


MEMORANDUM

TO: Council, AP, and SSC Members

FROM: Clarence G. Pautzke   
Executive Director

DATE: April 7, 1989

SUBJECT: Legislative Update

**ACTION REQUIRED**

Status reports on current legislation and Magnuson Act Reauthorization.

**BACKGROUND**

Current Legislation

Dave Hansen has prepared the excellent summary under item C-2(a) of fisheries legislation introduced to date in the 101st Congress. Rod Moore of the House Merchant Marine and Fisheries Committee staff also is here and can help with the details of the legislation.

Of particular interest is H.R. 1554, The Marine Resources Support Act, which was introduced by Congressman Don Young on March 21, 1989. It will provide an alternative source of funds for implementation of the Magnuson Fishery Conservation and Management Act (MFCMA) and the Marine Mammal Protection Act (MMPA) by authorizing the regional fishery management councils to require resource users to pay fees as part of a fishery management plan. Those fees, along with the civil penalties collected for enforcement of the MFCMA, will be put into a separate fund in the Treasury for fisheries research, management, and enforcement purposes. There are strict guidelines for developing such fee programs and funds collected from a region can only be used in that region. The bill also makes explicit the Councils' authority to require on-board observers if necessary for proper fisheries management. The bill will also establish a modest fee on the non-consumptive use of marine mammals to correspond with the fees already paid by commercial fishermen. These fees would be earmarked in a separate fund for purposes of implementing the MMPA. A copy of the bill is provided as item C-2(b).

Another bill to watch is H.R. 132, an amendment to the Fishermen's Protective Act that would expand the President's authority under the "Pelly Amendment" to embargo any products of nations found to be subverting international fishery conservation agreements.

Though not in your notebooks, copies of other bills can be made available to those interested.

Magnuson Act Reauthorization

The current authorization period for the MFCMA expires on September 30, 1989. Congress will begin its hearings on May 2 in Washington, D.C. Congressman Studds, Chairman of the House Subcommittee on

Fisheries and Wildlife Conservation and the Environment, has specifically invited John Peterson and other Council chairmen to provide testimony [see item C-2(c)]. Several field hearings are also planned on the East Coast, in the South, and in the Pacific Northwest.

In January the Council provided MFCMA amendment proposals to Chairman John Peterson and Vice Chairman John Winther to take with them to the January 27-28, 1989 Chairmen's meeting in Charleston, South Carolina. Our proposed amendments on controlling high seas salmon interceptions and fees made it into the Chairmen's package that will be presented to Congress. The Chairmen's recommendations will be passed out at meeting time.

**PACIFIC MARINE FISHERIES COMMISSION**AGENDA C-2(a)  
APRIL 1989METRO CENTER - SUITE 170  
2000 S.W. FIRST AVENUE  
PORTLAND, OREGON 97201-5346  
PHONE (503) 294-7025**Legislative Report**101st Congress  
(PMFC Office, April 3, 1989)

Recall that the last Congress took the following action:

- Omnibus Drug Bill (with innocent owners and expedited procedures)
- Commercial Fishing Industry Vessel Safety Act (with no insurance provisions)
- GIFA with the Soviet Union
- Diesel Fuel tax exemption
- Organotin Antifouling Paint Control Act
- Annex V to MARPOL
- Reauthorized Marine Mammal Protection Act (with significant changes affecting commercial fishermen)

Also recall that several bills did not pass:

Biological Diversity	(by Scheur)
Marine Research Centers	(by Mitchell)
NOAA Fleet Modernization	(by Jones)
Seafood Inspection	(several bills)
Marine Fishing License	(two versions, Young's and Upton's)
Territorial Sea	(by Lowry)
NOAA as an Independent Agency	(by Lowry)

New faces from the west coast in the 101st Congress are:

Washington:

Senator Slade Gorton (R) replaces Daniel Evans (R)  
 Congressman Jim McDermott (D) replaces Mike Lowry  
 Congresswoman Jolene Unsoeld (D) replaces Don Bonker

California:

Congressman Tom Campbell (R) replaces Ernie Konnyu  
 Congressman Christopher Cox (R) replaces Robert Badham  
 Congressman Dana Rohrabacher (R) replaces Dan Lungren

Oregon:

No changes

Alaska:

No changes

## Bills so far in the 101st:

**H.R. 897** by Jones (D, NC) authorizing NOAA to modernize and expand its fleet of ocean research vessels. Same as last year's bill with a \$31 million price tag in 1990, \$89 million in 1991 and a grand total over ten years of \$440 million. This would include acquiring seven new vessels, replacing four existing vessels, modernizing nineteen existing vessels and acquiring new scientific instruments.

**H.R. 132** by Young (R, AK) would amend the Fishermen's Protective Act of 1967 to expand the President's authority under the "Pelly Amendment" to embargo any products of nations found to be subverting international fishery conservation agreements.

**H.R. 980** by Jones (D, NC) would provide for a National Global Change Research Plan to coordinate oceanographic, atmospheric, terrestrial and polar research programs and it would amend NEPA to require consideration of the impact of major Federal actions on the global environment.

**H.R. 1225** Reauthorization of the Interjurisdictional Fisheries Act. This program provides matching grants to states and requires expenditure on programs in support of management of interjurisdictional fisheries. Our Pacific states judiciously use these grants to assist fisheries that are a priority from a federal point of view. The funds supplement substantial state investments in data collection for fisheries that are either part of a Regional Council FMP (e.g. groundfish) or were fisheries once considered by a council for FMP development (but because of limited council resources the fisheries were left under state authority, e.g. shrimp). This Act is contributing to the data which are the basic foundation of Pacific fisheries programs. PMFC recommends funding at the authorized level of \$5,000,000 for state grants and \$350,000 for the three interstate marine fishery commissions.

**H.R. 1224** Reauthorization of the Anadromous Fish Conservation Act. This program also provides matching grants to states, but for anadromous species which migrate through state, federal and international waters. All of Alaska's share is spent in Southeast Alaska which is the only part of the state subject to the federal Regional Council FMP and to the Pacific Salmon Treaty. The other four states and the Pacific Council have worked hard over the past decade to develop an effective state/federal salmon program. These states' anadromous grants help fund the data collection that is necessary to implement the Pacific Council's multijurisdictional FMP. PMFC recommends appropriations of \$3,000,000 for the Section 4 grants.

**H.R. 1467** by Unsoeld (D, WA) provides that forcible assault of an onboard observer carries a criminal penalty under the MFCMA (i.e., same protection as an "authorized officer").

**H.R. 1405** by Shumway (R, CA) "ensures the orderly implementation in domestic law of the extension of the territorial sea" to twelve nautical miles. The bill makes it clear that no federal or state authority shall be extended beyond its previous geographical limits by the President's proclamation, unless the authority is changed by some future act of Congress.

**H.R. 1434** by Hughes (D, NJ) amends MFCMA by establishing civil penalties for stealing, removing, damaging or tampering with fishing gear of another or the fish contained in such fishing gear.

**H.R. 1439** by Lancaster (D, NC) would require that certain plastic articles be made of naturally degradable material. The articles would include containers for food, drugs, cosmetics, etc. (including refuge), packing material, "six-pack" rings, disposable diapers and tampon applicators. The article must begin to degrade within 180 days of discard and within two years of discard be reduced to a "environmentally benign substance" (by biological decomposition, photodegradation, hydrolysis, etc.). The Administrator of EPA may exclude articles if he determines it is not technologically practicable for such articles to be made of naturally degradable material.

**S. 587** by Mitchell (D, ME) and **H.R. 1421** by Brennon (D, ME) would establish regional marine research programs. Senator Mitchell introduced this bill last year as S 2068 (Feb. 17, 1988) and it was amended on June 29, 1988. This year's version is identical to the June version. The purpose is to establish regional marine research programs with sufficient and sustained funding.

A national Oversight Board (with executive director and staff) would oversee and coordinate the activities of ten regional marine research programs (each with its own board of directors, executive director, professional and administrative staff, regional advisory group and research organizing committee). The purposes of each regional program are:

- (1) set overall goals for integrated, long-term program of research and monitoring of marine and coastal environmental quality in the region;
- (2) develop comprehensive, long-range plans which identify the specific needs and priorities of research and monitoring activities and projects;
- (3) assure coordination of research among State agencies and other organizations involved in marine research in the region;
- (4) monitor environmental quality conditions of marine and coastal waters and assess the impacts of proposed activities in these waters;
- (5) provide a forum for review and comment on research plans from affected user and interest groups, such as commercial fishermen, other marine industries, and environmental organizations; and
- (6) provide a forum for coordinating research among research institutions, with other regions and with neighboring countries; and
- (7) make public reports on the environmental quality conditions in the region;
- (8) analyze and interpret research data and information at the request of the relevant State and local agencies in the region for their application in environmental protection programs; and
- (9) make such scientific recommendations to local, State, and Federal agencies on design of effective programs to address identified problems as may be necessary.

Funding for the marine research programs (authorizations of \$33,000,000 per year) would come from S.588.

S. 588 by Mitchell (D, ME) is designed to fund the Marine Research Act of 1989 (S. 587) by establishing a trust fund consisting of any unobligated balance of the Offshore Oil Pollution Compensation Fund in excess of \$195,000,000.

H.R. 1554 by Young (R, AR), the "Marine Resource Support Act", is designed to provide an alternative source of funds for implementation of the MFCMA and MMPA. It provides authority to the eight regional councils to require resource users to pay fees as part of an FMP for observers and scientific research; it imposes a \$5 per person fee on persons who participate in marine mammal viewing cruises; and it channels civil penalties from MFCMA and MMPA violations back into expenditures associated with the research, management and enforcement of these two Acts.

Congressman Young's summary of the proposed act follows:

#### Summary of "Marine Resources Support Act of 1989"

##### Magnuson Act Amendments

Councils may require observers to be carried on domestic fishing vessels, collect fees to pay for observers and scientific research, as part of fishery management plans.

Fees must not exceed the cost of data collection or stationing of observers.

Fees must be fair and equitable, cannot be used as limited entry scheme.

Vessel owners are generally exempted from liability for injuries to observers (same provision as Marine Mammal Protection Act observers) except in cases of willful misconduct.

Fees are deposited in a new Fisheries Research Fund, as are civil penalties collected for MFCMA violations.

##### Fisheries Research Fund

Separate Fund in the Treasury, composed of the following:

- \* civil penalties collected for Magnuson Act violations;
- \* fees imposed under fishery management plans.

Amounts in the Fund are available to the Secretary, who can only spend the money for:

- \* supporting approved fishery management plans;
- \* collecting, processing, analyzing and disseminating data;
- \* improving enforcement of fisheries laws and treaties.

Secretary must ensure that each region receives benefits equal to payments received from that region.

Fund cannot be used to pay government salaries or overhead, costs not associated with carrying out Act, or to offset amounts authorized by other laws.

## Marine Mammal Protection Act Amendment

Imposes a \$5 per person fee on persons over 16 who participate in marine mammal viewing cruises.

Establishes a Marine Mammal Research Fund in the Treasury.

Fund consist of :

- \* Fees collected under section 104 (g);
- \* New marine mammal viewing fees imposed under section 112 (e);
- \* Civil penalties collected under sections 105 and 106;

Amounts in the Fund are available to the Secretary who can withdraw them to carry out his responsibilities under MMPA.

H.R. 1387 by Dorgan (D, ND) provides for the inspection of all commercial seafood destined for human consumption in the U.S. The Secretary of Agriculture would be charged with a mandatory program for comprehensive and statistically representative inspection of the commercial processing of all freshwater and saltwater fish, shellfish and their products. The bill intends the program to "be similar, to the extent practical, to the currently effective system for the inspection of commercially processed meat and poultry".

H.R. 1465 by Jones (D, NC) reintroduced a bill to establish a comprehensive oil pollution liability and compensation system. In early March 1989 the Merchant Marine and Fisheries Committee said "The time to act is now, before a major spill occurs".

The major components of the bill are as follows:

- \* It replaces four separate oil pollution liability systems with one single comprehensive federal system, and replaces four existing small cleanup funds with one large fund.
- \* It covers oil spills from vessels and facilities, both offshore and onshore;
- \* It imposes strict liability on those responsible for oil spills and it establishes liability for a broad class of damages, including cleanup costs, damages to natural resources, and third party damages;
- \* It authorizes up to \$500 million to cover claims against the fund arising out of a single incident, with the revenues to come from the industry and not the general taxpayer, as is currently the case under the Clean Water Act; and
- \* It implements two international protocols, establishing a similar liability and compensation regime globally, which are strongly supported by the Administration.

## Magnuson Act Reauthorizations

No bills yet, but hearings have been set for Washington DC on May 2 and Boston on May 8. West coast hearings are tentatively scheduled for August in Seattle and Anchorage. Hearings are expected to address limited entry, user fees, tuna inclusion, high seas interceptions, enforcement and penalties, observers, territorial sea, recreational/commercial issues, and council process (including appointments). A separate hearing will address the tuna issue.

(Original signature of Member)

~~101~~ CONGRESS  
1st SESSION

**H.R.** 1554

Insert  
title  
here

Marine Resources Support Act of 1989

IN THE HOUSE OF REPRESENTATIVES

MAR 21, 1989

Insert  
sponsor's  
names  
here

Mr. Young of Alaska

**A BILL**

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



**SECTION 1.SHORT TITLE.**

This Act may be cited as the "Marine Resources Support Act of 1989".

**SECTION.2.AMENDMENTS TO THE MAGNUSON ACT.**

(a) Section 303(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853 (b)) is amended--

- (1) by striking "and" at the end of paragraph (7);
- (2) by redesignating paragraph (8) as paragraph (10);

and

- (3) by inserting the following new paragraphs:

"(8) include a requirement that observers be carried on board a vessel of the United States engaged in fishing in the exclusive economic zone for the purpose of collecting scientific data;

(9) subject to section 304(d), include a requirement that fees to offset the cost of scientific research in the fishery be paid by the owner or operator of a vessel of the United States engaged in fishing in the exclusive economic zone; and".

(b) Section 304(d) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854(d)) is amended--

- (1) by inserting "(1)" before the existing language;
- and

(2) by adding the following:

"(2) A council may establish the level of fees that are authorized to be charged under section 303(b)(9), subject to the following standards--

(A) that the fees not exceed the cost of collecting scientific information, including the cost of stationing observers on board a vessel pursuant to section 303(b)(8);

(B) that the fees be fair and equitable to all participants in the fishery; and

(C) that the fees not be used to establish property rights, collect economic rent, or limit access to the fishery.

(3) Fees collected under paragraph (2) shall be deposited in the Fisheries Research Fund established under section 407."

(c) Section 308 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1858) is amended by adding the following new subsection:

"(g) DISPOSITION OF PENALTIES.--Penalties collected under this section shall be deposited into the Fisheries Research Fund established under section 407."

(d) The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) is further amended--

(1) by redesignating section 406 as section 408; and

(2) by inserting the following new sections:

"SEC.406.SPECIAL PROVISIONS REGARDING OBSERVERS.

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

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

SEC.407.FISHERIES RESEARCH FUND.

(a) ESTABLISHMENT--There is established in the Treasury of the United States the Fisheries Research Fund. The Fund shall consist of all fees collected under sections 304(d)(2) and (3), and all penalties collected under section 308 of this Act.

(b) DISTRIBUTION OF MONEY IN FUND.--Amounts in the Fund shall be available to the Secretary who shall withdraw and expend them solely for the following purposes--

(1) supporting fishery management plans approved under title III of this Act;

(2) collecting, processing, analyzing, and disseminating biological, economic, and statistical information concerning marine fisheries, including the abundance, distribution, and ecology of fish stocks; and

(3) improving enforcement of laws and treaties relating to marine recreational and commercial fishing.

In expending funds under this subsection, the Secretary shall ensure to the extent practicable that each region receives benefits from the Fisheries Research Fund equal to the fee payments received from persons in such region in the preceding year.

(c) PROHIBITIONS ON USE OF FUNDS.--Except as provided in subsection (b) of this section, the Secretary may not expend funds deposited into the Fisheries Research Fund--

(1) to pay salaries of government employees or other administrative overhead;

(2) to pay costs other than those directly incurred in carrying out the provisions of this Act; or

(3) to offset amounts authorized under other provisions of law."

### SECTION.3.AMENDMENTS TO THE MARINE MAMMAL PROTECTION ACT.

(a) MARINE MAMMAL PROGRAM FUNDING.--The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) is amended--

(1) in section 112 by adding a new subsection (e) as follows:

"(e) The Secretary of Commerce shall assess a fee of \$5 on any individual, whether or not a citizen or national of the United States, who has attained the age of 16 years and who has paid any person for the opportunity to view marine mammals in waters subject to the jurisdiction of the United States or of any state. The Secretary of Commerce shall deposit such fees in the fund established under section 116.";

(2) by redesignating section 116 as section 117; and

(3) by adding a new section 116 as follows:

"SEC.116.(a) There is established in the Treasury of the United States the Marine Mammal Research Fund. The Fund shall consist of all fees collected under section 104(g) and section 112(e), and all civil penalties collected under section 105(a)(1) and section 106(b).

(b) Amounts in the Fund shall be available to the Secretary who shall withdraw and expend them to carry out his responsibilities under this Act."

(b) CONFORMING AMENDMENTS.--The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) is amended--

(1) in section 104(g) by adding after the period: "All fees collected shall be deposited in the Fund established under section 116.";

(2) in section 105(a)(1) by adding after the last sentence: "All penalties collected under this subsection shall be deposited in the Fund established under section 116."; and

(3) in section 106(b) by adding after the last sentence: "All penalties collected under this subsection shall be deposited in the Fund established under section 116.".

WALTER B. JONES, NORTH CAROLINA, CHAIRMAN

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**U.S. House of Representatives**  
**Committee on**  
**Merchant Marine and Fisheries**  
**Room 1334, Longworth House Office Building**  
**Washington, DC 20515-6230**

APR - 4 1989

March 30, 1989

Dear Mr. Petersen:

On behalf of the Subcommittee on Fisheries and Wildlife Conservation and the Environment, I would like to invite you to participate in a hearing on the reauthorization of the Magnuson Fishery Conservation and Management Act (Act). The hearing will begin at 10:00 a.m. on May 2nd in room 1334 of the Longworth House Office Building.

The May 2nd hearing will be the first of several associated with the reauthorization of the Act. On May 8th, the Subcommittee will travel to Boston, Massachusetts to hold its first field hearing. I am hopeful that we will be able to schedule two additional field hearings in the South Atlantic/Gulf of Mexico area and in the Pacific Northwest during the summer. Our intention is to finish the hearing process by the end of August and to bring a bill to the House floor this fall.

Given this rather ambitious schedule, I believe it is important that the Council chairmen be given an opportunity at our first hearing to present testimony on changes you believe are needed to the Act. I am aware that the Chairmen have been working on a number of recommendations which will be offered on behalf of all the Councils. I expect that the presentation of this testimony will help the Subcommittee identify the major issues it will need to consider during the reauthorization.

Because opportunities to participate in our future hearings will be limited, I have invited all the Councils to participate on May 2nd, and I am hopeful that you will be able to join us. In this regard it would be most helpful for you to coordinate your testimony with the other Council chairmen, although you will have an opportunity to make brief remarks on behalf of your own Council should you so desire. Council representatives will appear before the Subcommittee on one panel so that we may benefit from your collective testimony. For your information, the Departments of Commerce and State have also been invited to participate as well as one representative each from the commercial and sport fishing industries and the scientific and environmental communities.

March 30, 1989  
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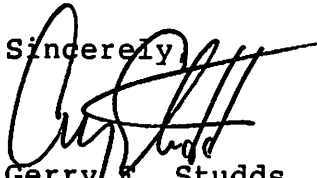
The focus of the hearing will be to review the overall effectiveness of the Act, to consider recommendations for amending it and to identify additional fishery research, management and funding needs. The Subcommittee is also interested in the funding needs of the Councils. In this connection, I ask that you provide the Subcommittee with a general breakdown of how your Council has spent its money (such as travel, compensation, staff salaries, contracts, administrative or other expenses) as well as a breakdown of compensation paid to individual members of your council for the past five years.

Committee procedures require that 75 copies of your written statement be delivered to the Subcommittee office in House Annex II, room 543 by 5:00 p.m. April 28th. Should you have any questions please let me know, or have a member of your staff contact Mr. Jeffrey Pike of the Subcommittee staff at (202) 226-3533.

In closing, I want to let you know that I am personally looking forward to working with you and the other Council chairmen on strengthening and reauthorizing the Act.

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 Management Council  
P.O. Box 103136  
411 West 4th Avenue, Suite 2D  
Anchorage, AK 99510



**AMENDMENTS TO THE MFCMA RECOMMENDED BY THE  
FISHERY MANAGEMENT COUNCIL CHAIRMEN**

1.

**SECTION TO BE AMENDED:** SEC. 2. FINDINGS, PURPOSES AND POLICY

**RECOMMENDATION:** Amend Act to add a number (7) under Section 2 (b) PURPOSES.

**SUGGESTED LANGUAGE:** (7) To eliminate the interception of United States anadromous salmon and steelhead species in waters beyond the Exclusive Economic Zone in order to effectively protect and enhance the conservation needs of and social and economic benefits derived from United States origin salmon and steelhead.

**RATIONALE:** Recent reports of the extent of essentially unregulated high seas drift gillnetting for squid in the North Pacific by foreign nations have created extreme concern over the catches of North American origin salmon and steelhead, as well as marine mammals, birds and other non-target species. It is estimated that in excess of 20,000 miles of gillnet are set each day by 700-1,000 vessels primarily from Taiwan, Japan and South Korea. The vessels are fishing in waters known to contain U.S. anadromous fish, and the potential for large impacts is great. These gillnets if lost, continue to ghost fish and can also foul props and be a hazard to navigation. U.S. efforts to obtain information on this fishery and to control it have not been successful.

This new subsection as proposed would strengthen our ability to eliminate the interception of U.S. anadromous salmon and steelhead in waters beyond the U.S. EEZ. Interception of salmon on the high seas has a very significant adverse impact on the resource users and potentially the resource itself. This issue is considered of such importance, that to focus attention on the issue, it should be included in the Purposes Section of the Act. This language is needed in the Act so the Councils involved can request more aggressive action in solving the associated problems.

**COUNCIL CHAIRMEN'S POSITIONS:** All Council Chairmen supported this Amendment.

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2.

**SECTION TO BE AMENDED:** SEC. 102. EXCLUSION FOR HIGHLY MIGRATORY SPECIES

**RECOMMENDATION:** Amend (or delete) Section 102 to the effect that tuna are no longer an exempted species.

**SUGGESTED LANGUAGE:** Change language as appropriate throughout the Act.

**RATIONALE:** Contained in Inter-Council position paper that will soon be available.

**COUNCIL CHAIRMEN'S POSITIONS:**

MAFMC, SAFMC, GMFMC, NEFMC and WPFMC Chairmen in favor of Amendment.

PFMC and CFMC Chairmen oppose the Amendment.

NPFMC Chairman remains neutral on Amendment.

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3.

**SECTION TO BE AMENDED: SEC. 201. FOREIGN FISHING**

**RECOMMENDATION:** Section 201 be amended to delete language on the alternate method of establishing TALFF and the Act be amended to ensure that establishment and release of TALFF provide benefits to the U.S. fishing industry and the nation.

**SUGGESTED LANGUAGE:** None specified. Changes should be made as appropriate.

**RATIONALE:** Section 201(d) was earlier amended to create what has now become a complicated process (Annual Fishing Level) for decreasing the Total Allowable Level of Foreign Fishing (TALFF) for a particular species. It was an early attempt to get around the interpretation of the arithmetic in the original MFCMA (TALFF = OY - DAH) coupled with fishery management plans (FMP) that required amendments to set annual quotas. To the best of our knowledge, the provision was used only once, for butterfish.

The current generation of FMPs make the Annual Fishing Level provision of 201(d) unnecessary. Given the current MFCMA and the concept of framework FMPs, there is greater flexibility in specifying the various quantities (Optimum Yield, Domestic Annual Harvest, Domestic Annual Processing, Joint Venture Processing, and TALFF). The concept of Allowable or Acceptable Biological Catch (ABC) has also been introduced. Additionally, establishing the specifications annually is generally a matter of a proposed rulemaking or a notice action.

In light of the above evolutionary measures, portions of Section 201 are no longer needed.

**COUNCIL CHAIRMEN'S POSITIONS:**

All Council Chairmen supported this Amendment.

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4.

**SECTION TO BE AMENDED: SEC. 204. PERMITS FOR FOREIGN FISHING**

**RECOMMENDATION:** Congress should review Section 204(b)(10)(B) for purposes of revising the formula by which foreign fishing fees are calculated to eliminate the inclusion of the amounts of fish harvested in the territorial sea, shellfish and the recreational fishery from the formula; and to further review Section 204(b)(10)(F) to reconsider the purpose for which foreign fees are escrowed.

It is further recommend that in view of the fact that the NOAA Fisheries budget is subjected to continued statutory reductions, all fishing fees collected be dedicated to the purpose of supporting the responsibilities of the NOAA Fisheries in their support of the MFCMA including research, data gathering and enforcement.

**SUGGESTED LANGUAGE:** None specified. Changes should be made as appropriate.

**RATIONALE:** Current formula includes recreational catch and shellfish catch; hence lacks equity. Excluding territorial sea, recreational and shell fisheries will increase base revenue by about 30%. This would raise the fees to foreign nations to more closely approximate the actual cost of having them fish in our EEZ. The fees collected could be made available to provide funding for NOAA Fisheries to fulfill their legislated fisheries mandates.

**COUNCIL CHAIRMEN'S POSITIONS:** All Council Chairmen except the PFMC supported this Amendment. The PFMC Chairman opposed the Amendment.

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5.

**SECTION TO BE AMENDED:** SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS

**RECOMMENDATION:** Amend Section 302 (a)(1) through (6) and (8) to specify an obligatory Council seat from each State.

**SUGGESTED LANGUAGE:** (Current language in regular type and new language in bold type and underlined, words bracketed are deleted)

.....by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed to an obligatory seat for [from] each state from a list of three or more individuals submitted by that state for that seat).

**RATIONALE:** NMFS has revised 50 CFR 601 providing that the obligatory seat would be filled from nominees submitted by the Governor of that state for the obligatory seat and for all at-large seats. While this is a better alternative than originally proposed in the draft regulations it does not satisfactorily resolve the issue. The Governors should continue to retain the flexibility of nominating certain individuals for certain seats. The NMFS regulations would change the present system and take this flexibility away from the Governors.

The amendment language is proposed to apply to all Councils except NPFMC which already has five obligatory Alaskan seats and two obligatory Washington seats. The current language of these sections applies the appointing procedures of section (b)(2) which provide for lists submitted by the Governors, qualifications, etc. The intent of the proposed language is to retain the obligatory seat for which only the Governor of that state may submit nominees. The legislative record supports an obligatory seat since the Senate version of the MFCMA made all appointed seats obligatory (i.e., three for each state including the fishery director). This amendment will assure the current appointment process, that has been working well and has been equitable for all states, will continue.

**COUNCIL CHAIRMEN'S POSITIONS:** All Council Chairmen supported this Amendment.

6.

**SECTION TO BE AMENDED:** SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS

**RECOMMENDATION:** Amend Section 302 to make Council staff members eligible to be reimbursed for actual expenses relative to their functions in support of Council activities.

**SUGGESTED LANGUAGE:** Amend Section 302 (d) COMPENSATION AND EXPENSES as follows: In the last line after the words "...nonvoting members" insert and Council staff members.  
or  
Amend Section 302 (f)(7)(D) STAFF AND ADMINISTRATION as follows: In the last line after the words "...under subsection (g)" insert and Council staff members.

**RATIONALE:** In carrying out their duties and responsibilities in support of the Council activities, staff members are required to use the same modes of transportation, stay in the same facilities and generally incur the same travel related expenses as Council members.

**COUNCIL CHAIRMEN'S POSITIONS:** All Council Chairmen supported this Amendment.

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**SECTION TO BE AMENDED:** SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS

**RECOMMENDATION:** Amend Section 302 (j) PROCEDURAL MATTERS so that fishery management plans and amendments are no longer subject to the National Environmental Policy Act.

**SUGGESTED LANGUAGE:** Add a new subsection under the first part of 302 (j) as follows: The National Environmental Policy Act (U.S. Code cite) shall not apply to the Councils, and fishery management plans and amendments to such plans shall not be subject to a requirement for preparation of an Environmental Impact Statement.

**RATIONALE:** The National Environmental Policy Act (NEPA) was passed to insure that the impacts of activities which may be harmful to the environment are adequately addressed. A fishery management activity, by its very nature, is aimed at conserving living marine resources for the long-term benefit of the nation. Fishery management activities are just the opposite of developmental activities which may produce adverse environmental consequences and for which the NEPA is relative.

The most recent amendments to the MFCMA have strengthened the requirements for addressing environmental issues and concerns in the development of fishery management plans and amendments. The requirements for preparation of Environmental Impact Statements (EIS) under the NEPA are duplicative and not

necessary under the MFCMA. Each MFCMA plan or amendment now prepared is in itself very similar to an EIS. Removing this requirement will lessen procedural hurdles that slow the plan and amendment process.

**COUNCIL CHAIRMEN'S POSITIONS:** All Council Chairmen except the GMFMC supported this Amendment. The GMFMC Chairman opposed this Amendment.

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**SECTION TO BE AMENDED:** SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS

**RECOMMENDATION:** Add language to clarify Council requirements relative to closed meetings and announcement of such meetings via newspapers.

**SUGGESTED LANGUAGE:** Delete portion of subsection 302 (j)(3)(A)(ii) beginning with the words "and if any meeting..." and add a new subsection (j)(3)(B) as follows: If any meeting or portion is closed, the Council concerned shall inform local newspapers in the major fishing ports within its region (and in other major, affected fishing ports), including the time and place of the meeting. Brief closures of meetings in order to discuss employment matters or other internal administrative matters need not be published. Subparagraphs (D) and (F) of Section 302 (j)(2) shall not apply to any meeting or portion thereof that is closed pursuant to subparagraph (3)(A)(i) and (ii) above.

**RATIONALE:** This will allow Councils to close meetings on an ad hoc basis if unforeseen administrative or personnel matters arise that may require closure of a meeting to protect individual rights to privacy. This would only apply to meetings that do not bear in any way on Council operations.

**COUNCIL CHAIRMEN'S POSITIONS:** All Council Chairmen supported this Amendment.

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9.

**SECTION TO BE AMENDED:** SEC. 304. ACTION BY THE SECRETARY

**RECOMMENDATION:** Specify a timeframe for Secretarial action after Council submission of regulatory amendments.

**SUGGESTED LANGUAGE** Reletter the present paragraphs (c) through (f) to (d) through (g) and add a new paragraph (c) as follows:

(c) REGULATORY AMENDMENTS. A regulatory amendment approved by a Council pursuant to the provisions of a fishery management plan shall be processed by the Secretary in

accordance with Sections 304(a) and (b) unless the Secretary determines such regulatory amendment can be processed more quickly.

**RATIONALE:** Regulatory amendments were intended to be a mechanism whereby certain modifications to an FMP could be processed through the system and implemented faster than regular FMP amendments, but this mechanism has not worked in many instances. Regulatory amendments have no mandatory schedule for review and approval and are not always processed expeditiously. One Gulf Council regulatory amendment required almost three years for implementation. Other Councils have experienced the same delays with regulatory amendments. NOAA Fisheries has encouraged the Councils to include framework measures within their FMPs to allow for modifying plans without having to amend the FMP. Many such framework measures are implemented by regulatory amendment. Unfortunately, because there is no mandatory time-frame for review and approval, the amendments are relegated to a secondary status and are not processed expeditiously, thereby creating significant management problems. The delay generally occurs at review levels above NOAA Fisheries. The inclusion of regulatory amendments in Section 304 would in no way prevent them from being processed and approved more rapidly than FMPs, however it does insure they will be processed in a timely manner.

**COUNCIL CHAIRMEN'S POSITIONS:** All Council Chairmen supported this Amendment.

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10.

**SECTION TO BE AMENDED:** SEC. 304. ACTION BY THE SECRETARY

**RECOMMENDATION:** Amend Section 304 (d) by removing the limitation that fees not exceed administrative costs, and make appropriate amendments to Section 303 concerning the discretionary provisions of FMPs to allow the Councils to establish fees for the implementation and maintenance of observer and data gathering programs and limited access systems.

Establishment of fees should be accomplished on a regional basis through plan/amendment development and the funds collected should be dedicated to the purpose for which they were collected.

**SUGGESTED LANGUAGE:** None specified. Changes should be made as appropriate.

**RATIONALE:** Currently, Section 304 (d) limits any fees charged U.S. fishermen to the administrative costs of issuing permits or licenses. As fisheries management under MFCMA has progressed and evolved over time, the need has arisen for a mechanism to fund data collection and observer programs and limited access systems. Many FMPs are being amended to incorporate these programs and systems with the end result of creating more cost effective management and profitable fishing operations. The cost of implementing these programs and systems can not be met under the current language in the Act. Allowing the Councils, in consultation with the Regional Director, to have discretionary authority to charge some type of user fee as part of a management plan would enhance the MFCMA management process and better serve the needs of the resource and resource users.

**COUNCIL CHAIRMEN'S POSITIONS:** All Council Chairmen except the PFMC and NEFMC supported this Amendment at the

Council Chairmen's meeting.

The PFMC Chairman voted against this Amendment because his Council had not had an opportunity to review it.

The NEFMC Chairman voted against this Amendment because it was considered too narrow in scope. However, the NEFMC has since approved a position, which incorporates and goes further than the above Amendment, in that fees could be charged to cover any management cost under the Act.

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**11.**

**SECTION TO BE AMENDED:** Where appropriate.

**RECOMMENDATION:** Amend the Act to require that upon written request by a Council the Secretary provide within thirty days a written legal opinion as to whether a measure or regulation under discussion or consideration by the Council is consistent with the Act and other applicable law and regulations.

**SUGGESTED LANGUAGE:** None specified. Changes should be made as appropriate.

**RATIONALE:** In the past, the Councils have experienced difficulties getting definitive legal opinions from NOAA General Counsel relative to management measures or regulations under consideration. In some instances, NOAA General Counsel has refused to provide specific legal opinions to the Councils when requested. In other cases legal opinions provided at the regional level early in the FMP or amendment process have been reversed at the Washington level during the review process. This has led to a waste of time and effort on the part of the Councils and frustrated their management efforts.

Although this particular issue had not been a problem recently because of the practices which the current administration is following relative to giving the Councils legal advice, this amendment is proposed based on past problems and the potential for personnel changes in the administration that would recreate the same situation in the future.

**COUNCIL CHAIRMEN'S POSITIONS:** All Council Chairmen supported this Amendment.

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**12.**

**SECTION TO BE AMENDED:** Where appropriate.

**RECOMMENDATION:** That Congress consider appropriate language that will further strengthen the Act in regards to habitat.

**SUGGESTED LANGUAGE:** None specified. Changes should be made as appropriate.

**RATIONALE:** Habitat degradation, coastal pollution and ecosystem health have been and continue to be significant problems effecting marine fishery resources under MFCMA management. Past and present habitat degradation has played a significant role, along with fishing pressure and inadequate fishery conservation and management practices, in contributing to substantially reduced and overfished stocks of fish. The health of coastal and ocean habitats will be a major determining factor in the maintenance and improvement of the our marine fishery resources.

**COUNCIL CHAIRMEN'S POSITIONS:** All Council Chairmen supported this Amendment.



**AMENDMENTS TO THE MFCMA RECOMMENDED BY THE  
FISHERY MANAGEMENT COUNCIL CHAIRMEN**

**1.**

**SECTION TO BE AMENDED:** SEC. 2. FINDINGS, PURPOSES AND POLICY

**RECOMMENDATION:** Amend Act to add a number (7) under Section 2 (b) PURPOSES.

**SUGGESTED LANGUAGE:** (7) To eliminate the interception of United States anadromous salmon and steelhead species in waters beyond the Exclusive Economic Zone in order to effectively protect and enhance the conservation needs of and social and economic benefits derived from United States origin salmon and steelhead.

**RATIONALE:** Recent reports of the extent of essentially unregulated high seas drift gillnetting for squid in the North Pacific by foreign nations have created extreme concern over the catches of North American origin salmon and steelhead, as well as marine mammals, birds and other non-target species. It is estimated that in excess of 20,000 miles of gillnet are set each day by 700-1,000 vessels primarily from Taiwan, Japan and South Korea. The vessels are fishing in waters known to contain U.S. anadromous fish, and the potential for large impacts is great. These gillnets if lost, continue to ghost fish and can also foul props and be a hazard to navigation. U.S. efforts to obtain information on this fishery and to control it have not been successful.

This new subsection as proposed would strengthen our ability to eliminate the interception of U.S. anadromous salmon and steelhead in waters beyond the U.S. EEZ. Interception of salmon on the high seas has a very significant adverse impact on the resource users and potentially the resource itself. This issue is considered of such importance, that to focus attention on the issue, it should be included in the Purposes Section of the Act. This language is needed in the Act so the Councils involved can request more aggressive action in solving the associated problems.

**COUNCIL CHAIRMEN'S POSITIONS:** All Council Chairmen supported this Amendment.

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**2.**

**SECTION TO BE AMENDED:** SEC. 102. EXCLUSION FOR HIGHLY MIGRATORY SPECIES

**RECOMMENDATION:** Amend (or delete) Section 102 to the effect that tuna are no longer an exempted species.

**SUGGESTED LANGUAGE:** Change language as appropriate throughout the Act.

**RATIONALE:** Contained in Inter-Council position paper that will soon be available.

**COUNCIL CHAIRMEN'S POSITIONS:**

MAFMC, SAFMC, GMFMC, NEFMC and WPFMC Chairmen in favor of Amendment.

PFMC and CFMC Chairmen oppose the Amendment.

NPFMC Chairman remains neutral on Amendment.

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3.

**SECTION TO BE AMENDED: SEC. 201. FOREIGN FISHING**

**RECOMMENDATION:** Section 201 be amended to delete language on the alternate method of establishing TALFF and the Act be amended to ensure that establishment and release of TALFF provide benefits to the U.S. fishing industry and the nation.

**SUGGESTED LANGUAGE:** None specified. Changes should be made as appropriate.

**RATIONALE:** Section 201(d) was earlier amended to create what has now become a complicated process (Annual Fishing Level) for decreasing the Total Allowable Level of Foreign Fishing (TALFF) for a particular species. It was an early attempt to get around the interpretation of the arithmetic in the original MFCMA ( $TALFF = OY - DAH$ ) coupled with fishery management plans (FMP) that required amendments to set annual quotas. To the best of our knowledge, the provision was used only once, for butterflyfish.

The current generation of FMPs make the Annual Fishing Level provision of 201(d) unnecessary. Given the current MFCMA and the concept of framework FMPs, there is greater flexibility in specifying the various quantities (Optimum Yield, Domestic Annual Harvest, Domestic Annual Processing, Joint Venture Processing, and TALFF). The concept of Allowable or Acceptable Biological Catch (ABC) has also been introduced. Additionally, establishing the specifications annually is generally a matter of a proposed rulemaking or a notice action.

In light of the above evolutionary measures, portions of Section 201 are no longer needed.

**COUNCIL CHAIRMEN'S POSITIONS:**

All Council Chairmen supported this Amendment.

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4.

**SECTION TO BE AMENDED: SEC. 204. PERMITS FOR FOREIGN FISHING**

**RECOMMENDATION:** Congress should review Section 204(b)(10)(B) for purposes of revising the formula by which foreign fishing fees are calculated to eliminate the inclusion of the amounts of fish harvested in the territorial sea, shellfish and the recreational fishery from the formula; and to further review Section 204(b)(10)(F) to reconsider the purpose for which foreign fees are escrowed.

It is further recommend that in view of the fact that the NOAA Fisheries budget is subjected to continued statutory reductions, all fishing fees collected be dedicated to the purpose of supporting the responsibilities of the NOAA Fisheries in their support of the MFCMA including research, data gathering and enforcement.

**SUGGESTED LANGUAGE:** None specified. Changes should be made as appropriate.

**RATIONALE:** Current formula includes recreational catch and shellfish catch; hence lacks equity. Excluding territorial sea, recreational and shell fisheries will increase base revenue by about 30%. This would raise the fees to foreign nations to more closely approximate the actual cost of having them fish in our EEZ. The fees collected could be made available to provide funding for NOAA Fisheries to fulfill their legislated fisheries mandates.

**COUNCIL CHAIRMEN'S POSITIONS:** All Council Chairmen except the PFMC supported this Amendment. The PFMC Chairman opposed the Amendment.

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5.

**SECTION TO BE AMENDED:** SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS

**RECOMMENDATION:** Amend Section 302 (a)(1) through (6) and (8) to specify an obligatory Council seat from each State.

**SUGGESTED LANGUAGE:** (Current language in regular type and new language in bold type and underlined, words bracketed are deleted)

.....by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed to an obligatory seat for [from] each state from a list of three or more individuals submitted by that state for that seat).

**RATIONALE:** NMFS has revised 50 CFR 601 providing that the obligatory seat would be filled from nominees submitted by the Governor of that state for the obligatory seat and for all at-large seats. While this is a better alternative than originally proposed in the draft regulations it does not satisfactorily resolve the issue. The Governors should continue to retain the flexibility of nominating certain individuals for certain seats. The NMFS regulations would change the present system and take this flexibility away from the Governors.

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necessary under the MFCMA. Each MFCMA plan or amendment now prepared is in itself very similar to an EIS. Removing this requirement will lessen procedural hurdles that slow the plan and amendment process.

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