



COMMANDER
SEVENTEENTH COAST GUARD DISTRICT
JUNEAU, ALASKA

15 MAR 1977

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Dear Jim:

I have two suggestions for the agenda of this next Council meeting. First, I would like my designee, CDR GIFFIN, to give a short report on CG/NMFS enforcement experiences since the implementation of the FCMA. This report, lasting about 10 minutes, would cover the deployment of patrol resources, the attitudes of the foreign fishermen, the enforcement problems encountered thus far, and projections for the future.

Second, in reviewing your schedule for the development of Council management plans (agenda item 14 of February's meeting) I note an issue which I don't believe the Council has addressed. Although the fishing regulations (50 CFR 611) and all the vessel permits I have seen thus far expire on 31 December 1977, no management plan will be implemented until mid-January 1978. This could well mean that in 1978, foreign fishing will again be controlled under Preliminary Management Plans rather than Council developed management plans. 50 CFR 611.3d requires the submission of permit applications at least 120 days prior to the commencement of fishing so SECSTATE should start receiving 1978 foreign fishing applications no later than September 1977. If one also considers the FCMA's built-in delays for processing permit applications, including the 45 day period for their review by the Council, it is clear that allocations of fish surpluses among the foreign applicants should be made no later than mid-October 1977. Thus, in the absence of council developed plans in October, the total allowable level of foreign catch in 1978 will be determined on the basis of the Preliminary Management Plans.

While I can recommend no single solution to the problem, I think the following factors may be worthwhile for Council members to consider:

a. Under section 305d of the FCMA, the Secretary of Commerce may use her emergency authority to implement a management plan even though the plan may not have yet gone through any of the required reviews or hearings. At first glance, since most plans will have been drafted by October 1977, it may appear that the Secretary's emergency authority to implement Council developed plans could solve the problem; however, I

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GIFFIN

would introduce two notes of caution. First, a regulation published under this emergency authority has a maximum life of 90 days. Second, I question whether the Secretary would use her emergency authority under the expected circumstances. She would have in one hand preliminary management plans, drafted by her own people, which probably have the approval of SECSTATE. In the other hand, she would have drafts of Council management plans which presumably set forth lower foreign catches unacceptable to SECSTATE. I assume she would opt for the former.

b. There is an implied expiration date in the Alaska preliminary management plans in that total allowable foreign catches are established for this year only. Therefore, these plans must be extended, revised, or rewritten if they are to be employed in 1978.

The Council may wish to consider some of the following alternative courses:

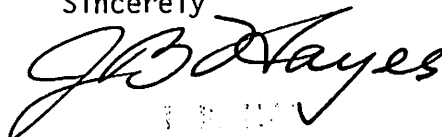
a. Accelerate development of selected council management plans which are critical with respect to foreign allocations. For example, the Bering Sea and Aleutian trawl plan presently identifies a surplus of 950,000 MT of Pollock. This figure is well above the amount the council would like to see in a management plan. Incidentally, there may be a temptation to delay development of the crab plan since the Japanese tanner crab fishery does not begin its activity until March. It could be reasoned that the Council developed crab plan is not as time sensitive as are those which control foreign fisheries starting in January. However, as long as the State of Alaska's authority to regulate the domestic crab fleet outside the 3 mile line remains in question, the Council should continue to assign a high priority to this plan.

b. It is within the scope of the FCMA to cancel a preliminary plan and implement a Council developed plan in the middle of the year. However, I believe such a shift would meet with strong resistance from SECSTATE unless adequate groundwork is laid well in advance. If the employment of preliminary plans in early 1978 can not be avoided, SECSTATE should be encouraged to inform the foreign nations that initial allocations for 1978 are subject to reductions.

c. In a similar vein, the Council should attempt to have a strong input to next year's preliminary management plans. We know which of those plans are most unpalatable to us and should start developing objective data which will convince the Secretary to bring the plans into line with our perspectives.

Jim, I am taking the liberty to distribute this letter directly to all members of the Council so it may be read in advance of the forthcoming meeting.

Sincerely



95TH CONGRESS
1ST SESSION

H. R. 2564

A BILL

To amend the Fishery Conservation and Management Act of 1976 in order to clarify the definition therein of vessels of the United States and to require the Secretary of Commerce to prepare an annual report regarding foreign investment in the United States fishing industry.

By Mr. AuCOIN and Mr. STUDDS

JANUARY 27, 1977

Referred to the Committee on Merchant Marine and Fisheries

95TH CONGRESS
1ST SESSION

H. R. 2564

IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 1977

Mr. AuCOIN (for himself and Mr. STUBBS) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To amend the Fishery Conservation and Management Act of 1976 in order to clarify the definition therein of vessels of the United States and to require the Secretary of Commerce to prepare an annual report regarding foreign investment in the United States fishing industry.

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

3 That section 3 of the Fishery Conservation and Manage-
4 ment Act of 1976 (Public Law 94-265) is amended by
5 striking paragraph (25) and inserting in lieu thereof the
6 following:

7 " (25) The term 'vessel of the United States' means
8 any vessel which—

9 " (A) is documented under the laws of the

1 United States or registered under the laws of any
2 State; and

3 “(B) is either owned by a citizen of the
4 United States, or has been continuously owned by
5 the same person who owned it prior to January 27,
6 1977.

7 “(26) The term ‘citizen of the United States’
8 means—

9 “(A) an individual who is a citizen or national
10 of the United States;

11 “(B) the Federal Government, any State or
12 local government within the United States, or any
13 entity of such a government; and

14 “(C) a corporation, partnership, association, or
15 other entity, organized or existing under the laws
16 of the United States or of any State, of which at
17 least 75 percent of the interest therein is owned by
18 a citizen or citizens of the United States: *Provided,*

19 That a corporation is not a citizen of the United
20 States—

21 “(i) unless its president or other chief ex-
22 ecutive officer and the chairman of its board of
23 directors are citizens of the United States and
24 no more of its directors than a minority of the

1 number necessary to constitute a quorum are
2 noncitizens, or

3 “(ii) if 75 percent of the interest in such
4 corporation is not deemed to be owned by citi-
5 zens of the United States under the provisions
6 of section 2 (c) of the Shipping Act of 1916,
7 as amended (46 U.S.C. 802 (c)).”

8 SEC. 2. Section 204 (b) (1) of such Act of 1976 is
9 amended by adding at the end thereof the following: “(For
10 purposes of this Act, any foreign nation may treat, as a
11 vessel under the flag of such nation, any vessel which is
12 documented under the laws of the United States or registered
13 under the laws of any State, if more than 25 percent of the
14 vessel is beneficially owned by an individual who is a citizen
15 of such nation or by a legal entity which is organized or
16 existing under the laws of such nation.)”

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17 SEC. 3. (a) The Fishery Conservation and Management
18 Act of 1976 (Public Law 94-265) is further amended by
19 adding at the end thereof the following new section:

20 “SEC. 407. ANNUAL REPORT REGARDING FOREIGN IN-
21 VESTMENT IN THE UNITED STATES FISHING
22 INDUSTRY.

23 “(a) CONTENTS OF REPORT.—(1) Before March 1 of
24 each year, the Secretary shall submit to Congress a report
25 on foreign investment in the United States fishing industry

1 during the immediately preceding calendar year. Such re-
 2 port shall include, but not be limited to, information
 3 regarding—

4 “(A) the nature and degree of such foreign
 5 investment;

6 “(B) the disposition of the fish processed by United
 7 States fishing enterprises in which there is foreign in-
 8 vestment, including information regarding the type of
 9 products into which such fish were processed and where
 10 such fish and the products derived therefrom were
 11 marketed;

12 “(C) the effect of such foreign investment on the
 13 employment of citizens and nationals of the United States
 14 in the United States fishing industry, including but not
 15 limited to the degree to which United States citizens
 16 exercise management control over companies in which
 17 there is foreign investment; and

18 “(D) the effect on the United States balance of
 19 payments.

20 “(2) The Secretary shall include in each report re-
 21 quired under paragraph (1)—

22 “(A) a current evaluation of the overall impact
 23 which foreign investment has had on the United States
 24 fishing industry;

1 “(B) an estimate of the future trends in such in-
 2 vestment by industry and by geographic region; and

3 “(C) an opinion by the Secretary with respect to
 4 whether or not current or future foreign investment in
 5 the United States fishing industry is adversely affecting,
 6 or may adversely affect—

7 “(i) the carrying out of the purposes and
 8 policies of this Act;

9 “(ii) the financial condition of the United
 10 States fishing industry and related industries, in-
 11 cluding but not limited to fishing vessel construc-
 12 tion and repair, marine supply, fish processing, and
 13 fish processing equipment manufacture;

14 “(iii) the availability of domestic financing for
 15 industries identified in (ii);

16 “(iv) the competitive position of United States
 17 exports of fish and fish products in world markets;

18 “(v) any other aspect of the national interest
 19 which the Secretary deems appropriate.

21 If the Secretary is of the opinion that there is, or may be,
 22 adverse impact as a result of foreign investment in the United
 23 States fishing industry, the Secretary shall include with the
 24 report his recommendations (including suggested legislation)
 25 for ameliorating such impact.

1 “(b) REGULATIONS.—(1) The Secretary shall pre-
2 scribe such regulations as may be necessary and appropriate
3 to carry out this section, including, but not limited to, regu-
4 lations requiring any appropriate person who is subject to
5 the jurisdiction of the United States to furnish any informa-
6 tion which is determined by the Secretary to be necessary
7 to carry out this section.

8 “(2) The Secretary of the Treasury shall provide to the
9 Secretary such assistance (including such pertinent informa-
10 tion as may be at the disposal of the Secretary of the Treas-
11 ury) as the Secretary may request for purposes of carrying
12 out this section.

13 “(3) Any information submitted to the Secretary by
14 any person in compliance with any requirement under this
15 subsection shall be confidential and shall not be disclosed
16 except when required under court order. The Secretary shall,
17 by regulation, prescribe such procedures as may be necessary
18 to preserve such confidentiality, except that the Secretary
19 may include in any report required to be made under this
20 section any such information in any aggregate or summary
21 form which does not directly or indirectly disclose the iden-
22 tity or business of any person who submits such statistics.

23 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated such sums as may be
25 necessary to carry out the purposes of this section.”

April 26, 1977

REPORT to the North Pacific Regional Management Council

In Re: To Joint Ventures and Foreign
Ownership of U. S. Fishing Vessels

In trying to find some common ground for recommendations to the Council, a Questionnaire was circulated to the Advisory Panel Members. The only point established is that ideally Joint Ventures should be shore-based, utilizing U. S. fishermen and processing personnel.

Delivery of raw fish to foreign processing vessels should not be allowed as this could only hinder the shore-based operations, and there is no clear-cut idea of how far this could go towards competing in all phases of the fishery. Possibly by utilizing cheap labor, this could kill off the present industry we now have.

The legal interpretations of what is possible so far as U. S. statutes go in controlling foreign ownership of U. S. fishing vessels appear to be what different attorneys and agencies want them to be.

However, it is our recommendation that foreign investments in the fishing industry be limited to 50% of any company.

Also, any company operating fishing vessels be limited to 25% foreign ownership. This corresponds to Coast Guard documentation regulations.

In regard to HR 2564 (Mr. AuCoin and Mr. Studds Amendment to the Fishery and Management Act of 1976), we feel the bill has a lot of good points but the amendment to Sec. 2, Section 204-(b)-(1) leaves us confused. If it means that U.S. documented vessels more than 25% controlled by foreign nationals be allowed to deliver their product to foreign processing vessels, we strongly disagree.