

North Pacific Fishery Management Council

Appendix B

Harold E. Lokken, Chairman
Jim H. Branson, Executive Director

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

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



Telephone: (907) 274-4563
FTS 265-5435

January 25, 1978
9:30am

SCIENTIFIC AND STATISTICAL COMMITTEE

Item 1. Review of Charter for Scientific and Statistical Committee

Discussion page by page:

Page 1. No comment

Page 2. Combine and modify items 2 and 3.

This will be done by Dr. Alverson.

Page 3. Modified to read, "The Committee shall assist as required by the Council with the review of scientific and technical aspects of any proposed regulations which the Council...Council."

Page 4. Item D.2 is modified to read, "The Committee shall be composed of professionals in the biological, statistical, economics, social, or other relevant disciplines from Federal, State, and Private professional communities."

Page 6. Item F change date to April 12, 1980.

Item 2. Status of Blackcod Stocks.

Memo dated, December 7, 1977 from Frank Fukuhara to D.L.Alverson was assigned SSC-INFO-#38.

The status of the ROK blackcod catch data seemed suspect; this problem should be brought to the Council's attention. Alverson will draft statement.

Memo dated, January 30, 1978 from H.A.Larkin to D.L.Alverson was assigned SSC-INFO-39.

The discussion revolved around the setting of OY to rebuild the stock. INFO 39 revised the data on catch,

effort, etc. Data indicates that the stocks are still producing at 80% of MSY. There is a lack of U.S. fish catch data. We have been informed that these may be additional U.S. data submitted.

The drafting team could not state that any drop could be tied to overfishing.

The drafting team was ask to submit any new data they receive to the SSC for review and to develop a better base on the U.S. fishery.

Item 3. Review of ADF&G Herring Proposal.

The SSC was provided the experimental design for the ADF&G Herring Proposal which we requested last meeting. Our major concern with the study as presented was that it is trying to cover too large an area. Questioned why the project would be undertaking larval growth, egg studies, etc. Felt that the projects should deal with distribution of stock, estimate of stock size, information which Council will need.

The committee recommends that the proposal be funded to get it underway and that the program manager meet with the SSC next meeting so we can help the program manager zero in on key areas.

We recommend his request for travel funding be just a part of the project. Or, if necessary, that it be funded jointly by the State-Federal, not directly from Council.

Item 4. Review of document entitled, "Summary of King Crab Fisheries"

This document was assigned SSC-INFO-40. Written comments were handed by members to drafting team. Felt it was an excellent presentation. Commented on the lack of a discussion on limited entry.

Item 5. Consideration of Separate FMP for Herring in the Bering Sea.

Discussed the recommendation that the Council develop a separate management plan for herring in the Bering Sea.

The SSC recommends that such a plan be developed, that the lead agency be ADF&G. We request that ADF&G recommend to the SSC the makeup of a plan development team. In making up this team, consideration should be given to the ecological interactions.

It was decided that if the plan should be combined with others, it could be done at a later date.

Item 6. Review of Proposals from M.I.T.

Proposal A. It was not felt that the Council's have been around long enough. The SSC does not rate the proposal high with respect to other problem areas we can identify.

Proposal B. We do not see this area as high priority now, nor in the near future. Dr. Miles will be drafting a letter for the SSC to recommend to Council.

Item 7. Cycle of Management Plan Development.

Discussed the time allowed for the drafting of the plan. SSC was informed by Mr. Branson that the days were for guidance only. We are satisfied with the document and recommend that it be followed.

Item 8. Review of Admiral Hayes letter of January 6, 1978.

Discussed issues raised in January 6, 1978 letter from Admiral Hayes to Jim Branson. Recommended that the NMFS, U.S. Coast Guard, and State of Alaska form a study team on a method for allocation which could be considered for next year (1979).

Item 9. Review of RFP 78-3, "Socio-Economic Study of Herring in the Bering Sea."

Reviewed the new RFP. The new sections to the document were briefly presented. The SSC recommend that the Council release the RFP.

Page 4

Item 10. Concern for Environmental Interaction in the Development of new Fisheries (Clams).

The NMFS will be putting together the environmental studies necessary.

Item 11. Frank's letter and Paper on "Economic and Allied Data Needs for Fisheries Management. "

The committee reviewed the letter of response drafted for the Council. We recommend forwarding to Council for their consideration.

Item 12. Possible Research Funding for Troll Salmon Fisheries and Management Plan.

Reviewed the proposal presented in Branson's memo of January 23, 1978, Appendix 9B. Discussed meaning of subcontract between ATA and ADF&G. Recommended moving ahead with contract. SSC will review final contract before it is awarded.

Appendix 9A. SSC working with Council staff will develop a draft RFP to be considered by committee by next meeting. RFP will limit analysis to data need of Council.

Adjourned 12:20pm.

1:30 pm. Joint Meeting with Advisory Panel.

Adjourned 3:00pm.

Submitted by Don Rosenberg

North Pacific Fishery Management Council

Harold E. Lokken, Chairman
Jim H. Branson, Executive Director

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MEMORANDUM

DATE: January 20, 1978

TO: Scientific and Statistical Committee

FROM: Jim H. Branson *JMB*

SUBJECT: Request from Irving Warner for Funding

The attached letter from Irv Warner (January 18, 1978) requests Council funding for two projects, both closely affiliated with the contract we are in the process of negotiating with ADF&G for the Bering Sea herring study. I would appreciate the Committee's analysis of this request and their recommendation.

I believe it would be inappropriate to fund these requests directly from Council funds in any case. If your group and the Council feels that the priority for this is high enough we should probably consider renegotiating the contract with ADF&G to handle the additional monies needed.

11-K1LH

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF FISH & GAME

January 18, 1978

P. O. BOX 686 — KODIAK 99615

Mr. Jim Branson
North Pacific Fisheries Management Council
333 West 4th Avenue, Suite 32
Post Office Mall Building
Box 3136DT
Anchorage, Alaska 99510

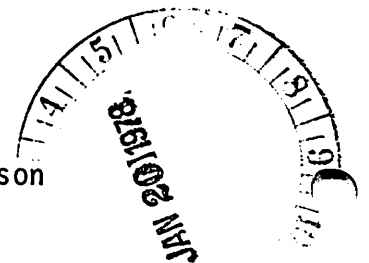
Dear Jim

I'm writing you in regards to an orientation trip to British Columbia where I would have an opportunity to accompany a commercial herring spotter. This would greatly facilitate my ability to subjectively estimate the biomass of herring schools, as B.C. spotters are very accurate at this. Also, I would hope to gain more insight into possible methods of species differentiation from the air. Since I'm going to be doing extensive spotting in 1978 - 1979 under Component I ("Bering Sea Herring"), and have the sole responsibility for the aerial methods study for Component II, I feel I need this experience to closely calibrate my observer's eye. For the past two years I've done extensive herring/capelin observing from the air, and biomass estimates are still far from my grasp. Since I know this skill to be accessible, I would like to request the funds for this trip, which I would anticipate taking part in late February or perhaps early March. Hopefully this trip could dovetail with a trip I would also like to have the council fund, that is, looking into the possibilities and technical feasibility in using the NWFC (Montlake) ageing center as a platform base from which to do all offshore and onshore herring/capelin ageing and scale character studies, with me acting as a sort of coordinator/work-study crew leader, under the overall direction of Mr. LaLane, (NMFS, Seattle).

I have discussed these subjects at some length with Mark Hutton during his recent trip to Kodiak, and I am writing this letter at his suggestion. Any further questions probably might be best handled by Mark, or feel free to contact either myself or Pete Jackson if any questions arise that are beyond the scope of our meeting with Mark.

Sincerely,
Irving Warner
Irving Warner
Fisheries Biologist

cc: Jackson/LaLane/Barton/Blankenbeckler/Wespestad/Martin Nelson



Post Office Box 1633
Kodiak, Alaska 99615
January 2, 1978

The Honorable Jay S. Hammond
Governor of Alaska
Pouch A
Juneau, Alaska 99801

Dear Governor Hammond:

I am writing in response to your request for the Alaska Board of Fisheries' recommendation concerning the R. A. Davenny/KMIDC proposal to purchase groundfish from U. S. fishermen and process them within the territorial waters of Alaska. During the Board's December 4-18 meeting and public hearing, we received testimony on the Davenny/KMIDC proposal and considered the proposal in light of the evidence presented. Eight people testified on the proposal during the public hearing on December 8. In addition the Board reviewed recommendations from the Department of Law and the Department of Fish and Game as well as numerous letters from fishermen, processors and the general public. Taking all factors into consideration, the Board unanimously voted to oppose the Davenny/KMIDC proposal as contrary to the public interest.

We reached several conclusions on the basis of the public testimony and the documents we reviewed.

1. In order for such an operation to take place within the territorial waters of Alaska, it would have to take place at a dock or a roadstead. In the attached letter to Robert Ely, attorney for Davenny and KMIDC, William Brewer, General Counsel for NOAA, states that foreign processing activities within three miles are considered "at sea" unless they occur at a dock or roadstead. Any other processing within three miles is prohibited. Davenny and his attorney concede that Korean factory vessels would be prohibited from processing fish in state territorial waters except at shoreside.

2. Apparently the state of Alaska would have no control over admitting a foreign venture into state waters. This is exclusively the province of the federal government. Also it would be neither necessary nor appropriate for the Board to adopt special regulations governing this venture. According to the Department of Law, nearly all the laws of Alaska would apply to the KMIDC project. They

would be treated as any other fish processor and would have to comply with existing and future regulations such as catch reporting, fish tickets, seasons and quotas. Since the Davenny/KMIDC processing would have to occur at shoreside, possibly in the same vicinity as existing shore-based plants, it seems logical that they would have to comply with the same Alaska health, environmental, tax, public safety and labor laws as well as federal OSHA, EPA, minimum wage, FCC, EEOC, FDA and tax laws as any other shore-based plant. Messrs. Ely and Davenny were vague about which laws they felt would apply to their operation and which wouldn't. Considerable concern was expressed that any type of exception for the foreign processors would result in a chaotic situation with domestic shore-based plants trying to compete for and market the same product as the foreign processing vessel but with greater restrictions and higher costs. The general concern was that Alaskan processors would be at an incredible competitive disadvantage if such an exception were ever granted. For example, Mr. Davenny stated that Korean workers on processing vessels at sea would be paid \$.30 per hour. Alan Otness, Petersburg Fisheries, and Ed Furia, New England Fish Company, testified that cold storage plant workers in southeast Alaska are paid \$6.75 per hour. New England's representative testified that if it were legal for these foreign processing operations to purchase and process bottomfish from U. S. boats, there would seem to be no legal way to prevent them from buying and processing salmon, crab, shrimp or other Alaska species. The possibility that they could do so without being subject to the same federal and state laws would jeopardize the economic viability of the Alaska seafood processing industry.

3. The Board heard testimony that the Davenny/KMIDC proposal does not have the support of the fishermen concerned. Mr. Davenny stated that many southeastern fishermen support his project because they need a market for underutilized bottomfish species in southeast. However, while Mr. Davenny wants only fishermen who will fish on a year-round basis, testimony indicated that southeastern fishermen do not wish to fish for bottomfish on a year-round basis and thus give up salmon and herring fishing. To emphasize the difficulties involved in recruiting a bottomfish fleet, Pelican Cold Storage president Jim Ferguson wrote the Board that in spite of his having placed advertisements in southeast for cod and pollock fishermen, no southeastern fishermen have come forth to fish either full-time or part-time. The problem is not limited to southeast. Carl Rosier testified that significantly higher concentrations of pollock occur near Kodiak and that concentrations diminish considerably, moving from Kodiak toward southeast. Davenny testified that Korean vessels would go wherever the pollock are concentrated. However, Tom Casey testified that Kodiak fishermen do not want to see foreign factory ship ventures prevent the survival or inhibit the growth of the U. S. processing industry. Further testimony revealed that New England Fish Company has begun processing bottomfish at its Kodiak facilities and announced last month a new facility at Sand Point. Petersburg Fisheries and Pelican Cold

The Honorable Jay S. Hammond

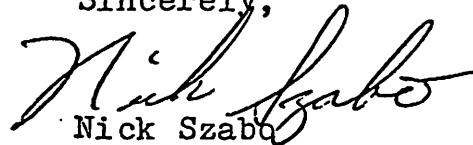
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January 2, 1978

Storage are actively trying to develop a market for bottomfish for U. S. fishermen in southeastern. It appears that U. S. processors are entering the bottomfish industry and are currently providing as large a market as U. S. fishermen now want for bottomfish.

In conclusion the Board felt that the public interest would not be served by endorsing a project of this nature at this time. However, the Board felt that future foreign joint ventures should be judged on their own merits and that there could be a benefit from such a venture where domestic capacity did not exist and there was a desperate need by the fishermen for a market.

Sincerely,



Nick Szabo
Chairman
Alaska Board of Fisheries

Enclosures

cc: Board of Fisheries members
Commissioner Skoog

November 25, 1977

ATTACHMENT 2: PUBLIC RECORD

#6

Robert C. Ely, Esq.
Ely, Guess & Rudd
510 L Street
Anchorage, Alaska 99501

Dear Bob:

Your letter of November 2, 1977, to Herb Blatt requests a legal opinion on the question whether a foreign vessel located within state waters and processing fish caught in state waters requires a license under the Fishery Conservation and Management Act of 1976, as amended (FCMA).

As you point out, §307 (2)(A) prohibits foreign vessels from engaging in fishing within the boundaries of any state. The term "fishing" is then defined by the FCMA to include support activities when conducted "at sea." Contrary to your interpretation of the phrase "at sea," we read "at sea" to encompass all oceanic waters extending outward from the baseline of the territorial sea except for ports and harbors, and recognized roadsteads customarily used in lieu of ports for the loading and unloading of goods. Therefore, our conclusion is that a foreign processing vessel is forbidden from conducting fishery support activities in the territorial sea, except for ports or "constructive" ports. As a collateral point, I would note that Section 204 of the FCMA provides for permits only in the Fishery Conservation Zone and beyond.

We do not consider the terms of §306(a) to require another construction of "at sea," since the United States, rather than individual States, has traditionally been responsible for regulation or prohibition of foreign fishing within the territorial sea e.g., Bartlett Act.

I trust this has been responsive to your ruling request.

Sincerely,



William C. Brewer, Jr.
General Counsel



653 NE NORTHLAKE WAY
SEATTLE WA 98105

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SEATTLE WA DECEMBER 13

MR NICK SZABO, CHAIRMAN
ALASKA BOARD OF FISHERIES
ANCHORAGE HILTON HOTEL
ANCHORAGE AK 99500

DEAR MR SZABO:

I UNDERSTAND THE BOARD OF FISHERIES HAS RECEIVED A NUMBER OF LETTERS SHOWING AN INTEREST BY ALASKA FISHERMEN TO ALLOW FOREIGN PROCESSING SHIPS TO ENTER THE STATE OF ALASKA WATERS TO PURCHASE AND PROCESS THEIR CATCHES OF GROUND FISH IN SE ALASKA. I ALSO HAVE BEEN ADVISED THAT SEVERAL FISHERMEN ARE SUPPORTING THE KMIDC PROPOSAL.

FIND THIS VERY CURIOUS AS PELICAN COLD STORAGE COMPANY HAS ADVERTISED IN THE SITKA AND JUNEAU NEWSPAPERS FOR ONE WEEK EACH, REQUESTING POLLOCK AND GRAY COD FISHERMEN. WE ARE OFFERING TO PAY 5 CENTS PER POUND FOR ROUND POLLOCK AND 34 CENTS PER POUND FOR GRAY COD. TODATE WE HAVE NOT RECEIVED ONE POUND AND THE ADS WERE IN THE NEWSPAPERS OVER TWO MONTHS AGO. PELICAN COLD STORAGE COMPANY IS VERY INTERESTED IN EXPANDING OUR OPERATION TO GROUND FISH AND CANNOT UNDERSTAND HOW THE KMIDC PROPOSAL COULD BE CONSIDERED BY THE STATE OF ALASKA AS A SERIOUS ALTERNATIVE. I UNDERSTAND FURTHER THAT IT IS ALSO ILLEGAL FOR THE FOREIGN FACTORY SHIPS TO ENTER THE THREE MILE ZONE UNLESS THEY TIE UP TO A DOCK OR STRONGHOLD. IF THE FOREIGN SHIPS TIE UP TO A DOCK, THEY MUST THEN MEET ALL FED AND STATE REGULATIONS THAT APPLY TO PELICAN COLD STORAGE COMPANY'S OPERATIONS. I URGE A STRONG POSITION AGAINST ALLOWING ANY FOREIGN FACTORY SHIP SPECIAL CONSIDERATIONS THAT WILL INTERFERE WITH THE GROWTH OF THE DOMESTIC PROCESSING INDUSTRY.

YOURS TRULY
J G FERGUSON, PRESIDENT

1734 EST

MGMCOMP MGM

SPONGES

Glove Sponge—*Hippiospongia canaliculata*;
 Sheepswood Sponge—*Hippiospongia lachne*;
 Grass Sponge—*Spongia graminea*; and
 Yellow Sponge—*Spongia barbara*.

If the Secretary determines, after consultation with the Secretary of State, that living organisms of any other sedentary species are, at the harvestable stage, either—

(A) immobile on or under the seabed, or

(B) unable to move except in constant physical contact with the seabed or subsoil,

of the Continental Shelf which appertains to the United States, and publishes notice of such determination in the Federal Register, such sedentary species shall be considered to be added to the foregoing list and included in such term for purposes of this Act.

(5) The term "Council" means any Regional Fishery Management Council established under section 302.

(6) The term "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, birds, and highly migratory species.

(7) The term "fishery" means—

(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

(B) any fishing for such stocks.

(8) The term "fishery conservation zone" means the fishery conservation zone established by section 101.

(9) The term "fishery resource" means any fishery, any stock of fish, any species of fish, and any habitat of fish.

(10) The term "fishery" means—

(A) the catching, taking, or harvesting of fish;

(B) the attempted catching, taking, or harvesting of fish;

(C) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).

Such term does not include any scientific research activity which is conducted by a scientific research vessel.

(11) The term "fishing vessel" means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for—

(A) fishing; or

(B) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

(12) The term "foreign fishing" means fishing by a vessel other than a vessel of the United States.

(13) The term "high seas" means all waters beyond the territorial sea of the United States and beyond any foreign nation's

fishing

tional period of not more than 45 days; and (C) may be terminated by the Secretary at any earlier date by publication in the Federal Register of a notice of termination.

(e) ANNUAL REPORT.—The Secretary shall report to the Congress and the President, not later than March 1 of each year, on all activities of the Councils and the Secretary with respect to fishery management plans, regulations to implement such plans, and all other activities relating to the conservation and management of fishery resources that were undertaken under this Act during the preceding calendar year.

(f) RESPONSIBILITY OF THE SECRETARY.—The Secretary shall have general responsibility to carry out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this Act. The Secretary may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to discharge such responsibility or to carry out any other provision of this Act.

Sec. 306. State jurisdiction

(a) IN GENERAL.—Except as provided in subsection (b), nothing in this Act shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries. No State may directly or indirectly regulate any fishery which is engaged in by any fishing vessel outside its boundaries, unless such vessel is registered under the laws of such State.

(b) EXCEPTION.—(1) If the Secretary finds, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, that—

(A) the fishing in a fishery, which is covered by a fishery management plan implemented under this Act, is engaged in predominantly within the fishery conservation zone and beyond such zone; and

(B) any State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such fishery management plan;

the Secretary shall promptly notify such State and the appropriate Council of such finding and of his intention to regulate the applicable fishery within the boundaries of such State (other than its internal waters), pursuant to such fishery management plan and the regulations promulgated to implement such plan.

(2) If the Secretary, pursuant to this subsection, assumes responsibility for the regulation of any fishery, the State involved may at any time thereafter apply to the Secretary for reinstatement of its authority over such fishery. If the Secretary finds that the reasons for which he assumed such regulation no longer prevail, he shall promptly terminate such regulation.

Sec. 307. Prohibited acts

It is unlawful—

(1) for any person—

- (A) to violate any provision of this Act or any regulation or permit issued pursuant to this Act;
- (B) to use any fishing vessel to engage in fishing after the

(C) to violate any provision of, or regulation under, any agreement or permit issued pursuant to section 301 (c);

(1) to refuse to permit any officer authorized to enforce provisions of this Act (as provided for in section 554) board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act or any regulation, or agreement referred to in subparagraph (A) or (B);

(2) to interfere with any such authorized officer in the course of any search or inspection described in subparagraph (1) to resist a lawful arrest for any act prohibited in this section;

(3) to ship, transport, offer for sale, sell, purchase, export, or have custody, control, or possession of, or taken or retained in violation of this Act or any regulation, or agreement referred to in subparagraph (1) or (2); or

(4) to interfere with, delay, or prevent, by any means, apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section.

(5) for any vessel other than a vessel of the United States and for the owner or operator of any vessel other than a vessel of the United States, to engage in fishing—

(A) within the boundaries of any State; or

(B) within the fishing conservation zone, or for any other purpose, in any fishery resources for any species or Continental Shelf fishery resources in such zone, unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to section 304 (b) or (c).

Sec. 308. Civil penalties

(a) ASSESSMENT OR PENALTY.—Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 307 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$5,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be determined by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited act, the history of prior offenses, ability to pay, and such other matters as justice may require.

(b) REVIEW OR CURE PENALTY.—Any person against whom a civil penalty is assessed under subsection (a) may obtain review thereof in an appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by depositing with the court a sum of such money as may be required to the