

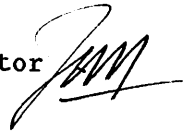
Agenda Item F-2  
May, 1980

MEMORANDUM

DATE: May 19, 1980

TO: Council Members, Scientific & Statistical Committee  
and Advisory Panel

FROM: Jim H. Branson, Executive Director



SUBJECT: HR 7039, A Bill Introduced by Congressmen Breaux,  
Forsythe and Murphy

ACTION REQUIRED

*Information. Council may wish to comment on the Bill.*

BACKGROUND

The bill proposes amendments to the Saltonstall - Kennedy Act, the Merchant Marine Act and the Fishery Conservation and Management Act. The House Subcommittee on Fisheries, Wildlife and the Environment has already held hearings on this bill so it will not be possible for the Council to comment in time for those the last of which was scheduled for May 20th, however, it may be useful to comment on the bill in any case.

Attachment 1, Fact Sheet, outlines the intent of the bill which:

- 1. Fisheries loan fund - restructured to assist borrowers in danger of defaulting on their mortgage payments. Interest at rates to cover the administrative cost of the program only.*

2. *New fees on foreign fishermen adds ten percent of the ex-vessel value of the catch to all other fees now paid by foreign fishermen. Money to be used to finance the fisheries loan fund with any surplus to go to the SK Program.*
3. *Amend the Saltonstall - Kennedy Program.*
4. *Capital construction fund-amends to include shoreside processing facilities (at least 75% U.S. owned).*
5. *Title XI loan guarantee program-expands to include shoreside facilities, etc.*
6. *Phase out of foreign fishing - provides that foreign fishing be reduced on the basis of the 1979 harvest to be entirely out of the CFZ by 1985 except by a specific permission of Congress.*
7. *Observer program provides for a 100% observer coverage with dedicated funds.*
8. *Trade - barriers makes foreign trade barriers a consideration in the allocation of surplus fish.*
9. *Fisheries Attaches - provides for six fishery attache posts including Tokyo, Brussels and Rome.*

The Pacific Council commented on HR 7039. Their comments are included as attachment 3. The bill itself is attachment 2. Attachment 4 is a memorandum from Robert Thorstenson, Icicle Seafoods, to Chairman Tillion on the Council system and the need to include all management measures in the fishery management plans.

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## BREAUX FISHERIES DEVELOPMENT BILL

ATTACHMENT 1  
F-2Fisheries Loan Fund -- Section 212

The Fisheries Loan Fund would be restructured to assist vessel owners in danger of defaulting on their mortgage payments. Potential defaults on Title XI guaranteed loans would receive priority assistance over other potential defaults. Interest on loans would be at rates established only to cover the administrative costs of the program. No new loans could be made after December 31, 1982.

New Fees on Foreign Fishermen -- Section 302

The bill adds to all other fees paid by foreign fishermen in our 200-mile fisheries zone a charge of 10% of the ex vessel price of the catch. Ex vessel price is the price of the catch when landed at a port. During the life of the amended Fisheries Loan Fund, it would receive, to the extent needed, the proceeds from the new foreign fees and the balance would go to the S-K program.

Amendment of the Saltonstall-Kennedy Program -- Section 101

(1) 75% of S-K monies would be dedicated to non-Federal fisheries development projects and the balance of the monies would have to be used for projects undertaken by Commerce;

(2) the use of S-K monies for non-Federal projects would be restricted to enterprises which are at least 75% U.S. owned;

(3) criteria and a time-table would be established for consideration of project applications;

(4) matching Federal funds would be fixed at no more than 75% and no less than 50%; and

(5) a detailed report to Congress on the use of S-K funds would be required.

Fuel Efficiency and Fish Inspection Quality Standards -- Section 101

At least one S-K project would deal with voluntary fish inspection quality standards and one with fuel efficiency. If, in the unlikely event that suitable proposals by industry were not made, Commerce would carry out either or both projects.

Capital Construction Fund (CCF) -- Section 201

CCF would be amended to include:

(1) shoreside fisheries facilities (processing plants, warehouse and related infrastructure);

- (2) floating processors (now covered by regulations);
- (3) the purchase of used fishing vessels or processing facilities or vessels;
- (4) a restriction on the use of CCF for shoreside facilities and processing vessels to 75% U.S. ownership; and
- (5) a cross-over of harvesting-derived funds for processing and vice versa.

Title XI Loan Guarantee Program -- Section 211

The loan guarantee program would be expanded to include items 1-4 listed under the CCF amendments above. In addition:

- (1) subfunds would be created for:
  - (a) vessels and facilities that meet the usual "economic soundness" criteria;
  - (b) vessels and facilities that do not meet such criteria (due to their use in underutilized fisheries); and
  - (c) merchant vessels.

(2) total of 10% of the \$10 billion available to Mar Ad for loan guarantees would be placed in the fisheries fund (5% in each subfund).

Phase-Out of Foreign Fishing -- Section 301

The bill would amend the FCMA to establish a schedule for the phase-out of foreign fishing. The established schedule for the phase-out for each fishery would be linked to the fishing season that ended in 1979. The base level would be the amount of harvested fish, not allocated fish.

The schedule of allowable foreign harvest would be as follows:

- (1) 1981, no more than 90% of the base harvest;
- (2) 1982, no more than 75% of the base harvest;
- (3) 1983, no more than 55% of the base harvest;
- (4) 1984, no more than 30% of the base harvest;
- (5) 1985, no foreign fishing.

If, in any year, the regular domestic allowable harvest, based on the normal optimum yield, resulted in an allowable level of fishing for foreign fishermen that would be lower than the level provided in the schedule, they would receive the smaller amount of fish.

If, in any year, the Secretary of Commerce found that the phase-out would result in a "substantial surplus of fish stocks" in a fishery, he could propose to defer all or part of the scheduled reduction of the foreign harvest for that year until the following year. Deferrals could be rolled-over from year-to-year. Either House could veto the proposal.

Observer Program -- Section 311

The bill would establish a 100% U.S. observer program on foreign vessels. Costs would be entirely borne by foreign fishermen.

Trade Barriers -- Section 301

The bill would amend the FCMA to make foreign trade barriers a consideration in the allocation of surplus fish to foreign vessels in our zone.

Regional Fisheries Attaches -- Section 102

The Secretary of Commerce would be directed to appoint six fisheries attaches. The State Department would assign them to key diplomatic missions, including Tokyo, Brussels, and Rome.

9<sup>th</sup> CONGRESS  
2d Session

H. R. \_\_\_\_\_

ATTACHMENT 2  
F-2

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IN THE HOUSE OF REPRESENTATIVES

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Mr. Breaux (for himself and/) introduced the following bill;  
which was referred to the Committee on \_\_\_\_\_  
Mr. Forsythe, Murphy of New York

-----  
A BILL

to provide for comprehensive research and development regarding  
United States fisheries, to expand the fishing vessel and  
fish processing capacity of the United States, and for other  
purposes.

1 Be it enacted by the Senate and House of Representatives  
2 of the United States of America in Congress assembled,



1 That this Act may be cited as the "American Fisheries  
2 Promotion Act".

3 TITLE I--RESEARCH AND DEVELOPMENT REGARDING UNITED STATES  
4 FISHERIES

5 SEC. 101. RESEARCH AND DEVELOPMENT PROJECTS AND PROGRAMS.

6 (a) Amendments to Saltonstall-Kennedy Act.--Section 2 of  
7 the Act of August 11, 1939 (commonly referred to as the  
8 Saltonstall-Kennedy Act, 15 U.S.C. 713c-3) is amended--

9 (1) by striking out subsections (b), (c), (d), and

10 (e);

11 (2) by redesignating subsection (a) as subsection

12 (b);

13 (3) by inserting immediately before subsection (b)  
14 (as so redesignated) the following new subsection:

15 "Sec. 2. (a) Definitions.--As used in this section--

16 "(1) The term 'person' means--

17 "(A) any individual who is a citizen or national  
18 of the United States; and

19 "(B) any corporation, partnership, association,  
20 or other entity (including, but not limited to, any  
21 fishery development foundation), nonprofit or  
22 otherwise, if such entity is a citizen of the United  
23 States within the meaning of section 2 of the  
24 Shipping Act, 1916 (46 U.S.C. 802) and for purposes

1  
2 of applying such section 2 with respect to this  
3 section—

4       “(1) the term ‘State’ as used therein  
5 includes any State referred to in paragraph (3),  
6 and

7       “(11) citizens of the United States must own  
8 not less than 75 percent of the interest in the  
9 entity and individuals who are nationals of the  
10 United States shall be treated as citizens of the  
11 United States in meeting such ownership  
12 requirement.

13       “(2) The term ‘Secretary’ means the Secretary of  
14 Commerce.

15       “(3) The term ‘State’ means any State, the District  
16 of Columbia, the Commonwealth of Puerto Rico, American  
17 Samoa, the Virgin Islands of the United States, Guam, the  
18 Commonwealth of the Northern Marianas, and any other  
19 Commonwealth, territory, or possession of the United  
20 States.

21       “(4) The term ‘United States fishery’ means--

22       “(A) any fishery subject to the exclusive  
23 management authority of the United States under the  
24 Fishery Conservation and Management Act of 1976 (16  
25 U.S.C. 1801 et seq.);

      “(B) any tuna fishery within the fishery

1           conservation zone established by section 101 of such  
2           Act of 1976 (16 U.S.C. 1811); and

3           “(C) any fishery, other than one described in  
4           subparagraph (A) or (B), that is, or may be, engaged  
5           in by citizens or nationals of the United States.”;

6           (4) by amending subsection (b) (as so redesignated)--

7           (i) by inserting “Fund.--” immediately after  
8           “(b)” and before the first word of such subsection,

9           (ii) by striking out “Secretary of the  
10           Interior” each place it appears therein and

11           inserting in lieu thereof “Secretary”, and

12           (iii) by striking out clauses (1), (2), and (3)

13           and inserting in lieu thereof the following: “(1) to

14           provide financial assistance for the purpose of

15           carrying out fisheries development projects approved

16           under subsection (c); and (2) to implement the

17           national fisheries research and development program

18           provided for under subsection (d).”; and

19           (5) by adding immediately after subsection (b)(as so

20           redesignated) the following:

21           “(c) Fisheries Research and Development Projects.--(1)

22           The Secretary shall make grants from the fund established

23           under subsection (b) to assist persons in carrying out

24           research and development projects addressed to any aspect of

25           United States fisheries, including, but not limited to,

1 harvesting, processing, marketing, and associated  
2 infrastructures.

3 "(2) The Secretary shall--

4 "(A) at least once each fiscal year, receive, during  
5 a 60-day period specified by him, applications for grants  
6 under this subsection;

7 "(B) prescribe the form and manner in which  
8 applications for grants under this subsection must be  
9 made, including, but not limited to, the specification of  
10 the information which must accompany applications to  
11 ensure that the proposed projects comply with Federal law  
12 and can be evaluated in accordance with paragraph (3)(B);  
13 and

14 "(C) approve or disapprove each such application  
15 before the close of the 90th day after the last day of  
16 the 60-day period (specified under subparagraph (A)) in  
17 which the application was received.

18 "(3) No application for a grant under this subsection  
19 may be approved unless the Secretary--

20 "(A) is satisfied that the applicant has the  
21 requisite technical and financial capability to carry out  
22 the project; and

23 "(B) evaluates the proposed project as to--

24 "(i) soundness of design,

25 "(ii) the possibilities of securing productive

1 results,

2        “(iii) minimization of duplication with other  
3 fisheries development projects;

4        “(iv) the organization and management of the  
5 project,

6        “(v) methods proposed for monitoring and  
7 evaluating the success or failure of the project, and

8        “(vi) such other criteria as the Secretary may  
9 require.

10       “(4) Each grant made under this subsection shall be  
11 subject to such terms and conditions as the Secretary may  
12 require to protect the interests of the United States,  
13 including, but not limited to, the following:

14       “(A) The recipient of the grant must keep such  
15 records as the Secretary shall require as being necessary  
16 or appropriate for disclosing the use made of grant funds  
17 and shall allow the Secretary and the Comptroller General  
18 of the United States, or any of their authorized  
19 representatives, access to such records for purposes of  
20 audit and examination.

21       “(B) The amount of a grant may not be equal to less  
22 than 50 percent, nor more than 75 percent, of the  
23 estimated cost of the project.

24       “(C) The recipient of the grant must submit to the  
25 Secretary periodic project status reports.

(d) National Fisheries Research and Development

2 Program.--(1) The Secretary shall carry out a national  
3 program of research and development addressed to such aspects  
4 of United States fisheries (including, but not limited to,  
5 harvesting, processing, marketing, and associated  
6 infrastructures), if not adequately covered by projects  
7 assisted under subsection (c), as the Secretary deems  
8 appropriate.

9 (2) Not later than 60 days before the close of each  
10 fiscal year, the Secretary shall, after consultation with  
11 appropriate representatives of the fishing industry, submit  
12 to the Committee on Commerce, Science, and Transportation of  
13 the Senate and the Committee on Merchant Marine and Fisheries  
14 of the House of Representatives, a report containing--

15 (A) the fisheries development goals and funding  
16 priorities under paragraph (1) for the next fiscal year,

17 (B) the status of each pending project under  
18 paragraph (1), including the amount of money obligated  
19 and actually expended on each such project during the  
20 current fiscal year; and

21 (C) an analysis and evaluation of all projects  
22 assisted under subsection (c), including, but not be  
23 limited to--

24 (i) a list of those applications approved and  
25 those disapproved under subsection (c), and the total

1 amount of grants made, for the current fiscal year,

2     “(ii) an assessment of the extent to which the  
3 objectives of the assisted projects have been  
4 attained,

5     “(iii) the extent to which the assisted projects  
6 have contributed to fishery development, and

7     “(iv) the extent to which available funds were  
8 not obligated or expended by the Secretary for grants  
9 under subsection (c) during the current fiscal year.

10     “(e) Allocation of Fund Moneys.--(1) With respect to any  
11 fiscal year, not less than 75 percent of--

12     “(A) the moneys transferred to the fund under  
13 subsection (b) or any other provision of law with respect  
14 to that fiscal year; and

15     “(B) such existing fund moneys carried over into  
16 that fiscal year

17 shall be used by the Secretary during that fiscal year to  
18 provide financial assistance for projects under subsection  
19 (c); and the remainder of such moneys in the fund shall be  
20 used to implement the national fisheries research and  
21 development program established under subsection (d) during  
22 that fiscal year.

23     “(2) Moneys accruing to the fund established under  
24 subsection (b) for any fiscal year and not expended with  
25 respect to that year shall remain available for expenditure

1 under this section without fiscal year limitation."

2 (b) Certain Required Projects.--(1) In the administration  
3 of section 2 of the Act of August 11, 1939 (as amended by  
4 subsection (a)), the Secretary of Commerce shall, if an  
5 application is received during fiscal year 1981 or 1982 for a  
6 grant under subsection (c) of such section 2 to carry out--

7 (A) a project to establish and operate a system (in  
8 which participation must be voluntary) to grade the  
9 quality of fish landed at a United States port; or

10 (B) a project to improve fuel efficiency in carrying  
11 out fishing operations within a United States fishery;

12 award the grant if the Secretary finds that the applicant and  
13 proposed project meet the requirements in paragraph (3) of  
14 such subsection.

15 (2) If an application for a project described in  
16 paragraph (1)(A) or (B) is not received during fiscal year  
17 1981 or 1982 (or, if received, the applicant or the proposed  
18 project do not meet the requirements in subsection (c)(3) of  
19 such section 2), the Secretary of Commerce shall carry out,  
20 pursuant to the national fisheries research and development  
21 program under subsection (d) of such section 2, such a  
22 project.

23 SEC. 102. UNITED STATES FISHERIES ATTACHES.

24 (a) Appointment.-- For purposes of carrying out export  
25 promotion and other fishery development responsibilities, the



1 Secretary of Commerce (hereinafter in this section referred  
2 to as the "Secretary") shall appoint not fewer than six  
3 officers who shall serve abroad to promote United States  
4 fishing interests. Such officers, who shall be employees of  
5 the Department of Commerce, shall have the designation of  
6 Fisheries Attaches.

7 (b) Assignment.--Upon the request of the Secretary, the  
8 Secretary of State shall officially assign Fisheries Attaches  
9 to such diplomatic missions of the United States as the  
10 Secretary designates (three of which shall be those in  
11 Brussels, Belgium; Rome, Italy; and Tokyo, Japan) and shall  
12 obtain for them diplomatic privileges and immunities  
13 equivalent to those enjoyed by foreign service personnel of  
14 comparable rank and salary.

15 (c) Administrative Support.--The Secretary of State shall  
16 provide office space, equipment, facilities, clerical  
17 services, and such other administrative support as may be  
18 required for Fisheries Attaches and their families.

19 TITLE II--AMENDMENTS TO THE MERCHANT MARINE ACT, 1936

20 Chapter 1--Amendments to Title VI

21 SEC. 201. EXTENSION OF CAPITAL CONSTRUCTION FUND TO FISHERY  
22 FACILITIES.

23 (a) In General.--Subsection (a) of section 607 of the  
24 Merchant Marine Act, 1936 (46 U.S.C. 1177), is amended to  
25 read as follows:

1     “(a) Agreement Rules.--(1) Any citizen of the United  
2 States owning or leasing one or more eligible vessels (as  
3 defined in subsection (k)(1)), or one or more eligible  
4 fishery facilities (as defined in subsection (k)(9)), may  
5 enter into an agreement with the Secretary of Commerce under,  
6 and as provided in, this section to establish a capital  
7 construction fund (hereinafter in this section referred to as  
8 the ‘fund’) with respect to any or all of such vessels or  
9 fishery facilities. Any agreement entered into under this  
10 section--

11     “(A) shall be for the purpose of providing--

12     “(i) replacement vessels, additional vessels, or  
13 reconstructed vessels, built in the United States and  
14 documented under the laws of the United States for  
15 operation in the United States foreign, Great Lakes,  
16 or noncontiguous domestic trade,

17     “(ii) replacement fishing vessels, additional  
18 fishing vessels, or reconstructed fishing vessels,  
19 built in the United States, American Samoa, the  
20 Virgin Islands of the United States, or Guam, any  
21 other Commonwealth, territory, or possession of the  
22 United States and documented under the laws of the  
23 United States for operation in the fisheries of the  
24 United States, or

25     “(iii) replacement fishery facilities,

1 additional fishery facilities, or reconstructed  
2 fishery facilities, located in the United States,  
3 American Samoa, the Virgin Islands of the United  
4 States, Guam, or any other Commonwealth, territory,  
5 or possession of the United States, and

6 "(B) shall provide for the deposit in the fund of  
7 the amounts agreed upon as necessary or appropriate to  
8 provide for qualified withdrawals under subsection (f).

9 "(2) For purposes of paragraph (1)(A)(ii) and (iii)--

10 "(A) a previously used fishing vessel or a  
11 previously used fishery facility that meets the  
12 requirements under this section as an eligible vessel or  
13 eligible fishery facility may be covered by an agreement  
14 under this section for replacement, addition, or  
15 reconstruction purposes; and

16 "(B) nothing in this section shall be construed as  
17 prohibiting the establishment of a capital construction  
18 fund (i) with respect to fishing vessels for purposes of  
19 acquiring fishery facilities, or (ii) with respect to  
20 fishery facilities for purposes of acquiring fishing  
21 vessels.

22 "(3) The deposits in the fund, and all withdrawals from  
23 the fund, whether qualified or nonqualified, shall be subject  
24 to such conditions and requirements as the Secretary of  
25 Commerce may by regulation prescribe or are set forth in such

agreement; except that the Secretary of Commerce may not require any person to deposit in the fund for any taxable year more than 50 percent of the sum of (A) that portion of such person's taxable income for such year which is attributable to the operation of the agreement vessels, or (B) that portion of such person's taxable income for such year which is attributable to the operation of agreement fishery facilities. For purposes of the preceding sentence, taxable income shall be computed in the manner provided in subsection (b)(1)(A)."

(b) Definitions.--Subsection (k) of section 607 of the Merchant Marine Act, 1936, is amended by adding at the end thereof the following new paragraphs:

"(9) The term 'eligible fishery facility' means any fishery facility which is located in the United States.

"(10) The term 'qualified fishery facility' means any fishery facility--

"(A) which is located in the United States, and

"(B) which the person maintaining the fund agrees with the Secretary of Commerce will be used for one or more of the functions described in paragraph (12).

For purposes of this paragraph and paragraph (9), the term 'United States' includes American Samoa, the Virgin Islands of the United States, Guam, and any other

1 Commonwealth, territory, or possession of the United  
2 States; and, when applied with respect to a fishery  
3 facility described in paragraph (12)(B), includes the  
4 fishery conservation zone established by section 101 of  
5 the Fishery Conservation and Management Act of 1976 (16  
6 U.S.C. 1811).

7 "(11) The term 'agreement fishery facility' means any  
8 eligible fishery facility or qualified fishery facility which  
9 is subject to an agreement entered into under this section.

12 "(12) The term 'fishery facility' means--

11 "(A) for operations on land--

12 "(i) any structure or appurtenance thereto  
13 designed for the unloading and receiving from  
14 vessels, the processing, the holding pending  
15 processing, the distribution after processing, or the  
16 holding pending distribution, of fish from one or  
17 more fisheries,

18 "(ii) the land necessary for any such structure  
19 or appurtenance described in clause (i), and

20 "(iii) equipment which is for use in connection  
21 with any such structure or appurtenance and which is  
22 necessary for the performance of any function  
23 referred to in clause (i); or

24 "(B) for operations other than on land, any vessel  
25 that is used for, equipped to be used for, or of a type

which is normally used for, the processing at sea of fish;

but only if such structure, appurtenance, land, and equipment or vessel is owned by an individual who is a citizen or national of the United States or by a corporation, partnership, association, or other entity that is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916 (46 U.S.C. 802) and for purposes of applying such section 2 with respect to this section--

(1) the term 'State' as used therein includes any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Commonwealth of the Northern Mariana, or any other Commonwealth, territory, or possession of the United States; and

(11) citizens of the United States must own not less than 75 percent of the interest in the entity and individuals who are nationals of the United States shall be treated as citizens of the United States in meeting such ownership requirement.

(13) The terms 'fishing' and 'fishing vessel' have the meanings given such terms by paragraphs (10) and (11) of section 3 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1802).

(14) The term 'fish' means finfish, mollusks,

1 crustaceans, and all other forms of marine animal and plant  
2 life other than marine mammals and birds.".

3 (c) Technical and Conforming Amendments.--(1)(A)  
4 Subparagraph (A) of section 607(b)(1) of such Act is amended  
5 by inserting "(1)" after "(A)", and by inserting ", or  
6 (ii) that portion of the taxable income of the owner or  
7 lessee for such year (as so computed) which is attributable  
8 to the operation of the agreement fishery facilities" after  
9 "the fisheries of the United States".

10 (B) Subparagraph (B) of such section 607(b)(1) is amended  
11 by inserting "or the agreement fishery facilities" after  
12 "the agreement vessels".

13 (C) Subparagraph (C) of such section 607(b)(1) is amended  
14 by inserting "or agreement fishery facility" after "any  
15 agreement vessel" each place it appears.

16 (D) Paragraph (2) of section 607(b) of such Act is  
17 amended by inserting "or an agreement fishery facility"  
18 after "an agreement vessel" and by inserting "or such  
19 facility (as the case may be)" after "such vessel".

20 (2)(A) Subparagraph (A) of section 607(f)(1) of such Act  
21 is amended by inserting "or a qualified fishery facility"  
22 after "a qualified vessel".

23 (B) Subparagraph (C) of section 607(f)(1) of such Act is  
24 amended to read as follows:

25 "(C) the payment of the principal on indebtedness

incurred in connection with the acquisition,  
construction, or reconstruction of--

“(i) qualified vessel,

“(ii) a qualified fishery facility, or

“(iii) a barge or container which is part of the

complement of the qualified vessel.”

(3)(A) Paragraphs (2) and (3) of section 607(g) of such Act is amended by inserting “fishery facility,” after “vessel,” each place it appears.

(B) Paragraph (4) of section 607(g) of such Act is amended by inserting “fishery facilities,” after “vessels.”

(d) Effective Date.--The amendments made by this section shall apply to taxable years beginning after December 31, 1980.

#### Chapter 2--Amendments to Title XI

#### SEC. 211. GUARANTEE OF OBLIGATIONS FOR FISHING VESSELS AND FOR FISHERY FACILITIES.

Title XI of the Merchant Marine Act, 1936 (46 U.S.C. 1271-1280) is amended as follows:

(1) Section 1101 is amended by adding at the end thereof the following new subsection:

“(i) The term ‘fishery facility’ has the same meaning as is given such term in section 607(k)(12).”

(2) Section 1103(f) is amended by inserting



1 immediately before the period the following: "; except  
2 that 5 percent of such sum shall be reserved for the  
3 guarantee of obligations for fishing vessels and fishery  
4 facilities that meet the economic soundness criteria set  
5 forth in section 1104(d)(1), and 5 percent of such sum  
6 shall be reserved for the guarantee of obligations for  
7 fishing vessels and fishery facilities that meet the  
8 economic soundness criteria set forth in section  
9 1104(d)(2)".

10 (3) Section 1104 is amended--

11 (A) in subsection (a)--

12 (i) by strike out "(D) in the fishing trade  
13 or industry; or (E)" in paragraph (1) and  
14 inserting in lieu thereof "; or (E)";

15 (ii) by redesignating paragraphs (2) through  
16 (4) as paragraphs (3) through (5), respectively,  
17 and by inserting immediately after paragraph (1)  
18 the following new paragraph:

19 "(2) financing, including reimbursement of an  
20 obligor for expenditures previously made for,  
21 construction, reconstruction, reconditioning, or purchase  
22 (regardless whether reconstruction or reconditioning is  
23 interded) of a vessel or vessels owned by citizens or  
24 nationals of the United States which are designed  
25 principally for research, or for commercial use in the

1 fishing trade or industry;"

2 (iii) by striking out "or" at the end of  
3 paragraph (4) (as redesignated by clause (1));

4 (iv) by striking out "or (3)" in paragraph  
5 (5) (as so redesignated) and inserting in lieu  
6 thereof "(3), or (4)", and by striking out the  
7 period at the end thereof and inserting in lieu  
8 thereof "; or"; and

9 (iv) by adding immediately after paragraph  
10 (5) the following:

11 "(6) financing or refinancing, including, but not  
12 limited to, the reimbursement of obligors for  
13 expenditures previously made for, the construction,  
14 reconstruction, reconditioning, or purchase (regardless  
15 whether reconstruction or reconditioning is intended) of  
16 fishery facilities.

17 Any obligation guaranteed under paragraph (6) shall be  
18 treated, for purposes of this title, in the same manner and  
19 to the same extent as an obligation guaranteed under this  
20 title which aids in the construction, reconstruction,  
21 reconditioning, or purchase of a vessel; except with respect  
22 to provisions of this title that by their nature can only be  
23 applied to vessels."

24 (B) in subsection (d)--

25 (1) by striking out "No" and inserting in

1 lieu thereof "(1) Except as provided in  
2 paragraph (2), no"; and

3 (ii) by adding at the end thereof the  
4 following:

5 "(2) In applying paragraph (1) with respect to  
6 commitments to guarantee, and the guarantee of, obligations  
7 for fishing vessels and fishery facilities, the Secretary of  
8 Commerce may apply an economic soundness test that is less  
9 stringent than that which would apply but for this  
10 paragraph."; and

11 (c) in subsection (g)--

12 (1) by inserting "(1)" immediately after

13 "(g)"; and

14 (ii) by adding at the end thereof the

15 following new paragraph:

16 "(2) The Secretary of Commerce shall establish within  
17 the Fund the following subfunds:

18 "(A) The standard fishery subfund which shall  
19 contain all moneys received for, and incident to, the  
20 guarantee of obligations with respect to fishing vessels  
21 and fishery facilities to which the economic soundness  
22 criteria set forth in section 1104(d)(1) apply.

23 "(B) The high-risk fishery subfund which shall  
24 contain all moneys received for, and incident to, the  
25 guarantee of obligations with respect to fishing vessels

and fishery facilities to which the economic soundness criteria set forth in section 1104(d)(2) apply.

“(C) The general subfund which shall contain all moneys received for, and incident to, the guarantee of obligations for vessels other than fishing vessels.”.

(4) The first sentence of section 1105(d) is amended by inserting immediately before the period at the end thereof the following: “, and shall be paid from the appropriate subfund required to be established under section 1104(a)(2)”. .

SEC. 212. LOANS UNDER THE FISH AND WILDLIFE ACT OF 1956.

(a) Inan Authority Until October 1, 1982.--Notwithstanding any provision of section 4 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742c) or of any other law, during the period beginning on the date of the enactment of this Act and ending at the close of September 30, 1982, the Secretary of Commerce (hereinafter in this section referred to as the “Secretary”) may make loans from the fisheries loan fund established under subsection (c) of such section 4 only for the purpose of assisting obligors to avoid default on obligations that are issued with respect to the construction, reconstruction, reconditioning or purchase of fishing vessels and that--

(1) are guaranteed by the United States under title XI of the Merchant Marine Act, 1936 (46 U.S.C. 1271-1280,

1 relating to Federal ship mortgage insurance); or

2 (2) but only to the extent that monies are available  
3 in the fisheries loan fund after loans are made with  
4 respect to obligations guaranteed under such title XI,  
5 are not guaranteed or assisted under any Federal program,  
6 and the fishing vessels concerned meet the use and  
7 documentation requirements, and the obligors meet the  
8 citizenship requirements, that would apply if the  
9 obligations were guaranteed under such title XI.

10 (b) Terms and Conditions of Loans.--Each loan made by the  
11 Secretary under the authority of this section shall be subject  
12 to such terms and conditions as the Secretary deems necessary  
13 or appropriate to protect the interests of the United States  
14 and to carry out the purpose of this section. In establishing  
15 such terms and conditions, the Secretary shall take into  
16 account, among such other factors he deems pertinent, the  
17 extent to which the obligations concerned have been retired,  
18 and the overall financial condition of the obligors. The  
19 interest rate on loans made under the authority of this  
20 section shall not exceed that rate determined by the  
21 Secretary to be sufficient to cover the costs incurred in  
22 processing and servicing of such loans.

23 TITLE III--AMENDMENTS TO THE FISHERY CONSERVATION AND

24 MANAGEMENT ACT OF 1976

25 Chapter 1--Phase-Cut of Foreign Fishing in Fisheries Subject

to Management Authority of the United States

2 SEC. 301. PHASE-OUT OF FOREIGN FISHING.

3 Section 201 of the Fishery Conservation and Management  
4 Act of 1976 (16 U.S.C. 1821) is amended--

5 (1) by amending subsection (d) to read as follows:

6 "(d) Total Allowable Level of Foreign Fishing.--(1) As  
7 used in this subsection--

8 "(A) The term 'base harvest' means, with respect to  
9 any United States fishery, the aggregate harvest by all  
10 foreign nations in that fishery during the 1979  
11 harvesting season.

12 "(B) The term 'harvesting season' means the period  
13 established under this Act by the Secretary during which  
14 foreign fishing is permitted within a United States  
15 fishery. For purposes of this subsection, a harvesting  
16 season is designated by the calendar year in which the  
17 last day of the harvesting season occurs, regardless  
18 whether fishing is not permitted on that day due to  
19 emergency or other closure of the fishery..

20 "(C) The term 'United States fishery' means a  
21 fishery subject to the exclusive fishery management  
22 authority of the United States.

23 "(2) Except as provided in paragraphs (3), (4), and (5),  
24 the total allowable level of foreign fishing, if any, with  
25 respect to any United States fishery for a harvesting season

1 shall be that portion of the optimum yield of such fishery  
2 which will not be harvested by vessels of the United States,  
3 as determined in accordance with the provisions of this Act  
4 other than such paragraphs.

5     “(3) Except as provided in paragraph (5), for each of  
6 the harvesting seasons 1981, 1982, 1983, and 1984 the total  
7 allowable level of foreign fishing, if any, with respect to  
8 any United States fishery shall be the lesser of--

9         “(A) the total allowable level for that fishery for  
10 that season determined under paragraph (2); or

11         “(B) a level--

12             “(i) for the 1981 harvesting season, that does  
13 not exceed an amount equal to 90 percent of the base  
14 harvest for that fishery,

15             “(ii) for the 1982 harvesting season, that does  
16 not exceed an amount equal to 75 percent of the base  
17 harvest for that fishery,

18             “(iii) for the 1983 harvesting season, that does  
19 not exceed an amount equal to 55 percent of the base  
20 harvest for that fishery, and

21             “(iv) for the 1984 harvesting season, that does  
22 not exceed an amount equal to 30 percent of the base  
23 harvest for that fishery.

24     “(4) Except as provided in paragraph (5), the total  
25 allowable level of foreign fishing that is permitted within

any United States fishery during any harvesting season after the 1984 harvesting season is 0.

(5)(A) If the Secretary determines, with respect to any United States fishery for any harvesting season after the 1980 harvesting season to which the allowable level of fishing determined under paragraph (2) does not apply, that the annual reduction of foreign fishing in that fishery provided for in paragraph (3)(B) or (4), as the case may be--

(i) will, if implemented, result in a substantial surplus of fish stocks within the fishery; and

(ii) that such surplus will not be harvested by vessels of the United States during such harvesting season;

the Secretary shall submit a written report to the Congress containing that determination and the factors on which the determination is based. Such report may also contain a recommendation by the Secretary that all or a portion of the reduction under paragraph (3)(B) or (4) that would, but for this paragraph, apply to such harvesting season be deferred and that any reduction (or portion thereof) deferred pursuant to this paragraph for earlier harvesting seasons in that fishery be continued during such harvesting season.

(B) A recommendation by the Secretary that a reduction (or portion thereof) be deferred or continued under subparagraph (A) with respect to any harvesting season shall





reduction deferral recommended in the report of the Secretary of Commerce dated \_\_\_\_\_, the first blank space being filled in with the name of the resolving House and the second blank space being filled in with the date of the report concerned.

“(B) Copies of a report referred to in paragraph (5)(A) shall be submitted to both Houses of Congress on the same day, and shall be delivered to the Clerk of the House of Representatives if the House is not in session, and to the Secretary of the Senate if the Senate is not in session.

“(C) For purposes of computing the 60-day period referred to in paragraph (5)(B)(ii), there shall be excluded--

(i) the days on which each House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(ii) any Saturday or Sunday, not excluded under clause (i), when either House is not in session.

“(D) All disapproval resolutions introduced in the House of Representatives shall be referred to the Committee on Merchant Marine and Fisheries and all disapproval resolutions introduced in the Senate shall be referred to the Committee on Commerce, Science, and Transportation.

“(E)(1) If the committee of either House to which a disapproval resolution has been referred has not reported it

1 at the end of 30 days after its introduction, not counting  
2 any day which is excluded under subparagraph (C), it is in  
3 order to move either to discharge the committee from further  
4 consideration of the resolution or to discharge the committee  
5 from further consideration of any other disapproval  
6 resolution introduced with respect to the same matter, except  
7 no motion to discharge shall be in order after the committee  
8 has reported a disapproval resolution with respect to the  
9 same matter.

10 "(11) A motion to discharge under clause (1) may be made  
11 only by an individual favoring the disapproval resolution,  
12 and is highly privileged in the House and privileged in the  
13 Senate; and debate thereon shall be limited to not more than  
14 1 hour, the time to be divided in the House equally between  
15 those favoring and those opposing the resolution, and to be  
16 divided in the Senate equally between, and controlled by, the  
17 majority leader and the minority leader or their designees.  
18 An amendment to the motion is not in order, and it is not in  
19 order to move to reconsider the vote by which the motion is  
20 agreed to or disagreed to.

21 "(F) The provisions of sections 203(d)(4) and (5)  
22 (relating to floor consideration of fishery agreement  
23 resolutions in the House and Senate) apply to disapproval  
24 resolutions."; and

25 (2) by amending subsection (e)--

1 (A) by striking out "and" at the end of  
2 subparagraph (C),

3 (B) by redesignating subparagraph (D) as  
4 subparagraph (E), and

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

7 "(D) whether such nations impose tariff barriers or  
8 nontariff barriers on the importation of United States  
9 fish products; and".

10 SEC. 302. PERMIT FEES.

11 Section 204(b)(10) of the Fishery Conservation and  
12 Management Act of 1976 (16 U.S.C. 1824(b)(10)) is amended--

13 (1) by inserting "(A)" after "(10)"; and

14 (2) by inserting at the end thereof the following:

15 "(B) In addition to any permit fee charged under  
16 subparagraph (A) or any other law, the owner or operator of a  
17 foreign fishing vessel for which a permit is issued under  
18 this subsection shall pay an additional fee equal to 10  
19 percent of the ex vessel price of the catch harvested under  
20 the permit. Subject to appropriation Acts, amounts collected  
21 by the Secretary under the preceding sentence shall be  
22 transferred to the fund established under section 2 of the  
23 Act of August 11, 1939 (15 U.S.C. 713c-3) to be available to  
24 carry out the purposes of that fund; except that until  
25 October 1, 1982, and only to the extent needed, amounts so

1 collected shall be transferred to the fisheries loan fund  
2 established under section 4 of the Fish and Wildlife Act of  
3 1956 (16 U.S.C. 742c)."

4 SEC. 303. EFFECTIVE DATE.

5 The amendments made by sections 301 and 302 shall apply  
6 with respect to the 1981 harvesting season and harvesting  
7 seasons thereafter (as defined in section 201(d)(1) of the  
8 Fishery Conservation and Management Act of 1976, as amended  
9 by section 301).

10 Chapter 2--Full Observer Program Until Foreign Fishing Phase-  
11 Out Completed

12 SEC. 311. ESTABLISHMENT OF FULL OBSERVER PROGRAM.

13 Section 201 of the Fishery Conservation and Management  
14 Act of 1976 (16 U.S.C. 1821) is amended by adding at the end  
15 thereof the following new subsection:

16 "(1) Observer Program.--(1) The Secretary shall  
17 establish a program under which a United States observer will  
18 be stationed aboard each foreign fishing vessel while that  
19 vessel is within the fishery conservation zone and is--

20 "(A) engaging in fishing;

21 "(B) accepting United States harvested fish through  
22 transfer at sea;

23 "(C) cruising to and from a location at which any  
24 such fishing or transfer will transpire; or

25 "(D) taking highly migratory species if such taking

1 may result in the incidental taking of species over which  
2 the United States exercises fishery management authority.

3 "(2) United States observers, while aboard foreign  
4 fishing vessels, shall carry out such scientific and other  
5 functions as the Secretary deems necessary or appropriate to  
6 carry out the purposes of this Act.

7 "(3) In addition to any fee imposed under section  
8 204(b)(10) of this Act and section 10(e) of the Fishermen's  
9 Protective Act of 1967 (22 U.S.C. 1980(e)) with respect to  
10 foreign fishing for any year after 1980, the Secretary shall  
11 impose, with respect to each foreign fishing vessel for which  
12 a permit is issued under such section 204, a surcharge in an  
13 amount sufficient to cover all the costs of providing a  
14 United States observer aboard that vessel. The failure to pay  
15 any surcharge imposed under this paragraph shall be treated  
16 by the Secretary as a failure to pay the permit fee for such  
17 vessel under section 204(b)(10). All surcharges collected by  
18 the Secretary under this paragraph shall be deposited in the  
19 Foreign Fishing Observer Fund established by paragraph (4).  
20 "(4) There is established in the Treasury of the United  
21 States the Foreign Fishing Observer Fund. The Fund shall be  
22 available to the Secretary as a revolving fund for the  
23 purpose of carrying out this subsection. The Fund shall  
24 consist of the surcharges deposited into it as required under  
25 paragraph (3). All payments made by the Secretary to carry

1 out this subsection shall be paid from the Fund, only to the  
2 extent and in the amounts provided for in advance in  
3 appropriation Acts. Sums in the Fund which are not currently  
4 needed for the purposes of this subsection shall be kept on  
5 deposit or invested in obligations of, or guaranteed by, the  
6 United States.".

7 SEC. 312. EFFECTIVE DATE.

8 The amendment made by section 311 shall take effect  
9 October 1, 1980, and shall apply with respect to permits  
10 issued under section 204 of the Fishery Conservation and  
11 Management Act of 1976 after December 31, 1980.

**DRAFT**

Honorable John B. Breaux, Chairman  
Subcommittee on Fisheries, Wildlife Conservation,  
and the Environment of the  
Committee on Merchant Marine and Fisheries  
House of Representatives  
Washington, D.C. 20515

RE: H.R. 7039

Dear Mr. Chairman:

The Pacific Fishery Management Council appreciates the opportunity to comment on H.R. 7039, the American Fisheries Promotion Act, and requests that these comments be entered into the hearing record for that Bill.

The Council commends your leadership in carrying forward legislation to expand the capabilities of all sectors of the U.S. fishing industry to utilize more fully the fisheries resources off our shores. The Council endorses the need for a U.S. policy and program which will assist domestic fishermen, processors, and distributors to benefit to the fullest extent possible from development of fishery resources to which they now have priority access under the extended jurisdiction provisions of the Fishery Conservation and Management Act of 1976. Your own comments introducing your bill in the House of Representatives on April 15 very effectively outlined the importance of expanding U.S. capabilities to develop these rich resources.

The Pacific Fishery Management Council believes that its principle purview for comment concerns Title III of H.R. 7039: Amendments to the Fishery Conservation and Management Act of 1976.

Particularly the Council endorses and supports Sec. 311 and its provisions for implementation of a full observer program through creation of the Foreign Fishing Observer Fund, into which observer support fees would be paid as collected from foreign vessels, and from which the Secretary could draw



# DRAFT

-2-

funds to support an observer aboard every foreign fishing vessel operating in the Fishery Conservation Zone. Repeatedly this Council's efforts to increase observer surveillance over foreign fishing has been frustrated by absence of any such automatic flow-through of observer fees, and by the total inadequacy of appropriated funds to meet that need. This Council has repeatedly called for 100% observer coverage of foreign fishing vessels operating off the Pacific Coast, and has repeatedly urged that foreign fees collected for that purpose be applied directly and promptly to meet that need.

The Pacific Fishery Management Council also has repeatedly advised federal authorities that the fee schedule for foreign fishing permits remains far too low, not in line either with the value of the fish taken or with prevailing fee schedules around the world. The Council therefore endorses the provisions of Sec. 302, to add to other fees paid by foreign fishermen a surcharge fee of 10% of the ex-vessel value of the catch. The Council believes that this provision, coupled with increased operating costs which prevail world-wide, can contribute significantly to the phase-out of foreign fishing in U.S. waters.

As a lever to assist the development of U.S. markets abroad and thereby reduce our negative balance of payments, the Pacific Fishery Management Council also endorses provisions of Sec. 301, which would make foreign trade barriers a mandatory consideration in the allocation of surplus fish to foreign fishermen. While authority to do so may exist under the present law, the Council believes there is value in strengthening any such implicit authority through this explicit expression of Congressional intent.

# DRAFT

-3-

The Pacific Fishery Management Council agrees with the intent of Sec. 301 as a whole to accelerate the phase-out of foreign fishing in U.S. waters. However, the Council notes that existing provisions of FCMA, as well as demonstrated actions by the Regional Councils established under that Act, provide adequate authority to achieve that objective over a time-scale closely geared to U.S. capacity to harvest those resources. U.S. takeover from the Japanese of the Tanner crab fishery off Alaska is an effective illustration of this constructive interaction between strongly developing U.S. industry capabilities, and North Pacific Council provisions to accommodate and support that spectacular growth.

The Pacific Fishery Management Council believes that the Councils can use authorities and techniques presently in place to scale-back foreign fishing consistent with the growing capabilities of our domestic fisheries to harvest and process presently underutilized resources. Through optimum yield designations which consider socioeconomic factors and therefore domestic industry needs, and through retention of reserves to accommodate unexpected growth of domestic fisheries, the Councils presently are establishing TALFFs which provide adequate margins to promote the orderly growth of domestic fisheries. Therefore, while the Council fully endorses the overall intent of Sec. 301, the Council questions the need for a relatively inflexible time-table for phase-out of all foreign fishing, particularly where flexibility to that schedule can be achieved only through a relatively cumbersome and laborous Congressional review process. As noted earlier, the Pacific Fishery

# DRAFT

-4-

Management Council believes its specific comments should be confined to management-related elements of H.R. 7039, and therefore will leave detailed commentary on fishery assistance sections up to others. However, because of its major concerns for the economic welfare of all segments of our domestic fishing industry, the Council does wish to urge a sharpening of focus upon development of unutilized and underutilized fishery resources. As you are well aware, certain of the West Coast's most important fisheries already are over-capitalized, and moratoriums on new entries are in place or are under active consideration. In the Pacific coast salmon fishery, expensive buy-back programs also have been instituted at public expense to reduce the number of boats and fishermen competing for a sharply limited resource. The Pacific Fishery Management Council therefore urges a strengthening of the expressed intent and the provisions of H.R. 7039 to assure that funds and related assistance will be directed into fisheries and sectors of fisheries which need and can accommodate expansion and further development.

As a final small but important point, some Council members have noted the narrow range specified for the federal funding share of projects approved under Sec. 101 of Title I (not less than 50% or more than 75%). They observe that many deserving projects might require less than 50% federal sharing, and that such initiatives should be encouraged. They further note that for some non-profit groups, the 75% upper limit may pose unsurmountable difficulties.

The Pacific Fishery Management Council wishes again to commend your initiative in carrying this bill forward, and expresses its support for the general intent of that legislation. The Council will be pleased to respond to any request for further information or advice.

Mark Sutton

ATTACHMENT 4  
F-2

# ICICLE SEAFOODS, INC.



4241-21st AVE. WEST - 4th FLOOR  
SEATTLE, WASHINGTON 98199  
(206) 282-0988  
TELEX 32-0938 PFICICLE-SEA.

## MEMORANDUM

TO: Clement V. Tillion, Chairman  
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

FROM: Robert M. Thorstenson, President  
ICICLE SEAFOODS, INC.

RE: Amendments to the Fishery Management Plans

DATE: April 30, 1980

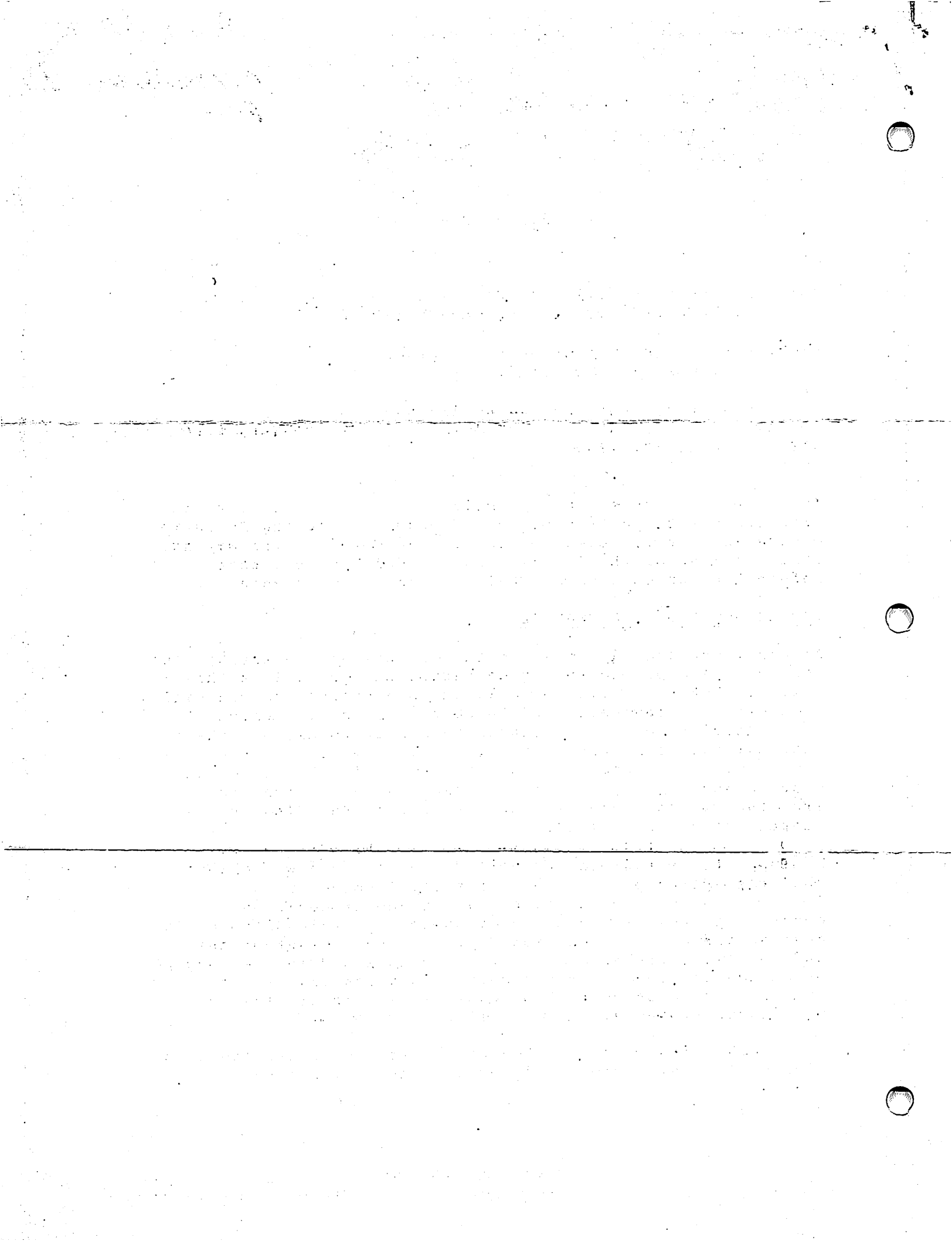
The purpose of this memorandum is to inform you of our view with respect to certain proposed amendments to the Fishery Management Plans, scheduled to be considered at the May and June meetings of the Council, and certain other matters before the Council that we believe are of importance.

### THE AUTONOMY OF THE COUNCIL

As Gene Ruthford expressed to the Council at the March meeting, perhaps the key issue before the Council at this time is whether it will be allowed to exercise its own will regarding the management of those fisheries over which it has jurisdiction. It continues to appear to us that the National Marine Fisheries Service is attempting to have critical decisions regarding the management of the fisheries made in Washington, D.C. rather than in the regions as expressed by the Congress when it enacted the Fishery Conservation Act of 1976.

We support the regional council system because we believe that the system places those directly involved with the industry in the area affected by management decisions in control of those fisheries over which the regional councils have jurisdiction. Additionally, the development of the underutilized fisheries is certainly included in the concept of management and is also a matter in which the regional councils are best suited to lead the way and provide for meaningful progress.

The recent efforts of the Council to impose an area restriction on foreign factory ship operations is illustrative of



Clem Tillion

Page 2

this concern. NMFS has delayed, and in our view sought reasons not to impose the recommended condition, rather than to seek ways to implement the management scheme sought by the Council. This experience has confirmed our belief that it would be best for the Council to manage the fisheries exclusively through fishery management plans. The plans should be comprehensive with respect to conservation and development matters and directly seek to achieve those goals sought by Congress and desired by those of us directly involved in the industry; namely, a healthy industry that can eventually totally utilize those renewable fishery resources found within the 200-mile fishery conservation zone.

There is no question in our minds that this generally is the course of action that the Council has chosen to follow and that fishery management plan development has progressed in a reasonable fashion. The key point is that if a plan is developed and presented by the Council, NMFS is not in a position to impose its judgment to a great extent regarding the management of the fisheries involved. NMFS can only reject or refuse to implement a plan if it is of the opinion that the plan as offered by the Council is inconsistent with the law. That is, if the plan could be successfully defended in a court of law, NMFS has no choice but to implement the plan, even if NMFS would rather see the fisheries involved managed in a different fashion.

This is exactly the position we believe NMFS should be in and the position which the Congress has chosen for NMFS with respect to the management of the fisheries. The NMFS role should not be expanded beyond that contemplated by the Congress by delegation of Council responsibilities to NMFS or its regional offices or through the foreign permit issuing process. Key decisions such as determination of yields and adjustments to such determinations due to economic, social or ecological reasons, and the establishment of areas of restricted harvesting or processing operations should be put forth as management measures of the Council not subject to second guessing by bureaucrats in Washington, D.C. It is not appropriate for NMFS to replace

the Council's judgment with its judgment regarding the management of the fisheries.

In short, the only way the Council can effectively keep control of the management of those fisheries over which it has jurisdiction is to manage all aspects of those fisheries through the fishery management plan process. Then, once the appropriate management mechanism has been developed, fight for its implementation in Washington. If NMFS chooses to challenge the implementation of any aspect of a plan merely on the basis that it would prefer a different management technique to be used, NMFS will fail, as there is no question that it is the judgment of the council that is the critical factor that determines how a fishery is to be managed. We also recognize that industry support of Council developed plans has not always been as strong or as active as it could be, but believe that such support could be put to effective use in the future.

#### GROUND FISH FMP AMENDMENTS

We believe that it would be appropriate to have the foreign factory processing ships area restriction, which the Council has approved for the area around Akutan, included as an amendment to the Bering Sea/Aleutian Island FMP. It also would be appropriate to establish other similar areas in the Bering Sea, or Gulf of Alaska, where conservation or development concerns also are present.

The specific closure area should be expressed in a manner identical to those already expressed as closures to foreign harvesting operations in the current plans. These closures would be carried over into the foreign Fishing Regulations and have full force and effect like any other properly adopted government regulation. All foreign fishing permits require that the holder of the permit comply with all such regulations as well as all the other requirements of the FCMA as either may be amended from time to time. Thus, the management requirements of the Council would be completely contained within the respective FMP's and all the management measures affecting foreign operations would be contained in the Foreign Fishing Regulations.

Clem Tillion

Page 4

At this time, we hope to resume our groundfish operations in Akutan in late October or early November. It would be very beneficial to our operation if the area closure could be incorporated into the Bering Sea FMP by such time and implemented through regulations. We, of course are prepared to assist the Council in any way possible to achieve these results.

#### COUNCIL FLEXIBILITY

It has been suggested that using the FMP process as we have proposed would reduce the flexibility of the Council, apparently with the reasoning that the FMP process is lengthy and dependent upon NMFS action, and once matters are adopted, they cannot be quickly changed in either a FMP or its implementing regulations. Nonetheless, there is no better process available for the management of the fisheries over which the Council would have the degree of control which it has over the FMP process. There are no other expedients; any other process that might be adopted would have to provide a similar opportunity for any interested person to participate and present his views and comments; and there certainly would be reason to prevent this type of participation.

Additionally, the FMP process is not and need not be that lengthy with respect to, for example, a single issue which the Council desires to have implemented immediately. There is no reason why it could not be isolated and handled separately as an in-season change or as an amendment to a FMP. We understand that it is common for government regulations, such as Foreign Fishing Regulations, to be amended frequently and in a routine fashion. Obviously this method could be utilized with respect to either a matter being adopted for the first time in a FMP or a matter already in a FMP which the Council chooses to amend.

Lastly, with respect to the concern that the FMP process is dependent upon NMFS action, we believe that this is the case no matter what other way the Council might attempt to effectuate any of the management measures it desires to have



Clem Tillion  
Page 5

implemented. Moreover, we all have recently seen that the permit process alone cannot be relied upon as an effective way to immediately implement Council policy. Although permit conditions would have to be used for the time being until any FMP amendment were in effect, Icicle believes that the Council is always in a much stronger position urging NMFS to accept and adopt a FMP amendment than in urging NMFS to follow a non-binding Council recommendation.