

Agenda Item 20
June 28-29, 1979

MEMORANDUM

DATE: June 22, 1979

TO: Council, Scientific & Statistical Committee and
Advisory Panel

FROM: Jim H. Branson, Executive Director

SUBJECT: FCMA Oversight Hearings

BACKGROUND INFORMATION

Oversight Hearings on the Fishery Conservation and Management Act have been scheduled for June 25th and 26th, July 10th and 12th in Washington, D.C. We have received two letters from the House Merchant Marine and Fisheries Committee requesting our views on a wide variety of subjects.

The first letter from Congressmen Forsythe and Breaux (May 25, 1979) explored, in 16 questions, a wide range of topics dealing with Council research; the acquisition of fisheries data; the preparation and development of fishery management plans; the composition of Council, SSC and AP; observers; Secretarial review of our fishery management plans, domestic fisheries problems and others. Our response (letter of June 12, 1979) is attached.

The second letter from Congressmen Forsythe and Breaux (June 11, 1979) outlined a basic agenda for the Oversight Hearings and highlighted several other areas of concern to the House Committee. They included the question of foreign built U.S. flag fishing vessels, Fishermen's Protective Act, the tuna issue, Council organization and legal status, and other Council operational questions.

The report on May Council action on FCMA changes was sent to you in the June 11 mailing. It is also included here as attachment #5.

COUNCIL ACTION

1. *Any additional comments relating to the June 7th, 1979 report and/or the June 12th, 1979 letter to Congressmen Breaux and Forsythe.*

2. *Council comment on questions raised in June 11 letter from Breaux and Forsythe dealing with foreign built fishing vessels, Fishermen's Protective Act, tuna, legal issues, and Council organization.*
3. *The designation of persons to attend the Oversight Hearings and a schedule for same.*

Attachments

1. May 25 letter from Breaux & Forsythe
2. June 12 letter from J. H. Branson
3. June 11 letter from Breaux & Forsythe
4. June 12 letter from Hammond to Stevens
5. June 7th Council Report

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AGENDA ITEM 20, June 1979

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U.S. House of Representatives
Committee on
Merchant Marine and Fisheries
 Room 1334, Longworth House Office Building
 Washington, D.C. 20515

June 11, 1979

JUN 15 1979

Mr. Jim H. Branson
 Executive Director
 North Pacific Fishery Management
 Council
 Suite 32
 333 West Fourth Avenue
 P. O. Box 3136 DT
 Anchorage, Alaska 99510

Dear Mr. Branson:

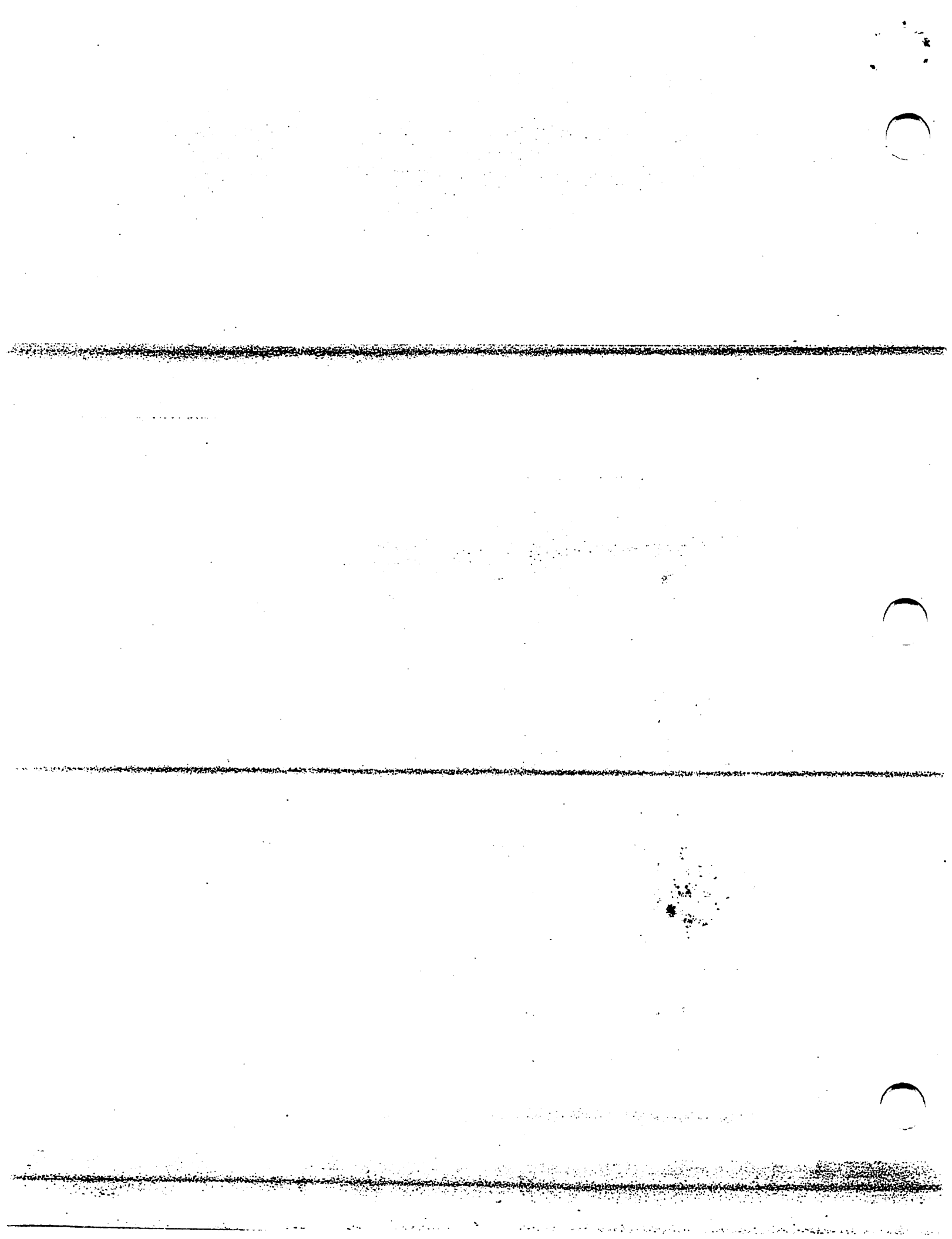
The Subcommittee on Fisheries and Wildlife Conservation and the Environment will begin a series of oversight hearings on the Fisheries Conservation and Management Act of 1976 (FCMA) during the latter part of June. We have presently scheduled the following dates for these hearings:

- Monday, June 25 - 10:00 a.m. - 1334 Longworth H.O.B.
- Tuesday, June 26 - 10:00 a.m. - 1334 Longworth H.O.B.
- Tuesday, July 10 - 2:00 p.m. - 1334 Longworth H.O.B.
- Thursday, July 12 - 2:00 p.m. - 1334 Longworth H.O.B.

The opening day, June 25, is scheduled to allow witnesses to address the FCMA in a broad sense, that is to identify benefits, problems, and possible changes with respect to any provision of the Act or implementation of such provisions.

After the opening day, we will endeavor to address categorical issues with a view towards focusing in more depth on specific problems concerning the Act.

The second day of our hearings, June 26, will focus upon several specific issues which are either pending as Senate amendments to the FCMA Authorization bill this year or pending as House bills. In order for our Subcommittee to be presented the pros and cons on these issues prior to further legislative consideration, we believe that they should be addressed early in our oversight process.



The three topics to be addressed on June 26 will be as follows:

1. Should an amendment be adopted to the FCMA which specifically prohibits the use of foreign built/ U.S. flag fish harvesting or fish processing vessels as U.S. fishing vessels in the U.S. Fisheries Conservation Zone (FCZ)? An amendment has been adopted in the Senate authorization bill (S. 917) to prohibit the use of foreign built/U.S. flag fish harvesting vessels in the FCZ.
2. Should an amendment be adopted to the FCMA which denies access to the U.S. Fisheries Conservation Zone to foreign fishing vessels from those nations which are certified by the Secretary of Commerce as being in contravention of section 8(a) of the Fishermen's Protective Act (22 USC 1978(a))? This amendment has also been included in S. 917. This amendment would have the effect of denying U.S. access to fishing vessels from nations which are found to be in non-compliance with international conservation agreements pertaining to living marine resources.
3. Should the FCMA be amended to include the management of tuna within the 200-mile zone of the United States? This issue is pending before the Committee in the form of several bills. Presently tuna are exempted from the Act.

Testimony should be prepared separately on each of these three issues since we will have individual panel sessions to address those questions individually.

For the hearings to be conducted on July 10 and July 12, the Subcommittee intends to address issues surrounding the organization and operation of the Regional Fishery Management Councils. In addition to identifying problems relating to the Councils, we will be interested in receiving recommendations to resolve such problems either legislatively or administratively.

Some issues regarding the Councils which should be addressed are as follows:

I. Organization

- What should the size of various Councils be?
- Is there adequate constituency representation on the Councils?
- Do the Councils have sufficient and adequate staff?
- Is the process of selecting Council members adequate?
- Is funding adequate for the Councils to operate effectively and is the budget process between the Councils and NMFS working?
- What is the relationship between NMFS and the Councils?

II. Legal Status

- What is the legal status of the Councils (Federal/non-Federal)?
- Do Councils need to clear statements and policy decisions through the Office of Management and Budget?
- What problems are associated with the applicability of the Federal Advisory Committee Act to the Councils?

III. Miscellaneous

- Is there adequate notice of meetings of the Councils in various regions of the country?
- Should any non-voting members of the Councils become voting members?
- Do Council members have conflict-of-interest problems?

In September and October, the Subcommittee intends to schedule additional hearings to focus upon such categorical issues as fisheries management plan formulation and implementation, multi-jurisdictional issues relating to management of fisheries which are found in the territorial as well as the FCZ, scientific research relating to fisheries data, and enforcement effectiveness within the zone. It is also possible that regional field hearings will be scheduled. At the conclusion of all hearings, the Subcommittee will prepare an oversight report which may form the basis for a bill to implement recommendations contained in such report.

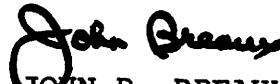
If you should desire to testify at our upcoming hearings in June or July, please inform either Wayne Smith (225-7307) or George Mannina (225-1320) so that your name can be added to the witness list. Committee rules require that 75 copies of prepared testimony must be delivered to the Subcommittee Clerk (Ms. Gerri Fitzgerald, 3574 House Annex No. 2, Washington, D.C. 20515) at least 48 hours in advance of the hearing.

Also, if you have any comments or suggestions concerning our proposed oversight schedule and topics to be addressed, we would be pleased to receive them.

Sincerely,



EDWIN B. FORSYTHE
Ranking Minority Member



JOHN B. BREAUX
Chairman
Subcommittee on Fisheries
and Wildlife Conservation
and the Environment

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Tillion
6-1-79

JUN - 1 1979

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U.S. House of Representatives
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May 25, 1979

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Clement Tillion, Chairman
 North Pacific Fishery Management Council
 P. O. Box 3136 DT
 Anchorage, Alaska 99510

Dear Mr. Tillion:

In late June and mid-July the Subcommittee on Fisheries and Wildlife Conservation and the Environment will be conducting oversight hearings on the Fishery Conservation and Management Act. In preparing for these hearings, it would be most helpful to us if we could have your views regarding the following issues:

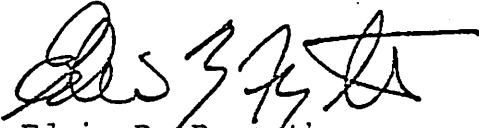
1. Does the Council have a system for identifying future research needs and advising NMFS of these needs? If so, please describe the procedure followed by the Council and indicate what response has been received from NMFS to Council research requests. If NMFS has declined to undertake requested research, please provide specific details regarding the circumstances surrounding the request and its denial.
2. Is the data on the level of recreational harvest of fisheries within your Council's geographic area of responsibility adequate? If not, should Congress or the appropriate states establish a marine recreational license (either with or without a fee) which would be used for gathering statistical data?
3. What problems, if any, have been associated with developing and implementing conservation and management plans for migratory species, such as billfish, which are covered under the FCMA?

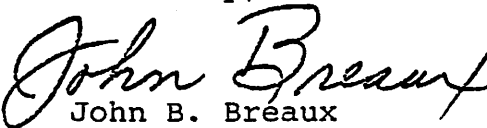
4. What problems have been encountered by the Council in the conservation and management of fisheries and in the enforcement of fishery management plans involving species which are taken inside state waters and within the FCZ? What recommendations do you have for overcoming any problems you have identified?
5. For each plan prepared, or under preparation, by the Council please indicate whether the plan was, or is being, written by the Council, by NMFS, or by a consultant.
6. Does the size of the Council need to be increased to adequately represent the diverse fishing, environmental and consumer interests in your region? If so, please detail the reasons you feel an increase is necessary.
7. Please indicate for the Council, for the scientific and statistical committee, and for any fishery advisory panel established by the Council what interests by type (recreational, commercial fishermen, processor, consumer, et cetera) and by species (crab, salmon, et cetera) are represented on the Council, committee, or panel.
8. Should members of the scientific and statistical committee receive compensation for the time they devote to their responsibilities as members of the committee?
9. What problems have been associated with the application of the Federal Advisory Committee Act to the Council? Should the Act continue to be applicable to the Councils?
10. Does the Council need additional staff? If so, has such staff been requested and what action was taken by NMFS?
11. Should observer coverage on foreign fishing operations be increased from its current level? If so, what percentage of coverage should be established?
12. Does the Council feel that it should continue to receive foreign permit applications for review pursuant to Section 204(b)(4)? Why or why not?
13. For each plan which has been submitted to the Secretary for review, please indicate the date on which the preparation of the plan began and the date on which the plan was submitted to the Secretary. For each plan not yet

submitted to the Secretary which is currently under preparation, please indicate when preparation of the plan commenced. For those plans which were, or which have been, in preparation for lengthy periods, please indicate the reasons for the long period of time necessary for preparation.

14. For each plan which has been prepared or which is in preparation, please indicate the number of public hearings which have been or will be held. Also, please indicate the attendance at each hearing which has been held. How were these hearings publicized and how much in advance of the hearing date were the hearings publicized?
15. What recommendations does the Council have for shortening the time taken for Secretarial review of FMP's?
16. Should the Secretary, upon the recommendation of the Council and pending the completion and implementation of an FMP, have the authority to promulgate emergency regulations governing the harvest of domestic fishermen?

We very much appreciate your assistance in responding to these questions. The Regional Councils are critically important to the implementation of the Act and we feel that it is extremely important to learn your views. At a later date, we will contact you regarding a representative of your Council testifying at the upcoming hearings.


Edwin B. Forsythe
Ranking Minority Member
Subcommittee on Fisheries
and Wildlife Conservation
and the Environment

Sincerely,

John B. Breaux
Chairman
Subcommittee on Fisheries
and Wildlife Conservation
and the Environment

JBB:gmb

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June 12, 1979

The Honorable John B. Breaux, Chairman
Subcommittee on Fisheries and Wildlife Conservation
and the Environment of the
Committee on Merchant Marine and Fisheries
United States House of Representatives
Room 1334, Longworth House Office Building
Washington, D.C. 20515
and

The Honorable Edwin B. Forsythe
Subcommittee on Fisheries and Wildlife
Conservation and the Environment of the
Committee on Merchant Marine and Fisheries
Room 1334, Longworth House Office Building
Washington, D.C. 20515

Dear Congressmen Breaux and Forsythe:

At the request of Chairman Clem Tillion the staff of the North Pacific Fishery Management Council has responded to your questions of May 25th. Our responses are attached to this letter. The Council has spent a considerable amount of time and effort in the last two months preparing for your Committee's Oversight Hearings on the FCMA. Most of the material I am submitting with this letter was developed during those sessions. Chairman Tillion is looking forward to the opportunity to testify before the Subcommittee on those areas that the Council believes need improvement in the Act and on the administrative areas that have presented problems during the 2½ years of the Council's existence.

If we can supply any other material prior to the Hearings please let us know. The Council is most anxious to present as complete and objective a picture of the workings of the FCMA and the Council as they possibly can. We feel that the Act to date has been a tremendous success but we recognize areas where it needs improvement in order to function in a timely and realistic fashion. The principal of U.S. management within the Fishery Conservation Zone and on a regional basis however, has already been tested and we believes lives up to the expectations of the authors of this landmark legislation.

Sincerely yours,

Jim H. Branson
Executive Director

Enclosure

1. *Does the Council have a system for identifying future research needs and advising NMFS of these needs? If so, please describe the procedure followed by the Council and indicate what response has been received from NMFS to Council research requests. If NMFS has declined to undertake requested research, please provide specific details regarding the circumstances surrounding the request and its denial.*

The Council has funded several research programs. All have emanated from critical data gaps identified by the management plan drafting teams during the development of fishery management plans. The research projects are evaluated by the Council according to three basic criteria:

1. Does the research relate directly to the development of a fishery management plan?
2. Can funding be found anywhere else?
3. Is the project short term, not more than 2 years? If it is longer is there funding guaranteed by some other agency to carry it to completion?

Longer term projects that may safely be deferred until Federal funding is available to NMFS, normally a 2 or 3 year process, are discussed with NMFS and worked into their system. The Northwest and Alaska Fisheries Center has re-allocated funding and priorities in several cases to fit Council needs on a more immediate basis. Generally speaking NMFS has been most cooperative, within their budgetary limits, in implementing or shifting research programs to support Council activities.

We have recently instituted an indepth study of the social and economic data needs of all fishery management plans developed, or under development by the Council and intend to use the results of that study to advise NMFS of our long term research needs. If you are interested in this study, we will be happy to provide you with all of the details.

NMFS has been most helpful in assisting in joint research projects with states and universities and in supporting, for NOAA grant approval, all of our research requests.

- o As an example, the National Marine Fisheries Service could not undertake the 1978 study needed to assess the effects of hydraulic clam harvesting in the eastern Bering Sea. Long term research budget commitments could not be altered but they did arrange a cooperative ship charter to assist in the Council research effort.

2. *Is the data on the level of recreational harvest of fisheries within your Council's geographic area of responsibility adequate? If not, should Congress or the appropriate states establish a marine recreational license (either with or without a fee) which would be used for gathering statistical data?*

Data on the level of recreational fishing in the Fishery Conservation Zone off Alaska is adequate. The level of recreational fishing in the FCZ is so small that it is not a factor in calculating the harvest of any fisheries resource off Alaska.

A small recreational fishery occurs in the marine territorial waters of the State and already requires a marine recreational license. The State of Alaska funds a good creel census and sportfish survey program, supplying all the information currently needed on recreational fisheries.

3. *What problems, if any, have been associated with developing and implementing conservation and management plans for migratory species, such as billfish, which are covered under the FCMA?*

The North Pacific Council has faced, or will face, the development and implementation of management plans dealing with two migratory species, halibut and salmon shared, at least in part, with Canada, Japan and the Pacific Fishery Management Council. Both species are now handled by international agreements: the International Pacific Halibut Convention (IPHC), and the International North Pacific Fisheries Convention (INPFC).

Concerning halibut: A west coast United States/Canada agreement was reached this year which superceded the Council's draft fishery management plan (FMP) for halibut. The FMP had been completed and was undergoing Secretarial review when the new agreement was reached. It would have eliminated all Canadian halibut fishing in the U.S. Fishery Conservation Zone but retained the same general management regime established by IPHC. The proposed FMP, however, would not have solved some important management problems:

- (a) Would Canada have continued the same halibut management philosophy in their waters, or would they over-harvest at the expense of the resource off Alaska and Washington?

- (b) It made no provisions for reciprocal groundfish fisheries by the U.S. off Canada.
- (c) It did not coordinate halibut management with the Pacific Council because of the gap in range off British Columbia.

Generally speaking the coordination of complimentary management regimes and the balance of reciprocal fisheries for other species by Canadian and U.S. fishermen remains the biggest problem in developing a halibut FMP.

Concerning salmon: The Council developed a draft fishery management plan (FMP) for high seas salmon two years ago as a contingency measure in case renegotiation of the INPFC failed. The draft FMP was not needed because the INPFC was successfully renegotiated. The Council believes that the complexities of the high-seas-salmon fishery by Japan can be handled better by the treaty than by the FCMA because:

- (1) The FCMA does not provide a formal (tripartite or otherwise) communicating mechanism for cooperative research, management or enforcement;
- (2) The fishery, which is mostly outside the U.S. 200-mile limit is a mixed stock fishery on U.S. and Asian fish; and
- (3) The FCMA is probably not as effective a mechanism for establishing complex high seas management areas as a treaty. The Council recognizes, however, that the FCMA is a powerful lever in the negotiation of a successful treaty on salmon with Japan.

The Council does intend to actively manage those stocks of salmon caught in the U.S. troll fishery off Southeast Alaska. This fishery is a mixed stock, interception-fishery where the major problem is to effectively control and manage the catch off Alaska of salmon destined for British Columbia, Oregon, Washington and California. Because of complex salmon interception issues (biological and political) between Canada and the United States the Council has adopted conservative management philosophies.

An additional problem is the complex job of managing migratory species where the bulk of the fishery occurs in the waters of the states. That problem necessitated a rather unique management approach in our "troll-salmon" plan, creating a Federal-State management unit. Part of this problem has been solved by a cooperative enforcement agreement between the State of Alaska and the Federal Government.

4. *What problems have been encountered by the Council in the conservation and management of fisheries and in the enforcement of fishery management plans involving species which are taken inside state waters and within the FCZ? What recommendations do you have for overcoming any problems you have identified?*

The integration of State and Federal management for three fishery management plans in the waters off Alaska has not been easy and is by no means over. The problems are numerous, for example:

- A. In the absence of Federal management the State has historically managed all of the major domestic shellfish and salmon fisheries in state waters and in the FCZ. This management responsibility (since statehood) has its foundation in a complex system of broad public input, continuing research programs, management philosophies developed over many years, highly trained professionals and a several million dollar annual budget.

The Federal government through the Fishery Management Council is not in a position to displace this management effort even for fisheries clearly under the auspices the Fishery Conservation and Management Act. To do so will require a drastic increase in staff, equipment, and funding for NMFS.

- B. Most of the fisheries off Alaska are prosecuted both in the territorial waters of the State and in the Fishery Conservation Zone; i.e., salmon and crab. The conservation and management of the resources requires consistent and complimentary regulations in State and Federal waters. To coordinate and develop joint fishery management regimes in these areas is extremely complicated due to differing public input processes, different enforcement capabilities, different systems of inseason management and occasionally different management philosophies.

Our recommendations for solving these problems include cooperative research, management and enforcement agreements; substantial delegation of authority to the states; possible waivers from the FCMA for wholly nearshore domestic fisheries now under full state management to remain under state management in the FCZ; and/or redefinition of fishery management units. The success of management and conservation programs will hinge on State/Federal cooperation. In the case of Alaska, a one Council-one State arrangement, a cooperative management system stands a reasonable chance of success.

5. *For each plan prepared, or under preparation, by the Council please indicate whether the plan was, or is being, written by the Council, by NMFS, or by a consultant.*

No consultants have been used to prepare or write any of the Council's fishery management plans. For each fishery management plan a management plan drafting team is selected by the Scientific and Statistical Committee and approved by the Council. Team membership or generally includes individuals from the Alaska Department of Fish & Game, National Marine Fisheries Service, Washington Department of Fisheries, University of Alaska and University of Washington, and Council staff.

The National Marine Fisheries Service has played the lead role in the development of the Gulf of Alaska Groundfish FMP, Bering Sea and Aleutian Island Groundfish draft FMP, and the draft Eastern Bering Sea Shrimp FMP. The Alaska Department of Fish and Game has been the lead agency on the Tanner Crab FMP, Troll Salmon FMP and is lead agency in the development of the King Crab FMP, the Eastern Bering Sea Herring FMP, and the Eastern Bering Sea Clam FMP.

None of the plans are written by the Council although the Council approves the original objectives of the plan and uses subgroups to review drafts of the plan. The Council staff acts in a coordinating role to assist the management plan drafting teams in all aspects of the preparation of the FMP. The Council's SSC and AP also function in sub-group advisory roles throughout the initial drafting of the FMP.

6. *Does the size of the Council need to be increased to adequately represent the diverse fishing, environmental and consumer interests in your region? If so, please detail the reasons you feel an increase is necessary.*

There is no apparent need to increase the size of the Council. I believe our decisionmaking process fairly reflects a representative cross section of interests for the Alaska region. More detail on the representation of the different interest groups on the Council, its Scientific and Statistical Committee and its Advisory Panel is contained in the answer to question number 7.

7. *Please indicate for the Council, for the scientific and statistical committee, and for any fishery advisory panel established by the Council what interests by type (recreational, commercial fishermen, processor, consumer, et cetera) by species (crab, salmon, et cetera) are represented on the Council, committee, or panel.*

There are 15 members of the North Pacific Council, 4 of them are non-voting members. Of the 11 voting members, 4 are agency heads; the Director of Fisheries for the States of Oregon, Washington and Alaska and the Regional Director for the National Marine Fisheries Service in Alaska. The remaining 7 members, 5 from Alaska and 2 from the State of Washington, consist of 2 active fishermen, one fishing primarily for crab, the other for halibut. One retired fisherman who is also a State legislator; one retired manager of a fishermen's organization; one member trained and experienced in fisheries management now in State administration on the international fisheries scene; one consumer/businessman with relatively little past experience in fisheries. The seventh seat was filled by Professor Donald McKernan, his replacement has not been chosen as yet. Both of the active fishermen, the ex-fishermen and the fisheries organization manager have had long experience on various national and international advisory and negotiating bodies in addition to their experience in the fishery itself. One has been active for years in the management and rulemaking process of the Alaska Board of Fisheries.

The Council's Scientific and Statistical Committee is composed of 10 members from fishery management agencies and universities in the Pacific Northwest and Alaska. Six are fisheries scientists, four are economists specializing in fishery matters.

The North Pacific Council has only one Advisory Panel composed of twenty-five members. It works closely with both the Council and the Scientific and Statistical Committee, advising the Council on virtually all of the matters brought before it, including, but not restricted to, the development and implementation of management plans. Five of those members are associated with the processing industry, four in management positions and the fifth as a organizer lobbyist. They represent all of the species and processing capability present in Alaska. Five of the members are officers in fishermen's associations, most of them have been fishermen but are now working full time as representatives of their respective organizations. Six members are active fishermen, most of whom are officers in fishermen's organizations or members of the Alaska Board of Fisheries,

etc. Five members represent rural areas, they are active commercial and subsistence fishermen and all five are officers in smaller regional cooperatives or fishermen's organizations. Two members are primarily consumers, one of them is educated and has some working background in fisheries science. Two are recreational fishermen active in sport fishermen's or guiding organizations.

The Advisory Panel spreads across most of the fisheries in Alaska, including salmon, shellfish, bottomfish, subsistence, and sport fishing. Almost all of the members have experience and expertise in two or more areas of the State and its diversity of fisheries.

8. *Should members of the scientific and statistical committee receive compensation for the time they devote to their responsibilities as members of the committee?*

The North Pacific Council has discussed the subject of compensation for Scientific and Statistical Committee members and has not fully resolved the question as a body. The general feeling is that non-agency SSC members should receive compensation on approximately the same basis as Council members. The North Pacific SSC usually meets at least two days a month immediately prior to each Council meeting. Some of the members stay for the Council meeting to interact with them. In addition to the regular meetings, the SSC has a number of working groups who devote several days each month to analysis of specific subjects requested by the Council. They actually average more time on Council business than most of the Council members.

We have been fortunate so far in having scientists of very high caliber and reputation serving on the SSC. It has been at considerable personal cost when they must give up paying work to work on Council business. Several members pay substitutes from their own pocket to handle teaching assignments, etc., during their absence. A solid recommendation on this subject should be available during the Oversight Hearings in July.

9. *What problems have been associated with the application of the Federal Advisory Committee Act to the Council? Should the Act continue to be applicable to the Councils?*

The Federal Advisory Committee Act, if it is applied only to the Council itself and not to its subsidiary groups, has presented few difficulties to the North Pacific Council. Public meetings, complete public access to records, transcripts, etc., has been the preferred operating mode of the Council in any case. Two requirements of the Act have given some trouble, one is the rather long notice required for meetings. Generally we must have notice of meetings to the Department of Commerce 25 days prior to a meeting in order to get

it into the Federal Register on time. Addition of critical agenda items is frequently a problem.

Section 10(f) of the FACA requires that the Council not hold meetings except at the call of or with the advance approval of a designated officer or employee of the Federal Government and that their agenda must be approved by such officer or employee. Carried to extremes, that provision could effectively block the effectiveness of the Council in fisheries management.

Section 10(e) requires a designated officer or employee of the Federal Government to Chair or attend each meeting of each Advisory Committee. There is a properly designated employee of the Federal Government at each Council meeting, this has presented no problem. However it can be a problem in meetings of the Scientific and Statistical Committee and the Advisory Panel who do not always have Federal employees on their rolls. As I mentioned earlier, application of FACA to the Council presents only a few difficulties, it should not, however, apply to either the Advisory Panel or the Scientific and Statistical Committee which properly could be considered creatures of the Council.

10. *Does the Council need additional staff? If so, has such staff been requested and what action was taken by NMFS?*

The North Pacific Council has asked for one staff position beyond the originally allocated seven. That position has been approved and filled. The Council foresees the need for additional staff positions in the future, one in early 1980 with the possibility, after assessment of the workload, of an additional member at the end of 1980.

Most of the initial management plan development has been done by agency and university personnel with coordination and staff work by the Council. As the plans are implemented and the review and amendment procedure begins to occupy more time its becoming apparent that much of that work will have to be done by Council staff. Currently there are two scientist/writers on the Council staff. There will be need for additional staff in the fields of economics and sociology in the near future.

11. *Should observer coverage on foreign fishing operations be increased from its current level? If so, what percentage of coverage should be established?*

The Council believes that a strong observer program is a very high priority item which is urgently needed and is not adequately funded. Observer coverage has not been adequate off Alaska. For example, observers were on only 3% of the landbased Japanese trawl fleet in

1978. Including the coverage of mothership fleets, where observers on the factory ship are considered to cover all the catcher boats assigned to that factory ship, coverage fell well below the desired 20% the Council feels is needed to give adequate crosschecks on the foreign fishery and to give any credence to catch statistics reported by the foreigners. Evidence continues to mount that catches by foreigners off Alaska are grossly under-reported and mis-reported.

The Council realizes that observer costs are reimbursed by the country whose ships they are on. However, the money goes directly to the U.S. Treasury and the observer program itself is line item funded in the regular NMFS budget. The Council understands that the observer budget for 1980 for the Northwest and Alaska area has been reduced by \$107,000. If that cut stands it will reduce the already inadequate observer coverage off Alaska a further 20%. Some way of ensuring adequate funding for this program must be developed. We believe one possibility exists in earmarking monies from foreign fees and reimbursed observer costs.

12. *Does the Council feel that it should continue to receive foreign permit applications for review pursuant to Section 204(b)(4)? Why or why not?*

The Council does feel that it should continue to receive and review foreign permit applications. While most permit applications are routine, and the Council has delegated some authority to the Executive Director for review of routine applications, others concern joint ventures or applications from countries that have not fished in the Council's area in the past. As the Act is currently written, the only opportunity for public review or comment on foreign permit applications is during the Council review period. They feel that this accessibility for public input should continue.

In addition to review of permit applications the Council feels strongly that they should be consulted before allocations are made to individual countries by the State Department. They were concerned and upset by the allocation to Mexico in the Gulf of Alaska and Poland in the Bering Sea in 1979. Neither of those countries had any historical record of fishing in those areas and both allocations were made at the expense of countries who have fished off Alaska and who have cooperated with the United States in fisheries research in the past.

13. For each plan which has been submitted to the Secretary for review, please indicate the date on which the preparation of the plan began and the date on which the plan was submitted to the Secretary. For each plan not yet submitted to the Secretary, which is currently under preparation, please indicate when preparation of the plan commenced. For those periods which were, or which have, been in preparation for lengthy periods, please indicate the reasons for the long period of time necessary for preparation.

<u>PLANS PREPARED</u>	<u>DATE BEGUN</u>	<u>DATE SUBMITTED</u>	<u>DATE APPROVED</u>	<u>DATE IMPLEMENTED</u>
Tanner crab	1/26/77	10/17/77	5/16/78	12/1/78
*Salmon (troll)	1/6/78	12/18/78	5/15/79	5/15/79
GoA groundfish	1/26/77	10/17/77	2/24/78	12/1/78
BS/A groundfish	1/7/78	4/23/79	Presently under review	
** Halibut	7/10/78	11/14/78		
<u>PLANS IN PROGRESS</u>				
Herring	9/12/78			
*** Clam	4/27/77			
**** King crab	1/6/78			
Salmon (comprehensive)	1/16/79			
***** Shrimp	2/9/78			

* This plan was approved with interim regulations effective immediately.

** This plan was drafted as a contingency pending the outcome of U.S./Canada negotiations as to the future of the International Pacific Halibut Commission.

*** Plan development has been delayed by Council action re-ordering FMP priorities.

**** Plan development period has been extended due to the size and complexity of the resource and the fact that the fishery is entirely domestic.

***** This plan will manage a developing American fishery which has had only one recorded landing. The FMP will develop on a schedule of data availability.

11. For each plan which has been prepared or which is in preparation, please indicate the number of public hearings which have been or will be held. Also, please indicate the attendance at each hearing which has been held. How were these hearings publicized and how much in advance of the hearing date were the hearings publicized?

<u>PLAN NAME</u>	(Prepared)	<u>NUMBER OF PUBLIC HEARINGS</u>	<u>ATTENDANCE</u>
Tanner crab		5	220
Salmon (troll)		* 13	172
GoA groundfish		5	** 220
BS/A groundfish		5	161
Halibut		*** 5	161
<u>PLAN NAME</u>	(In preparation)		
Herring		4	
Clam		3	
King crab		3	
Salmon (comprehensive)		5	

* Totals reflect two public hearing schedules (1977-1978).

** Held concurrently with Tanner crab hearings.

*** Held concurrently with troll salmon and BS/A groundfish schedule.

Public notices in the form of press releases issued from the NPFMC office are prepared for all hearing schedules. The notices precede the hearing dates by a month, are published for a general list of newspapers, radio and television outlets and are directed to whatever media form is available. (In one instance, a hearing schedule was broadcast to fishing vessels at sea via marineband radio.)

All hearings to be held are required by law to be published in the Federal Register at least 20 days prior to the hearing date. This is done in each instance.

15. *What recommendations does the Council have for shortening the time taken for Secretarial review of FMP's?*

The Council recommends holding the Secretary to a 60-day review period or less. To date, none of the North Pacific Council's plans have finished review in 60 days, most have taken at least twice that long, some as much as five months. The Council feels that if the Secretary has not finished her review within the 60 days allowed by the Act that the plan should be approved automatically and go through the implementation procedure. They maintain that if the bulk of the review is done by the NMFS Regional Offices, who work closely with the Council during the development of the plans, that the 60 days under the Act could be reduced. Certainly the greatly extended review time encountered thus far by this Council cannot continue.

The requirement that Executive Order 12044 (regulatory analysis) be applied to fishery management plans is going to slow development beyond the delays already encountered in the process. Currently EO 12044 calls for a work plan to be approved by the Secretary prior to the Council starting on the development of a fishery management plan. This is another layer of planning and redundancy that appears to have little or no purpose. Paperwork delays imminating from that Executive Order and from unnecessary reviews of environmental assessments, environmental impact statements, delays in promulgating regulations after Secretarial review of plans and "cooling periods" after final regulations are published, as required by the Administrative Procedures Act, all are areas where the plan development and review process can be shortened.

16. *Should the Secretary upon the recommendation of the Council and pending the completion and implementation of an FMP, have the authority to promulgate emergency regulations governing the harvest of domestic fishermen?*

The North Pacific Council has not discussed this specific question. They have discussed at some length the necessity for emergency regulations by the Secretary to quickly implement amendments to fishery management plans that affect domestic fishermen. Currently we estimate that the amendment process to an FMP will take approximately 120 days, far too long to respond to problems in a fishery, whether they are resource related or emergencies of a social or economic nature. We believe that the Secretary should have, upon the recommendation of the Council, the authority to promulgate emergency regulations governing the harvest of both domestic and foreign fishermen for a long enough period to allow amendment to an FMP. Currently her emergency powers run for a maximum of 90 days. Either that time must be extended or the amendment process must be shortened.

In essence, the Council suggests that the Secretary should have the power to implement emergency regulations upon the recommendation of the Council for resource, social and economic related emergencies for a period long enough to allow amendment of the FMP. They have not developed a recommendation for emergency regulations for domestic fishermen prior to the completion and implementation of an FMP.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

June 12, 1979

JUN 15 1979

The Honorable Ted Stevens
United States Senate
260 Russell Building
Washington, D. C. 20510

Dear Ted:

Reference is made to the forthcoming oversight hearings on Public Law 94-265, The Fishery Conservation and Management Act.

I appreciate the fact that Alaska has a representative on the Pacific Fishery Management Council, though nonvoting. You will recall the States of Washington and Oregon have four votes on the North Pacific Council. I have strong feelings that an inequity exists here, but I would never have requested opening Public Law 94-265 to revision solely for this reason. However, at its May, 1979, meeting the Pacific Council unanimously voted in favor of giving Alaska's representative a vote and intends to submit this request to the oversight hearings. It is particularly significant, I feel, that Gordon Sandison, Director of the Washington State Department of Fisheries, made the motion that Alaska be given a vote; the motion was seconded by Dr. John Donaldson, Director of the Oregon Department of Fish and Wildlife; and carried unanimously. Further, since both of these directors serve on the North Pacific Council, it appears to me they also recognize the inequity. At its May meeting the North Pacific Council concurred with the Pacific Council's action and the North Pacific Council, too, intends to support this request before the congressional committee at the oversight hearings.

Ted, I was pleased when my staff checked with your office and learned of your constructive feelings towards obtaining an Alaskan vote on the Pacific Council. I respectfully request your support at the oversight hearings to affect a favorable outcome.

Sincerely,

Jay S. Hammond
Governor

bc: North Pacific
Fishery Management Council

North Pacific Fishery Management Council

Clement V. Tillion, Chairman
Jim H. Branson, Executive Director

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Jim H. Branson

June 7, 1979

REPORT
COUNCIL RECOMMENDATIONS ON FCMA CHANGES
and
TESTIMONY AT CONGRESSIONAL OVERSIGHT HEARINGS
ON THE FCMA

At the North Pacific Council Meeting on May 25th the Council reviewed the report of the Council Workshop on FCMA Changes dated May 21st, 1979 and made the following recommendations:

1. BOARDING AUTHORITY

Judge von der Heydt, U.S. District Court, Anchorage on May 23rd ruled that boardings without warrants to ensure compliance with the FCMA was a proper exercise of authority by U.S. enforcement officials. This may eliminate the need for an FCMA amendment to clarify the authority of U.S. enforcement officials to routinely board foreign and U.S. fishing vessels. The Council recommendation was that this should still be brought to the attention of Congress at the Oversight Hearings and that the Council would have no objection to an amendment to the Act to clarify this point. von der Heydt's ruling did not make a distinction between foreign and U.S. fishing vessels and the question of U.S. fishing vessels may not be as clear as the authority for boarding foreign ships.

2. COORDINATION BETWEEN THE FCMA AND OTHER FEDERAL LEGISLATION
AND ADMINISTRATIVE PROCEDURES

- a. Relief for the Fishery Management Plan Development and Amendment Process from the Requirements of the Environmental Protection Act, Federal Advisory Committee Act, Administrative Procedures Act and Executive Order 12044.

The Council requests at least partial relief from the requirements of these Acts and Executive Order. The Fishery Management Plans are essentially environmental assessments and meet most of the requirements of an EIS. Inordinate delay in plan and amendment implementation has derived from Executive Order 12044, the Administrative Procedures Act and the Federal Advisory Committee Act. The worst is Executive Order 12044. A good argument can be made that E.O. 12044 was not meant to apply to a natural resource regulation that has to be implemented and revised in the time frame required by an active fishery. The Council feels that this problem should be brought to the attention of the Oversight Committee, recognizing that E.O. 12044 was not a result of legislation and that Congress may have no influence on its application to FMP's, but feel that it should be identified as a major delay in FMP development and amendment procedures.

- b. Clarification of Other Federal Legislation Relating to Fisheries

Clarification of various federal laws and regulations affecting the fishing industry such as the Jones Act, the Nicholson Act, tariffs on fishery products and on fishing and processing equipment, quotas and trade barriers. The Council recommends a thorough study of this body of law and regulation, perhaps by a Library of Congress team, to reduce the confusion on what can and cannot be done with foreign built ships, identify

the impediments to fishery development and in general clarify this area so that the fishing industry can clearly define its limits of action and identify those areas where changes may be possible to improve the efficiency of the industry.

3. ALLOW THE NORTH PACIFIC COUNCIL TO HOLD PUBLIC HEARINGS OUTSIDE OF ALASKA

The FCMA prohibits the North Pacific Council from holding public hearings outside of Alaska. A large part of the Alaska fishing industry is based in Seattle and fishermen in many of the Alaskan fisheries can most easily be reached there. Adequate public input into Council plan development is almost impossible without the ability to hold hearings in the Pacific Northwest. An amendment is needed.

4. STATUS OF COUNCIL STAFF

The Council feels that the FCMA should be amended to make it very clear that Council staff members are not federal employees.

5. SECRETARIAL REVIEW PERIOD FOR FMP'S AND AMENDMENTS

Much of the delay in management plan implementation has occurred in the Secretarial review process. None of the North Pacific Council's plans have finished review within the 60 days specified in the Act, most have taken at least twice that long.

The Council feels that an amendment to the Act is desirable to specify what happens if no action has been taken by the Secretary on a fishery management plan at the end of the specified 60-day review period. There is a strong feeling that if a plan has not been acted on at the end of 60 days it should be automatically approved and implemented.

6. ENSURE A VIABLE OBSERVER PROGRAM

The Council believes that a strong observer program is absolutely necessary and must be adequately funded. Observer coverage has not been adequate off Alaska; for example, it was only 3% on the landbased Japanese trawler fleet in 1978. Including the coverage of mothership fleets, where observers on the factory ship are considered to cover all of the catcher boats assigned to that factory ship, coverage fell well below the desired 20% the Council feels is needed to give adequate crosschecks on the foreign fishery. Evidence continues to mount that catches in the foreign fisheries off Alaska are grossly under reported and mis-reported.

The Council notes that observer costs are reimbursed by the country whose ships they are on. However, that money goes directly to the U.S. Treasury and the observer program itself is line item funded in the regular NMFS budget. The Council understands that the observer budget for 1980 for the Northwest and Alaska area has been reduced by \$107,000. That will amount to a 20% reduction of an already inadequate program. Some way of ensuring adequate funding for this program must be developed. One possibility is earmarked monies from foreign fees and reimbursed observer costs.

7. INCREASED FEDERAL FUNDING FOR RESEARCH AND MANAGEMENT FUNCTIONS PERFORMED BY THE STATES IN SUPPORT OF FMP'S

Effective fishery management requires long term stock assessments and continuing surveys of socio-economic and environmental relationships. These requirements are in addition to short term Council responsibilities for the development and periodic updating of fishery management plans. Because the States already have responsibilities and experience in these processes within State waters (and in many cases within the FCZ), and because National Standard 3 requires management of stocks as units throughout their range, the states should participate in these programs in the FCZ on the extended basis mandated by the FCMA in cooperation with the responsible federal agencies.

Additional long term federal funding is necessary to assist the states to meet these expanded management and data collection responsibilities. Alaska has always maintained research and data gathering activities on fisheries in the FCZ. Management responsibility for those fisheries is now shifting to the Federal Government and the State administration is cutting the fisheries management budget. If the existing organization and the ability of the Alaska Department of Fish and Game is expected to continue work outside State waters, contributing to FCMA management, financial help will have to come from the Federal Government. The alternative is to increase direct Federal expenditures for facilities, personnel, and equipment to assume those functions now conducted by the State.

Increased funding could be done through management reorganization in federal grant-in-aid funding (P.L. 88-309), via the state/federal fishery management program, or other means.

8. EMERGENCY REGULATIONS BY THE SECRETARY

The Council believes that the Secretary should have the authority to promulgate emergency regulations for socio-economic reasons as well as the conservation reasons now specified by the Act. Since OY is based on social and economic measures as well as resource requirements, it seems logical that emergency regulations could and should also be promulgated for those reasons.

The Act now provides for two 45-day periods of emergency regulations, a total of 90 days. The plan amendment process, as now envisioned, takes approximately 120 days. Those two time periods should be brought into conformity. The Act should allow the Secretary to implement emergency regulations long enough to amend a plan. The Act should be amended to allow emergency regulations for a longer period or the plan amendment process must be improved so it can be accomplished in 90 days. Improving that process hinges on relief from the various acts and executive orders addressed in item 2.

9. PERMIT REVIEW AND ALLOCATION PROCEDURE

The Council believes they should have some input into the allocation process, at least the right to review and comment on preliminary allocations at the beginning of a plan year. The permit review procedure authorized under the Act is relatively meaningless if the Council does not have any input into what country gets allocations in its area. The Council suggests that the Act to be amended to require the State Department to consult with the Council as well as the Secretary of Commerce before making allocations.

10. COORDINATION OF FCMA WITH OTHER ACTS AFFECTING FISHERY RESOURCES

The Council believes that the issue of interaction with the Marine Mammal Act, Endangered Species Act, Marine Sanctuary Act and Coastal Zone Legislation should be raised before the Oversight Committee. They point out that ecosystem management is not possible without coordinated, or even single agency management of all organisms in the ecosystem. Effective management without control of all of the manipulable factors in a system is virtually impossible.

11. SANCTIONS AGAINST FOREIGN FISHING PERMITS

The Council wishes to raise this subject at the Oversight Hearings on two levels; first that a vessel convicted of a serious violation should have permit sanctions levied; it should lose its permit for a specified period of time, depending on the severity of the violation. In addition the Council considered the possibility of reducing the allocation to a country whose ships have been involved in serious violations of the FCMA. The standards in the Act used for awarding allocations include the degree of cooperation in enforcement activity, that standard could conceivably be used to effect allocation reductions. No change in the Act may be necessary but it is a point that should be brought to the attention of the Oversight Committee.

12. REMOVE THE LIMIT ON LICENSE FEES FOR U.S. FISHERMEN

The Council wishes to bring this problem to the attention of the Oversight Committee with the understanding that the Council has not finalized its views on the issue but believe it should be out in the open for comment.

Allowing only the recovery of administrative costs for permits from U.S. fishermen severely limits the options available for developing limited access programs or obtaining any form of "economic rent" from the resource. The Council notes any limited access program should be carefully evaluated for its effect and additional costs to industry or society before adoption.

13. A VOTING MEMBERSHIP FOR THE STATE OF ALASKA ON THE PACIFIC FISHERY MANAGEMENT COUNCIL

The Council recommends supporting this request before the Congressional Committee.

14. REDEFINITION OF THE FISHERY CONSERVATION ZONE

Bring to the attention of the Congressional Subcommittee the problem of small high seas areas in what have always been considered internal waters in Alaska. Suggest that the FCMA might be amended to redefine the baselines from which the FCZ is measured, that baselines for fishery management purposes need not necessarily be the same as the baselines from which the Territorial Sea is measured.

15. PROCESSOR PREFERENCE AMENDMENT TO THE FCMA

The Council asks that the Oversight Committee explain the Congressional intent of this amendment as it applies to the difference in prices to fishermen from U.S. domestic processors and joint venture processors.

In addition ask if closing certain areas in the FCZ to joint ventures would sufficiently protect access to the fishery resource for U.S. processors.

MISCELLANEOUS

The Council considered several other subjects for testimony before the Oversight Committee and deferred them until after the Chairman's meeting or until after the July Council Meeting.

1. COMPENSATION FOR CERTAIN SSC MEMBERS

The Council discussed paying non-agency SSC members on the same basis as Council members and deferred a recommendation until after the Council Chairmen's meeting in June.

2. INCLUDE TUNA IN THE FCMA

The Council decided not to raise this issue before the Oversight Committee, but if asked for a position would go on record as opposing the inclusion of tuna in the FCMA.

3. DEVELOPMENT OF OY AS AN AVERAGE

The Council deferred further discussion of this subject until the July meeting, it does not require an amendment to the FCMA but might be worth bringing to the attention of the Oversight Committee after the SSC report at the July meeting and further Council discussion.

The Council discussed several other subjects but took no action on them. Among them were:

1. Development of regulations supporting FMP's and the timing of regulations and FMP drafts.

The general feeling was that regulations should accompany FMP drafts when they go to the public for first review. There are some Council members that advocate regulation writing as the prerogative of the Council, rather than of the Secretary.

2. They again stressed the value of as much plan review as possible within the NMFS Regional Office rather than all in the Central Office.
3. Deferred discussion on an FCMA waiver for wholly domestic fisheries.
4. Deferred discussion on excessive restrictions on limited entry programs in the Act.
5. Did not discuss the Customs appeal procedures and Civil forfeiture proceedings on foreign vessels.
6. Did not feel that the section of the Act dealing with "registered under the laws of the state" needed further explanation.

The Council did discuss the desirability of using criminal procedure in serious violations, rather than civil and generally favored the concept, although it was noted that the Act may have been written as it was to mitigate the possibility of foreign nations using criminal action against U.S. fishermen apprehended in their zones.

The Council supported the Pacific Council proposals to earmark foreign fishing fees for work on FCMA programs, to reexamine the foreign fee structure, and supported the recently introduced Magnuson Bill to close a loophole in federal law that allows the use of American registered, foreign built ships to fish and deliver in the FCZ.