

M E M O R A N D U M

TO: Council, SSC, and AP Members

FROM: Jim H. Branson
Executive Director

DATE: December 3, 1980

SUBJECT: Foreign Fishing Fees for 1981

ACTION REQUIRED

Comment on Notice of Proposed Rulemaking on foreign fishing fees for 1981.

BACKGROUND

NMFS published in the Federal Register on May 30, 1980 an Advance Notice of Proposed Rulemaking concerning foreign fishing fees. In that notice, NMFS explained that it was examining alternative fee structures to recover costs of the federal government of administering the foreign fishing aspects of the FCMA. Comments were requested on two alternatives: effort-based fees and poundage-based fees. I responded by letter to Roland Smith on July 3, 1980 that my preference was for an extension of the current poundage fee system based on ex-vessel value of the catch, and further suggested that improved observer coverage is necessary regardless of the fee system chosen and that better cost and earnings data are needed on foreign fisheries in the U.S. FCZ. I also encouraged NMFS to examine the possibility of a bid system for surplus fishery resources to recover costs of maintaining the foreign fishery.

These issues were raised before the Council at the July meeting. The Advisory Panel endorsed the increased percentage fee and 100% observer coverage on foreign vessels. At the Council's direction I sent a second letter on July 30, 1980 to Roland Smith confirming the Council's endorsement of my previous letter and a poundage fee.

On November 13, 1980, NMFS published in the Federal Register a Notice of Proposed Rulemaking (attached) on foreign fishing fees. This notice proposes fees based on poundage and increased for 1981 to reflect best estimates of value of the fish caught. The proposed fees are roughly twice those charged in 1980. Also proposed are changes in fee collection procedures and NMFS's intent to collect the full 20% surcharge authorized by the Fishermen's Protective Act of 1967 as amended. Comments on this notice must be postmarked no later than midnight, December 15, 1980.

Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

Foreign Fishing Regulations; Fee Schedule

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: For the past ten months, NOAA has reviewed the foreign fishing fees. As a result of this review, NOAA proposed a new fee schedule for foreign fishing in 1981; sets the surcharge level at 20 percent; proposes new fee collection procedures; proposes a format for the Effort Plan; and announces a public hearing on these issues.

DATES: A public hearing will be held beginning at 10:00 a.m. on December 8, 1980. Persons wishing to attend should notify the National Marine Fisheries Service at the address given below no later than December 3, 1980. If interest warrants, an additional hearing will be scheduled. Written comments on these proposed regulations must be postmarked no later than midnight, December 15, 1980.

ADDRESSES: The public hearing will be held in Room B-100 of the Page Building #1, 2001 Wisconsin Avenue, N.W., Washington, D.C.

Notification of attendance and written comments may be addressed to: Denton R. Moore, Chief, Regulations and Permits Division, F/CM7, National Marine Fisheries Service, 33000 Whitehaven Street, N.W., Washington, D.C. 20235. Telephone (202) 634-7432 or 653-5526.

FOR FURTHER INFORMATION CONTACT: Miss Susan Jelly, telephone (202) 634-7432 or 653-5526.

SUPPLEMENTARY INFORMATION: The four substantive issues presented in this proposed rulemaking are related and pertain to the requirements outlined in Section 204 (b)(10) of the Fishery Conservation and Management Act of 1976, as amended (the FCMA), 16 U.S.C. 1801 *et seq.* That section requires the Secretary of Commerce to establish and publish a schedule of reasonable fees which may take into account the cost of carrying out the provisions of the FCMA. A proposed rulemaking to

amend the vessel permit application fee was published on October 1, 1980 (45 FR 64995).

Proposed Poundage Fee Schedule for 1981

The fees charged foreign fishermen for fishing in the fishery conservation zone (FCZ) have been reviewed by NOAA for more than a year. A national conference was convened in Washington, D.C. in the summer of 1978 expressly to review the fee structure and its underlying philosophy. This was followed by an intensive inhouse review comparing the U.S. system with systems used elsewhere. This study culminated in an advance notice of proposed rulemaking which appeared in the Federal Register on May 30, 1980 (45 FR 36460). That notice solicited public notice advice and comment regarding the fee system.

One option suggested in the Notice was an "effort" fee based on vessel days on the grounds. The proposal was opposed by virtually all commenters for various reasons.

Another issue raised in that Notice concerned the level of fees which should be charged. Public sentiment, reflected in recent Congressional activity, clearly favors significantly increased fee levels for a variety of reasons. Fees should be set at a level which defrays a significant portion of the costs incurred while administering the Act as it pertains to foreign fishing. The practice in previous years has been to charge a flat 3.5 percent of the published U.S. price for all species for which domestic markets exist. It has been pointed out that the U.S. price for certain species may not accurately reflect the international value of those species. Moreover, the flat-fee approach, while administratively appealing, did not reflect the economic variables associated with some fisheries. Thus, for 1981, we have

departed from the practice of charging 3.5 percent of the value of the fish to a practice of setting a fee that reflects our best estimate of a reasonable level for the fishery, and blends U.S. and foreign prices when the U.S. price does not reflect the international value. The proposed fees are roughly twice those charged in 1980, although there are some exceptions.

The proposed fee for each allocated species is set forth in Table 1 below. Explanation of certain fees are included:

1. *Butterfish*. NMFS proposes a fee of \$65/mt. This species is highly valued overseas and is a fishery the United States wish to develop.

2. and 3. *Hake (red and silver)*. NMFS proposes fees of \$7/mt for each. These are the same fees paid in 1979. The fee is not increased because NMFS suspects the fishery is only marginally profitable even at these low fees.

5. *Atlantic mackerel*. NMFS proposes \$37/mt since mackerel are a highly desirable species in the United States and overseas.

8. *Illex squid*. NMFS proposes \$36/mt. While \$36 is six times the present fee, the foreign countries paid \$16.50/mt for this desirable species in 1979.

9. *Loligo squid*. NMFS proposes \$70/mt, since *Loligo* squid is a very desirable species and one the U.S. industry wishes to export.

16. *Pacific Ocean Perch*. NMFS proposes \$44/mt. This is a species already almost fully utilized by U.S. fishermen, and higher fees are entirely appropriate.

19. *Sablefish*. NMFS proposes \$55/mt for all sablefish. NMFS proposes to charge the same fee for longline-caught and trawl-caught sablefish, instead of different fees as in the past.

23. *Pacific whiting*. NMFS proposes \$8/mt. NMFS does not believe that a higher fee will be economical.

Table 1.—1981 Poundage Fees

Species	1980 dollar value	1980 fee (dollars per metric ton)	1981 dollar value	Proposed 1981 fee (dollars per metric ton) ^a	Percent of 1981 dollar value
1. Butterfish.....	927	32.454	1,019	65	6.4
2. Hake, red.....	315	11.03	266	7	2.6
3. Herring, silver.....	369	13.92	378	7	1.9
4. Herring, river.....	113	3.98	138	8	6
5. Mackerel, Atlantic.....	530	18.55	1341	37	11
6. Other finfish (Atlantic).....	930	32.55	1853	56	7
7. Sharks (Atlantic).....	1,091	38.19	423	30	7
8. Squid, <i>Illex</i>	176	6.16	522	36	7
9. Squid, <i>Loligo</i>	993	34.76	736	70	10
10. Shrimp, royal red.....			5,445	191	3.5
11. Atka mackerel.....	223	7.81	114	8	7
12. Cod, Pacific.....	419	14.67	586	41	7
13. Crab, Tanner.....	882	30.87	627	50	8
14. Flounders.....	397	13.90	550	30	5
15. Jack mackerel.....	154	5.39	198	20	10
16. Pacific ocean perch.....	397	13.90	440	44	10
17. Other groundfish (Pacific).....	56	1.96	220	8	3.5
18. Alaskan pollock.....	220	7.70	241	16.50	7
19. Sablefish.....	1,587	55.55	705	55	7.8

Table I.—1981 Poundage Fees—Continued

Species	1980 dollar value	1980 fee (dollars per metric ton)	1981 dollar value	Proposed 1981 fee (dollars per metric ton) ^a	Percent of 1981 dollar value
20. Rockfish.....	397	13.90	*375	30	8
21. Snails.....	658	23.03	(?)	46	
22. Squid, Pacific.....	324	11.34	(?)	23	
23. Whiting, Pacific.....	176	6.16	*176	8	5
24. Dolphinfish (Mahi mahi).....	4,354	152.39	¹⁰ 5,635	197	3.5
25. Other billfish.....	1,111	38.89	¹⁰ 1,477	52	3.5
26. Precious coral.....			(?)	Reserved	
27. Seamount groundfish.....	397	13.90	(?)	14	
28. Sharks, Pacific.....	825	26.68	¹¹ 123	4	3.5
29. Striped marlin.....	2,816	98.56	¹⁰ 3,693	129	3.5
30. Swordfish.....	3,036	106.26	¹¹ 3,201	112	3.5
31. Wahoo.....	2,968	103.88	¹⁰ 5,071	177	3.5

¹Maine, Massachusetts, Rhode Island, New York, New Jersey, and Virginia landings, January–May 1980.

²NMFS Southeast Region estimate.

³Gulf of Mexico landings, January–June 1980.

⁴NMFS Alaska Region estimate.

⁵NMFS Northwest Region estimate based on negotiated prices of West Coast Fishermen's Marketing Association and actual prices reported by Washington Department of Fisheries.

⁶NMFS Market New, Seattle.

⁷No U.S. prices are available.

⁸Survey by NMFS Northwest Region of processing firms.

⁹To be determined if an application is received.

¹⁰Hawaii landings, January–March 1979.

¹¹Hawaii landings, year of 1979.

¹²Averaged 1980 U.S. and 1979 Japan prices.

Fee Collection Procedures

The foreign fishing regulations pertaining to fee collection present several serious administrative problems both for the United States and the foreign nations involved.

Two modifications to the present system are proposed. The first is to require foreigners to establish and maintain a letter of credit for at least 25 percent of the annual poundage fee (based on the 1980 allocations where applicable; otherwise set by NMFS) and surcharge required by the Fishermen's Protective Act of 1967, as amended, rather than paying for the annual allocation in advance of fishing.

Each foreign nation will be responsible for maintaining its letter of credit at the required level at all times. This is a condition of continuing in the fishery.

Congress is now considering legislation which may provide for the transfer of foreign fishing fees paid to the Secretary of Commerce to a fisheries loan fund. If this legislation is enacted in 1980, the NOAA will amend these proposed fee collection procedures in order to adequately capitalize the fisheries loan fund. This amendment would require foreign nations to pay 20 percent of their 1981 poundage fees (effective January 1, 1981) and the related surcharge in advance of catching operations. The 20 percent cash payment (and surcharge) will be credited to that country's account in equal amounts at the end of the second quarter (after June 30) and at the end of the third quarter (after September 30), where appropriate.

The second proposal would amend the regulations so that foreign fishermen would pay poundage fees on a quarterly basis for fish actually caught in the previous three months. This procedure would be a significant improvement both for foreign nations and the United States. One reason is purely economic. By deferring cash settlements until after fish are actually caught, the debt service (now approximately 15 percent) is minimized. Refunds are no longer required. Fishing can be conducted on a more orderly and predictable basis. For the United States this change will reduce the bookkeeping burden, lessen the chance of error, and save about 1,200 staff hours per year.

A second, related problem arises because of in-season adjustments to the foreign allocations. These adjustments almost invariably involve making additional fish available to foreign fishermen so that operations may be continued. Again, the existing processes which involve prepayment tend to inhibit the orderly conduct of the fisheries. In 1979, 104 separate collection actions were initiated. These tended to overlap, partly because of the time required for their processing, but also as a result of the dynamics of the fisheries involved.

This amendment will also reduce international disagreements over catches. Discrepancies between foreign and NOAA estimates of the foreign catch would be resolved every three months, instead of being allowed to accumulate over an entire year. This will give the NOAA and the Regional Fishery Management Councils a better

opportunity to manage foreign fishing on a real-time basis.

The new process would be to bill each nation for its actual catch in the fishery conservation zone during the following periods: January–March, April–June, July–September, and October–December. Countries would have 45 days to resolve catch figures with the Regional Director, and NMFS would then draw on the letter of credit for instantaneous payment.

Fishing Vessel and Gear Damage Compensation Fund

The NMFS proposes to collect the full 20 percent surcharge authorized by the Fishermen's Protective Act of 1967, as amended. The surcharge will be assessed against actual poundage fees and permit application fees, rather than fees paid for the allocation. The surcharge will be collected when vessel permit application fees are submitted, and when quarterly bills are prepared, unless the 20 percent advance payment is required.

Effort Plan

A format for the effort plan is proposed.

Other Matters

The Assistant Administrator for Fisheries, NOAA, has determined that these proposed amendments do not constitute a major Federal action within the meaning of the National Environmental Policy Act of 1969, as amended, since the amendments will not affect the quantity of fish harvested by foreigners. Therefore, no environmental assessment or environmental impact statement is required. The Assistant Administrator also has determined that these proposed amendments do not constitute a significant action under Executive Order 12044, and therefore do not require the preparation of a regulatory analysis.

Authority: 16 U.S.C. 1801 *et seq.*

Signed in Washington, D.C., this 28th day of October, 1980.

Robert K. Crowell,
Deputy Executive Director, National Marine Fisheries Service.

The NMFS proposes to amend 50 CFR Part 611 as follows:

1. Section 611.15(a) is amended by adding a new paragraph (8) to read as follows:

§ 611.15 Fishery closure procedures.

(a) * * *

(8) A nation has not established and maintained a letter of credit as required in paragraph 611.22(a).

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