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DEPARTMENT OF FISHERIES

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January 10, 1977

Mr. Jim Branson, Acting Executive Director
North Pacific Fishery Management Council
P.O. Box 1668
Juneau, Alaska 99802

Dear Jim:

I am responding to your December 29 letter concerning vessel registry, continuance of state regulations in lieu of Council management plans, and planning responsibility for transboundary stocks.

First, Counsel for NOAA has provided no clear interpretation on the meaning of Section 306(A) as it relates to vessel registration. At the present time and in the absence of a definitive interpretation, I believe the licensing of a vessel by the state meets the meaning and intent of the law. Because NOAA attorneys cannot provide a positive answer, the only safe way to handle this is to have Congress amend the Act in one of two ways (1) Under Section 306(A) include the following language "...unless such vessel is registered or licensed under the laws of such state", or (2) add a paragraph under Section 3 which defines registration to include vessels licensed under state laws.

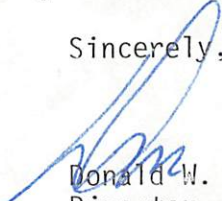
In the interim, however, I suggest that for the purposes of the North Pacific Council, we accept the terms licensed and registered as being synonymous.

Second, the assumption that state regulations can be used in lieu of Council management plans (regulations) must be carefully considered in the light of experience elsewhere. In my case, for example, there have been numerous occasions where legally-enacted state laws were overturned by the courts in cases brought on by dissident fishermen. The solution may require that the Secretary of Commerce enact emergency regulations which coincide with state laws as an interim measure. The state has management experience and regulations in place which we assume to be the best regulatory regime available, at least on a short term basis.

Finally, the position taken by the Pacific Council with regard to transboundary stocks is, in my opinion, a good one and could be accepted in toto by the North Pacific Council.

I recommend these three items be placed on the agenda for action.

Sincerely,


Donald W. Moos
Director

cc: Don Johnson

OFFICE OF THE ATTORNEY GENERAL

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January 10, 1977

Mr. Jim Bergan, Acting Executive Director
North Pacific Fishery Management Council
P.O. Box 1688
Juneau, Alaska 99802

Dear Jim:

I am responding to your letter regarding concerning vessel registration, compliance of state regulations in lieu of Council management plans, and clearing responsibility for transboundary stocks.

First, Council for NOAA has provided no clear interpretation on the meaning of Section 306(A) as it relates to vessel registration. At the present time and in the absence of a definitive interpretation, I believe the licensing of a vessel by the state meets the mean and intent of the law. Because NOAA attorneys cannot provide a positive answer, the only safe way to handle this is to have Congress amend the Act in one of two ways (1) under Section 306(A) include the following language "... unless such vessel is registered or licensed under the laws of such state", or (2) add a paragraph under Section 2 which defines registration to include vessels licensed under state laws.

In the interim, however, I suggest that for the purposes of the North Pacific Council, we accept the terms licensed and registered as being synonymous.

Second, the assumption that state regulations can be used in lieu of Council management plans (regulations) must be carefully considered in the light of experience elsewhere. In my case, for example, there have been numerous occasions where locally-enacted state laws were overturned by the courts in cases brought on by distant fishermen. The solution may require that the state and Council agree on a regulatory scheme which coincides with state laws as an interim measure. The state has management experience and regulations in place which we assume to be the best regulatory regime available, at least on a short term basis.

Finally, the position taken by the Pacific Council with regard to transboundary stocks is, in my opinion, a good one and could be accepted in toto by the North Pacific Council.

I recommend these three items be placed on the agenda for action.

Sincerely,

William H. Jones
Director

cc: Jim Johnson

The Pacific Fishery Management Council directs its Chairman to address letters to appropriate leaders of the Congress to request Congressional action to clarify Section 306 (a) of P.L. 94-265 to assure that State management authority be maintained over vessels operating under the authority of those States until such time as Fishery Management Plans can be promulgated pursuant to the Act. The following language is suggested for incorporation into these letters:

Certain interpretations of Section 306 (a) of P.L. 94-265 cast doubt upon the continued authority of the States to continue existing regulatory management of vessels registered under and licensed by those States until such time as Fishery Management Plans can be promulgated pursuant to P.L. 94-265. Specifically, it is construed that the terms "registered" and "licensed" are not indeed synonymous, and therefore that unless the procedures for controlling vessels by States be specifically called "registration," the States no longer can regulate fishing by those vessels in waters outside State waters (per Section 306 (a): "No State may directly or indirectly regulate any fishing which is engaged in by any fishing vessel outside its boundaries, unless such vessel is registered under the laws of such State").

We are certain that it was not the intent of Congress to create this problem for us and understand that earlier language in drafts of the Bill was more explicit, including Coast Guard registry and other State licensing control of vessels.

We suggest that the key element in Section 306 (a) is liberal interpretation of the "vessel is registered" phrase to include licensing of vessels for fishery management purposes. We see no logical difference between vessel registration and vessel licensing; in fact, the terms often are used interchangeably, as for motor vehicle registration. In all our Pacific states, vessels are licensed (and/or registered) for purposes of handling catch and effort statistics, to collect revenue, etc. The numbers assigned are permanent for those vessels, and we believe, meet the intent of the Congress under P.L. 94-265 for effective management of fisheries generally, and for Section 306 (a), specifically with respect to State control of vessels operating off their shores.

The specifics of the States' general licensing/registering procedure vary somewhat from state to state, and indeed change from year to year as systems are streamlined and improved. For example, for reasons of obvious economy and to avoid unnecessary replication, the State of Oregon this year began using the Coast Guard documentation number in lieu of an Oregon-assigned number for the licensing/registration of documented commercial fishing vessels. All our Pacific states are in the process of developing compatible vessel registration data so that State files will be machine-compatible and we thus can achieve a coastwide registry of all commercial fishing vessels for the first time.

On behalf of the Pacific states and the Pacific Fishery Management Council, we ask your help to provide a prompt clarification of this matter. Our States have a long history of commitment to effective management of fisheries off their shores, whether the harvest occurs inside or outside the limits of the territorial sea. In most cases, this management scope has been effective. We do not believe a technicality of wording should interpose a void in successful management over the time it takes for the Councils to develop and the Secretary to implement the necessary fishery management plans.