


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke   
Executive Director

DATE: April 15, 1993

SUBJECT: Reauthorization Issues

**ACTION REQUIRED**

Review Magnuson Act, Marine Mammal Protection Act, and Endangered Species Act reauthorization issues.

**BACKGROUND**

This is a major year for reauthorization of the above three Acts, but I am having a difficult time finding the focus on the actual changes that might be made. As I reported in January, no one was sure whether reauthorization of the Magnuson Act would go quickly or turn into an extended process. With the nation's attention on deficit reduction, Clinton's economic plan, tax legislation, health care reform, base closures, etc, it looks now like reauthorization will take some time.

Several meetings and conferences have been held on Magnuson Act issues. National Fisheries Institute held a fisheries policy conference in Washington, D.C. on February 23-24. I attended as did several representatives of Pacific Northwest and Alaska fisheries interests. A summary of discussions provided by NFI is under item C-5(a). The groups at the NFI conference mainly represented a cross section of the fishing and processing industry.

On March 3, I testified on behalf of the Council at a hearing before the new House Subcommittee on Fisheries Management, chaired by Congressman Manton of New York. All Councils were represented at that hearing. Their testimony, which I have summarized in item C-5(b), reflects the various stages each Council is at in developing recommended changes to the Act. Our Council has as yet not really identified specific issues to carry forward, so my testimony, attached to the summary, essentially reviews our accomplishments. We also received NMFS' nine primary proposals for changes to the Act (item C-5(c)). Those were identified by the old administration and could change as new leadership gets established.

On March 8-10, Chairman Lauber, Vice-Chairman Alverson, and I attended a national symposium on the Magnuson Act sponsored by the National Coalition for Marine Conservation, NMFS, U.S. Fish and Wildlife Service, and the International Game Fish Association. As you can tell from the sponsorships, this conference had more of the environmental perspective on how to improve fisheries management. I have reviewed some of the suggestions in item C-5(d).

Attention to the Magnuson Act, marine mammals, and the Endangered Species Act, will continue with the following hearings and meetings:

- April 20 House Subcommittee on Environment and Natural Resources hearing on fisheries and marine mammals. Washington, D.C.
- April 21 House Subcommittee on Fisheries Management hearing. Washington, D.C. A mix of industry, environmental, and sports representatives will be invited.
- May 16-18 Council Chairmen's meeting in San Francisco.
- May 26 House Subcommittee on Fisheries Management hearing in D.C. Tentative date.
- May 27 House Subcommittee on Environment and Natural Resources hearing on Endangered Species Act in D.C. Tentative date.
- June 8 Debate on Magnuson Act sponsored by Center for Marine Conservation, NFI, and United Sports Fishermen. D.C. All Council Chairmen have been invited.
- August 9 Field hearings on Magnuson Act in Anchorage, Alaska. This is very tentative. August 9 may not be the exact date. Could be any time that week.

I do not have much information for you on marine mammal or endangered species legislation. There are several hearings planned as noted above, and I understand that representatives of environmental and fishing industry interests have been meeting to seek common ground as far as reauthorization. I will report later to you as the issues and dialog mature.

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**1993 Fishery Policy Conference  
Summary Of Discussions**

**MAGNUSON ACT REAUTHORIZATION**

**1. The Basic Structure Of The Magnuson Act Is Sound.**

No participant supported any fundamental change to the Magnuson Act. While significant problems with fishery management were noted, participants said these problems could be dealt with through administrative actions. Participants said that the fundamental structure of the Act was sound and should not be changed.

**2. Present Requirements To Conserve Fish Stocks Are Adequate.**

The Magnuson Act recognizes that the regulatory measures needed to rebuild overfished fisheries and conserve stocks vary significantly for each fishery. Except as noted in the later sections regarding fishery bycatch, participants said that those provisions regarding conservation and overfishing in the Magnuson Act should not be amended.

Many participants said that they opposed these amendments: (1) mandating risk-averse decisions; (2) separating conservation and allocation decisions; (3) defining overfishing; (4) limiting allowable catch through statutory equations; and (5) setting specific rebuilding schedules. No participant spoke in favor of these proposals.

**3. The Research Program To Reduce FinFish Bycatch In The Shrimp Fishery Should Be Extended.**

Several participants said that the present three-year program to reduce finfish bycatch in the shrimp fisheries of the Gulf of Mexico and South Atlantic by 50% should be extended one or two years. NMFS delayed initiating the research needed. Participants stated that further bycatch regulation should be delayed until this research is completed. No one spoke in opposition to this proposal.

**4. Some Participants Support General Bycatch Amendments.**

The need to reduce bycatch in some fisheries is recognized. The participants differ, however, on whether or not the Act should be amended.

Some of those attending believe that the Act adequately addresses bycatch concerns and should not be amended. An equal number said they would support an amendment generally aimed at encouraging the reduction of waste in fisheries to the extent practical. Some of those supporting an amendment favor amending the Act consistent with the UN Conference on Environment and Development declaration to "promote the development and use of selective fishing gear and practices that minimize waste of catch

of target species and minimize by-catch of non-target species."

**5. Habitat Conservation Should Be Strengthened.**

Many participants said that fishery management councils should be required to identify the habitat in fishery management plans which is critical for the continued production of optimum yield and that federal and state agencies should be required to consult with the councils concerning any proposed action that would adversely impact designated critical habitat before they take such action, if consultation is requested by the council.

Some participants also support amending the Act to prohibit state and federal agencies from taking actions which in the opinion of the NMFS would adversely impact designated critical fishery habitat.

**6. The Secretary Should Not Have Limited-Entry Authority.**

Many participants said that the Secretary of Commerce should not be authorized to adopt limited entry programs without the prior approval of the councils.

**7. Many Support A Three-Year Moratorium On Implementing New Individual Fishing Quota Plans.**

Many participants expressed concern that councils and the NMFS were implementing individual fishing quota programs without adequate study and understanding of the impact of such programs. They support an amendment to impose a three-year moratorium on the implementation of such programs. Some participants opposed such a moratorium as an unjustified interference in the work of the fishery management councils.

**8. Representation On The Councils Should Be Addressed Without Amending The Act.**

Many expressed concern that certain groups are not represented by membership on the councils. Participants said, however, that these concerns should be addressed administratively and that the Act should not be amended to require specific interest-group representation.

**9. Conflict-Of-Interest Concerns Need To Be Addressed.**

The participants differ on how to address the actual or perceived conflicts of interest among council members. Some believe concerns can be addressed through better administration of the Act. Others support amending the Act. Of those supporting an amendment, most favor authorizing the councils to establish and enforce conflict-of-interest standards. Others support giving this authority to the Secretary of Commerce. Participants also differed on whether a two-thirds council vote should be required on management measures.

Many opposed restricting the appointment of trade association executives to the councils. None supported this amendment.

**10. A New Oversight Agency Is Not Needed.**

Many said that a new oversight organization or body for the Act was not needed. None supported such a body.

**11. Prohibit Future Foreign Harvest Allocations.**

Some participants strongly support an amendment prohibiting future harvest allocations of fish (TALFF) to foreign countries. No participant opposed such amendment.

**12. Continue The Atlantic Highly Migratory Program.**

Those participants involved with the management of Atlantic highly migratory fisheries (tuna, swordfish, shark) support the Act's present management system for these fisheries. They said, however, that some improvements were needed in the process.

**13. Many Oppose Additional Fees.**

Some participants support the idea that industry councils or boards should be authorized to collect fees from the industry to fund research, management and marketing programs approved by them, if such fees are approved by a referendum vote of those paying the fees. They would support legislation for such a program if it is needed. Some believe that sufficient statutory authority already exists for such boards or councils.

Some participants support an amendment authorizing the North Pacific Council to impose fees on the harvest of certain prohibited species to provide an incentive to reduce bycatch and fund management programs.

Many participants opposed amendments to authorize: (1) fees to fund the cost of federal fishery management programs; (2) fees to pay for fish harvested in federal fisheries; and (3) a committee to study fees. They suggested that any additional funding needed for fisheries should come from S/K revenues.

**14. Citizen Lawsuits Should Not Be Authorized.**

Many participants oppose proposals to authorize citizen lawsuits to enforce the Act. None supported these proposals.

**15. Some Support Deleting References To Efficiency.**

Some participants are concerned that efforts to increase efficiency on the part of fishery managers will result in the loss of traditional fisheries. Some participants support deleting references to efficiency in the Act. Others oppose any change.

**FISHERIES POLICY CONFERENCE: 93**

February 23-24, 1993

**Attendees List**

<b>NAME</b>	<b>AFFILIATION</b>	<b>LOCATION</b>
Atchison, Richard C.	American Tunaboat Association	San Diego, CA
Adams, Eben	Office of Senator Cohen	Washington, DC
Adler, Karena	Fishing Co. of Alaska Inc.	Seattle, WA
Adler, William A.	Mass. Lobstermen's Assn.	Scituate, MA
Alden, Robin	Commercial Fisheries News	Stonington, ME
Altman, Mackie	Blue Water Fishermen's Assn.	Barnegat Light, NJ
Anderson, Philip	Pacific Fishery Management Council	Portland, OR
Ames, Ted	Maine Gillnetter's Assn.	Stonington, ME
Anderson, Eric	New England Gillnetters	South Portland, ME
Avila, Rodney	Northeast Atlantic Swordfish Net Assn.	West Kingston, RI
Barnaby, Roland	UNH Coopertive Extension/Sea Grant	Epping, NH
Behnken, Linda	Alaska Longline Fishermen's Assn.	Sitka, AK
Beideman, Nelson	Bluewater Fishermen's Assn.	Barnegat Light, NJ
Beetham, Mary Beth	Rep. Dan Hamburg Office	Washington, D.C.
Bingham, Nat	American Seafood Harveters Assn.	Mendocino, CA
Blum, Joe	American Factory Trawler Assn.	Seattle, WA
Bomster, Venna	Southern New England Fishermen's Assn	Stonington, CT
Bomster, William	Southern New England Fishermen's Assn	Stonington, CT
Brancaleone, Joseph	New England Fishery Mgt. Council	Saugus, MA
Broches, Charles	PARAGON	Seattle, WA
Brown, Jed	Office of Cong. Frank Pallone	Washington, D.C.
Brown, Ralph	Fishermens Marketing Assn.	Brookings, OR
Bruce, John	Deep Sea Fishermens Union of Pacific	Seattle, WA
Buck, Eugene	Congressional Research Services	Washington, D.C.
Bullard, John K.	New Bedford Seafood Co-op.	New Bedford, MA
Burney, David G.	U.S. Tuna Foundation	San Diego, CA
Ciarmataro, Frank	Cape Ann Vessel Assn.	Gloucester, MA
Clark, Roland	Long Island Inshore Trawlermen's Assn	Amagansett, NY
Cole, John	Fishermen's Dock Co-op.	Pt. Pleas. Beach, NJ
Cole, Sue	Fishermen's Dock Co-op.	Pt. Pleas. Beach, NJ
Coons, Ken	New England Fisheries Dev. Assn.	Boston, MA
Crom, Miles	Office of Senator John Breaux	Washington, D.C.
Dalton, Penny	Senate Commerce Committee	Washington, D.C.
Delaney, Glenn Roger	Consultant	Alexandria, VA
Dobson, Kevin	Aleutians East Borough	Sand Point, AK
Duncan, Dave	Fishermens Marketing Assn.	Hammond, OR
Dunn, Michael E.	Caribe Tuna, Inc.	San Diego, CA
Dykstra, Jacob	Pt. Judith Fishermens Co-op	Narragansett, RI
Earnest, Mark	City of Unalaska	Unalaska, AK
Easley, Joe	Oregon Trawl Commission	Astoria, OR
Fiorelli, Patricia M.	New England Fishery Mgt. Council	Saugus, MA

Firth, Chuck  
Flemma, Jean  
Fullilove, Jim  
Gehan, Shaun  
Gilman, Brad  
Gilmore, Jim  
Grader, Zeke

Graham, Kate  
Greenberg, Eldon  
Gross, Shari  
Gutting, Dick  
Hanson, Dave

Harris, Marty  
Hoey, John  
Homstead, Cathy  
Igawa, Charles  
Jacobsen, Dick  
Jamewouk, John  
Joseph, Bob  
Jenison, Brian  
Kaelin, Jeff  
Kanin, Dennis  
Kelty, Frank, Mayor  
Kirkley, James  
Kronmiller, Ted  
Lambert, Gregory  
Lassen, Thor J.  
Leipzig, Peter  
Lima, Ed  
Lirette, Donald  
Lloyd, Denby  
Madsen, Stephanie  
Marks, Rick  
Marshall, Douglas G.  
Mattera, Frederick

Matthews, Jim  
Mayfield, Patt  
McCauley, James  
Myhre, William N.  
Miller, Terry  
Mitchell, Henry  
Moore, Rod  
Murphy, Rick  
Murray, Tom  
Nickerson, Howard W.  
O'Malley, James P.  
O'Leary, Kevin B.  
Ohls, Karl  
Osterback, Alvin

City of Unalaska  
Cttee Merchant Marine & Fisheries  
National Fisherman  
Seafarers International Union  
Robertson, Monagle & Eastaugh  
American Factory Trawler Assn.  
Pacific Coast Federation of  
Fishermen's Association

American High Seas Fisheries Assn.  
Garvey, Schubert & Barer  
Halibut Assn. of North America  
National Fisheries Institute  
Pacific States Marine Fisheries  
Commission

My 3 Ladies, Inc.  
National Fisheries Institute  
New England Gillnetters  
S.U.P.A.C.  
Aleutians East Borough  
Norton Sound Economic Dev. Corp.  
General Mills Restaurants, Inc.  
Ventura Co. Comm. Fishermen's Assn.  
Maine Sardine Council  
East Coast Tuna Assn.  
City of Unalaska  
Va. Institute of Marine Science  
Law Offices  
Subcttee on Fisheries Management  
Ocean Trust  
Fishermens Marketing Assn.  
Cape Ann Vessel Assn.  
Terrebonne Fishermen's Organ.  
Aleutians East Borough

National Fisheries Institute  
New England Fishery Mgt. Council  
Northeast Atlantic Swordfish  
Net Assn.

Subcttee on Fisheries Management  
Aleutian East Borough  
Point Judith Fishermen's Coop.  
Preton Gates Ellis & Rouvelas Meeds  
Fishermens Marketing Assn.  
Bering Sea Fishermen's Assn.  
Merchant Marine & Fisheries  
Sentor Judd Gregg  
Seafood Consumers & Producers Assn.  
Offshore Mariners Assn.  
East Coast Fisheries Foundation  
Kodiak Longline Vessel Owners' Assn.  
Bering Sea Fishermen's Assn.  
Aleutians East Borough

Unalaska, AK  
Washington, D.C.  
Rockland, ME  
Camp Springs, MD  
Arlington, VA  
Washington, D.C.  
Sausalito, CA

Seattle, WA  
Washington, D.C.  
Seattle, Wa  
Arlington, VA  
Portland, OR

Tallahassee, FL  
Arlington, VA  
Sth Portland, ME  
Long Beach, CA  
Sand Point, AK  
Anchorage, AK  
Orlando, FL  
Ventura, CAN  
Brewer, ME  
Salem, NH  
Unalaska, AK  
Gloucester Point, VA  
Falls Church, VA  
Washington, D.C.  
Arlington, VA  
Eureka, CA  
Gloucester, MA  
Dulac, AK  
Sand Point, AK  
Unalaska, AK  
Arlington, VA  
Saugus, MA  
West Kingston, RI

Washington, D.C.  
Joshua, TX  
Narragansett, RI  
Washington, D.C.  
Astoria, OR  
Anchorage, AK  
Washington, D.C.  
Washington, D.C.  
Tampa, FL  
New Bedford, MA  
Narragansett, RI  
Kodiak, AK  
Anchorage, AK  
Sand Point, AK

Parrarano, Pietro	Pacific Coast Federation of Fisheries Association	Sausalito, CA
Paultzke, Clarence G.	North Pacific Fishery Mgt. Council	Anchorage, AK
Phelan, Dennis	Pacific Seafood Processors Assn.	Washington, D.C.
Pleschner, Diane	California Seafood Council	Santa Barbara, CA
Quigley, Mike	Subcttee on Fisheries Mangement	Washington, D.C.
Rogness, Ron	Long John Silvers	Lexington, KY
Rolon, Miguel A.	Caribbean Fishery Mangement Council	Puerto Rico
Rosa, Lori A.	Subcttee on Fisheries Management	Washington, D.C.
Rose, Margaret	East Coast Fisheries Assn.	Nth Cape May, NJ
Ruais, Rich	East Coast Tuna Assn.	Salem, NH
Salmon, Jim	General Mills Restaurants, Inc.	Orlando, FL
Schock, Larry	Fishermens Marketing Assn.	Newport, OR
Selby, Jerome M., Mayor	Kodiak Island Borough	Kodiak, AK
Seniti, Vito	Cape Ann Vessel Assn.	Gloucester, MA
Shawback, Lynn	Bristol Bay Borough Fisheries Economic Commission	Naknek, AK
Simonds, Kitty	Western Pac. Reg. Fishery Mgt. Cl.	Honolulu, HI
Smith, Lorraine	Luther L. Smith & Son, Inc.	Atlantic, NC
Smith, Thorn	North Pacific Longling Assn.	Seattle, WA
Smolowitz, Ron	New England Gillnetters	Sth Portland, ME
Spaeth, Robert A.	Southern Offshore Fishing Assn.	Madeira Beach, FL
Steele, Bruce Alan	California Urchin Divers Assn.	Santa Barbara, CA
Stewart, Beth	Aleutians East Borough	Sand Point, AK
Stockwell, Terry	New England Gillnetters	Sth Portland, ME
Stolpe, Nils	N.J. Commercial Fishermen's Assn.	Doylestown, PA
Sweeney, Brian	Seafreeze, Ltd.	North Kingston, RI
Sweeney, Philip	Long Island Inshore Trawlermen's	Amagansett, NY
Sylvia, Larry	Blue Water Fishermen's Assn.	Barnegat Light, NJ
Szymanski, Mike	Fishing Co. of Alaska Inc.	Seattle, WA
Thomas, Randi Parks	U.S. Tuna Foundation	Washington, D.C.
Thornburg, Guy	Pacific States Marine Fisheries Commission	Portland, OR
Troll, Kate	Southeast Alaska Seiners Assn.	Juneau, AK
Truelove, Henry	LSPMB/LA Fishermen for Fair Laws	Charenton, LA
Vega, Hector	Caribbean Fishery Management Council	Puerto Rico
von Krusentiern, Fred	MBO, Inc.	Monomet, MA
Walsh, James P.	Davis Wright Tremaine	Washington, D.C.
Warren, James	Associated Fisheries	Brewer, ME
Weddig, Lee	National Fisheries Institute	Arlington, VA
Wheeler, Allison	National Fisheries Institute	Arlingotn, VA
White, Barney	Zapata Corporation	Houston, TX
Williams, Jean	SASI	Miss.
Wright, Terry	Northwest Indian Fisheries Comm.	Olympia, WA
Young-Duborsky, Connie	Atlantic States Marine Fisheries Commission	Washington, D.C.
Youngman, Robert	Garvey, Schubert & Barer	Washington, D.C.
Zuanich, Robert P.	Purse Seine Vessel Owners Assn.	Seattle, WA
Zuck, Jon	Norton Sound Economic Dev. Corp.	Anchorage, AK



**NOTE: ITEMS C-5(b) AND C-5(d) WILL BE AVAILABLE  
AT MEETING TIME.**

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**PRELIMINARY PROPOSALS TO AMEND AND REAUTHORIZE  
THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT**  
National Marine Fisheries Service  
National Oceanic and Atmospheric Administration

Meeting with Regional Fishery Management Councils  
February 23, 1993:

**PRIMARY PROPOSALS**

The National Marine Fisheries Service has identified a number of fishery conservation and management issues for resolution this year during the reauthorization of the Magnuson Fishery Conservation and Management Act, which expires on September 30, 1993. The following represent the 9 primary and 6 secondary amendments that the Agency is currently intending to propose under the reauthorization.

**1. Strengthened Protection for Fisheries Habitat.**

The single greatest long-term threat to fisheries productivity is the continuing degradation of fisheries habitat. Coastal, estuarine, and riverine habitats essential to most of the valuable fisheries species continue to be degraded and lost as a result of contaminants, freshwater flow diversion, physical habitat alteration (e.g., dredging and filling), and nutrient overenrichment. Present authority under the Magnuson Act and the Clean Water Act extends only to making recommendations to the deciding government agency, and many such recommendations are ignored, to the detriment of U.S. fisheries. NMFS will propose an amendment that would require an FMP, where appropriate, to designate habitat essential to achieving optimum yield of a species or species complex. The designation would include important areas, and specifications of physical and chemical conditions that must be maintained, and would require consultations by project proponents with NMFS on the project's impact on FMP species. The process could be similar to a section 7 consultation under the Endangered Species Act, with consultations based on specific criteria for achieving and sustaining an acceptable level of habitat productivity.

**2. Financing the Recovery of Depleted Fishery Stocks**

A mechanism must be developed to remove the short-term fiscal barriers to long-term economic and social benefits from U.S. fisheries. Many of the Nation's most valuable fisheries are seriously overfished, and the stringent regulations required to

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rebuild these stocks will cause substantial economic hardships for harvesters and processors.

Many individuals and firms will be threatened with losing their vessels or processing plants, still further straining already impoverished coastal communities; the severe restrictions may also encourage illegal fishing on stressed stocks. The future benefits of stock rebuilding, however, are significant: \$2.9 billion in annual potential net value and 500,000 jobs could be realized through the recovery of overfished stocks and appropriate adjustment of the fishing fleet size. NMFS will propose an amendment directing the Secretary to develop plans for financing the recovery of depleted fisheries. Such plans will identify costs associated with rebuilding the stocks, examine alternative mechanisms for assisting the historic participants, and suggest management regimes for maintaining the long-term potential yields of the stocks. The Secretary would also develop criteria and standards for determining the eligibility of fisheries in such systems, and of harvesters and processors who may wish to participate in approved recovery plans.

**3. Streamlined Regulatory Process**

Efficient management of U.S. fisheries must consider that time is money, and must seek to reduce the costs associated with regulatory delays. Fisheries management is currently hampered by the need for plans and regulatory measures to comply with the redundant requirements of several other applicable laws in addition to the Magnuson Act, including the National Environmental Protection Act, Paperwork Reduction Act, Coastal Zone Management Act, Endangered Species Act, Executive Order 12291, Regulatory Flexibility Act, and Administrative Procedures Act. This complexity retards and complicates the management process, adds to the burden of Fishery Management Council and NMFS staff, and sometimes prevents completion of actions within the required time frame without adding additional benefits to the public decision process. A second burden is associated with the lack of flexibility to adjust regulations with rapidly changing conditions of the resource of fleet. This has resulted from the requirement for an FMP to contain both conservation and management measures, with the measures repeated in the proposed and final published rules. NMFS will propose an amendment that permits development of management plans specifically exempting separate analysis and impact statements of these other acts. Also included would be a provision for the FMP to become a policy document that focuses on the Council's goals and objectives for that fishery, including desired yields. The Council would submit proposed rules for Secretarial approval and public comments, and the Secretary would prepare final rules, including explanation of any substantive changes from the proposed rules.

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#### **4. Marine Fisheries Management Trust Fund**

Fishery management regimes, especially controlled access, have special requirements--onboard observers and monitoring systems, and collection and management of statistical information--that must be met if these programs are to be effective. However, funding for such programs is severely limited, and authority to collect fees is currently limited to the administrative costs of issuing permits, with funds collected under this limited authority deposited into the U.S. Treasury and unavailable for managing the fishery from which the funds are derived. NMFS will propose an amendment to facilitate the proper and timely sharing of costs for special management programs, through establishment of a dedicated trust fund into which present fees for permits would be deposited. NMFS will also propose obtaining authority to collect fees associated with any extraordinary costs incurred by limited entry programs, if authorized in a fishery management plan, and for any other extraordinary projects authorized in a plan, such as observers to verify catch data. These monies would be used specifically for the special management programs of the fisheries from which they were collected.

#### **5. Fair and Balanced Council Representation**

The Magnuson Act requires that Secretarial appointments to a Council ensure a fair and balanced apportionment of active participants in the fisheries. There is a growing nationwide perception that Councils do not proportionally or fairly represent the users of the resources under their jurisdiction, jeopardizing confidence in Federal fishery management and achievement of conservation and management goals. However, the Secretary's ability to comply with this requirement is severely constrained by the limited number of appointments that may be made each year, and by restricting selection only to persons nominated by State governors. Unfortunately, governors sometimes fail to develop a balanced slate of nominations, or nominate only the required minimum of three individuals for each applicable vacancy. This can result in an absence of nominees for Secretarial selection, leading to a Council that does not have fair and balanced representation. NMFS will propose an amendment that requires each governor to submit a fair and balanced slate of at least six individuals for each applicable vacancy. NMFS would also provide guidance to assist governors in determining a fair and balanced representation. Subsequent regulations would be developed to define the sectors that must be represented in the list of gubernatorial nominees.

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**6. Averting Council Conflict of Interest**

The Magnuson Act requires that Council members, by reason of their occupation or other experience, be knowledgeable of the fisheries, and it proclaims that members should exercise sound judgment in the stewardship of the Nation's fishery resources. The intent of the Act is to avoid promotion of narrow interests in the careful deliberation of Council actions. There frequently may be, however, the appearance, or actual existence, of conflict of interest in cases where Council members are participants in an industry sector affected by their decisions. The appearance of conflict is especially strong in the case of individuals who are paid representatives of fishery associations. NMFS will propose an amendment that directs the Secretary to give preference to those currently employed in a commercial fishery, when considering nominees for vacancies appropriate to that sector. A lower priority would be given to paid representatives of fishery associations unless they are also currently employed in a commercial fishery.

**7. Effective Management of Highly Migratory Species**

The Magnuson Act directs Regional Fishery Management Councils to establish and maintain scientific committees, advisory panels and industry advisory committees to provide information and recommendations on plan development and amendments. These committees are specifically exempted from provisions of the Federal Advisory Committee Act (FACA). The 1990 Amendments to the Act provided the Secretary with the authority and responsibility for managing highly migratory species (HMS) in the Atlantic, Gulf of Mexico and Caribbean, but they did not provide for advisory bodies similar to those established to assist the Councils. This makes it difficult to receive institutionalized public input for HMS management, and impairs the essential public participation integral to the Magnuson Act's purpose. Another obstacle to effective management is confusing language in the Magnuson Act, and in the Atlantic Tunas Convention Act. NMFS will propose an amendment to return authority for management of all highly migratory species to an appropriate Council (or to Councils jointly, but with a new voting mechanism), where advisory bodies may provide the necessary counsel and the Secretary will maintain the traditional review and approval role. In the event Congress continues to vest authority for HMS management with the Secretary, an exemption from the FACA will be sought for this FMP. The amendment will also propose to delete the confusing language so that the Secretary has all the usual and necessary tools to conserve Atlantic highly migratory species.

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## **8. Extension of Emergency Rule Authority**

Amendments to Fishery Management Plans are frequent and common, and developed to effect a permanent solution to resource management problems. The Magnuson Act currently limits emergency management actions to two 90-day periods, but this maximum of 180 days is too brief to allow for the preparation, public and Secretarial review, and implementation of such amendments, and can result in adverse effects on the resource or industry upon expiration of an emergency rule. NMFS will propose an amendment to permit extension of an emergency rule in two additional 90-day increments, the total emergency rule period not to exceed 1 year; this amendment will not be necessary if the amendment to streamline the regulatory process is approved. The amendment would also provide for public comment if an additional extension is desired, and approval of the extension would be contingent on demonstration of substantial progress in developing an amendment to resolve the management problem. It is also necessary to amend the Act to account for special circumstances involving public health emergencies. The Act currently does not differentiate between circumstances involving conservation and management actions and those involving threats to public health and safety, which often last considerably longer than 180 days. NMFS will seek authority to continue declared public health emergency actions until the problem is resolved. A recommendation by the FDA would trigger initiation and termination of such an emergency.

## **9. Enhanced Data Collection**

Serious deficiencies in NMFS' collection and management of statistical information jeopardize effective fisheries management. The Department will propose four amendments to enhance its data systems capability: (1) Obtain overall authority for mandatory collection of uniform, standardized fisheries catch data from harvesters for fisheries under FMPs, under a National Data Collection Plan, in order to standardize data, avoid duplication, and acquire information on fisheries not under an FMP but which are significant contributors to individual vessel revenue. (2) Obtain authority to delete the current Magnuson Act exemption for economic data from fish processors, in order to calculate optimum yield and conduct economic and social impact analyses. (3) Obtain authority for a sunset provision of 3-5 years on fisheries catch and effort data confidentiality, to reduce administrative burdens and costs, as currently occurs under Magnuson Act requirements. (4) Obtain authority for the collection of data from internal waters processing (i.e., in State waters), in order to use this information in EEZ or interjurisdictional resource management.

## SECONDARY PROPOSALS

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1. Foreign Fishing Permits for Transportation. Obtain authority to moderate the approval requirements for foreign transshipment of fishery products, and provide for the establishment of a system to require performance bonds and representation by agents for these activities in state waters and the EEZ, and for mandatory reporting of such activities.
2. Statutory Schedule for Regulatory Amendments. Obtain authority to require approval or disapproval for regulatory amendments by the 110th day of receipt, similar to the process for FMPs or FMP amendments.
3. Judicial Review for Permit Sanctions. Obtain authority for judicial review of permit sanctions under the Magnuson Act, and suspension of permits during such judicial review; currently, only civil penalties may undergo judicial review.
4. Use of Penalty and Forfeiture Fund. Obtain authority to allow the Penalty and Forfeiture Fund to be used for enforcement of all statutes dealing with living marine resources, not just fishery resources, as is currently the case.
5. Protection for Fishery Data Collectors. Obtain authority to extend criminal sanctions for violence, or threats of violence, against all persons collecting Federal fisheries data, not just fishery observers.
6. Delete Obsolete Reporting Requirements. Obtain authority to delete reporting requirements for the Foreign Allocation Report, which is no longer relevant without joint ventures, and for the Driftnet Report, no longer useful with the implementation of agreements under the U.N. moratorium.

Anchorage Daily News Thursday, April 15, 1993 A5

# Clinton getting ready to commit U.S. to global biodiversity treaty

By RITA BEAMISH  
The Associated Press

WASHINGTON — The Clinton administration hopes to commit the United States next week to an international treaty on plants and animals that President Bush refused to sign at last year's Earth Summit, administration officials said Wednesday.

A group of industry and environmental representatives that has been working with the White House urged Clinton on Wednesday to sign the biodiversity treaty, which seeks to protect diverse forms of plant and animal life.

Clinton could announce his decision in an Earth Day speech next week.

Bush rejected the treaty at the Rio de Janeiro conference on the grounds it could threaten U.S. jobs and technology and impose a disproportionate financial burden on the United States.

Clinton wants to endorse the treaty, but has had those same concerns, administration officials have said. The administration has been working with pharmaceutical, biotechnology and envi-

ronmental representatives to address the concerns through an interpretive statement that would accompany the treaty signing.

"The flaws in the biodiversity treaty are well known. We have been working to try and solve them," Marla Romash, spokeswoman for Vice President Al Gore, said Wednesday. "It's an issue we are focused on but there have been no decisions made."

"We believe it is in the shared interest of the nation and the world community for the United States to join in signing this treaty and further to assume a leadership position in its future implementation," the advisory group told Gore in a letter obtained by The Associated Press.

The signers included the chief executives of Merck & Co., Inc., Genentech Inc., Shaman Pharmaceuticals, World Wildlife Fund, World Resources Institute, and the Environmental and Energy Study Institute.

The United States was alone among the major economic powers in refusing to sign the treaty in Rio De

Janeiro. It requires signatories to inventory plants and wildlife within their borders and develop plans to protect those that are endangered.

It also sets up financial mechanisms to help developing countries carry out that task, and obliges countries that use the genetic resources of another nation — for drugs, for example — to share research.





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**Keystone Dialogue on the  
Reauthorization of the  
Marine Mammal Protection Act (MMPA)**

**Meeting Summary**

The April 5-6 meeting was the third meeting of this group; the first with Keystone. The meeting began with introductions, a discussion of the role of the facilitator and an overview of the agenda for the two days.

Ground Rules

The participants discussed and determined ground rules that will govern the meetings as well as the time between meetings. Ground rules include the following: 1) the participants will be considered formal representatives of their organizations, 2) all comments and discussions are off-the-record and not for attribution, and 3) the documents remain in the group until every participant agrees that materials are ready for public distribution. Until that time, documents will be identified in terms of for group-eyes only, or more broadly circulated for comment.

Participation

Participants noted that Congressional staff and FWS representatives should be encouraged to attend future meetings.

Objectives and Scope

The group established an overall objective of the Dialogue: By June 1, 1993, deliver a package to Congress of recommendations for a program to replace the exemption and subsequent changes to the MMPA. Included in this package will be identification of areas of consensus and disagreement, and why different views exist. The scope of this Dialogue is everything in the MMPA, including amendments, and how the MMPA relates specifically to fishing interactions (not public display or scientific takes or oil and gas, etc.). The issue of total takes in the context of an overall framework is also included in the scope.

Key Themes

Key themes were identified:

**Resources** Are they a constraint or program issue? How do we obtain sources, i.e., funding? Do hot spots need targeted action?

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**Incidental Take Package** The participants would like to develop a permanent structure/system and target hot spots.

**Data** How do we collect and utilize it and how do we monitor hot spots?

**Enforcement** An effective way to enforce the law in hot spot areas needs to be created.

**Overall Structure for the MMPA** The scope of the MMPA should address all interactions between marine mammals and fishing activities, not just hot spots.

One focus of the group was whether the MMPA should protect marine mammals or manage them -- the issue of preservation versus management.

### Hot Spots

Hot spots was a cross-cutting issue for the group. Hot spots were identified by the group in three ways: 1) areas where marine mammal stocks are of the greatest and most immediate concern; 2) areas where marine mammal stocks are abundant and increasing, and adversely affecting fisheries; and 3) "nuisance" animal areas, or areas where other problems exist that involve marine mammals and is independent of the population size of stocks.

The participants divided initial discussions into those three categories of areas regarding hot spots.

### Work Groups

In order to further clarify criteria for identifying hot spots and processes for addressing these situations, the participants divided into two work groups. One to address the *Criteria* to define hot spots and the other to devise a *Process* for developing action plans.

The two work group meeting summaries are at the end of this packet.

### Tools for Action

The group discussed tools for action in terms of those appropriate for each category of hot spots. The group listed, but did not discuss the following tools. Further discussions will take place at the April 23-27 meeting.

- for Category I: greatest and immediate concern
- voluntary action
- fishery administrative approach
- proposed regulatory measures

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**time/area/gear modifications**

- user fees
- direct regulatory authority action
- education
- expert skippers program
- incentives
- PBR-like system, including capped numbers
  
- tariffs/sanctions

**for Category II: abundant/increasing**

- population control
  - lethal take
  - birth control
  - capture/removal
- predator-prey relationships
- technological deterrents
- no action

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### Meeting Summary Criteria Work Group

The Criteria Work Group met to develop criteria that identify stocks of greatest and immediate concern.

The following criteria identify "declining" stocks (referenced during discussions as "critical critters" or Bucket 1):

1. Any decline based on historic population abundance data. The committee agreed that the "best estimate" of population abundance would be used, rather than the minimum estimate.
2. When historic trend information is unavailable, any case in which total lethal takes from all sources are equal to or greater than the growth rate is a "de facto" decline, unless the stock is at OSP. Growth rate assumptions are based on "best available" data, or on NMFS standard assumptions if there are no data (6% per year for pinnipeds and 2% per year for cetaceans).

All sources of lethal takes on declining stocks (fisheries, motor boats, oil/gas, pollution, etc.) are classified:

- a. Significant: lethal takes equal to or greater than 0.5% per year of a cetacean population or 1% per year of a pinniped population.
- b. Insignificant: lethal takes less than 0.5% per year of a cetacean population or 1% per year of a pinniped population.

"Increasing" (Bucket 2) stocks are the mirror image of "declining" stocks are identified by:

1. Any increase based on historic population abundance data.
2. Any stock at OSP.
3. When historic trend information is unavailable, any case in which total lethal takes from all sources are less than the growth rate. Growth rate assumptions are again based on "best available" data, or on NMFS standard assumptions if there are no data (6% per year for pinnipeds and 2% per year for cetaceans).

Lethal takes from "increasing" stocks are categorized in the same manner as "declining" stocks. The committee agreed, however, that there should be some qualitative distinction between takes from stocks that are at OSP versus takes from stocks that are not at OSP.

The committee did not develop criteria to identify "nuisance animals" (Bucket 3). There was a general agreement that lethal removal could be negotiable if it involved a member of an abundant population that threatened the existence of another population.

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The committee did not decide:

1. How to categorize stocks for which there is no population estimate. There are currently about 8 such stocks listed in the NMFS proposal, and NMFS will provide additional data as it becomes available. The criteria committee deferred to the process committee to develop a mechanism to deal with takes of these stocks until population estimates become available.
2. How an authorized level of take or "cap" is established once takes have been classified "significant".

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## Meeting Summary Process Work Group

### Flow Chart

- I Identification of Critical Critter
- II Establishment of Mitigation Planning Committee (MPC)
- III Analysis by MPC
- IV Develop Plan
- V Publish Mitigation Plan

#### I Identification of Pre-Threatened Species/Stocks

Who The Secretaries should be held accountable. Backups to the Secretaries include the FMP, petitions for rule-making, states and the MMC.

How An Annual Statutory Review Process would be established. This process would look at selected stocks and produce a list of critical critters. Stock status would be reviewed annually, probably on a staggered schedule.

Data about the critical critter would be reviewed. Criteria would then be applied to this data. Merit would be determined and the outcome published.

#### II Establishment of MPC

All involved/interested parties would need to be identified by the Secretary with the help of FMC Councils. (This also allows for regional input.)

The criteria for selection of the MPC:

- knowledgeable and experienced
- user group representatives
- science and managers
- environmental groups
- other state and federal managers/officials

The MPC would be exempt from FACA.

**Funding Issues** A fund would be established and distributed on a need-basis or for emergency situations. Perhaps industry could contribute as well. A facilitator, i.e., a paid coordinator, would come from NMFS or FWS regional staff.

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### III Analysis by MPC

How low does the level of take need to be to accomplish the goal?

The first step is to review impacts, including fishing, oil and gas, and subsistence, etc. A stock trend analysis is also necessary. Existing research would be reviewed and necessary future research would be identified, including stocks, gear, other mitigation, and sustainable level of take.

### IV Develop Mitigation Plan -- to be discussed at the next meeting

3-tiered approach

determine goals and objectives



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## MMPA Meeting Attendees 4/4/94

NAME	ORGANIZATION
Bennett	Jay Trout Unlimited (Northwest Council)
Berger	Tina Sport Fishing Institute
Boner	Monica The Keystone Center
Britten	Barbara American Cetacean Society
Credle	Vicki NMFS/Office of Protected Resources
Daves	Nancy Animal Protection Institute
Didier	Al PSMFC
Dilley	Abby The Keystone Center
Fadope	Cece Greenpeace
Fiorelli	Patricia NE Fishery Management Council
Gilman	Brad Aleutians East / Gulf Coalition
Gilmore	Jim American Factory Trawler Assoc.
Gosliner	Mike Marine Mammal Commission
Gutting	Dick National Fisheries Institute
Hofman	Bob Marine Mammal Commission
Iudicello	Suzanne Center for Marine Conservation
Kaelin	Jeff Maine Sardine Council
Kaufman	Herb National Maine Fisheries Service
Leape	Gerald Greenpeace
Lloyd	Denby Aleutians East Borough
O'Connell	Kate Whale and Dolphin Conservation
Osterback	Alvin Aleutians East
Phelan	Dennis Pacific Seafood Processors Assoc.
Pleschner	Diane California Seafood Council
Polasky	Bob Rural Alaska Community Action Program
Rebuck	Steve American Seafood Harvesters Assoc.
Rinaldo	Ron National Oceanic and Atmospheric Admin.
Smith	Eric Rural Alaska Community Action Program
Snape	Bill Defenders of Wildlife
Sparck	Harold Assoc. of Village Council Presidents (AK)
Steele	Bruce California Urchin Divers Assoc.
Thornburgh	Guy PSMFC
Wright	Terry NWIFC
Young	Nina Center for Marine Conservation
Young	Sharon HSUS - National Wildlife Coalition

# City gets a whale of a show

## Orcas hunt dolphins in Petersburg harbor

By KIM HASTINGS  
KFSK Radio

PETERSBURG — Early risers on Easter morning witnessed a rare display — a pod of killer whales attacking dolphins in the town harbor.

Petersburg lies at the entrance to the Wrangell Narrows. The whales chased the dolphins through the narrows and remained for three or four hours.

"The whales were leaping in the air and doing all kinds of acrobatics," said Amy Miller. "Everything you could see on National Geographic was happening right here in front of my house."

The resident sea lions that usually hover near the canneries hid out under the docks.

"They kept real still," said assistant harbormaster Bill Beal. "They stayed between the pilings, hoping the whales wouldn't notice them down there."

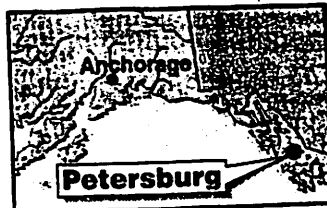
Pacific white-sided dolphins usually stay at sea, but they're not unknown in Southeast.

Marilyn Dahlheim, a researcher with the National Marine Mammal Lab in Seattle, has been surveying whale and porpoise populations in Alaska for the last four years. She was excited to hear of the dolphin sighting in Petersburg.

"Last May, we recorded a tremendous increase in the number of Pacific white-sided dolphins in Southeast," she said. "They even outnumbered Dall's porpoises, which is very unusual."

Also last May, Dahlheim witnessed the first recorded attack in Southeast of orcas on dolphins.

"It was pretty spectacular," she said. "It was a high-speed chase, and one whale actually jumped clear out of the water with



# WHALES: Pod of orcas chases, attacks dolphins in Petersburg harbor

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the porpoise held crosswise in its mouth. There was lots of blood in the area, too."

The whales in Petersburg harbor actually spent only a little while chasing dolphins. But they stayed in the harbor for several hours, breaching and cavorting within easy range of anyone with a video camera.

"I even saw one swim on its back," said Valerie Ing-Miller.

"I was watching this group of whales and I said,

'Hey, that one has a white back and no fin.' Then I realized it was swimming upside down."

One dolphin beached itself in the heat of the chase, apparently exhausted by the whales' pursuit and suffering from internal injuries. It died shortly thereafter.

Dahlheim said resident pods of killer whales tend to feed mainly on fish; it's the transient pods that generally attack other mammals. Last fall, two hunters spotted orcas attacking a pair of moose swimming across Icy



Strait, near Glacier Bay.

"They've also been known to take deer swimming in salt water here in Puget Sound," Dahlheim said.

Some observers in Petersburg think the adult whales may have blocked the exit through Wrangell Narrows, giving the juveniles a chance to practice their hunting

skills on the dolphins.

"That's possible," Dahlheim said. "A researcher named Juan Carlos Lopez filmed killer whales teaching their young to hunt in Patagonia. The adults would actually pull young seals and sea lions off the beach, letting them go in the surf for the juvenile whales to grab."

For Dahlheim, the whales' appearance in Petersburg represents a major research opportunity. She is compiling a guide to Southeast's killer whales — com-

plete with "mug shots" — and hopes that Petersburg residents who photographed the whales will help her identify them when she makes her regular spring visit here next month.

For others, like Amy Miller, the whale spectacle will be remembered for a lifetime.

"My neighbor has lived here over 40 years," Miller said. "And this is the first time he's ever seen killer whales leaping into the air right in front of his living room window."