



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

26 JAN 1979

F37/MZ

AP AGENDA ITEM 1 0 MAR 1979

Mr. Jim H. Branson
Executive Director
North Pacific Fishery Management Council
P. O. Box 336DT
Anchorage, Alaska 99510

Dear ~~Mr. Branson~~ *Jim*:

We are writing to you directly because of your expressed interest in regulations which would implement P.L. 95-354 (the "joint venture" amendment to the Fishery Conservation and Management Act of 1976).

A public hearing will be held by the National Marine Fisheries Service for the purpose of receiving comments on regulations to implement P.L. 95-354. The hearing will be on Wednesday, February 7, 1979, at 10:00 a.m., in the Director's Conference Room, Room 410, Page Building II, 3300 Whitehaven Street, Washington, D.C.

The public is invited to attend and present oral or written comments on the following issues:

A. Issues which have been addressed by the National Marine Fisheries Service in rulemaking (proposed regulations were in the Federal Register October 20, 1978; interim final regulations will be issued in late January 1979):

1. Whether U.S. processors should be required to report information such as price of, and markets for, fish.
2. Purposes for what such information should be used.
3. What protection should be given to confidential information which is reported.

B. Issues which the National Marine Fisheries Service is considering concerning rulemaking (an advance notice of proposed rulemaking will be issued in late January 1979):

1. Procedures and criteria for estimating U.S. harvesting capacity.



2. The definition of "processing" as the term is used in P.L. 95-354.

3. Procedures and criteria for establishing conditions and restrictions on permits for foreign fish processing vessels which receive U.S. harvested fish.

Written comments also may be submitted until April 1, 1979, to the Permits and Regulations Division, National Marine Fisheries Service, Washington, D.C. 20235. For further information contact Mr. Denton R. Moore, Acting Chief, Permits and Regulations Division at the above address or by telephone at (202) 634-7454.

Sincerely yours,



Denton R. Moore
Acting Chief
Permits and Regulations Division



AGENDA ITEM 10 MAR 1979

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

6 FEB 1979

Dear Reviewer:

I am enclosing a copy of interim regulations which implement Pub. L. 95-354, an amendment of the Fishery Conservation and Management Act of 1976. The interim regulations provide guidelines for development of fishery management plans which contain information related to availability of U.S. harvested fish for receipt by foreign processing vessels. I also am enclosing for your information a final notice of determinations of the consistency of 1978 foreign fishing permits for "joint ventures" with P.L. 95-354.

A public hearing is planned to consider issues related to the regulations. The hearing was scheduled on February 7, 1979, but later was postponed and rescheduled on March 13. You were notified this change by my telegram of February 2.

You are invited to comment on issues related to the enclosed regulations, either in writing or orally at the hearing on March 13. Written comments must be received by April 9.

Thank you for your interest in this matter.

Sincerely,

Denton R. Moore
Acting Chief,
Permits and Regulations

Enclosures



DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
FOREIGN FISHING "JOINT VENTURE" PERMIT APPLICATIONS

AGENCY: National Oceanic and Atmospheric Administration/National Marine Fisheries Service.

ACTION: Notice of determinations of consistency of 1978 foreign fishing vessel permits for "joint ventures" with the Fishery Conservation and Management Act of 1976, as amended by Public Law 95-354:

FOR FURTHER INFORMATION CONTACT:

Mr. Alfred J. Bilik
Permits and Regulations Division
National Marine Fisheries Service
Department of Commerce
Washington, D.C. 20235
(202) 634-7265

SUPPLEMENTARY INFORMATION

BACKGROUND: On June 9 and August 16, 1978, the National Marine Fisheries Service (NMFS) issued fishing permits which authorized foreign vessels to receive, from vessels of the United States in the fishery conservation zone, fish harvested by vessels of the United States ("joint ventures"). The permits complied with the then-existing requirements of the Fishery Conservation and Management Act of 1976, as amended (16 U.S.C. 1801, et seq.) ("the Act").

On August 28, 1978, Pub. L. 95-354 further amended the Act to provide a preference for U.S. fish processors to process U.S. harvested fish. Specifically, Pub. L. 95-354 provides that an application for a foreign vessel to receive at sea U.S. harvested fish from vessels of the U.S. may be approved unless it is determined that U.S. fish processors have adequate capacity, and will utilize such capacity, to process all U.S. harvested fish from the fishery. Pub. L. 95-354 further provides that the amount of U.S. harvested fish which may be received at sea during any year by foreign vessels may not exceed that portion of the optimum yield which will not be utilized by U.S. fish processors.

On October 20, 1978, NMFS published preliminary determinations of the consistency of the 1978 "joint venture" permits with the provisions of Pub. L. 95-354 and sought public comments

(43 FR 49032). To make these determinations, NMFS assessed: (1) the anticipated U.S. harvest in 1978 of Pacific hake off Washington, Oregon and California and of Alaska pollock in the Gulf of Alaska, and (2) the capacity, and utilization of such capacity, of U.S. fish processors to process in 1978 Pacific hake and Alaska pollock. NMFS found that U.S. fish processors would not process all U.S. harvested fish from these fisheries. NMFS then computed the maximum amounts of U.S. harvested Pacific hake and Alaska pollock which could be received at sea during 1978 by

foreign vessels as follows:

	<u>Pacific hake</u>	<u>Alaska pollock</u>
Optimum yield	130,000 m.t.	168,800 m.t.
To be utilized by U.S. fish processors	- 4,000	- 500 m.t.
Total receivable by foreign vessels	126,000 m.t.	168,300 m.t.

The amounts of U.S. harvested hake and pollock which could be received at sea by foreign vessels were limited by permit restrictions to 10,000 m.t. and 51,460 m.t., respectively. Thus, the NMFS preliminary determinations were that the 1978 "joint venture" permits were consistent with the Act as amended by Pub. L. 95-354.

COMMENTS AND RESPONSES: No comments received addressed the NMFS assessments of anticipated U.S. harvest or anticipated U.S. processing in the fisheries concerned, and no objections were made to the preliminary determination that approval of the "joint venture" permit applications was consistent with the Act as amended by Pub. L. 95-354. Objections were expressed, however, to the method used by NMFS in computing the maximum amounts of fish which could be received at sea by foreign vessels. Reviewers pointed out that the intent of Pub. L. 95-354 in this regard was to allow foreign receipts of U.S. harvested fish only to the extent that U.S. processors are not expected to process that U.S. harvested fish. Specifically, commenters urged that the language "may not exceed that portion of the optimum yield of the fishery concerned" in section 204(b)(6)(B)(ii) of the Act (as amended by

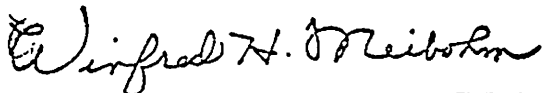
Pub. L. 95-354) refers to the portion of the optimum yield caught by U.S. vessels. After re-examining the legislative history of Pub. L. 95-354, NMFS agrees with that interpretation.

DETERMINATIONS OF CONSISTENCY: NMFS finds that the approvals of the "joint venture" applications were consistent with the Act, as amended by Pub. L. 95-354. However, the permit limitations on the amounts of fish which could be received at sea in 1978 were not consistent with Pub. L. 95-354. The limitations should have been computed as follows:

	<u>Pacific hake</u>	<u>Alaska pollock</u>
U.S. harvested portion of optimum yield	10,000 m.t.	32,700 m.t.
To be utilized by U.S. fish processors	<u>- 4,000 m.t.</u>	<u>- 500 m.t.</u>
Total receivable by foreign vessels	6,000 m.t.	32,200 m.t.

The 10,000 m.t. limitation on Pacific hake and the 51,460 m.t. limitation of Alaska pollock exceeded the revised computations. Because the actual receipts by foreign vessels of U.S. harvested Pacific hake and Alaska pollock during 1978 did not exceed 1,000 m.t. of either species, the inconsistency had no adverse effect on the conservation of the fish stocks.

Signed at Washington, D.C., this the 2nd day of February, 1979.



Winfred H. Meibohm
Acting Executive Director
National Marine Fisheries Service

Authority: 16 U.S.C. 1801 et seq.

DEPARTMENT OF COMMERCE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

[50 CFR Part 602]

Interim
~~Proposed~~ Guidelines for Development of Fishery Management Plans

AGENCY: National Oceanic and Atmospheric Administration/National Marine Fisheries Service.

ACTION: Interim final regulations; *Request for Comments*
~~Advance Notice of Proposed~~
~~Rulemaking~~; Notice of Public Hearing.

SUMMARY: The National Marine Fisheries Service (NMFS) is promulgating interim regulations which require fishery management plans (FMP's) developed under the Fishery Conservation and Management Act of 1976, as amended (FCMA), to contain information regarding: (1) historical and projected transfers of U.S. harvested fish to foreign fishing vessels at sea, (2) the processing capacity of U.S. fish processors, and (3) the data which FMP's may require U.S. fish processors to submit to the Secretary of Commerce. NMFS seeks public comment on three subjects related to these regulations: (1) guidelines for specifying U.S. harvesting capacity, (2) the activities which should be considered "processing" and (3) guidelines for conditioning or restricting permits of foreign fishing vessels receiving fish from U.S. harvesting vessels at sea. NMFS will hold a public hearing on the interim regulations and the related subjects which may be incorporated into future proposed rulemaking.

DATES: The interim regulations are effective February 7, 1979.

Written comments on the interim regulations and the subjects identified in this Notice must be received on or before April 9, 1979. A public hearing will be held on Tuesday, March 13, 1979, at 10:00 a.m.

ADDRESSES: Comments should be submitted in writing to: Assistant Administrator for Fisheries, National Marine Fisheries Service (F37), Washington, D.C. 20235.

Please mark "Joint Ventures" on the envelope.

The public hearing will be held at: Penthouse Conference Room, Page Building I, 2001 Wisconsin Avenue, N.W., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT:

Mr. Alfred J. Bilik
Program Support Specialist
National Marine Fisheries Service
Washington, D.C. 20235
(202) 634-7265

SUPPLEMENTARY INFORMATION:

Purpose

On October 20, 1978, regulations were proposed to amend 50 CFR Part 602, "Guidelines for the Development of Fishery Management Plans", (43 FR 49023). The purpose of these proposed regulations was to implement P.L. 95-354, which amended the FCMA.

Seven written comments on the proposed regulations were received prior to the close of the comment period. After reviewing the comments received, NMFS has decided to amend the proposed regulations, put them into effect on an interim basis, and seek additional public comment on certain issues.

Interim Final Regulations

Regulations to implement P.L. 95-354 must be in place before the Secretary can issue permits for foreign vessels to receive U.S. harvested fish during 1979. The interim regulations will allow the Secretary to weigh data on the 1979 U.S. fish processors' capacity and extent to which the processors will utilize U.S. harvested fish.

NMFS will apply the interim regulations in considering applications for foreign vessel permits to receive hake harvested by U.S. vessels in the Washington, Oregon, California trawl fishery and Alaska pollock harvested by U.S. vessels in the Gulf of Alaska groundfish fishery.

At this time, NMFS does not expect foreign permit applications in other fisheries.

Additional comments on the interim regulations will be received until April 9, 1979. A public hearing will be held on March 13, 1979; see the "DATES" and "ADDRESSES" sections of this Notice for time and place. Final regulations will be promulgated after the additional comments have been considered. Reviewers should note that the public hearing which had been scheduled earlier on February 7 has been postponed and is now scheduled on March 13.

Comments Received on Proposed Regulations

Several comments addressed the question of the burden imposed on the U.S. fish processing industry by reporting requirements under proposed §602.3(b)(14)(iii). The proposed requirements include the submission of the following information for each species: amounts of fish and locations at which fish are purchased, transported, and/or processed; limitations as to seasons, quantities or quality standards which apply to fish received and/or processed; and the disposition and prices paid for the fish received and/or processed.

Price and market reporting.

Particular exception was taken to revealing prices and domestic fish processors' markets. Some reviewers claimed that Congress specifically excluded prices offered by domestic processors from consideration when determinations are made of their capacity and intent to process U.S. harvested fish.

NMFS does not believe that consideration of these factors should be precluded when estimating the extent to which U.S. fish processors will receive and utilize U.S. harvested fish.

This important information should not be ignored. Instead, NMFS contends it should be considered as an element among several related factors. For example, price data alone might not be a definitive indicator of the intent of U.S. fish processors to create a reasonable market for U.S. fish harvesters. However, price can be a vital component in the decision by a U.S. harvester to sell his catch to either U.S. or foreign processors. In the interim regulations however, the requirement for reporting these data by U.S. fish processors has been left to the discretion of the Regional Councils, until additional oral or written comments are received.

Confidentiality. Some reviewers of the proposed regulations contended that submission of data on price or markets should not be required because regulations presently reserved under Part 603 are not yet final (see 43 FR 1162; January 9, 1978). Part 603 would explain how NMFS and the Regional Fishery Management Councils will preserve the confidentiality of such information. Reviewers believe that U.S. fish processors may suffer economic damage if such information is not held confidential. Some reviewers also believe conflicts of interest will arise if unaggregated data are available to Regional Councils. NMFS's practice is that any such data required by an FMP are kept confidential under section 303(d) of the FCMA.

ADDITIONAL COMMENT INVITED ON PROCESOR REPORTING REQUIREMENTS

After the close of the comment period on these interim regulations NMFS will issue final regulations specifying the minimum data which U.S. fish processors will be required to submit. NMFS invites comments on the following issues:

1. Information which U.S. fish processors should be required to report;
2. Circumstances in which such data should be considered; and
3. Whether Regional Councils should be given access to price, market and other data reported by U.S. fish processors in unaggregated form.

Other Comments.

Comment 1. NOAA should consider international trade barriers when decisions are made on foreign permit applications to receive U.S. harvested fish.

Response. The President, on signing P.L. 95-354 into law, noted that the provision in predecessor bills requiring consideration of this factor had been removed, and that denying permits to processors from countries with import barriers to U.S. fish and fish products "...would have conflicted directly with our trade policies."

Comment 2. Several reviewers proposed that Councils perform assessments of U.S. processing and harvesting capacity and utilization more frequently. One reviewer stated that the regulations should require that the Federal government remain neutral and that the Regional Councils reduce the optimum yield of a fishery when price or other disputes between U.S. harvesters and processors cause all or a portion of the estimated U.S. harvested to remain unharvested. When the dispute is resolved, the Regional Council should increase optimum yield to its former level.

Response. NMFS believes that an adequate mechanism to consider these matters exists under section 602.5(d)(2) which now encourages more frequent Council assessments of estimates where appropriate, of the U.S. harvesting and processing capacities and the extent to which the fishery resources will be utilized throughout the year.

Comment 3. NMFS should give careful consideration to implementing the discretionary provisions of Section 303(b) of the FCMA related to fishing time, ocean area and season, and type and quantity of fishing gear to ensure that fishery management plans provide the maximum opportunities for development of the entire U.S. fishing industry.

Response - NMFS is not prepared at this time to address fully questions involving consistency with National Standards (4) and (5) (section 301(a)(4),(5) of the FCMA). This matter will be considered in the context of item 3 of the advance notice of proposed rulemaking.

Comment 4. The proposed regulations should identify species which traditionally have been fully utilized by U.S. fish processors as unavailable for transfer to foreign vessels.

Response. We do not expect applications from foreign nations to receive U.S. harvested fish in fisheries which historically have been utilized fully by U.S. fish processors.

Comment 5. Certain changes should be made in the proposed regulations to include the U.S. fish processing industry or the entire fishing industry in favorable considerations under Part 602.

Response. Changes to reflect industry-wide considerations have been made in the interim regulations.

Advance Notice of Proposed Rulemaking

NMFS invites public comment on the following subjects.

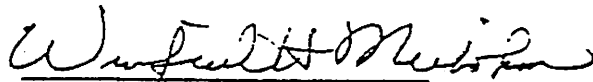
1. Guidelines for establishing U.S. harvesting capacity;

2. Activities which should be considered "fish processing" ;
and
3. Guidelines for developing conditions and restrictions on
foreign fishing permits for receiving U.S. harvested fish.

These matters are not addressed in the interim regulations. However, they may be considered before promulgation of final regulations. NMFS seeks public comment, either in writing or at the public hearing announced in this Notice, before deciding whether to issue rules governing Regional Councils and NMFS on matters relating to these three issues.

The Assistant Administrator for Fisheries has determined under Department Administrative Order (DAO)281-7 that the interim regulations are not significant. This determination will be reviewed prior to promulgation of final regulations.

Signed in Washington, D.C. this 2nd day of February.



Winfred A. Meibohm
Acting Executive Director
National Marine Fisheries

Authority: 16 U.S.C. 1801 et seq.

§602.2 [Amended]

1. Amend 50 CFR §602.2(b)(5) by deleting the second sentence and substituting as follows:

* * * * *

(b)***

(5)***In determining whether U.S. fishermen will not harvest an optimum yield, the Councils are to consider the capacity and extent to which fishing vessels of the United States will harvest such optimum yield, including U.S. harvested fish which will be received at sea by foreign vessels.***

2. Amend §602.2(b)(5) by adding a fourth sentence as follows:

* * * * *

(b)***

(5)***Fishery management plans and amendments to such plans shall estimate the amount of fish expected to be harvested by U.S. vessels and received at sea by foreign vessels.

§602.3 [Amended]

3. Amend §602.3(b)(8)(ii) by adding the following new subparagraph (I):

* * * * *

(b)***

(8)***

(ii)***

(I) Assessment and specification of the portion of the optimum yield which U.S. harvesters propose to deliver to foreign vessels.

4. Amend §602.3(b)(8)(iv) by inserting "(A)" after "the fishery". and by adding a new subparagraph (3) as follows:

* * * * *

(b)***

(8)***

(iv)***

(B) Describe and quantify the amount or tonnage of any transfers at sea, or proposed transfers, of the stock(s) comprising the management unit from U.S. harvesters to foreign vessels."

5. Amend §602.3(b)(8) by adding the following new subparagraph (v):

* * * * *

(b)***

(8)***

(v) Domestic processing capacity. Assess and specify the capacity and extent to which U.S. fish processors, on an annual basis, will process the stock(s) comprising the management unit. In assessing the extent to which U.S. fish processors will process the stock(s), the following factors, as appropriate, shall be considered:

(A) Any contracts or other agreements for the purchase of U.S. harvested fish by U.S. fish processors;

(B) The ability, and intent to utilize that ability, of U.S. processors to process a particular species;

(C) Considerations such as geographical proximity of harvest areas to the facilities of U.S. fish processors, especially in relation to the refrigeration/freezing capability of potential U.S. fish harvesting vessels;

(D) Recent history of the extent to which U.S. fish processors have processed particular species;

(E) Availability and capacity of the labor force, processing machinery, freezers and cold storage facilities of U.S. fish processors and their intent and plans to increase availability or capacity in order to process a particular species;

(F) Seasonal schedules of the U.S. fish processors; and

(G) Availability of U.S. harvesting vessels to supply the stock(s) comprising the management unit taking into consideration such things as capability of vessels to fish the species in the fishery, seasonal schedules, and relative availabilities and prices of alternative fisheries.

* * * * *

6. Delete §602.3(b)(9)(ii) and substitute the following:

* * * * *

(b)***

(9)***

(ii) Domestic processing sector. Describe the wholesale products and their values. Specify the degree of dependence of the processing sector upon products from the fishery.

7. Amend §602.3(b)(9)(iii) by redesignating subparagraph (iii) as (iv) and inserting a new subparagraph (iii):

* * * * *

(b)***

(9)***

(iii) Other sectors of the U.S. fishing industry. Describe the dependence of other sectors of the U.S. fishing industry on the fishery. Include the dependence of labor, suppliers and provisioners, as well as fishing communities.

* * * * *

8. Amend §602.3(b)(13)(viii) by deleting "U.S. fishermen" and inserting "the U.S. fishing industry."

9. Amend the heading for §602.3(b)(14)(ii) to read "(ii) Domestic and foreign harvesters".

10. Amend §602.3(b)(14)(ii) by adding "numbers or weight of fish received at sea by foreign vessels from U.S. harvesting vessels." after "number of hauls"

11. Delete §602.3(b)(14)(iii), and substitute the following:

* * * * *

(b)***

(14)***

(iii) Processors. The plan shall specify the data that shall be submitted by fish buyers, processors, etc., who purchase, transport, and process the catch of the stock(s). The data specified may include, but are not limited to:

(A) The amount or tonnage of fish purchased, transported, and/or processed, by species.

(B) Locations at which fish are received and/or processed, by species.

(C) Limitations as to seasons, quantities, or quality standards of fish which apply to fish received and/or processed, by species.

(D) Disposition of the fish received or processed, by species.

(E) Prices paid for fish received, by species.

(F) The amount or tonnage which the processor expects to purchase, transport, and/or process, by species, by year.

§602.4 [Amended]

12. Amend §602.4(b)(8) to add the following heading:

* * * * *

(b)***

(8)***

(v) Domestic processing capacity.

13. Amend §602.4(b)(14)(ii) to read:

"Domestic and Foreign Harvesters"

§602.5 [Amended]

14. Amend §602.5(d)(1) to read:

* * * * *

(d)***

(1) Council review. The Act directs each Council to review on a continuing basis, and revise as appropriate, the assessments and specifications made regarding the optimum yield from, the capacity and extent to which U.S. fish processors will process U.S. harvested fish from, and the total allowable level of foreign fishing in, each fishery within its geographical area of authority.

15. Amend §602.5(d)(2), second sentence, to read:

* * * * *

(d)***

(2)*** At least once each year, and more often where appropriate, each Council must assess the accuracy of the estimates of MSY and optimum yield, the capacity and extent to which U.S. fish processors will process U.S. harvested fish, and the total allowable level of foreign fishing for each plan implemented regardless of whether the plan is prepared by a Council or by the Secretary.***