofs 5 days before the opening of the target blue crab fishery. This was the first year red king crab had been taken in the Pribilofs, presumably the result of high stock levels in the Bristol Bay area which moved crabs into the fringe areas. This different opening date caused much confusion during vessel registration and tank inspection since both species are fished on the same grounds. Also, the Pribilof fishing season began 5 days prior to the Bristol Bay fishery and an enforcement problem resulted. The Department recommended that the Pribilof

and Bristol Bay fisheries open simultaneously to alleviate these problems. The Board agreed and changed the season opening date for the Pribilof fishery to September 15.

The second problem identified by the Department was associated with taking incidental red king crab in the Pribilof fishery after the closure of the Bristol Bay fishery. When the red king crab season in Bristol Bay closed to fishing, the red king crab fishery in the Pribilofs also closed to prevent an enforcement problem. The blue king crab season in the Pribilofs remained open but the fishermen were required to throw back any incidental red crab. From commercial catch sampling the Department concluded that approximately 67% of the red king crab were greater than 7 1/2 inches. The Department recommended to the Board that during the second season the size limit be raised from 7 to 7 1/2 inches for the Pribilof red king crab fishery. Two purposes would be served: one, an increase harvest of post recruits which suffer from increased levels of natural mortality; and two, enforcement problems associated with possible illegal fishing in the Bristol Bay area. The Board concurred and raised the size limit from 7 to 7 1/2 inches.

### Bristol Bay Fishery

The 1980 king crab harvest in Bristol Bay was at record levels. Effort which had been rapidly increasing since the mid-1970's stabilized during the 1979 and 1980 seasons at 236 vessels. This was due in part to the Board's action in designating the Bristol Bay fishery as an exclusive registration area. Three major topics were considered by the Board: 1) establishing the guideline harvest levels for the 1981 fishery; 2) a request for modifying the pot storage area; and 3) a request to classify the Bristol Bay registration area as a nonexclusive fishery.

The Bristol Bay fishery is currently experiencing high stock levels. The Board reviewed a report by Dr. Jerry Reeves (1981) entitled "The Projected 1981 Guideline Harvest Level for the Red King crabs in Bristol Bay." The report followed the procedures for determining the acceptable biological catch (ABC) specified in the BS/AI King Crab Fishery Management Framework. The Department endorsed the Reeves report which discussed the data base and its limitations when used to project the ABC of approximately 100 million pounds. Final verification of the projected guideline harvest levels will await results of the 1981 summer survey. The report suggests that, based upon past exploitation rates which have fluctuated from approximately 0.4 to 0.6 and given the uncertainty of the projection, a guideline harvest level range of 40-100 million pounds be established for the 1981 fishery. Public testimony supported the commercial harvest of the ABC. The Board accepted the report and discussed the limitations of the data base, particularly the spawner-recruitment relationship. The Board concluded that for the 1981 season the ABC was the Optimum Yield for the fishery. Therefore, the Board established a guideline harvest range of 40 to 100 million pounds for this season's fishery. The Board directed the Department to incorporate the 1981 survey results paying particular attention to the number of ovigerous females in the population. Further, the Board directed the Department to manage the fishery in so far as possible to achieve the ABC.

The Board considered a proposal to modify the existing pot storage area for the Bristol Bay fishery. This gear storage area has been in effect since 1978 and is designed to alleviate the problem of limited nearshore shallow water storage. The intent of the gear storage area is to provide a location near the fishing grounds which can be utilized as a staging area after the Tanner crab season closes and before the king crab season opens. This area is carefully delineated



so as to be outside the crab fishing grounds. The Department expressed concern that the proposed storage area was in an area which produced approximately half of the 1980 season harvest. Further, the Department pointed out the obvious enforcement problems with such an area. The Board received testimony expressing concern for possible biological harm by gear stored improperly in the major production areas. Also, concern was expressed that the proposed storage area would frustrate the public desire for a fair and equitable start of the fishery. The Board rejected the proposed storage area because 1) the area is in the major production grounds of the fishery and the enforcement costs of determining if pots are properly stored is too great; and, 2) the public desires a fair and equitable season start.

The Board considered a proposal to redesignate the Bristol Bay (Area T) fishery as a nonexclusive registration fishery. This area was classified as an exclusive registration area in 1980. This classification was opposed because it reduced the mobility of vessels and gear. The Board received testimony supporting the status quo. The Board evaluated these conflicting desires of the user groups and rejected the proposal to redesignate the area as nonexclusive. The Board based their decision on the desire to continue to provide a reasonable opportunity for all segments of the fleet to participate in the fisheries recognizing that some areas require large offshore vessels to harvest the resource while others may be harvested by smaller vessels fishing more inshore populations. Management can also be more precise providing fuller utilization of available surpluses when fishing effort is not so great that harvests are taken in a very abbreviated time. Two hundred thirty-six vessels with an average keel length of 105 feet fished the Bristol Bay area in 1980 harvesting 130,000,000 pounds of king crab compared to 18,900,000 pounds harvested in Area 0 by 121 smaller vessels (average keel length of 74 feet). Due to processing and unloading problems experienced when the Bristol Bay and Area 0 seasons were concurrent in 1979 and problems with crab quality, the Board delayed the season opening in Area 0 to November 1 in 1980. Opening of Area 0 after the closure of Area T would promote an intense concentration of effort on Area 0 crab stocks if free transfer were allowed from Area T.

# Joint Crab Management proposed by NPFMC

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A proposal to manage the Bering Sea king crab fishery under a joint agreement between the North Pacific Fishery Management Council (NPFMC) and the Alaska Board of Fisheries was outlined in a "Joint Statement of Principles" released at the Council's Feb. 26-27 meeting in Anchorage.

The statement, prepared by representatives of both groups, calls for a co-management approach as an alternative to the Council assuming exclusive management responsibility for the fishery. The draft also stipulates that the Council "may expand this agreement to include other fisheries."

Councilman Don Bevan said that copies of the proposed agreement had been mailed to the public, and that the Council will take up the issue at the combined meeting of the Council and the Board beginning March 25 in Anchorage.

"Right now we are just trying to work up a plan that both groups can live with," said Bevan, who helped draft the joint statement. He noted that neither the Council nor the Board had actually accepted the proposal for joint management, and that the public will be given a chance to testify before any final plan is approved.

Bevan said he could see several advantages in the co-management approach, especially since the Council relies on the Alaska Department of Fish & Game for

much of its resource data.

"The Board has been effectively managing the (king crab) fishery for some time, and has done an exceptional job," he said. "I believe they will be an asset in the future."

But Dick Goldsmith, manager of the Seattle-based North Pacific Fishing Vessel Owner's Association, said he has "strong objections to the direction the Council is moving."

"I think this could subvert the whole purpose of the Council," he said. "I am concerned that this co-management scheme could deny us the input into the decision-making process that is guaranteed under the FCMA."

Bevan disagreed, maintaining that the Board provides for extensive public input and that the FCMA does not require that a formal plan be submitted to the Secretary of Commerce.

"Obviously there are some legal questions that need to be addressed," he said. "But I think the objectives of the FCMA can be met under a co-management arrangement."

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TANNER CRAB FMP HISTORY

February 16, 1977

Preliminary Fishery Management Plan (PFMP) for Eastern Bering Sea King and Tanner Crab

March 10, 1978

Amendment to PFMP

Substance of Amendment:

- increase Tanner crab OY to 70,381 mt (C. bairdi 40,381, mt, C. opilio 30,000 mt)
- increase DAC to 55,381 mt
- TALFF increased to 15,000 mt (from 12,500 mt)
- reduce foreign fishing area to west of 164°W longitude and north of 58°N latitude
- eliminates all directed foreign fishing on C. bairdi stocks

May 16, 1978

SOC approval of FMP for Tanner crab off Alaska

Substance of plan:

- one year plan
- statewide application
- adoption of state management regime for domestic Tanner crab fishery
- TALFF set at 15,000 mt

December 6, 1978

Final regulations implementing Tanner crab FMP.

January 4, 1979

FMP Amendment #1 and final regulations to extend effective dates of plan from October 31, 1978 to October 31, 1979.

March 14, 1979

FMP Amendments (#2 & #3) and final regulations

Substance of Amendment:

- increase Kodiak area OY to 15,880 mt
- extend foreign fishing area to permit fishing between 54° and 58°N latitude, west of 173°W longitude

retaining only C. opilio up to 2,500 mt out of a total TALFF of 15,000 mt.

January 3, 1980

FMP Amendment (#4) and final regulations to extend effective date of plan to October 31, 1980

November 3, 1980

FMP Amendment (#5) and final regulations

Substance of Amendment:

- reduce Bering Sea C. bairdi OY to a range of 10-15,000 mt.
- increase Bering Sea C. opilio OY north and south of 58°N latitude to 58,984 mt
- increase estimate of DAH for C. opilio to 51,484 mt.
- decrease estimate of DAH for C. bairdi to 10-15,000 mt.
- reduce TALFF for C. opilio to 7,500 mt
- restrict foreign fishing to the area north of 58°N latitude and west of 164°W longitude
- implement provisions of the Joint Venture Amendment.

Pending

Amendment #6 is currently awaiting publication in the Federal Register as a final rule.

FMP Amendment (#6) and final regulations.

Substance of Amendment:

- delete preseason tank inspection requirements for registration areas A, E and H.
- require preseason tank inspections for Area J registration area
- allow the recovery and sale, after the season closure, of crabs that are harvested in pots deployed by a vessel lost through sinking
- require reporting of deadloss
- divide South Peninsula district into separate South Peninsula and Chignik districts
- establish eight management sections within the Kodiak district
- change season opening dates for Kodiak (Jan. 22), Bering Sea (Jan. 22), South Peninsula (Dec. 1),

Eastern and Western District  
(June 15)

- require vessels and gear fishing a district of Area J to be registered for that district
- require vessel registration in areas E and H take place prior to the season opening
- definition of a Tanner crab pot
- require floating processors to report their intended processing location to the ADF&G office within the area of intended operation

Pending

FMP Amendment (#7) - SOC review period ends for Feb. 20, 1981. Estimated publication as a proposed rule is May 1, 1981

Substance of Amendment:

- Establish C. bairdi OY's for Chignik, 2,722 mt; South Peninsula, 2,269 mt; and Bering Sea, 12,704-16,334 mt.
- specify the C. opilio OY for the Bering Sea area as equal to the DAH range of 17,954-41,289 mt (i.e., TALFF = 0)

Final implementation of this amendment is being estimated for early July, 1981.

There currently exist some inconsistencies between the FMP and State regulations (see attached table). This list assumes Amendment #6 and #7 regulations become final before the start of the 1981-82 fishery. Many of the differences are minor and can be corrected in-season by field order. However, differences in season opening dates and the Cook Inlet pot limit may require a new amendment. Based on these differences, the Council should determine at this meeting if a new amendment is necessary.

INCONSISTENCIES BETWEEN TANNER CRAB FISHERY  
MANAGEMENT PLAN AND STATE REGULATIONS

1. Harvest Guidelines/OY need to be updated.

	<u>AREA</u>	<u>DISTRICT</u>	<u>STATE</u>	<u>FMP</u> (millions of pounds)
S.E.	A	Northern District (Cape Spencer - C. Suckling)	.5 - 3.0	5.5 (for both districts)
		Southern (East of Cape Spencer)	.75 - 2.5	
PWS	E		1.3 - 5.3	7.0
Cook Inlet	H		11.0	5.3
Westward	J	Chignik	5.0 - 10.0	6.0
		Kodiak	9.0 - 15.0	35.0
		Aleutian	no guideline	2.0
		Bering Sea <u>opilio</u>	no guideline	OY = DAH not to exceed ABC

2. Minor differences in statistical area descriptions

3. Fishing Seasons

	<u>AREA</u>	<u>DISTRICT</u>		<u>STATE</u>		<u>FMP</u>	
				<u>*Opening</u>	<u>Closing</u>	<u>Opening</u>	<u>Closing</u>
S.E.	A	Northern District	was Sept. 15	Dec. 1	May 1	Sept. 1	May 15
		Southern District	was Sept. 15	Feb. 1	May 15	(for both districts)	

\*denotes changes made by Board of Fisheries, March 1981

3. Fishing Seasons (continued)

	<u>AREA</u>	<u>DISTRICT</u>		<u>STATE</u>		<u>FMP</u>	
				<u>*Opening</u>	<u>Closing</u>	<u>Opening</u>	<u>Closing</u>
Westward	J	Kodiak	was Jan. 22	Feb. 10	April 30	Jan. 22	April 30
		Chignik	was Nov. 1	Dec. 10	May 15	Nov. 1	May 15
		South Peninsula	was Dec. 1	Dec. 10	May 15	Dec. 1	May 15
		E. Aleutian	was Jan. 15	Feb. 15	June 15	Jan. 15	June 15
		Bering Sea	was Jan. 15	Feb. 15	June 15	Jan. 22	June 15
			was Jan. 15	Feb. 15	*Aug. 1 (opilio only) was Aug. 15		opilio closed by FO

4. Pot Limits

	<u>AREA</u>	<u>DISTRICT</u>	<u>STATE</u>	<u>FMP</u>
Westward	J	Kodiak	250 pot limit	no pot limit
Cook Inlet	H		no pot limit	75 pot limit
PWS	E		175 pot limit	no pot limit

\*denotes changes made by Board of Fisheries, March 1981

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Received 4/20/81

MAJORITY COUNSEL  
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MICHAEL J. TOOHEY

## U.S. House of Representatives

Committee on

Merchant Marine and Fisheries

Room 1334, Longworth House Office Building

Washington, D.C. 20515

April 15, 1981

The Honorable Malcolm Baldrige  
 Secretary  
 Department of Commerce  
 Washington, D.C. 20230

Dear Mr. Secretary:

We are writing this letter to acquaint you with what we feel is a significant fisheries management issue over which your department has jurisdiction. This issue involves a recent decision by the North Pacific Fishery Management Council and the Alaska Board of Fisheries to develop a "Management Framework" in lieu of the submission of a Fishery Management Plan (FMP) for the Bering Sea/Aleutian Island King crab fishery. The implications of this approach reach far beyond the scope of the King crab fishery alone. In fact, the clear abandonment by the North Pacific Fishery Management Council of its exclusive management authority within the Fishery Conservation Zone by failing to submit an FMP could set an extremely adverse precedent and seriously undermine the Fishery Management Council structure.

First of all, the North Pacific Fishery Management Council has a legal responsibility for reviewing and recommending to the Secretary of Commerce measures for the conservation and management of the fisheries of the Arctic Ocean, Bering Sea, and the Pacific Ocean seaward of Alaska. The State of Alaska only has management authority within three miles, while the Council has authority from three to 200 miles. The only way to achieve conservation and management for a resource which clearly ranges beyond the State's jurisdiction is through the authority of the Fishery Management Council and the Secretary of Commerce. This is consistent with the legislative history of the Magnuson Fishery Conservation and Management Act (MFCMA), and it is essential that an FMP be developed to achieve such conservation and management for these stocks.

We might add that we have always been supportive of the State of Alaska's King crab research, but we are simply making



the point that the only lawful way to manage the King crab fishery is through the North Pacific Fishery Management Council which is the only body which has the clear management and enforcement authority through the Secretary of Commerce to manage the fishery throughout its range. Furthermore, it is our understanding that if the North Pacific Fishery Management Council neglects this duty, then section 304(c) of the MFCMA clearly provides that the Secretary of Commerce may develop an FMP for such species. The MFCMA did not provide for, nor did Congress intend that, the Secretary of Commerce should in any way acquiesce or delegate to any state the authority to manage fish stocks or enforce fisheries regulations beyond state waters.


What is most important about the development of an FMP under the MFCMA is that this plan must be consistent with certain national standards laid out in the Act. One of these standards prohibits either de-facto or de-jure discrimination between residents of different states engaged in a fishery. Because many non-Alaskans are engaged in the King crab fishery and because there has always been strong resentment of "outsiders" by the Alaska Board of Fisheries and their constituents, we think that the proposed "Management Framework" to be implemented primarily by the Alaska Board of Fisheries with very limited advice from non-residents is grossly inadequate and would most likely not adhere to the national standards of the MFCMA. This view is confirmed by the "Draft Regulations for the Bering Sea/Aleutian Island King Crab Fishery Management Framework" which was circulated by the Alaska Board of Fisheries on April 1, 1981.

Therefore, we strongly urge you to advise the North Pacific Fishery Management Council before its May meeting that a decision to not submit a formal King crab FMP for your approval is clearly inconsistent with the intent of the MFCMA, and that the Council should submit a formal FMP to you as soon as possible in order to prevent the application of section 304(c) of the Act. Five years have passed since the enactment of the MFCMA, and this is surely a long enough period for the development of a King crab FMP which meets the national standards. Your action on this matter has significant implications not only for the King crab fishery but as a precedent for the authority of Fishery Management Councils generally.

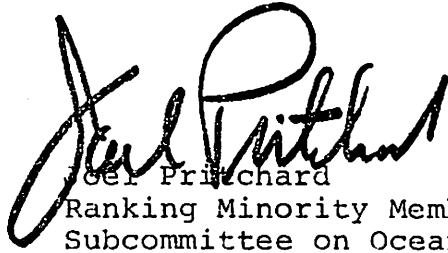
Thank you for your consideration of this matter.

With best regards,

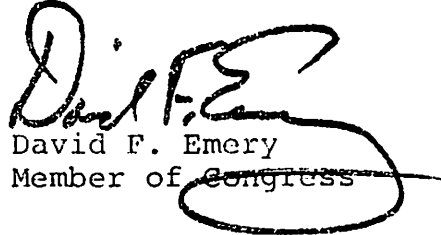
Sincerely,



Gerry E. Studds  
Chairman  
Subcommittee on Coast Guard  
and Navigation



Joel Pritchard  
Ranking Minority Member  
Subcommittee on Oceanography



David F. Emery  
Member of Congress

GULF OF ALASKA GROUND FISH

Status of FMP Amendments

I. IMPLEMENTED AMENDMENTS

- April 21, 1978 FMP approved and published in the Federal Register.
- December 1, 1978 Amendment #1 effective, extended OY's DAH, TALFF and the fishing year to October 31, 1979.
- January 1, 1979 Amendment #2 effective, allowed a directed foreign longline Pacific cod fishery west of 157°W and seaward of 12 miles.
- December 1, 1978 Amendment #3 effective, established special joint venture reserve amounts.
- August 16, 1979 Amendment #4 effective, 11 changes to FMP:
1. Reduced the number of regulatory areas from five to three.
  2. Allowed foreign fishing within 12 miles but not in the territorial sea between 169° and 170°W.
  3. Removed the 25% seasonal TALFF restriction and quota from December 1 to May 31.
  4. Allowed foreign longlining for sablefish seaward of 400 meters from May 1 to September 30 between 140° and 170°W. (closed from Dixon Entrance to 140°W)
  5. Limited a directed foreign longline fishery for Pacific cod between 140° and 157°W seaward of 12 miles except during the U.S. halibut season.
  6. Exempted foreign longline vessels from the provisions of the "all-nation" closure where the allocations for certain species in a fishing area had been reached.
  7. Increased the squid OY from 2,000 mt to 5,000 mt.
  8. Increased the Atka mackerel OY from 24,800 to 26,800 mt.
  9. Removed the domestic one-hour tow restriction.
  10. Removed the domestic requirement for use of off-bottom trawls from December 1 to May 31.
  11. Required domestic permits to be reviewed annually and domestic catch reporting to be submitted within seven days of delivery.

- July 25, 1979                      Amendment #5 effective, established a separate Rattail OY of 13,200 mt.
- September 22, 1979                Amendment #6 effective, released unused DAH to TALFF and re-apportioned DAH by regulatory areas.
- November 1, 1979                   Amendment #7 effective (Secretary of Commerce Amendment), extended the FMP through October 31, 1980, implemented the processor preference amendment, increased the OY's for Atka mackerel and Pacific cod, established a gulfwide OY for Sebastolobus sp., new general domestic reporting requirements.
- November 1, 1980                   Amendment #8 effective, 7 changes proposed to the FMP, only 6 approved:
1. Changed the plan year to a calendar year and eliminated any expiration date.
  2. Distributed the OY Gulfwide for squid, thornyhead rockfish, other rockfish and other species.
  3. Established four species categories for the FMP; unallocated species, target species, other species, and non-specified species.
  4. Divided the Eastern Regulatory Area into three parts to allocate sablefish OY; Yakutat, Southeast inside, Southeast outside.
  5. Set a schedule for release of reserves.
  6. Required biodegradeable escape panels on sablefish pots.

The subpart specifying the authority of the Regional Director of NMFS to issue field orders for time and/or area restrictions to resolve gear conflicts and ground preemption problems is still being reviewed by the Secretary.

## II. PENDING AMENDMENTS, #9 #10

### A. Amendment #9 August 28, 1980

Amendment #9 received by NMFS Washington, the "Lechner Line" around Kodiak Island which closes crab fishing areas to foreign trawling.

Although the Secretarial Review of the Amendment has lasted more than 60 days, the amendment has not been approved or disapproved.

April 10, 1981

Amendment #9 should be approved in two weeks as per telephone conversation with GOA coordinator at NMFS Washington, D.C.

B. Amendment #10  
March 23, 1980

Amendment #10 is sent to NMFS Juneau for review. Amendment #10 proposed the following changes to the FMP for the Eastern Regulatory Area:

1. Reduced the ABC for Pacific ocean perch from 29,000 mt to 875 mt.
2. Set the Pacific ocean perch OY equal to ABC.
3. Set the Pacific ocean perch DAH equal to 500 mt.
4. Set the Pacific ocean perch TALFF equal to 200 mt.
5. Close the FCZ to all foreign fishing from Dixon Entrance to 140°W.
6. Require foreign trawlers fishing between 140°W and 147°W to use midwater gear only.
7. Permit year-round trawling between 140°W and 147°W.
8. Delete the areas closed to foreign trawling east of 140°W.
9. Add a communications code designed to prevent gear conflicts between foreign and domestic fishermen.

April 15, 1981

Amendment #10 received by NMFS Washington, D.C. The 60-day Secretarial Review should have started on this date.

BERING SEA/ALEUTIAN ISLANDS GROUND FISH  
FISHERY MANAGEMENT PLAN

STATUS REPORT

I. FMP Implementation set for late summer, 1981

- November 19, 1979      The FMP and proposed regulations were published in the Federal Register. The FMP had been approved by Leitzell on October 22, 1979.
- April 1980              The Final Environmental Impact Statement was judged to be inadequate by NOAA General Counsel. The FMP cannot be implemented until 30 days after publication on the Federal Register of the final EIS, so a new draft EIS was prepared.
- September 1980        The new draft EIS was sent to the public for review. Comments on the draft EIS were received until November 10, 1980. The response to comments and the final EIS are still being prepared by NMFS Juneau and NOAA General Counsel. As soon as time and manpower permits, the final EIS and final regulations implementing the FMP will be written and sent to Washington, D.C. This will happen during June. If the final EIS is approved at the end of July, the FMP could become effective by September 1980.

II. Amendments

Because certain parts of the Preliminary Fisheries Management Plan have been amended, the FMP will have to be amended to insure a consistent management regime. The amendments which conform the FMP to the PMP are #2 and 1-a.

A. Amendment 2

- October 22, 1980      Amendment 2, changing the amount of yellowfin sole allocated to DAH and TALFF was submitted to NMFS Washington by NMFS Juneau.
- February 10, 1981    A Supplement to Amendment 2, proposing changes to the OY, DAH, and reserve amounts of Pacific cod was sent to NMFS Juneau by Council staff.
- March 13, 1981        NMFS Juneau submitted a revised Amendment 2 to NMFS Washington.
- March 23, 1981        NMFS Washington informed Clem Tillion that the 60-day Secretarial Review has started and that the amendment will be implemented at the same time as the FMP.

The earliest Amendment #2 could be implemented would be September 1980, which corresponds to the projected implementation date for the FMP.

B. Amendment 1-a

March 27, 1981

The Council recommended that the salmon savings amendment for the PMP be implemented by NMFS Juneau. The amendment will limit the foreign trawl incidental catch of chinook salmon to 65,000 fish.

The same amendment will be submitted to the Secretary for the FMP, and is in preparation by Council and NMFS staff. Amendment 1-a could be submitted to the Secretary by May 1. The Notice of Proposed Rule Making could be forthcoming by the first week of July. The amendment could be implemented by the middle of October, which would still protect the salmon stocks during the winter trawl fishery. If implementation of the FMP depends upon implementation of Amendment 1-a, then the FMP could not be implemented before October 1980.

C. Amendment 1

March 27, 1981

The Council approved the final form of Amendment 1, the single OY management concept for the Bering Sea. The amendment is in preparation by Council and NMFS staff and could be submitted to the Secretary by May 1. The Secretary could approve the amendment by the first week of July. The amendment could be implemented by the middle of October.

Amendment #1 is less restrictive to the domestic trawl fisheries in the Winter Halibut Savings Area and the Bristol Bay Pot Sanctuary than the current FMP. It is possible that because of the developing domestic trawl fishery, Amendment #1 may have to be implemented at the same time as the FMP. This could delay implementation of the FMP until 1982.

D. Amendment 3

February 27, 1981

The Council approved Amendment #3 for public review. Amendment #3 is designed to reduce the catch of all prohibited species in the Bering Sea. Public hearings were scheduled for April 18 in Seattle and April 22 in Anchorage. Final Council action is scheduled for the May meeting. Secretarial review could begin by mid-June, which means that Amendment #3 could be implemented by December 1981.