


M E M O R A N D U M

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke  
Executive Director 

DATE: December 2, 1988

SUBJECT: Central Bering Sea Fisheries

**ACTION REQUIRED**

Information Only.

**BACKGROUND**

There have been several meetings on the international front since September. In September the Council strongly urged the Department of State to call for an immediate cessation of all fishing in the Donut Hole, to be implemented as expeditiously as possible by bilateral or unilateral action. C-2(a) has the Chairman's letters to Ambassador Wolfe and Secretary Verity summarizing the Council's position.

U.S.-Soviet Meeting in Moscow. Ambassador Wolfe met with the Soviets in Moscow on October 19-20 and it was agreed that unregulated fisheries in the Donut "...are clearly detrimental to pollock resources in the adjacent economic zones of the United States and the Soviet Union." The U. S. side proposed a call for a temporary cessation on fishing in the Donut. The Soviets proposed that the U.S. and U.S.S.R. lead in establishing a management regime throughout the Bering Sea, but cautioned that management would have to be implemented on a cooperative and voluntary basis. The State Department also predicts more cooperation on high-seas salmon issues. Bob Ford is prepared to further review progress on these issues. C-2(b) relates to the U.S.-U.S.S.R. agreement.

Enforcement and Driftnet Meeting in Tokyo. A U.S. delegation headed by Larry Snead met with Japanese officials in Tokyo on October 19-21 to discuss North Pacific and Bering Sea enforcement issues and requirements of the U.S. Driftnet Impact Monitoring, Assessment and Coastal Act of 1987. A summary of that meeting is under C-2(c).

Scientific Meetings. Bill Aron attended scientific bilaterals in Leningrad on October 10-14, Taiwan on November 5-7, and South Korea on November 10-11, and the annual meeting of the International North Pacific Fisheries Commission in Tokyo from October 31 to November 4. He is available to summarize those meetings for the Council as well as give a brief final wrap-up on the Sitka Scientific Symposium that was held July 19-20. A preliminary summary was given at the September meeting but the foreign countries had not yet responded to the meeting summary prepared by NMFS. C-2(d) is Ed Wolfe's review of the INPFC meeting.

PICES. On November 14-15, I attended a meeting in Sidney, B.C., designed to keep the ball rolling on establishing a Science Organization for the North Pacific Ocean and Bering Sea. The U.S., U.S.S.R., Japan, Canada, and China all attended to review a draft convention for scientific research coordination. The organization's purpose would be to promote and facilitate collaborative scientific effort and cooperation among North Pacific countries while avoiding duplication of effort with other organizations. The scientific focus would include all disciplines from marine biology to pollution to climatology and weather. It was stressed repeatedly that this would be a scientific endeavor with no regulatory functions.

It's my impression from the discussions that Canada, the Soviet Union and the United States are eager to move ahead with establishing such an organization. China is a little less enthusiastic but recognizes the need for scientific exchange. Japan voiced strong reservations about the need for yet another international organization and the usefulness of the draft convention. They wanted suggested research topics so they could convince themselves and those back home that there really was a need for the convention.

The next step will be for Canada to send out a meeting summary to the four other countries along with the draft convention. Comments must be returned by April 1. Canada then will collate the comments and country texts and resend a draft convention to all countries by April 15. An expert group will meet in July to polish the draft convention and there's a possibility that a plenary session will be held before the end of the year to sign the convention.

# North Pacific Fishery Management Council

John G. Peterson, Chairman  
Clarence G. Pautzke, Executive Director

605 West 4th Avenue  
Anchorage, Alaska 99501



Mailing Address: P.O. Box 103136  
Anchorage, Alaska 99510

Telephone: (907) 271-2809  
FAX (907) 271-2817

October 11, 1988

Ed Wolfe, Deputy Assistant Secretary  
for Oceans & Fisheries Affairs  
Department of State  
Washington, DC 20520

Dear Ed:

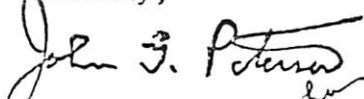
The North Pacific Council remains deeply concerned about the uncontrolled foreign fisheries developing in the Donut Hole. We seek the strongest action now from the U.S. Department of State to eliminate those fisheries. They not only may be harming the pollock resources of our U.S. EEZ, but the fishery products compete with ours on international markets.

We believe that the Department of State should call for an immediate cessation of all fishing in the Donut Hole, to be implemented as expeditiously as possible by bilateral or unilateral action as necessary. This cessation must be followed by effective management and enforcement to further protect our interests. The Council urges you to carry that position forward to Moscow in your negotiations with the Soviets later this month. Further, the burden of proof should be on the foreign countries that fish the Donut Hole to show that those stock removals do not impact our resource.

In addition to a cessation on fishing, the Council strongly encourages the State Department to investigate how enforcement can be improved in Bering Sea fisheries. This could include cooperative enforcement arrangements with the Japanese as well as pressure on their government to strictly punish violators, seize illegal product and prosecute harvesters and distributors of the illegal product. We also request that the State Department respond to the direction of Senate Resolution 396 to report to the Senate Commerce Committee on actions of the Interagency Task Force to investigate enforcement options for fishery management in the Bering Sea.

We look for your leadership in resolving these issues of great importance to our continued management and conservation of Bering Sea fisheries resources.

Sincerely,

  
John G. Peterson  
Chairman



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605 West 4th Avenue  
Anchorage, Alaska 99501



Mailing Address: P.O. Box 103136  
Anchorage, Alaska 99510

Telephone: (907) 271-2809  
FAX (907) 271-2817

October 26, 1988

C. William Verity  
Secretary of Commerce  
U.S. Department of Commerce  
Washington, DC 20230

Dear Secretary Verity:

Uncontrolled foreign fisheries outside 200 miles in the central Bering Sea continue to be of grave concern to the North Pacific Fishery Management Council and the U.S. fishing industry. Japan, South Korea, Poland, and China fish the Donut Hole and will harvest upwards of 1.3 million metric tons of pollock this year. This quantity exceeds the entire catch of pollock in the U.S. EEZ of the Bering Sea. The specific impacts on U.S. stocks are unclear, but data are sufficient to at least show that stocks inside and outside 200 miles are not unique. The burden of scientific proof should be placed on the nations fishing the Donut to show that their activities are not impacting our resource. Without that proof, our ability to effectively conserve and manage those stocks could be seriously compromised.

The Council recently adopted a strong position urging the U.S. Department of State to call for an immediate cessation of all fishing in the Donut Hole, through bilateral or unilateral action as necessary. In the attached letter, we've asked Ambassador Wolfe to carry that message forward to the Soviet Union during his October 19-20 meeting in Moscow.

Another problem of equally grave concern to the Council is illegal foreign fishing within our Exclusive Economic Zone. Japanese trawlers were caught last January fishing illegally, and then in mid-August the Japanese press reported two Hokkaido trawlers to be offloading for blackmarket sales in Japan, rockfish and other groundfish species thought to come from United States waters. Japanese government officials reported to the Council in September that their investigations confirmed irregularities in the recording of fishing positions of the vessels, and that both vessels had been penalized with port confinement.

That is all well and good, but these few detected incursions into our EEZ are very likely just the tip of the iceberg. The Council urges you, through NOAA and in coordination with the U.S. Coast Guard, to provide leadership in enhancing our ability to stop these illegal intrusions into our waters. Specifically we request you take the following actions:

1. Promulgate regulations requiring radio check in and check out and gear stowage by foreign fishing vessels transiting the EEZ, placement of

October 26, 1988

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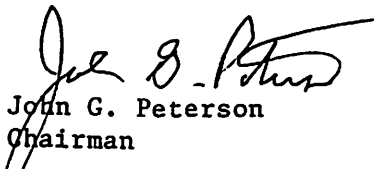
observers on foreign vessels within the Donut Hole, and transponders on foreign vessels to relay positions to shoreside monitoring stations.

2. Working with the Coast Guard and through the U.S. Department of State, establish a cooperative enforcement regime with the Japanese Fishery Agency in which enforcement agencies would be able to identify and investigate suspected illegal activities and use their best efforts to urge the Japanese to fully cooperate.
3. Working with the Coast Guard, establish a cooperative relationship with the military regarding the use of military resources to accomplish our fisheries enforcement objectives.
4. Create a fisheries enforcement advisory panel consisting of representatives of the U.S. fishing industry to develop in consultation with the North Pacific Council, effective enforcement strategies for stopping illegal foreign fishing.
5. Working through the U.S. Departments of State and Justice, use all available federal laws and mechanisms to seek appropriate punishment of foreign violators.S.
6. Ensure that adequate funding is allocated to enforcement activities in the Bering Sea and Aleutians.

Our fishing and processing industries will soon be able to fully utilize the vast groundfish resources off Alaska. These fish stocks must be maintained sufficiently abundant to allow our fishermen the opportunity to harvest and our factories to process economically in order to remain competitive with other world sources of similar fishery products. Natural stock fluctuations are difficult enough to predict, without the uncertainty added by illegal foreign fishing and uncontrolled extractions from the Donut Hole.

Therefore, we call on you to provide your leadership in enhancing our enforcement over illegal fisheries and working toward control of the Donut fisheries. We are sure that you recognize the importance these endeavors hold for the continued well-being of our resources and our industry. The North Pacific Council and the fishing industry stand ready to help you in any way we can.

Sincerely,

  
John G. Peterson  
Chairman

Attachment

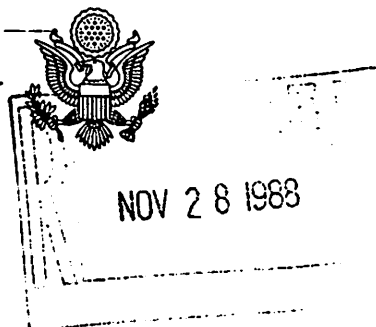
cc Secretary of State George P. Shultz  
Secretary of Transportation James H. Burnley IV  
Congressional Delegations, WA, AK, OR  
Governor Steve Cowper, Alaska  
Governor Booth Gardner, Washington  
Governor Neil Goldschmidt, Oregon

United States Department of State

*Bureau of Oceans and International  
Environmental and Scientific Affairs*

Washington, D.C. 20520

November 17, 1988



Mr. John Peterson, Chairman  
North Pacific Fishery Management  
Council  
Post Office Box 103136  
Anchorage, Alaska 99501

Dear John:

Because of your continuing interest in U.S.-Soviet fisheries issues, I am writing to inform you of the status of the Comprehensive Fisheries Agreement which was signed in Moscow on May 31 by Secretary Shultz and Soviet Fisheries Minister Kotlyar.

On October 28 the U.S.-USSR agreement formally entered into force following an exchange of diplomatic notes between the Department and the Soviet Embassy. As a result of the entry into force of this agreement, both the U.S.-Soviet Governing International Fisheries Agreement and the interim agreement of February 21, 1988 regarding U.S. access to the Soviet economic zone are no longer in force.

The comprehensive fisheries agreement now governs both Soviet access to the U.S. exclusive economic zone and U.S. reciprocal access to the Soviet zone. It is our anticipation that U.S. and Soviet fishing companies will now be able to finalize joint venture arrangements for operations in Soviet waters. The agreement also provides the basis for expanded bilateral cooperation on fisheries issues of mutual interest, including the unregulated fisheries in the central Bering Sea and the harvest of salmon on the high seas in the North Pacific Ocean.

I would like to take this opportunity to express my appreciation for your support during our fisheries discussions with the Soviet Union. I look forward to continuing to work with you on the development of the U.S.-Soviet fisheries relationship.

Sincerely,

A handwritten signature in dark ink, appearing to be "Ed", written in a cursive style.

Edward E. Wolfe  
Deputy Assistant Secretary  
Oceans and Fisheries Affairs



UNCLASSIFIED

REPORT OF THE  
UNITED STATES DELEGATION  
TO THE CONSULTATION WITH  
JAPANESE OFFICIALS  
ON ENFORCEMENT AND DRIFTNET ISSUES  
OCTOBER 19-21, 1988

Prepared by:

Larry Snead  
Margaret Frailey  
George Flanigan  
Henry Beasley  
Steven Springer

UNCLASSIFIED



## SUMMARY

Representatives from the United States and Japan met in Tokyo, October 19-21, 1988, to (1) discuss North Pacific and Bering Sea enforcement issues of mutual concern, and (2) the requirements of U.S. Driftnet Impact Monitoring, Assessment and Control Act of 1987. The U.S. delegation was headed by Larry Snead, Office of Oceans and Fisheries Affairs, U.S. Department of State, and included George Flanigan, U.S. Coast Guard; Margaret Frailey, NOAA Assistant General Counsel--Enforcement and Litigation; Henry Beasley, NMFS Office of International Affairs; and Steven Springer, NMFS Office of Enforcement, while the Japanese delegation was headed by Isao Nakasa, Fisheries Agency of Japan (FAJ), and included officials concerned with Pacific high seas fisheries (Attachment 1).

Most of the meeting was devoted to gaining a better understanding of Japanese regulatory and enforcement methods. The U.S. side also provided the Japanese side with proposed elements of pilot cooperative observer and enforcement programs for 1989, to meet the requirements of the driftnet legislation. The Japanese specifically linked any cooperative observer program in the squid driftnet fishery to Japan's regaining access to salmon fishing in the U.S. Exclusive Economic Zone (EEZ) pursuant to the Annex to the International Convention for the High Seas Fisheries of the North Pacific Ocean. The Japanese also said they were not in a position to accept the U.S. driftnet legislation. While they did not exclude the possibility of practical accommodations on enforcement, they emphasized that they could not enter into formal agreements that might derogate from Japanese sovereignty over its high seas fisheries.

## BACKGROUND

In opening remarks, the Japanese said they had arranged the meeting in response to U.S. proposals in April 1988 for an exchange of information on enforcement issues. They expressed hope that such an exchange would be useful, while making clear that Japan was responsible for its high seas fisheries. They also noted that Japan looked to the International North Pacific Fisheries Commission (INPFC) as the principal forum to exchange scientific data on North Pacific fisheries.

The U.S. side reiterated the longstanding and significant U.S.-Japanese fishery relationship and the importance for both sides to exert their best efforts in resolving a complex and sensitive issue for each side. We noted the need to establish a strong,

effective enforcement program to insure that U.S.-origin salmon are not harvested illegally by squid driftnet vessels. Incidents of such harvest have been detected for all countries conducting such fisheries. Numerous net-marked salmon have appeared this year in Alaska where some salmon runs are abnormally low, and recent industry estimates indicate that as much as 10,000 metric tons of salmon may have been illegally caught and marketed by foreign driftnet fleets. The United States had asked the Japanese to investigate over 80 incidents in 1988 of squid driftnet vessels operating north of the fishing boundaries established by Japan to avoid interception of U.S.-origin salmon, as well as 96 similar incidents in 1987. The U.S. side agreed that Japan has the lead as well as the responsibility to enforce its squid driftnet fishery regulations on Japanese fishermen on the high seas. With regard to central Bering Sea trawl fisheries beyond national 200-mile zones, a growing perception in the United States is that foreign trawl fleets are using the "donut" region as a staging area for organized illegal fishing in the U.S. EEZ. The U.S. side noted its interest in gaining a better understanding at this meeting of the procedures and resources used by Japan and areas of possible cooperation on enforcement activities to reduce violations.

#### PROPOSED OBSERVER AGREEMENT

The U.S. side noted that the observer program described in letters exchanged between U.S. and Japanese representatives on April 11, 1988, could serve as the principal basis for a pilot observer program in 1989 pursuant to the Driftnet Act. We noted that we would like to confirm our understanding that the ten Japanese and four American observers referred to in the April 11, 1988, letters would be placed on vessels in a fashion representative of the overall squid fishing fleet or vessel class.

We also proposed that two additional observers would be deployed on the land-based vessels in the squid fishery, bringing the number of observers with this component of the fleet to 4, and raising the total complement of observers from 14 to 16. This would raise the proportionate observer coverage of this sector of the fleet to a level more consistent with that for other vessel classes. In addition, it would allow direct comparison of vessel data collected by separate observers during the same time period.

The Japanese side noted that they had conditioned the implementation in 1988 of a pilot observer program for the squid fishery upon the Japanese salmon mothership fishery having access to the U.S. 200-mile zone under the area and seasonal limits of the INPFC. They noted that until this fundamental issue was resolved, other matters such as the U.S. proposal to adjust the number of observers were secondary.

## PROPOSED ENFORCEMENT AGREEMENT

The Japanese said they were not in a position to accept the U.S. driftnet legislation. However, Japan had attempted to investigate U.S. reports of violations of squid driftnet fishery boundaries and punish violators where appropriate. They saw value in the meeting of enforcement experts, but emphasized that it remained a difficult and delicate issue to address monitoring and enforcement issues while fully respecting the high seas sovereignty of the flag state.

During the meeting of enforcement experts (described below), the U.S. side gave the Japanese a summary of proposed elements for U.S.-Japan cooperative undertakings to enhance enforcement and meet the requirements of the driftnet legislation. The proposal calls for (1) continuation of existing Japanese area-seasonal limits for the driftnet fishery; (2) enhanced position fixing, vessel identification, data collection, and record keeping; (3) expanded exchanges of data and information between U.S. and Japanese authorities; and (4) cooperative exchanges of enforcement personnel for aerial surveillance, at-sea boardings, and port inspections.

In the plenary session, the Japanese side rejected the bilateral agreement format of the U.S. proposal, but said it would comment later on the substance of a Japanese response. The U.S. side indicated that the format was not so important as content, and that an exchange of letters would be acceptable in satisfying U.S. domestic requirements. In any case, the United States would appreciate Japan's response at an early date.

## OVERVIEW OF TRAWL AND DRIFTNET FISHERIES

The Japanese side provided brief overviews and regulatory summaries for the Japanese trawl fishery in the Bering Sea "donut" (see Attachment 2) and the Japanese squid driftnet fishery (see Attachment 3).

They said some skipjack, albacore, and yellowtail tuna are taken in the squid fishery. Japan said the by-catch of the salmon in the squid fishery is very low and that retention of salmon and fur seals is prohibited. The U.S. side expressed appreciation for the material, but requested detailed regulations on both fisheries. The Japanese agreed to provide all pertinent regulations. The U.S. side also reiterated the request made in May 1988 for answers to specific questions posed by NMFS for the squid driftnet fishery (particularly catch and effort details) for inclusion in the report to Congress required under the U.S. Driftnet Legislation by December 1988. The U.S. side also requested updated information on Japan's large-mesh driftnet fishery for billfish and tuna for which no information has been provided to INPFC since 1982.

The Japanese said that official data and information on the driftnet fisheries would continue to be reported through INPFC. However, they had provided summary information to the United States on the squid driftnet fisheries, and would attempt to respond to the pending U.S. request for updated information on the large mesh driftnet fishery for billfish and tuna. (We will need to followup through the U.S. Fisheries Attache on the latter request, since the Japanese did not provide a response during the Tokyo meeting.)

#### INFORMATION EXCHANGES

The enforcement experts from Japan and the United States met on Thursday and Friday, October 20 and 21, to exchange information on regulations, violations, and prosecution systems of each country.

#### Squid Driftnet Enforcement

In Japan, the Fisheries Agency of Japan is under the Ministry of Agriculture, Forestry and Fisheries and includes an International Affairs Division, Far Seas Fisheries Division, and Offshore Fisheries Division. Each division has its own enforcement officers, vessels, and equipment to enforce the regulations under its jurisdiction. The regulatory workload in each division exceeds the enforcement work. The Offshore Fisheries Division has responsibility for the coastal and high-seas squid driftnet fisheries and all foreign fishing within Japan's exclusive economic zone. This division has seven vessels and 40 officers. In 1988, three enforcement vessels spent about 300 days patrolling the high-seas squid driftnet fishery. Their primary responsibility was to monitor compliance with the northern boundary of the high-seas squid area. However, because the number of boundary violations remained high in 1988, the Japanese will add a fourth vessel to patrol the squid area in 1989. This will extend their coverage to 400 days. The FAJ has a twin engine Cessna that it uses for near-shore surveillance, but its range is too limited to be used in the high-seas squid fishery.

The U.S. side asked if the evidence provided on boundary violations was sufficient. The Japanese replied that it was, but recommended the following to help increase the number of successful investigations:

- a) All photographs need to be large and clear;
- b) Individual positions of vessels should be recorded (apparently the Coast Guard had been using a central position and assigning it to several vessels located in a small area);

- c) The relative positions of each vessel should be charted, if individual vessel positions are not available;
- d) The course, speed, and altitude of the enforcement aircraft should be reported; and
- e) Aircraft should circle the suspect vessels (apparently aids in obtaining confessions, upon which the Japanese prosecution system depends heavily).

Squid Driftnet Violations

We received a status report on 1987 and 1988 violations detected by the U.S. Coast Guard in the squid driftnet fishery east of 170° East:

	<u>1987</u>	<u>1988</u>
Admitted	40	27
Denied	25	1
Pending	0	1
Unidentified	31	41
Total	96	70

Japanese investigations independent of U.S. Coast Guard sightings

2	3
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Five cases in 1988 have proceeded to disposition:

<u>Vessel</u>	<u>Days in port before P.C.</u>	<u>Days of port confinement</u>	<u>Total</u>
Choko Maru No. 58	45	40	85
Hoshin Maru No. 28	34	20	54
Kinpo Maru No. 128	46	30	76
Sankichi Maru No. 8	34	40	74
Tokuyou Maru No. 18	--	40	40

Bering Sea Enforcement

The Japanese deploy two chartered vessels in the Bering Sea during the fishing season. In 1987, these two vessels were on the grounds for 277 days. In response to the January violations by eight vessels fishing in the U.S. EEZ, the Japanese increased the days on grounds to 347. These vessels concentrate their patrol efforts on the U.S. and Soviet EEZ borders and have been instructed to increase their boardings and inspections as weather

permits. (This is predominantly a wintertime fishery that occurs under harsh weather conditions). Few at-sea boardings are performed by enforcement officials.

In addition to the at-sea patrol effort, the Far-Seas Fisheries Division implemented a port investigation program whereby trawlers returning from the Bering Sea must notify authorities of the date, time, and intended port of offloading prior to their arrival. Fishery enforcement officers then perform random inspections -- monitoring offloadings, reviewing logbooks, and checking Naval Navigation Satellite System (NNSS) data. There are 16 designated ports of landing for the Hokuten trawlers that fish in the Bering Sea. Last year, 79 inspections occurred of Bering Sea trawl vessels and the numbers have increased in 1988. However, the exact numbers were unavailable.

In August, to respond to violations by two Hokuten trawlers, the Japanese implemented several special requirements on their Bering Sea fishing vessels. These vessels are now required to stow all fishing gear when transiting the waters of a foreign country. Submission of NNSS from departing port to returning is now mandatory; any lapse in reception of satellite transmissions will be filled by using dead-reckoning position fixing. Each fishing vessel master must personally visit the FAJ and receive instructions and "guidance," which have the force and effect of regulations. Lastly, a recent administrative order was issued requiring all vessels fishing in the Bering Sea to call and give the enforcement vessels their noontime positions to facilitate locating and boarding activities.

The U.S. side discovered a major loophole in the Japanese enforcement system when we began discussing transport vessels and transshipment activities. While the Japanese contended that catcher vessels were required to notify authorities of their intention to transfer their catch and to obtain a permit, they had little information regarding this activity. Apparently there are no requirements placed on transport vessels to report what they receive, who they receive it from, the quantities received, and where they intend to land their cargos. The Japanese said they would work to address this problem but didn't say how.

#### Bering Sea Violations

We had a briefing on the two Hokuten trawlers that received port confinements of 100 and 200 days for fishing in a foreign zone without permits last August. The cases were based on circumstantial evidence, since the operators would not admit to fishing outside the Bering Sea donut hole. The evidence included shellfish and scales of "redfish" found on conveyor belts and on the workers' boots. Investigators concluded the vessels had to have been bottom-trawling on their return trip, not within the donut hole because of the depths of water there.

FAJ was unable to determine whether the zone violated was Soviet or American. The vessels' route home was along the U.S./U.S.S.R. boundary; the vessels were not required to record NNSS readings on route back to port (that rule has been changed). The Japanese officials said we could have copies of their investigative files, but could not have evidence seized off the vessels because there had been no confession. No similar violations have been detected since August.

### Japanese Prosecution System

Restrictions can be imposed through published regulations or by giving personal notice of additional permit conditions, such as the recent requirement in the squid driftnet fishery that a vessel cannot cross the northern boundary without notifying enforcement officials.

Penalties can be imposed either administratively or judicially. The judicial system, by which monetary fines or jail terms are imposed, is lengthy, complex, and infrequently invoked. Some 22 documents must be prepared to bring a criminal case. In addition, illegal catch can be confiscated.

FAJ prefers the quicker administrative procedure of imposing port confinements against the vessel. The usual consequence of a port confinement is that the vessel owner fires the captain or fishing master. The owner can request the site of a port confinement, but FAJ ensures that the vessel is tied up in a location where its enforcement personnel or prefecture employees can monitor the vessel. No repairs or preparations for fishing operations are allowed during port confinements. A confinement might be split between the end of one fishing season and the beginning of the next.

The maximum length for port confinements is set by internal guidelines that vary from fishery to fishery (currently 100 days for the squid driftnet fishery and 200 days for the far-seas trawl fisheries). The usual term for a first-time boundary violation in the squid driftnet fishery was changed last June from 10 to 20 days. For an aggravated violation, the term is lengthened. Aggravating factors include fishing in rather than transitting a closed area, distance within the closed area, covered numbers, retention of salmon, and prior violations within the last five years by any vessel belonging to the same owner. FAJ has no intent of increasing these sanctions in 1989 because much of the fleet sailed in 1988 before the new guidelines were made known. Officials believe squid driftnet operators have become very careful.

An investigation begins with detection of a possible violation by a patrol boat, or seemingly more often, with submission of information from the U.S. Coast Guard or sources in Japan (press, other agencies, competitor vessel owners). If the violation is

serious enough, the agency orders the vessel to return to port for further investigation. (Compliance with this order is a permit condition.) Examples given were retention of prohibited species or fishing far inside a closed area. For vessels ordered back to port, the time spent there before the port confinement is imposed constitutes an additional sanction.

For less serious violations, the vessel is allowed to continue its normal fishing trip. The vessel owner is summoned for an interview, but the in-port investigation occurs upon the vessel's return. No prosecution is instituted without this in-port investigation (interviews, review of logs), which explains the time lag we have noticed between sightings of squid driftnet vessels outside the boundaries and determinations that violations have occurred.

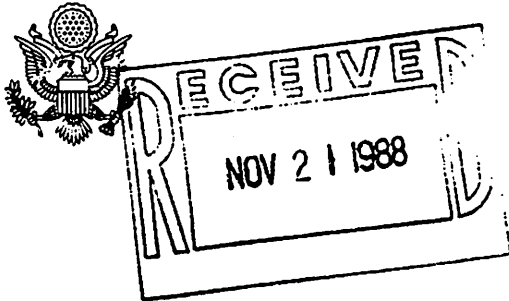
FAJ uses evidence supplied by the U.S. Coast Guard. It has photographs of all vessels in the fleet and can identify a vessel with its numbers covered if the U.S. photo is clear enough.

The enforcement officer submits a case report with a recommendation for port confinement. Apparently different lawyers employed by the Ministry represent the government's position. Owners and fishing masters have an opportunity to have their say, but there is no formal or public hearing. The "position paper" wends its way through the bureaucracy for at least ten signatures before the Director-General makes the final decision. The vessel owner is informed and the confinement begins immediately, unless it must be held over until the next fishing season.

There is a 60-day period for appeal to the Minister, and a further appeal opportunity to a court, but fishermen view appeal as a futile effort. Besides, at this point they have usually confessed. It seems to be the Japanese way to accept the decision of the agency.



United States Department of State



Bureau of Oceans and International Environmental and Scientific Affairs		INITIAL
EXC. DIR.	ROUTE 10	7
Deputy Dir.		
Adm. Off.		
Exec. Sec.		
November 10, 1988	Staff Asst. 1	
	Staff Asst. 2	
	Staff Asst. 3	
	Economist	
	Sec./Bkkr.	
	Sec./Typist	

Mr. John Peterson, Chairman  
 North Pacific Fishery  
 Management Council  
 P.O. Box 103136  
 Anchorage, AK 99510

Dear John:

I am writing with regard to the Annual Meeting of the International North Pacific Fisheries Commission (INPFC), which was held in Tokyo from October 31 to November 4. As you are aware, we are currently facing a difficult situation in the INPFC as a result of U.S. judicial and legislative decisions which prevent operations by Japan's salmon fishery in the U.S. exclusive economic zone (EEZ) pursuant to the INPFC treaty. In response to this situation, Japan has proposed that the INPFC treaty be amended to provide new high seas fishing grounds for the Japanese salmon fleet and to allow the mothership salmon fishery to convert to a landbased type operation.

I was in Tokyo during the INPFC meeting to discuss this and other bilateral fisheries issues with Japanese government and industry officials. Japanese officials stated that the loss of salmon fishing opportunities in the U.S. EEZ has become a national concern in Japan and could have severe ramifications for the bilateral fisheries relationship. In meetings with Fisheries Agency of Japan Director General Tanaka and others, I emphasized that we are looking for ways to improve the overall situation, but that Japan must take steps to address U.S. concerns over such issues as interceptions of salmon in the squid driftnet fishery, the unregulated harvest of groundfish in the Bering Sea "donut" area, and illegal fishing in the U.S. EEZ. With regard to Japan's specific proposals for amending the INPFC treaty, I stated that the United States could not agree to the establishment of any new areas for the Japanese salmon fishery, but that we would consider the proposal for a conversion of the mothership fishery if sufficient progress can be made on the adequate monitoring and enforcement of both the salmon and squid driftnet fisheries.

I anticipate that negotiations on this issue could take place in Washington, D.C. late this year or early next year. We will be glad to keep the Council informed of the progress of these talks.

Sincerely,

A handwritten signature in black ink, appearing to be 'Ed', written over a horizontal line.

Edward E. Wolfe  
Deputy Assistant Secretary  
Oceans and Fisheries Affairs

# North Pacific Fishery Management Council

John G. Peterson, Chairman  
Clarence G. Pautzke, Executive Director



Mailing Address: P.O. Box 103136  
Anchorage, Alaska 99510

605 West 4th Avenue  
Anchorage, Alaska 99501

Telephone: (907) 271-2809  
FAX (907) 271-2817

October 18, 1988

Mr. Minoru Morimoto  
Fisheries Agency of Japan  
1-2-1, Kasumigaseki  
Chiyoda-ku  
Tokyo 100 Japan

Dear Mr. Morimoto:

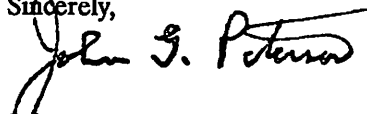
On behalf of the North Pacific Council, I want to thank you for your testimony at the September Council meeting on the foreign fishing violations by Japanese trawlers and your agency's actions to discourage such infractions in the future. Violations of our fishing laws are of grave concern to us, especially illegal harvests that may harm our fisheries resources and international markets for our fisheries products. Actions by your government to halt these illegal harvests are of great interest to the Council, and below are several questions we request you address in preparation for our December meeting to enable us to better understand your monitoring, enforcement, and penalty system:

1. Mainichi Shimbun and the U.S. industry believe that illegal fishing and marketing of fish from the U.S. is much more widespread than the two vessels reported, the Daian Maru No. 128 and Eikyu Maru No. 86. What investigations are being conducted in this regard, or was the investigation limited to these two vessels?
2. What documentation is required from the vessels to import or land this product into Japan? We believe that excellent records are maintained by the FAJ on fish landed by the Hokuten fleet; therefore, we feel this information must be available for all landings by all members of that fleet.
3. Why can't this product be traced in the market? Documents such as delivery tags, dock receipts, bills of lading, warehouse receipts, invoices, payment receipts, etc., must have been issued, leaving a clear and obvious paper trail. Sales at prices lower than market are landmark events, and identification of the channels used for distribution should be clear to any serious investigation.
4. Were personal penalties or fines levied against the captains, Chief Executive Officers, or owners of the vessels?
5. Mainichi Shimbun implicated a company owned by the Governor of Hokkaido in the distribution of black market fish. Was this claim investigated and what was the result?
6. Did FAJ conduct an internal investigation to determine whether FAJ or other government officials had knowledge of the illegal fishing and marketing of fish?
7. Does the FAJ consider the matter closed?
8. Please explain more fully about the strict warning to the wholesale market given by the Hokkaido regional government. What penalties would be levied if a wholesaler refused to abide by the strict warning?

Mr. Morimoto  
October 18, 1988  
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We would appreciate your answers to the above questions in time for our December 5 Council meeting. The Council remains extremely concerned with these incursions into our fisheries zone and wishes to seek ways of better cooperating with the Government of Japan to enhance our ability to properly conserve and manage the fisheries resources off Alaska.

Sincerely,



John G. Peterson  
Chairman



## FISHERIES AGENCY

MINISTRY OF AGRICULTURE, FORESTRY AND FISHERIES, GOVERNMENT OF JAPAN

2-1, 1-Chome, Kasumigaseki, Chiyoda-ku, Tokyo 100, Japan TEL:03-502-8111 EXT:

December 9, 1988

Mr. John Peterson  
Chairman  
North Pacific Fishery Management Council

Dear Mr. Peterson,

The purpose of this letter is to respond to the questions posed by your letter dated October 18, 1988. We would like to respond to your questions in their order in the letter. As we have been making best efforts to prevent the reoccurrence of violations by the North Pacific trawl fishery, we hope the United States side will deepen its understanding of those efforts by this letter.

Question #1. To fully explain this question, we need to first outline our regulation and enforcement of the North Pacific trawl fishery. The North Pacific trawl fisheries are classified as "designated fisheries" under Japanese fisheries law. Under the Fisheries Law and the Ministerial Ordinance for the Permit and Enforcement of the Designated Fisheries, the Japanese North Pacific trawl fleets are subject to the following regulations and restrictions.

### (1) Limited Fishing Permits

No vessel can engage in the North Pacific trawl fishery unless the Minister of Agriculture, Forestry and Fisheries (the Minister) issues a permit. In issuing the permits, the Minister determines in advance the upper limit of the number of vessels to be permitted and the tonnage of these vessels in light of economical and other situations of the fishermen concerned, with due regard given to protection of fisheries fauna and flora, fisheries coordination, and the scope within which no impediment on the public interests will be expected. As of August 1, 1988, the upper limits on the number of fishing vessels operating in the North Pacific Ocean are: thirty-nine for the Northern Trawl fleet, fourteen for the Converted Trawl fleet and fifty-four for the Hokuten fleet.

### (2) Restrictions and Conditions

Under the Fisheries Law and the Ordinance, vessels operating

in the North Pacific Ocean must record, keep and submit the fishing log, install the NNSS, and keep and submit the record, and cover fishing gears during the navigation in foreign 200 mile zones. The landing ports are also restricted. In addition, the number of transport vessels to be used is restricted from the viewpoint of limiting fishing efforts. Particularly with regard to the entrance into the foreign zones, the Ministerial notification prohibits any vessel to enter into the U.S. 200 mile zone with the purpose of fishing operations unless the vessel retains a permit from the Government of the United States and engages in the activities prescribed in the permit.

### (3) Enforcement

With regard to the enforcement of designated fisheries, the Ordinance authorizes the Minister as follows:

- a. Order mandatory port confinement and inspection of vessels.
- b. Prohibit the boarding of vessels under port confinement by the captain and crew.
- c. Board commercial fishing vessels for the purpose of inspection.
- d. Require the reporting of positions and other information by commercial fishing vessels.

Under the Fisheries Law, the Minister appoints fisheries enforcement officers from FAJ personnel for conducting enforcement activities. Furthermore, as occasions demand, the Minister, in consultation with judicial authorities, appoints judicial police officers, from fisheries enforcement officers, with the authority to arrest violators, confiscate material evidence and carry out other judicial activities as prescribed in the Criminal Procedure Act.

Fisheries enforcement officers pursue fisheries enforcement activities both at sea and at main landing ports. For enforcement at sea, FAJ dispatches its enforcement vessels for the North Pacific trawl fishery based on an annual schedule. For 1988, a total of 347 vessel patrol days was scheduled for two enforcement vessels (KONAN MARU No. 27: 287 days, TOSHI MARU No. 18: 60 days).

FAJ also conducts enforcement activities by dispatching fisheries enforcement officers to main landing ports based on an annual schedule. This year, a total of 110 days of enforcement at ports was scheduled. Furthermore, as occasions demand, FAJ dispatches fisheries enforcement officers and other personnel to landing ports. In light of the violations in August 1988, the number of inspections at landing ports has been increased

by encouraging cooperation from regional governments.

For reference, seventy-nine vessels were inspected last year.

In addition, the National Police Agency and Maritime Safety Agency also conduct their own fisheries enforcement activities. For example, as you may be aware, the dealers who had transferred salmon at sea which was illegally caught by Taiwanese vessels and tried to smuggle them into Japan, were arrested by those authorities under the charge of violation of fisheries regulations. Furthermore, as happened in the incident of the illegal operation in August this year, ordinary people other than enforcement officers sometimes report violations.

#### (4) Penalties

The Ordinance prescribes such penalties as mandatory port confinement, imprisonment and fines for fisheries violations. FAJ imposes penalties on violators if violation of the laws and regulations is confirmed or observed through these daily enforcement activities. Furthermore, in the event of an alleged violation, the FAJ conducts investigations through interview and interrogation of related people and requests the submission of documents from offices concerned. If the violation is confirmed, the FAJ imposes a penalty on the violators as in the case of observed violations. Last year, FAJ imposed nine penalties on trawl vessels operating in the North Pacific including violations in the U.S.S.R. zone.

With regard to the recent incident of the illegal operations, the FAJ was not able to catch the violators in the act through its enforcement activities. However, based on the reports of the newspaper, FAJ initiated investigations and made best efforts to confirm the violation. The procedure of our investigation and confirmation was explained in my letter to the Council in September. As a result, FAJ has imposed mandatory port confinements on the two fishing vessels concerned.

Therefore, while you questioned whether the FAJ conducted the investigation on only the two vessels and also pointed out that there might be extensive violations, our enforcement and inspection activities were not limited to those vessels as explained above. We continuously carry out enforcement activities on all trawl vessels operating in the North Pacific. Accordingly, we do not believe that there have been extensive violations.

However, in light of the fact that FAJ was not able to catch the illegal operations and landings in the act through the enforcement activities, the FAJ decided to give further instructions to the fishing industry groups and intensify the enforcement activities to deter the reoccurrence of violations

as follows.

(1) For the time being, the FAJ imposes a requirement on owners, captains and fishing masters of the Hokuten trawlers fishing in the North Pacific to report in person to the FAJ, Tokyo, in advance, every time they leave their home port in order to hear and approve their cruise schedule and give them strict instructions not to engage in illegal operations.

(2) The FAJ has increased the number of inspections at landing ports. The FAJ will make best efforts to increase the number of inspections of commercial fishing vessels in further cooperation with the regional governments.

(3) The FAJ obligates all North Pacific trawl vessels to retain and submit complete, port to port position records of the NNSS. The FAJ also requires them to record not only actual positions of the vessels obtained when the satellite is at right positions, but also automatically estimated positions with reasonable time intervals in order to keep precise records of the vessel position.

During the period from August to the end of November, the FAJ conducted inspections of fifty-six vessels out of a total ninety-one Hokuten trawler landings immediately after they came back from operations in the international waters. No violation was found.

Question #2. No specific legal document is required to land the domestic catch in Japan. However, when the catch is landed and delivered to the market for trading, invoices (shikiri denpyou) are provided. Other commercial documents are exchanged as the products move through the market.

In addition to the commercial documents, other records must be prepared and later submitted to the FAJ. Under the Fisheries Law, trawl fishermen operating in the North Pacific Ocean are required to (i) record and submit their fishing logs, operational schedules and reports, and shipment/transfer reports, (ii) install NNSS and record and submit their records, and (iii) report at sea their positions to enforcement vessel. Under the Ordinance, the vessels concerned are required to prepare and submit catch reports. In addition, under the Seamen's Law, the vessels are required to record and keep navigation logs. Generally, the vessels also record and keep engine logs.

Based on this information, the FAJ prepares the "Annual Report of Fisheries and Aquaculture Production Statistics" and the "Annual Report of Fisheries Products Distribution Statistics". For the sake of preventing violations, the enforcement vessels inspect fishing logs, records of NNSS and other records during commercial fishing operations at sea.



After the submission of those documents and reports, the FAJ also conducts random inspection of the documents to monitor the activities of fishing vessels. Furthermore, in case that an alleged violation arises through enforcement activities, the FAJ conducts investigations based on these documents and occasionally utilizes them as documentary evidence.

Imported goods to Japan are subject to inspection at customs. In such event, a bill of lading is required under the Ministerial Ordinance for Import Trade Control and Regulation. If products are from joint venture operations, the bill of lading and the permit from the Minister are required under the Regulation regarding Foreign Fisheries.

Question #3. Since the related articles of the Mainichi Shinbun (newspaper) of August 17 reported alleged violations of the two Hokuten trawlers, officers of the FAJ were immediately sent to the port where the off loading was reportedly conducted to conduct necessary investigations. Consequently, it was confirmed that the illegal catch was landed from the night of August 14 to the early morning of August 15, and the catch was already sold and processed.

At the same time, the FAJ obtained the landing sheets from the wholesale market which was believed to be involved in the landing procedure, and the invoice and storage sheets from the processor and the cold storage which were believed to be involved in the sale and the storage respectively. Accordingly, the FAJ tried to disclose the network of the distribution, the species and the prices of the illegal catches. However, it was unable to determine the illegal operations based on the seized documents.

Question #4. There are two types of penalties for the violation under the domestic law. One is the administrative penalty, the other is the judicial penalty. The administrative penalty imposes the mandatory port confinement against the responsible person of the vessel's operation (the licensee).

The judicial penalty imposes a fine and imprisonment which is finally ordered from the court. The fine and imprisonment is imposed on the captain or the fishing master who violates the laws or regulations. At the same time a fine is imposed on the company or the person who has been employing the violator. However, because of evidentiary requirements in court proceedings, it is very difficult to determine the fine or the imprisonment unless the fisheries inspection officer identifies the fact of the violation in the act. Furthermore, it usually takes a substantial period of time to make the final decision for the violation. And in order to balance the fine with fines for violations other than fisheries violations, the fine on the fisheries violation shall be 2 million yen at maximum.

In contrast, administrative penalties shall be subject to the discretion of the Minister. Consequently, the decision shall be made in a timely manner. Furthermore, a mandatory port confinement inflicts a greater loss (particularly the recent mandatory port confinements extended to 100 days and 200 days).

Accordingly it seems that industry people can understand the severity of the penalty because of their economic losses. During the penalty, the fishing activity or any kind of activities for the preparation are not allowed. For the captain, fishing master and crew members these penalties greatly affect their wages since in most cases the wage is paid in proportion to the whole revenue of the vessel. This is particularly effective since the vessel confined is generally the life employment of the officers and crew members. In Japan, these people cannot easily find other employment or change vessels. Therefore the Minister decided mandatory port confinements for the two vessels as the most severe penalties aimed at making fishermen maintain orderly fishing operations and deterring reoccurrence of the violations.

Question #5. Under the Wholesale Market Law, the opening of the regional wholesale market shall require the permit issued by the governor of the prefectural government. In this case, the permitter is the Governor of Hokkaido. The regional wholesale market is not the company belonging to the Governor of Hokkaido. The wholesale markets where the catch were sold through were the Kushiro Fish Market Company and the Kushiro Municipal Fisheries Cooperative. Both markets retain the permits of the Governor of Hokkaido.

Under the law, the prefectural government supervises its regional wholesale markets. The governor is authorized to issue the permits to the persons operating the regional wholesale markets and wholesalers, and to conduct investigations and require reports as necessary. Thus, in connection with this incident, the Governor of Hokkaido should not be investigated. Rather, he has the role to investigate the Kushiro Fish Market Company and the Kushiro Municipal Fisheries Cooperative. Therefore, it seems that you might have misinterpreted the role of the Governor from the report of the newspaper.

Furthermore, as occasions demand, the Minister shall request the Governor to submit reports or information, and shall give the Governor advice or recommendations regarding the administration of the regional wholesale market. With regard to the recent incident, as a regional wholesale market, the distribution of the catch concerned adversely affected the security of the social confidence which is necessary for an entity with high public awareness. Therefore, under the instruction from the Government, the Governor of Hokkaido gave strict warnings to the wholesale market companies involved.

Question #6. Since the expansion of jurisdiction to 200 miles in 1977, many of the Japanese North Pacific trawl fleets which had been traditionally operating in the North Pacific Ocean, have operated under the administration of the United States.

Following the implementation of the 200 mile zone, the United States worked out the programs to promote the U.S. fisheries industry, and requested Japan to provide the technical assistance and capital investments. For those requests, the Japanese industry and FAJ have cooperated with the United States in providing fishing vessels, fishing gears, processing facilities, technical assistance, resource surveys and others. Then, in spite of the performance of the fisheries cooperation by Japanese industry in promoting U.S. fisheries, the United States has rapidly reduced the allocations to Japan. Finally in 1988 the allocation to Japan became zero.

Meanwhile, due to the implementation of the U.S. 200 mile zone and the reduction of the allocation to Japan, the Japanese North Pacific trawl fleets have faced the discontinuance of business. As a result, eighty-eight trawl vessels were imposed to give up their operations in 1978 and forty-three trawl vessels were imposed to give up their operations in 1985. In such event, the remaining fishermen paid for the great amount of costs which were necessitated by the retiring fishermen. Consequently, it caused retiring fishermen to lose business opportunities and remaining fishermen to owe a great deal of financial burdens.

Thus, while the fishermen are now facing severe difficulty, the FAJ has been conducting enforcement to prevent violations in order to maintain orderly operations by Japanese fleets engaged in international fisheries. If the fact of the violation is confirmed, the FAJ has imposed the appropriate penalties on the fishermen. We believe that you could understand that FAJ has taken a strict attitude against violators as the FAJ imposed severe mandatory port confinements of 100 days and 200 days on the two fishing vessels.

We understand that the FAJ already explained this point in detail at the September Council meeting. All the Council members should be aware of the FAJ's efforts. In spite of these efforts, the Council still questioned whether the staffs of the FAJ or other ministerial staffs were aware of the fact of the violations in advance. Thus, we have to say that the Council disregards the FAJ's efforts. We deeply regret the Council's attitude while the FAJ has been making a great deal of effort to prevent violations. No FAJ or other government officials had any knowledge of the illegal fishing and marketing of fish.

Question #7. Since the incident occurred in August, the FAJ has expended best efforts to conduct investigations related

to the two alleged fishing vessels. As a result, the fact of the violations of each vessel was confirmed, and the FAJ imposed the mandatory port confinements of 100 days and 200 days on the fishing vessels concerned. The two fishing vessels are now subject to the penalties and in anchoring. Therefore, the FAJ understands the incident was already resolved. Furthermore, as explained in the response to question 2, the FAJ intensified the enforcement activities and gave further instruction to the industry groups to prevent the reoccurrence of violations.

Question #8. As the result of the FAJ's investigation it was disclosed that facilities of the wholesale market were used for off loading the catch from both vessels. For one vessel, the fishermen sold the catch directly to the processor. For the other vessel, the catch was delivered to a cold storage facility of the fishing company. Consequently, in both cases the involvement of the wholesale market was not significant.

However, since it is apparent that the two illegal catches were distributed through facilities of the wholesale market, this incident became a major social issue, and adversely affected the security of social confidence. Accordingly, the Governor gave strict warnings to the wholesale market.

We understand that these strict warnings were not given for involvement in the illegal activities or the violations, but to call their attention to the serious damage upon the security of social confidence which is important for the wholesale market with high public awareness in the distribution of fresh or frozen food products. We also understand that these warnings were necessary to deter the reoccurrence of this kind of incidence.

These are our responses to your questions. We hope that the United States deeply understands the FAJ's monitoring, fisheries enforcement and penalty system.

Sincerely,



Minoru Morimoto  
Counselor  
Fisheries Agency  
Government of Japan