

DECEMBER

TO: Council, AP and SSC Members
FROM: Jim H. Branson
Executive Director
DATE: December 4, 1987
SUBJECT: Legislative Update

ACTION REQUIRED

Information Only.

BACKGROUND

User Fees

There has been no action, as yet, on H.R. 3341, the "Fisheries Research Funding Act of 1987" introduced by Rep. Don Young on September 23. The bill would impose a schedule of fees on both commercial harvesting and processing vessels operating in the EEZ and also require a fishing license for recreational fishing in the zone. The fee schedule is as follows:

- Harvesting Vessel - \$45 per vessel annually
- Processing Vessel - \$2 per ton of fish purchased by the vessel for processing within the EEZ
- Recreational Fishing License - \$15 annually for anyone 16 and over

The fees are to be collected by the Secretary of Commerce and deposited into the Fisheries Research Fund. The fees are to be distributed annually as follows:

1. 25% to the Regional Fishery Councils
2. 10% to the Pacific Marine Fisheries Commission
3. 10% to the Atlantic States Marine Fisheries Commission
4. 5% to the Gulf States Marine Fisheries Commission
5. 50% to NMFS

The Council distribution is to be prorated on the basis of the amount of the fees collected from commercial harvesters and processors within the respective Council jurisdictions; however, no Council may receive less than 5% of the amount available to all Councils.

The bill also provides a schedule of severe penalties for violations. Failure to pay fees charged to commercial harvesters and processors is punishable by a fine not to exceed \$25,000 per violation and may lead to a one-year suspension of harvesting or processing privileges. Recreational fishing in the EEZ without a license is subject to a \$100 fine. No committee or subcommittee hearings will be held on this bill until next year.

National Oceans Policy Commission

On September 29, the House approved H.R. 1171, legislation creating a National Oceans Policy Commission. The 17-member Commission is to make recommendations to Congress and the President regarding a comprehensive oceans policy for the U.S.

The Senate has yet to act on S. 562, a bill introduced by Senator Weicker (R. Conn.) in February, that would create a panel similar to that created by H.R. 1171 but titled the National Marine Policy Commission.

Vessel Safety

On October 22 the House Merchant Marine and Fisheries Committee, Subcommittees on Fisheries and Wildlife Conservation and the Environment, and Coast Guard and Navigation, marked up H.R. 1841, the "Commercial Fishing Industry Vessel Safety and Compensation Act of 1987." As reported to the full Committee, the bill provides the following regarding compensation for injuries:

1. A seaman may not sue to recover any loss resulting from a temporary illness or injury suffered in the course of his employment on a fishing, fish processing, or fish tender vessel as long as the employer or vessel owner, during the recovery period, pays for wages (maintenance) equal to $66\frac{2}{3}\%$ of the seaman's wage or share, or \$30 a day, whichever is higher, and for medical care (cure). The maintenance and cure must be provided within 14 days of notification of the injury.
2. A vessel owner or operator must be notified of all injuries: within 30 days for temporary and within 90 days for permanent injuries. Failure to provide such notice could serve as a bar to civil actions against the employer, vessel owner or vessel.
3. The limitation on compensation set out in paragraph 1 above would not apply if a temporary illness or injury is caused by the employer's or vessel owner's gross negligence or willful misconduct, by a violation of safety standards established by the legislation, or failure to provide the required maintenance and cure.
4. Temporary illness, disability or injury is defined to include both physical and mental impairments.
5. A two-year statute of limitations is established for litigation against the employer or operator of a fishing, fish processing, or fish tender vessel for death or injuries suffered by a seaman on the vessel.

The bill sets safety standards and equipment requirements for commercial fishing, fish processing, and fish tender vessels including:

1. Proper venting in engine and fuel tank compartments.

2. Fire extinguishers capable of extinguishing a fuel fire, life preservers or other life saving devices for each person on board, flame arresters or backfire traps on gasoline engines, visual distress signals, EPIRBs, lifeboats, survival suits, emergency radio equipment, and other equipment the Secretary of Transportation may deem necessary.

Additionally, the bill establishes a commercial fishing industry vessel advisory committee to advise the Secretary of Transportation on safety matters and requires the Secretary to establish a plan within 18 months of the bill's enactment for inspecting fish processing vessels and, within two years of enactment, a plan for licensing operators of documented fishing, fish processing and fish tender vessels.

The House Merchant Marine and Fisheries Committee has scheduled a mark-up of H.R. 1841 for December 16 but may postpone this action until late January or early February.

Seafood Inspection

On October 23, Senator Pat Leahy (D. Vt.) introduced S. 1813, the "Safe Foods Standards Act of 1987" intended to improve the inspection of meat, poultry and fish. The bill requires the Secretary of Commerce to develop and administer a program of testing for the presence of "pathogenic micro-organisms" in "statistically selected samples of fish or fish products intended for human consumption." The samples may be taken from fish harvesters or processors.

If a harvester or processor is found to be in violation of program standards, a notice of violation is to be issued with additional sampling to follow during a 120-day review period. If the standards are exceeded during the review period, a warning will be issued and published in the Federal Register. Violations during a six-month period that begins on the date of the Federal Register notice call for a fine of \$3,000 for each day standards are exceeded, except after the fifth such day, and then the fines are \$10,000 per day. Persistent violators will be subject to special monitoring programs and fines of \$10,000 for each day standards are exceeded during the special monitoring period.

The legislation also authorizes the Secretary of Commerce to establish a water quality monitoring program to determine the effects of pollutants on fish harvested for human consumption and any causal connections between those fish and food-borne illnesses.

Plastics Pollution

On November 5, the Senate ratified Annex V of the International Convention for the Prevention of Pollution from Ships (MARPOL) which governs at-sea disposal of plastics and other garbage. Four bills have been introduced this year that would implement Annex V: S. 560, S. 663, S. 1562, and H.R. 940.

On October 13 the House passed and sent to the Senate H.R. 940, the "Marine Plastic Pollution Act of 1987." Title I of that bill implements Annex V, Title II calls for marine pollution studies, and Title III reauthorizes the National Sea Grant Program.

The House bill was referred to the Senate Commerce and Environment and Public Works Committees. On November 19, the Senate Commerce Committee adopted the provisions of H.R. 940 regarding Annex V but deleted Titles II and III of the bill. The Commerce Committee also added language that requires the Secretary of Commerce, in consultation with the Secretary of Transportation, to conduct a three-year public education program regarding the harmful effects of plastics in the marine environment.

The Environment and Public Works Committee will report out its own version of Annex V legislation and has placed a hold on any action by the full Senate on H.R. 940.

High Seas Driftnets

As reported to the Council in September, the House deleted that portion of H.R. 940 that addressed entanglement and pollution problems associated with the use of high seas driftnets. On October 29, Representatives Gerry Studds and Don Young introduced H.R. 3554, the "Driftnet Impact Monitoring Assessment and Control Act of 1987." The new House bill calls for the Department of State to negotiate monitoring and enforcement agreements with foreign countries whose fishermen fish with driftnets in the North Pacific north of 35°N latitude. If the foreign country fails to enter into a monitoring agreement within one year of the bill's enactment, permits for directed fishing in the U.S. EEZ may be denied that country. If a country fails to enter into a monitoring agreement within two years of the bill's enactment, joint venture permits for that country may be denied. If a foreign country has failed within one year of the bill's enactment to enter into an enforcement agreement, that country will be certified under Section 8(a) of the Fishermen's Protective Act and may be prohibited from exporting fishery products into the U.S. The Secretary is also required to report to Congress on the effects of driftnet fishing on marine resources of the U.S.

The House Subcommittee on Fisheries and Wildlife Conservation and the Environment passed the bill out on November 4. The House Committee on Merchant Marine and Fisheries is expected to act on the legislation within the next two weeks.

On November 19, S. 62, Senator Stevens' driftnet bill, was reported out of the Senate Commerce Committee with substantial amendments. Originally, the bill contained the following provisions:

1. A requirement that U.S. observers be placed on Japanese salmon vessels fishing in the U.S. EEZ under the authority of the INPFC.
2. A requirement that the Secretary of Commerce, within one year of the bill's enactment and annually thereafter report to Congress on the impact of driftnets on marine life.
3. A requirement that the Secretary of Commerce, within six months of the bill's enactment, develop recommendations on a driftnet marking and registration system, and evaluate the feasibility of using biodegradable materials in driftnets.

4. A requirement that the Secretary implement a net bounty program to pay for the retrieval from the EEZ of lost, abandoned or discarded driftnets.
5. The creation of a 60-mile seabird protection zone around the Aleutian Islands within which no driftnet fishing (as defined in the bill) would be allowed.
6. A requirement that the Secretary of Commerce, through the Secretary of State, negotiate with foreign nations conducting driftnet fisheries that result in the taking of living marine resources of the U.S. in waters off the coast of the U.S. to cooperate in assessing the impacts of driftnets on marine life. Foreign directing fishing permits would be withheld if any such foreign nation did not cooperate with the U.S. in the impact studies.

As reported out of the Commerce Committee, S. 62 only retained the requirements that the Secretary of Commerce: (1) report to Congress on the impacts of driftnets on marine life, (2) develop recommendations on a driftnet marking and registration system and the use of biodegradable materials, and (3) implement a bounty system. As amended, the bill requires the Secretary of Commerce to negotiate, through the Secretary of State, monitoring and enforcement agreements with foreign countries whose fishermen fish with driftnets in the "North Pacific off the coasts of the U.S." and take living marine resources of the U.S. Failure by a foreign country to enter into an enforcement agreement within one year of the bill's enactment will result in certification under Section 8(a) of the Fishermen's Protective Act.

Marine Sanctuaries Restoration Act of 1987

On November 10, Representative Studts introduced H.R. 3640, a bill that amends the Marine Protection, Research and Sanctuaries Act, to impose liability on those who cause damage to the resources of a national marine sanctuary and clarifies the authority of NOAA to recover for those damages. Recovered funds are to be deposited into a special account rather than the general fund and used to restore the affected marine sanctuaries.

Reflagging

On November 9, the House passed and forwarded to the Senate H.R. 2598, the "Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987." It was originally the intent of the Senate Commerce Committee to offer an amendment in the nature of a substitute to the House bill. The Senate substitute would not contain the House bill's provision that fishing, fish processing or fish tender vessels applying for documentation after July 28, 1987 and owned by U.S. corporations with less than 51% ownership by American citizens would be ineligible for U.S. registry.

Senator Murkowski has put a hold on the bill because he intends to offer an amendment to the Senate Committee substitute that would include the American ownership requirement. Some Senators have objected to this move and the matter is currently at an impasse.

The Administration, in a Statement of Administration Policy issued during the House consideration of H.R. 2598, objected to the ownership provision. OMB has indicated that it will recommend the President veto the bill if it passes with that provision.

The temporary moratorium on reflagging foreign processing vessels expired on November 15.

Japanese GIFA

The current GIFA with Japan expires on December 31. H.R. 3674, the House bill that provides for Congressional approval of the new GIFA, will be considered by the House Fisheries and Wildlife Subcommittee on December 9 and by the House Merchant and Marine Fisheries Committee on December 16. Some in the House are considering attaching H.R. 3584 - the driftnet bill, H.R. 940, the Plastics Pollution bill, and Sea Grant Reauthorization to H.R. 3674 before it is sent to the Senate.

Executive Order 12612

Included with the November 17 Council mailing was a copy of Executive Order 12612, signed by the President on October 26, 1987. The Executive Order restates fundamental federalism principles and:

1. Establishes federalism criteria for agencies to follow when formulating and implementing policy.
2. Limits federal agency preemption of state laws.
3. Prohibits submission of proposed legislation which is not in accord with federalism principles.
4. Requires the preparation of a "Federalism Assessment" for federal actions having sufficient federalism implications.
5. Directs OMB to ensure that the policies of executive agencies are consistent with the principles, criteria and requirements of the order.

Of particular importance to the Council in its consideration of the Crab FMP is Section 3(c) of the Executive Order which states,

"With respect to national policies administered by the States, the national government should grant the States the maximum administrative discretion possible. Intrusive, Federal oversight of State administration is neither necessary nor desirable."