



DEPARTMENT OF STATE

Washington, D.C. 20520

BUREAU OF OCEANS AND INTERNATIONAL  
ENVIRONMENTAL AND SCIENTIFIC AFFAIRS

May 9, 1978

Mr. Terry L. Leitzell  
Assistant Administrator  
for Fisheries  
National Marine Fisheries Service  
NOAA - Department of Commerce  
Washington, D.C. 20235

Dear Terry:

This is in reference to the enclosed correspondence on draft guidelines for approval/disapproval of foreign fishing vessel permit applications recently considered, at the request of NMFS, at the April 19-21 meeting of the Caribbean Regional Fishery Management Council in San Juan, and which I understand have been sent to all Councils for comment.

Although we have not been contacted for our views on your draft, the development of guidelines under which the United States shall approve or deny foreign fishing permit applications is a matter of legitimate and substantive concern to the Department of State, and we wish to take this opportunity to provide you and the Regional Councils with our comments.

The draft guidelines note the instructions for completion of the Application for Vessel Permits, advise foreign nations to submit request by letter for fisheries not covered by a PMP or FMP and state that applications which do not conform to these instructions will be disapproved. I am concerned that these instructions may have the effect of discouraging foreign nations from applying for permits to fish for fishery resources, particularly underutilized resources, which may not now be covered by a PMP or FMP. We note that there is no requirement in the FCMA for the development of a management plan on the basis of an informal foreign request by letter,

and we question whether the Department of Commerce is prepared to develop a PMP on this basis, particularly for latent resources which may have a low priority for utilization by domestic fishermen.

As you know, application by a foreign nation to fish is one means of triggering those provisions of the FCMA designed to provide for fishing in accordance with management plans for each fishery off our coast. It is the position of the Department of State that under the FCMA a foreign country which has entered into a GIFA with the United States may formally apply for a permit to engage in any fishery subject to U.S. exclusive fishery management authority. If a country applies for a permit for a fishery which is not covered by a management plan, the Secretary of Commerce is required, under the FCMA, to prepare a PMP. Only through the development of management plans for all fisheries off the U.S. coast, as required under the FCMA, can the United States, in our view, meet a basic objective of the FCMA which is to prevent overfishing of a particular stock while achieving, on a continuing basis, the optimum yield from each fishery.

Since directed foreign fisheries for traditional stocks off the U.S. coast in the Northwest Atlantic have either been eliminated or sharply reduced in the past two years, it will be increasingly important in the future for foreign countries desiring to fish off our coast to direct their efforts to fisheries which are presently underexploited by U.S. fishermen. Foreign utilization of latent resources is a legitimate interest of both foreign and U.S. fishing interests since our domestic policy is premised upon achieving optimum utilization of the stocks. Consequently, we feel it is important for foreign countries to better understand the provisions of the FCMA relating to applications to fish and to submit applications for desired fisheries off the United States coast. We intend to so inform all countries which have entered into GIFAs with the United States.

We have several additional comments concerning the section of the draft guidelines dealing with sanctions for violations of U.S. regulations. We understand from

the NMFS representative at the recent Caribbean Council meeting that the proposed guidelines are designed to establish a basis for applying the sanction of disapproval of a permit application to countries rather than individual vessels. The State Department strongly opposes this approach, for which no basis is established in the FCMA and which could result in the elimination of a foreign country's entire fishery off the U.S. coast as a result of one or more violations by an individual vessel. The imposition of such a blanket sanction, if applied by a foreign nation against the U.S. could have a very serious impact on our distant water fisheries. If such guidelines were followed, we could expect foreign countries to cite our action in expelling entire foreign fleets as a justification for curtailing the activities of the U.S. fleet off their coasts. Thus, we believe that any position taken by the United States involving such a complex issue should be carefully reviewed in the context of U.S. fishing interests off foreign coasts. Clearly, the United States should not expect more favorable treatment off the coasts of other countries than we are willing to accept off our coast.

I appreciate this opportunity to state our position and trust our comments will be helpful.

Sincerely,

15/  
James A. Storer  
Director  
Office of Fisheries Affairs

Enclosure:

MAR 30 1978

St. Petersburg, Florida  
RECEIVED

APR 3 1978

ROUTING

TO: Regional Directors, NMFS

FROM: Terry L. Leitzel *Frederic H. Meibohm*  
Acting Assistant Administrator  
for Fisheries

SUBJECT: Guidelines for Approval/Disapproval of Permit Applications

FSE  
"2"  
"1"

We propose to establish NOAA guidelines regarding approving or disapproving applications for foreign fishing vessel permits on a case-by-case basis. Such guidelines are intended as an aid to Fishery Management Councils in reviewing individual applications.

Attached is a draft of guidelines which are being provisionally employed for 1978 applications. I request your comments on these guidelines. In addition, request you obtain the views of the Fishery Management Council(s) within your Regions regarding the criteria and additional considerations which should be addressed.

We request your response by June 1, 1978. When comments have been received, evaluated and resolved, if necessary, we will establish final guidelines for internal use which may be published in the Federal Register.

Attachment

cc: F, F3(2), F31, F35, F4, GCF



FSE

<u>Proposed Reason for Disapproval</u>	<u>Action</u>
Species not covered by PMP/FMP <sup>1/</sup>	Disapproval
No allocation to nation <sup>2/</sup>	Disapproval <sup>3/</sup>
Limit number of vessels	Not sufficient basis for disapproval
Violation by vessel in 1977:	
Citation	Not sufficient basis for disapproval
Report of Violation:	
One incident <sup>4/</sup>	Not sufficient basis for disapproval
Two or more incidents	May be basis for disapproval depending on FMC recommendations and evaluation of severity of violations
Seizure	Probable disapproval depending on FMC recommendations and evaluation of circumstances
Non-payment of assessed fine	Disapproval, but only after such fine is overdue
Joint Venture	May be basis for disapproval or conditional approval, depending on FMC recommendations and NOAA evaluation based on the criteria contained in the interim joint venture policy

1/ The instructions for completion of the Application for Vessel Permits advise foreign nations to submit requests by letter for fisheries not covered by a PMP or FMP. Applications received despite those instructions will receive the action indicated.

2/ Applications may be resubmitted if an allocation is subsequently made by the Department of State.

3/ An exception is made for fisheries such as Atlantic Billfishes and Sharks in which an allocation is not required in order to engage in the fishery.

4/ An "incident" relates to the boarding or other means of notifying the master of the vessel that a violation has occurred. Thus, an "incident" may involve more than one Report of Violation or more than one count on a Report of Violation. The principal concern is recidivism after notification.