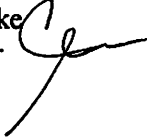


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director 

DATE: April 3, 1996

SUBJECT: Regulatory Consolidation

ESTIMATED TIME

2 HOURS

ACTION REQUIRED

- (a) Review consolidated regulations for groundfish and crab.
- (b) Review Proposed Rule to repeal Salmon Fishery Management Plan.

BACKGROUND

In a letter dated February 23, 1996, Rollie Schmittin informed us that NMFS was consolidating our regulations as part of a nationwide effort to further reform the Federal regulatory system. The letter and a press release are under item C-8(a). Similar letters went to the other Councils. The letter also indicated that the Secretary was withdrawing approval of our salmon FMP because it was no longer necessary for managing the fisheries. As I note below, the review period for the consolidated regulation package has passed, but we still have time to submit comments on the salmon plan withdrawal.

(a) Consolidated Regulations

Item C-8(b) contains a March 22 letter and schedule from the Region describing the consolidation of CFR Parts 671-673 and 675-677 into a new CFR Part 679. We have scanned the new regulations, but it would take an inordinate amount of time to compare them word-for-word with the original regulations (a double-sided copy of the new regs is almost an inch thick). I believe that NMFS has done a good job of consolidating the regulations, but we will also be sure to compare both the old and new regulations when developing regulatory changes over the next six months or so, just to be completely sure that they track. The comment period on the consolidated regulatory package ended on April 12.

(b) Salmon FMP Withdrawal

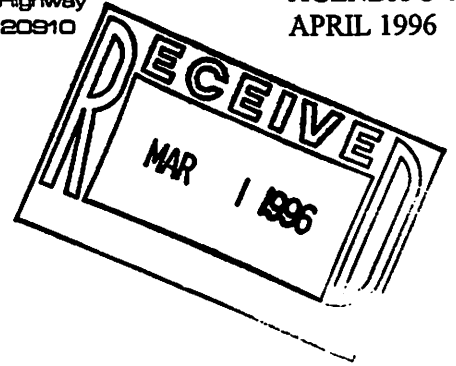
Item C-8(c) contains a transmittal letter and proposed rule withdrawing the salmon plan, a schedule for processing the withdrawal, a news release, and letters from the State and us commenting on the proposed action. Our basic objections to withdrawing the plan center on whether the Secretary can just up and remove a plan without Council action, whether the State will be able to regulate the fishery outside three miles absent a plan, and various concerns with issues involving the Endangered Species Act. We have until May 9 to comment.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1335 East-West Highway
Silver Spring, MD 20910
THE DIRECTOR

AGENDA C-8(a)
APRIL 1996

FEB 23 1996



Mr. Richard B. Lauber
Chairman, North Pacific Fishery
Management Council
605 West 4th Avenue
Anchorage, Alaska 99501-2252

Dear Chairman Lauber:

You may be aware that early last year, President Clinton announced plans for further reform of the Federal regulatory system as a central part of his efforts to reinvent Government. One initiative under the reinvention activity is a page-by-page review of every agency's regulations, and elimination, consolidation, and/or revision of those regulations that are outdated or otherwise in need of reform.

This letter is to inform you that the National Marine Fisheries Service considers this project a very high priority; consequently, we are proceeding with this effort as quickly as possible. We have carefully scrutinized all of our regulations and have identified those that we believe can be eliminated without compromising the successful accomplishment of our missions. We have also determined that the volume of the remaining regulations can be reduced through careful consolidation and redrafting.

Regarding those regulations implemented under the authority of the Magnuson Fishery Conservation and Management Act, it is our intent to consolidate them by region of the country, thus eliminating duplication, where possible, and updating and reorganizing regulatory text where necessary to improve readability and clarity. These consolidations and improvements to the regulations will be accomplished without changing the substance of the regulatory text.

We plan to provide each Council with a draft final rule that will revise the implementing regulations for that Council's Fishery Management Plans by March 15, 1996, with a request that the Councils comment on the draft rules by April 1, 1996. Because this task will not entail making substantive changes to the regulations, we intend to proceed directly to final rules, which would be published by June 1, 1996. Any regulatory issues of a more substantive nature identified during this consolidation project will be brought to the Council's attention, with recommendations for future action.

For your information, we intend that regulations governing the Bering Sea and Aleutian Islands king and Tanner crab, Gulf of Alaska groundfish, Alaska scallop, and Bering Sea and Aleutian



Islands groundfish fisheries, as well as regulations implementing the North Pacific Fisheries Research Plan and limited access management of Federal fisheries in and off Alaska will be consolidated into a single part in the CFR, which will cover all of the North Pacific fisheries under Federal management in the U.S. Exclusive Economic Zone.

In addition, we intend to publish in the Federal Register a proposed rule to withdraw Secretarial approval of the Fishery Management Plan for the Alaska high seas salmon fishery and remove its implementing regulations (50 CFR part 674), because state regulations should be adequate to protect and manage these resources.

I appreciate your cooperation in this important effort and will keep you informed as it proceeds.

Sincerely,

A handwritten signature in black ink, appearing to read "Rolland A. Schmitten", with a long horizontal flourish extending to the right.

Rolland A. Schmitten
Assistant Administrator
for Fisheries

Author: jmccallu@honlab.nmfs.hawaii.edu at "INTERNET"
Date: 3/8/96 5:48 PM
Priority: Normal
TO: Kitty Simonds at "WPCouncil"
Subject: press release

----- Message Contents -----

I assume you already have this:NOAA 96-10

Contact: Gordon Helm

FOR IMMEDIATE RELEASE
2/27/96

COMMERCE DEPT. CONTINUES
PRESIDENT'S NATIONAL PERFORMANCE
REVIEW PLAN TO REINVENT GOVERNMENT
AND REDUCE FEDERAL PAPERWORK

The Commerce Department's National Marine Fisheries Service is conducting a review of regulations to eliminate, consolidate or revise them to make the service more

efficient, less costly, and more responsive to the country's fishing industry, Commerce Secretary Ronald H. Brown announced. This includes considering the elimination of six federal fishery management plans and their implementing regulations.

"The regulatory reform plan is part of the Clinton administration's reinventing government initiative to streamline the federal bureaucracy," Secretary Brown said.

"This is another example that the 'era of big government is over,' as the President said in his State of the Union address."

Brown said the administration has already eliminated more than 16,000 pages of government regulations and more are to be deleted under the reform plan.

"Final action to consolidate, revise, or eliminate almost all of the fisheries service's regulations should be completed by June 1, meeting the President's timetable under the National Performance Review's reinventing government initiative," stated Secretary Brown.

The six fishery management plans proposed for elimination include the American lobster plan in the New England region and the bluefish management plan in the Mid-Atlantic region. The fisheries service believes that there is now authority under the Atlantic Coastal Fisheries Cooperative Management Act to manage these two fisheries through the Atlantic States Marine Fisheries Commission, a multi-state body that

regulates fisheries that range across waters of more than one state on the Atlantic.

coast.

In addition, the spiny lobster, stone crab, northern anchovy and high seas salmon management plans are to be eliminated. Both the spiny lobster and stone crab fisheries are found primarily in state waters of Florida and the fisheries service believes that state management authority should be sufficient to manage the resources. The state of California management authority should be sufficient to manage the northern anchovy fishery off its coast, and the state of Alaska management authority is expected to be sufficient to manage the salmon fishery within its state waters and adjacent federal waters.

"The consolidations and improvements in fishery regulations will be accomplished

without weakening the protection for our fishery resources," said Rolland Schmitt, fisheries service director. "The end result will be shorter, more readable regulations that fishermen and others in the industry will find easier to use and understand."

Fisheries service officials have carefully scrutinized all of the regulations under its purview and have identified those regulations that can be eliminated without compromising the successful accomplishments of the agency's missions. Fisheries officials have also determined that the volume of the remaining regulations can be reduced by carefully consolidating and redrafting existing language.

Under the regulatory reform plan, the fisheries service will also consolidate all regulations implemented under the authority of the Magnuson Fishery Conservation and Management Act by region of the country. This action will eliminate duplication, where possible, and will update and reorganize regulatory text where necessary to improve comprehension and clarity.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

AGENDA C-8(b)
APRIL 1996

March 22, 1996

Clarence Pautzke, Executive Director
North Pacific Fishery Management Council
605 West Fourth Avenue, Suite 306
Anchorage, Alaska 99501-2252

Dear Clarence:

As you know, NMFS has been requested to take regulatory action that supports the President's Regulatory Reinvention Initiative. To respond to this request, we have undertaken a review of existing regulations implementing the North Pacific Fishery Management Council's (Council) fishery management plans, and have decided that certain regulations can be consolidated in keeping with the intent of the President's initiative. Accordingly, we have consolidated into a new Part 679 of the Code of the Federal Register (CFR) the following regulations:

CFR Part

- 671 King and Tanner Crab Fishery
of the Bering Sea and Aleutian Islands
- 672 Groundfish of the Gulf of Alaska
- 673 Scallop Fishery Of Alaska
- 675 Groundfish Fishery of the Bering Sea
and Aleutian Islands Area
- 676 Limited Access Management of Federal Fisheries
In and Off Alaska
- 677 North Pacific Fisheries Research Plan

In consolidating these regulations, we have eliminated duplication wherever possible and re-organized text where necessary to improve readability and clarity of the regulations. These changes are non-substantive. We have not made any changes to the Council's programs.

Please provide comments on the newly consolidated regulations by April 12, 1996. We intend to publish a final rule implementing this action by June 1, 1996.

Sincerely,

Steven Pennoyer
Director, Alaska Region



SCHEDULE FOR MAGNUSON ACT CONSOLIDATION FINAL RULES

- 03/22/96 -- Draft final rule (FR) provided to Councils by Regions. Drafts should have been reviewed by Regional Attorneys prior to sending to Councils. Drafts are expected to be the best product possible, given the timeframe, but are not expected to be polished or in final form; they should be sufficient to allow the Councils to review them for completeness of content and to ensure that no unintended eliminations of important text occurred.
- Drafts should be provided to F/CM at the same time they are sent to the Councils. F/CM will initiate informal review of the drafts.
- 04/12/96 -- Comments due from Councils to the Regions.
- 04/17/96 -- Draft decision memos submitted to F for preclearance.
- 04/19/96 -- Draft decision memos cleared.
- 04/23/96 -- Final rule packages submitted to F/CM for formal review and clearance. Must include signed decision memo and Attorney Work Product.
- 04/24/96 -- NMFS Headquarters review begins.
- 05/01/96 -- GCF review begins. May be concurrent with Regs. Unit review, due to size of documents.
- 05/10/96 -- FR package cleared by NMFS.
- 05/13/96 -- FR package sent to NOAA/DOC for review/clearance.
- 05/20/96 -- Docket no. received; FRs signed by F.
- 05/23/96 -- FRs certified and sent to OFR.
- 05/31/96 -- FRs published and effective.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

AGENDA C-8(c)

APRIL 1996

March 26, 1996



Mr. Clarence G. Pautzke
Executive Director
North Pacific Fishery
Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Dear Clarence,

Enclosed for review and comment by the North Pacific Fishery Management Council is a copy of a proposed rule that would withdraw the Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska East of 175° E. Longitude. This action has been published in the Federal Register for public review and comment. Comments must be submitted to NMFS by May 9, 1996.

The reasons for this action are described in the preamble to the proposed rule. If you need further information, please call our Fisheries Management Division at 907-586-7228.

Sincerely,

Steven Pennoyer
Director, Alaska Region

Enclosure



anchovy resource is a major forage species for marine mammals, other fish, and birds such as the California brown pelican, which is listed as endangered under the Endangered Species Act (ESA). There have been six amendments to the FMP.

The FMP was one of the first fishery management plans developed by the Pacific Fishery Management Council, under the authority of the Magnuson Fishery Conservation and Management Act. At the time, substantial reduction fisheries existed in the United States and Mexico. (Reduction fisheries processed anchovy into fish flour/meal, oil, fertilizer, or other products not intended for human consumption). Further, recreational fisheries for kelp/sand bass, white seabass, bonito, barracuda, yellowtail, and tunas depended on northern anchovy as live bait for its livelihood, as it still does today. The FMP was designed to resolve difficult allocation issues. There was, and still is, no agreement with Mexico on how to manage the fishery.

With the decline in U.S. harvests and little prospect for growth in the fishery, interjurisdictional and allocation issues, which might require Federal intervention, no longer exist. In recent years, virtually the entire fishery has occurred in California waters, and nearly all harvesters and processors are California citizens utilizing vessels registered in California. The condition of the fishery is such that no management authority over this fishery is exercised through Federal regulations that are beyond those available to the State.

California has management measures in place for anchovy and other components of the coastal pelagic species complex. Should this proposed removal of Federal regulations be finalized, NMFS anticipates that California will broaden its management to include the anchovy fishery with substantially the same controls as were provided by Federal regulations. This would also unify management of the coastal species complex fisheries.

Therefore, Federal management is neither necessary nor appropriate for this fishery and unnecessarily duplicates the State of California's management. For these reasons, NMFS proposes to withdraw approval for the FMP and remove the FMP's implementing regulations (50 CFR part 662), leaving management of the anchovy resource to the State of California.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. We expect that California will regulate fishing in the same manner that we currently do. Because virtually the entire anchovy fishery takes place in California waters, conditions in the fishery should not change.

NMFS is conducting an ESA consultation with the U.S. Fish and Wildlife Service regarding the effects of this proposed action on the endangered brown pelican.

List of Subjects in 50 CFR Part 662 Fisheries.

Dated: March 20, 1996.

Gary Matlock,
Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, under the authority of 16 U.S.C. 1801 *et seq.*, 50 CFR part 662 is proposed to be removed.

[FR Doc. 96-7185 Filed 3-25-96; 8:45 am]

BILLING CODE 3510-22-F

50 CFR Part 674

[Docket No. 960314075-6083-04; I.D. 031196D]

RIN 0648-A116

Salmon Fisheries Off the Coast of Alaska; Removal of Implementing Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS announces its initial determination to withdraw approval of the Fishery Management Plan for the Salmon Fisheries in the Exclusive Economic Zone (EEZ) off the Coast of Alaska East of 175° E. Long. (FMP). NMFS proposes to remove the regulations implementing the FMP. This action is necessary, because NMFS has determined that the State of Alaska adequately manages the salmon fisheries in Federal waters, and, therefore, the need for a Federal FMP no

longer exists. This action is in accordance with the President's Regulatory Reinvention Initiative.

DATES: Comments must be received at the following address by May 9, 1996.

ADDRESSES: Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel. Individual copies of the Environmental Assessment/Regulatory Impact Review prepared for this action may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, 907-586-7228.

SUPPLEMENTARY INFORMATION:

The Magnuson Fishery Conservation and Management Act (Magnuson Act) authorizes the North Pacific Fishery Management Council (Council) to prepare and amend fishery management plans for any fishery in waters under its jurisdiction. In December 1978, the Council prepared the FMP and submitted it to the Secretary of Commerce (Secretary) for approval. The Secretary approved the FMP, and it was implemented in May 1979 with Federal regulations at 50 CFR part 674.

The Assistant Administrator for Fisheries, NOAA, submitted a letter, dated February 23, 1996, to the Council Chairman, expressing NMFS' intent to withdraw approval of the FMP and to remove its implementing regulations. The State of Alaska would retain its authority to manage State-permitted vessels in Federal waters. Currently, all vessels that fish for salmon in Federal waters are registered under the laws of the State of Alaska, and, therefore, are subject to the State laws governing the fishery. In the unlikely event that unregistered vessels were to conduct directed salmon fishing operations in the EEZ, NMFS could address the problem through regulatory action pursuant to the Pacific Salmon Treaty Act of 1985 or the Magnuson Act.

The FMP originally established the Council's management authority over the salmon fisheries in the Federal waters off the coast of Alaska east of 175° E. long., including parts of the Gulf of Alaska, Bering Sea, Chuckchi Sea, and Arctic Ocean. The International North Pacific Fisheries Commission, which is authorized by the International Convention for the High Seas Fisheries of the North Pacific Ocean, manages salmon fisheries west of 175° E. long.

The FMP management area is divided into two management units located east and west of the longitude of Cape Suckling (143°53'35" W. long.). The FMP has historically focused on the troll fishery in the eastern management

unit. Implementing regulations governing the troll fishery consisted of several management measures, including a fishing season, gear restrictions, a limit on the number of vessel troll permits, and a requirement for trollers to have either a State of Alaska or a Federal limited entry troll permit. The Council intended all of its management measures governing the sport fishery and the commercial troll fishery to complement State of Alaska regulations for the salmon fisheries in adjacent State waters. The FMP has been amended four times. Amendment 3 deferred the management of the salmon fisheries to the State of Alaska.

NMFS has considered the adequacy of State of Alaska management of salmon fisheries within waters of the Council's area of authority with respect to advisory guidelines at 50 CFR part 602, and has determined that State management is adequate. Therefore, NMFS has determined that Federal

management is not necessary and proposes to withdraw Secretarial approval of the FMP and remove the implementing Federal regulations.

Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities because the State of Alaska is already managing the fishery with its regulations. Removal of Federal regulations eliminates duplication of effort but does not effect management of the fishery. As a result, a regulatory flexibility analysis was not prepared.

Consultation pursuant to section 7 of the Endangered Species Act will be initiated for the 1996 fishery and for the withdrawal of the FMP.

An RIR was prepared for this proposed rule that describes the management background, the purpose and need for action, and the management action alternatives. Copies of the RIR can be obtained from (see ADDRESSES).

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 674

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 21, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, under the authority of 16 U.S.C. 1801 *et seq.*, part 674 is proposed to be removed.

[FR Doc. 96-7286 Filed 3-25-96; 8:45 am]

BILLING CODE 3510-22-F

Salmon FMP Recission Schedule

Schedule of Events for Rules Related to the Withdrawal of Secretarial Approval

- March 1 - Regions submit draft decision memos on proposed rules to F/CM for "pre-clearance by F."
- March 8 - Regions submit complete proposed rule packages to F/CM, including signed decision memo and associated transmittal memos, proposed rule, EA, RIR, ESA consultation, regional attorney work product, etc.
- March 8-15 - F/CM processes proposed rule packages; GCF clears; F signs decision memos and transmittals to NOAA and DOC.
- March 18-22 - NOAA and DOC OGC review and clear actions; OGC issues docket numbers for proposed rules. Proposed rules signed by F.
- March 29 - Proposed rules published in the Federal Register. 45-day comment period beginning on date of publication.
- May 13 - 45-day public comment period ends; Regions begin preparation of final rule packages.
- May 15 - Regions submit draft decision memos on final rules to F/CM for "preclearance by F."
- May 17 - Regions submit final rule packages to F/CM.
- May 17-24 - F/CM processes final rule packages; GCF clears; F signs decision memos and transmittals to NOAA and DOC.
- May 28-31 - NOAA and DOC OGC review and clear actions; OGC issues docket numbers for final rules. Final rules signed by F.
- May 31 - Final rules filed with the Office of the Federal Register; rules effective on filing.

[26] From: Cassandra V. Wheatley at -NMFS-6 4/1/96 1:05PM (6973 bytes: 1 ln)
To: Jim Balsiger at -NMFS-AFSC, Nikki Bane at -NMFS-1, Henry Beasley at -NMFS-4,
Fred Beaudry at -NMFS-4, Ruby Bellows at -NMFS-4, Thomas Bigford at -NMFS-4,
Fred Bilik at -NMFS-5, Dwayne T. Blain at Banyan, Janet Blake at -NMFS-1,
Pat Blunt at -NMFS-5, Brad Brown at -NMFS-SEFC, Dail Brown at -NMFS-A,
James Burgess at -NMFS-4, Vivian Burrus at -NMFS-5, Richard Cano at -NMFS-1,
Stanley Chanesman at Banyan, Nancy Chu at -NMFS-LB, James Czerwonky at
-NMFS-1, Hilda DiazSoltero at -NMFS-LB, Carol Douglas at -NMFS-5,
Cindy Driscoll at -NMFS-4, John Everett at -NMFS-1, Nancy Foster, William Fox
at -NMFS-1, Teri Frady at -NMFS-NEC, Michael Fraser at -NMFS-1,
Gary Gailbreath at -NMFS-FEN, Bess Gillelan at -NMFS-A, Brian Gorman at
-NMFS-NWR, Michael Grable at -NMFS-FTS, Margaret F. Hayes at Banyan,
Gordon J. Helm, William Hines at Banyan, Deborah Hogans at -NMFS-5,
Mark Holliday at -NMFS-5, Brenda Jans, Evelyn Jones at -NMFS-5,
Charles Karnella at -NMFS-5, Herb Kaufman at -NMFS-5, Andrew Kemmerer at
-NMFS-SERO, Jim Lecky at -NMFS-LB, Rebecca Lent at -NMFS-5, Alan F. Mager at
-NMFS-FEN, Gary C. Matlock, James McCallum at -NMFS-HONO, Rod McInnis at
-NMFS-LB, Sam McKeen at -NMFS-1, Dave McKinney at -NMFS-FEN, James M Meehan at
-NMFS-1, Pat Montanio at -NMFS-5, Linda Moon at -NMFS-5, Bruce Morehead at
-NMFS-1, John Oliver at -NMFS-1, Edward Pastula at -NMFS-1, James W. Peaco at
Banyan, Steven Pennoyer at Banyan, Martie Piper at -NMFS-5, Sheryl Reddix at
-NMFS-1, Gladys Reese at -NMFS-SEFC, Jon Rittgers at Banyan, Mia Robinson at
-NMFS-1, Maryann Rodriguez at -NMFS-L1, Andy Rosenberg at Banyan, Brenda Rupli
at -NMFS-SERO, Brett Schneider at -NMFS-FEN, Kevin Scott at -NMFS-1,
Michael Sissenwine at -NMFS-NEC, Gary Smith at -NMFS-NWR, Shirley Smith at
-NMFS-1, Susan Smith at -NMFS-L1, Scott Smullen, Steven Springer at -NMFS-FEN,
Will Stelle at -NMFS-NWR, Richard Surdi at -NMFS-5, Dean Swanson at -NMFS-4,
Ann Terbush at -NMFS-4, Gloria Thompson, Michael Tillman at -NMFS-L1,
Usha Varanasi at -NMFS-NWFSC, Cindy Walker at -NMFS-1, Susan A. Weaver at
Banyan, Richard Wheeler at -NMFS-1, Lois Woodward at -NMFS-A, Betty Young at
-NMFS-1
Subject: NOAA Release 96-R122 Alaska Salmon fisheries

----- Message Contents -----
NOAA 96-R122

Contact: Gordon Helm
GORDON J HELM@ssp.nmfs.gov FOR IMMEDIATE RELEASE
(301) 713-2370 4/1/96

COMMERCE DEPT. PROPOSES REMOVAL OF ALASKA SALMON FISHERIES MANAGEMENT
PLAN AS PART OF PRESIDENT'S REINVENTING GOVERNMENT

The federal government has proposed improving the efficiency of marine fisheries management, in part through the elimination of six fishery management plans, including the plan for salmon off the coast of Alaska, the National Marine Fisheries Service has announced. This action is part of the Administration's effort to improve efficiency by streamlining federal regulations to reduce duplication and minimize costs. The Alaska salmon fishery would continue to be regulated by the state of Alaska.

"Our review at this time indicates removal of this fishery management plan will not weaken protection of our fishery resources," said Rolland Schmitt, fisheries service director. "The state of Alaska has long managed its permitted vessels operating in the salmon fisheries in federal waters through the plan. The fisheries service will continue to monitor the fishery through the fishery management council process and through international treaties."

Currently, all vessels that fish for salmon in federal waters are registered under the laws of the state of Alaska, and are subject to the state laws governing the fishery. Under this proposal, Alaska would retain its authority to manage state-permitted vessels in federal waters. In the unlikely event that unregistered vessels were to conduct salmon fishing operations in federal waters, the fisheries service has the authority to act under the Pacific Salmon Treaty Act of 1985, or through the Magnuson Fishery Conservation and Management Act.

The salmon fisheries management plan has historically focused on the Gulf of Alaska troll fishery in the eastern management unit. (The plan management area is divided into two management units located east and west of the longitude of Cape Suckling (143 degrees 53 minutes, 35 seconds west longitude). Implementing regulations governing the troll fishery consisted of several management measures, including a fishing season, gear restrictions, a limit on the number of vessel troll permits, and a requirement for trollers to have either an Alaska or federal limited entry troll permit. In its regulation of federal waters, the North Pacific Fishery Management Council has intended all of its management measures governing the sport fishery and the commercial troll fishery to complement Alaska regulations for the salmon fisheries in adjacent state waters.

The other five fishery management plans proposed for elimination are for spiny lobster (Gulf of Mexico), stone crab (Gulf of Mexico), northern anchovy (California), American lobster (Atlantic states), and Atlantic bluefish (Atlantic states).

Those interested in commenting on the proposed withdrawal and removal of Alaska salmon regulations can send their comments to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel. Written comments must be received on or before May 9, 1996.

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NOTE: All NOAA press releases, and links to other NOAA material, can be found on the NOAA Public Affairs World Wide Web home page, <http://www.noaa.gov/public-affairs>. If you'd like to receive these releases by electronic mail rather than fax, please send an e-mail to jlaff@hq.noaa.gov

North Pacific Fishery Management Council

Richard B. Lauber, Chairman
Clarence G. Pautzke, Executive Director



605 West 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Telephone: (907) 271-2809

Fax (907) 271-2817

March 14, 1996

Rolland A. Schmitten
Assistant Administrator for Fisheries
NOAA/NMFS
1335 East-West Highway
Silver Spring, MD 20910

Dear Rollie:

I received your letter of February 23, 1996 detailing how NMFS would be consolidating and reducing regulations for fishery management plans. Reductions in regulations may be good for those involved in management and on the receiving end, as long as we are careful not to eliminate a critical regulation or inadvertently loose the thrust of a particular rule. In that regard, I will ask the Council staff to meet with Alaska Region staff to review proposed changes to the regulations.

Reducing regulations has merit, but I must say I was somewhat nonplussed, as I am sure other Council Chairmen are, with your stated intention to withdraw approval of existing fishery management plans. Several issues arise with eliminating our salmon plan. First, we may again have a "Mr. Big" problem wherein someone fishes outside three miles out of season and lands elsewhere. NMFS could then close the whole EEZ, but this will take time and more regulations. Would it not have been better to let Congress finish its reauthorization activities wherein we hope there will be authority for states to extend their jurisdictions into the EEZ under specific circumstances? Second, our federal ban on net fishing outside three miles has supported conservation regulations at the State and international levels. Third, the plan served as a vehicle for resolving ESA Section 7 issues. All these issues must be considered before the plan is abandoned, and we will submit our views during the March 29-May 13 comment period.

More fundamentally, this unilateral move by the Secretary seems to run counter to Congressional intent as embodied in the Magnuson Act, that the Council should be the body that initiates fishery management plans and amendments. I see nothing in the Magnuson Act explicitly authorizing the Secretary to unilaterally remove an FMP and its management measures. There may be good cause for removing a plan, but it would not have taken that much additional effort to consult with us first and thus smooth the path. We will be seeking clarification of whether Congress intended the Secretary to have the authority to unilaterally abandon an FMP without a vote of the Council.

We hope to discuss these initiatives fully at our April meeting, and any further insights you may have truly would be appreciated. Your March 13 letter extends the comment deadline on regulatory consolidation until April 12. Our Council begins meeting April 17. Please give us until Monday, April 22, so we can review the package and fax comments to you by that morning.

Sincerely,

Richard B. Lauber
Chairman

cc: Steve Pennoyer
Other Councils
House Committee on Resources
Senate Commerce Committee, Oceans & Fisheries Subcommittee

STATE OF ALASKA

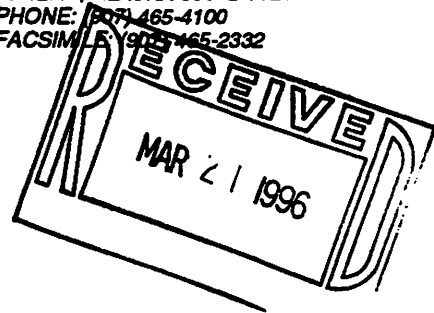
TONY KNOWLES, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

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March 12, 1996



Mr. Rolland A. Schmitten
Assistant Administrator for Fisheries
National Marine Fisheries Service/NOAA
U.S. Department of Commerce
1315 East-West Highway
Silver Spring, MD 20910

Dear Mr. Schmitten:

I am writing in response to your letter to Chairman Rich Lauber, North Pacific Fishery Management Council, concerning National Marine Fisheries Service's intent to eliminate the Fishery Management Plan (FMP) for the Alaskan high seas salmon fishery and consolidate most other FMPs which the council has developed.

The State of Alaska is concerned that the time line, which you have provided for review of the streamlined regulations, will not provide council members and the affected public at-large sufficient opportunity to review and consider these regulations. While your letter states that the consolidation of the regulations will be accomplished without changing the substance of the regulations, I am confident that the council and the public will want adequate time to review the proposed rules.

Additionally, I want to inform you that the State of Alaska does not support the proposed action to withdraw the high seas salmon FMP. First, we question the Secretary's authority to do this absent a recommendation by the council. Second, we are concerned about the effect of this on the ongoing negotiations within the Pacific Salmon Commission and on our national responsibility to meet commitments under the Endangered Species Act. Finally, we are concerned that, absent an FMP, restrictions on high seas salmon fishing in the Alaskan EEZ will no longer apply.

The state strongly requests that you extend the comment period until June 15 so that the state, council, industry, and public can provide thoughtful comments on your proposal.

Sincerely,

Frank Rue
Commissioner

cc: Richard Lauber, Chairman NPFMC

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL



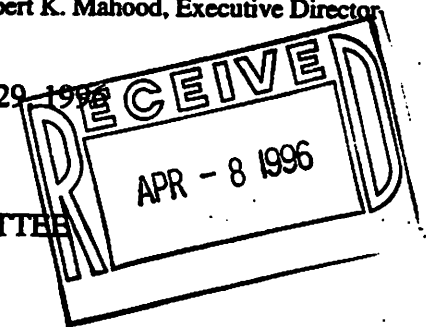
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AGENDA C-8
APRIL 1996
Supplemental

David M. Cupka, Chairman
Benjamin C. Hartig, Vice-Chairman

Robert K. Mahood, Executive Director

March 29, 1996



MEMORANDUM TO: SPINY LOBSTER ADVISORY PANEL
SCIENTIFIC & STATISTICAL COMMITTEE

FROM: GREGG WAUGH *GW*

SUBJECT: NMFS PROPOSAL TO DROP SPINY LOBSTER FMP

I am enclosing the proposed rule (which was published in the Federal Register on March 25, 1996) to withdraw Secretarial approval of the FMP for the spiny lobster fishery in the Gulf of Mexico and South Atlantic and the Environmental Assessment, Regulatory Impact Review and Regulatory Flexibility Act Determination prepared by NMFS.

The Council is concerned about the following:

1. Justification for the original FMP. Section 12.3 of the FMP (pages 12-8 through 12-5) present the Councils' analysis of alternative approaches to achieving OY: "The No Action (No FMP) option was rejected as inferior to the other alternatives considered. Its cost to the fishery and the nation, both in terms of loss of yield per recruit and potential for recruitment overfishing, are higher than options 3 and 4. Costs to the government are not substantially different from the preferred alternative. The only difference is a small increase in expenditure for data collection. The benefits of this option are effectively zero. The purpose of this section is to examine the best route to achieving the best use for the nation and, therefore, OY, whether or not an FMP is implemented. In that context, the No Action alternative does not comply with the intent of MFCMA and National Standard one because it allows continuation of an activity which could easily result in recruitment overfishing."

The harvest of illegal lobsters in the EEZ and the transport of illegal lobsters from Florida to Georgia were the primary problems requiring implementation of the FMP. These problems will resurface should the FMP be repealed by the Secretary of Commerce.

2. Authority of Secretary to drop FMP. Where in the Magnuson Act does it state the Secretary of Commerce has unilateral authority to remove a FMP? We do not believe the Secretary has such authority.

3. How do emergency regulations result in less regulations? The EA/RIR correctly notes that not many vessels participating in the fishery are registered outside the State of Florida. This is, in part, because there is no incentive to do so. Repealing the FMP will make it economically feasible for unscrupulous individuals to register in another state (e.g., Georgia) and resume the buy-boat fishery which existed prior to implementation of the original FMP. The document and the proposed rule further note, should fishing practices outside the authority of a state constitute an emergency situation that jeopardizes effective management of the spiny lobster fishery or resource in the EEZ, NMFS would consider promulgating emergency regulations. How does this result in less regulations than currently exist? How would emergency regulations effectively address the problem given that the regulations are only temporary?

Such an approach is not consistent with the NMFS Risk Averse Policy.

4. How does repeal of the FMP protect the recreational fishery north of Florida? The RIR notes directly quantifiable net benefits (net of cost increases) for the first year of between \$13,100 and \$30,600. No estimate of the loss to the recreational fishery north of Florida is included. In order for the net benefits to be positive, the value of the recreational fishery off Georgia, South Carolina and North Carolina would be less than about \$31,000. We would submit that the value is greatly in excess of this although the value cannot be quantified at this time.

The Council is in the process of preparing a response. If you wish to comment, please do so by writing a letter to Georgia Cranmore, Southeast Regional Office, NMFS, 9721 Executive Center Drive N. St., St. Petersburg, FL 33702. Also, please send us a copy of your comments. **COMMENTS MUST BE RECEIVED ON OR BEFORE MAY 9, 1996.** If you require any additional information please do not hesitate to contact me or Bob Mahood.

GTW/mac

cc: SAFMC Members & Staff, w/attachments
Perry Allen, Joe Kimmel & Pete Eldridge, memo only
Mike McLemore, memo only
John Merriner, memo only
Council Executive Directors, memo only

Transcription - NPFMC Discussion of Salmon FMP
April 21, 1996

TAPE 58

Chairman Lauber: . . . As I previously announced before we adjourned last night, we're going to take up an issue that Mr. Pennoyer has regarding the Salmon Fishery Management Plan. He assures me this will not take us very long and he has to leave here shortly. Mr. Pennoyer, you have the floor.

Steve Pennoyer: There actually is a agenda item on this and you may want to come back and revisit the regulatory consolidation issue overall at some point and I think the Executive Director can advise you on that. There's one particular piece of that I wanted to discuss this morning, and when I said it wouldn't take much time, obviously it depends on how much people want to discuss it. But the issue I wanted to discuss this morning was the Salmon FMP and an action that's required at this meeting that you've taken in the past to get us through this season. You've got a number of letters in your notebook on the Salmon FMP and you're aware of the fact that the Department of Commerce has put a rule out to propose withdrawal of that FMP at some time in the near future. I think the public comment period ends May 9th on that option and obviously the Council may wish to comment on the question of whether the Salmon FMP should be withdrawn.

That is not the issue I had as much in mind this morning as the second issue I believe the Council has to address. As a background to that, because somebody could ask me, 'well if you're proposing withdrawing the Salmon Plan why are we even talking about some action we need to take under the salmon plan?' I made copies for you of a letter that I sent to Commissioner Frank Rue on April 16th of this year which unfortunately didn't get into your file before the meeting. In that we basically talk about the fact that any withdrawal, if it is proceeded with, would not be finalized until after this year's salmon season, in other words until after the first of October of this year. So, the provisions of the current Salmon Plan and the actions we've taken in the past related to the Pacific Salmon Treaty and the Endangered Species Acts, or other applicable federal law, would still be pertinent to this season. If the Salmon Plan was to be withdrawn the State would actually have to obtain a Section 10 permit under the Endangered Species Act . . . to continue the salmon fishery since there is a bycatch in that fishery of an endangered species, a species that has been declared endangered. But since in fact that action would be delayed, even if taken at all, until October we do have to proceed with the Salmon Plan in place for this summer. I also sent you a letter telling you what that basically entailed, and it's basically the same letter you've had for the last, I believe, four years. The Council under the Salmon Plan annually reviews the provisions of the Pacific Salmon Treaty, including the agreed annexes, the State's proposed management regime, and then determines if the conditions under which you deferred management to the State of Alaska have been met. This year as in the past several years we don't have either a management plan from the State in front of us or a Pacific Salmon Treaty agreement on a quota, and therefore there have been no determinations on other federal law such as whether the endangered species act has been satisfied. That being the case, and being the case that the fishery will actually start before this Council can take formal action and have it entered into law, we have proposed the same course of action that we have in the past and based on that I've prepared a motion which I'll read into the record and I passed out this morning and it is essence the same motion. . . I took it out of the letter, I think it's word-for-word from what we've done the past couple of years, or essentially the same. And, it states:

In the absence of having a specific proposed management regime to evaluate at this time, I move that the Council delegate to the Regional Director, Alaska Region, NMFS, the authority to review the Southeast Alaska chinook salmon management plan proposed by the State of Alaska and to make determination as to whether the proposed plan satisfies the conditions of deferral under the Council's Salmon Fishery Management Plan. If the proposed management plan meets the requirements, the Regional Director will certify to the Council, in writing, prior to the start of the fishery that the requirements have been satisfied. If the Regional Director cannot make

such certification, he will notify the Council and propose to the Council what emergency rulemaking is required to satisfy the Federal obligation under the Pacific Salmon Treaty, the objectives of the Salmon Fishery Management Plan, the Magnuson Act, and other applicable law.

In essence, what that allows us to do is to issue a Section 7 if the State management plan does meet the requirements of other applicable law and anything that the Salmon Treaty might come down with. Mr. Benton's been following the Salmon Treaty negotiations closer than I have, but at the present moment we do not know where that's going to end up, so we're left with this position and if I don't have this mechanism, there's no way in essence to allow the fishery in State waters and in Federal waters off the State this summer because I would not be able to issue a Section 7 to allow that. So, that's what I'm asking for. Again, it's separate from the question whether the Salmon FMP should or shouldn't be withdrawn, which is out for public review. That would not be made effective even if it happened until October so we're still faced with needing to do something like that for this summer. I make the motion anyway, if I have a second . . . I guess I spoke to it ahead of time, sorry.

Dave Benton: Second.

Lauber: It's been moved and seconded by Mr. Benton. Is there any discussion regarding this? Explanation is adequate? Any objection to the motion? Hearing none, it passes.

Benton: This does bring up the letter dated April 16th that's been provided to us. The letter to Commissioner Rue signed by Mr. Steve Pennoyer. It does bring up one issue that I think's important and that is it appears by reading this letter that a decision has been made to withdraw the Salmon FMP. Is that true, Steve?

Pennoyer: Mr. Chairman, that's not true. I noticed in this paragraph after re-reading what I wrote, the same thing, and that's not the case. It's out for public review and no decision can be made by the Secretary until the public review period is finalized. So that's still available for comment. The Council can comment on it or anybody else, and I think what this should have said is, "if this is done, it will not survive. . . ." so I believe that's simply a typo.

Benton: I would ask, I don't know if I need to make a motion, but I'd ask that before publication of the final rule that the Council be able to review this at the September meeting, which is . . .

Linda Behnken: Second.

Benton: I would simply ask that before publication of the final rule, that the Council would be able to take this up at the September meeting and comment to the agency regarding the withdrawal of the Salmon FMP.

Pennoyer: Obviously, it's out for public comment. I have no problem with anybody commenting on the rule, but I would suspect that if you wait until the end of September and the date for publication is October 1st, the public comment period has been over for in essence three months, that may create a problem, so I'm not able to tell you that that would be effective at that date. Certainly, you could review it; it'll be out on the table if it hasn't been published finally. But if you're asking for a delay or an extension of the public comment period, or . . .

Benton: Well, I just wanted to avoid the June meeting. We could certainly bring this back up at the June meeting if we wanted to.

Morris Barker: As I read the letter, the public comment period closes March 9th. If we want to equivocate about this issue after the public comment period's closed, it's not going to do us much good.

Clarence Pautzke: May 13th is when the public comment period closes on this, but it has the same effect because we're not going to be able to come back to it.

Pennoyer: I guess that's what I was trying to say if I didn't. I'm not sure what effect a comment a week before publication . . . because I think the decision is intended to be reached before that. The public comment period closes May 9th; I'm not sure what the decision date would be, but I think it would be before that. And if you asking as part of this discussion, the Salmon Plan in general, if you're asking for a delay in the comment period or a delay in the decision, that's certainly something you could ask for, but simply saying could you review it in the September meeting, yes you could, but I'm not sure what effect that would have.

Benton: Mr. Chairman. The agency, our agency, sent a letter commenting on this matter already and I believe you've sent a letter as well. I'm looking to you, Mr. Chairman, for some guidance. I could make a motion to formally object to the withdrawal of the Salmon FMP, unilateral withdrawal of the Salmon FMP, by the Secretary if that's the Council's wish, but seeing as how you've sent a letter I don't know if we need to do anything further.

Clarence Pautzke: We have received several letters, and all of this is under C-8, and there's been letters from other Councils, the South Atlantic about their plan, the Pacific Council about the anchovy or whatever plan down there, and the reading that I think we're getting is that there is a push on to repeal and withdraw these plans regardless of what the Council says, in any of the regions. And, the decision seems to have been made somewhere up the line that these things are going and I would like Mr. Pennoyer's candid assessment. Is it doing us any good to write in these letters, or has the decision been made? It appears to me the decision has been made regardless of typos in whatever letters we're getting from the Region, the decision appears to be made, the end of the comment period is May 13th, and then it's just going to be in a holding pattern pending publication of the final rule. If the decision's been made, what's our chances of overturning it?

Pennoyer: Well, Mr. Chairman, that was a question of my candid assessment of where the legal process stands, obviously it's out to public review and obviously I'm not going to tell you that in fact the public review is not meaningful. I mean, I doubt any Council is going to be given that word. There is a very major push in the federal government and in Congress and other places to reduce the number of regulations that are out there affecting the industry. Regulatory consolidation was part of that, the withdrawal of plans that have basically been inactive and not seen to have a lot of things happening with them, withdrawal of plans where the state clearly has the authority and is clearly doing a good job managing the fishery, these are all elements that entered into that and I think they're all stated in the publication of the rule. So, candidly there's a lot of move to try and consolidate regulations and eliminate unnecessary regulations. In this case, it is out to public review and until after May 9th I'm not going to be able to tell you what our decision's going to be.

Bob Mace: I think we want to make it very clear that the Council would like a part of this before this decision is made without our input. With what's going on with respect to the Pacific Salmon Treaty, that thing could go gunny bag and this Salmon Plan may be the only ace in the hole that we have left.

Clem Tillion: Somewhat along the same lines, having once been a fur seal commissioner I naturally have great trust in my federal government and I have that fear that he withdraws it and they don't give us the letter and then we're wiped out and I think we need to take another look before we walk up and stick our heads in a guillotine that's just a demonstration affair, naturally it doesn't have a blade in it, we think. So, really before we give up the FMP that does give us some rights or at least raise hell about it if they take it away from us, well we want to know that we'll be able to move on and actually administer our fishery.

Benton: Would it be appropriate to make a motion at this time on this matter? It's a little out of the order of our agenda. . .

Lauber: Your original motion was withdrawn, so there's no motion on the floor, go ahead.

Benton: I would move that the Council register its objection to the Secretary's withdrawal of the Salmon FMP and if I have a second I'll speak to that.

Behnken: Second.

Lauber: Go ahead, you have the floor, Mr. Benton.

Benton: The letter that we have here dated April 16 by Mr. Pennoyer cites as the reason for delaying publication of the final rule is because of ESA considerations and preparing a Section 7 consultation and, Mr. Chairman, that's an important consideration. I think the letter is correct in the way that it identifies that issue and attempts to address that issue. However, if you note in the letter and it has been made clear here, the close of public comment is on May 9th. This is the time that the Council can comment formally to the Secretary on this matter and I think we need to do that. I'd like to note, Mr. Chairman, that there are more reasons for retaining the Salmon FMP than simply the Section 7 process articulated in Mr. Pennoyer's letter. The first and probably most important is whether or not the Secretary has the authority to unilaterally withdraw an FMP without a recommendation from a Council and I think that's an important issue that needs to be addressed. Second, it does have implications for the Pacific Salmon Treaty and the management of fisheries for salmon outside 3 miles as Mr. Mace has pointed out, and if the Salmon Treaty process were to break down, as Mr. Mace has discussed, this is the mechanism whereby salmon would be managed offshore of Alaska beyond 3 miles. And in that regard, Mr. Chairman, the FMP contains some important provisions regarding high seas salmon fishing outside the area governed by the Pacific Salmon Treaty, and that is that it prohibits fishing in the EEZ beyond 3 miles with some exceptions and those protections for salmon resources in the EEZ off Alaska would be lost if the Salmon FMP were terminated and nothing else was in place to fill that void. And, as we know Mr Chairman, from our experience with scallops, our ability to regulate any such activity in a meaningful manner are limited. There are provisions in the proposed reauthorization of the Magnuson Act that may address this but we have no surety that they will be addressed. So I think it's important for us to comment formally to the Secretary registering our objection to the withdrawal of the Salmon FMP. Thank you.

Barker: I strongly support Mr. Benton's comments. I can just imagine what would happen if we had another entrepreneur show up out there with rig for high salmon fishing like we did with scallops.

Pennoyer: I do believe that it's appropriate for the Council to comment and the question Mr. Pautzke asked was one of would it be effective. I don't think the issue right now is how effective it is, the issue is whether you've spoken to the purposes of the plan and the reason that the plan is still required to satisfy those purposes and I think the motion tries to address that and we would accept that as a comment. I'm going to abstain on the motion obviously because it's out for public review and comment, but I . . . certainly the Council was expected to comment at this meeting and we think that would be a better course of action if you want to comment than waiting until some later date.

Pautzke: In talking with the various Senate staffers I believe that they think that the Secretary does not have this authority to unilaterally withdraw a plan and maybe if there's enough fuss that comes about from all the Councils maybe this can be overturned. One question that I had for Steve was, is there a way that the final rule or proposed could be written such that the plan itself is not withdrawn? That the plan is still approved and sitting on the sidelines without, say, a whole slew of implementing regulations so that if we needed to have something in place very quick to stand up regulations we would not have to through a full plan analysis and so on. And I thought at one point with one of the crab plans that we had that kind of a thing where there was an FMP without implementing regulations, or at least minimal implementing regulations, and then if we needed the regulations

because of say the Pacific Salmon Commission goes out of style, that you could stand up the regulations really quickly without going through the formal FMP process.

Pennoyer: I don't think I care to answer exactly what the effect of that is in terms of timing or the effect on the current interest in reducing the regulations. If you propose it as a possible option to be looked at I think we could do that. I can't answer the question right now. I think it's an option; I don't what the effect is going to be.

Lauber: I understand, Counselor, that NOAA General Counsel ruled that this is legal, but I think it's a rather interesting situation because if we were developing a Salmon Management Plan and sent it back to the Secretary for approval, the normal procedure is that if the Secretary didn't approve of the plan it would be sent back to us for our consideration, amendments, and possible resubmitting the plan. Apparently a way around that would really be if they didn't want the Council to have any additional input would be to approve the plan and then immediately cancel it which is the effect of this one although obviously many years have transpired in between and I think why many of the legislative people and staff and legislators in Washington feel this is improper because it probably wasn't the intent of Congress when they passed the Magnuson Act to have the Secretary summarily dismiss a plan because they think it is no longer necessary, but even if legal, but I'd better leave the other more political parts out of the question to you, so I'll leave it at that. But, could you comment, has this been reviewed and this procedure, by Washington I presume, probably not by you, the decision has been made nationally because of all the other Councils that are complaining this thing, have they determined that this procedure is legal, that the Secretary can basically summarily dismiss plans when they decide they're no longer needed?

Lisa Lindeman: The position of NOAA General Counsel is that inherent in the Secretary's express authority to approve and implement fishery management plans is the implied authority to withdraw a plan that he doesn't deem any longer necessary.

Pautzke: Would you be able to provide . . . [tape changeover, some discussion lost] . . . in the Magnuson Act to which he's referring that authorizes that?

Lindeman: It's an implied authority.

Pautzke: It's a what?

Lindeman: Implied authority. So, the Magnuson Act doesn't expressly state that the Secretary can unilaterally withdraw an FMP that he does not deem necessary, but he does have the express authority to approve those and implement those FMPs he deems necessary.

Pautzke: But I thought, Lisa, that the Magnuson Act was very specific in the language in what the Secretary is authorized to do unilaterally by himself. There is language in when the Secretary can start a plan and what types of amendments, there are certain prohibitions for instance on starting a anything on limited entry. It's not like the Congress left that out. It put in language in section in 303 or 304, whatever it is, on that and it says nothing about this kind of a situation.

Lindeman: Mr. Chairman, what we can do is take the Council's comments and go back and . . . authority, but at this point the opinion is that it's based on an implied authority.

Lauber: So the basis is that the implied, or implication, being that since the Secretary has the authority to not approve a Council plan that then the Secretary would have the authority implied to decide that they no longer needed that plan, or something of that sort, that's the . . . in other words the basis of the authority is the implied authority that because you have the right to disapprove at the time it's submitted that you have the right to, after

it's been approved, to disapprove at a later time, I guess, or withdraw it. That's my understanding of what your.

Lindeman: Basically, Mr. Chairman, that since the Secretary can approve, you know, develop and approve and implement a plan on his own under the Magnuson Act, that implied in that is that the Secretary has the authority on his own, if he deems that fishery management plan is not necessary for conservation and management of the resource, that he can withdraw that plan.

Lauber: But, of course that's a positive. He can approve a plan, that's not to disapprove a plan. I understand there the intent of Congress was completely different. It was basically where the Council refused to act, and if you're basing it upon that, they really have I think made a fatal error because that authority is only granted to the Secretary after the Council has refused to act and in this case this issue was never sent to this Council for us to even review. They summarily decided that they were going to do it. Now, since we've complained they've allowed us to make a public comment, but that's different than having a full-blown process where we decide to review it. And I question, really, the basis of that implication that because the Secretary has the power which is implied because the power is to approve or disapprove of a plan. Following that theory, the President of the United States who has the power to sign a law or, as you know, to veto a law, would then at some later time decide ten years down the line, by the way another President, that because he has the power to disapprove a law when it was passed, veto it, or approve it, that all of a sudden he doesn't like the law now, a new President, and so he has the implied authority to just veto it ten years later without going back to Congress. Now I realize we're not quite Congress, but the implication that because a person has the power to approve or disapprove that they can all arbitrarily exercise that ten years later or in our case this is 15 years later, I wonder whether that will stand the test of. . .

Lindeman: Mr. Chairman, we'll go back and review this.

Pennoyer: We're not going to sit here and resolve this with you. Obviously this is a question that goes beyond either this particular region or this particular Council and it's not something I think that General Counsel here can resolve. They have a decision from obviously the D.C. level that in fact it is authorized. The National Standard guidelines talk about threshold (?) question of actual need for management through regulation even when a Council believes there is an advantage of managing a fishery, etc. So, I mean, there are other. . .and I can't sit here and argue with you about the prevalence of that over somebody else's interpretation of the Magnuson Act or past practices. So, if the Council wishes to re-express what was in your letter, which I realize you never got a response to, the Council could do that. I can't sit here and debate it with you 'cause I. . .and I don't think Lisa can either because we're not able to answer that national question.

Pautzke: Just one last thing. Lisa, could we have made available to us, and I'm not putting in a formal Freedom of Information request, but could we have made available to us any internal memos by Jay Johnson or NOAA General Counsel that has had an opinion and the basis for that opinion on the Secretary's ability to withdraw a plan unilaterally made available to the Council?

Lindeman: We can go back and look at that. I don't know. . .

Pautzke: Thank you. Anything in writing on that would be great.

Benton: This is a monumental decision by the Secretary and my question for NOAA General Counsel is I can't imagine that they would make a decision like this nationwide without having a written legal determination and I would like to see that written legal determination.

Lauber: Well, it's been requested.

Lauber: All right, we have a motion. Is there any further debate?

Pennoyer: One more statement, though. By the time you get any of that, it's going to be after the end of the comment period on this particular plan so I assume that somewhere in your motion if you want to reiterate your request and comments in a letter or however you do, you may get all this in June and that doesn't mean the discussion's obviously over, but the comment period ended May 9, so I'm not. . . I'm not sure where that request goes relative to this particular legal action. I mean, this is a broader question than the Salmon FMP off Alaska.

Lauber: All right. Why don't we withdraw the request and we'll just do it under the Freedom of Information Act, then they have to get back to us within ten days.

Tillion: If the comment period ends May 9th we should object.

Benton: We're not withdrawing the motion, just the request for the letter.

Tillion: Oh, the request for the letter, then I agree with you.

Lauber: This is separate and it's not part of this motion. I'm just saying. . .that was just an aside. We have the motion before us and then we'll take up this request for information later.

Benton: A point of clarification for the letter, Mr. Chairman, is that Mr. Pennoyer pointed out some matters in the Standards and Guidelines, I believe it was, of the Magnuson Act, and I think I articulated some reasons why this would not be a good action. I just ask the letter show the relationship between those Standards and Guidelines and the need for conservation and management in the EEZ at this time. Thank you.

Pennoyer: I wasn't basically relating my comments to what was in the motion which spoke to the purposes question. This is a different question on authority and I was treating it separately. I didn't intend that they had any relationship to each other.

Lauber: O.K., ready for the question. Repeat the motion.

Pautzke: Move that the Council register its formal objection to withdrawal of the Salmon FMP and submit a letter to that effect. And then I'll get together with Mr. Benton to go over all the contents of it. And it does not include the request right now for information; we're going to take that up as a separate motion.

Lauber: Is there any further discussion? Ready for the question? Call the roll, Mr. Pennoyer has to abstain, or wants to abstain, I don't. . . both the same.

[All members voted yes; Mr. Pennoyer abstained]

Lauber: Now, does someone wish to move that we make a formal Freedom of Information request?

Benton: I would move that the Council submit a formal Freedom of Information Act request to National Marine Fisheries Service and to NOAA General Counsel requesting all memoranda and legal interpretations that pertain to the Secretary's authority to unilaterally withdraw fishery management plans without a recommendation by the Council.

Behnken: Second.

Lauber: Further discussion? I guess we'll call the roll on this one. . .

Pennoyer: I think I'd probably have to abstain from that one, too, although obviously we'd respond to the request.

[All members voted yes; Mr. Pennoyer abstained]

Lauber: Does that complete that whole item now?

Pautzke: It pretty much completes the salmon part. At some point in the meeting we should get back to the status of the consolidation of regulations but we don't have much to report there other than that they have been consolidated, they're moving along on a track that is pretty much the. . .the proposed rule is already on the streets and the public comment period I think is over on it already because they had. . .

Pennoyer: . . .it's not a proposed rule, it's a technical amendment since it has no effect and is not intended to have any effect on the intent of the regulations. It is simply a clarification, in essence a housekeeping matter. While the national news release was perhaps less artfully worded than it could have been, the fact that it didn't state that, my letter to you did state and I believe your response to me based on that, there was no intent to change any regulation here, that in fact that anything that by mistake was changed would be rectified and the fact this is just basically a housekeeping measure to make the regulations consolidated, more concise. And your letter back to me indicated that based on that assertion and commitment that the Council would have found it O.K. We're not changing anything . . . commenting on changing any kind of intent here.

Lauber: I think that in our discussions, and I think your letter made it clear, that if in the changes that some inadvertent mistake was made that would have accidentally made some change in regulations that you would go back to the original regulation for clarification and explanation of it. So that if there had been a substantive change that was unintended we could use the original regulation to explain that that wasn't intended.

Pennoyer: Yes, Mr. Chairman, there is no intent here to change anything. We'll make sure that doesn't happen.

[miscellaneous comments - essentially the end of this agenda item]



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

COPY

C-8(b)

April 16, 1996

Commissioner Frank Rue
Alaska Department of Fish and Game
P.O. Box 25526
Juneau, Alaska 99802-5526

Dear Frank,

I wish to update you on the current status of the Secretarial process withdrawing approval of the North Pacific Fishery Management Council's Salmon Fishery Management Plan (FMP) and associated implementing regulations. Further, I would like to explain how we view the interface between the withdrawal of the FMP and how we intend to deal with chinook salmon listed under the Endangered Species Act (ESA), for the 1996 chinook salmon summer fishery and the fishery conducted by the State of Alaska thereafter.

The proposed rule to withdraw Secretarial approval of the FMP/implementing regulations was published in the Federal Register on March 26, 1996 (59 FR 13149). The public comment period closes on May 9, 1996. Shortly after the close of the public comment period on the proposed rule, we would normally proceed to publish the final rule. However, because of ESA considerations and given the short period of time between now and the start of the summer chinook fishery and the fact that your staff is fully occupied with Pacific Salmon Treaty Commission technical committee assignments and negotiations as well as preparing for the upcoming salmon season, we have decided to delay publication of the final rule until October 1, 1996. This delay of the effective date of the final rule will allow us to do an ESA section 7 consultation on the summer chinook fishery under the provisions of the FMP that delegates management to the State, as we have done for the past three years.

The section 7 on the summer chinook fishery will not survive the withdrawal of the FMP when it is published as a final rule on October 1, 1996. Any Southeast Alaska chinook salmon fishery taking place after that date would have to be authorized by a permit issued to the State pursuant to section 10 of the ESA. I would encourage you to initiate the ESA section 10 permit



application process as soon as possible.

The Alaska Region will serve as your contact for the purpose of processing the section 10 permit. The Northwest Region will continue to handle the section 7 consultation for the summer chinook fishery as they have in the past. When you are prepared to initiate the section 10 application, I invite you to contact my office to arrange a meeting between your staff and mine to scope the process and plan a schedule of events that will ensure timely processing of the State's section 10 permit application.

Sincerely,



Steven Pennoyer
Director, Alaska Region

PACIFIC FISHERY MANAGEMENT COUNCIL2130 SW Fifth Avenue, Suite 224
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Telephone: (503) 326-6352

CHAIRMAN

Robert C. Fletcher

EXECUTIVE DIRECTOR

Lawrence D. Six

April 12, 1996



Mr. Rolland Schmitt, Director
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
1335 East-West Highway
Silver Spring, MD 20910

RE: Regulation Consolidation and Elimination

Dear Rollie:

The Pacific Fishery Management Council opposes withdrawal of Secretarial approval of the Northern Anchovy Fishery Management Plan and removal of its implementing regulations. In addition, the council opposes the consolidation of Western Pacific and Pacific regulations into a single Part of the Code of Federal Regulations.

Not only do we support the continuation of federal anchovy management, we strongly advocate federal management of associated species including Pacific sardine, Pacific mackerel and jack mackerel coastwide. The reasons for this are clearly articulated in the Fishery Management Plan for Coastal Pelagic Species and summarized in our letter to you of January 29, 1996. Furthermore, we share the concern of the North Pacific Council about unilateral Secretarial action to withdraw a plan without concurrence of the affected council. Any actions to drop plans and accompanying regulations should await Congressional clarification of intent.

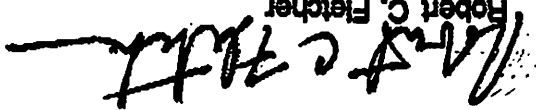
We received the consolidated regulation package on March 25 and have not had enough time to review it in detail. A thorough review is not possible in the time available. In any event, we question the value and necessity of this exercise. What has been accomplished? According to the Commerce news release dated February 27, 1996, the purposes are "to make the service more efficient, less costly and more responsive to the country's fishing industry." How is the industry better served by combining Western Pacific and Pacific Council regulations? We are not aware that industry requested this. The proposed consolidation will require the public to spend more time sorting through irrelevant regulations to find those that are applicable. The goal of this exercise is to make it easier for the public to understand the regulations, but the proposal will in fact make it more difficult. If consolidation is a good thing, why weren't North Pacific regulations included in this package? Conversely, if there is good reason to keep North Pacific regulations separate then it follows that there are good reasons to keep Western Pacific and Pacific regulations separate. In addition, we are concerned that this effort is tying up valuable National Marine Fisheries Service staff time and budget which could be better used to conserve and manage fisheries.

Mr. Roland Schmitzen
April 12, 1996
Page 2

Another problem with this exercise is the risk that some important language will be dropped or changed intentionally or unintentionally. In our cursory review of the West Coast groundfish section of the document, we noticed that a number of elements have been deleted and the wording of some regulations was revised slightly. Deletion of the appendix which describes the framework provisions of the West Coast groundfish regulations will make it more difficult for the public to understand the process and is contrary to the goal of this exercise to make regulations more user friendly. We accept the notion that some changes could be improvements, but improvements can be made without combining our regulations with those of the Western Pacific Council.

In closing, we recommend that the Secretary not withdraw approval of the anchovy plan and not combine Pacific and Western Pacific regulations. Furthermore, we would like an opportunity to meet with the regional offices to better understand the need for the proposed changes to our regulations.

Sincerely,


Robert C. Fletcher
Chairman

c: Hilda Diaz-Sotero
Will Stelle

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL



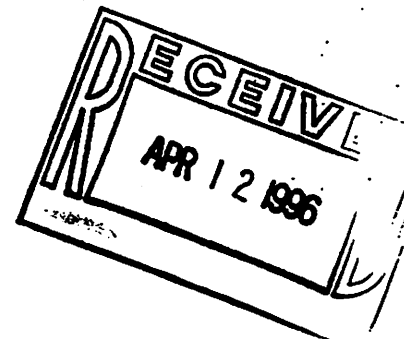
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AGENDA C-8
APRIL 1996
Supplemental

David M. Cupka, Chairman
Benjamin C. Hartig, Vice-Chairman

Robert K. Mahood, Executive Director

April 3, 1996



Rolland A. Schmitten
Assistant Administrator for Fisheries
NOAA/NMFS
1335 East-West Highway
Silver Spring, MD 20910

Dear Rollie:

At its March 27-28, 1996 meeting, the South Atlantic Council's Executive Committee reviewed the intent of NMFS to publish in the Federal Register a proposed rule to withdraw Secretarial approval of the FMP for the spiny lobster fishery in the Gulf of Mexico and South Atlantic and remove its implementing regulations (50 CFR part 640) because state regulations should be adequate to protect and manage this resource (letter from Schmitten to Cupka dated February 23, 1996). In addition, the committee reviewed the Environmental Assessment, Regulatory Impact Review and Regulatory Flexibility Act Determination prepared by NMFS and the proposed rule which was published in the Federal Register on March 25, 1996.

The goal of reducing unnecessary regulations is a laudable one. It is a shame NMFS and the Councils could not have worked together to identify such regulations rather than NMFS unilaterally deciding the Spiny Lobster FMP is no longer necessary.

The South Atlantic Council respectfully disagrees with your conclusion that Florida's regulations are adequate to protect and manage the spiny lobster resource off its coast and that the removal of Federal regulations for the spiny lobster fishery in the EEZ off the other states should have no significant regulatory or biological effects. On the contrary, the Council reaffirms its position that Federal regulations are necessary for the effective and efficient operation of the trap certificate program and other regulations within the State of Florida. Further, that Federal regulations are necessary to continue development of the recreational fishery in the EEZ off the States of North Carolina, South Carolina and Georgia. Without Federal regulations in the EEZ the continued biological, economic and social integrity of the spiny lobster fishery would suffer. The basis for the Council's position is presented below.

1. Justification for the original FMP. Section 12.3 of the FMP (pages 12-8 through 12-15) present the Councils' analysis of alternative approaches to achieving OY: "The No Action (No FMP) option was rejected as inferior to the other alternatives considered. Its cost to the fishery and the nation, both in terms of loss of yield per recruit and potential for recruitment overfishing, are higher than options 3 and 4. Costs to the government are not substantially different from the preferred alternative. The only difference is a small increase in expenditure for data collection. The benefits of this option are effectively zero. The purpose of this section is to examine the best route to achieving the best use for the nation and, therefore, OY, whether or not an FMP is implemented. In that context, the No Action alternative does not comply with the intent of MFCMA and National Standard 1 because it allows continuation of an activity which could easily result in recruitment overfishing."

The harvest of illegal lobsters in the EEZ and the transport of illegal lobsters (shorts and berried females) from Florida to Georgia were the primary problems requiring implementation of the FMP. These problems will resurface should the FMP be repealed by the Secretary of Commerce. The result will be decreases in potential yield and spawning potential.

2. Authority of Secretary to drop FMP. Where in the Magnuson Act does it state the Secretary of Commerce has unilateral authority to remove a FMP? We do not believe the Secretary has such authority.
3. How do emergency regulations result in less regulations? The EA/RIR correctly notes that not many vessels participating in the fishery are registered outside the State of Florida. This is, in part, because there is no incentive to do so. Repealing the FMP will make it economically feasible for unscrupulous individuals to register in another state (e.g., Georgia) and resume the buy-boat fishery which existed prior to implementation of the original FMP. The document and the proposed rule further note, should fishing practices outside the authority of a state constitute an emergency situation that jeopardizes effective management of the spiny lobster fishery or resource in the EEZ, NMFS would consider promulgating emergency regulations. How does this result in less regulations than currently exist? How would emergency regulations effectively address the problem given that the regulations are only temporary?
Such an approach is not consistent with the NMFS Risk Averse Policy.
4. How does repeal of the FMP protect the recreational fishery north of Florida? The RIR notes directly quantifiable net benefits (net of cost increases) for the first year of between \$13,100 and \$30,600. No estimate of the loss to the recreational fishery north of Florida is included. In order for the net benefits to be positive, the value of the recreational fishery off Georgia, South Carolina and North Carolina would be less than about \$31,000. We would submit that the value is greatly in excess of this although the value cannot be quantified at this time.
5. The Magnuson Act was to have been modified to include language allowing states to manage all vessels in the EEZ. Absent such language, the states do not have authority to manage vessels registered in other states.
6. Should the Spiny Lobster FMP be repealed, there would be no management in place off South Carolina and Georgia. Both states would have to get rules through their respective state legislatures and the earliest they could do so would be 1997 and there are no guarantees that we would be successful then. Such a lapse in regulations could negatively impact yield and recruitment.
7. The Snapper Grouper FMP prohibits use of fish traps. Repeal of the Spiny Lobster FMP would remove the definition of spiny lobster trap and could create a large loophole whereby fishermen could use fish traps in the EEZ claiming they were spiny lobster traps.
8. Repeal of the Spiny Lobster FMP would also negatively impact the effort limitation program in Florida. It would also complicate the issue of fish trap/lobster trap construction and the related bycatch issue. In addition, how would trap robbery be treated in the EEZ off Florida?
9. SAFE Report cost savings projected in the RIR could also be realized without repeal of the FMP by evaluating whether the State of Florida could prepare the SAFE Report as they currently prepare an annual status report.
10. The Spiny Lobster FMP has been effective in maintaining landings at a relatively stable level of around 5-7 million pounds. Without the measures contained in the FMP, landings would probably have declined due to continued illegal harvest (shorts and berried females) in the EEZ.

Overall we disagree with the proposal to repeal the Spiny Lobster FMP. The benefits do not outweigh the costs. Repealing the Spiny Lobster FMP is not consistent with the NMFS' Risk Averse Policy and is not in the best interest of the spiny lobster resource, spiny lobster commercial fishermen, spiny lobster recreational fishermen, consumers and the nation. We respectfully request you do not repeal the Spiny Lobster FMP. However, if the FMP is repealed, the Council will consider immediately requesting emergency action to prevent illegal harvesting in the EEZ. The need for and mechanism to implement such emergency regulations are acknowledged in the EA/RIR and in the proposed rule. Another possible option might be to delay repeal in order to give the states an opportunity to implement management measures to protect the resource.

We appreciate your assistance in this matter, and if you require any additional information please do not hesitate to contact me or Bob Mahood.

Sincerely,

David Cupka

David M. Cupka
Chairman

Attachment

DMC:GTW/mac

cc: SAFMC Members & Staff
Spiny Lobster Advisory Panel
Scientific & Statistical Committee
Perry Allen, Joe Kimmel & Pete Eldridge
Mike McLemore
John Merriner
Council Executive Directors



NMFS AK REGION

UNITED STATES DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Marine Fisheries Service

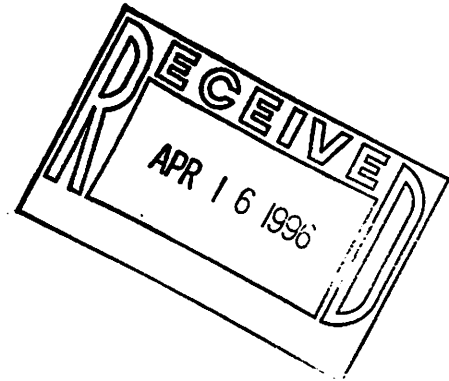
P.O. Box 21668

Juneau, Alaska 99802-1668

AGENDA C-8
Supplemental
APRIL 1996

April 16, 1996

Richard B. Lauber, Chairman
North Pacific Fishery
Management Council
605 W. 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252



Dear Rick,

Under the provisions of the North Pacific Fishery Management Council's (Council) April 1990 Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska (Salmon FMP), the Council retains oversight of the Southeast Alaska (SEAK) chinook salmon fishery, but has conditionally deferred regulatory management of the fishery to the State of Alaska (State). This deferral acknowledges the State's extensive management program and the fact that the all-gear SEAK chinook fishery, both in State waters and in the Exclusive Economic Zone, is subject to the governance of the United States/Canada Pacific Salmon Treaty. The conditions of the Council's deferral to the State requires that the State's annual regulatory management regime be in accord with the terms and provisions of the Pacific Salmon Treaty (PST), the Magnuson Act and other applicable law, and the objectives of the Council's Salmon FMP.

Customarily the Council annually reviews the provisions of the PST, including agreed annexes, and the State's proposed management regime. Based upon the review, the Council determines if the conditions of deferral to State regulatory management have been satisfied. In each case since the adoption of the Salmon FMP, the Council has found that the conditions have been met.

As in 1993, 1994 and 1995, the PST Commission has failed to date to successfully negotiate a new chinook annex to replace the old one which expired after the 1992 season. Without a 1996 PST chinook annex, no catch quota has been specified for the 1996 SEAK chinook fishery. Further, just as in 1993, 1994 and 1995, because there is not a PST chinook annex, a combined Endangered Species Act (ESA) Section 7 consultation has not been accomplished. The Council, therefore, will need to assure that



the management regime proposed by the State to fulfill the requirements of deferral under the provision of the Council's Salmon FMP continues to satisfy ESA requirements.

The Council should proceed with its annual review to determine whether or not the conditional deferral to the State should stand and, if not, what action (rule-making and/or plan amendments) the Council needs to take under the provisions of the salmon FMP to meet the requirements of the Magnuson Act and other applicable law, including the ESA. Normally, the State of Alaska and the Alaska Region National Marine Fisheries Service (NMFS) would present to the Council, at the April meeting, the proposed management plan for the 1996 SEAK chinook fishery, including a quota ceiling and implementing regulations, along with an explanation of how the proposed management regime will satisfy the requirements of the PST, the ESA, the Magnuson Act and other applicable law. If the Council found that the proposed management regime would, in fact, satisfy the Council's oversight obligations, the Council would memorialize that determination in a "Council Finding."

Unfortunately, the State/NMFS will not have the details of a proposed 1996 management regime or the associated biological assessment/biological opinion completed prior to the end of the April Council meeting.

Two primary issues are pertinent for 1996 that the Council needs to evaluate, which were not the subject of earlier findings approving deferral to the State. The first is whether or not the proposed harvest quota for the 1996, if taken under the regulations that governed the 1995 fishery (which the Council found to satisfy the objectives of the Salmon FMP, Magnuson Act and other applicable law in 1993, 1994 and 1995), satisfy the Federal obligation under the PST in the absence of a chinook annex. The second prominent issue is whether the proposed quota and management regime satisfy the requirements of the ESA.

In the absence of having a specific proposed management regime to evaluate at this time, I recommend that the Council, as they have for the past three years, delegate to the Regional Director, Alaska Region, NMFS, the authority to review the SEAK chinook management plan proposed by the State of Alaska and to make determinations as to whether the proposed plan satisfies the conditions of deferral under the Council Salmon FMP. If the proposed management plan meets the requirements, the Regional

Director will certify to the Council, in writing, prior to start of the fishery that the requirements have been satisfied. If the Regional Director cannot make such a certification, he will notify the Council and propose to the Council what emergency rule-making is required to satisfy the Federal obligation under the PST, the objectives of the Salmon FMP, the Magnuson Act and other applicable law.

Sincerely,



Steven Pennoyer
Director, Alaska Region