


Agenda Item F-1
August, 1979

MEMORANDUM

DATE: September 26, 1979

TO: Council Members, Scientific & Statistical Committee
and Advisory Panel

FROM: Jim H. Branson, Executive Director 

SUBJECT: Testimony for the FCMA Oversight Hearings on October 11
and 12, 1979

ACTION REQUIRED

*Council review, revision and approval of testimony developed
by the Council working group.*

BACKGROUND INFORMATION

The House Subcommittee on Fisheries and Wildlife Conservation and The Environment, chaired by Congressmen Breaux and Forysthe will hold its last Oversight Hearings on the FCMA on October 11th and 12th in Washington, D.C. At the last Council meeting the Council established a working group to develop testimony for those Oversight Hearings.

The recommendations of that working group are in the attachment preceded by the pertinent sections of the last letter from the Subcommittee.

Attachment

North Pacific Fishery Management Council

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

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



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

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

MEMORANDUM

DATE: September 14, 1979

TO: Council Members, Scientific & Statistical Committee and
Advisory Panel

FROM: Jim H. Branson, Executive Director

SUBJECT: Report of the September 11th Meeting of the Working Group to
Develop Council Testimony for the October Congressional Oversight
Hearings

The Working Group, chaired by Harold Lokken and composed of Ray Lewis, Joe Kurtz, Guy Thornburgh and Jim Branson met in the Council conference room on September 11th to develop responses to the questions asked in the letter from Congressmen Breaux and Forsythe of August 13th, 1979. These responses, if approved by the Council at the October 4th and 5th meeting, and with whatever additions and changes that are made at that meeting, will form the testimony for Chairman Tillion at the Oversight Hearings on October 11th and 12th in Washington, D.C.

- 1. Are the Regional Councils identifying research needs sufficiently in advance so that the information can be developed prior to the time necessary for the preparation of a management plan?*

Development of a fishery management plan is frequently the best method of identifying needed research. Once the initial plan is in place, using all of the available data, priorities can then be established with comparative ease for further research to refine the FMP. In some instances it has been obvious that some basic data would have to be developed before the first version of the FMP could be completed. An example is; the social and economic studies on subsistence and the biological and resource assessment work on the Bering Sea herring populations prior to the development of the first Herring FMP. A similar situation existed for the Bering Sea clam resource where a considerable research effort has been made by the Council, NMFS, ADF&G and industry prior to the development of the first draft of the FMP.

In other plans, such as the Salmon FMP, initial development was done with available data but research needs were identified and initiated at the start of plan development for use in later amendments. Further research needs were identified after the plan was adopted and programs developed to accomplish that research for even later versions of the FMP.

Since the North Pacific Council's FMP's are developed by people from several participating groups, including NMFS, ADF&G and universities, some research needs are identified during plan development by participants, who then recommended research projects to the Council or to their own agency to satisfy those needs.

Generally speaking, research needs have been identified far enough in advance so that short term research results can be incorporated in initial plan drafts. The results of longer term research projects are planned for incorporation into later revisions of the FMP.

2. *To what extent is the National Marine Fisheries Service (NMFS) responsive to the Council's research requests?*

The Northwest & Alaska Fisheries Center and the Alaska Region, the primary NMFS arms working with the North Pacific Council, have been very responsive to the Council's research requests, both in planning long term research and, where possible, in shifting emphasis or programs for short term research. While NMFS has been very cooperative in restructuring their research programs to aid in developing FMP's, they have been unable to increase their overall efforts because of the personnel ceilings imposed by the President. Funding has been adequate but the inability to increase or even sustain personnel ceilings has imposed severe limitations on the amount of work that can be done.

3. *Should the Regional Councils be given a separate research budget with which to undertake research on a contract or grant basis?*

The Regional Councils do need a separate budget for short term research. The North Pacific Council does not believe they should be in the research business even on a short term basis if any other agency can be found to do it. They have established a policy for Council funding of research projects as follows:

1. Research shall be short term. If a program is to last more than two years Council funding should be considered only as start-up money, the program must be assumed by NMFS or some other fulltime research agency after 2 years of Council funding.
2. Research shall be aimed directly at a developing or completed fishery management plan to fill data needs that cannot wait on the normal agency funding and planning cycle.
3. No other funding can be found to accomplish the needed research.

Council research money is short term and used only when a short response time is needed and cannot be accomplished under normal agency funding requirements.

4. *Does the NOAA fleet need to be expanded in order to conduct, in a timely manner, the research which needs to be done to implement the Act?*

More ship time is needed but we believe that a balance between NOAA fleet ships and chartered ships should be maintained. NOAA vessels dedicated to fisheries research should be run by professionals in the fisheries field, rather than line NOAA uniform corp officers. In addition to dedicated NOAA fishery ships there should be enough funding to charter professional fishermen and fishing boats for an equal amount of time.

Currently there are three NOAA ships dedicated to fisheries research in the North Pacific. The JOHN N. COBB, the MILLER FREEMAN, and the OREGON. Those ships, with an equal amount of charter vessel time, are capable of doing a reasonable job at this time. In any case, personnel ceilings for scientists to accompany research and resource survey vessels now block any increase in effort.

There is a need for long term charters to aid in outfitting and improve standardization of effort from year to year. Long term charters would allow some special equipment on charter ships that is not possible with an annually renegotiated contract.

In summary, there is a need for more ship time in the North Pacific but it is contingent on the availability of scientists to accompany those research ships. They are not now available because of personnel ceilings. Any increase that is made should be a balance of NOAA fleet units and charter vessels. If only a nominal increase is possible, it would be most cost effective if used for charter vessels.

5. *Is the currently available data on the nature and extent of the recreational harvest sufficient for the preparation of fishery management plans? If not, is the problem the result of inadequate funds and manpower to conduct the required research or is it necessary to institute a no-fee marine fisheries license for data collection and purposes?*

The available data on the recreational fishery in Alaska is more than adequate for the preparation of fishery management plans. The State of Alaska has a good survey and reporting system for the recreational fishery and marine fishing licenses have been required for several years.

6. *Are the logbooks a necessary or appropriate means of collecting data?*

A well designed and practical (for the fisherman) logbook with adequate guarantees of confidentiality, supported by interviews with fishermen, is valuable in some fisheries. We have found in the North Pacific that voluntary logbooks work as well or better than a mandatory system. Logbooks should be developed as needed for specific fisheries using a voluntary system and supported by fishermen interviews and other existing means of data collection.

7. *Due to the lack of adequate biological and other data is maximum sustainable yield being substituted for optimum yield in the management of U.S. fisheries?*

Lack of adequate social, economic or biological data may equate OY with MSY for some species and fisheries. The North Pacific Council has found that there is generally adequate biological data available to make deviations from MSY to OY if necessary for the health of the resource. We expect that further adjustments in the derivation of OY will be made as more information is developed in all categories.

8. *In the preparation and implementation of management plans what problems, if any, are caused by the fact that many species are found and harvested within both the three mile zone and the 197 mile Fishery Conservation Zone thereby subjecting such species to two or more different management programs? If effective management of these fisheries is inhibited because of the fisheries multi-jurisdictional nature, what action should be taken to resolve this problem?*

To date, multi-jurisdictional problems have been insignificant in Alaska and have generally been because of the newness of the administrative procedure under the FCMA. As long as the Council continues to develop the management regimes in conjunction with the State of Alaska and the Council's function is not usurped by Commerce we do not expect any insurmountable problems. Close coordination with the State management system is obviously the key to satisfactory resolution of multi-jurisdictional problems.

9. *Why has it taken the Regional Councils so long to prepare certain fishery management plans? Why is the Secretary unable to complete the review of plans within the 60-day statutory time period?*

We do not believe that the North Pacific Council has taken an excessive amount of time to prepare fishery management plans. Priorities and schedules were established for 12 FMP's soon after the Council was formed and work has proceeded since then with periodic re-assessment of priorities. Some delays have occurred because of delays in the review and implementation procedure within the Department of Commerce and some because of data gaps or re-adjustment of priorities. The North Pacific Council now has three plans implemented; one under review by the Secretary and expected to be implemented on January 1st, 1980; one plan undergoing public review prior to Council approval; another almost complete that the Council

will consider in December for release for public comment; three plans well along in the drafting stage and three more that have been given a low priority for future development. We are finding these are not only complex documents to initiate and implement but that they require constant updating and amending as conditions change and more information becomes available.

Delays in the Secretarial review period beyond the statutory 60 days provided in the FCMA appear to be mostly due to excessive attention to the operational details of the FMP's by the NMFS Central Office. The North Pacific Council continues to believe that most of the FMP review should be done in the Regional Offices and that Central Office review should be confined to insuring conformity with the National Standards as provided in the Act and other applicable Federal law.

10. *Should the National Environmental Policy Act continue to be applicable to fishery management plans?*

When taken in conjunction with the other requirements imposed on the development of fishery management plans, such as the Federal Advisory Committee Act, Executive Order 12044, and the Administrative Procedures Act, the National Environmental Policy Act does not delay plan development or implementation inordinately. It does create some delays because of additional reviews within the Department of Commerce of the Environmental Impact Statement (as separate from the FMP) and does create a fair amount of additional work for both the Councils and the agencies involved. Generally speaking, the most restrictive requirements for NEPA have been imposed by the Department of Commerce rather than the Environmental Protection Agency. If the requirements of NEPA are carried to minor amendments and changes in management regimes it could be a serious impediment.

11. *Should Executive Order 12044 continue to be applicable to the preparation of fishery management plans?*

We do not believe Executive Order 12044 is necessary for fishery management plans. An analysis of the effects of the management measures proposed by the plan should be included in every FMP but it does not need be a separate, redundant, time consuming process as now imposed by EO12044. The Department of Commerce now requires a work plan from the Council for each plan proposed, with the work plan subject to approval by the Secretary before an FMP can be started. That requirement seems unnecessary and contrary to the FCMA which mandates the development of fishery management plans by the Council for every fishery. EO12044 does increase the time required for developing and approving management plans and creates a great deal of additional, largely unnecessary work.

12. *Should the Secretary of Commerce have emergency authority exerised only upon the request of the appropriate Regional Council to promulgate a fishery management plan applicable to U.S. fishermen?*

We believe that the Secretary should have that emergency authority, but only at the request of the Council and, insofar as possible, following the recommendation of the Council for the management measures in such an emergency plan. The time requirements demanded by on-going fisheries will make Secretarial emergency action necessary occasionally.

13. *Should the Secretary's current authority to amend existing management plans by emergency regulations be limited to those situations in which new biological data indicates the need for emergency action? Or are economic and social dislocations caused by the plan a sufficient basis for emergency action?*

We believe that the Secretary should have the authority to amend a management plan by emergency regulation for economic and social reasons as well as biological emergencies. Again, we do not believe the Secretary should have that authority except upon the specific request of the Council. We do not expect that economic and social dislocations will necessarily be caused by an FMP, however, but rather by changing situations in the fishery or because of new information that was not initially available. Several instances have occurred in the North Pacific since FMP's were implemented where better catch reporting data has forced the closure of foreign fisheries, not because of resource emergencies, but because the previous catch data used to develop OY's proved to be inaccurate. The new data demonstrated that the resource would not be damaged by increasing OY's for some species to allow continued foreign fishing, but the plan amendment process is so lengthy and cumbersome that the fishery remains closed for a good portion of the fishing year because of administrative procedures. There was no biological emergency, but there was definitely an economic and social emergency.

14. *Will the proposed framework fishery management effectively shorten the time required for the preparation of management plans? Will the framework FMP process significantly reduce the Council's role in the management of U.S. fisheries?*

- a) We do not think that the framework concept for FMP's will speed up the preparation of plans, but we do think it will speed up the management and adjustment process after a plan is in place.
- b) If the framework plan is not very carefully developed, it could easily reduce the Council role in fishery management. Rather than using specific numbers in the plan for optimum yield, domestic annual harvest etc., a formula concept can be developed that will allow periodic reassessments of resources and catches without going through the lengthy amendment process.

Management measures, such as gear restrictions, size or sex limitations, closed areas, etc., would all have to be part of the basic FMP however, or the Councils would abrogate any substantive role in management.

It appears that the "framework" concept is really a multi-year FMP, rather than a bare-bones plan giving the Secretary wide authority to implement management measures and changes in management.

15. *Should foreign permit and/or observer fees collected under the Act be placed in a special fund to be used for the implementation of the Act?*

The observer program has suffered greatly because of the lack of appropriations within NMFS. Further cuts in the program, which has never been adequate, are scheduled for 1980. The Council believes that observer costs reimbursed by other nations should be placed in a special fund to be used solely for the observer program.

The Council does not believe that permit fees should be placed in a special fund to be used for implementation of the Act. It is the Council's hope that those revenues will dwindle rapidly as U.S. fishermen replace the foreigners in the CFZ. Elimination of the foreign fishery will not eliminate the need for funding but would eliminate that revenue. We believe it wise to continue appropriated funding for implementation of the Act rather than depend, even in part, on revenues derived from the foreign fishery. On the other hand, the observer program, once the foreign fishery is displaced, will no longer be needed. Until that time the funding from reimbursed costs would always be equal to the need.

16. *Should the U.S. require 100% observer coverage on foreign fishing vessels operating within the U.S. Fishery Conservation Zone?*

The North Pacific Council does not feel that 100% observer coverage is necessary or practical off Alaska. Twenty percent coverage is considered adequate but minimal. The number of observers per fleet per nation per area should be left to the discretion of Councils and NMFS since the percentage of coverage required will vary by fishery and nation.

17. *Are the penalties which are levied against U.S. and foreign fishermen for violations of the Act commensurate with the offense or are the penalties so small as to constitute no deterrent to violations?*

Monetary fines in the Alaskan area have been satisfactory. The North Pacific Council feels that permit sanctions are the most effective penalty but in order to be a true deterrent they must be imposed rapidly and for an extended period.

18. *Why does it take so long to process alleged violations into assessed penalties?*

It is difficult for the Council to respond to this question. We feel that it is an internal Department of Commerce problem that may hinge, at least in part, on an excessive number of reviews of each action within that Department.

19. *What enforcement problems are created by the fact that many fisheries are found and harvested within both the three mile Territorial Sea and the 197 mile Fishery Conservation Zone?*

In the North Pacific Council's area no particular problem has been created by fisheries that move back and forth between the Territorial Sea and the Fishery Conservation Zone. Insofar as has been possible, State and Federal regulations have been the same for a given fishery. That coordination, combined with an enforcement agreement between the State of Alaska, National Marine Fisheries Service and the

United States Coast Guard, and a general attitude of cooperation between those three agencies and their enforcement functions has forestalled enforcement problems so far.

20. *Should the level of Coast Guard enforcement efforts be increased? In what specific areas?*

The Coast Guard off Alaska has been very active and effective. The level of patrol seems to be adequate and combined with a much better observer program to improve catch reporting should continue to be satisfactory.

There is a need for more Federal near-shore enforcement work, primarily with the U.S. fishing fleets, as Federal regulations continue to be implemented to support FMP's. That need can probably best be supplied by a reasonable amount of NMFS floating equipment and a slight increase in their enforcement personnel.



DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

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Address reply to:
COMMANDER
Seventeenth Coast Guard District
P.O. Box 3-5000
Juneau, Alaska 99802
907-586-7347

16214

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

Dear Jim:

Thank you for the opportunity to comment on the report of the Congressional Oversight Committee Workgroup. Since I will be unable to attend the October Council meeting, I felt that I should write this letter to convey my views. I agree with and fully support most of the proposed responses to the questions posed by Congressmen Breaux and Forsythe. I would suggest, however, in your response to item 17 that the effectiveness of the enforcement tool of seizure of the fishing vessel and suit for civil forfeiture be emphasized. The nine seizures accomplished in waters off Alaska since the implementation of the FCMA in 1977 and especially the seven seizures during this calendar year have certainly had some deterrent effect on the foreign fishing fleets. Despite the fact that several of these cases are tied up in protracted litigation, the fact that the vessel was pulled off the fishing grounds for a considerable period of time and still faces possible forfeiture must have had a substantial deterrent effect on the fleet. I agree that a rapid permit revocation mechanism would be an extremely effective enforcement tool, especially in cases where a report of violation has been issued and the civil penalty assessment process has been set in motion. Seizure of the vessel, however, still seems to be the most effective deterrent for serious violations.

I would also like to take this opportunity to disagree with a statement made in your proposed response to item 20. I don't believe that the formation of a National Marine Fisheries Service fleet is necessary to adequately perform near-shore enforcement work, primarily with the U.S. fishing fleets. I feel this would create an unnecessary duplication of federal resources in the area. An increase in Coast Guard resources would be more cost-effective to the Federal Government since they would operate under the Coast Guard's multi-mission concept of operations and could be used for general law enforcement and search and rescue in addition to fisheries law enforcement. I feel that the NOAA/NMFS fleet alluded to in item 4 should be devoted exclusively to fisheries research. The Coast Guard should provide all of the vessels to perform the FCMA enforcement mission. The Coast Guard presently has adequate resources to perform near-shore enforcement. This fact is illustrated by the recent salmon power troll closure which the Coast Guard was able to adequately patrol with helicopters from Coast Guard Air Station Sitka

OCT 1- 1978

Mr. Jim Branson

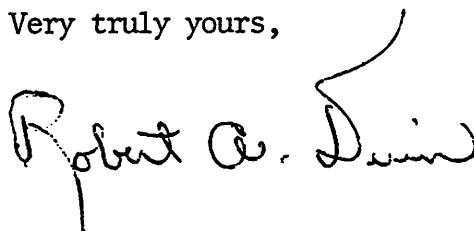
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and a 95-foot patrol boat docked in Sitka. As the need for increased near-shore surveillance of the U.S. fishing fleet increases, the Coast Guard will be ready and able to devote more resources to this aspect of FCMA enforcement. We have already considered the probable need for additional enforcement effort in the near-shore area in our long-term planning process.

Thank you again for this opportunity to comment and I look forward to seeing you again at the November/December Council meeting in Anchorage.

Very truly yours,



ROBERT A. DEWITT
REAR ADMIRAL, U.S. COAST GUARD
COMMANDER, SEVENTH COAST GUARD DISTRICT