

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director



DATE: September 21, 1989

SUBJECT: Legislative Update

ACTION REQUIRED

Receive status report on legislation and provide recommendation on the continued use of Fisheries Obligation Guarantee and Capital Construction Fund programs.

BACKGROUND

Current Legislation

Congress has been extremely busy since returning from its Labor Day recess. All committees have had a full meeting schedule as members attempt to work through important legislation. Dave Hanson has prepared a summary of fisheries legislation introduced to date in the 101st Congress and it is provided in your supplementary folder. He is prepared to provide additional details.

Magnuson Act Reauthorization

The current authorization period of the MFCMA expires on Saturday, September 30. A House Merchant Marine and Fisheries subcommittee has met twice in the last two weeks to mark-up proposed amendments. The full committee will meet on October 11 to approve the amendment package for House review. Even though the MFCMA will have expired by the time the committee meets, they are working under the assumption that the Act will be reauthorized by Congress during this session.

A copy of the September 14 draft amendment package was sent to you in a Council mailing. On September 19, the Subcommittee on Fisheries and Wildlife Conservation and the Environment met to revise the draft. Section 501 on moving the Director for the Alaska Fisheries Science Center to Alaska was deleted earlier. The Subcommittee made only minor corrections, and an amendment offered by Representatives Miller and Unsoeld from Washington to change the composition of the North Pacific Council was withdrawn, without prejudice, at the request of other representatives. Representatives Unsoeld, Miller and Young were asked to meet to seek a compromise recommendation for full committee review. A summary of the highlights of the proposed amendments (as of September 19) is provided as Item C-1(a).

Item C-1(b) has additional amendments that have been introduced, including additional language to strengthen the call for a driftnet ban.

Fur Seal Act Amendment

In June I reported on H.R. 1405 which would amend the Fur Seal Act to assure natives of the Pribilof Islands continued access to certain fisheries in the Bering Sea should the Council approve a limited access program. The legislation proposes that the Secretary of Commerce allocate 10% of the applicable TAC to the Pribilof Islands. There have been no hearings on this bill and we have been told that Congressman Young is considering adding this provision to Magnuson Act legislation.

Merchant Marine Act Amendment

Congressman Studds has attached as a rider to the MFCMA amendments an amendment to the Merchant Marine Act which would rewrite Section 607 to terminate the Capital Construction Fund Provisions and the Fisheries Obligations Guarantee Program. He has specifically requested the advice of the Council concerning this action and has asked several questions (Item C-1(c)). The Council should review his letter and prepare a response.

Briefly, the Capital Construction Fund and the Fisheries Obligation Guarantee Program were established in 1970 and 1972, respectively, under the authority of the Merchant Marine Act of 1936 to provide financial incentives for the fishing industry to participate in the development of underutilized fish resources.

The Capital Construction Fund provides for tax deferment, reduced depreciation and other savings relative to construction or reconstruction of fishing vessels. The Fisheries Obligation Guarantee Program increases the availability of long-term financing for fishing vessels and shoreside facilities by providing a U.S. Government guarantee of repayment of the debt portion of construction, reconstruction, reconditioning, or purchasing costs.

The benefits of both programs are severely curtailed if the vessel or shore facility will operate in fisheries that have been specified as "conditional," i.e., fully developed. The National Marine Fisheries Service is authorized to make this determination. The following fisheries are now conditional fisheries:

1. Yellowfin tuna in area regulated by Inter-American Tropical Tuna Commission.
2. Salmon fishery off Alaska.
3. American lobster in Gulf of Maine.
4. Salmon off Washington, Oregon, and California.
5. Surf clams off East Coast.
6. Atlantic Groundfish, including cod, haddock, and yellowtail flounder.
7. Alaska king crab.

Seafood Inspection

Several bills have now been introduced this session to establish a national seafood inspection program. All proposals are designed to ensure the quality and wholesomeness of all fish products intended for human consumption in the U.S. Proposals differ in what agency will administer the program (i.e., Dept. of Agriculture, Food and Drug Administration, NOAA) and whether industry or the government should pay for it.

Highlights of the Proposed Changes to the MFCMA
as submitted by the House Merchant Marine and Fisheries Committee
("Fishery Conservation Amendments of 1989")

Prepared by North Pacific Council Staff

- Sec. 2(a), Findings, Purposes and Policy, is amended by adding to Congress's list of findings that "the collection of statistically reliable scientific data is essential to the effective conservation and management of the fishery resources of the U.S."
- Sec. 2(c), Findings, Purposes and Policy, is amended by adding to the policy declaration of the Act that an objective is to "achieve international agreement on banning large-scale driftnet fishing on the high seas as soon as possible, including support for the Tarawa Declaration and other international efforts to achieve such a ban."
- A new section is to be added entitled "Section 206, International Ban on Large Scale Driftnet Fishing." This section would require the Secretary of State to seek and secure as soon as possible a international ban on large scale driftnet fishing on the high seas. A report is to be prepared that would describe the steps the Secretary has taken, progress to date, and recommendations for legislative action should nations not wish to comply.
- Sec. 301, National Standards for Fishery Conservation and Management, National Standard 1 is revised as follows (old language lined out, new language underlined): Conservation and management measures shall prevent overfishing ~~while achieving, on a continuing basis,~~ in order to achieve the optimum yield from each fishery for the United States fishing industry.
- Sec. 302, Regional Fishery Management Councils, is amended to incorporate the following changes:
 - Council member qualifications to be based on knowledge by reason of their occupational or commercial experience, scientific expertise, or academic training.
 - No Council member appointed after January 1, 1986, may serve for more than two consecutive terms.
 - Council members appointed before January 1, 1990 will continue to receive compensation at the GS-18 rate, but all appointments or reappointments after this date will be compensated at \$200/day plus expenses.
 - Each Council will no longer be constrained to its defined geographical area for conducting Council meetings.
 - Councils are to establish and maintain an industry advisory panel that represents a fair composition of industry interests.
 - Decisions and recommendations from Council committees and panels are considered advisory in nature.

- The Council must comment and make recommendations concerning any proposed activity which, in view of the Council, may affect the habitat of anadromous resources within its jurisdiction.
- Should the Council deem it appropriate to consider new information from a state or federal agency or from a Council advisory body, it shall give comparable consideration to new information offered at that time by interested members of the public. Interested parties shall have a reasonable opportunity to respond to new information prior to final Council action.
- Sec. 303, Contents of Fishery Management Plans, is amended to incorporate the following changes:
 - All FMPs after January 1, 1991 must contain an assessment and specification of the nature and extent of scientific data which is needed to ensure the effectiveness of the plan in conserving and managing the fishery resources covered by the plan; and specify any limitation or prohibition of types of fishing gear necessary and appropriate for the fishery.
 - The Secretary will have the discretion to require permits and fees to be paid to the federal government from all harvesters and processors who wish to catch or receive fish under an FMP.
 - The Secretary will have the discretion to require that observers be carried on board a domestic vessel fishing in the EEZ for the purpose of collecting statistically reliable scientific data.
 - The Secretary will have the discretion to require fish processors to submit data necessary for conservation and management.
 - Statistics submitted to the Secretary in compliance with any requirement shall be confidential and shall not be disbursed, except to State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person.
- Sec. 305, Implementation of Fishery Management Plans, is amended to recognize a unanimous Council vote on emergency actions to be all voting members other than the Regional Director.
- Sec. 306, State Jurisdiction, is amended to require the Governor of a state to consult with the Council and appropriate Marine Fisheries Commission with respect to the fishery concerned prior to granting an internal waters foreign fish processing permit.
- Sec. 307, Prohibited Acts, to be amended to declare it unlawful to steal, remove or tamper with fishing gear; assault, resist, intimidate, or interfere with an observer; to engage in large-scale driftnet fishing; and to engage in fishing which violates an international fishery agreement between that nation and the U.S.
- Sec. 308, Civil Penalties, is to be revised to add a subsection on permit sanctions which may be ordered following failure of the guilty party to pay any civil penalty or criminal fine imposed on a vessel/owner/operator under any fishery resource law. Permit sanctions include revocation of the permit, permit suspension, permit denial, and permit conditions. Also, transfer of

ownership of a vessel, sale or otherwise, shall not extinguish any permit sanction in effect. Suspended permits will be reinstated upon payment of the penalty.

- Sec. 310, Civil Forfeitures, is revised to add that it will be rebuttable presumption that any anadromous fish found on board a fishing vessel within the migratory range of that species is of U.S. origin.
- A new section is to be added entitled "Sec. 313, North Pacific Fisheries Research Plan." This section provides the North Pacific Council the authority to "request the Secretary to prepare a fisheries research plan which requires observers be stationed on board vessels of the U.S. engaged in fishing in that part of the EEZ which is within the geographical authority of the Council, for the purpose of collecting statistically reliable scientific information. . .," and to establish a system of fees to pay the costs of implementing the plan.
 - An additional \$100,000 appropriation is made to the Secretary for the fiscal years 1990 and 1991 for the purpose of establishing this program, which is to be reimbursed from fees later collected.
- Sec. 401 is retitled "Special Provisions Regarding Observers" and revised to state that an observer who is ill, disabled, injured, or killed on a vessel may not bring civil action under any U.S. law for those reasons against the vessel or vessel owner unless the vessel or owner committed willful misconduct. This section does not apply if the observer is engaged by the owner or master of the vessel to perform any duties as a crew member.

Ocean and Coastal Programs

In early September the House sent to the Senate a bill (H.R. 1688) authorizing \$529 million in fiscal 1990 for ocean and coastal management programs of NOAA. This marks the first time the House has separated these programs from the overall NOAA budget. It is an effort to insulate them from deep cuts the Administration has proposed for NOAA. The House-approved \$524 million nearly doubles the 1990 funding requested by the Administration for this program.

Oil Spill Legislation

Several proposals for oil spill liability and prevention legislation have been developed by members of Congress this session. As a result, the House Committee for Merchant Marine and Fisheries and the House Committee for Public Works and Transportation, have been working on jointly-sponsored legislation. Unfortunately, at this time there appears to be no consensus on the provision that would prohibit states from enacting any legislation that taxes the oil industry to compensate spill victims or that sets a state's own liability and compensation standards. Coastal states and environmental organizations are opposed to any limitation on rights of states.

Both committees have approved their own draft bill. Although there are numerous differences between them, both contain provisions prohibiting tougher state laws and their liability limits are much lower than in a Senate-passed bill that most coastal states and all environmental groups support. Further joint committee meetings are planned for this fall.

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U.S. House of Representatives

Committee on

Merchant Marine and Fisheries

Room 1334, Longworth House Office Building
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CHIEF CLERK
 BARBARA L. CAVAS
 MINORITY STAFF DIRECTOR
 GEORGE D'PENGE
 MINORITY CHIEF COUNSEL
 DUNCAN C. SMITH, II

August 1, 1989

Dear Mr. Petersen:

I am writing to seek the advice of the management councils concerning legislation I intend to introduce relating to Federal financial assistance to the fishing industry.

Specifically, the Fisheries Obligation Guarantee (FOG; Title XI of the Merchant Marine Act) and the Capital Construction Fund (CCF) were established almost twenty years ago to assist the fishing industry in obtaining financing for the development and modernization of our fishing fleets and shoreside facilities. Both programs have been successful in providing a source of funds to the industry, particularly in situations where it has been difficult to obtain funding from other sources.

Recently, questions have been raised about the need to continue these programs. Those calling for the termination of the programs claim that most of our fisheries are fully developed, and in some cases overcapitalized. In addition, the financial climate has changed significantly since the inception of the programs, and the availability of private funding has reduced the need for Federal assistance.

Personally, I believe that the Federal government ought to be spending its limited fisheries funds elsewhere, and that is why I intend to introduce legislation to eliminate or severely curtail these two programs. Before I do so, however, I was hoping the Council would provide me with its thoughts on the following questions:

- 1) In your view, would the elimination of these programs undercut any of the management goals of the council? In which fisheries?
- 2) Is there a need to continue the programs for underutilized fisheries such as skate, dogfish, and mackerel in the Atlantic? If so, should the Councils be responsible for identifying the fisheries for which these programs could be utilized?

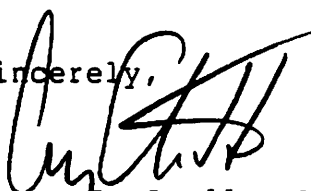
Mr. John G. Petersen
August 1, 1989
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3) Do you believe it would be useful, if the programs are eliminated, to allow the funds currently deposited in CCF's to be used for other purposes, such as the purchase of equipment required for compliance with Federal conservation or safety regulations (e.g. TED's, life rafts), or equipment which would improve seafood quality (e.g. refrigerators, ice makers)?

Your views are greatly appreciated. I will certainly keep in touch as the Subcommittee develops these legislative proposals.

With kind regards.

Sincerely,



Gerry E. Studds, Chairman
Subcommittee on Fisheries and
Wildlife Conservation and the
Environment

Mr. John G. Petersen
Chairman
North Pacific Fishery Mgmt. Council
P.O. Box 103136
411 West 4th Avenue, Suite 2D
Anchorage, AK 99510

UNSOEL015

AMENDMENT OFFERED BY MRS. UNSOELD
TO THE AMENDMENT
OFFERED BY MR. STUDDS AND MR. YOUNG

Insert at the appropriate place in the first title the following:

1 SEC. ____ . INTERNATIONAL BAN ON LARGE-SCALE DRIFTNET FISHING.

2 Section 206 (16 U.S.C. 1826) is amended to read as

3 follows:

4 ``SEC. 206. INTERNATIONAL BAN ON LARGE-SCALE DRIFTNET
5 FISHING.

6 `` (a) NEGOTIATIONS.--The Secretary of State shall seek to
7 secure, as soon as possible after the date of the enactment
8 of the Fishery Conservation Amendments of 1989, an
9 international ban on large-scale driftnet fishing on the high
10 seas.

11 `` (b) REPORT.--Not later than 18 months after the date of
12 the enactment of the Fishery Conservation Amendments of 1989
13 and every year thereafter until such a ban is secured, the
14 Secretary of State shall transmit to the Congress a report--

15 `` (1) describing the steps the Secretary has taken to
16 initiate and complete negotiations pursuant to subsection
17 (a);

18 `` (2) detailing the progress of those negotiations;

UNSOEL015

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1 ``(3) listing those nations which have refused to
2 enter into those negotiations and which engage in large-
3 scale driftnet fishing on the high seas; and

4 ``(4) making recommendations for legislative action
5 which could be taken to encourage the nations listed
6 pursuant to paragraph (3) to cease large-scale driftnet
7 fishing.''.
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**AMENDMENT #1 OFFERED BY CONGRESSMAN DOUG BOSCO
TO THE MAGNUSON FISHERY CONSERVATION
AND MANAGEMENT REAUTHORIZATION ACT**

SEPTEMBER 19, 1989

Add to Sec. 1852(j) [302(j)] the following:

(6) At any time when a Council deems it appropriate to consider new information from a state or federal agency or from a Council advisory body, it shall give comparable consideration to new information offered at that time by interested members of the public. Interested parties shall have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures.

AMENDMENT EXPLANATIONS

West coast salmon trollers have experienced great frustration at the PFMC's tendency to introduce new technical information and new season options at the last minute, often after the close of public comment. The Council has made several critical decision based on this last minute information, without input from affected parties. At the same time, consideration of new technical information presented by affected parties has often been put off for months or years.

Our intention is to encourage the Council to give equal consideration to all information presented to it, and to allow all parties the chance to review and comment on it.

**AMENDMENT ON DRIFTNETS
TO H.R. 2061**

OFFERED BY REP. SOLARZ

Amend Sec. 102 (b)(3) by adding at the end before the period the following:

"including support for the Tarawa Declaration and other international efforts to achieve such a ban ".

The proposal amends the new national policy regarding international agreement on banning large-scale driftnet fishing on the high seas by explicitly lending U.S. support to the Tarawa Declaration. By recognizing the importance of the Tarawa Declaration, the amendment seeks to accelerate the movement towards a driftnet free zone in the South Pacific region.

amendment #1

**AMENDMENT TO THE STUDDS-YOUNG SUBSTITUTE
TO H.R. 2061**

Offered By Mr. Hughes

On page 5, line 24, renumber (3) as (4), and insert immediately after line 23, the following:

"(3)(A) Each Council shall establish and maintain a United States fishing industry advisory committee which shall provide information and recommendations on, and assist in the development of, fishery management plans and amendments to such plans.

"(B) Appointments to a committee established under subparagraph (A) shall be made by each Council in such a manner as to provide fair representation to commercial fishing interests in the geographical area of authority of the Council."

amendment #2

AMENDMENT TO THE STUDDS-YOUNG SUBSTITUTE

TO H.R. 2061

Offered by Mr. Hughes

Section 308 (beginning on page 5, line 4) is amended by redesignating subsections (a) through (f) as (b) through (g), respectively, and inserting the following new subsection immediately after page 5, line 4:

(a) MEMBERS' QUALIFICATIONS. -- Section 302(b)(2)(A) is amended by striking the first sentence and inserting in lieu thereof the following: "The members of each Council required to be appointed by the Secretary must be individuals who are knowledgeable, by reason of their occupational or commercial experience, scientific expertise, or academic training, with respect to conservation and management, or the recreational or commercial harvest, of the fishery resources of the geographical area concerned."

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1 section 402 the following:

2 ``SEC. 401. SPECIAL PROVISIONS REGARDING OBSERVERS.

3 `` (a) CIVIL ACTION.--An observer on a vessel (or the
4 observer's personal representative) under the requirements of
5 this Act that is ill, disabled, injured, or killed from
6 service as an observer on that vessel may not bring a civil
7 action under any law of the United States for that illness,
8 disability, injury, or death against the vessel or vessel
9 owner, except that a civil action may be brought against the
10 vessel owner for the owner's willful misconduct.

11 `` (b) LIMITATION.--This section does not apply if the
12 observer is engaged by the owner, master, or individual in
13 charge of a vessel to perform any duties in service to the
14 vessel.``.

15 SEC. 119. AUTHORIZATION OF APPROPRIATIONS.

16 Section 406 (16 U.S.C. 1882) is amended--

17 (1) by striking paragraph (1) and all that follows
18 through paragraph (14);

19 (2) by redesignating paragraph (15) as paragraph (1);
20 and

21 (3) by adding at the end the following:

22 `` (2) \$75,000,000 for fiscal year 1990.

23 `` (3) \$76,000,000 for fiscal year 1991.

24 `` (4) \$77,000,000 for fiscal year 1992.

25 `` (5) \$78,000,000 for fiscal year 1993.``.

3. Providing observer salary, benefits and personnel services.
4. Providing basic workmen's compensation and P & I insurance to cover and protect observers injured in the performance of their duties.
5. Providing all deployment logistics to place and maintain the observers aboard the fishing vessels. This includes all travel arrangements, hotels and per diem, and any other services required to place the observers aboard the vessels.
6. Providing replacement or back-up observers in the event an observer has to be removed from a vessel for any reason.
7. Keeping NMFS informed of current observer deployments and deployment plans.
8. Arranging and coordinating observer debriefings with NMFS.
9. In cooperation with the vessel owner, assuring that all observer in-season catch messages and other required transmissions between the observer and NMFS are delivered to NMFS within a specified time.
10. Assuring that all data, reports and specimens collected by observers are delivered directly to NMFS within 5 working days of the completion of each observer trip.
11. Assuring that all gear and equipment issued to their observers by NMFS is returned to NMFS within 5 days of the completion of the observers field deployment.

A more detailed work statement for contractor responsibilities will be developed by NMFS and modelled after the statement of work used by the NMFS contract for observers. Certification of a contractor could be completed through the signing of a letter or memorandum of understanding between NMFS and the contractor. A contractor can be decertified if they are found not to be financially independent, they fail to provide the required observer data directly to NMFS or vessels owners can clearly demonstrate that the firm has not performed the required services satisfactorily.

Coordination with MMPA Domestic Observer Program

The 1988 amendments to the Marine Mammal Protection Act require that domestic vessels participating in the trawl fisheries in Alaska carry natural resource observers on 20% - 35% of their effort. This program is currently in place in 1989 and observers