

M E M O R A N D U M

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke  
Executive Director



DATE: September 22, 1988

SUBJECT: Legislative Update

ACTION REQUIRED

- (a) Marine Mammal Issues. (Will be treated in a separate handout)
- (b) Magnuson Act Reauthorization - Review discussion from Chairmen's meeting and consider appointing a Reauthorization Committee.
- (c) Other Legislation - Information only.

BACKGROUND

Since the last Council meeting there has been considerable activity in Washington, DC on issues of importance to the fishing industry. Summaries of relevant Congressional and Administration actions during the last three months appear below. Additionally, the MFCMA is up for reauthorization at the end of FY 1989. Outlined below are proposed amendments discussed at the Chairmen's meeting in July.

(a) Marine Mammals

This item will be treated in a separate handout.

(b) Magnuson Act Reauthorization

The current authorization period for the MFCMA expires on September 30, 1989. Congress is expected to hold hearings on reauthorization during the first quarter of next year. The Council may want to form a new Reauthorization Committee to propose amendments to the Act. The 1985 & 1986 Reauthorization Committee consisted of:

Don Collinworth, Committee Chairman  
Bob Mace  
John Peterson  
Jeff Stephan  
John Winther

At their July 29-30, 1988 meeting in Homer, the Council Chairmen discussed the following potential MFCMA amendments.

a. Obligatory Seats

Concern was expressed over proposed regulations and guidelines changing the method of appointing Council members. The Gulf Council proposed that the MFCMA be amended to require an obligatory seat for each Council from each state within its jurisdiction. Without an obligatory designation all seats would become at-large seats, and a person serving on behalf of a state could be nominated by a Governor of an adjoining state.

The Gulf Council proposed the following amendment: (underlined language is new; language in brackets is deleted)

Section 302. Regional Fishery Management Councils

(a)(1) - (6), and (8)

(at least one of whom shall be appointed [from] to an obligatory seat for each state from a list of individuals submitted by that state)

Council Chairmen agreed by consensus to support this proposed amendment.

b. Fast Track for Regulatory Amendments

Regulatory amendments have no fixed schedule for review and approval and are not always processed expeditiously, creating management problems. The Gulf Council suggested that regulatory amendments be included in the language of Section 304(a)(1) regarding Secretarial review and approval of FMPs and amendments. Many framework measures are implemented by regulatory amendment and it is critical they be reviewed in a timely manner.

It was suggested that Section 304(a)(1) may not be the proper place for the proposed revision. Also, some Chairmen thought that a fixed schedule might slow down the review process in some cases when it could have been completed more quickly. There was no consensus for change.

c. Joint FMP Preparation

Language was submitted that would revise §304(f) that deals with joint FMP preparation. New language is underlined, deletions are in brackets. Proposed language is:

"[No] A jointly prepared plan or amendment [may be] submitted to the Secretary [unless it is] must be approved by a majority of the combined total voting members, present and voting, of [each] all of the Councils concerned."

The Chairmen were asked to bring this issue before their Councils and submit comments to Bob Mahood, Executive Director of the South Atlantic Council.

d. Economic Rent and User Fees

The Gulf Council suggested amending §304(d) of the Act to allow fees charged for limited access systems to be set at a level above those needed for administrative costs. The rationale is that these operations should be charged economic rent for being granted exclusive access to a common property resource. It was suggested that perhaps this should be applied to all fisheries, not just limited access fisheries, as the need for more data collection and research escalates.

No consensus was reached on approval of this proposed amendment, but it will be included with the other amendments Mr. Mahood will be developing for the Councils' consideration.

e. Tuna Exemption

The Pacific Council opposes including tuna under Magnuson Act authority. The Caribbean Council is not opposed to including tuna under the Act, but has discussed the issue and not taken a formal position. Other Councils thought the tuna exemption makes management of other fisheries in their jurisdictions more difficult. The Western Pacific and South Atlantic Councils have both commissioned studies on this proposal. It was decided that an ad hoc group composed of the Chairmen, or their designees, will meet to review the reports and draft proposed amendments to the Act. Each Council was asked to write a position paper on this issue for the ad hoc committee's review. The New England Council will coordinate this effort.

f. Other Statutory Amendments

Paperwork Reduction Act Exemption

The Gulf Council submitted a draft letter for consideration by all Councils. The letter, addressed to both the House Committee on Government Operations and the Senate Committee on Governmental Affairs, points out the conflict between the need for data collection under the Magnuson Act and the annual reduction of data collection budgets under the Paperwork Reduction Act. The Council Chairmen agreed to send the letters and the Gulf Council will prepare them for Council signatures.

(c) Other Legislation and Proposed Regulations

A. Vessel Safety

On September 9, 1988 the President signed H.R. 1841, the Commercial Fishing Industry Vessel Safety Act of 1988, into law. Key elements of that bill are:

1. Fish harvesting, processing and tender vessels must be equipped with
  - (a) fire extinguishers rated for fuel fires,
  - (b) at least one life preserver or other life saving device for each person on board,
  - (c) flame arrestors or backfire traps on inboard gasoline engines,
  - (d) vented engine and fuel tank compartments and,
  - (e) visual distress signals.

2. Documented harvesting, processing and tender vessels must also carry:
  - (a) EPIRBs,
  - (b) lifeboats or life rafts,
  - (c) survival suits for all on board (required for vessels operating in the Atlantic north of 32°N latitude or south of 32°S latitude and vessels operating in other waters north of 35°N latitude or south of 35°S latitude),
  - (d) radio equipment sufficient to communicate with the Coast Guard,
  - (e) navigational equipment, and
  - (f) first-aid supplies.
3. Vessels built after December 31, 1988, or that undergo a major conversion completed after that date, and that have crews larger than 16 must also be equipped with:
  - (a) Radars and fathometers,
  - (b) lifesaving equipment, survival suits, signaling devices, bilge pumps and bilge alarms,
  - (c) fire protection and fire fighting equipment, and
  - (d) fuel, ventilation and electrical systems.
4. Vessels less than 36 feet in length and not operating on the high seas are exempt from the life raft requirement.
5. The Secretary of Transportation must promulgate regulations regarding the operating stability of harvesting, processing and tender vessels built, or converted, after December 31, 1989.
6. Processing vessels built after July 27, 1990, or that undergo a major conversion after that date, must be certified to be in compliance with survey and classification requirements established by the American Bureau of Shipping.
7. A 17-member Commercial Fishing Industry Vessel Advisory Committee is created to advise the Secretary of Transportation on marine insurance, vessel safety, and personnel qualification and training matters.
8. Within two years of the legislation's enactment, the Secretary of Transportation must submit a plan to Congress for the licensing of operators of documented fishing, processing and tender vessels.
9. Before January 1, 1990 the National Academy of Engineers, in consultation with the Secretary of Transportation, the National Transportation Safety Board and the Commercial Fishing Industry Vessel Advisory Committee must prepare a study of safety problems on harvesting, processing and tender vessels and recommend whether to implement a vessel inspection program.

10. Fishermen injured while working on harvesting, processing and tender vessels must report the injury to the master of the vessel within 7 days of the date on which the injury occurred.

B. U.S./U.S.S.R. GIFA

The bill to approve the comprehensive fisheries agreement between the U.S. and Soviet Union, H.R. 4919 (item C-1(a)), was introduced on June 27, 1988 and reported out the House Merchant Marine and Fisheries Committee on September 15, 1988 with amendments providing for:

1. A North Pacific and Bering Sea Fisheries Advisory Body to advise the U.S. representative to the U.S./U.S.S.R. International Consultative Committee. The Advisory Body is a 12-member committee established by the Secretary of State with the following membership--
  - (a) The Director of the Washington Dept. of Fisheries
  - (b) The Commissioner of the Alaska Dept. of Fish and Game
  - (c) Five members appointed by the Secretary of State from a list of ten nominees submitted by the Governor of Alaska and,
  - (d) Five members appointed by the Secretary of State from a list of ten nominees submitted by the Governor of Washington.

Members are to receive no compensation for their work on the Advisory Body.

2. A requirement that foreign fishing vessels while in the U.S. EEZ stow fishing gear below decks, in an area where it is not readily available for fishing, or otherwise render it unusable for fishing unless the vessel is authorized to engage in fishing in the area in which the vessel is operating.
3. A requirement that the Secretaries of State, Commerce and Transportation, "exercise their authority under §201(c)(2)(C)" of the MFCMA to require foreign vessels fishing in the U.S. EEZ be equipped with transponders or other position fixing and identification equipment. Section 201(c)(2)(C) of the MFCMA grants discretionary authority to the Secretary of Transportation to require such equipment on foreign vessels fishing in U.S. waters. Within 180 days after enactment, the Secretary of Commerce is to report to the House Merchant Marine and Fisheries Committee and the Senate Committee on Commerce, Science and Transportation on the Administration's efforts in this matter.

H.R. 4919 is scheduled for floor action in the House on September 26.

C. Territorial Sea and Contiguous Zone Extension Act of 1988

H.R. 5069 was introduced on July 14, 1988 by Representative Mike Lowry. The bill establishes a 12-mile territorial sea and 24-mile contiguous zone around the U.S. for purposes of protecting national security, enforcing U.S. laws on vessels operating off the coasts of the U.S. and conforming U.S. laws with prevailing international law. The bill would also establish a National Oceans Policy Commission to assist in implementing the territorial sea and contiguous

zone legislation and to propose to Congress and the President a comprehensive oceans policy.

After a hearing before the House Oceanography Subcommittee, the bill was amended to ensure that current state fishery management authority would not be altered by passage of the new legislation.

The new language is:

"§101(c) Authority of States to Manage Fishery Resources.--The extension of the territorial sea by this Act shall not affect the authority of States to manage fishery resources, as such authority existed prior to the extension."

H.R. 5069 has been reported out of the House Merchant Marine and Fisheries Committee but is being held in the House Foreign Affairs and Judiciary Committees. Representative Lowry is confident the bill will be brought to the floor of the House before adjournment.

The President was to have issued a proclamation during the first half of this month extending the territorial sea and contiguous zone; however, consultations within the Administration have taken longer than anticipated. A proclamation is now expected sometime from mid- to late October.

#### D. NOAA as an Independent Agency

Also on July 14, 1988 Representative Lowry introduced H.R. 5070, a bill that would establish NOAA as an independent agency. No action is expected on this legislation before adjournment.

#### E. The Trade Act of 1974

On July 13, 1988, Senator Moynihan (N.Y.) introduced S. 2638 and S. 2640 that would authorize Section 301 actions under the Trade Act of 1974 for acts and practices by foreign countries that diminish the effectiveness of international agreements protecting endangered or protected species (S. 2638) or international fishery conservation programs (S. 2640). As noted by Senator Moynihan in his statement accompanying the introduction of the legislation (item C-1(b)), current sanctions available to the U.S. to address the subject practices are insufficient. Broader trade sanctions may be more effective in stopping those practices. Senator Moynihan also noted that the legislation would allow private parties to petition the U.S. trade representative under Section 301 for relief against any burden caused by the failure of a foreign government to enforce agreements or conservation programs.

#### F. Seafood Inspection

No action is expected prior to adjournment on any of the bills currently before Congress regarding seafood research and inspection. The GAO report on this topic, Seafood Safety - Seriousness of Problems and Efforts to Protect Consumers, released last month concluded the following:

"- Seafood illness data reported to the Centers for Disease Control from 1978 to 1984, while recognized as incomplete, represented about 5% of all food-borne illness cases. In addition, the U.S. Food and Drug Administration (FDA) in 1986 found adverse seafood samples - those in violation of regulations and requiring action - about 29% of the time, but the majority of these adverse findings would not be considered direct threats to human health.

- Unlike the meat and poultry industry, seafood is not subject to mandatory, 100% product inspection by the federal government. However, federal and state agencies perform safety-related inspections, data gathering and research activities to help monitor the condition of the nation's seafood.

- Many experts said that seafood safety problems do not reflect the need for major changes in federal programs. However, they identified specific areas for improvement, such as better tests for microbiological pathogens and more research on chemical contamination and human illness."

On the basis of this information, GAO concludes that there is no compelling case at this time for implementing a comprehensive, mandatory federal seafood inspection program similar to that used for meat and poultry. Copies of the report may be obtained from the GAO by calling (202) 275-6041.

#### G. U.S./Canada Trade Agreement

The U.S./Canada trade liberalization agreement has passed both houses of Congress and awaits the President's signature. The agreement provides for a ten-year phase out of tariffs on products traded between the two countries.

The agreement's fate in Canada is uncertain. While the accord passed the House of Commons, it is being held in the Canadian Senate. This delay is being used by the Liberals to force the Prime Minister to call an election.

The Senate intends to hold a series of hearings on the agreement and may propose substantial amendments. If the agreement is amended it must be sent back to the House of Commons. If the Conservatives do not win a majority in the election, the trade agreement may be doomed.

#### H. Marine Research Centers

At the April meeting, the Council was briefed on S. 2068, a bill that seeks to create regional marine research centers. The centers are to consist of existing marine research facilities and are to provide a regional focus for planning, coordinating and conducting marine scientific research. Alaska would be designated as a separate region, and the Alaska marine research center could be funded annually at a level not to exceed \$3 million.

S. 2062 is a bill that creates the Regional Marine Research Trust Fund to carry out the purposes of S. 2068. The fund would consist of unobligated balances of the Offshore Oil Pollution Compensation Fund and additional sums as appropriated by Congress.

Hearings have been held on S. 2068 and the House companion legislation, H.R. 4231. However, floor action in either house on this legislation before adjournment is doubtful.

I. Budgets

No final action has been taken on the FY 1989 budget. The Councils and NMFS should be funded at the actual FY 1988 budget levels, i.e., FY 1988 appropriations minus a Gramm-Rudman reduction.

J. Chemical, Drug and Alcohol Testing of Personnel on Commercial Vessels

On July 8, 1988 the Coast Guard published a notice in the Federal Register proposing to implement a drug abatement program which would include periodic drug tests as part of required physical exams, pre-employment testing, and random sampling programs for marine employees. A memorandum summarizing the proposed program was included in the Council mailing on July 25, 1988. The public comment period on the proposed rules closed on September 6, 1988. The Coast Guard originally intended to publish final rules in October or November but final action may be delayed until the end of the year.

On September 22, 1988 the House Merchant Marine Subcommittee held a hearing on the proposed testing program. Subcommittee members and industry witnesses were concerned that the Administration appeared to be in a rush to implement drug testing and that no data existed to justify the program. There may be an attempt to legislatively forestall the testing program.

K. MARPOL Annex V

On June 24, 1988 the Coast Guard published an Advanced Notice of Proposed Rulemaking in the Federal Register regarding regulations implementing Annex I of the International Convention for the Prevention of Pollution by Ships. Public comments were allowed on the proposed rules until July 25, 1988. A Notice of Proposed Rule Making should be published in two to three weeks with final rules enacted by the end of the year.



100TH CONGRESS  
2D SESSION

# H. R. 4919

To approve the governing international fishery agreement between the United States and the Union of Soviet Socialist Republics.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 27, 1988

Mr. STUDDS (for himself and Mr. YOUNG of Alaska) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

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## A BILL

To approve the governing international fishery agreement between the United States and the Union of Soviet Socialist Republics.

1       *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That notwithstanding any provision of the Magnuson Fishery  
4 Conservation and Management Act (16 U.S.C. 1801 et seq.),  
5 the governing international fishery agreement entered into  
6 between the Government of the United States and the Gov-  
7 ernment of the Union of Soviet Socialist Republics, as con-  
8 tained in the message to Congress from the President of the  
9 United States dated June 22, 1988, is approved by the Con-

- 1 gress and shall enter into force and effect with respect to the
- 2 United States on the date of the enactment of this Act.

○

AMENDMENT TO H.R. 4919  
OFFERED BY MR. LOWRY

Add at the end of the bill the following:

1 SEC. 2. NORTH PACIFIC AND BERING SEA FISHERIES ADVISORY BODY.

2 (a) IN GENERAL.--The Secretary of State shall establish  
3 an advisory body on the fisheries of the North Pacific and  
4 the Bering Sea, which shall advise the United States  
5 representative to the International Consultative Committee  
6 created in accordance with Article XIV of the governing  
7 international fishery agreement entered into between the  
8 United States and the Union of Soviet Socialist Republics, as  
9 contained in the message to Congress from the President of  
10 the United States dated June 22, 1988.

11 (b) MEMBERSHIP.--

12 (1) IN GENERAL.--The advisory body established  
13 pursuant to this section shall consist of 12 members, as  
14 follows:

15 (A) The Director of the Department of Fisheries  
16 of the State of Washington.

17 (B) The Commissioner of the Department of Fish  
18 and Game of the State of Alaska.

19 (C) Five members appointed by the Secretary of  
20 State from among persons nominated by the Governor of

1 Alaska on the basis of their knowledge and experience  
2 in commercial harvesting, processing, or marketing of  
3 fishery resources.

4 (D) Five members appointed by the Secretary of  
5 State from among persons nominated by the Governor of  
6 Washington on the basis of their knowledge and  
7 experience in commercial harvesting, processing, or  
8 marketing of fishery resources.

9 (2) NOMINATIONS.--The Governor of Alaska and the  
10 Governor of Washington <sup>shall</sup> ~~may~~ each nominate 10 persons for  
11 purposes of paragraph (1).

12 (c) PAY.--Members of the advisory body established  
13 pursuant to this section shall receive no pay by reason of  
14 their service as members of the advisory body.

15 (d) EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.--The  
16 Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.)  
17 shall not apply to an advisory body established pursuant to  
18 this section.

AMENDMENT TO H.R. 4919  
OFFERED BY MR. BONKER

Add at the end of the bill the following:

1 SEC. 2. STORAGE OF FISHING GEAR ON CERTAIN FOREIGN FISHING  
2 VESSELS OPERATING IN EEZ.

3 Section 307 of the Magnuson Fishery Conservation and  
4 Management Act (16 U.S.C. 1857) is amended--

5 (1) in paragraph (2)(C) by striking ``and``;

6 (2) by striking the period at the end of paragraph

7 (3) and inserting ``; and``; and

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

9 `` (4) for any fishing vessel other than a vessel of  
10 the United States to operate, and for the owner or  
11 operator of a fishing vessel other than a vessel of the  
12 United States to operate such vessel, in the exclusive  
13 economic zone, if--

14 `` (A) all fishing gear on the vessel is not  
15 stored below deck or in an area where it is not  
16 normally used, and not readily available, for  
17 fishing; or

18 `` (B) all fishing gear on the vessel which is not  
19 so stored is not secured and covered so as to render

1           it unusable for fishing;  
2           unless such vessel is authorized to engage in fishing in  
3           the area in which the vessel is operating.''.

Amend the title of the bill so as to read: ``A bill to  
approve the governing international fishery agreement between  
the United States and the Union of Soviet Socialist  
Republics, and for other purposes.'`.

Amendment to H.R. 4919

Mr. Miller of Washington

At the end of the bill, add a new section as follows:

" Sec. \_\_\_\_\_. Use of Vessel Identification Equipment.

(a) The Secretary of State, the Secretary of Commerce, and the Secretary of the department in which the Coast Guard is operating, as appropriate, shall exercise their authority under section 201 (c) (2) (C) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821) to require the use of transponders or other such appropriate position-fixing and identification equipment on any vessel other than a vessel of the United States engaged in fishing in the United States Exclusive Economic Zone.

(b) The Secretary of Commerce, after consultation with the Secretary of Defense, the Secretary of State, and the Secretary of the department in which the Coast Guard is operating shall report to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate within 180 days after the date of enactment of this Act on the results of their compliance with subsection (a).

July 13, 1988

CONGRESSIONAL RECORD — SENATE

S 9595

**SEC. 3. CLARIFICATION OF CRIMINAL SANCTION FOR SALE OF HEALTH INSURANCE POLICIES THAT DUPLICATE MEDICARE BENEFITS.**

(a) **IN GENERAL.**—Section 1882(d)(3) of the Social Security Act (42 U.S.C. 1395ss(d)(3)) is amended by striking "entitled," and inserting "entitled (including benefits furnished by a skilled nursing facility or home health agency)."

**SEC. 1. NOTICE TO MEDICARE BENEFICIARIES REGARDING AVAILABILITY OF LONG-TERM CARE BENEFITS UNDER MEDICARE PROGRAM.**

(a) **NOTICE REQUIRED.**—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall notify each individual who is entitled to benefits under title XVIII of the Social Security Act of the availability of (and limitation upon) long-term care benefits (as defined by the Secretary) under the insurance programs that are established under title XVIII of the Social Security Act.

(b) **TIMING.**—The Secretary shall provide the notice described in subsection (a)—

- (1) when an individual applies for benefits under part A or enrolls under part B of such title on or after January 1, 1989, and
- (2) in November of 1988 and annually thereafter.●

● **Mr. COHEN.** Mr. President, I am pleased today to join Senator DURENBERGER as an original cosponsor of the Long-Term Care Insurance Consumer Protection Act of 1988. This legislation would put in place, in very timely fashion, standards and safeguards to guide the development of the long-term care insurance products that will likely play such a crucial role in meeting the long-term care needs of our Nation's senior citizens.

Out of the debate over legislation to broaden medicare protection against "catastrophic" medical expenses has come an awareness that there is still work to be done in order to safeguard the elderly from ruinous health-related expenses. The recently enacted Medicare Catastrophic Coverage Act provides coverage only for "acute" medical care—that is, medical treatment of an illness or injury. Even with the enactment of the catastrophic bill, medicare does not cover the cost of custodial nursing home care or other long-term care. Now that the Medicare Catastrophic Coverage Act has been signed into law, there is in the Congress, I believe, an increasing consensus and resolve that the next order of business will be addressing the need for, and cost of, long-term care.

The cost of long-term care is rightly of great concern to the Nation's senior citizens. The average cost of a year in a nursing home is approximately \$22,000. Obviously, costs of this magnitude can and often do overwhelm whatever resources or savings an elderly individual or household may have. Even couples or individuals who have done their best to plan ahead for a secure and comfortable retirement cannot long carry the financial burden of long-term care. The consequence is that thousands upon thousands of the elderly are driven into poverty—and onto the medicaid rolls—each year. It is estimated that almost one-half of all current medicaid nursing home resi-

dents were not initially poor, but became eligible for medicaid when nursing home costs took all their income and exhausted their savings. In a typical year, up to half a million elderly Americans will see their savings wiped out by the cost of nursing home care.

The Congress has begun to consider legislation that would combine private and public efforts in order to help the elderly to meet the great financial burden of long-term care. It is appropriate that any measure the Congress puts forward encourage, to as great an extent as is possible, individuals to assume responsibility for their own long-term care needs. Although private insurance for long-term care costs is scarcely available at the current time, such insurance should figure prominently as a required complement to any Federal long-term care assistance.

The Long-Term Care Insurance Consumer Protection Act would help to foster insurance policies well suited to the long-term care needs of the elderly and would guard against exploitative or misleading marketing practices. The history of the "medigap" insurance industry, which has been marked by shoddy products and abusive marketing practices, suggests that it would be prudent to put such safeguards in place at an early date.

The Long-Term Care Insurance Consumer Protection Act includes the following provisions:

First, assured renewability of insurance.

Second, prohibition of coverage for skilled nursing care only.

Third, limitation on definition of preexisting conditions for individual policies.

Fourth, restrictions on requirements of prior institutionalization as a condition for benefit payment.

Fifth, authority to promulgate regulations establishing loss ratio standards for long-term care insurance policies.

Sixth, refundability of premium upon purchaser request within a 30-day period.

Seventh, a mandatory disclosure statement of available coverage for purchases of individual and group policies.

Eighth, prohibition against advertising, marketing, or offering a policy as long-term care or nursing home insurance unless it complies with the provisions of this act.

Mr. President, as the Congress proceeds to consider legislation that would combine private and public efforts in order to help the elderly meet the great financial burden of long-term care, we should call upon recent related experience to avoid whatever problems we are able to anticipate. Therefore, I am pleased to cosponsor the Long-Term Care Insurance Consumer Protection Act and to commend it to my colleagues.●

By Mr. MOYNIHAN:

S. 2637. A bill for the relief of Gillian Lesley Sackler; to the Committee on the Judiciary.

**RELIEF OF GILLIAN LESLEY SACKLER**

● **Mr. MOYNIHAN.** Mr. President, I rise today to introduce a bill for the relief of Gillian Lesley Sackler, the widow of Dr. Arthur Sackler. Dr. Sackler had begun the process of obtaining permanent resident status for his wife in May 1987 when he died suddenly, before he could complete the application process with his wife. Subsequently, the INS ruled that as a result of Dr. Sackler's death, Mrs. Sackler was no longer the spouse of a U.S. citizen and should be denied her petition for permanent resident status.

Clearly Mrs. Sackler should be granted such status. If the U.S. Government was willing to do so because she was married to a U.S. citizen, his premature death should not affect her right to citizenship. She was, in fact, still married to him at the time of his death.

I understand there are measures pending in the House of Representatives which would remedy this unfair bureaucratic obstacle. Yet Mrs. Sackler cannot wait that long.

Permit me to explain. Mrs. Sackler is the president and director of the Arthur M. Sackler Foundation for the Arts, Sciences, and Humanities. She is responsible for contributing millions of dollars to the arts and sciences in this country and abroad. Just recently, the Sackler Foundation donated the necessary funds to build the Arthur M. Sackler Gallery. In addition the Sackler Foundation contributes to the National Academy of Sciences, the Massachusetts Institute of Technology, and the Medical School of Tufts University.

These duties require that Mrs. Sackler travel to and from this country frequently. As a result of being denied permanent resident status, she has been forced to request advance permission to leave and reenter this country from the INS. Surely, an individual who has given—and indeed will continue to give—so much to this country should be granted all those rights which accompany full citizenship.

I ask my colleagues to look closely at this situation and recognize the injustice which lies therein, and to support the passage of this bill.●

By Mr. MOYNIHAN:

S. 2638. A bill to amend the Trade Act of 1974 to treat acts and practices of foreign countries that diminish the effectiveness of international agreements protecting endangered or threatened species as unreasonable for purposes of applying chapter 1 of title III of the Trade Act of 1974; referred to the Committee on Finance.

S. 2640. A bill to amend the Trade Act of 1974 to treat acts and practices of foreign countries that diminish the



July 13, 1988

effectiveness of international fishery conservation programs as unreasonable for purposes of applying chapter 1 of title III of the Trade Act of 1974; to the Committee on Finance.

LEGISLATION CONCERNING ENDANGERED OR  
THREATENED SPECIES

● Mr. MOYNIHAN. Mr. President, I rise to introduce legislation that will improve the enforcement of agreements that protect endangered and threatened species, and marine resources subject to conservation programs. My bill will provide new hope to all those individuals and governments that have struggled to protect and conserve species that have been subjected to irresponsible commercial exploitation.

Let us take the example of whales. Since 1970, the Secretary of the Interior has listed eight species of whales as endangered. The 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora regulates trade in 11 species of whales. The United States has taken a leadership role in the protection of whaling, and the International Convention for the Regulation of Whaling was signed in Washington in 1946.

We are all aware that on February 10, Secretary of Commerce Verity certified to the President, pursuant to the Packwood-Magnuson amendment to the Fishery Conservation and Management Act of 1976, that Japan was killing minke whales—one of the species protected under the Endangered Species Act and the international convention—in the waters of the Antarctic in a manner that diminishes the effectiveness of an international fishery conservation program. In this case, the International Convention for the Regulation of Whaling.

Despite a moratorium on commercial whaling approved by the international community in 1985, and finally accepted by Japan in 1987, Japanese fishermen reportedly killed 300 minke whales.

Why? Japan claims that the recent whale killings are for scientific research. Reputable cetacean scientists outside of Japan disagree. The member governments of the International Whaling Commission voted 19 to 6 that the Japanese scientific hunt violated the moratorium. The reality is that Japan insists on maintaining its whale hunting—whatever the impact on international whale conservation efforts.

We must remember that the whale moratorium does not necessarily mean a complete future ban on whale hunting. The U.S. position is not motivated by a bias against cultural values that continue to accept the consumption of whale meat. Rather, what we are clearly saying is that the decimation of the Earth's whale population now requires the moratorium. We will not passively tolerate further extinctions.

Earlier this month, the State Department reportedly sent a letter to the Norwegian Foreign Ministry ex-

pressing concern about the planned harvest of 30 minke whales. Norway, too, claims the harvest would be for scientific purposes. Iceland and South Korea have also sought to evade the moratorium with scientific proposals.

The Commerce Department has indicated its willingness to make the same certification against Norway that was made last February against Japan. Norway's current view is ironic since it was Norway that first warned of the dangers or possible whale extinction in 1910.

We need time to do proper scientific research to adequately count the remaining stocks of whale species. Too much remains unknown. We do know many species are near extinction. Let us do the science together in compliance with the moratorium—the slaughter of additional whales need not be part of the effort. It cannot be part of the effort.

The United States is now confronted with how to convince Japan and Norway to comply with the moratorium. Unfortunately, the International Whaling Commission has no power to enforce its regulations and findings. We can hope that a conservation movement will grow in Japan. But we cannot wait.

The U.S. Government has invoked sanctions before. But our legal armory in this regard is weak. On April 6, 1988, in response to Secretary Verity's certification, the President directed Secretary of State Schultz to terminate all Japanese fishing privileges in the 200-mile exclusive economic zone. However, since Japan currently has no fishing quota allocations within the U.S. zone, the measure was purely symbolic.

Hardly a sanction! At the same time, the President refused to take the only remaining option under the law available to him: embargo Japan's fishery imports pursuant to the Pelly amendment to the Fisherman's Protective Act of 1967. Since we have a significant fishery products trade surplus with Japan, many fear that sanctions imposed in this sector may leave our fishery exports open to counterretaliation. Similar arguments have been invoked on prior occasions to avoid using the Pelly sanction.

Hence, my amendment. I would make foreign government practices that diminish the effectiveness of international agreements that protect endangered or threatened species or international fishery conservation programs, actionable under section 301 of the Trade Act of 1974. Such a change would greatly broaden the armory of retaliatory options available to the President. And the President could craft the proper response. Our ability to enforce conservation agreements would be improved and the security of many species enhanced.

In addition, private parties would also have the right to petition the U.S. Trade Representative under section 301 for relief against any burden

caused by the failure of foreign governments to enforce agreements or conservation programs.

I hope that the Congress can move expeditiously to enact this legislation. The survival of important species around the globe may depend upon it. ●

By Mr. McCAIN:

S. 2639. A bill to establish a standard nuclear reactor program to develop an inherently safe and economic nuclear reactor, and for other purposes; to the Committee on Environment and Public Works.

STANDARD NUCLEAR REACTOR DEVELOPMENT ACT

Mr. McCAIN. Mr. President, I rise today to join with my distinguished colleague in the House—not only my colleague, but my dear friend—Mo Udall, chairman of the Committee on Interior and Insular Affairs in the House of Representatives, to introduce in our respective bodies legislation which we believe is vital to the future of nuclear power in our country.

This legislation creates a new office within the Department of Energy that would be charged with creating, within a year, a program plan so that by the year 2000 utilities would have available to them reactors possessing the following features:

Safety, derived from inherent design more than from complicated safety systems;

A design that would not be prone to delays in the licensing process and one that would insure that new plants could be built expeditiously;

A fuel cycle associated with the standard reactor that would represent a nuclear proliferation risk no greater than that represented by the light water fuel cycle in which spent fuel is not reprocessed;

And, most importantly, the design would engender public confidence as it would be such that the people could readily understand why severe accidents were unlikely.

Additionally, the legislation will give the Department of Energy the option of including in its plan the construction of one or more prototype or demonstration projects and would specify a schedule for developing information required by the Nuclear Regulatory Commission [NRC]. It does not specify the kind of plant to be designed, whether it should be gas, liquid metal, or water. It leaves these types of decisions up to the Department of Energy in so doing, the Department of Energy and the Nuclear Regulatory Commission would be required to consider the veils of industry, environmentalists, labor unions and States, in effect, all interested citizens.

Nothing in this legislation would prevent the Nuclear Regulatory Commission from granting licenses for existing or future designs put forth by industry or other qualified entities.

Mr. President, the effects of an excessive reliance on fossil fuels is only

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LEGI-SLATE Report for the 100th Congress Thu, September 15, 1988 2:21pm (EDT)  
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Report for S.2638 Trade Act of 1974, Amendment  
As introduced in the Senate  
Complete Text of this version  
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II

100th CONGRESS  
2d Session

S. 2638

To amend the Trade Act of 1974 to treat acts and practices of foreign countries that diminish the effectiveness of international agreements protecting endangered or threatened species as unreasonable for purposes of applying chapter 1 of title III of the Trade Act of 1974.

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IN THE SENATE OF THE UNITED STATES  
July 13 (legislative day, July 8), 1988

Mr. Moynihan introduced the following bill; which was read twice and referred to the Committee on Finance  
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A BILL

To amend the Trade Act of 1974 to treat acts and practices of foreign countries that diminish the effectiveness of international agreements protecting endangered or threatened species as unreasonable for purposes of applying chapter 1 of title III of the Trade Act of 1974.

=====  
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (3) of section 301(e) of the Trade Act of 1974 (19 U.S.C. 2411(e)(3)) is amended to read as follows:

"(3) Unreasonable.--

"(A) In general.--An act, policy, or practice is unreasonable if the act, policy, or practice, while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, is otherwise unfair and inequitable.

"(B) Inclusions.--Acts, policies, and practices that are unreasonable include, but are not limited to, acts, policies, and practices which--

"(i) deny fair and equitable--

"(I) market opportunities,

"(II) opportunities for the establishment of an

enterprise, or  
    "(III) provision of adequate and effective protection of  
intellectual property rights, or  
    "(ii) diminish the effectiveness of any international  
agreement that protects endangered or threatened species."  
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Report for S.2640 Trade Act of 1974, Amendment  
As introduced in the Senate  
Complete Text of this version  
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II

100th CONGRESS  
2d Session

S. 2640

To amend the Trade Act of 1974 to treat acts and practices of foreign countries that diminish the effectiveness of international fishery conservation programs as unreasonable for purposes of applying chapter 1 of title III of the Trade Act of 1974.

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    "(ii) diminish the effectiveness of any international fishery  
conservation program.

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# Southwest Alaska Municipal Conference

*Putting Resources to Work For People*

1007 West 3rd Avenue, Suite 201 • Anchorage, Alaska 99501 • (907) 274-7555

## RESOLUTION 88-30

A RESOLUTION OF THE SWAMC IN SUPPORT OF NEGOTIATED AGREEMENT CONCERNING THE MARINE MAMMAL PROTECTION ACT.

WHEREAS, the Marine Mammal Protection Act is up for reauthorization this year; and

WHEREAS, under the current act all fishing which may affect marine mammals designated as depleted must cease; and

WHEREAS, Northern fur seals and Stellar sea lions are considered depleted; and

WHEREAS, ceasing all fishing which may take or affect northern fur seals and Stellar sea lions would seriously jeopardize the economic welfare of Alaskan coastal communities and Alaskan fishermen; and

WHEREAS, research is inadequate to determine the cause of the apparent declines in Northern fur seals and Stellar sea lions as well as many marine birds; and

WHEREAS, the commercial fishing communities and the environmental communities have negotiated a compromise agreement to allow commercial fishing to continue; and

WHEREAS, the concern over marine mammals is a nationwide concern; and

WHEREAS, the negotiated agreement requires funding for observers by the U.S. Congress; and

WHEREAS, the logistics of deploying observers on vessels delivering to shorebased plants in Alaska require a local infrastructure; and

WHEREAS, the Alaska Department of Fish and Game is able to hire and deploy observers for \$2,000 a man month less than the National Marine Fisheries Services.

BE IT HEREBY RESOLVED that the SWAMC supports the negotiated marine mammal agreement and urges the United States Congress to appropriate adequate funding to implement the agreement; and

BE IT FURTHER RESOLVED that SWAMC urges increased research and funding into the environmental changes in the Bering Sea and Gulf of Alaska which may affect the carrying capacity for marine mammals and seabirds.

SWAMC Resolution 88-30 cont.

AND BE IT FURTHER RESOLVED that SWAMC urges the Alaska Department of Fish and Game be granted a portion of the federal observer funds to handle the marine mammal observer program on vessels delivering to shorebased plants in Alaska.

PASSED AND APPROVED THIS 28TH DAY OF AUGUST, 1988.

Jerome M. Silly  
President

Mary Ann Weideman  
Attest

M E M O R A N D U M

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke  
Executive Director

DATE: September 27, 1988

SUBJECT: Marine Mammals

I. Status of Steller Sea Lions

On May 6, 1988 NMFS published in the Federal Register a Notice of Proposed Rulemaking to designate the Steller sea lion as depleted. Public comments were received until July 5. NMFS is expected to issue a depletion designation early in 1989.

At the last Council meeting, Commissioner Collinsworth requested the staff to research further whether a depletion designation obligated the Secretary of Commerce to implement a rehabilitation program for the depleted species or population stock. In its present form, the Marine Mammal Protection Act (MMPA) does not provide for such a program; however, NMFS has in the past, implemented conservation plans for depleted stocks upon the recommendations of the Marine Mammal Commission. Included in the proposed amendments to the MMPA discussed below is a requirement that the Secretary prepare conservation plans for depleted species. The conservation plans are to be similar to the recovery plans required by the Endangered Species Act of 1973.

II. Marine Mammal Protection Act Reauthorization

On September 26, 1988 the House passed H.R. 4189, a bill reauthorizing and amending the Marine Mammal Protection Act. The Senate is expected to act on companion legislation, S. 2810, next week. Important points of the legislation appear below.

A. Purpose

1. 5-year exemptions are granted for commercial fisheries from the MMPA's general taking prohibitions. The exemptions apply to U.S. fishermen, other than tuna fishermen, and to foreign vessels fishing under permits issued to the Secretary of Commerce pursuant to Section 204(b) of the MFCMA.

B. Fishery Classification

1. The Secretary of Commerce must categorize fisheries by one of three classifications based on the frequency of incidental taking of marine mammals by vessels in those fisheries. The categories are:



- (a) Fisheries in which there is a frequent incidental taking of marine mammals.
  - (b) Fisheries in which there is an occasional taking of marine mammals.
  - (c) Fisheries in which there is a remote likelihood of, or no known incidental taking of marine mammals.
2. The House Merchant Marine and Fisheries Committee Report on H.R. 4189 states that at a minimum, category (a) should include the Bering Sea/Aleutian Islands and Gulf of Alaska Groundfish trawl fisheries, the Prince William Sound/Copper River salmon set and driftnet gillnet fisheries, the Unimak and False Pass salmon drift gillnet fisheries, the Columbia River salmon drift gillnet fisheries, and the Washington/Oregon thresher shark driftnet fishery. The Committee report further states that category (c) should include the shrimp trawl fisheries in the Southeastern U.S. and the Gulf of Mexico and the mid- and south Atlantic menhaden purse seine fishery. The Senate Commerce Committee report will include crab pot fisheries as category (c) fisheries and remove the menhaden purse seine fishery from this classification.
  3. Fishermen are provided a 240-day grace period after enactment of the legislation to allow the Secretary of Commerce time to establish categories of fisheries and implement registration and reporting systems.
  4. No later than 60 days after enactment, the Secretary of Commerce must publish in the Federal Register a proposed list of fisheries according to the three categories discussed earlier.
  5. Vessels in category (a) and category (b) fisheries may be granted exemptions from the takings restriction of the MMPA upon completion of a registration form provided by the Secretary. The exemptions shall authorize the incidental takings of marine mammals, other than California sea otters, from species or stocks including a population designated as depleted.
  6. Fishing vessels in category (a) fisheries are required to take on board a natural resource observer if requested to do so by the Secretary of Commerce.
  7. Fishing vessels in category (c) fisheries receive the exemption as long as they report to the Secretary any lethal incidental takings of marine mammals during their fishing operations.
  8. Decals are to be issued identifying the category of fishery for which the vessel is registered. The decals are to be reissued annually.
  9. The Secretary may charge a registration fee to cover the administrative costs of granting exemptions.

C. Reporting Requirements

1. The legislation requires fishermen to report to the Secretary of Commerce at the end of the fishing season, or annually as the Secretary determines, and provide the following:
  - (a) the type of fishery in which they operated,
  - (b) whether there were any incidental takings of marine mammals,
  - (c) the date and approximate time of any incidental taking of marine mammal plus the area, gear used and species of fish targeted,
  - (d) the number and species of marine mammals encountered, whether the mammals were deterred from gear or catch, incidentally injured, killed, or lethally removed to protect gear, catch or human life,

D. Observers

1. The legislation implements an observer program as follows:
  - (a) In each category (a) fishery, the Secretary of Commerce, after consulting with the appropriate Regional Fishery Management Council, other federal and state agencies, and other interested parties, must place observers on exempt vessels in order to monitor not less than 20%, nor more than 35%, of the fishing operations in the fishery.
  - (b) When determining distribution of observers, the Secretary must -
    - (1) consider the level of coverage necessary to obtain the best scientific
    - (2) ensure that assignment of observers is fair and equitable among fisheries and among vessels,
    - (3) ensure that no individual, person, vessel or group of persons or vessels are subject to excessive or overly burden some observer coverage, and
    - (4) minimize costs and avoid duplication of effort.
  - (c) If observers cannot be assigned to all category (a) fisheries at the level designated in the legislation, the Secretary of Commerce shall allocate them as follows -
    - (1) fisheries that incidentally take marine mammals designated as depleted.
    - (2) fisheries that incidentally take marine mammals from stocks that are declining.

- (3) fisheries, other than fisheries described in sections (1) and (2) above, in which the greatest incidental take of marine mammals occur.
- (4) any other category (a) fishery.
- (d) With the consent of the vessel owner, the Secretary of Commerce may station observers on board a vessel engaged in a category (b) or category (c) fishery.
- (e) If requested by the appropriate Regional Fishery Management Council, or in the case of a state fishery, the State, the Secretary of Commerce shall require observers to collect information in addition to marine mammal information, including information on targeted and incidental fisheries and, if requested by the Secretary of the Interior, information on seabirds.
  - (1) As provided for in S. 2810, the Secretary of Commerce may decline to require observers to collect this information if the Secretary makes a formal finding that such information will not contribute to the protection of marine mammals or the understanding of the marine ecosystem, including fishery resources and seabirds.
- (f) The specified level of observer coverage is not required if the Secretary of Commerce finds -
  - (1) in the case of a mothership operation, that statistically reliable information may be obtained from an observer placed onboard the processing vessel,
  - (2) observer facilities on a vessel are inadequate or unsafe,
  - (3) for reasons beyond the control of the Secretary, observers are not available.
- (g) Vessel owners are indemnified against injury or wrongful death claims that may be filed by an observer, or his survivors, except for those claims stemming from the vessel owner's or operator's willful misconduct, or if the observer is engaged by the owner to perform duties of a crew member.
- (h) An alternative observation program may be implemented for category (a) fisheries in cases where observer coverage is required but where deployment on in numbers sufficient to meet the 20% minimum standard cannot be accomplished or, in the case of other fisheries, where reliable marine mammal interaction information is unavailable. The alternative observer program is to include observation from patrol vessels, aircraft, or points onshore.
- (i) \$2.7 million is appropriated to fund the observer programs for FY 1989 and \$8 million annually for the remaining four years of the program.

E. Other Secretarial Actions

1. If a fishery is having an immediate and significant adverse impact on a marine mammal population, or if more than 1,350 Steller sea lions and 50 North Pacific fur seals will be incidentally killed during a calendar year, the Secretary of Commerce, after consulting with the appropriate Regional Fishery Management Councils and states, shall prescribe emergency regulations to prevent, to the maximum extent practical, any further taking.
2. If the Secretary of Commerce finds that incidental takings of marine mammals in a fishery is not having an immediate and significant adverse impact on a stock but that it will likely have a significant adverse impact over a period of time longer than one year, the Secretary shall request the appropriate Regional Fishery Management Council or state to initiate, recommend, or take such action as it considers necessary to mitigate the adverse impacts. If the Regional Council or state does not so act in a reasonable period of time, then the Secretary of Commerce shall take appropriate action.
3. By February 1, 1991, the Secretary of Commerce must publish in the Federal Register a proposed regime to govern the incidental taking of marine mammals in commercial fisheries. After public comment and consultations, but no later than January 1, 1992, the Secretary of Commerce must submit the recommended plan to Congress.
4. The legislation directs the Secretary, in reviewing the status of any stock of marine mammals, to follow a prescribed series of steps designed to ensure early and adequate public notice, comment and participation in the review process.
5. The Secretary must develop conservation plans for North Pacific fur seals by December 31, 1989, for Steller sea lions by December 31, 1990, and for any other depleted species or stocks as soon as possible. A conservation plan is to conserve and restore a species or stock to optimum sustainable population. The plans are to be modeled on recovery plans required under the Endangered Species Act of 1973 and shall be implemented as quickly as possible and regularly updated. Conservation plans should outline specific actions and provide a clear strategy, including research needs, for the conservation and restoration of a species or stock.

F. Other Provisions

1. Other sections concern the mortality of porpoises in the yellowfin tuna fishery, the importation of marine mammals into the U.S. for medical treatment, requirements for public display permits, requirements that the Secretary of Commerce conduct studies on the effects of seal control devices and other explosive devices used in the course of the commercial yellowfin tuna fishery, and the causes of the die-off of Atlantic bottlenose dolphins in 1987 and 1988.

Anchorage Times, Sept 19 1988

## Fishing boats retain right to kill mammals off coast

SEATTLE (AP) — Fishing boats in the North Pacific remain able to kill seals and other marine mammals off the coast of Alaska under an agreement reached between commercial fishermen and environmentalists.

Without the agreement, the National Marine Fisheries Service would not have been able to issue licenses to fishermen next year, endangering the \$3 billion North Pacific fishing industry.

The agreement is a victory for fishermen, said Bill Robinson, chief of the NMFS' northwest fisheries management division in Seattle. The agreement also benefits environmentalists and scientists because it provides for spending millions of dollars to

study marine mammal populations and the extent of the incidental catch, caused by seals and other mammals getting caught in fishing nets.

The five-year agreement, adopted Friday by the House Merchant Marine and Fisheries Committee, extends the Marine Mammal Protection Act. The agreement must still pass the full House and Senate.

The compromise was necessary because court decisions against Japanese gillnetters in the North Pacific would also affect U.S. fishermen, most of whom are based in Seattle.

Greenpeace is satisfied with the agreement, spokesman Alan Reichman said. It provides for a study of mammals lost in nets