

EXECUTIVE DIRECTOR'S REPORT

Senate Committee Hearings on MFCMA Amendments

The Senate Committee on Commerce, Science and Transportation held a hearing on April 30, 1982 on the amendment and reauthorization of the Magnuson Fishery Conservation and Management Act of 1976. Senators Packwood, Gorton and Stevens attended. Representatives of the regional fisheries councils, the states of Alaska and Oregon, the Japanese fishing industry, the U.S. fishing industry and the Northwest Indian tribes, and Bill Gordon testified. My testimony is included here as Agenda Item B-1(b). The Council's testimony generally supported the proposed amendments to the act. I have copies of most of the testimony in my office if you are interested.

State Fish and Wildlife Directors' Meeting

I attended a meeting of State Fish and Wildlife Directors in Washington, D.C. on April 27-29. The meeting essentially resulted in a reaffirmation of the needs agreed upon at the previous such meeting in 1980. Funding for data collection and management-related research, FMP development and implementation, and enforcement is still a high priority. We also emphasized the need to support our international obligations such as INPFC. NOAA-NMFS seems to be proposing a role for itself as a service agency with the states providing increased funding to cover commensurate decreases in federal funds. The State representatives responded unequivocally that the states were unable to increase their fisheries funding and that the cuts proposed by the administration would be disastrous to many on-going programs. John Harville may want to further elaborate on this meeting.

Soviet and Polish GIFAs

The Soviet GIFA has been signed by the President, diplomatic notes have been exchanged, and the GIFA has been sent to Congress for approval. This will allow the Soviets to continue their joint ventures off Alaska. Action on the Polish GIFA is still pending. Ray Arnaudo will have information on the GIFAs and other allocations.

Proposed Joint Venture Analysis

In December 1981, Larry Cotter representing the International Longshoremen's and Warehousemen's Union, testified before the Council on the need for a complete analysis of the merits of joint ventures. He has provided further clarification of what this study should encompass [see Agenda Item B-1(c)]. I have referred this to the SSC and AP for comment and hope to have a firm RFP drafted for Council review at the July meeting for possible inclusion in our fiscal year 1983 programmatic funding request.

Japanese Herring Processors at Togiak

Several Japanese herring processors are off Togiak awaiting the herring harvest. Their presence in State waters is a direct result of last year's federal court ruling against the State of Alaska. Federal legislation giving the Governor authority to control foreign processing in State waters was

originally part of the MFCMA amendments proposed by the U.S. House of Representatives. I have heard that Senator Stevens intends to extract that language from the House Bill and submit a separate bill that could be in place by June 1. Don Collinsworth may want to further elaborate on this.

Preemption of State Authority Under MFCMA

NOAA has published interim final regulations regarding preemption of State management authority [see Agenda Item B-1(d)]. These rules interpret Section 306(b) of the Act and specify the procedures governing the formal adjudicated hearings specified in Section 306(b). The public comment period has been extended through May 21, 1982.

Programmatic Research Funds for FY82 Arrive

We just received the \$194,489 requested for our FY82 programmatic research, which will include ADF&G's FMP support activities, the crab observer program, the Southeast Alaska economic profile, and the halibut limited entry study. I have also committed \$500 of administrative funds to a Pacific cod study that Natural Resource Consultants is doing on projected use of the resource.

Taiwanese Effort Plan for 1982 Available

I have a copy of the Effort Plan for 1982 for the Republic of China in my office. Four trawlers plan on harvesting 8,341 mt total, mainly of pollock.

STATUS OF FISHERY MANAGEMENT PLANS

1. Salmon FMP

No action is required by the Council at this meeting. No amendment was needed for 1982 because the chinook OY range of 1981 was retained. However, NMFS feels that the authority of the Regional Director to manage the troll fishery to achieve harvest within the OY range, not just at the upper end, needed to be clarified. The proposed rule modification should be published in the Federal Register by May 14.

2. Herring FMP

Though no action is required at this meeting, there probably will be further discussion of the State of Alaska's position on the FMP. The FMP was originally submitted to Secretarial review on March 17, 1982, but the review has been delayed pending receipt of certain supporting documents which will be forwarded to the Secretary shortly after this Council meeting.

3. King Crab FMP

At this meeting, the Council will review the Board of Fisheries' actions taken in March on king crab management. The FMP has been submitted for preliminary review by the NMFS Regional Office. Once the Regulatory Impact Review document is complete, both documents will be submitted to Secretarial review. The FEIS should be completed by July.

4. Tanner Crab FMP

The Council will review actions by the Board of Fisheries concerning Tanner crab management and also give instruction to the plan team on drafting a housekeeping amendment to remove inconsistencies between State and Federal regulations.

Amendment #7 is still in NMFS, Washington, D.C. pending review of the final regulations.

5. Gulf of Alaska Groundfish FMP

The Council will take final action on the unresolved portions of Amendment #11 on sablefish. The Council also will consider approving Amendment #12 which would increase pollock DAH. Part 5 to Amendment #8 concerning the resolution of gear conflicts by the Regional Director also may be discussed. This part was officially disapproved by the Secretary.

Amendment #10 lowering the Pacific ocean perch OY in the Eastern area from 14,400 mt to 875 mt and restricting foreign trawlers to pelagic gear is scheduled to be implemented by June 1, 1982.

6. Bering Sea/Aleutian Islands Groundfish FMP

At this meeting, the Council will review Amendment #1 on managing the groundfish as a complex before resubmission to Secretarial review. The Council will also discuss a proposal to create a Fishery Development Zone, and an amendment (#5) lowering the prohibited species catch of chinook salmon according to schedule. Proposed restrictions on U.S. bottom trawling in the Bristol Bay Pot Sanctuary will also be discussed.

Amendment #4 revising fishery allocations for various species or groups was submitted to Secretarial review on February 18. No word has been received on its status.

Amendment #3 concerning prohibited species catch limitations is under Regional review and after final editing, will be forwarded to Secretarial review about May 21.

North Pacific Fishery Management Council

AGENDA B-1(b)
MAY 1982

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

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TESTIMONY OF JIM H. BRANSON, EXECUTIVE DIRECTOR
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL
BEFORE THE SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
ON AMENDMENT AND REAUTHORIZATION OF THE MAGNUSON FISHERY CONSERVATION
AND MANAGEMENT ACT OF 1976

April 30, 1982

Thank you, Mr. Chairman and members of the Committee, for this opportunity to testify on amendments proposed for the Magnuson Fishery Conservation and Management Act, the reauthorization of that Act, and other matters pertaining to fisheries conservation as it relates to the Act.

The North Pacific Fishery Management Council continues to champion changes in the Act that will speed the plan and regulatory processes through the labyrinth of requirements that now slow them to a lethargic crawl. The process generally has been unable to keep up with the course of events in the industry and the resource. That must change if we are to have credible management. We can increase reliance on existing management machinery, be it state, Federal, or international, and we can redesign the machinery so the Federal regulatory process as envisioned in the Act works more smoothly. Amendments are necessary to accomplish either of those goals.

I would like to begin my testimony by commenting on the working draft prepared by the Committee staff, then commenting on some of the proposals in the comparable House bill, HR 5002, and then briefly outline the Council's priority areas for fisheries funding.

SEC. 3. Section 201(e) would be amended to allow the Secretary of State, in cooperation with the Secretary of Commerce, to reduce allocations to foreign nations in mid-year for cause, and outlines how those causes shall be determined. The North Pacific Council has advocated this kind of action and power for the Secretary of State for some time. It is a very direct and effective response to repeated serious violations by a nation's fishermen. It is a power that should not be used capriciously, however, but should be a response to a definite trend or pattern of violations, and only violations. Other problems, such as failures to live up to agreements in joint ventures, do not need a response in mid allocation year. It is more appropriate to weigh them in relation to next year's allocations.

SEC. 4. Section 204(b)(4)(B) would make Council review of foreign permit applications optional rather than mandatory. I believe the North Pacific Council will continue to ask that permit applications be sent to them for review and they will continue to comment on them. They are a proven vehicle for reviewing violation records and the proper method for putting joint venture operations, allocations, and procedures in a public forum for comment and discussion. My Council probably reviews more permit applications than any

of the others, but we have reduced the paperwork to a minimum and the Council actually spends its valuable time only on those issues critical to policy and management.

SEC 5. Foreign Recreational Fishing. The Council would like to see foreign recreational fishing permitted under regulations developed by the appropriate state and the Secretary of Commerce. They do not believe it should be tied only to fishing tournaments, but it should be restricted to foreign vessels not operated for hire or profit. This is an important issue for U.S. citizens in the Pacific Northwest who frequently transit or fish in British Columbia, as well as for those Canadians who fish in U.S. waters in southeastern Alaska.

The Council would like more lead time in the announcement of new Council appointments. Cliffhangers like we had last year are not very productive.

The revision of Section 302 (SEC. 9), which allows the Council to determine whether a plan is necessary for a fishery within its area, is most welcome, as are the steps through which that determination will be made. Not every fishery will need a management plan. For some it will be because there is simply no need for management, and for others because management is already adequate through existing machinery, whether it be by the state or by an international body such as the Pacific Halibut Commission. As long as that management conforms with the Act and other appropriate U.S. law, we should not duplicate or disrupt it. The proposed amendment provides for justification by the Council, review and comment by the public, and requires the Secretary to detail his objectives if he disagrees with the Council's conclusions.

Exempting Council activity from the Federal Advisory Committee Act (SEC. 11) and substituting similar but more timely requirements for Council action will improve Council functioning, enabling us to respond more efficiently to our management responsibilities. The proposed amendment will still ensure adequate notice to the public and complete participation in all Council activities by all interested persons.

The amendment to Section 303 (SEC. 12), which improves the language providing for limited access systems and allows charging fees to fund vessel "buy-back" programs or their equivalents, is very timely. I would recommend one addition to that section which would allow the administration of a limited access system and collection of fees to be contracted to a state by the Department of Commerce and allow the contractor to retain fees to operate the program.

We are currently studying limited access systems for the halibut fishery off Alaska. Most of the industry has asked for some sort of control and it is a fishery that lends itself to that type of management. We expect that some system for limiting access will be in place by 1983, at least by 1984. The State of Alaska has a system in place for limited entry; if it is possible to contract with them to administer whatever system is developed for halibut, it would be a great saving in both manpower and expense to the Federal government. The Department of Commerce would not have to gear up for an additional, complex administrative and recordkeeping function.

The amendment of Section 303(c) (SEC. 13), which requires draft regulations to be submitted with a fishery management plan for Secretarial review, is a good one. While we have attempted to submit regulations with a plan in the past,

we have not always done so. We have been remiss in that respect and we know that timely development of regulations will speed the entire process.

I would recommend that we go a step further in this area and when SEC. 16 Section 305(a) is considered, that the Secretary of Commerce be directed to publish a Notice of Proposed Rulemaking when he receives an FMP for review, using the draft regulations submitted with the plan. This would considerably enhance the entire review and implementation process. By the time the Secretarial review was finished, the comment period for Proposed Rulemaking would be over. Comments could be considered for both the plan and the regulations and if the plan has been accepted by the Secretary, Final Rulemaking can be accomplished within a short time. That would eliminate the current time consuming step of Proposed Rulemaking, which now follows approval of the plan by the Secretary.

As the amendment is proposed in the Staff draft, it appears that publishing a Notice of Availability of a plan and accepting comments for 30 days while the plan is being reviewed is somewhat redundant. Any FMP has gone through an extensive public review and comment process, sometimes lasting for months, before it ever gets to the Secretary. To go through the same thing again does not appear to be really necessary. This would be particularly true if a Notice of Proposed Rulemaking and the opportunity to comment on proposed regulations is concurrent with plan review.

SEC. 14 Section 303(e) allows the Council to design and the Secretary to implement data collection programs to determine if a plan is necessary or to develop a plan which has been determined necessary. That is a very desirable amendment, but it should, in fact must, include social and economic as well as biological data. Not only the MFCMA, but other Federal acts such as the Regulatory Reform Act and the National Environmental Policy Act require social and economic analysis of Council actions. Any data collection program must collect social and economic data as well as biological data. The confidentiality of that data must be protected, of course, and it would be by existing Federal legislation. The North Pacific Council seldom needs raw data or data from single operations in their plan development process. In those instances where they do, they have asked for (and usually received) voluntary information. The fishing industry is a highly competitive business and its participants are understandably reluctant to reveal details of their operations. Yet it is an industry based on a publicly-owned resource and to be properly managed, some of that information simply must be made available to the management agencies.

SEC. 16. Section 305(e), extending the length of time that an emergency regulation can be in place and further defining how those regulations are developed, is very welcome. Emergencies are always going to occur in this business and the plan amendment process is generally too slow to cope with them. The situation will improve as we develop framework plans and as we learn more about the resource, but emergency regulation power for the Secretary is necessary for the foreseeable future. The two 45-day periods now provided by the Act are not adequate. I endorse the language in your draft.

The problem of "enclaves" as addressed by SEC. 18. Section 306(a) is a real one in Alaska. The proposed amendment is adequate for those FCZ areas completely surrounded by state waters. There are other areas that also cause problems, usually deep inlets or entrances to archipelagos where the FCZ may

intrude well into areas that have traditionally been managed as inshore fishing areas. Those problems can be resolved if it is possible to define a fishery management unit (FMU) based on straighter lines, leaving those long penetrations of territorial waters to management by the adjacent state. The definition of a fishery management unit as used in any given FMP should be left to the appropriate Council.

SEC. 22. Section 201(i)(5) is very desirable. Direct payment of observer costs from the observer fund without going through appropriations acts will greatly enhance this program. Our average observer coverage off Alaska last year was only 10%. We expect it to be up to almost 35% to 40% for the rest of this year, but program expansion was greatly delayed because we had to wait for an appropriation. Since the program is totally funded by the foreigners that host the observers, it seems appropriate to keep it as a revolving fund. The Act mandates the kind of coverage required, so little further action or discretion is possible.

While on the subject of observers, I would like to note that it is almost impossible for an observer to be an enforcement agent. They can certainly monitor the conduct of a foreign fishery operation and their compliance with the regulations, but they cannot be expected to be active in enforcement. Their role as scientific observers and catch monitors is much too important to endanger or degrade by imposing additional duties that are impossible to perform.

In other areas not addressed by the draft being considered by this Committee, I would like to recommend that the Regional Director of the National Marine Fisheries Service, now an obligatory voting member of the Council, be retained as just that -- a voting member. The North Pacific Council feels very strongly that the Regional Director's role is much too important to curtail his participation as an active voting member. That active, voting membership stimulates discussion, openly develops rationale for the Department of Commerce position on Council actions, and makes a commitment to action when he votes that would not be there if the Regional Director were a non-voting member.

We would like authority to hold public hearings on MFCMA matters outside of our area of authority, particularly in the state of Washington. As the Act is currently written and construed, we do not have that ability. Many of the fishermen and a great preponderance of the industry engaged in the fisheries off Alaska are based in Seattle. If we are to get full public participation in the planning process, we must have that input. The need for participation by people from those areas was recognized when three of our voting members were designated to the Council from the state of Washington and one from the state of Oregon. Allowing the Council to hold public hearings on the West Coast is simply an extension of that recognition.

The House proposal to reduce the compensation of Council members seems unnecessary. The savings would be minimal and most Council members are even now poorly paid for the amount of time they put in and for the very great amount of expertise they bring to the regional fishery management process.

Funding

The North Pacific Council is very concerned that adequate funding be maintained for resource surveys, data collection, and analysis. Those areas are absolutely necessary for the Council management function. While we recognize the importance of other programs in the National Marine Fisheries Service and generally endorse them, the basic areas mentioned have to be adequately funded or the whole process will collapse. Resource surveys are expensive. It takes valuable ship time and lots of it to do a proper job, and it needs the right kind of ship time. It is the Council's belief that more can be accomplished at less cost if we concentrate on chartering fishing vessels for survey work. They are much less costly and usually more efficient than all but the smaller units in the present NOAA fleet.

We must fund research commitments made by the United States in international negotiations. I refer specifically to our commitments to Japan and Canada in the International North Pacific Fisheries Convention and to research requirements arising out of our current negotiations with Canada on trans-boundary salmon problems. Those agreements can solve many of our problems and go a long way toward rehabilitating salmon resources in the North Pacific, but they will not work if we don't live up to our commitments by doing the research promised.

Salmon is still the number one fishery resource in Alaska. Funding for anadromous fish programs has been important in rebuilding and maintaining salmon as a strong and viable resource. We cannot afford to abandon those programs.

In summary, Mr. Chairman, I believe the proposed amendments are good ones. I think they can be strengthened in some areas, but with relatively little change will greatly improve the functioning of the Magnuson Fishery Conservation and Management Act. The Act is still a very sound piece of legislation. Even though we have heard many grumblings about its effectiveness since it was passed in 1976, it has accomplished a great deal. The American fishing industry is in better shape now than it was before in most areas; the foreigners have been removed from some fisheries; and the end is in sight for them in the others, except as participants in the processing and investment areas. As a Council we think we can do more and do it better. These amendments and adequate funding will go a long way toward accomplishing that. Thank you.

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UNION



May 3, 1982

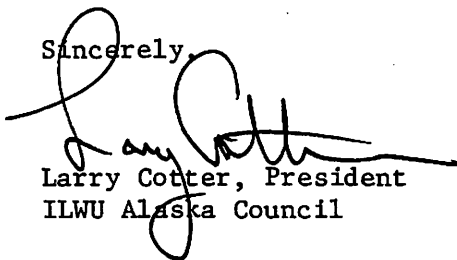
Mr. Jim Branson, Executive Director
North Pacific Fishery Management Council
P.O. Box 3136DT
Anchorage, Alaska 99510

Dear Jim:

Enclosed please find a series of questions relating to an analysis of joint ventures. I apologize for the tardiness of this communication, but I've been heavily involved in contract negotiations which have assumed a priority status.

See you later this month.

Sincerely,



Larry Cotter, President
ILWU Alaska Council

AN ANALYSIS OF JOINT VENTURES

Since their inception in 1977, joint venture operations have become a normal part of the allocation schemes in the North Pacific FCZ. In four short years joint venture harvests have increased from 0 to 250 million pounds plus annually. The number of joint venture operations and their annual harvest have and are continuing to escalate. Indeed, the U.S. State Department has determined that joint ventures are to be the means through which foreign fishing operations in the FCZ will be curtailed, and that direct TALIFF allocations be linked to a particular country's willingness to participate in joint ventures and their subsequent performance. As a result, joint ventures have become the single, most significant factor in the development of a United States domestic bottomfish industry.

Joint ventures, however, are both praised and cursed. U.S. fishermen engaged in joint ventures, or seeking involvement in joint ventures, look to joint ventures for economic salvation during a period of high interest rates and dwindling, harvestable domestic resources (such as King Crab). The domestic industry and organized labor, both beset by the same high interest rates and dwindling resources, question whether joint ventures are effectively precluding the development of an expanded domestic industry.

Regardless of points of view, it is clearly obvious that joint ventures are having, as they are intended to have, a significant impact on the development of a domestic industry focused on the utilization of underutilized species. Given the controversial nature of the impact of joint ventures, it is only appropriate an indepth analysis of the short and long range effects of joint ventures on the entire domestic industry be performed. Accordingly, the following areas -- among others -- should be analyzed:

1.) What are the goals of joint ventures:

- a.) Provide a method of entry into the harvesting and processing of underutilized species by the domestic industry?

- b.) Provide an educational training ground for U.S. fishermen?
- c.) Provide for an economically viable, alternative fishery for U.S. fishermen?
- d.) ????

2.) Is there a necessity for joint ventures?

- a.) MFCMA doesn't allow for the direct phase out of foreign fleets?
- b.) Domestic overhead and operations costs, foreign trade barriers, and world market structure preclude development of a domestic industry under current conditions?
- c.) The economic situation in the U.S. (particularly high interest rates) coupled with the collapse of King Crab stocks has made joint ventures an economic necessity for large-boat, U.S. fishermen?
- d.) ????

3.) Are there problems with current, actual joint ventures?

- a.) Foreign countries are reluctant to enter joint ventures without accompanying direct allocations of more valuable species?
- b.) Joint venture motherships focus on direct allocations while disregarding joint venture allocations?
- c.) Management regulations apply differently to joint venture harvesters than to TALIFF harvesters?
- d.) In regards to American fishermen participating in joint ventures:

- 1.) Are U.S. fishermen paid properly and on time?
 - 2.) Do U.S. fishermen receive bona fide commitments of purchase and availability for purchase?
 - 3.) Are there too many desirous U.S. fishermen for too few joint ventures?
 - 4.) Do U.S. fishermen suffer from mothership emphasis on direct allocations as opposed to joint venture allocations?
 - 5.) ????
-
- 4.) How does the price paid to joint venture fishermen compare with the price paid by domestic companies to fishermen fishing for the same specie?
 - 5.) Do domestic companies involved with, or seeking to become involved with, the processing of underutilized species have difficulty securing fishermen and/or product? If there is difficulty, does this coincide with periods of joint venture operations?
 - 6.) Do domestic companies which operate processing facilities and have become involved in joint ventures also purchase and process similar underutilized species domestically? Does there appear to be a correlation between domestic companies who are not engaged in joint ventures and the amount of underutilized specie they process, and domestic companies which are engaged in joint ventures and the amount of underutilized species they domestically process: i.e., does it appear that joint venture involvement by domestic companies precludes their involvement in domestically processing the same specie?
 - 7.) Is there an ownership relationship between domestic processing companies who participate in joint ventures and their foreign co-participant? Does this have any bearing on question #6 above?
 - 8.) Has the amount of underutilized species harvested and processed domestically since

the inception of joint ventures increased, decreased, or stayed the same?
Does there appear to be any correlation between the amount harvested and processed domestically and the increase in joint venture allocations and harvests?

- 9.) What would be the approximate dollar value of joint venture harvests if they had been landed onshore and processed domestically:
 - a.) To the fishermen?
 - b.) To the domestic processing company?
 - c.) To the domestic processing worker?
 - d.) To infrastructure and support industries?
 - e.) To communities?
 - f.) To the state of Alaska?
- 10.) What are the comparative overhead costs for purchasing and processing one pound of a particular underutilized specie by foreign vessels involved in direct TALIFF allocations, foreign vessels involved in joint venture operations, and domestic operations involved in direct purchases from U.S. fishermen?
- 11.) What is the approximate dollar value of joint ventures as they currently exist for each of the entities listed in question #9 above?
- 12.) How many U.S. fishing vessels are involved in joint ventures, and how many U.S. fishermen and deckhands are currently involved? What are the projections for the future?
- 13.) Are there alternatives to joint ventures?

14.) Does the data gathered by this analysis support the contention that joint ventures will pave the way for total domestic harvesting and processing of underutilized species within the North Pacific FCZ? Why? Why not?

(5) Conducting those investigations necessary to complete security determinations in connection with requirements, as specified in Executive Order 10450, of April 27, 1953, and by Executive Order 12065 of June 28, 1978, as amended.

(6) Carrying out certain authorities specifically reserved from the delegations to the United States Fire Administrator in § 2.65 and to the Federal Insurance Administrator in § 2.64 as follows:

(i) Auditing pursuant to section 21(c) of the Federal Fire Prevention and Control Act of 1974, as amended.

(ii) Auditing the records of insurers or others under section 1244(d) of the National Housing Act (12 U.S.C. 1749bbb.14).

(iii) Auditing and examining the records of flood insurance pools and insurance companies or other private organizations under section 1348(b) (42 U.S.C. 4084(b)).

(7)(i) Investigations of allegations of specific instances of wrongdoing, waste or malfeasance on the part of any FEMA employee, any contractor or subcontractor doing business with FEMA, any grantee or other person who may be involved in FEMA activities.

(ii) Investigations of any fraudulent request for assistance, request for insurance, or fraudulent claim against FEMA by any person.

(iii) Any subpoena power for the collection of information.

(8) Making referrals to the Department of Justice under 28 U.S.C. 535.

(b) Notwithstanding any general delegation of statutory authority to another officer of FEMA, if such authority delegated in the general delegation contains an audit authority, that authority is delegated to the Inspector General.

§ 2.71 Regional Directors.

(a) Except as otherwise provided in this part, each Regional Director is authorized to exercise the authority of the Director, FEMA, pursuant to the provisions of sections 1-102, 4-201, and 4-202 of Executive Order 12148 of July 20, 1979.

(b) Except as otherwise provided in this part, and in accordance with program guidance from the responsible FEMA Program Director, each Regional Director is authorized to exercise the authority of the Director pursuant to the Disaster Relief Act of 1974, which were delegated to the Director by section 4-203 of Executive Order 12148 of July 20, 1979.

(c) The following authorities are excluded from the delegation under paragraph (b) of this section and are

delegated to other officials of FEMA or are reserved to the Director:

(1) The authority to issue rules and regulations pursuant to the Disaster Relief Act of 1974.

(2) The authority to make recommendations to the President concerning the determination that an emergency exists pursuant to section 301(a) of the Act.

(3) The authority to make recommendations to the President concerning the issuance of a major disaster declaration pursuant to section 301(b) of the Act.

(4) The authority contained in section 407 of the Act concerning unemployment assistance.

(5) The authority to appoint a Federal Coordinating Officer pursuant to section 303 of the Act.

(6) The authority to enter into agreements with the American National Red Cross, the Salvation Army, the Mennonite Disaster Service and other relief or disaster assistance organizations pursuant to section 312(b) of the Act.

(7) The authority to determine that a State plan of self-insurance is satisfactory pursuant to section 314 of the Act.

(8) The authority to approve a community disaster loan pursuant to section 414 of the Act.

(9) The authority to provide assistance for the suppression of fires pursuant to section 417 of the Act.

(d) Each Regional Director is authorized to exercise the power and authority of the Director, FEMA, with respect to sections 201(d), 302(b), 306(a), and 309 of the Disaster Relief Act of 1974 except that the authority in section 309(b) (1) and (2) shall be conducted through the Office of Personnel.

(e) Each Regional Director is authorized to exercise the authorities of the Director, FEMA, with respect to:

(1) Approval, disapproval, modification or amendment of request from the States related to financial contributions for civil defense materials and facilities and personnel and administrative expenses pursuant to sections 201(i) and 205 of the Federal Civil Defense Act of 1950, as amended.

(2) Conduct of programs for the States, designated by the Associate Director for State and Local Programs under the Federal Civil Defense Act of 1950 as amended including execution of the necessary document to implement and conduct the program.

(f) In exercising any authority delegated to them, the Regional Directors shall coordinate (to the maximum extent practicable) technical matters and routine actions with

appropriate program officials on the staffs of the various Administrators, Associate Directors, General Counsel, Inspector General or Office Directors who shall render policy guidance and program direction.

(g) Each Regional Director is authorized to accept service of process on behalf of the agency and its officials. Upon so doing, the Regional Director shall notify the General Counsel as soon as possible.

(h) Each Regional Director is authorized to approve reimbursement to the extent appropriated funds are available for obligation by the Regional Director, for expenses of attendance of cooperating officials and individuals at meetings concerned with the work of emergency preparedness, provided:

(1) that the Appropriations Act for the fiscal year in which the obligation is incurred contains the same authorizing language that is found in Pub. L. 98-103 with respect to such travel, and

(2) that the authority exercised under this delegation is subject to the Federal Travel Regulations and per diem rates as may from time-to-time be established by the Administrator of General Services.

Dated: March 12, 1982
L. O. Giuffrida,
Director, Federal Emergency Management Agency.
[FR Doc. 82-7643 Filed 3-18-82; 8:45 am]
BILLING CODE 6718-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 619

Preemption of State Authority Under Section 306(b) of the Magnuson Fishery Conservation and Management Act

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final regulations.

SUMMARY: NOAA promulgates rules which interpret section 306(b) of the Magnuson Fishery Conservation and Management Act and specify the procedures governing the formal adjudicatory hearings specified in section 306(b). These rules apprise interested parties of NOAA's interpretations and procedures in the event that it becomes necessary to preempt State fishery management authority if State action or inaction

adversely affects Federal implementation of Fishery Management Plans. NOAA also solicits comments on the rules.

DATE: These rules are effective as interim rules. Comments must be submitted on or before April 21, 1982.

ADDRESS: Comments should be sent to the NOAA Office of General Counsel (GCF), Room 404, 3300 Whitehaven Street NW., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Frederick D. Kyle, 202-634-7486.

SUPPLEMENTARY INFORMATION: Section 306(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1856(b)) authorizes the Secretary of Commerce to apply Federal regulations to State waters (other than internal waters) if he finds certain facts in a formal adjudicatory hearing. This statutory provision supplements, but does not substitute for, the Constitutional doctrine of Federal Supremacy—that State laws which conflict with Federal regulations, or which proscribe activities permitted by Federal regulations, are superseded by those Federal regulations.

NOAA promulgates these rules to govern preemption hearings under section 306(b) when required. The rules accomplish two purposes. First, they interpret key statutory phrases (such as "predominately" and "substantially affects") regarding the factual findings for Federal preemption of State authority. Second, the rules set forth the procedures by which the process is governed, from commencement of the hearing through reinstatement of State authority. Certain of these procedures (e.g., commencement of the proceeding, personal decision by the Secretary, and reinstatement of State authority) are unique to preemption hearings. Procedures governing the actual conduct of formal adjudicatory hearings, however, are not unique to preemption hearings. With respect to the latter procedures, NOAA utilizes its previously published Hearing and Appeal Procedures, 15 CFR Part 904, Subpart C (46 FR 61653), with certain exceptions, (regarding sections not applicable to preemption hearings) to ensure uniformity of procedures in all its formal adjudicatory hearings.

Classification

NOAA promulgates these rules as interim final rules on the authority of 5 U.S.C. 553(b), which excepts interpretative and agency practice rules from notice-and-comment procedures. Nonetheless, NOAA solicits comments on these rules from interested parties

and will review them in light of the comments.

NOAA has determined that these rules, which interpret statutory provisions and prescribe procedures, are not "major" rules as defined in Executive Order 12291. These rules are not subject to requirements of the Regulatory Flexibility Act, and contain no collection of information requirements for purposes of the Paperwork Reduction Act of 1980. These regulations prescribe agency procedures and thus constitute a "categorical exclusion" from the requirements of the National Environmental Policy Act of 1969.

Dated: March 16, 1982.

Robert K. Crowell,
Deputy Executive Director, National Marine Fisheries Service.

For the reasons set forth in the preamble, a new Part 619 is added to 50 CFR, Chapter VI, to read as follows:

PART 619—PREEMPTION OF STATE AUTHORITY UNDER SECTION 306(b)

Sec.

- 619.1 Purpose and scope.
- 619.2 General policy.
- 619.3 Definitions.
- 619.4 Factual predicates for Federal preemption.
- 619.5 Commencement of proceedings.
- 619.6 Rules pertaining to the hearing.
- 619.7 Administrative appeal.
- 619.8 Secretary's decision.
- 619.9 Application for Reinstatement of State Authority.

Authority. 16 U.S.C. 1856(b)

§ 619.1 Purpose and scope.

The rules in this part, together with the requirements of 5 U.S.C. 554-557, prescribe procedures for the conduct of preemption hearings under section 306(b) of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1856(b). These rules are issued by the Secretary of Commerce pursuant to the authority of section 305(g) of the Act and the requirement of 5 U.S.C. 552(a)(1)(C).

§ 619.2 General policy.

It is the policy of the Secretary of Commerce that preemption proceedings will be conducted expeditiously. The administrative law judge and counsel or other representative for each party are encouraged to make every effort at each stage of the proceedings to avoid delay.

§ 619.3 Definitions.

As used in this part, unless the context clearly requires otherwise:

Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Administrator means the Administrator, National Oceanic and Atmospheric Administration (NOAA) or any person to whom the Administrator's authority has been delegated.

Assistant Administrator means the Assistant Administrator for Fisheries, NOAA, or any person to whom the Assistant Administrator's authority has been delegated.

Council means any appropriate Regional Fishery Management Council established under Title III of the Act.

Party to the proceeding means the Assistant Administrator and each State served with a notice of proposed preemption (as represented by such State's Attorney General or other official representative).

Secretary means the Secretary of Commerce.

State means any State or States, as defined in Section 3(21) of the Act, with respect to which action is taken under this part.

§ 619.4 Factual findings for Federal preemption.

(a) The two factual findings for Federal preemption of State management authority over a fishery are:

(1) The fishing in a fishery, which is covered by a fishery management plan implemented under the Act, is engaged in predominately within the fishery conservation zone (FCZ) and beyond such zone; and

(2) A State has taken an action, or omitted to take an action, the results of which will substantially and adversely affect the carrying out of such fishery management plans.

(b) *Definitions.* In addition to the definitions contained in section 3 of the Act, terms used in this section have the following meanings:

Predominately means, with respect to fishing in a fishery, that more fishing on the stock or stocks of fish covered by the fishery management plan occurs, or would occur in the absence of regulation, within or beyond the FCZ than within the boundaries of all States off the coasts of which the fishery is conducted. Whether fishing is engaged in "predominately" within or beyond the FCZ shall be determined after consideration of relevant factors, including but not limited to:

(1) The catch (based on numbers, value or weight of fish caught, or other relevant factors) or fishing effort during the appropriate period,

(2) In light of historical patterns of the distribution of catch or fishing effort such stock or stocks of fish.

State action or omission that affects a fishery covered by a fishery management plan includes a State's statutes, conservation and management regulations, judicial decisions, policies, and enforcement practices, or the lack thereof.

Substantially (affects). Whether or not a State's action or omission will substantially affect the carrying out of a fishery management plan (FMP) for a fishery is determined after consideration of relevant factors, including but not limited to:

(1) The similarity or dissimilarity between:

(i) The goals, objectives, or policies of the State's action or omission and the management goals or objectives specified in the FMP for the fishery, or

(ii) The State and Federal conservation and management measures for the fishery;

(2) The effect of the State's action or omission upon:

(i) The achievement of the FMP's goals or objectives for the fishery;

(ii) The achievement of optimum yield from the fishery on a continuing basis;

(iii) The attainment of the national standards for fishery conservation and management (as set forth in section 301(a) of the Act) and compliance with other applicable law; and

(iv) The enforcement of regulations implementing the FMP;

(3) The proportion of the total fishery (stock or stocks of fish and fishing for such stocks) that occurs or has occurred within the boundaries of such State, or that is subject to the effects of a particular State's action or omission; and

(4) The characteristics and status (including migratory patterns and biological condition) of the stock or stocks of fish in the fishery.

§ 619.5 Commencement of proceedings.

(a) *Notice of proposed preemption*. The Assistant Administrator may, if deemed necessary, initiate a proceeding under this part by issuing a notice of proposed preemption to the Governor and Attorney General of the State concerned. The notice shall contain:

(1) A recital of the legal authority and jurisdiction for instituting the proceeding;

(2) A concise statement of the § 619.4 factual findings for Federal preemption upon which the notice is based;

(3) The time, place, and date of the hearing; and

(4) Any regulations which the Assistant Administrator proposes to apply or promulgate with respect to fishing within the boundaries of the State.

(b) *Response*. The State shall have the opportunity to respond in writing to the notice of proposed preemption.

(c) *Amendment*. The Assistant Administrator may, at any time prior to the hearing, amend or withdraw the notice of proposed preemption. At the discretion of the administrative law judge, the Assistant Administrator may, after the hearing has begun but before the record is closed, amend or withdraw the notice of proposed preemption.

(d) *Proposed regulations*—(1) *In general*. If additional regulations are required to govern fishing within the boundaries of a State, the Assistant Administrator shall publish proposed regulations in the Federal Register concurrently with issuing the notice indicated in paragraph (a) of this section.

(2) *Emergency actions*. Nothing in this section shall prevent the Secretary from taking emergency action under section 305(e) of the Act.

§ 619.6 Rules pertaining to the hearing.

The civil procedure rules of the National Oceanic and Atmospheric Administration currently set forth in 15 CFR Part 904, Subpart C, (or as subsequently amended), apply to the course of the hearing subsequent to commencement of the proceeding (pursuant to § 619.5) and prior to administrative appeal (§ 619.7), *except* that the following sections shall not apply:

- 15 CFR 904.201 (Definitions);
- 15 CFR 904.206(a)(1) (Duties and powers of Judge); and
- 15 CFR 904.272 (Administrative review of decision).

§ 619.7 Administrative appeal.

(a) *Right of appeal*. Within twenty (20) days after receiving the recommended decision, either party may appeal the decision to the Administrator. Any such appeal shall be made in writing and shall include a concise explanation of any factual or legal errors the party believes were made by the administrative law judge, and any alternative findings the party proposes that the Administrator make. A copy of the appeal shall be sent to the opposing party.

(b) *Response*. The opposing party shall have ten (10) days from receipt of a copy of the appeal in which to respond in writing. There shall be no further right of reply.

(c) *Administrator's authority*. Upon consideration of any such appeal, and response thereto, the Administrator may, on the basis of the hearing record and any materials submitted with respect to the appeal:

(1) Remand the case to the administrative law judge for such further proceedings as may be appropriate, along with a statement of reasons for the remand;

(2) Reserve decision on the merits or withdraw the notice of proposed preemption; or

(3) Accept or reject any of the findings or conclusions of the administrative law judge and submit a recommendation to the Secretary.

(d) *Recommendation to the Secretary*. If no appeal is filed, the Administrator shall promptly certify the hearing record and a recommendation to the Secretary. If an appeal is filed and the Administrator acts pursuant to paragraph (c)(3) of this section, the Administrator shall promptly certify the hearing record, any appeal record and his recommendation to the Secretary.

§ 619.8 Secretary's decision.

(a) *Secretary's authority*. Based upon the hearing record, any appeal record, and the Administrator's recommendation, the Secretary shall decide whether the factual findings exist for Federal preemption of a State's authority within its boundaries (other than in internal waters) with respect to the fishery in question, or whether to remand the case to the Administrator for further proceedings as may be appropriate.

(b) *Notification*. (1) If the Secretary determines that the factual findings for Federal preemption exist, he shall notify in writing the Governor of that State and the appropriate Council of his preemption of that State's authority. The Secretary shall also direct the Administrator to promulgate appropriate regulations proposed pursuant to § 619.5(d), and otherwise to begin regulating the fishery within the State's boundaries.

(2) If the Secretary determines that the factual findings for Federal preemption do not exist, he shall notify in writing the Governor of that State and the appropriate Council of his determination. The Secretary shall also direct the Administrator to issue a notice withdrawing the regulations proposed pursuant to § 619.5(d).

§ 619.9 Application for Reinstatement of State authority.

(a) *Application or Notice*. At any time after the promulgation of regulations under § 619.8(b)(1) to regulate a fishery within a State's boundaries, the affected State may apply to the Secretary for reinstatement of State authority, or the Secretary may of his own initiative serve upon such State a notice of intent

to terminate such Federal regulation. A State's application shall include a clear and concise statement of (1) the action taken by the State to correct the action or omission found to have substantially and adversely affected the carrying out of the fishery management plan, or (2) any changed circumstances which affect the relationship of the State's action or omission to take action to the carrying out of the fishery management plan; and (3) any laws, regulations or other materials which the State believes support the application.

(b) *Informal response.* If the Secretary determines that the application does not raise substantial and material issues of fact, he may accept or reject the application in his discretion. If the Secretary accepts the application and finds that the reasons for which he assumed regulation of the fishery within the boundaries of the State no longer prevail, he shall promptly terminate such regulation and publish any regulatory amendments necessary to accomplish that end.

(c) *Hearing.* Whenever the Secretary determines that the application raises substantial and material issues of fact, he may direct the Administrator to schedule hearings for the receipt of evidence by an administrative law judge. Hearings before the administrative law judge to receive such evidence shall be conducted in accordance with § 619.6. Upon conclusion of such hearings, the administrative law judge shall certify the record and his recommended decision to the Administrator. Upon consideration of the State's application, the hearing record, and any other relevant material, the Administrator shall recommend to the Secretary his determination. If the Secretary finds that the reasons for which he assumed regulation of the fishery within the boundaries of the State no longer prevail, he shall promptly terminate such regulation and shall publish any regulatory amendments necessary to accomplish that end.

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50 CFR Part 671

Tanner Crab off Alaska

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, National Marine Fisheries Service, has determined that the desired harvest

level of Tanner crab for the remainder of the South Peninsula District in Registration Area J will be achieved on March 17, 1982, and that early closure of the fishery is necessary to protect Tanner crab stocks. The Secretary of Commerce, therefore, issues this notice of closure of the remainder of the South Peninsula District to fishing for Tanner crab by vessels of the United States on March 17, 1982, thereby adjusting the previous closing date of May 15, 1982, in order to prevent overfishing of Tanner crab stocks in the South Peninsula District.

DATE: This notice is effective from 12:00 noon, Alaska Standard Time (AST), March 17, 1982, until 12:00 noon, Alaska Daylight Time (ADT), May 15, 1982. This notice of closure was filed for public inspection with the Office of the Federal Register on March 17, 1982, at 4:38 p.m. Public comments on this notice of closure are invited until March 31, 1982.

ADDRESS: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Robert W. McVey, 907-586-7221.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Commercial Tanner Crab Fishery Off the Coast of Alaska (FMP), governing this fishery in the fishery conservation zone (FCZ) under the Magnuson Fishery Conservation and Management Act, provides for inseason adjustments by field order, to season and area openings and closures. Implementing rules at 50 CFR 671.27(b) specify that these orders will be issued by the Secretary of Commerce under the criteria set out in that section.

50 CFR 671.26(f) establishes five districts within Registration Area J in order to prevent overfishing of individual Tanner crab stocks by allowing closure or partial closure of a particular district when the desired harvest level is reached. One of these districts is the South Peninsula District, for which an optimum yield for all Tanner crab of 6.0 million pounds has been approved by the Secretary of Commerce and is pending publication of a final rule in the Federal Register. The State of Alaska's 1981 Tanner crab index survey, however, indicates that the acceptable harvest in the South Peninsula District during the 1981-82 season should be only 4.5 million pounds. Fishing has yielded 2.5 million pounds and 1.6 million pounds in areas referred to as the "Belkofski" Section and the "Pavlov" Section to the South Peninsula District, respectively. Those

sections were closed by field order (49 FR 6655) to further Tanner crab fishing on February 10 and February 15, respectively, to prevent localized overfishing on those stocks.

Following closure of the above two sections, effort shifted to a minor producing-ground, commonly referred to as the "Stepovak Bay/Nagai Island" Section, to harvest the remaining 400,000 pounds. Through March 8, 300,000 pounds have been harvested by 22 vessels. Catch per unit of effort has declined from 30 crabs per pot to 18 crabs per pot, further substantiating the 1981 index survey. It is estimated that the desired harvest level of 400,000 pounds will be achieved on March 17, 1982. Further fishing could result in harm to the resource.

In light of this information, the Regional Director, National Marine Fisheries Service, in accordance with 50 CFR 671.27(b), has determined that:

1. The actual condition of Tanner crab stocks in the South Peninsula District is substantially different from the condition that was previously anticipated; and
2. This difference reasonably supports the need to protect those Tanner crab stocks by closing the FCZ portions of the "Stepovak Bay/Nagai Island" Section to further fishing for Tanner crab during the current fishing year after 12:00 n AST, on March 17, 1982.

For these reasons, the FCZ portion of the "Stepovak Bay/Nagai Island" Section of the South Peninsula District in Registration Area J, as defined below, is closed to all fishing for Tanner crab from 12:00 noon, AST, March 17, 1982, until 12:00 noon ADT, May 15, 1982, at which time the closure of this district prescribed in 50 CFR 671.26(f)(2)(ii) will begin. The "Stepovak Bay/Nagai Island" Section is defined as follows:

Stepovak Bay/Nagai Island Section: means all waters of the South Peninsula District bounded on the west by a line extending from Renshaw Point (55°36'30" N. latitude, 160°21'12" W. longitude) to West Head on Unga Island (55°22'48" N. latitude, 160°31'00" W. longitude) and extending south along the longitude of Acheredin Point on Unga Island (55°07'09" N. latitude, 160°49'18" W. longitude), and bounded on the east by the eastern boundary of the South Peninsula District as defined by § 671.26(f)(1)(ii).

This closure will not be effective prior to filing this notice for public inspection with the Office of the Federal Register and publicizing the closure for 48 hours through Alaska Department of Fish and Game (ADF&G) procedures, under 50 CFR 671.27(a)(2). Under 50 CFR 671.27(b)(4), public comments on this