

November 2-3, 1978

AGENDA ITEM: 25

ACTION REQUIRED: Comments requested

SUBJECT: Public Law 95-354

SUMMARY: Two comminuges from Leitzell are included, each dealing with P.L. 95-354 and each seeking comments.

Read the following cover memo.

COMMENTS: This matter was briefly addressed by the SSC ... see their report.

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
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P. L. 95-354

SUBJECT: Receipt of two communications from Terry Leitzell;

The first deals with Amendments made (re: P. L. 95-354) to the FCMA which benefit U.S. fish processors. The specifics are new requirements for specifying U.S. capacity to process and the inclusion of that data in fishery management plans.

ACTION

REQUIRED: Comment is requested on the Amendments.

The second deals with how consistent with present law certain permits are that were issued to foreign vessels to receive fish from U.S. fishermen BEFORE the amendments concerning processors (above) became law. NMFS has determined the permits are consistent with the NEW FCMA amendments.

ACTION

REQUIRED: Comment is requested on the NMFS action.

EXPLANATION

- #1. It is proposed that FMP's from now on include information concerning (1) amounts of fish transferred (sold or delivered) from U.S. fishing boats to foreign processing vessels, (2) U.S. processing capacity, and (3) certain data from U.S. processors. From these data, a determination can be made as to the extent of U.S. processing, both real and intended, and decisions for permitting foreign vessels can be made. If, on the basis of data (1), (2), and (3) above it is determined U.S. processors have and will use capacity to process all U.S.-caught fish in the fishery concerned, permits can be denied foreign applicants.
- #2. Permitted vessels presently include SOO GONG 51 and BOOK NEUNG (ROK - Davenny-KMIDC) and SULAK (USSR - Marine Resources Co.). NMFS has determined that amounts to be received by these ships from U.S. fishermen are within the limits of the OY portion which will not be utilized by U.S. fish processors.



Agenda #25 (2)

Nov. 2-3, '78

**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

National Marine Fisheries Service
Washington, D.C. 20235

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F37/AJB

OCT 17 1978

Mr. Clement Tillion
Chairman, North Pacific Fishery
Management Council
Suite 32
333 West Fourth Street
P.O. Box 3136DT
Anchorage, Alaska 99510

Dear Mr. Chairman:

President Carter signed P.L. 95-354 on August 28, 1978. This new law, a copy of which is enclosed, amends the Fishery Conservation and Management Act of 1976 (FCMA) by extending the funding authorization to fiscal year 1979, and by making a number of substantive amendments intended to benefit U.S. fish processors. Specifically addressed in the law are new requirements for specifying the U.S. fish processing capacity in both fishery management plans and preliminary management plans.


The National Marine Fisheries Service has prepared proposed amendments of 50 CFR Part 602, Proposed Guidelines for Development of Fishery Management Plans, which require that FMP's contain information regarding the historical and projected transfers of fish from U.S. harvesters to foreign vessels, the processing capacity of U.S. fish processors, and data which U.S. fish processors must submit to the Secretary of Commerce. A copy of the proposed amendments is enclosed.

I would ask you to review the proposed amendments and comment on them as soon as possible. Input from the Councils will contribute significantly to insuring that all pertinent factors are considered when processing foreign applications to receive U.S. harvested fish.



Amendments of the foreign fishing regulations as may be required by P.L. 95-354 will be included in the 1979 foreign fishing regulations. The proposed 1979 foreign fishing regulations will be published separately.

Sincerely,


Terry L. Leitzell
Assistant Administrator
for fisheries

Enclosures

Public Law 95-354
95th Congress

An Act

To authorize appropriations to carry out the Fishery Conservation and Management Act of 1976 during fiscal year 1979, to provide for the regulation of foreign fish processing vessels in the fishery conservation zone, and for other purposes.

Aug. 28, 1978

[H.R. 10732]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 406 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1882) is amended by adding at the end thereof the following new paragraph:

Fishery
Conservation and
Management Act
of 1976,
amendments.
Appropriation
authorization.

“(5) \$30,000,000 for the fiscal year ending September 30, 1979.”

SEC. 2. (a) Section 2(a)(7) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801(a)(7)) is amended by striking out “United States fishermen” and inserting in lieu thereof “the United States fishing industry”.

(b) Section 2(b)(6) of such Act (16 U.S.C. 1801(b)(6)) is amended by inserting immediately after “development” the following: “by the United States fishing industry”.

SEC. 3. Section 3 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1802) is amended by redesignating paragraph (25) as paragraph (27), and by inserting the following new paragraphs immediately after paragraph (24):

Definitions.

“(25) The term ‘United States fish processors’ means facilities located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption.

“(26) The term ‘United States harvested fish’ means fish caught, taken, or harvested by vessels of the United States within any fishery for which a fishery management plan prepared under title III or a preliminary fishery management plan prepared under section 201(h) has been implemented.”

16 USC 1851.
16 USC 1821.

SEC. 4. Title II of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1821-1825) is amended as follows:

(1) Section 201(a)(2) is amended by striking “(f)” and inserting in lieu thereof “(g)”.

(2) Section 201(c)(3) is amended by striking out “exceed” and inserting in lieu thereof “harvest an amount of fish which exceeds”.

(3) Section 201 is amended by redesignating subsections (f) and (g) as (g) and (h), respectively, and by inserting after subsection (e) the following new subsection:

“(f) FOREIGN ALLOCATION REPORT.—The Secretary of the Treasury, in cooperation with the Secretary and the Secretary of State, shall prepare and submit a report to the Congress and the President, not later than July 1 of each year, setting forth—

Report to
Congress and
President.

“(1) a list of species of all allocations made to foreign nations pursuant to subsection (e) and all permits issued pursuant to section 204(b)(6)(B); and

“(2) all tariff and nontariff trade barriers imposed by such nations on the importation of such species from the United States.”

16 USC 1824.

16 USC 1821.

(4) Section 201(h)(1), as redesignated by paragraph (3), is amended to read as follows:

“(1) shall contain a preliminary description of the fishery and a preliminary determination as to—

“(A) the optimum yield from such fishery;

“(B) when appropriate, the capacity and extent to which United States fish processors will process that portion of such optimum yield that will be harvested by vessels of the United States; and

“(C) the total allowable level of foreign fishing with respect to such fishery;”.

16 USC 1824.

(5) Section 204(b)(3) is amended—

(A) by amending subparagraph (D) to read as follows:

“(D) the estimated amount of tonnage of fish which will be caught, taken, or harvested in each such fishery by each such vessel during the time the permit is in force;”.

(B) by redesignating subparagraph (E) as subparagraph (F), and

(C) by inserting immediately after subparagraph (D) the following new subparagraph:

“(E) the amount or tonnage of United States harvested fish, if any, which each such vessel proposes to receive at sea from vessels of the United States; and”.

Publication in
Federal Register.

(6) Section 204(b)(4) is amended by striking out “such application in the Federal Register and” and inserting in lieu thereof “a notice of receipt of the application in the Federal Register. Any such notice shall summarize the contents of the applications from each nation included therein with respect to the matters described in paragraph (3) and shall be set forth under the name of each Council to which it will be transmitted for comment. The Secretary of State”.

(7) Section 204(b)(6) is amended—

(A) by inserting “(A)” before “After” in the first sentence thereof,

(B) by inserting “, subject to subparagraph (B),” immediately after “may approve” in the second sentence thereof, and

(C) by adding at the end thereof the following new subparagraph:

“(B)(i) In the case of any application which specifies that one or more foreign fishing vessels propose to receive at sea United States harvested fish from vessels of the United States, the Secretary may approve the application unless the Secretary determines, on the basis of the views, recommendations, and comments referred to in subparagraph (A) and other pertinent information, that United States fish processors have adequate capacity, and will utilize such capacity, to process all United States harvested fish from the fishery concerned.

“(ii) The amount or tonnage of United States harvested fish which may be received at sea during any year by foreign fishing vessels under permits approved under this paragraph may not exceed that portion of the optimum yield of the fishery concerned which will not be utilized by United States fish processors.

“(iii) In deciding whether to approve any application under this subparagraph, the Secretary may take into account, with respect to the foreign nation concerned, such other matters as the Secretary deems appropriate.”

(8) Section 204(b)(7) is amended by redesignating subparagraph (D) as subparagraph (F), and inserting immediately after subparagraph (C) the following new subparagraphs:

16 USC 1824.

“(D) If the permit is issued other than pursuant to an application approved under paragraph (6)(B), the restriction that the foreign fishing vessel may not receive at sea United States harvested fish from vessels of the United States.

“(E) If the permit is issued pursuant to an application approved under paragraph (6)(B), the maximum amount or tonnage of United States harvested fish which may be received at sea from vessels of the United States.”

SEC. 5. Title III of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1851-1861) is amended as follows:

(1) Section 302(h)(5) is amended by inserting “the capacity and extent to which United States fish processors will process United States harvested fish from,” immediately after “from.”

16 USC 1852.

(2) Section 303(a)(4) is amended—

16 USC 1853.

(A) by striking out “and” at the end of subparagraph (A);

(B) by striking out “; and” at the end of subparagraph (B) and inserting in lieu thereof “, and” and

(C) by adding at the end thereof the following new subparagraph:

“(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States; and”

(3) Section 303(a)(5) is amended by striking out “and number of hauls.” and inserting in lieu thereof “number of hauls, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors.”

16 USC 1857.

(4) Section 307 is amended—

(A) by striking out “and” at the end of paragraph (1)(H);

(B) by striking out the period at the end of paragraph (2) and inserting in lieu thereof “; and”; and

(C) by adding at the end thereof the following new paragraph:

“(3) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to transfer directly

16 USC 1824.

or indirectly, or attempt to so transfer, any United States harvested fish to any foreign fishing vessel, while such foreign vessel is within the fishery conservation zone, unless the foreign fishing vessel has been issued a permit under section 204 which authorizes the receipt by such vessel of United States harvested fish of the species concerned.”

Approved August 28, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 95-1334 accompanying H.R. 13340 and No. 95-1024 (Comm. on Merchant Marine and Fisheries).

SENATE REPORTS: No. 95-935 accompanying S. 3050 and No. 95-815 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 124 (1978):

Apr. 10, considered and passed House.

June 14, considered and passed Senate, amended.

July 11, H.R. 13340 considered and passed House; passage vacated; House agreed to Senate amendments of H.R. 10732 with an amendment.

Aug. 4, Senate concurred in House amendment with an amendment.

Aug. 10, House concurred in Senate amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 14, No. 35:

Aug. 28, Presidential statement.

Department of Commerce

National Oceanic and Atmospheric Administration

[50 CFR Part 602]

PROPOSED GUIDELINES FOR DEVELOPMENT OF FISHERY MANAGEMENT PLANS

AGENCY: National Oceanic and Atmospheric Administration

ACTION: Proposed amendments to regulations

SUMMARY: These proposed amendments require fishery management plans (FMP's) to contain information regarding: (1) historical and projected transfers from U.S. harvesters to foreign vessels, (2) the processing capacity of U.S. fish processors, and (3) data which U.S. processors must submit to the Secretary of Commerce. The addition of such information is required by Public Law 95-354, an amendment of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et. seq.) (FCMA).

DATE: Comments are invited until November 20, 1978.

ADDRESS: Comments should be submitted in writing to the Assistant Administrator for Fisheries, National Marine Fisheries Service (F37), 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

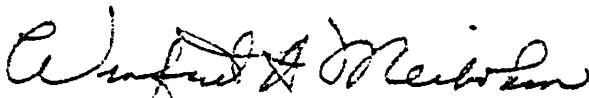
SUPPLEMENTARY INFORMATION: The FCMA establishes certain criteria and procedures for foreign vessels to engage in fishing in the fishery conservation zone (FCZ) of the United States. Included in those procedures is a requirement that no foreign fishing vessel may engage in fishing within the FCZ unless a valid permit has been issued to such vessel. As amended by P.L. 95-354, the FCMA requires that in the case of any application for a permit by a foreign vessel which proposes to receive U.S. harvested fish from vessels of the United States, the Secretary of Commerce may approve the application unless the Secretary determines that U.S. fish processors have adequate capacity, and will utilize such capacity, to process all U.S. harvested fish from the fishery concerned. Accordingly, the FCMA, as amended, requires all FMP's to contain information regarding the capacity and extent to which U.S. fish processors, on an annual basis, will process fish covered by FMP's.

50 CFR Part 602 contains the guidelines for development of FMP's (42 FR 34450, July 5, 1977; 42 FR 36980, July 18, 1977). It is proposed that section 602.3 be amended to require the inclusion in FMP's of historical information on any transfers of U.S. harvested fish to foreign vessels. A significant amendment is the proposal that a new subsection be added to section 602.3(b)(8) entitled "Domestic processing capacity" which will require inclusion in

FMP's of an assessment and specification of the capacity and extent to which U.S. fish processors will process the stocks of fish covered by the plan. Certain factors are enumerated which shall be considered in assessing the extent to which U.S. fish processors will process the stocks. Comments regarding these factors and their application, or additional factors which deserve consideration, are specifically solicited.

Finally, it is proposed that section 602.3 specify the types of data which FMP's may require to be submitted by U.S. fish processors.

Signed in Washington, D.C., this 17th day of,
October, 1978.



Winfred H. Meibohm
Acting Executive Director
National Marine Fisheries Service

1. Revise paragraph 602.2(b)(5) by deleting the second sentence and substituting as follows:

"In determining whether U.S. fishermen will not harvest an optimum yield, the Councils are to give consideration to the capacity and extent to which fishing vessels of the U.S. will harvest such optimum yield, including U.S. harvested fish which will be received at sea by foreign vessels."

2. Revise subparagraph 602.3(b)(8)(iv) by inserting "(A)" after "the fishery." and by adding a new subparagraph B as follows: "(B) Describe and enumerate the amount or tonnage of any transfers, or proposed transfers, of the stock(s) comprising the management unit from U.S. harvesters to foreign vessels."

3. Revise paragraph 602.3(b)(8) by adding the following:

- (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 actual ability and intent of U.S. processors to utilize that ability 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 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 the U.S. fish processors and intent and plans to increase availability or capacity of any of the above 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.

4. Substitute the following for subparagraph 602.3(b)(9)(ii):

- (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.

5. Revise subparagraph 602.3(b)(13)(viii) by substituting "the harvesting and processing sectors of the U.S. fishing industry." for "U.S. fishermen."

6. Revise Subparagraph 602.3(b)(14)(ii) by substituting "(ii) Domestic and foreign harvesters" for "(ii) Domestic and foreign fishermen".

7. Revise subparagraph 602.3(b)(14)(ii) after "number of hauls," by adding "numbers or weight of fish received by foreign vessels from U.S. harvesting vessels,".

8. Substitute the following for subparagraph 602.3(b)(14)(iii):

(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 shall 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.

9. Add to paragraph 602.4(b)(8) the following:

(v) Domestic processing capacity.

10. Amend subparagraph 602.4(b)(14)(ii) to read: "Domestic and Foreign Harvesters"

11. Amend paragraph 602.5(d)(1) to read:

(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.

12. Amend paragraph 602.5(d)(2), second sentence, to read:

At least once each year, each Council must assess the accuracy of the estimates of MSY and optimum yield, the capacity and extent to which U.S. fish harvesters will harvest the optimum yield, the capacity and extent to which United States fish processors will process United States 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.

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Agenda #25 (1.)
Nov. 2-3, '78

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

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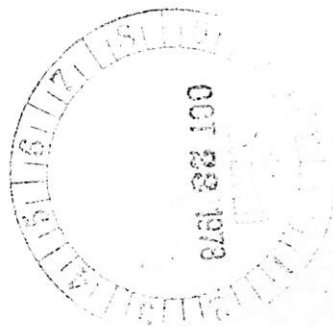
Mr. Clement Tillion
Chairman, North Pacific Fishery
Management Council
Suite 32
333 West Fourth Street
P.O. Box 3136DT
Anchorage, Alaska 99501

Dear Mr. Chairman:

On August 28, 1978, the President signed P.L. 95-354 into law. This law amends the Fishery Conservation and Management Act of 1976 to provide a preference for U.S. fish processors. Subparagraph 204(b)(6)(B)(i) of the Fishery Conservation and Management Act of 1976, as amended, further provides for determination of whether U.S. fish processors have adequate capacity, and will utilize that capacity, to process all U.S. harvested fish from the fishery concerned. Subparagraph 204(b)(6)(B)(ii) restricts the amount of U.S. harvested fish which may be received by foreign fishing vessels under approved permits to that portion of the optimum yield of the fishery concerned which will not be utilized by U.S. fish processors.

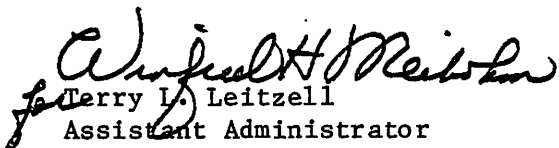
During Congressional hearings on predecessor bills, it was said that NMFS should assure that the terms of permits issued prior to passage of the legislation to foreign vessels to receive Pacific hake and Gulf of Alaska pollock are consistent with the new law. The National Marine Fisheries Service has reviewed these permit actions and is publishing its preliminary determinations which conclude that the permit actions taken prior to enactment of P.L. 95-354 are consistent with the general provisions of the FCMA amendment. Therefore, it is not necessary to amend the 1978 foreign fishing permits to receive U.S. harvested Pacific hake and Gulf of Alaska pollock.

cc: NPFC office
and Council.



The preliminary determinations are being published in the FEDERAL REGISTER for public comment and a copy is enclosed for the Council's review.

Sincerely,


Terry L. Leitzell
Assistant Administrator
for Fisheries

Enclosure

NOTICE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
DEPARTMENT OF COMMERCE
Part 611 - Foreign Fishing

AGENCY: National Oceanic and Atmospheric Administration

ACTION: Preliminary determinations of consistency of certain 1978 foreign fishing permits with the Fishery Conservation and Management Act of 1976, as amended by P.L. 95-354.

SUMMARY: Public comments are sought on preliminary determinations of the consistency of 1978 foreign fishing permits to receive U.S. harvested Gulf of Alaska pollock and Pacific hake with provisions of P.L. 95-354.

DATE: Comments received by November 20 , 1978, will be considered.

ADDRESS: Comments may be submitted in writing to the Assistant Administrator for Fisheries, National Marine Fisheries Service, F37, Washington, D.C. 20235.

ADDITIONAL INFORMATION MAY BE OBTAINED FROM:

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

SUPPLEMENTARY INFORMATION: The Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 et seq., (Act) provides for a national program for the conservation and management of the Nation's fishery resources within the fishery conservation zone (FCZ). Under the Act and §611.3 of the Foreign Fishing Regulations (50 CFR Part 611), procedures are established for foreign participation in fisheries under the exclusive management authority of the United States. Any foreign vessel harvesting fish or supporting fishing operations in the FCZ must have a permit. Activities in support of fishing include those in which a foreign vessel in the FCZ receives fish from a U.S. fishing vessel. The amount of fish that a foreign nation's vessels may harvest in the FCZ is limited to that amount which has been allocated by the Department of State to that nation. However, receipts by foreign vessels from U.S. vessels do not count against such allocations.

A NOAA policy, published in the FEDERAL REGISTER ON May 12, 1978, created a mechanism to closely review foreign permit applications involving the receipt of U.S. harvested fish by foreign vessels in the FCZ to minimize the possibility that the optimum yield in a fishery would be exceeded. The policy was based on factors directly related to conservation and management of the resource and the requirements of the Act. The policy did not take into consideration any preference for U.S. fish processors.

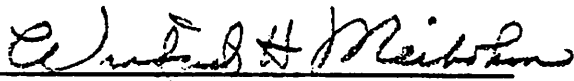
On August 28, 1978, the President signed P.L. 95-354 into law. This law amended the Act to provide a preference for U.S. fish processors to U.S. harvested fish to the extent such processors have and will utilize the capacity to process such fish. An application for a foreign fishing vessel to receive U.S. harvested fish in the FCZ may be approved only if U.S. fish processors do not have, or will not utilize, the capacity to process all U.S. harvested fish from the fishery concerned. The amounts of any U.S. harvested fish which may be received by foreign fishing vessels in the FCZ may not exceed that portion of the optimum yield which will not be utilized by U.S. fish processors.

On June 9, 1978, NMFS issued foreign fishing permits to two Republic of Korea fishing vessels to allow the vessels (SOO GONG 51 and BOOK NEUNG) to receive from vessels of the U.S. in the FCZ in 1978 up to a total of 51,460 metric tons (m.t.) of Gulf of Alaska pollock and various amounts of certain other designated species normally taken incidental to the pollock fishery. On August 16 a similar permit was issued to the Soviet vessel, SULAK, for a similar operation in the pollock fishery. The amount of incidental species which may be received by the foreign vessels was determined as a percentage of the pollock received. Percentage limits were derived from experience with the incidental catch in directed foreign fisheries for Alaska pollock. The permits thus were consistent with the NOAA policy of May 12 and complied in all respects with existing requirements of the Act and other applicable law.

On August 16, 1978, NMFS also issued foreign fishing permits to the Soviet fishing vessels MYS GRINA, TERNEY, and 18 SIEZD VLKSM to allow the vessels to receive from vessels of the U.S. in the FCZ off California, Oregon, and Washington during 1978, up to a total of 10,000 m.t. of Pacific hake and various amounts of certain other designated species normally taken incidental to the hake fishery. The amount of incidental species which may be received by the foreign vessels again was determined as a percentage of the hake received. Percentage limits were derived from limitations on incidental catch by foreign fishing vessels prescribed under the 1978 Foreign Fishing Regulations for the Washington-Oregon-California trawl fishery. These permits thus also were consistent with the NOAA policy of May 12 and complied in all respects with existing requirements of the Act and other applicable law.

The purpose of this notice is to publish for public comment preliminary NMFS determinations concerning the consistency of permit actions applicable in 1978 for the above named vessels, with the Act, as amended by P.L. 95-354, specifically subparagraph 204(b)(6)(B)(i) and (ii). In order to make such determinations, it is necessary to assess the anticipated U.S. harvest of Pacific hake off Washington, Oregon, and California and of Alaska pollock in the Gulf of Alaska in 1978 and to assess the capacity, and utilization of such capacity, of U.S. fish processors to process Pacific hake and Alaska pollock from these geographic areas in 1978. Applying provisions of subparagraphs 204(b)(6)(B)(i) to reconsideration of

permits issued on June 9 and August 16 requires a determination whether United States fish processors have adequate capacity, and will utilize such capacity, to process all United States harvested hake and/or pollock from the Washington, Oregon, and California trawl fishery and/or the Gulf of Alaska Trawl fishery in 1978. If U.S. processors do not have, or will not utilize, adequate capacity, the condition of subparagraph 204(b)(6)(ii) must be applied. Under this condition, the total amount or tonnage of U.S. harvested hake or pollock which may be received at sea by foreign fishing vessels during 1978 under the permits may not exceed that part of the optimum yield of these species which will not be utilized by United States fish processors. Permit modifications, if any are required, may be effected in accordance with §611.3 (i) of the Foreign Fishing Regulations (50 CFR Part 611).


Winfred H. Melbohm
Acting Executive Director
National Marine Fisheries Service

Oct. 17, 1978

1978 Foreign Fishing Permits for Receiving U.S. Harvested Alaska Pollock

- Republic of Korea (ROK) Vessels SOO GONG 51 and BOOK NEUNG

and Soviet Vessel SULAK

Anticipated U.S. Harvest

U.S. fishing vessels which operate in the Gulf of Alaska historically have not engaged in bottom trawl fishing operations but, rather, have been rigged to fish for crab and shrimp. For the most part, those vessels currently rigged for crab fishing would require major modifications in order to fish for Alaska pollock while most shrimp vessels could easily accommodate groundfish gear. There are about 80 shrimp fishing vessels operating out of Kodiak. In addition, there are two to five trawlers in the Kodiak area which devote a substantial amount of effort towards catching groundfish, including Alaska pollock, for bait. Up to three vessels in and around Petersburg have trawled for pollock during the winter and for flounders during the spring. From 60 to 70 dragnet vessels which normally harvest rockfish and flounder off the Washington, Oregon, and California coasts could fish for Alaska pollock in Gulf of Alaska if the weather conditions and economic factors were suitable. Of the total number of vessels presently capable of harvesting and immediately available to harvest Alaska pollock, a significant portion do not have freezing capability. Thus, these vessels could engage in the Alaska pollock fishery (other than the bait fishery)

only in close proximity to a processing plant, a floating processor or a transport with freezer storage. While some conversions to the Alaska pollock fishery have been noted, mass shifts are not indicated.

The projection for the 1977 U.S. harvest of Alaska pollock from the Gulf of Alaska was 1,000 m.t. Actual catches were approximately 232 m.t. The 1978 projection was 17,700 m.t. This amount was contemplated to cover significant increases in domestic landings. In addition, a reserve of 33,760 m.t. has been set aside to accommodate domestic landings in excess of 17,700 m.t. and transfers from U.S. fish harvesters to foreign processors. An assessment completed by the Alaska Region, NMFS in early September has found that the 1978 U.S. harvest will be approximately 32,700 m.t. That assessment is based on catches through June of approximately 500 m.t. with the remainder predicated on the timely commencement and successful operation of the proposed transfer of Alaska pollock to the ROK vessels. Agents for U.S. harvesters who plan to deliver pollock to the ROK vessels state that up to seven U.S. vessels will deliver up to 50 tons per day per vessel for the balance of the year. Operation of the Soviet vessel in the Gulf of Alaska is not expected during 1978.

Capacity and utilization of such capacity of U.S. fish processors

The initial projection of 1978 U.S. processing capacity of Alaska pollock was 17,700 m.t. Early in 1978 that projection was revised downward to 3,000 m.t. of Alaska pollock. The amount of Alaska pollock processed through June was approximately 500 m.t. Two U.S. fish processors who earlier in the year purchased Alaska pollock no longer are accepting deliveries. U.S. fish processors currently are fully utilized processing salmon and shrimp with shifts to crab processing contemplated. In short, realistic production estimates for the remainder of the year indicate that the amount of Alaska pollock which will be processed by U.S. fish processors during 1978 will not significantly exceed the 500 m.t. already processed. There are no indications of processing vessels or freezer transports employed or planned for use by U.S. fish processors for pollock production in 1978.

Quantities which may be received

Having established that U.S. fish processors do not have capacity, or will not utilize such capacity, to process all U.S. harvested Alaska pollock which up to seven U.S. vessels have potential to harvest in 1978, it is necessary to reassess the amount of Gulf of Alaska pollock which may be received by foreign fishing vessels in 1978. In accordance with §204 (b)(6)(B)(ii) of the Act, as amended by P.L. 95-354, such amount may not exceed that portion of the optimum yield (OY) of Gulf of Alaska pollock which will not be

utilized by U.S. fish processors. The OY for Gulf of Alaska pollock in 1978 is established at 168,800 m.t. That amount less the 500 m.t. expected to be processed by U.S. fish processors in 1978 leaves 168,300 m.t. Permits for the foreign vessels restrict the amount of U.S. harvested Gulf of Alaska pollock which may be received by foreign vessels to a maximum of 51,460 m.t., thus meeting the requirements of §204 (b)(6)(B)(ii).

Under the terms of the permits, moreover, the actual amounts of Gulf of Alaska pollock which will be received by foreign fishing vessels may be reduced below 51,460 m.t. The permit provides that if the Director of NMFS determines that 51,460 m.t. of pollock has been harvested by vessels of the U.S. the permitted foreign fishing vessels may not receive additional U.S. harvested fish in the FCZ. That is, at such time as the total of U.S. harvested Alaska pollock delivered to U.S. fish processors and delivered to foreign vessels equals 51,460 m.t., the foreign vessels may not receive any further U.S. harvested fish. Thus, unexpectedly large amounts of Gulf of Alaska pollock harvested by U.S. vessels and processed by U.S. fish processors may reduce amounts that may be received by the foreign vessels.

It should be noted that the Gulf of Alaska trawl fishery management plan, prepared by the North Pacific Fishery Management Council, is to be implemented in late 1978. The plan includes new estimates of the domestic harvest of pollock. Thus only about 10,850 m.t. of

pollock plus 500 m.t. landed at U.S. ports (11,350 m.t.) will be harvested under the existing preliminary management plan for this fishery. It is expected that about 21,850 m.t. of pollock will be harvested under the fishery management plan for the balance of the year (November-December). Therefore, a total 1978 U.S. harvest of 33,200 m.t. of pollock is expected.

Conclusion

The anticipated U.S. harvest of Alaska pollock in the Gulf of Alaska during 1978 (33,200 m.t.) exceeds the capacity and expected utilization of such capacity of U.S. fish processors for Alaska pollock in that fishery during 1978 (500 m.t.). The amount of U.S. harvested fish which may be received by the subject foreign fishing vessels (51,460 m.t. or less) does not exceed that portion of the OY which will not be utilized by U.S. fish processors (168,300 m.t.). Thus, permits issued to the foreign vessels are consistent with the provisions of §204(b)(6)(B)(i) and (ii) of the Act, as amended by P.L. 95-354. Further, permit restrictions ensure that when the total U.S. harvest of Gulf of Alaska pollock reaches 51,460 m.t. in 1978, no further U.S. harvested fish may be received by the foreign vessels.

1978 Foreign Fishing Permits for Receiving U.S. Harvested Pacific Hake -
Soviet Vessels MYS GRINA, TERNEY, and 18 SIEZD VLKSM

Anticipated U.S. Harvest

Fishing vessels which operate out of Pacific coast ports from Northern California to Washington generally have not engaged in the hake fishery but, rather, have fished for shrimp, crab, rockfish, flounder and other groundfish. These vessels generally shift among the west coast fisheries according to prices offered and the annual and seasonal availability of the fish resources. However, there are 30 to 50 crab boats which could be converted for trawling operations; up to 100 shrimp boats are rigged for trawling; and 60-70 dragnet vessels currently harvesting rockfish and flounder could operate in the hake fishery. Thus, while up to 220 U.S. vessels are capable of harvesting Pacific hake, the number which will engage in that fishery is dependent primarily on relative prices for and anticipated abundance of Pacific hake and other species. Currently, these factors do not create favorable conditions for mass shifts to the hake fishery. A significant number of the vessels capable of harvesting Pacific hake do not have freezing capability. Thus, these vessels could engage in the Pacific hake fishery only in close proximity to a processing plant, a floating processor or a transport with freezer storage.

The projection for the 1977 U.S. harvest of Pacific hake was 6,800 m.t. The actual 1977 U.S. harvest is estimated at only 630 m.t. The projection for the 1978 U.S. harvest was set originally at 41,000 m.t. This was a high-side estimate to allow for vastly increased domestic landings plus the contemplated joint venture. Based on the conduct of the 1978 fishery to date and reassessments of projections for the remainder of the 1978 fishery, on August 14, 1978, the anticipated U.S. harvest of Pacific hake was set at 10,000 m.t. Prior to August 14, 1978, the contemplated action was approved by the Pacific Fishery Management Council with no dissenting vote and was published in the FEDERAL REGISTER for public comment on August 4, 1978. No comments were received. It should be noted that 5,000 m.t. of the anticipated U.S. harvest of 10,000 m.t. was based on the availability of foreign processing vessels to receive the catch at sea.

Capacity and utilization of such capacity of U.S. fish processors

The early 1978 survey indicated that about 6,000 m.t of the 41,000 m.t. U.S. harvest of Pacific hake would be processed by U.S. fish processors in 1978. In August, in the process of reassessing the anticipated U.S. harvest of Pacific hake during 1978, most of the potential and major buyers and processors of Pacific hake were contacted. Quantitative estimates of hake production were generally not forthcoming. However, based on production up to that time and realistic production estimates for the remainder of the year it was determined that the amount of Pacific hake which will be processed

by U.S. fish processors in 1978 will not exceed 4,000 m.t. It is apparent that the high interest of U.S. fish processors in Pacific hake has not yet been matched by capacity and performance. At present there is only one floating processor being employed by U.S. hake processors in 1978. There are no other indications of floating processors or freezer transports being employed or planned for use by U.S. fish processors during 1978.

Quantities which may be received

Having established that U.S. fish processors do not have the capacity, or will not utilize such capacity, to process all U.S. harvested Pacific hake in 1978, there remains the necessity to reassess the amount of Pacific hake, which may be received by foreign vessels. In accordance with §204(b)(6)(B)(ii) of the Act, as amended by P.L. 95-354, such amount may not exceed that portion of the optimum yield (OY) of Pacific hake which will not be utilized by U.S. fish processors. The OY for Pacific hake in 1978 is established at 130,000 m.t. That amount less the 4,000 m.t. anticipated to be processed by U.S. fish processors in 1978 leaves 126,000 m.t. Permits for the Soviet vessels restrict the amount of U.S. harvested Pacific hake to a maximum of 10,000 m.t., thus meeting the requirements of §204(b)(6)(B)(ii).

Because of the late start of operations by the Soviet vessels (September 17) and the required cessation of such operations not later than October 31, it is probable that the amount of Pacific

hake which will be delivered to the Soviet vessels will not exceed 5000 m.t. That amount added to the amount expected to be processed by U.S. fish processors, 4000 m.t., does not exceed the anticipated U.S. harvest of 10,000 mt. Moreover, the terms of the permits for the Soviet vessels provide that if the Director, NMFS, determines that 10,000 m.t. have been harvested by vessels of the U.S., the permitted foreign vessels may not receive additional U.S. harvested fish in the FCZ. That is, at such time as the total of U.S. harvested Pacific hake delivered to U.S. fish processors and delivered to the Soviet vessels equals 10,000 m.t., the Soviet vessels may not receive any further U.S. harvested fish. Thus, unexpectedly large amounts of Pacific hake processed by U.S. fish processors may reduce amounts that may be received by the Soviet vessels.

Conclusion

The anticipated U.S. harvest of Pacific hake off Washington, Oregon, and California during 1978 (10,000 m.t.) exceeds the capacity and expected utilization of such capacity of U.S. fish processors for Pacific hake in that fishery during 1978 (4,000 m.t.) by 6,000 m.t. The maximum amount of U.S. harvested fish which may be received under the terms of the permit by the Soviet vessels (10,000 m.t.) does not exceed that portion of the OY which will not be utilized by U.S. fish processors (126,000 m.t.). Thus, permits issued to the Soviet vessels are consistent with the provisions of §204(b)(6)(B)(i) and (ii) of the Act, as amended by P.L. 95-354.

Further, permit restrictions ensure that when the total U.S. harvest of Pacific hake reaches 10,000 m.t. in 1978, no further U.S. harvested fish may be received by the Soviet vessels.