

M E M O R A N D U M

TO: Council Members, AP, and SSC

FROM: Jim H. Branson  
Executive Director

DATE: September 10, 1980

SUBJECT: Joint Venture Closure Criteria Workgroup Meeting

*ACTION REQUIRED*

*Review the criteria for closing areas to joint venture operations.*

BACKGROUND

The Joint Venture Criteria Workgroup met in Anchorage on August 28, 1980. The purpose of this meeting was to develop criteria to be used by the Regional Director in closing areas within the FCZ to foreign processing to protect shore-based U.S. processors.

Several main issues were raised during the discussions in the meeting. These issues are in the Meeting Summary, which is Agenda Item C-3(a). Bob McVey suggested five criteria for closing areas to joint venture operations. He was requested to draft a more detailed version of the proposal for further review. This is Agenda Item C-3(b). I have also included under Agenda Item C-3(c) materials which were passed out at the meeting. These materials include a brief history of Council consideration of joint venture closures.

With Council approval, I would like to send out the suggested criteria for joint venture closures to the industry for their review and comment.

MEETING SUMMARY: JOINT VENTURE CRITERIA WORKGROUP

August 28, 1980

The Joint Venture Criteria Workgroup met in Anchorage on August 28, 1980. Clem Tillion, Bob McVey, Rick Lauber, Don Rawlinson, Harold Lokken, Bart Eaton, John Harville, Bob Mace, Jeff Stephen, Jim Branson, and the Council staff attended. Background materials for the meeting included a memorandum from Jim Branson, detailing a brief history of Council consideration of joint venture closures.

The purpose of this meeting was to develop criteria to be used by the Regional Director in closing areas within the FCZ to foreign processing to protect shore-based U.S. processors. McVey indicated that NMFS was concerned about the Regional Director acquiring this authority and about the kind of information that should be brought to NMFS in making these closures. McVey concurred with Attachment B of Branson's memorandum which stated that "... the Regional Director, NMFS, Alaska Region, may, upon the recommendation of the Council, designate such areas within which foreign fishing vessels may not receive U.S. harvested fish." Branson explained that there would have to be a line of reasoning in order for the regulation to be accepted.

In the discussion that followed, several main issues were raised.

1. It is economic reality that a shore-based processor cannot process fish where there are none left. Joint venture operations have the ability to pulse-fish an area and deplete it of its resource. If the best scientific information available indicates that for a given area, resources are not sufficient to support vessels of both a joint venture operation and a domestic operation throughout the year, then preference should be given to U.S. processors who employ U.S. labor.
2. Because U.S. floating processors may also compete with shore-based processors, any criteria that are developed for foreign joint venture operations must also be applicable to the type of operation utilizing a floating U.S. processor.
3. It is conceivable that each situation that may arise will be so unique that no single set of criteria can be developed that will apply to all cases. Therefore, each case should be evaluated on its own merit and each processor with problems should bring them to the Council for evaluation.
4. Areas to be closed to joint venture processing should be small enough that good fishing is available elsewhere. A problem that arises is that stock condition data usually are not available for very small areas.

5. Areas must be small enough to show that processors have the capacity to process the harvested fish.
6. Domestic processors must be encouraged to remain active. The American fisherman benefits from the competition between foreign and domestic processors. The closed area must be small enough so that fishermen can sell either to the foreign processor or to the shore-based processor.

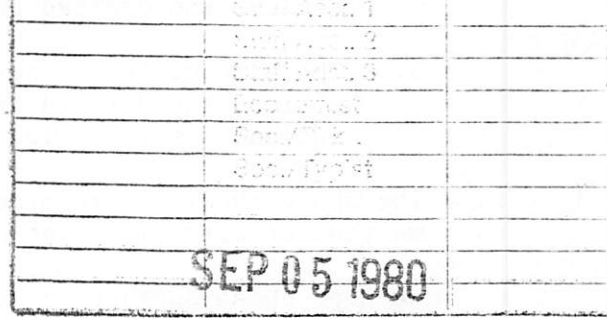
McVey proposed five criteria to close areas to foreign processors.

1. The initiator, a shore-based processor, would have to show credible evidence that his operation would be imperiled by JV activity.
2. There would have to be findings that DAP, and hence OY, would not be reached specifically due to JVP in the area.
3. There must be a conservation basis for the closure. In effect, both JV and domestic activity will cause depletion.
4. Areas should be no larger than that necessary to produce the product for the local area.
5. Terms and period of closure depend on many factors.

It was suggested that the proposal be put in writing for the industry's review. McVey was requested to draft a more detailed version of his proposal for further review.



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
Alaska Region  
Post Office Box 1668  
Juneau, Alaska 99802



September 2, 1980

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

Dear Jim:

At last Friday's meeting of our Joint Venture Closure Criteria Development Group (JVCCDG), I agreed to provide the list of five suggested criteria we came up with during staff discussions here. The drafting of the addition to the BS/A groundfish FMP makes clear that the authority for JV closures would only be exercised on the recommendation of the Council. This takes care of a major concern; namely, the difficulty we in the Region would encounter in obtaining adequate review and comment on closure proposals.

The concept of JV closures is still under consideration in our Washington office and in the Office of General Counsel. Accordingly, we do not yet have a definitive NMFS policy regarding the concept. Thus, although we are providing our suggestions for criteria, I must add the disclaimer that the approvability of the concept is not assured.

That said, here are the criteria we suggest:

1. The initiator, normally a firm having one or more on-shore processing plants potentially subject to impact by JV operations, should be required to develop a detailed, credible justification for the closure showing that the firm's operations would be hindered, disadvantaged or imperiled by JV operations. (Clear regulations regarding the content of the justification would be of great value in avoiding unwarranted closure proposals.)
2. The Council should make a determination that the impact of JV operations on the shoreside processor(s) would likely preclude attainment of DAP and thus in consequence would preclude attainment of OY.
3. The Council should assure that the proposal includes conservation as one of its grounds (recognizing the difficulty in rigorously proving such a case owing to the size of our statistical reporting areas).



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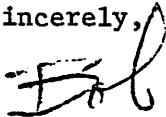
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4. The proposed closure area should be the minimal size necessary to achieve the desired protection of shoreside processing.
5. The time of the closure should be the minimal period necessary to achieve the desired protection and each recommended closure should include specification of its termination date.

The above should be regarded as descriptive only of the criteria concepts we thought were important and not as polished regulatory language.

We hope these suggestions are useful.

Sincerely,



Robert W. McVey  
Director, Alaska Region

# North Pacific Fishery Management Council

AGENDA C-3(c)  
September, 1980

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## MEMORANDUM

TO: Joint Venture Closure Criteria Development Group

FROM: Jim H. Branson  
Executive Director *Jim H. Branson*

DATE: August 20, 1980

SUBJECT: Meeting Materials for August 28, 1980

As a reminder, we will meet in the Council conference Room at 1:30 p.m. on Thursday, August 28th. We will attempt to develop criteria to be used by the Regional Director to close areas within the FCZ to foreign processing (receiving fish from American fishermen) to protect shore-based U.S. processors fishing for the same resources. The following is a brief history of this matter.

### BACKGROUND

In June 1979, the Council first explored ways to implement the Processor Preference Amendment by restricting JV operations. At the August meeting, the Council unanimously approved Amendment No. 7 to the Gulf of Alaska Groundfish FMP and specifically in Subpart 5, agreed to indicate in the plan that the Council may wish to consider the possibility of time/area closures to joint ventures to afford a U.S. corporation the opportunity to utilize the boats of an area for DAP.

A Secretarial amendment, approved on November 1, 1979, incorporated Amendment No. 7 but excluded the Council's policy statement on joint ventures. At the December-January meeting, the Council reconsidered the policy and was told by Mike Stanley that any time/area closures must not affect U.S. harvesters and that conservation and economic reasons must be considered when establishing such a closure. Guidelines are stated in National Standard No. 5. The SSC and PDT were requested to review the issues.

On January 17, 1980, I informed Leitzell that the Council wished to close areas around Akun and Akutan Islands to foreign processors receiving fish from U.S. trawlers because the additional fishing pressure in the local area might impact local stocks adversely, the joint-venture operation would interfere with Icicle Seafoods, and that the JV operations were highly mobile and could find good fishing elsewhere in the Bering Sea.

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August 20, 1980  
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In the February 22nd Federal Register, NMFS requested comments on the conservation basis for the proposed permit modifications, which among other things would impose closures on JV foreign processors operating within 12 miles of Akun and Akutan. NOAA concluded that the procedures specified in 611.3(i)(2) (Attachment A) of the foreign fishing regulations applied to this permit modification because foreign fishing includes operations in support of vessels of another nation. NOAA believed that the Council could allocate economic benefits between two groups of U.S. fishermen provided that (1) the measures are reasonably calculated to promote conservation and management; (2) the measures do not seriously adversely affect the U.S. fishermen involved; and (3) reasonable alternatives are available for the U.S. fishermen who may be adversely affected.

In March, Bert Larkins told the Council that the BS/AI Groundfish PDT could not establish a biological reason for the area closure around Akutan. Pat Travers said that although social and economic factors could be the primary reason for closures, resource reasons must also be present to establish a restriction under the law.

In April, the AP recommended a JV policy statement (Attachment B) be included in both groundfish plans. The Council moved to include the statement in the GoA groundfish amendments and also gave notice of its intent to include the statement in the BS/AI FMP as section 14.3.2.3(D).

The policy statement became Part XI of the 1981 amendment package for the GoA Groundfish FMP. At the May meeting, the SSC did not support this proposal because there were no data available to indicate that the allowance of joint ventures has adversely affected U.S. processing firms. At the AP's recommendation, the Council deferred Part XI so that criteria could be developed for JV closures in both the BS/AI and GoA.

The following is a summary of rationales that have been bandied about in the past year for and against imposing closures on JV:

FOR

1. Protect shore-based processors to allow them to fully develop.
2. Other vast areas are open to highly mobile JV.
3. Foreign processors operate on a significantly different cost basis.
4. Focusing JV and domestic fishing in a small area may affect local stocks adversely.

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AGAINST

1. Floating processors do not qualify as temporarily vulnerable or developing onshore processing facility.
2. Action must foster development, not adversely affect U.S. harvesters, and have conservation rationale.
3. Does not promote efficiency.
4. Restrictions on foreign fishing permits should relate to conservation and management (FCMA Sec. 204 a 7).
5. Not based on best scientific data available.
6. No rational basis.
7. Contrary to Standards 2, 4, 5.

CP

Distribution

Bob Alverson  
Don Bevan  
Jim Campbell  
Bart Eaton  
John Harville

Rick Lauber  
Harold Lokken  
Don Rawlinson  
Jeff Stephen  
Clem Tillion



(h) Permits issued under this section do not authorize vessels or persons to engage in the kill, capture, or harassment of marine mammals. The requirements, restrictions and prohibitions applicable to marine mammals and the application procedures for permits to take marine mammals incidental to fishing operations are contained in 50 CFR 216.24.

(i) Permits issued under paragraph (c) of this section may be modified by the Assistant Administrator as follows:

(1) Because compliance with this Part 611 of the regulations is a condition of all foreign fishing permits, such permits may be modified by amendment of these regulations. Any such modification which would adversely affect activities under a permit will be effective no sooner than ten days after publication of the final amended regulation in the Federal Register. Other changes in the regulations may be made effective immediately. Notice of potentially adverse modifications will be sent by the Assistant Administrator to:

(i) Each nation whose fishing vessels are affected (via the Secretary of State); and

(ii) The owner of each affected fishing vessel (via the agent).

(2) The Assistant Administrator may modify any permit for purposes of "conservation and management" (as defined in section 3(2) of the Act) of fishery resources covered by the permit. Except as provided in subparagraph (2)(vii) of this paragraph such modifications will be effected as follows:

(i) The Assistant Administrator shall notify the owner of the

PROCESSOR PREFERENCE POLICY

(( Council intent is to propose a joint venture policy as an amendment to the BS/A fishery management plan. ))

The following material is proposed to be added to the FMP for the Bering Sea/Aleutian area groundfish:

14.3.2.3 (D) \_ Joint Venture

The Council finds that one method of implementing provisions of the Processor Preference Amendment (P.L. 95-354) requires that ocean areas in the vicinity of U.S. processing facilities be designated as closed areas to joint venture processing operations.

The Fishery Management Plan therefore provides that the Regional Director, NMFS, Alaska Region, may, upon the recommendation of the Council, designate such areas within which foreign fishing vessels may not receive U.S. harvested fish.