

North Pacific Fishery Management Council

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Agenda Item #14

MIH

MEMORANDUM

To: Council, SSC, and AP

From: Jim H. Branson, Executive Director 

Date: March 16, 1979

Subject: Proposed general regulations for marine sanctuaries

Regulations have been proposed for nominating and designating marine sanctuaries and their appropriate management and enforcement systems. The proposed regulations were noticed in the Federal Register of February 5, 1979, comments due by April 6, 1979.

Rather than summarize the entire set of proposed regulations, I have summarized those which are pertinent to the responsibilities of the North Pacific Fishery Management Council under the FCMA.

POLICY AND OBJECTIVES

(A) The purpose of the marine sanctuary program is to identify, preserve, and restore distinctive ocean areas -- from the shore to the edge of the continental shelf -- for their conservation, recreational, ecological, or aesthetic value. (B) The primary emphasis of the

program will be the protection of natural and biological resources.

(C) Human activities will be allowed within a designated sanctuary to the extent that such activities are compatible with the purposes for which the sanctuary was established. (D) Close cooperation is required

between federal and state coastal zone programs, Regional Fishery Management Councils, and Department of Interior leasing programs.

EFFECTIVE MARINE SANCTUARY DESIGNATION

The designation of a sanctuary and the regulations implementing it are binding on any person subject to the jurisdiction of the United States including foreign citizens to the extent consistent with recognized principles of international law or authorization by international agreement.

SUBMISSION OF RECOMMENDATIONS

Any person may recommend a site to be considered for potential designation as a marine sanctuary.

ANALYSIS OF RECOMMENDATIONS

Recommendations are reviewed in accordance with the following resource values: (1) A marine ecosystem that is rare, endangered or threatened, has limited geographic distribution, or is rare in the waters to which the Act applies. (2) An ecosystem of exceptional richness. (3) An important habitat for one or more stages in the life cycle of species which are rare, endangered, or threatened or have commercial or recreational value. (4) Intensive recreational use growing out of distinctive marine characteristics. (5) Historical cultural remains of widespread public interest. (6) Distinctive or fragile geological features of exceptional scientific or educational value.

An initial list of recommended areas will be published in the Federal Register within three months of the date the regulations are approved. Thereafter the list will be updated semiannually.

EFFECT OF PLACEMENT ON THE LIST

(A) Placement of a site on the list is a prerequisite for designation, but does not imply acceptance. (B) The list is intended to provide a source of information on recommended sites relevant to other federal agencies and others conducting activities that affect these sites.

SELECTION OF ACTIVE CANDIDATES AND DESIGNATION OF SANCTUARIES

Sites will be selected for consideration or designation as a marine sanctuary based on criteria used in the analysis of recommendations section. In addition, the following factors are also taken into account: (1) The severity and eminence of existing or potential threats to the resource including the cumulative affect of various human activities that individually may be insignificant. (2) The ability of existing regulatory mechanisms to protect the values of the sanctuary. (3) The research significance of the area as an eco system or representing a particular biological or physical process. (4) The value of the area to other private programs including approved coastal zone management programs. (5) Aesthetic qualities of the area. (6) Economic value of the resource and human uses within that area which may be lost as a result of marine sanctuary designation taking into account economic significance to the nation of such additional resources and uses and the probable impact of the regulations.

Before selecting a site the Regional Fishery Management Councils, among others, must be consulted on a preliminary basis. Selection of any sites as an active candidate for designation shall be announced in the Federal Register.

REVIEW OF ACTIVE CANDIDATES

Within six months of selection as an active candidate site, a public workshop will be held to solicit the views of interested persons before and in addition to other public hearings required under the Act. Within 90 days of the workshop a decision shall be made whether the site should be continued to be an active candidate site. If appropriate a draft environmental impact statement and implementing regulations shall be distributed to, among other groups, the Regional Fishery Management Councils. At least one public hearing shall be held on the DEIS in the coastal areas most affected by the proposed designation.

COORDINATION WITH STATES

Coordination with a state must be prior to the selection of candidate sites and also during the appropriate public workshops and hearings.

DESIGNATION

After filing final environmental impact statements with EPA, and (among others) the Regional Fishery Management Councils, the recommendation is transmitted to the President for approval. The designation must be in terms of geographic coordinants, distinctive features that require protection, and types of activities that may be subject to regulation.

Regulations may then be promulgated consistent with the above mentioned terms of the designation. Regulations must include procedures for review and certification of permits, licenses, or other authorization pursuant to other authorities.

If the governor of a state whose waters are included in the sanctuary certifies that any terms of the designation are unacceptable, such terms and any regulations implementing them will not be effective for the part of the sanctuary in state waters until a certification is withdrawn. If the governor so certifies, the designation may be withdrawn if the sanctuary as modified no longer achieves the objective specified in the Act, the regulations, and the designation: i.e., the governor has some veto authority.

BOUNDARIES

Boundaries will be designated to sufficiently protect the resource. Determination of the boundaries shall consider the range and relationships of key elements in the ecosystem, the potential for adverse impact on human activities at some distance from where they are conducted, the economic safety and other effects of displacing certain human activities to other locations to the extent such displacement is likely to occur and the feasibility and cost of conducting surveillance and enforcement. The boundary may be revised at any time prior to designation of a candidate site as a marine sanctuary in conformity with the criteria of this section reflecting new information.

PENALTIES

Violators are subject to a civil penalty of not more than \$50,000 for each violation. Each day of continuing violation will constitute a separate violation. A vessel used in violation of the regulation will be liable in rem for any civil penalty assessed for such violation, and may be proceeded against in any district court of the United States having jurisdiction thereof.

A notice of violation will be issued in writing to the person the violation has been charged, indicating the right to demand a hearing to be held in accordance with the following. Hearings will be held not less than 60 days after demand. The hearing officer will rule on all evidentiary matters and on all motions which will be subject to a determination usually made within 30 days following the conclusion of the hearing. The hearing officer will then recommend a penalty to which an objection may be filed within 30 days of that date. A final order on the proceeding under this part will be issued no sooner than 30 days following receipt of the findings and recommendation to the hearing officer.

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Agenda Item #14c

MIH

MEMORANDUM

To: Council, SSC, and AP

From: Jim H. Branson, Executive Director *Jim*

Date: March 16, 1979

Subject: Implications of marine sanctuaries proposed regulations

In my opinion there are serious implications in the proposed regulations for marine sanctuaries which relate directly to the fisheries management responsibilities of regional fishery management councils under the FCMA. Their importance is not in a traditional/technical review of the ability of the regulations to implement the Marine Sanctuaries Act. Rather, I feel, the importance lies in the very broad policy and objectives statements and in the tone of the selection, analysis, and designation regulations for the actual marine sanctuary sites. The implication is that regulations governing a marine sanctuary could duplicate, parallel, or supersede regulations of a Regional Fishery Management Council in areas under the exclusive management jurisdiction of the FCMA.

The basic tenant that the Act and regulations support is good; that a marine sanctuary system should be designed to protect and manage certain rare, unique, and special areas off the coast of the United States. However the following portions of the regulations, to which I draw your attention, should be areas of serious concern to the Council.

(1) Section 922.1 Policy and Objectives

The language in this section of the regulations is too broad and suggests the inclusion of species whose primary management is a responsibility of the Council. If such species are to be included in this section, then a more careful examination should be made of the policies and objectives of a marine sanctuary regarding commercial uses.

(2) Section 922.21 Analysis of Recommendations

In this section of the regulations potential marine sanctuary sites will be reviewed in accordance with a prescribed set of resource values which include (1) a marine ecosystem characterized by the significant presence of one or more species which...has limited geographic distribution...a marine ecosystem of exceptional richness indicated by the abundance and variety of species and productivity of the various trophic levels of the food web...important habitat of one or more stages in the life cycle of the species described above...or of species of commercial or recreational value which depend on an area for one or more stages in its life cycle...intensive recreational use...historic or cultural means of widespread public interest.

These resource values do not appear to be based on criterion describing rare or unique species. The broad connotation and specific reference to commercially valuable species appears of questionable value for a marine sanctuary, and of concern for a Regional Fishery Management Council. The Bering Sea in its entirety fits most of the resource values suggested.

(3) Section 922.26 Designation

The veto authority afforded the governor of a state whose waters are included in a sanctuary is encouraging. The opportunity to impose yet another layer of federal regulations on the commercial fishing industry should not be encouraged. Marine sanctuary regulations with no commercial fishing implications or overlapping commercial species regulations and designed to protect special rare and unique marine areas would probably be acceptable and desirable.

(4) Section 922.27 Boundaries

The working definitions in this section of the regulations appear to encompass just about everything. For example, an area encompassing the range and interrelationships of key elements of the ecosystem could include almost anything. I fail to find any sufficient boundary definition which combines the target environmental concern with any socio-economic concerns.

The marine sanctuary concept is not bad and certainly has value in its planned approach to protect certain critical or unique marine areas. What does appear bleak is the potential for a duplication or additional layer of regulations affecting commercial fisheries, commercial fishing resources, and fisheries in general now under the management purview of the Fishery Conservation and Management Act.

I might also add that Don Young summed it up pretty well when in his letter to Ms. JoAnn Chandler (Acting Director of Sanctuary Programs) of February 12, 1979 he said:

"In conclusion, let me reiterate that the marine sanctuary system should be designed to protect and manage certain rare, unique, and specific areas off the coast of the United States. Further, while the claim will be made that these regulations are designed to be used in a reasonable manner by reasonable persons, let me remind you that the people of Alaska were under the same impression in regard to the Antiquities Act prior to December 1, 1978. I do not wish to see offshore areas subjected to the same sort of environmental overkill that we have witnessed on land areas in Alaska."



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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Rockville, Maryland 20852

DATE: February 8, 1979

TO: Marine Sanctuary Core Mailing List
Diane Mayerfeld for

FROM: Jo Ann Chandler, Acting Director, Sanctuary Programs
Office, OCZM

SUBJECT: Comments on Proposed General Regulations for the Marine
Sanctuary Program--INFORMATION MEMORANDUM

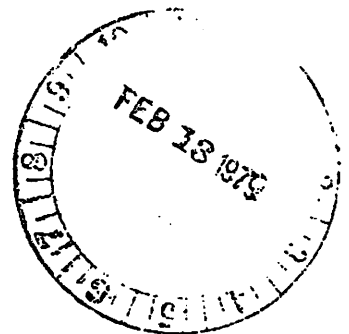
Attached is a copy of the Proposed General Regulations for the Marine Sanctuary Program recently published in the Federal Register.

Since this is the first revision of the regulations since 1974, your response and comments would be most helpful. Please note the April 6, 1979, deadline.

Thank you for your assistance.

Attachment

cc: Council (50) 3-13-79



leg of the upper end and lower chord of the horizontal stabilizer rear spar. The cracks are located along a rivet line and at the tangent of the radius and have been found as far outboard as stabilizer Sta 265 and inboard to stabilizer Sta 96. To date, cracks have been found on 50% of the aircraft inspected.

The cracks do not pose an immediate safety of flight problem, however, if they should coalesce, the structural capability of the outer portion of the horizontal stabilizer could be compromised. It is proposed that an AD be issued which requires repetitive inspection of the vertical flange rear spar upper and lower chords. The manufacturer is currently preparing Service Bulletin 3356 which will contain approximately the same information contained in Boeing Service Letter 707-SL-55-2 which has been released to all operators.

THE PROPOSED AMENDMENT

§ 39.13 [Amended]

Accordingly, the Federal Aviation Administration proposes to amend Sec. 39.13 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new Airworthiness Directive:

BOEING: Applies to all Boeing 707-300/-400/-300B/-300C airplanes noted in Boeing Service Bulletin 3356:

A. Unless inspected within the last 6 months prior to the effective date of this AD, within the next 6 months at intervals thereafter not to exceed 18 months, eddy current inspect the vertical flange of the horizontal stabilizer rear spar upper and lower chord from station 92 outboard in accordance with Boeing Service Bulletin 3356. If cracks are found, proceed in accordance with paragraph B or C of this AD, or by a method approved by the Chief, Engineering and Manufacturing Branch, FAA Northwest Region.

B. If cracks do not exceed the limits of Boeing Service Bulletin 3356 Figure 1 Paragraph 2(a) and 2(b), airplanes may continue in service if eddy current inspections are accomplished at intervals not to exceed 400 landings or 6 months, whichever occurs first.

C. If cracks exceed the limits of Figure 1 Paragraph 2(a) and 2(b), Boeing Service Bulletin 3356, repair prior to further flight in accordance with Figure 2 of that service bulletin, or in a method approved by the Chief, Engineering and Manufacturing Branch, FAA Northwest Region.

D. Inspections may revert to normal when the preventive modification of Boeing Service Bulletin 3356 or a modification approved by the Chief, Engineering and Manufacturing Branch, FAA Northwest Region, has been accomplished.

E. For purpose of complying with this AD subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's hours time-in-service by the operator's fleet average from takeoff to landing for the airplane type.

F. Upon request of the operator, an FAA Maintenance Inspector, subject to prior ap-

proval of the Chief, Engineering and Manufacturing Branch, FAA Northwest Region may adjust the inspection interval if the request contains substantiating data to justify the increase for that operator.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423); sec. 8(c) Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.25.)

NOTE.—The FAA has determined that this document involves a regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12944 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978.)

Issued in Seattle, Washington, on January 26, 1979.

J. H. TANNER,
Acting Director,
Northwest Region.

[FR Doc. 79-3712 Filed 2-2-79 8:45 am]

[3510-12-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric
Administration

[15 CFR Part 922]

MARINE SANCTUARY REGULATIONS

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

ACTION: Proposed General Regulations for Marine Sanctuaries.

SUMMARY: These proposed regulations revise existing regulations which prescribe the procedures for nominating and designating marine sanctuaries, establishing appropriate management systems within designated sanctuaries and enforcing compliance with these management systems. The regulations reflect new approaches and interpretations developed by NOAA during the administration of the program to date.

DATE: Comments due: April 6, 1979.

ADDRESS: Send comments to: JoAnn Chandler, Acting Director Sanctuary Programs Office, Office of Coastal Zone Management, Page Building 1, 3300 Whitehaven Street, N.W., Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT:

JoAnn Chandler (202) 634-1672.

SUPPLEMENTARY INFORMATION: On June 27, 1974, NOAA published regulations setting forth the procedures for nominating, designating and managing areas of the oceans and Great lakes as marine sanctuaries under Title III of the Marine Protection Research and Sanctuaries Act of 1972, P.L. 92-532, 16 U.S.C. 1431-1434, (The Act). Four years of experience have revealed a number of areas

where criteria and procedures could be refined to ensure greater certainty in the administration of the Program. These are as follows:

MAJOR CHANGES:

I. REVIEW OF RECOMMENDED SITES

During the past year, NOAA has received over 100 recommendations of possible marine sanctuary sites. Many of them are overlapping and only a small percentage of them can be pursued actively at any given time. Moreover, examination may indicate that certain sites already are protected under existing mechanisms so that designation would not provide significant additional protection. Also analysis must be conducted of the effect of designation on other existing or potential uses of an area. As a result of such factors and the limited resources available for the program, relatively few sites may be found to warrant designation.

Those sections of the current regulations which describe review procedures (primarily § 922.20, Nominations, and § 922.21, Analysis of nomination) provide that upon receipt of a nomination for designation as a marine sanctuary, a "preliminary review to determine feasibility" will be undertaken and, if designation appears feasible, and in-depth study leading to the preparation of a draft environmental impact statement will follow.

The initial reviews conducted under these procedures have indicated areas where additional specificity can be articulated. These include the scope and criteria for the "preliminary review," the time limits within which it and subsequent steps in the designation process should be accomplished and the way in which the public will be kept informed of the progress of any nomination.

Accordingly, these sections have been substantially rewritten and new § 922.22, Effect of Placement on the List, § 922.23.

Selection of Active Candidates, and § 922.24, Review of Active Candidates, have been added to reflect the approach NOAA has developed over the past year, involving generally the following stages:

(1) Placement on the List of Recommended Areas:

Within three months of receiving a recommendation of any site, NOAA will determine whether the site appears to contain any of the significant resources listed in § 922.21(b) (see discussion of Criteria in II below), in which case it will be placed on a master list cataloguing such areas. (§ 922.21(a)) Experience indicates that many areas recommended contain significant resources and will therefore be listed; consequently, the list will contain many more sites than could or

should be designated as marine sanctuaries.

NOAA may or may not consult other Federal agencies and/or outside parties at this stage but in any event the recommendor will be notified of the determination within the prescribed period and a notice of listing published in the FEDERAL REGISTER if listing is determined to be appropriate.

(2) Selection of Active Candidates:

From the comprehensive list of Recommended Areas, those areas which may be most suitable for designation as marine sanctuaries will be identified as Active Candidates from time to time as program resources allow. The criteria on which this selection will be based are set forth in § 922.23(a). (See II below)

(3) Review of Active Candidates and Designation as Marine Sanctuaries: Active candidates will be subjected to extensive review procedures including consultation with interested Federal and State and local agencies, Regional Fishery Management Councils and the public at large. (see §§ 922.24(b), 922.25 and 922.26(a)) Ultimately the designation must be approved by the President. Sections 922.24, 922.25 and 922.26 outline the new review procedures, time limits and public notice requirements. The latter will include public workshops prior to issuance of an EIS discussed in § 922.22 of the current guidelines.

During the review of any Active Candidate, NOAA's policy has been to seek the close cooperation of any affected State and this policy is emphasized by new § 922.25.

II. ADDITIONAL CRITERIA

Taken together §§ 922.10 and 922.21(b) of the current regulations suggest a number of factors which are relevant in determining whether or not designation may be appropriate. Questions and suggestions have revealed that additional clarification in some areas would be helpful. The proposed regulations respond to these concerns by defining more precisely the features that must be present for a site to be a potential sanctuary, i.e. on the List of Recommended Areas (§ 922.21(b)) and the priorities for selection of Active Candidates (§ 922.23(a)). The categorization of types of sanctuaries presently found in § 922.10 has not been particularly useful because most sanctuary candidates fall in several categories, and it has been dropped.

New §§ 922.24 and 922.25 incorporate the other requirements of old §§ 922.22 and 922.23 and replace these sections.

III. SPECIFICATION OF REGULATORY SCOPE

New § 922.26 requires specification of the "terms" of the designation in a

Designation document, including the geographic area to be included, the character of the area that requires protection, and the types of activities that may be subject to regulation after designation. They make explicit NOAA's interpretation of the Act that not every activity taking place within a sanctuary must be subject to additional control by NOAA. These sections ensure that the only activities that will be subject to additional regulatory control are those identified at the time of designation. Before any additional activities may be regulated, the Designation must be amended through the same review procedure used in making the original Designation.

These amendments also provide that existing regulations of other agencies and any permits and licenses issued pursuant to these regulations will remain unaffected unless specifically provided otherwise by the regulations implementing a particular Designation. Thus, even for those activities included in the Designation, certain licenses or permits issued by other authorities may remain valid until such time as provided otherwise by regulation. The amendment provisions are found in new § 922.25(b) and (c). The new sections replace §§ 922.28 and 922.27.

IV. INTERNATIONAL APPLICATION

The present regulations (§§ 922.12 and 922.13) which describe the effect of designating a sanctuary upon foreign nationals have been combined and reworded slightly to emphasize the nonterritorial nature of any regulation in a sanctuary beyond the territorial sea and that the only basis for their application is consistency with recognized principles of international law or authorization by international agreement.

PUBLIC REVIEW AND COMMENT:

NOAA invites public review and comment on this proposed revision to the regulations. Written comments should be submitted to; JoAnn Chandler, Acting Director, Sanctuary Programs Office; Office of Coastal Zone Management; Page Building 1; 3300 Whitehaven Street, N.W., Washington, DC 20223 on or before April 4th, 1979. Following the close of the comment period and review of the comments received final regulations will be published in the FEDERAL REGISTER.

ROBERT L. CARNAHAN,
Acting Assistant Administrator
for Administration

It is proposed to revise 15 CFR Part 922 to read as follows:

PART 922—MARINE SANCTUARIES

Subpart A—General

- Sec.
- 922.1 Policy and objectives.
- 922.2 Definitions.
- 922.10 Effect of marine sanctuary designation.

Subpart B—Initial Review of Areas Recommended as Sanctuaries

- 922.20 Submission of Recommendations.
- 922.21 Analysis of Recommendations.
- 922.22 Effect of placement on the list.

Subpart C—Selection of Active Candidates and Designation of Sanctuaries

- 922.23 Selection of Active Candidates.
- 922.24 Review of Active Candidates.
- 922.25 Coordination with States.
- 922.26 Designation.
- 922.27 Boundaries.

Subpart D—Enforcement

- 922.30 Penalties.
- 922.31 Notice of violation.
- 922.32 Enforcement hearings.
- 922.33 Determinations.
- 922.34 Final action.

Authority: Title III, Public Law 95-632, as amended; 84 Stat. 1001 (16 U.S.C. 1431-1434).

Subpart A—General

§ 922.1 Policy and objectives.

(a) The purpose of the marine sanctuaries program is to identify distinctive areas in the oceans from the shore to the edge of the continental shelf and in the Great Lakes and to preserve and restore such areas for their conservation, recreational, ecological or esthetic values by designating them as marine sanctuaries and providing appropriate regulation and management.

(b) The primary emphasis of the program will be the protection of natural and biological resources and in most cases higher priority will be afforded candidate sites that meet this objective in accordance with Congressional design.

(c) The presence of actual or potential conflicts among existing or potential human uses of a candidate site is not of itself a basis for designating a site as a marine sanctuary. Human activities will be allowed within a designated sanctuary to the extent that such activities are compatible with the purposes for which the sanctuary was established, based on an evaluation of whether the individual or cumulative impacts of such activities may have a significant adverse effect on the resource value of the sanctuary.

(d) The marine sanctuaries program will be conducted in close cooperation with related Federal and State programs, including particularly the coastal zone management and estuarine sanctuary programs under the Coastal Zone Management Act of

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1972, as amended, 16 U.S.C. 1451 *et seq.*, the fishery management programs of the Regional Fishery Management Councils under the Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.* and leasing programs of the Department of the Interior for the Outer Continental Shelf under the Outer Continental Shelf Lands Act, as amended 43 U.S.C. 1331 *et seq.*

§ 922.2 Definitions.

(a) "Act" means Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431-1434.

(b) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration, United States Department of Commerce.

(c) "Assistant Administrator" means the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, United States Department of Commerce.

(d) Continental Shelf means the Continental Shelf, as defined in the Convention on the Continental Shelf 15 U.S.T. 74 (TIAS 5578), which lies adjacent to any of the several states or any territory or possession of the United States.

(e) "Ocean waters" means those waters lying seaward of the baseline from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. 1956, TIAS 5689.

(f) "Person" means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government, or any state, local or regional unit of government.

§ 922.10 Effect of marine sanctuary designation.

The designation of a marine sanctuary and the regulations implementing it are binding on any person subject to the jurisdiction of the United States. In no case does a designation constitute any claim of territoriality on the part of the United States, and the regulations implementing it apply to foreign citizens only to the extent consistent with recognized principles of international law or authorization by international agreement.

SUBPART B—INITIAL REVIEW OF AREAS RECOMMENDED AS SANCTUARIES

§ 922.20 Submission of recommendations.

(a) Any person may recommend a site to be considered for potential designation as a marine sanctuary. Recommendations should be addressed to:

Director, Sanctuary Programs Office,
OCZM, NOAA, 3300 Whitehaven Street,
N.W., Washington, D.C. 20235.

Further information can be obtained by contacting this office.

(b) Recommendations should be submitted in the following format:

Site recommended:

General description of area
Approximate coordinates
Area in square miles
Name of person or organization submitting recommendation.

Principal Contact:

Name, Title
Address
Telephone number
Detailed description of the feature or features which make the site distinctive (See sec. 922.21).

Available Data on the Resources and Site:
Summary of existing research and other data to support description
Principal data deficiencies

Description of present and prospective uses of site.

Impacts of present and prospective uses on site and its distinctive features.

Probable effects of marine sanctuary designation and regulations:

Present uses of resources
Future uses of resources
Uses of adjacent areas (including those on shore).

Management:

Summary of who should manage area and why
Summary of activities which must be regulated to ensure protection of distinctive features

(c) The Assistant Administrator may request such additional information as is necessary to make the determination called for by § 922.21.

§ 922.21 Analysis of recommendations.

(a) Within 3 months of receiving a recommendation for any site the Assistant Administrator will review the site in accordance with the criteria of paragraph (b) to determine if it should be placed on the List of Recommended Areas and will notify the recommender in writing of this determination. Notification of the placement of any site on the List will be published in the FEDERAL REGISTER.

(b) A candidate area shall have one or more of the following resource values to be eligible for placement on the List of Recommended Areas for marine sanctuaries:

(1) A marine ecosystem characterized by the significant presence of one or more species which (i) is rare, endangered or threatened, (ii) has limited geographic distribution, or (iii) is rare in the waters to which the Act applies.

(2) A marine ecosystem of exceptional richness indicated by the abundance and variety of marine species and the productivity of the various trophic levels in the food web.

(3) An important habitat during one or more stages in the life cycle of spe-

cies described in paragraph (1) or habitat on which one or more commercially or recreationally valuable marine species depends for one or more stages in its life cycle. Life cycle activities include breeding, feeding, and rearing young.

(4) Intensive recreational use growing out of its distinctive marine characteristics.

(5) Historic or cultural remains of widespread public interest.

(6) Distinctive or fragile geologic features of exceptional scientific or educational value.

(c) Where overlapping or adjacent sites are recommended or where the recommended boundaries of an area appear either excessive or inadequate to protect the identified features the Assistant Administrator may prepare a combined or revised description for placement on the List.

(d) All recommendations submitted prior to the effective date of these regulations will be reviewed in accordance with this section and an initial List of Recommended Areas will be published in the FEDERAL REGISTER within 3 months of such date. Thereafter the List will be updated semi-annually and a cumulative list published in the FEDERAL REGISTER.

§ 922.22 Effect of Placement on the list.

(a) Placement of a site on the List is a prerequisite for designation as a marine sanctuary but does not imply that designation will occur and does not establish any regulatory controls. Such controls can be established only after designation in accordance with § 922.26.

(b) The list provides a source of information on recommended sites that may be relevant to federal agencies and others conducting activities that affect these sites.

SUBPART C—SELECTION OF ACTIVE CANDIDATES AND DESIGNATION OF SANCTUARIES

§ 922.23 Selection of active candidates.

(a) Sites on the List will be selected for active consideration for designation as marine sanctuaries based primarily on the significance of the resources identified during listing under § 922.21(b) and the extent to which the means are available to the Assistant Administrator to support full review within the time specified in § 922.24. In addition the following factors will be taken into account:

(1) The severity and imminence of existing or potential threats to the resources including the cumulative effect of various human activities that individually may be insignificant.

(2) The ability of existing regulatory mechanisms to protect the values of the sanctuary and the likelihood that

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sufficient effort will be devoted to accomplishing those objectives without creating a sanctuary.

(3) The significance of the area to research opportunities on a particular type of ecosystem or on marine biological and physical processes.

(4) The value of the area in complementing other areas of significance to public or private programs with similar objectives, including approved Coastal Zone Management programs.

(5) The esthetic qualities of the area.

(6) The type and estimated economic value of other natural resources and human uses within the area which may be foregone as a result of marine sanctuary designation, taking into account the economic significance to the nation of such additional resources and uses and the probable impact on them of regulations designed to achieve the purposes of sanctuary designation.

(b) Before selecting a site as an Active Candidate, the Assistant Administrator shall consult on a preliminary basis with relevant Federal agencies, state and local officials, Regional Fishery Management Councils and other interested parties including the recommender to discover if significant objections to designation exist and to gather additional information as necessary to conduct the review process.

(c) Selection of any site as an Active Candidate for designation shall be announced in the FEDERAL REGISTER and all Active Candidates shall be placed on a separate list published and updated concurrently with the List of Recommended Areas as provided in § 922.21(d).

§ 922.24 Review of active candidates.

(a) Within six months of selection as an Active Candidate as specified in § 922.23, the Assistant Administrator shall conduct a Public Workshop to solicit the views of interested persons to aid in determining whether the site should be further considered for designation. This workshop shall be before and in addition to the public hearings required under section 302(e) of the Act.

(b) Based on the views obtained at the Public Workshop and other relevant information, the Assistant Administrator shall determine whether the site should continue to be an Active Candidate and shall announce that decision in the FEDERAL REGISTER within 90 days of the Public Workshop. If appropriate, the Assistant Administrator shall commence preparation of a draft Environmental Impact Statement (DEIS), Designation document, and regulations implementing the Designation, with the participation of relevant Federal, State and local officials, Regional Fishery Management Council members and other

interested parties in the preparation of such documents.

(c) No less than 30 days after EPA publishes a Notice of Availability in the FEDERAL REGISTER, the Assistant Administrator shall hold at least one public hearing on the DEIS in the coastal areas most affected by the proposed designation in accordance with section 302(e) of the Act.

§ 922.25 Coordination with states.

(a) The Assistant Administrator shall make every effort to consult and cooperate with affected states through the entire review and consideration process. In particular the Assistant Administrator shall:

(1) Consult with the relevant state officials prior to selection of a candidate for active consideration pursuant to § 922.23(b).

(2) Ensure that any state agency designated under sections 305 or 306 of the Coastal Zone Management Act of 1972 and any other appropriate state agency is consulted prior to holding any public workshop pursuant to § 922.24(a) or public hearing pursuant to § 922.24(c).

(3) Ensure that such public workshops and public hearings include consideration of the relationship of a proposed designation to state waters or to an approved state Coastal Zone Management program.

§ 922.26 Designation.

(a) After filing a final environmental impact statement with EPD and after final consultation with all appropriate Federal agencies and Regional Fishery Management Councils, the Administrator may transmit to the President for approval the proposed Designation to make the site a Marine Sanctuary.

(b) The Designation shall specify by its terms the geographic coordinates of the Sanctuary area, its distinctive features that require protection, and the types of activities that may be subject to regulation. The terms of the Designation may be modified only by the same procedures through which the original designation was made.

(c) The Assistant Administrator shall promulgate regulations consistent with and implementing the terms of the Designation. Such regulations shall set forth procedures for the review and certification of permits, licenses or other authorization pursuant to other authorities. All amendments to or revisions of these regulations must remain consistent with the Designation.

(d) If the Governor of a state whose waters are included in the sanctuary certifies that any terms of the Designation are unacceptable, such terms and any regulations implementing them will not become effective for the part of the Sanctuary in state waters

until the certification is withdrawn. If the Governor so certifies, the Designation may be withdrawn if the sanctuary, as modified, no longer achieves the objectives specified in the Act, the regulations and the Designation.

§ 922.27 Boundaries.

(a) Sanctuary boundaries should include an area sufficient to provide reasonable assurance that the resource value of the area can be protected against degradation or destruction. The boundary will not include an area greater than that appropriate to protect the resource. The determination of boundaries should consider the following elements, depending on the resource values that justify establishing the sanctuary:

(1) The range and interrelations of key elements of the ecosystem,

(2) The potential for adverse impact from human activities at some distance from where they are conducted, whether as a result of normal operations or foreseeable accidents,

(3) The economic, safety, and other effects of displacing certain human activities to other locations to the extent such displacement is likely to occur.

(4) The feasibility and cost of conducting surveillance and enforcement activities in managing the area.

(b) At any time prior to the designation of any candidate site as a marine sanctuary, the boundary proposed for such site may be revised in conformance with the criteria of this section to reflect new information. Notification of the revision will be made at the next update of the List of Recommended Areas or Active Candidates List, as appropriate.

Subpart D—Enforcement

§ 922.30 Penalties.

Any person subject to the jurisdiction of the United States who violates any regulation issued pursuant to the Act will be liable for a civil penalty of not more than \$50,000 for each such violation. Each day of a continuing violation will constitute a separate violation. No penalty will be assessed under this section until the person charged has been given notice and an opportunity to be heard. Upon failure of the offending party to pay an assessed penalty, the Attorney General, at the request of the Administrator will commence action in the appropriate district court of the United States in order to collect the penalty and to seek such other relief as may be appropriate. A vessel used in the violation of a regulation issued pursuant to the Act will be liable in rem for any civil penalty assessed for such violation and may be proceeded against in any district court of the United States having jurisdiction thereof. Pursuant

PROPOSED RULES

to section 303(a) of the Act, the district courts of the United States have jurisdiction to restrain a violation of the regulations issued pursuant to the Act, and to grant such other relief as may be appropriate.

§ 922.31 Notice of violation.

Upon receipt of information that any person has violated any provision of this title, the Assistant Administrator will notify such person in writing of the violation with which charged, and of the right to demand a hearing to be held in accordance with § 922.32. The notice of violation shall inform the person of the procedures for demanding a hearing and may provide that, after a period of 30 days from receipt of the notice, any right to a hearing will be deemed to have been waived.

§ 922.32 Enforcement hearings.

Hearings demanded under § 922.31 will be held not less than 60 days after demand. Such hearings shall be on a record before a hearing officer. Parties may be represented by counsel, and will have the right to submit motions, to present evidence in their own behalf, to cross examine adverse witnesses, to be apprised of all evidence considered by the hearing officer, and, upon payment of appropriate costs, to receive copies of the transcript of the proceedings. The hearing officer will rule on all evidentiary matters and on all motions, which will be subject to review pursuant to § 922.33.

§ 922.33 Determinations.

Within 30 days following conclusion of the hearing, the hearing officer normally will make findings of facts and recommendations to the Administrator unless such time limit is extended by the Administrator for good cause. When appropriate, the hearing officer will recommend a penalty, after consideration of the gravity of the violation, prior violations by the person charged, and the demonstrated good faith by such person in attempting to achieve compliance with the provisions of the title and regulations issued pursuant thereto. A copy of the findings and recommendations of the hearing officer shall be provided to the person charged at the same time they are forwarded to the Administrator. Within 30 days of the date on which the hearing officer's findings and recommendations are forwarded to the Administrator, any party objecting thereto may file written exceptions with the Administrator.

§ 922.34 Final action.

A final order on a proceeding under this part will be issued by the Administrator no sooner than 30 days following receipt of the findings and recom-

mendations of the hearing officer. A copy of the final order will be served by registered mail (return receipt requested) on the person charged or his representative.

[FR Doc. 79-3948 Filed 2-2-79; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1917]

[Docket No. FI-5070]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Borough of Westville, Gloucester County, N.J.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Borough of Westville, Gloucester County, N.J. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Borough Hall, 114 Crown Point Road, Westville, N.J. 08093. Send comments to: Honorable H. V. Laskowski, Mayor, Borough of Westville, Borough Hall, 114 Crown Point Road, Westville, N.J. 08093.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Borough of Westville,

N.J. in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation, feet, national geodetic vertical datum
Big Timber Creek	Conrail—at centerline	10
	Interstate 295—at centerline	10
Tributary No. 1	Intersection of Woodbine Avenue and 4th Avenue	10
	Intersection of Willow Road and High Street	10

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.L. 95-557, 92 STAT. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 22, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-3415 Filed 2-2-79; 8:45 am]

DON YOUNG
CONGRESSMAN FOR ALL ALASKA

COMMITTEES:
INTERIOR AND INSULAR
AFFAIRS
MERCHANT MARINE AND
FISHERIES

Hutton

WASHINGTON OFFICE

1210 LONGWORTH BUILDING
TELEPHONE 202/225-5765

14d

Congress of the United States

House of Representatives

Washington, D.C. 20515

February 12, 1979

DISTRICT OFFICES

115 U.S. FEDERAL BUILDING
ANCHORAGE, ALASKA 99501
TELEPHONE 907/279-1587

202 U.S. FEDERAL BUILDING
FAIRBANKS, ALASKA 99701
TELEPHONE 907/456-6949

Ms. JoAnn Chandler
Acting Director of Sanctuary Programs
Office of Coastal Zone Mgt.
Page Bldg. 1
3300 Whitehaven Street NW
Washington, D.C. 20235

Dear Ms. Chandler:

I would like to take this opportunity to comment on the proposed marine sanctuary regulations published in the February 5, 1979 Federal Register.

It is my understanding that the Marine Sanctuary program was designed to protect and adequately manage those areas of the ocean and the Great Lakes which contain especially unique features. Unfortunately, the proposed regulations are so broad in scope that all waters surrounding the State of Alaska, and all activities conducted within those waters, could come under strict regulation.

Specifically, let me call your attention to the following:

- 1) Policy and Objectives - The proposed regulations state that "primary emphasis...will be protection of natural and biological resources..." and that "human activities will be allowed...to the extent that such activities are compatible..." This is broad language that can cover anything from protection of a rare or endangered specie to federal management of fish stocks above and beyond that which is already being accomplished by the Fisheries Conservation and Management Act and by State regulation. I suggest that the regulations be limited to unique (in national or international terms) resources.

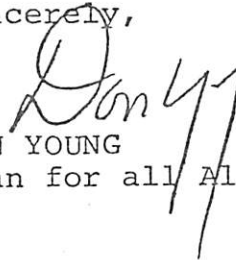
- 2) Analysis of Recommendations - The resource values suggested for eligibility are entirely too vague. For example, both the gray whale and the bowhead whale are considered threatened or endangered under the Endangered Species Act. Both of these whales are highly migratory and all waters through which they pass could be assumed to meet criteria (b)(3). Further, all waters off the coast of Alaska could meet criteria (b)(2) because of the "abundance and variety of marine species" present therein. Again, limiting or specific language is needed.
- 3) Selection of Active Candidates - When combined with the criteria listed in S.922.21, paragraph (a)(1) of this section takes on ominous significance. If a broad-brush approach is taken in establishing sanctuaries, the presence of the commercial fishing industry could be construed as a major factor in accelerating sanctuary establishment. This is certainly not what Congress intended. Further, the implication of this paragraph is that sanctuary designation will be used to halt any offshore activities which do not meet the approval of the federal government. This raises serious questions as to the validity of the sanctuary program.
- 4) Designation - Paragraph (b) speaks of "the types of activities that may be subject to regulation." While an area such as the wreck of the Monitor certainly requires special consideration, the size and complexity of areas which would be eligible under the proposed regulations would require the federal government to be involved in day to day activities, such as fishing and vessel traffic, which are already being regulated. A fisherman who is already subject to regulation by the Coast Guard, the State of Alaska, the Regional Fisheries Management Council and other entities certainly does not need to be subjected to even greater amounts of regulatory authority.

- 5) Boundaries - Again, paragraphs (a)(1) and (2) are both extremely broad in scope and lead to the conclusion that only federally approved activities will be permitted. The term "ecosystem" covers a great deal of territory and if boundaries are established under the terms of (a)(1), we can anticipate two giant sanctuaries, one covering the entire Bering-Chukchi Sea, and the other covering the entire west coast of the U.S. south of the Alaska Peninsula, as this would include all key elements of the gray whale "ecosystem."

In conclusion, let me reiterate that the marine sanctuary system should be designed to protect and manage certain rare, unique, and specific areas off the coast of the United States. Further, while the claim will be made that these regulations are designed to be used in a reasonable manner by reasonable persons, let me remind you that the people of Alaska were under the same impression in regard to the Antiquities Act prior to December 1, 1978. I do not wish to see offshore areas subjected to the same sort of environmental overkill that we have witnessed on land areas in Alaska.

I look forward to working with you in the future on this and other matters of mutual interest.

Sincerely,



DON YOUNG
Congressman for all Alaska

cc: Hon. Joel Pritchard
Offshore Dist. List

DY:rhm

North Pacific Fishery Management Council

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

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

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



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

INFORMATION MEMORANDUM

Date: February 6, 1979

To: Council, SSC, AND AP

From: Jim H. Branson
Executive Director

Subject: The Marine Protection Research and Sanctuaries Act
in general and Possible California Marine Sanctuary
Sites in detail

We received an informational report on the status of the Marine Sanctuary Program of the Office of Coastal Zone Management. We developed the following assessment and summary of that report for your information. We can forward a copy of the report to you if you need further information.

1. There is no apparent or immediate danger for any of the waters off Alaska to be designated as marine sanctuaries.
2. Only two in the U.S. have been designated to date: (1) in 1975, the Monitor Marine Sactuary; (2) also in 1975, the Key Largo Coral Reef Marine Sanctuary.
3. Only five areas are currently active sanctuary proposals for 1979;
 - (a) Point Reyes/Farallon Islands, California
 - (b) Monterey Bay area, California
 - (c) Waters around Northern Channel Islands and Santa Barbara Island, California
 - (d) Flower Garden Banks, Texas and Louisiana
 - (e) Looe Key, Florida
4. Three of these active sanctuary proposals are off the coast of California and have management implications regarding fisheries for both the State and the Pacific Fishery Management Council.
5. NOAA is very carefully coordinating its marine sanctuary activities in California with the Pacific Fishery Management Council so as not to interfere with nor supercede the programs established by the FCMA.

6. The boundary however of all three marine sanctuary proposals extends into the FCZ. Also, the potential development and uses described for each area includes commercial fishing as a major use.
7. Regulatory alternatives described for each of the three sanctuary proposals range from a complete prohibition of any activity to an intermediate alternative of allowing the activity under certain conditions to occur.
8. Perhaps most importantly, each proposal contains a major provision regarding "Fishing" as follows:

"NOAA does not have any independent evidence that fishing poses a threat to the resources of the proposed sanctuary or any information from concerned parties which would help define the need for or scope of further regulation of fishing. Since State and Federal regulations for fishing already control the activity in the area under consideration, no specific regulatory options have been presented here."

9. In summary, I believe that the marine sanctuary concept could someday lead to active sanctuary proposals for Alaskan waters which could have management implications overlapping with the North Pacific Council. Furthermore, given the extensive way in which ecosystems in general and marine mammals in particular are thought of in the current California proposals, several areas off Alaska have to be considered prime contenders.
10. My feeling is that any action off Alaska is a ways off and probably warrants a defensive interest in marine sanctuary proposals outside Alaska...especially the resolution of any conflict which might occur as a result of the marine sanctuary proposals off California and the Pacific Fishery Management Council.

North Pacific Fishery Management Council

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

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



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

Telephone: (907) 274-4563
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Agenda Item #19
February 22-23, 1979
JHB

Agenda #15
MARCH 1979

Discussion Paper Council Review of Foreign Fishing Permit Application Procedures and the Development of Review Criteria

The New England Council has raised the question of the Management Councils' input into the review of foreign fishing permit applications (Memo of January 10, 1979 to Executive Directors). They contend that their review and comments on foreign fishing permit applications have not been given full consideration by NOAA/NMFS. They believe that this is partly because no policy or objective criteria exists within NOAA or the Councils as a basis for the approval or denial of permits. Their memo, and a letter to Leitzell with a draft of proposed NOAA policy on the subject is in your agenda folder.

The North Pacific Council has recommended against approving permit applications in a number of cases. We have been always overruled by NOAA/NMFS, who has issued the permits. Most of the Council's objections to permit applications have been based on the fact that the countries applying had received allocations in areas where they did not have a traditional fishery or for a species on which they had no traditional fishery. NMFS has issued the permits because "since the countries have allocations there was no valid reasons to deny applications to allow those nations to harvest the allocations." Our basic problem is with the allocation procedure rather than the permit review but since the Councils have no legislative recourse to comment on allocations, review of the permit application is the only avenue left to voice their objections to misdirected allocations.

In addition to the basic problem on the allocation procedure, the New England Council's comments (summarized at the end of this discussion paper) have validity in that there is no objective criteria developed among all of the Councils for the review of permits. A nationwide policy may or may not be desirable.

We can generate additional information on permit applications from the Regional NMFS computer files if they are willing to assist. I would suggest that we send permit applications to NMFS, Juneau, and ask them to give us a run on each vessel requesting a permit prior to Council review. This would give us information on any citations or violations

against that ship, and if the Council wished, information on where they have fished previously, their reported catches, etc. Unless information is really needed, however, we should hold computer reviews to a minimum to save time and labor for NMFS.

Summary of New England Council's
Comments and Recommendations

I. Comments:

1. No policy statement on role of the Councils in review of applications.
2. No objective criteria for approving/denying applications.

II. Need to know NMFS policy on basic issues:

1. What weight does NMFS give Council recommendations
2. Which sources of information will NMFS consider:
 - a. observer reports
 - b. enforcement actions
 - c. reports of U.S. fishermen
 - d. other
3. What action will be taken with respect to:
 - a. subsequent applications by ships who have failed to comply with U.S. regulations
 - b. applications for ships in fishery where ships of the same nation have a record of non-compliance
4. What are appropriate criteria for Council to base recommendations?

III. NEFMC proposed criteria

1. Whether applications represent excessive vessel capacity
2. Whether there is a record of violations by ships or others of same nation

JHB



HOUSE OF REPRESENTATIVES
WASHINGTON, D. C. 20515

I think you
may be interested
in the attached.

Don Young

6/28/83 WVC



Agenda #19
February 1979

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

JAN 26 1979

F37:AJB

Honorable Don Young
House of Representatives
Washington, D.C. 20515

Dear Mr. Young:

Thank you for your letter of December 13, 1978, concerning policy aspects of allowing "third party" entries into the U.S. fishery conservation zone and basing TALFF allocations on the return of fishery products to this country.

In making 1979 foreign allocations of TALFF's the Department of State considered policy implications of Gulf of Alaska and Bering Sea allocations to Mexico and Poland. The Department was aware of Poland's requests for larger allocations and of arrangements entered into between Mrs. Paul's Kitchens, Inc., and Polish fishing interests. However, the allocations of groundfish were provided to Poland in the Bering Sea and the Gulf of Alaska to partially offset severe reductions which Poland sustained in other fisheries, particularly on the Atlantic Coast. With regard to Mexico, the Department considered the importance of reciprocal fisheries arrangements with the Mexican government in allocating Gulf of Alaska groundfish to that nation.

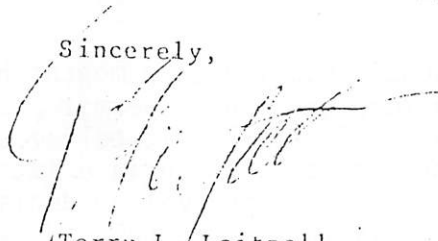
The recommendations of the North Pacific Fishery Management Council were taken into account when 1979 foreign fishing applications submitted by the Polish People's Republic and the United States of Mexico were considered. Since both nations received allocations in 1979, there was no valid reason to deny applications to allow these nations to harvest the allocations. Disapproving the Mexican and Polish foreign fishing applications would have frustrated the intent of the Department of State's allocation decisions pursuant to section 201(e) of the Fishery Conservation and Management Act of 1976, as amended.



I agree that domestic fisheries development is an appropriate consideration in determining the allocations. However, I do not foresee that the allocations to Poland and Mexico will have an adverse impact on such development. The quantities of fish allocated to Poland and Mexico are in excess of the harvesting capacity of vessels of the United States. If not allocated to those nations, the quantities would have been added to the allocations of other foreign nations and the competition with domestic products would be just as great.

I hope this explanation clarifies the situation and we will be glad to provide any additional information if it is needed.

Sincerely,



Terry L. Leitzell
Assistant Administrator
for Fisheries

New England Fishery Management Council
Peabody Office Bldg., One Newbury Street, Peabody, MA 01960—617-535-5450

Agenda #19
February, 1979

To: EXECUTIVE DIRECTORS,
FISHERY MANAGEMENT COUNCILS

Date: January 10, 1979.

Spencer Apollonio

From: Spencer Apollonio, Executive Director

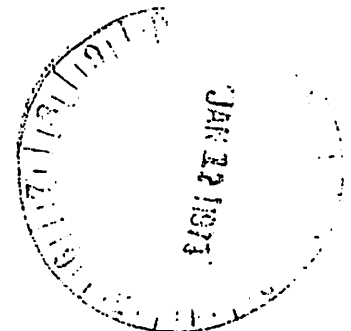
Subject: Councils' Input into Review of Foreign Fishing Permit Applications

The New England Council has for some months been concerned that its review of and comments on foreign fishing permit applications have not been given full consideration by NOAA/NMFS. It believes that this is in part because no policy nor objective criteria exists within NOAA or NMFS or the Councils as a basis for the approval or denial of permits. The Council believes that, if it is in fact to have any significant role in the review process, such a policy and criteria should be established. It has, therefore, sent the enclosed letter and suggested policy statement to Mr. Leitzell for his consideration.

The Council requests the consideration and support of the other Councils on this issue. It welcomes suggestions for improving the Councils' role in the review of foreign permit applications.

j

cc: Terry L. Leitzell
Asst. Administrator for Fisheries



New England Fishery Management Council

Peabody Office Building
One Newbury Street
Peabody, Massachusetts 01960

617-535-5450

FTS 8-223-3822

January 10, 1979

Mr. Terry L. Leitzell
Asst. Administrator for Fisheries
NOAA/NMFS
Page Building Two
Washington, DC 20235

Dear Mr. Leitzell:

The Council has recently undertaken a review of its process for handling foreign fishing permit applications. Its goal is to develop a more timely and organized review process which is based upon a set of clearly articulated criteria. It notes that there is no policy statement on the role of the Councils in the review process, and no objective criteria for recommending approval or denial of permit applications. In the absence of these, the Council is uncertain whether it has a significant role in the review process. The Council wishes to play a meaningful role in the Secretary's consideration of foreign fishing permit applications and appropriate conditions and restrictions, as required by Section 204(b)(5) of the FCMA.

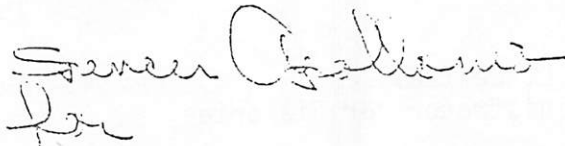
Before a more rational system of permit review can be developed, however, the Council feels there is a need to clarify NMFS policy on several basic issues, specifically, (1) what weight will the NMFS give to the Council's recommendations with respect to foreign fishing permit applications; (2) which sources of information on the activities of permitted vessels, if any, will NMFS consider in foreign fishing permit applications (e.g., observers' reports, enforcement actions, reports of U.S. fishermen, etc.), and what weight will be given to information which indicates noncompliance with the foreign fishing regulations; (3) what action will be taken with respect to a) subsequent permit applications by foreign vessels whose owners or operators have failed to comply with U.S. regulations and b) permit applications for foreign vessels in a fishery where vessels of the same country have a record of noncompliance with the regulations; and (4) what are the appropriate criteria upon which the Council may base its recommendations with respect to foreign fishing permit applications.

To assist in resolving these policy issues, the Council wishes to submit for

Mr. Terry L. Leitzell
January 10, 1979
Page 2

your consideration a draft Assistant Administrator's Policy Statement on the role of the Fishery Management Councils in the consideration of foreign fishing permit applications. The Council hopes that this draft statement will facilitate the resolution of the above policy issues. Please feel free to call on the Council staff for further development of this policy.

Sincerely yours,



Allen E. Peterson, Jr.
Chairman

AP:jr

cc: William Gordon, Regional Director

STATEMENT OF POLICY

Role of the Fishery Management Councils in Consideration of Foreign Fishing Permit Applications

I Background

Recently, the Fishery Management Councils have expressed concern over their roles and responsibilities in the consideration of foreign fishing permit applications, particularly with respect to fisheries where foreign fishing activities can affect species of particular concern to U. S. fishermen.

In the past, there has been no clear expression of NMFS's view of the Council's role in permit review, nor on the weight to be given to their recommendations in permit application approval and conditioning. NMFS wishes to remedy this and make clear that it has a commitment to give full consideration to the concerns of the Management Councils in its review of foreign fishing permit applications.

II Policy

Recognizing that the interests of the Fishery Management Councils and the policies which they formulate for the conservation and management of species within their geographical areas are affected by foreign fishing activities permitted by the Secretary of Commerce under the authority of the FCMA, and recognizing that the Fishery Management Councils may have access to information regarding the conduct of foreign fishing vessels in the FCZ, it is therefore the policy of the Assistant Administrator for Fisheries, NOAA, to solicit the views of the Fishery Management Councils on foreign fishing permit applications and to give full consideration to any recommendations they make which are based upon the conservation and management of the U. S. fisheries. In addition, it is the policy of the Assistant Administrator to give full weight to the recommendations of the Councils with respect to the imposition of additional conditions and restrictions on the approved applications of foreign nations which are necessary for conservation and management of U. S. fisheries, and in particular, for fishing vessels which have been used in the commission of acts prohibited by the regulations and Section 307 of the FCMA.

It is understood that the above recommendations of the Councils will be based upon the following criteria:

a) whether the permit applications represent, either alone or when considered cumulatively, excessive vessel capacity in comparison to the species allocations of the foreign nation, and

b) whether there is a record of violations by either the vessel described in the application or by other vessels of the same foreign fishery, and the foreign nation responsible for those vessels has failed to comply with its GIFA responsibility under Section 201 (c)(4)(C) to take appropriate steps under its own laws to assure that all vessel owners and operators comply with the permit conditions and restrictions established under Section 204 (b)(7).

III Procedure

Pursuant to the requirements of Section 204 of the FCMA, copies of foreign permit applications will be transmitted by the Department of State to the appropriate Councils. Each Council will then prepare written comments on the applications for submission to the Secretary of Commerce, after considering any comments provided by the public.

The submission will contain recommendations for approval or disapproval of the permit applications, based upon the above criteria, with appropriate reference to the information upon which they are based. If approval is recommended, the Council may also recommend appropriate conditions and restrictions of the permits which the Council deems necessary to assure compliance with the foreign fishing regulations and fishery management plans.

Prior to the consideration of the foreign permit applications, NMFS will provide the Councils with current information on the activities of foreign fishing vessels in the FCZ, including catch statistics, observer reports, information from boarding inspections, enforcement actions taken, and any other information available to inform the Councils on compliance with the foreign fishing regulations and management plans.

If the Assistant Administrator receives a recommendations from a Council for disapproval of an application and the application is nevertheless approved, the Assistant Administrator will provide an explanation of the action in the Notice of Approval required by Section 204(b)(8)(C) to be sent to the Council.

If the Assistant Administrator receives a recommendation from a Council for approval of an application with specific recommendations for appropriate restrictions and conditions and the application is nevertheless approved without the recommended restrictions or conditions, the Assistant Administrator will provide an explanation of the action in the Notice of Approval to the Council which refers specifically to the information and criteria which were the basis of the Council's recommendation.

If the permit application is approved with restrictions and conditions, such restrictions and conditions will be incorporated into the permit.

Terry L. Leitzell
Assistant Administrator
for Fisheries, NOAA