AGENDA B-1
September, 1980

EXECUTIVE DIRECTOR'S REPORT

MEETING SCHEDULE

I would like to recommend changing the October meeting date from the 23rd and 24th to October 30th and 31st. The fourth week, when we usually meet, has a number of conflicts with other meetings, including that of the Council Chairmen. Postponing the meeting for a week will also tend to shorten the gap between the October meeting and the December meeting.

December promises to be a very full meeting, since we have a number of management plans to act on and need to work jointly with the Alaska Board of Fisheries. I'd like to recommend the Council meet from December 10th through the 12th, using the 11th as a day to meet jointly with the Board of Fisheries. I also recommend that we schedule a public hearing in conjunction with the Board of Fisheries for December 9th on King Crab, Tanner Crab, Troll Salmon, and Bering Sea Groundfish FMP's. We would have difficulty meeting with the Board of Fisheries the first week in December, since they are meeting jointly with the Board of Game.

A proposed meeting schedule for 1981 is attachment (e) in this Agenda item. I would like to have Council recommendations and approval of that schedule at this meeting.

EXECUTIVE DIRECTORS' MEETING

The Council Executive Directors met in Washington on September 4th and 5th, half a day with only Council personnel and the other day with representatives of NMFS from the Washington office. The meeting was useful, but not outstanding. We are so completely bogged down in the procedural aspects of developing fishery management plans and amendments that it's almost impossible to get to the substance of those plans. We did, I think, get some of the things out of the way that would have been talked about at the Chairmen's meeting had it not been for this get-together. A short report of the Directors' meeting is in this Agenda item as attachment (f).

We did develop a tentative agenda for the Council Chairmen's meeting, which I had hoped to have in time for this Council meeting. It will contain such things as plan monitoring, handling programmatic funds, obtaining outside legal services, joint development of FMP's by two or more Councils, and a number of other fairly substantive matters.

COUNCIL PERSONNEL

Jeffrey Povolny has joined the Council staff as Plan Coordinator for the King Crab and Tanner Crab Plans. He arrived in Alaska on Sunday, and we have had him working with the Plan Development Team for Tanner Crab since then.

Our OS-6 operator, Ida Putnam, resigned because of advanced pregnancy. We have filled the position with the new lady, Peggy Hough, expected to come to work on September 29th. Lack of a full-time operator for the word processor has slowed our progress on manuscripts considerably.

GROUNDFISH WORKSHOP

A workshop on multi-species management of groundfish resources was held in Woodshole, Massachusetts September 15th and 16th. Maggie Duff, who will be the Plan Coordinator for both groundfish plans, attended, as did Council member Don Bevan in his role as an SSC member for the Pacific Council. That workshop was followed by two days of discussions with NMFS lawyers and management staff in Washington on the same subject. Our preliminary reports from Maggie indicate that it was a very worthwhile exercise.

REPUBLIC OF KOREA VISITORS

Mr. Ik-Sung Choi, Deputy Administrator for the National Fisheries Administration of the Republic of Korea, accompanied by Sung Chae Kim, Director of the International Cooperation Division of the Fisheries Administration, Mr. Chung Koo Youn, President of Oyang Fisheries Company, and Mr. Yong Soon Kang, Chairman of the Korea Wonyang Fisheries Company, visited the office on September 15th to plead their case for a larger allocation in 1981. They would like to have 405,000 tons from the FCZ off Alaska, up from the 230,000 tons they were allocated in 1980. They were also greatly concerned about the closure of their fishery in the Western Regulatory Area of the Gulf of Alaska recently when they reached their allocation of sablefish. They assured me that they would continue the joint ventures even though they continue to lose money.

I explained to Mr. Choi that the Council had little input into the allocation procedure and that their case should be taken to the Department of State and the Department of Commerce, but did promise that I would pass their requests on to the Council.

CATCH REPORTS RECEIVED BY NMFS

Attachment (a) is the Regional Director's response to the Council's question at the last meeting as to the exact type of catch reports received by NMFS, both from foreign fishermen and U.S. fishermen.

CHAIRMEN'S MEETING

The Council Chairmen's meeting will be held October 20th and 21st in San Juan, Puerto Rico. Council direction of the Chairman for that meeting will have to be given at this Council meeting. One of the things that you may wish to discuss is under Item (c), the preparation of FMP's by two or more Councils. I sent some material on this subject to you on July 8th, and since then we have received a response from Terry Leitzell to the Chairman of the Caribbean Council, elaborating on the NMFS policy in this matter.

Other subjects that will probably arise are whose responsibility it is for monitoring FMP's; whose decision it is, NMFS or the Council, on whether an FMP should be developed; different methods of handling programmatic funds; and a Council's ability to hire outside legal talent if they wish.

RELEASE OF RESERVES AND DAH

At the July meeting, the Council asked for a study of the procedure and time required for the release of reserves and DAH to surplus so they could be reallocated to TALFF. Clarence has made that study; it is attachment (d). The time is variable, but unless complicated by factors such as trade policy, foreign policy, and so on, does not appear to be unreasonable.

STATUS OF FMP'S

Attachment (b) is an update on the current status of FMP's in place or under development by the Council. As you can see by that summary, most of them tend to continually fall behind. We spend much more time on the process than we do on the product, and I see little likelihood that that situation will change.

To: Jim Branson
From: Ron Antrim
586-7229

AGENDA B-1(a)
September, 1980

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service
P.O. Box 1668
Juneau, Alaska 99802

September 17, 1980

Jim Branson, Director
North Pacific Fishery Management Council
P.O. Box 3136 DT
Anchorage, AK 99510

Dear Jim:

The Council at its last meeting requested a description of the catch reports submitted to the Alaska Region by foreign and U.S. fishermen. The reports we receive are the weekly foreign reported catch, the joint venture weekly reported catch and the daily foreign Tanner crab catch. The data elements of each report are as follows:

Weekly foreign catch reports (by individual fishing vessels): week ending date, vessel identification, area, number of days fished, species, metric tons caught (number of fish caught for prohibited species).

Joint venture weekly catch reports (by individual processing vessels): week ending date, processing vessel identification, area, species, total metric tons caught by all U.S. vessels (number of fish for prohibited species).

Daily foreign Tanner crab catch reports (from U.S. observers for the factoryship fleet and for independent pot vessels): day, factoryship or independent pot vessel identification, latitude-longitude, species composition by percentage, total number of crabs caught, total metric tons caught.

The raw data from the above reports are confidential and must be summarized for release to the public.

In addition to the above reports each foreign nation is required to submit detailed annual reports showing catch and effort by vessel class, by gear, by month, by one half degree latitude and one degree longitude. These data are used by the NWAFC scientists for stock assessment.

Raw observer data are stored in the NWAFC computer and are not directly accessed by the Region. We do, however, obtain collated data in the summary and detail "best blend" weekly reports.

Domestic catch statistics, other than joint venture catches, are collected by the Alaska Department of Fish and Game (ADF&G). The Region does not have access to ADF&G's catch data bases, but we do receive summarized catch reports.

In regards to historical statistics, we are working on making the annual "best blend" summary files more accessible and manipulatable. We understand the NWAFC is putting together historical foreign catch reports for pre-FCMA years.

Sincerely,

Philip E. Chitwood
Chief, Fisheries Management Operations Branch

STATUS OF FISHERY MANAGEMENT PLANS

1. Tanner Crab FMP

Amendment #5, sent to D.C. November 7, 1979, reducing TALFF from 15,000 mt to 7,500 mt, is being reviewed by the General Counsel in Washington. Amendment #6 a series of minor regulation changes, was submitted to Terry Leitzell on June 2, 1980. Implementation is expected on January 15, 1981.

A summary of 1981 amendments is being composed by a workgroup that will meet on September 22nd. This summary of 1981 amendments will be available to the SSC and the Council for their review and approval for public hearings.

2. King Crab FMP

The draft FMP was approved by the Council in July to go to public hearings after some minor revisions by the PDT as suggested by the SSC. These revisions were made and the plan was resubmitted in August. A summary of the plan was sent in early September to ADF&G area offices for distribution at tank inspection time in mid-September. The draft FMP is awaiting revision of the draft Environmental Impact Statement and the draft Regulatory Analysis before being sent out for public review, hopefully in late September.

Dates and times need to be set for the public hearings to be held in Nome, Seattle, Anchorage, and Kodiak. A public hearing has been planned for Dutch Harbor on October 21st.

3. Bering Sea/Aleutian Islands Groundfish FMP

The FMP is now back in the Washington office of NMFS and will be implemented on January 1, 1981.

The 1981 amendment package was approved for public review by the Council in July. and will be sent to Washington shortly. The draft EIS covering both the FMP and the 1981 amendments is in D.C. now, and will begin its 45-day public review on September 26. Planned implementation date for the 1981 amendments is in August, 1981. Public hearings need to be scheduled by the Council.

Proposals for 1982 amendments are being requested at this meeting. The proposed deadline is January 1. Implementation of the 1982 amendments is scheduled for January, 1982.

4. Gulf of Alaska Groundfish FMP

Amendment #9 for 1981, which replaces six small fixed gear areas around Kodiak with one large area, was approved by the Council in July and sent to Leitzell on August 13th. It was also sent to NMFS, Alaska Region, for their review. The 60-day Secretarial review began August 28th. Implementation is planned for late February, 1981.

Proposals for 1982 amendments are requested at this meeting. The proposal deadline is January 1. Planned implementation for these amendments is January, 1982.

5. Salmon FMP

The Salmon PDT will be meeting on September 21st and 22nd to develop 1981 amendments. These amendments will be reviewed by an SSC working group and then by the full SSC and should be available for Council review and approval to send to public hearings. A draft Environmental Impact Statement and a Draft Regulatory Analysis will probably be required to accompany the 1981 amendments.

Emergency regulations for 1981 were re-promulgated by NMFS on July 1, 1980 and were effective through August 13th. The final regulations for 1930 were approved on August 29th and became effective September 3rd. The fishery closed on September 21st.

6. Herring FMP

The draft FMP was reviewed by the Herring PDT on August 26th. The SSC subgroup will meet on September 22nd to review this draft. It will then be available for Council review and approval to go to the Secretary of Commerce. The draft EIS and draft Regulatory Analysis are being composed and will be added to the draft FMP as soon as possible.

AGENDA B-1(c)
September, 1980

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

SUBPORT BUILDING
JUNEAU, ALASKA 99801

September 16, 1980

Jim H. Branson, Executive Director
North Pacific Fisheries Management Council
P.O. Box 3136 DT
Anchorage, AK 99510

Dear Jim:

I've reviewed your Council mailing of July 8, 1980 dealing with Terry Leitzell's policy on preparation of joint Council FMPs.

Mr. Leitzell uses Pacific salmon as an example where a single Council would be charged with the preparation of an FMP when the fishery is predominantly within that Council's area of responsibility. Since Pacific salmon in the FCZ range only throughout the waters of the Pacific and North Pacific Councils I am deeply concerned with the possibility of only one of these Councils preparing an ocean salmon plan. The North Pacific Council is in no position to prepare a plan for the Pacific Coast and on the other hand, it is inconceivable to think that Alaska's Southeast troll fishery is so insignificant as to allow the Pacific Council to command the planning process.

Pacific salmon fisheries are of coastal concern and nothing less than joint Pacific, North Pacific, and Canada planning efforts are acceptable.

I support Mr. Hector Vega-Morera's suggestion (June 28 letter to Leitzell) that NOAA Legal Council review the legality of some aspects of Leitzell's interpretation of the Act. In particular, it appears that Council authority would be preempted if the Secretary a) assumes discretionary power to assign an FMP to a single Council and b) prevents a Council from withdrawing from a joint planning effort.

I believe we need to develop a position on this subject at the September Council meeting in preparation for the October Council Chairmen's meeting.

Sincerely,

for Ronald O. Skoog
Commissioner
(907) 465-4100

11-K11LH

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Washington, D.C. 20235

Copy pls

ACTION	ROUTE TO
	Exec. Dir.
	Deputy Dir.
	Admin. Off.
	Exec. Sec.
	Staff Asst. 1
	Staff Asst. 2
	Staff Asst. 3
	Secretariat
	Sec./Clerk
	Sec./Typist
	SEP 15 1980

AUG 2 2 1980

Mr. Hector Vega-Morera
Chairman
Caribbean Fishery Management Council
Suite 1108 Banco de Ponce Building
Hato Rey, Puerto Rico 00918

Dear Hector:

Thank you for your letter of June 23, 1980, stating your objections to NMFS' policy on joint preparation of fishery management plans. I will respond to each of your points in turn.

1. You believe that the exercise, against a Council's wishes, of the Secretary's authority to designate joint plans under section 304(f)(1)(B) conflicts with the authority granted by the Act to a Council to prepare fishery management plans for fisheries within its geographic area.

On the contrary, the Act recognizes that a fishery which extends over a broad range is a special case. If the Councils had total autonomy over plan preparation within their respective areas, management of a broad-range fishery might be done piecemeal or through incompatible plans, or might have to wait until the Councils could agree on which ones would prepare a unified plan.

To facilitate management of a broad-range fishery, Congress gave the Secretary authority, in section 304(f)(1)(B), to designate which Councils should prepare the joint plan. The Secretary's authority is discretionary in the sense that he has leeway to decide which fisheries need joint plans and which Councils have sufficient interest in a fishery to be designated as plan preparers. Of course the Secretary would consult with the Councils and take their wishes into account in making 304(f)(1)(B) designations. But once a designation is made, the Councils must proceed according to its terms, whether an individual Council originally or subsequently found it convenient. Section 304(f)(1)(B) is not inconsistent with the grant of authority to a Council to prepare plans, because a broad-range fishery is not strictly "within its geographical area of authority."

2. You believe that NMFS policy requiring Secretarial approval of a Council's withdrawal from a joint plan "pre-empts" the Council's authority

We find our interpretation to be a necessary corollary of the authority to make joint-plan designations under 304(f)(1)(B). While there may be circumstances in which withdrawal of a Council would be appropriate, the Secretary must have the final decision. Otherwise, the intent of 304(f)(1)(B), that the Secretary determine how plans for broad-range fisheries will be prepared, would be frustrated.

Contrary to your statement on page 3, Councils cannot effect a 304(f)(1)(B) designation by deciding among themselves how to prepare a joint plan. Likewise, they may not, without concurrence of the Secretary, decide to alter the composition of a 304(f)(1)(B) joint designation.

3. You believe section 304(f)(1)(B) did not contemplate management of the highly-migratory billfish.

It may be true that 304(f)(1)(B) was drafted with a less wide-ranging species in mind, such as the coastal migratory pelagic resource off Florida. The language, however, does cover the billfish fishery and provides the best mechanism under the Act to deal with that fishery. Many other fisheries extend beyond the fishery conservation zone; plans for those fisheries have to cope with the jurisdictional difficulties.

4. You conclude that our action on the shark FMP is inconsistent with our policy on joint-plan designation.

Our approval of preparation by the Gulf Council of a shark FMP for the Gulf of Mexico was based on changes in circumstances since the five-Council designation was made. We had originally expected the priorities and scheduling for a shark FMP to be similar among the five Councils. Instead, the Mid-Atlantic Council, which has the "administrative lead," gave it low priority. The Gulf Council made a case for expeditious preparation of a plan for the Gulf fishery, so we allowed it to proceed. Our policy on joint-plan designation is quite clear; piecemeal preparation of a plan covering a broad-range fishery will be allowed only when the Secretary is convinced that immediate management of one area is more important than simultaneous development of a unified plan.

5. I interpret your last point as a belief that the Act would be better served by allowing unilateral withdrawals from joint plans, so that a plan not endorsed by one of the Councils could nonetheless be submitted to the Secretary.

Our position is that, in the special case of a broad-range fishery, the Act values a unified approach to management more than expeditious preparation of a plan for only part of the fishery. Requiring Councils to continue to work together until all their concerns and objectives are met furthers National Standard 3 and the intent of Congress that fisheries be managed as units throughout their range. There is no point to the Act if fishery management remains as fragmented as it was before 1976.

Please continue to work with the Inter-Council Billfish Steering Committee until the Billfish FMP satisfies your needs and concerns. As stated in my May 15, 1980 letter, joint plans require cooperation and coordination by the respective Councils to ensure that each Council's concerns are met and blended into the overall framework of the plan.

I might add that the NOAA Office of General Counsel has cleared this letter as well as my May 15 letter.

Sincerely yours,

William H. Stevenson

Terry L. Leitzell
Assistant Administrator
for Fisheries

cc: New England Fishery Management Council
Mid-Atlantic Fishery Management Council
South Atlantic Fishery Management Council
Gulf of Mexico Fishery Management Council
Pacific Fishery Management Council
North Pacific Fishery Management Council
Western Pacific Fishery Management Council

CARIBBEAN FISHERY MANAGEMENT COUNCIL
Suite 1108 Banco de Ponce Building • Hato Rey, Puerto Rico 00918
Telephones: FTS (809) 753-4926, 753-4927, 753-4928, Comm (809) 753-6910
Telex: "Carifish" 385-790

June 23, 1980

Mr. Terry L. Leitzell
Assistant Administrator for
Fisheries F
National Oceanic and Atmospheric
Administration
Washington, DC 20235

Dear Terry:

Thank you very much for your letter of May 15, 1980, in which you state NMFS position with respect to the individual or joint preparation of fishery management plans by the Councils.

If our interpretation of your letter is correct, NMFS' position regarding Section 304 (f) (1) - Miscellaneous duties on the optional (non-mandatory) powers vested upon the Secretary by the Act-when "any fishery extends beyond the geographical area of authority of any one Council", the following will apply:

"1. To designate a single Council to prepare a management plan for a fishery (Section 304 (f) (A)) when the fishery is predominately within that Council's area of responsibility as in the case of Atlantic herring or Pacific salmon. This does not preclude input from other Councils. However, the official submission of the FMP to the Secretary requires only a formal vote by the designated Council. If other Councils disagree, they may make their objections known to the Secretary but they have no formal standing in the Council approval process."

"2. Joint plan development and approval (under Section 304 (f) (1) (B)) should be used when a fishery extends over a broad range as is the case with billfish, sharks, and swordfish. After consulting with the Councils within the geopraphic area of the fishery, I shall designate the Council having the "administrative lead" for joint plan preparation and indicate which Councils are involved. All of the Councils involved shall be part of the joint plan development and each will have to approve the plan by a majority vote before it is submitted to the Secretary."

Even if we have no problems with your position statement in terms of the adoption of general policy guidelines, we are concerned with the legality of some aspects of your interpretation of the Act. We will summarize below our position on the subject:

North Pacific Fishery Management Council

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

Suite 32, 333 West 4th Avenue
Post Office Mall Building

Mailing Address: P.O. Box 3136DT
Anchorage, Alaska 99510

Telephone: (907) 274-4563
FTS 271-4064

July 8, 1980

TO: Council Members

The enclosed material, a letter from Leitzell to Tillion and a response to a similar letter from the Caribbean Council, develops NMFS policy for preparation of joint Council fishery management plans (FMPs). While the correspondence is aimed at the current problems developing a billfish and shark plan for the East Coast, it does touch on an area that we will be getting into in the next year or two with the Comprehensive Salmon FMP for the Pacific and North Pacific Councils.

If you can see anything in Leitzell's letter that might increase the difficulty of the two West Coast Councils preparing a joint plan, or that might have long range policy implications restricting our ability to coordinate activities with another Council, I would appeciate your comments.

This will be a subject at the Council Chairmen's meeting in October, so we should have a Council position developed, if we believe we need one, by at least the September Council meeting.

Sincerely,

Jim H. Branson
Executive Director

attachments

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Washington, D.C. 20235

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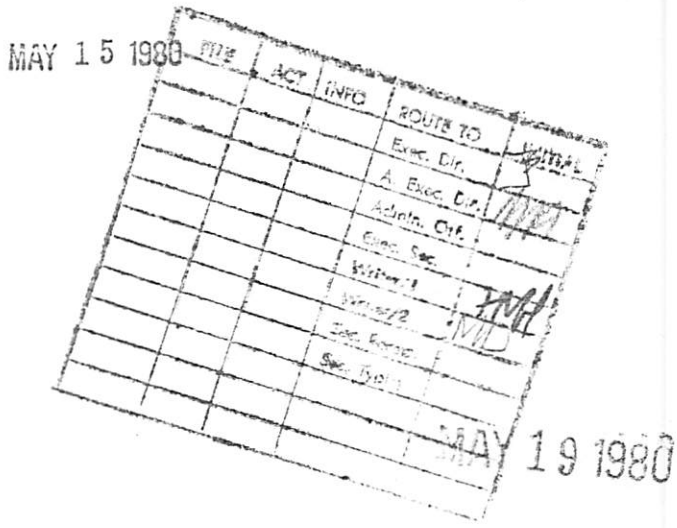

Mr. Clement Tillion
Chairman
North Pacific Fishery Management Council
P.O. Box 3136 DT
Anchorage, Alaska 99510

Dear Clem,

The purpose of this letter is to clarify our position with respect to preparation of joint or single Council Fishery Management Plans (FMPs). Since the inception of the Fishery Conservation and Management Act (the Act) and the initial designations of Councils to develop or join with other Councils in developing FMPs, there have been questions concerning "lead" designation and whether certain plans were included under Section 304(f)(1)(A) or (B) of the Act. The Act specifies that, where practicable, stocks of fish shall be managed throughout their range. However, several early memoranda did not indicate clearly whether the Secretary expected plans on billfish and sharks to be prepared by a single Council or jointly by a number of Councils.

Our policy is to designate a single Council to prepare a management plan for a fishery (Section 304(f)(1)(A)) when the fishery is predominately within that Council's area of responsibility as in the case of Atlantic herring or Pacific salmon. This does not preclude input from other Councils. However, the official submission of the FMP to the Secretary requires only a formal vote by the designated Council. If other Councils disagree, they may make their objections known to the Secretary but they have no formal standing in the Council approval process.

Joint plan development and approval, under (Section 304(f)(1)(B)) should be used when a fishery extends over a broad range as is the case with billfish, sharks, and swordfish. After consulting with the Councils within the geographic area of the fishery, I shall designate the Council having the "administrative lead" for joint plan preparation and indicate which Councils are involved. All of the Councils involved shall be part of the joint plan development and each will have to approve the plan by a majority vote before it is submitted to the Secretary.

It shall be the responsibility of the Council having "administrative lead" in joint plan development to facilitate preparation of the FMP in as expeditious a manner as possible. Its responsibilities include overview of plan preparation, issuance of appropriate contracts, meeting arrangements, and other normal administrative matters associated with expediting plan development. In addition, the Council designated as having "administrative lead" shall be responsible for coordinating and submitting minority reports to the Secretary if they are requested to do so by any participating Council member desiring to file such a report, even though the FMP was approved by all the Councils involved.

Once the Secretary has determined that a plan must be prepared jointly by two or more Councils, none of the designated Councils may withdraw from the plan without Secretarial approval. Joint plans require cooperation and coordination by the respective Councils to ensure that each Council's concerns are met and blended into the overall framework of the plan. I recognize the concern that, when a number of Councils are involved, an objecting Council could substantially frustrate the adoption of a joint FMP by refusing to approve it, thereby precluding presentation of the plan to the Secretary. I believe the Councils' concern for rational management for species throughout their ranges will prevent this from happening. If it should occur, the Secretary would have to consider preparing a Secretarial plan or other action to break the deadlock.

There may be rare instances in joint plan development when circumstances warrant varying from the above procedures. For example, I have approved the request of the Gulf Council to proceed with the development and implementation of a shark FMP for the Gulf of Mexico even though the FMP was designated a five-Council joint plan, with the Mid-Atlantic Council having the administrative lead. The Mid-Atlantic Council, however, initially placed low priority on development of the joint plan because of other commitments, while the Gulf Council felt there was a need for management of the Gulf of Mexico shark fishery. The Gulf of Mexico shark plan will be implemented upon approval. Subsequently, I expect it to be incorporated into a joint plan for sharks when the Atlantic and Caribbean parts of that plan are developed by the other four Councils concerned. After the joint plan is implemented, any amendment to any part of the plan will be through joint development by all five Councils.

In conclusion, I am requesting the Councils to pursue the approach I have outlined above. In the event that any specific problems are encountered, the National Plan Coordinator (NPC) will assist, through the Regions, in reconciling them. You are urged to maintain close liaison with the NPC at all stages of plan development. Any problem that cannot be resolved through the NPC or the Regional Director should be brought to the attention of the Director of the Office of Resource Conservation and Management.

I hope this clears up the questions that have been raised concerning our policy for joint or single Council plan development. I have asked that this topic be put on the agenda at the next Council Chairmen's meeting, in case additional clarification is needed.

Sincerely yours,

Terry L. Leitzell
Assistant Administrator
for Fisheries

FILE	ACT	INFO	ROUTE TO	INITIAL
			Exec. Dir.	
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			Sec. Typ.	
			Sec. Typ.	
	JUN 26 1980			

CARIBBEAN FISHERY MANAGEMENT COUNCIL
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Telex: "Carifish" 385-790

June 23, 1980

Mr. Terry L. Leitzell
Assistant Administrator for
Fisheries F
National Oceanic and Atmospheric
Administration
Washington, DC 20235

Dear Terry:

Thank you very much for your letter of May 15, 1980, in which you state NMFS position with respect to the individual or joint preparation of fishery management plans by the Councils.

If our interpretation of your letter is correct, NMFS' position regarding Section 304 (f) (1) - Miscellaneous duties on the optional (non-mandatory) powers vested upon the Secretary by the Act-when "any fishery extends beyond the geographical area of authority of any one Council", the following will apply:

"1. To designate a single Council to prepare a management plan for a fishery (Section 304 (f) (A)) when the fishery is predominately within that Council's area of responsibility as in the case of Atlantic herring or Pacific salmon. This does not preclude input from other Councils. However, the official submission of the FMP to the Secretary requires only a formal vote by the designated Council. If other Councils disagree, they may make their objections known to the Secretary but they have no formal standing in the Council approval process."

"2. Joint plan development and approval (under Section 304 (f) (1) (B)) should be used when a fishery extends over a broad range as is the case with billfish, sharks, and swordfish. After consulting with the Councils within the geopraphic area of the fishery, I shall designate the Council having the "administrative lead" for joint plan preparation and indicate which Councils are involved. All of the Councils involved shall be part of the joint plan development and each will have to approve the plan by a majority vote before it is submitted to the Secretary."

Even if we have no problems with your position statement in terms of the adoption of general policy guidelines, we are concerned with the legality of some aspects of your interpretation of the Act. We will summarize below our position on the subject:

1. In first instance, we feel that even if authority was granted to the Secretary to exert certain discretionary powers when any fishery extends beyond the geographical area of authority of any one Council, the authority vested upon him by (304) (f) (1) as to the preparation of fishery management plans by the Councils, is of an optional ("the Secretary may") and not of a mandatory (shall) nature.

Considering that Section 302 (a) (4) confers authority to the Councils over the fisheries seaward of the constituent States and considering, in addition, that Section 302 (h) (1) mandates each Council to "prepare and submit to the Secretary a fishery management plan with respect to each fishery within its geographical area of authority ... "we believe that the exercise of this discretionary power by the Secretary against a Council's will or decision (in respect to the preparation of an FMP) could result in conflict with the authority vested by the Act upon the Councils. Thus, we have to disagree with your opinion on the same grounds, that is, that any action by the Secretary (NMFS in this case) in contravention to the Council granted authority, might present some vestiges of pre-emption of Councils' authority to prepare fishery management plans.

2. According to your letter, "once the Secretary has detemined that a plan must be prepared jointly by two or more Councils, none of the designated Councils may withdraw from the Plan without Secretarial approval."

This is a conclusion that you have, obviously, reached by inference, as there is nothing in the Act that precludes a Council to withdraw from a joint effort even without requesting Secretarial approval. In fact, the only provision in the Act in reference to joint actions by Councils is that "no jointly prepared plan or amendement may be submitted to the Secretary unless it is approved by a majority of the voting members, present and voting, of each Council concerned."

Obviously, you preferred not to address this part of 304 (f) (1) (B) (as quoted in the previous paragraph) as it is not even mentioned in your letter, but we frankly feel that your statement regarding the need for Secretarial authority to withdraw from a plan that is being jointly developed by more than one Council lacks legal sufficiency. If this interpretation of the Act is enforced it will result in pre-emption of Council's authority.

3. We have reasonable doubts as to the applicability to the billfish fishery of the qualification statement ("If any fishery extends beyond the geographic area of authority of any one Council,...") for Secretarial intervention, considering the highly migratory nature of the species and, therefore, the fact that the fishery extends not only beyond the geographical area of authority of any one Council", but even United States jurisdiction. In our opinion, the billfish fishery situation was not contemplated under Section 304 (f) (1).

4. We are forced to conclude that your stament regarding the exceptions to the procedures in the case of the Sharks Plan defeats, in the very early stages of the process, the policy you are intending to establish. If the policy is not clear, as yet, in the case of billfishes, why do you expressly and expeditiously vary the procedures in the case of sharks? To us, and strictly from a procedural standpoint, it makes no sense.

5. In spite of our personal feelings on the issue, we must question the lack of concordance with the Act of your statement, in support of your position, that "an objecting Council could substantially frustrate the adoption of a joint FMP by refusing to approve it, thereby precluding presentation of the plan to the Secretary". In our view, your position in this respect again lacks legal sufficiency as the Act provides precisely for this situation to occur under 304 (f) (1) (B). It reads: "No jointly prepared plan or amendment may be submitted to the Secretary unless it is approved by a majority of the voting members, present and voting of each Council concerned." Don't you think that NMFS will be acting contrary to the Act if your interpretation is accepted?

It is precisely with this in mind that we have tried, by all means within our reach, not to interfere or present obstacles to the presentation of the Atlatic Billfish Plan to the Secretary (as evidenced by several documents and actions), considering that the Plan does not address adequately the economic and social needs of this area.

Regardless, we feel it is a Council legal prerrogative under such circumstances to withdraw from the joint effort or, regretfully, to refuse to endorse the Plan.

In order to avoid these problems, we requested Secretarial approval to withdraw from the joint effort. This authorization was never granted. Some time after, we received legal advice that Secretarial approval was not necessary for the Council to withdraw from the joint effort on the basis that the initial decision to participate in the joint plan was the Council's and not the Secretary of Commerce's.

Our Council has already made the decision, repeatedly confirmed, to withdraw from the joint effort. We feel that our withdrawal will cause no adverse affects to the plan preparation as no major changes will be necessary to the Plan, which is not as yet final. On the contrary, the Inter-Council Steering Committee is still in the process of re-examining the OY figures and other aspects of the Plan. Besides, the Caribbean is excluded from several sections of the Plan which, as stated previoulsy, does not address properly the socio-economic objectives of the Caribbean billfish fishery.

Please do not interpret our statements as negating the possibility of the Councils' working in a coordinated way towards achieving common goals. In fact, we are working with the other Councils in a coordinated way in relation to the billfish plan as is evidenced by the attendance of Council representatives to the Billfish Steering Committee meetings. On the contrary, what we feel has been lacking is NMFS timely action and decisions to solve some of the problems that have resulted.

We are convinced that the proposed policy, as stated in your letter of May 15, 1980, if accepted by the Councils, will have the effect of surrendering Councils individual decisional authority when involved in the preparation of plans that will require joint efforts with other Councils.

As suggested by you, we will propose the issue for consideration by the next Chairmen and Executive Directors' meeting. May we suggest that our position on the issue be taken for legal scrutiny by NOAA Legal Counsel before the meeting.

With my best personal regards, I am

Sincerely yours,

Héctor Vega-Morera
Chairman

cc: Mr. William H. Stevenson
Chairman, Regional Fishery Mangement Council
Council Members
NOAA Southern Counsel
Council Staff

HVM/iv

AGENDA B-1(d)
September, 1980

DELAYS IN RELEASE OF GROUNDFISH RESERVES

At the Council's request in July, we asked the Departments of State and Commerce to provide an overview of the procedures for release of groundfish reserves and estimate the time taken by each step of the process. Both Departments responded.

The general process is for NMFS, Alaska Region, to telecopy the notification of an increase in TALFF to Washington, D.C. This notification is published in the Federal Register. NMFS also informs the Department of State of the TALFF increase. State informs NMFS of the approximate percentage of the allocation of the major or directed fisheries which State intends to make to each country and requests NMFS's views. NMFS's Foreign Allocations Board sends their recommendations for species mix and areas to State and State then notifies the foreign countries of their new allocations.

The total time from reserve release date to notification of the foreign countries has ranged from 91 days (March 2, 1980 release) to 39 days (July 2, 1980). The process generally has taken 11 to 47 days in the NMFS Region, then 14 to 35 days in the NMFS Washington office, and finally 11 to 16 days in State.

AGENDA B-1(e)
September, 1980

1980-81 MEETING SCHEDULE

For the remainder of 1981, I recommend we meet in Anchorage on October 30th and 31st and again in Anchorage on December 10th, 11th and 12th with a joint public hearing with the Board of Fisheries scheduled for the 9th on King Crab, Tanner Crab, Troll Salmon, and Bering Sea Groundfish.

1981 Meeting Schedule

Based on our regular meetings on the fourth Thursday and Friday of the month, a schedule for 1981 would be as follows:

January 22, 23
February 26, 27
March 26, 27
April 23, 24
May 28, 29
June 25, 26
July 23, 24
August 27, 28
September 24, 25
October 29, 30
December 2, 3, and 4

As has become the custom, the October and December meetings do not follow the usual pattern. Change has generally been necessary to avoid holidays and to bridge the time gap in a period that is usually very busy.

Of the 8 meetings we will hold this year, two have been outside of Anchorage: the one in May in Kodiak, and this one in September in Sitka. We did not have meetings in January, June, or August and will not have any in November. (A mid-January meeting was a continuation of the December meeting, not counted in this exercise.)

We need an OK for the proposed schedule, with directions for out of town meetings for 1981. We'll book for every month on the assumption that some of the meetings will be skipped and some will probably be longer than two days. We do need to get our space bookings as far ahead as possible.

AGENDA B-1(f)
September, 1980

SUMMARY OF EXECUTIVE DIRECTOR'S MEETING

September 4-5, 1980

Confidential Data: Council staff will not have access to confidential data. Proposed regs were published in the FR in December 1979. Twenty-five comments were received. The final regs will be published in the FR by September 1980. They are not appreciably different from the proposed regs. To circumvent the limited access, Jim Bray has signed a $1 contract with NMFS. The contract binds him to non-disclosure.

Review of National Standards: Daphne White, Maggie Frailey, and Mary Thompson reviewed the standards. The following schedule applies:

December 1:	Action memo to Leitzell with proposed action.
December 15:	To Policy Group for discussion.
December 30:	To Councils for 60-day review.
March 20:	Proposed changes in FR.
May 15:	Public comment ends.
July 9:	Final changes in FR.

Update will reflect current interpretations, and hopefully, the recent Oversight Hearings report will be considered.

EIS's: Significant Federal action occurs when SOC approves plan instead of when final regulations are implemented. NEPA is here to stay and EIS's will need strengthening. Alternatives must be discussed and a preferred option selected by the Council, not PDT. The EIS could be imbedded in the FMP provided there is good cross-referencing to the Plan. All critical elements must be included in the EIS.

RA's: Chief Economist says that a separate document is not needed. Proposed regs should go to the public with the Plan. There must be a clear-cut analysis of alternatives and critical elements must be included. The Chief Economist wants economic impacts spelled out. SOC is most concerned with industry productivity and development of export markets. Several questions must be addressed: Is fishery in need of management? Does management justify cost? Is resource in trouble?

We have to determine whose responsibility it is to do RA -- Council staff, PDT, or NMFS? Bob Siegel should write guidelines. NOAA directives on RA contains critical elements for RA's.

Council Policy: Council staff and PDT's are on $50/day. Councils cannot hire outside lawyers to sue U.S. Government using Federal funds. Council can hire attorneys upon recommendation by NOAA GC.

Improving the FCMA Process

After nearly four years, the time is ripe to review and resolve problems that have become apparent in the FCMA management process. We have identified the following as the most pressing:

(1) Flexibility in fishery management plans

Management may be made more responsive to fishery needs by constructing FMPs that can be operated without requiring amendments for annual and in-season adjustments. "Framework" measures are in use in a number of plans. It is likely that the use of such measures could be extended considerably. To help ensure the acceptance and adequate legal basis of such measures, there is need to define further the procedures and criteria that can be used.

- How can this best be accomplished?

(2) Improving EISs and RAs to an acceptable level

Increasing pressure from CEQ and the DOC Chief Economist make it clear that higher standards have to be met. Many of the defects arise from a lack of clear statements of objectives and a failure to show the impact of the alternatives on the environment (EIS) or the economy (RA). The solution is in conducting a thorough analysis of all realistic alternatives, including the status quo alternatives, and their impacts as a key part of the plan development process. This would provide a sound basis for the Council's decisions and for NEPA and E.O. 12044 documentation. A NEPA task force established by NOAA will recommend a number of actions designed to provide improved guidance.

A format combining the three documents into one is practicable and will save duplication.

- Who should prepare EISs, RAs, and draft proposed regulations?
- What are the problems in achieving this, and how may they be solved?

(3) Outstanding problems of FCMA law and policy relating to FMPs

A proposal for revision of the national standards guidelines is under way, based on public comment in response to an advance notice of proposed rulemaking.

There may be a need to list and identify other problems that may not fall directly under the national standards, such as determination of DAH, DAP, etc., and find a means to resolve them.

- o What would be a practical mechanism for doing this?

(4) Improving Council-NMFS communication

Communication between Councils and NMFS as a whole has at times been poor, resulting in confusion and conflicting signals going to Councils. NMFS recently restated Regional Director's roles and responsibilities as the primary contacts with Councils. NMFS Washington is concerned solely with policy, quality control, and national perspectives. Guidance and internal arrangements proposed by the NOAA task force on NEPA should channel information better and avoid differing advice. Workshops are proposed to update NEPA and E.O. 12044 guidance.

- o What other steps could be taken?
- o Should workshops be regionally-based, Council-based or nationally-based?

(5) Should all fisheries be managed?

Limited resources, the recognition of the high costs of monitoring and implementation, and the requirement of E.O. 12044 that regulations should only be approved where there is demonstrated need, force a reevaluation of which fisheries need to be managed.

- o What criteria should be used?