

MEMORANDUM

TO: Council, AP and SSC Members

FROM: Clarence G. Pautzke 
Executive Director

DATE: June 18, 1990

SUBJECT: Legislative Update

ACTION REQUIRED

Status report on Magnuson Act Reauthorization and Seafood Inspection

BACKGROUND

Magnuson Act Reauthorization

In April you were provided with a "marked-up" copy of the MFCMA and a summary comparing the amendments recommended by the House and draft Senate language. On May 22 the Senate Committee on Commerce, Science, and Transportation met to mark-up the Senate bill. A revised summary comparing the House and Senate Commerce Committee legislation is provided as item C-1(a). Copies of the Commerce Committee bill are available upon request. The bill will now go to the full Senate for approval prior to being sent to a House-Senate Conference Committee. Senate staff has informed me that the Senate may not take up the MFCMA amendments until later this fall. We have also been advised to anticipate significant Senate debate regarding the proposed tuna and moratorium language.

Seafood Inspection

Several bills were introduced last session to establish a national seafood inspection program. The House Subcommittee on Fisheries and Wildlife Conservation and the Environment has held three hearings on this issue. The Subcommittee has developed a draft proposal which would establish a mandatory program involving both the federal government and individual states. Funding of the program would come from Congress and the program would be administered by both the Department of Agriculture and the Department of Commerce. The program would cover both onshore and offshore processors. Fishing vessels and tender vessels would largely be exempt unless it was determined that a critical control point exists involving the vessels, in which case they may become subject to inspection.

On May 22, the Senate Committee on Agriculture, Nutrition, and Forestry marked up a draft seafood inspection bill. Copies of this legislation are also available upon request. We have been told that the Commerce Committee has asked to review this bill prior to it going to the full Senate. Given both the Senate and House bills, and that the Administration is pushing its own version, this legislation will likely be tied up in Congress until fall.

Comparison of Magnuson Act Amendments
Proposed by H.R. 2061 and S. 1025

Magnuson Act Findings

Both bills add a new finding that scientific data collection is essential to effective conservation and management.

Magnuson Act Purposes

The first purpose is to immediately act to conserve and manage U.S. fisheries and anadromous species by exercising sovereign rights over all fish except highly migratory species, etc. The Senate changes the thrust of this purpose by exempting only tuna from U.S. management, rather than all highly migratory species.

The second purpose is to encourage international fishery agreements on highly migratory species. The House changes this purpose by adding swordfish and billfish to the highly migratory species requiring international management programs and agreements. The Senate version does not incorporate this change.

The Senate did modify the purpose of the Councils which stated they were to "prepare, monitor, and revise" FMPs. This wording is to be replaced with "exercise sound judgement in the stewardship of fishery resources through the preparation, monitoring and revision" of FMPs.

Magnuson Act Policy

Both House and Senate expand policy #3 to assure that the national fishery conservation and management program considers the effects of fishing on immature fish and encourages development of measures that avoid unnecessary waste of fish.

Both House and Senate add a policy to achieve an international ban on driftnets, 1.5 miles or longer, beyond the EEZ.

The Senate adds another policy to foster and maintain the diversity of fisheries in the U.S. and minimize disruptions and dislocations in those fisheries upon which coastal communities are substantially dependent to meet their social and economic needs.

Definitions

Both House and Senate add definitions of "driftnets" and "waters of a foreign nation". Both add a definition of "migratory range", however the House refers to any species, and the Senate just to anadromous species.

The Senate deletes highly migratory species from the term "fish" and foreign fisheries for tuna from the term "fishing". The Senate then changes the definition of "highly migratory species" from including just tuna to including tuna species, marlin, oceanic sharks, sailfishes, and swordfish. The Senate goes on to define five species of tuna.

Senate adds a definition of an "observer" as any person required or authorized to be carried on a vessel for conservation and management purposes by regulation or permits under the Act. The Senate drops its earlier definition/reference of the Inter-Council Working Group on Highly Migratory Species.

Management of Highly Migratory Species

House repeals the tuna exclusion and directs the Secretary of State to renegotiate international agreements that are now inconsistent with U.S. assertion of management of highly migratory species.

Senate drops its exemption of tuna from U.S. authority but mandates the U.S. to cooperate with other nations in managing highly migratory species both within and beyond the EEZ.

TALFF

Both bills replace the complicated TALFF formulas with simpler language that TALFF shall be that portion of OY in excess of U.S. harvesting needs.

International Fishery Agreements

House adds swordfish and billfish to anadromous and highly migratory species for which the Secretary of State will negotiate international conservation and management agreements.

Senate adds a lengthy section directing the Secretary of State to cooperate with the Secretary to evaluate the effectiveness of international agreements in managing highly migratory species, to report within 12 months, and to negotiate international agreements on highly migratory species. They have dropped reference to the Working Group.

Foreign Fishing Permits

House and Senate require the Secretary to consult with the Secretary of State in setting foreign fees. The House also requires consultation with the Councils in setting fees. The Senate dropped this requirement. Both bills require the fees to go into the general fund of the Treasury. Both delete the methodology for calculating the fees, substituting the term "reasonable" fees. Both delete the two-tier approach for charging higher fees on nations that harvest anadromous fish from the U.S. or fail to take sufficient action to benefit the conservation and development of U.S. fisheries.

Both bills delete the lengthy section on sanctions on foreign fishing vessels.

International Ban on Large-Scale Driftnet Fishing

House and Senate direct the Secretary of State to secure an international ban or moratorium on driftnets beyond the EEZ. Both require a progress report to Congress. The Senate requires certification under the Fishermen's Protective Act of any nation that allows their nationals to conduct driftnet operations beyond the nation's EEZ in a manner that diminishes the effectiveness of any bilateral or multilateral agreement governing driftnet fishing to which the U.S. is a party.

North Pacific Council Composition

The House bill adds one new Council member from Oregon and one from Washington.

Council Member Qualifications

Both bills tighten qualifications to require occupational or commercial experience, scientific expertise, or academic training in fisheries management or recreational or commercial harvest, and that the Secretary ensure fair representation across the industry. The Senate requires an annual report starting January 31, 1991 on actions taken to ensure fair representation.

Council Member Terms

House limits terms to two consecutive terms for members appointed after January 1, 1986. The Senate limits terms to three previous terms for appointments or reappointments after January 1, 1991.

Council Member Compensation

House bill reduces daily compensation to \$200 for members appointed or reappointed after January 1, 1991. Senate bill does not change the daily compensation.

Staff Travel Reimbursement

Both bills enable staff members to be reimbursed for actual expenses.

Council Meeting Location

Both bills allow Councils to meet in any of the constituent states.

Regional Director Minority Statement

The Senate bill requires the NMFS Regional Director to submit a minority report if he disagrees with any matter submitted to the Secretary by a Council,

Advisory Committees

Both bills limit decisions and recommendations of advisory committees to being advisory only. The Senate bill clarifies SSC reports as being advisory in nature. The House bill mandates each Council to establish industry advisory panels.

Fishery Habitat Concerns

Both bills augment current habitat language by requiring an agency response to include a description of measures being considered to mitigate activities that impact the habitat of anadromous species. Both the House and Senate bills compel a Council to comment concerning any such activity.

Notice Requirements for Closed Meetings

Both bills require the Council to notify newspapers of closed meetings.

Opportunity for Public Comment on New Information

Both bills mandate Councils to give the public opportunity to comment or submit new information in response to new information submitted by a Federal or State agency or Council advisory body.

Testifying under Oath

The Senate bill requires all members of Councils or the public who present oral or written testimony to the Councils to be administered an oath and be subject to perjury charges. This would take effect 120 days after enactment.

Required Provisions of Plans

The Senate bill requires that FMPs prevent overfishing, and protect, restore, and promote the long-term health and stability of the fishery. It also requires that conservation and management measures in plans be consistent with regulations implementing recommendations by international organizations to which the U.S. is party.

Both House and Senate bills mandate the Councils to provide for temporary adjustments in regulations to provide access for vessels that may be disadvantaged by weather conditions, provided that the adjustments do not adversely affect conservation of the stocks.

Both bills require all plans and amendments submitted after January 1, 1991 to assess and specify the nature and extent of scientific data which are needed to ensure the plan's effectiveness in conserving and managing the resource.

The Senate bill requires plans and amendments submitted after January 1, 1992 to include a fishery impact statement on commercial fisheries.

Discretionary Provisions of Plans

Both bills add operators of fishing vessels and processors to the list of those for which permits and fees can be required, allow the Councils to require processors to submit data (other than economic data) which are necessary for conservation and management of the fisheries, and allow the Councils to require observers. The Senate drops a provision that would allow the Councils to prescribe, with respect to foreign fishing for tuna species, measures that are reasonable and necessary for the conservation and management of non-tuna fisheries resources.

Confidentiality of Data

Both bills grant state employees access to confidential data.

Fisheries Research

The Senate bill would require that within one year following enactment of the amendments, and at least every three years thereafter, the Secretary prepare a 5-year strategic plan for fisheries research. The research would be designed to support fishery conservation and management, including biological and economic studies; conservation engineering research, including the study of fish behavior and new gear technology; and information management research.

Multi-Council Fisheries Management

The Senate bill adds extensive provisions on inter-Council management of highly migratory species. It establishes a 5-Council working group on the east coast.

Temporary Moratorium

The Senate bill now contains a provision whereby the Secretary can establish a temporary moratorium if he determines that overfishing is likely to occur as a result of fishing by vessels in addition to those that have participated substantially in the fishery during the 3-year period immediately preceding such determination. The Secretary may establish a moratorium that prohibits, as of the date of such determination, participation in the fishery by vessels during such 3-year period. The moratorium would sunset in 18 months, or earlier by Secretarial action.

Judicial Review

Both bills extend the time for submitting petitions in response to regulations. Now a petition must be filed within 30 days of the regulations being promulgated. The revision would make it 30 days from publication in the federal register if that is longer. Both bills require the Secretary to respond to the petition within 30 days and for the courts to expedite hearings on the matter.

Regional Directors and Emergency Actions

The House bill requires the Secretary to promulgate emergency regulations upon unanimous request of the Council even if the Regional Director voted "no" or abstained.

Foreign Processing in Internal Waters

Both bills require the species of interest to be identified in internal joint venture processing permit applications. Both bills require a Governor to consult with the Council or Commission and consider comments of a Governor of another state, if the species is fished also in the waters of another state.

Prohibited Acts

Both bills add to the list of prohibited acts: (1) stealing or tampering with someone else's fishing gear, (2) assaulting or interfering with an observer, and (3) driftnet fishing. The Senate bill also prohibits roe-stripping and discarding flesh of pollock.

Both bills prohibit U.S. vessels fishing in a foreign EEZ from violating international agreements between the country and the U.S. The Senate bill requires the provisions to have been published in the Federal Register.

Civil Penalties

Both bills increase maximum civil penalties to \$100,000 (from \$25,000).

Permit Sanctions

Both bills allow the Secretary to revoke, suspend, deny or condition permits of violators. Transfer of the vessel permit does not extinguish the sanction. The House bill requires the person transferring the permit to disclose the presence and type of sanctions to the person receiving the permit.

Punishment for Criminal Offenses

The Senate bill increases the maximum fine for six offenses (refusing boardings, assaulting law officers, resisting arrest, interfering with the arrest of another person, submitting false data, or obstructing an observer) to \$100,000 (from \$50,000). If there is harm or threat of harm to an observer or law enforcement officer, the fine can be increased to \$200,000. Maximum fines are

increased to \$200,000 for foreign vessels operating illegally in State waters, the EEZ, or beyond the EEZ on salmon.

Anadromous Species Rebuttable Presumption

The House states that it shall be a rebuttable presumption that an anadromous fish found on board a vessel is a U.S. fish if the vessel was in the migratory range of that species. The Senate uses similar language but refers to any species, not just anadromous species, and allows for consideration of seasonal changes in the migratory range.

Payment of Storage, Care, and Other Costs

The Act now allows properties and fish seized under Magnuson Act violations to be stored and maintained using proceeds from fines and seizures made under the auspices of the Act. Both bills expand these provisions to include violations and fines of any other fishery resource law including the Lacey Act amendments.

North Pacific Council Research Plan

The House bill includes this new provision for the North Pacific Council to establish an observer program and support it by fees collected from industry. The Senate bill has now added a similar plan. Their version includes a cap on the amount of fees authorized for an observer program (1% of the value of fish and shellfish harvested, including halibut) and a requirement that all harvesters and processors participate in the user-fee program regardless of whether an observer is present. The Secretary would also be directed to review the feasibility of establishing a risk-sharing pool for vessels and owners and the availability of commercial insurance to provide coverage against liability from civil suits.

Special Provisions Regarding Observers

Both bills restrict observers from bringing civil action for illness, injury or death against a vessel or owner unless it is the owner's willful misconduct. This restriction does not apply if the observer was engaged in any duties in service of the vessel. Both bills exempt a vessel from carrying an observer if quarters for observers or facilities for carrying out observer functions are unsafe or inadequate so that the health of the observer or the safe operation of the vessel is at risk.

Authorization of Appropriations (\$ millions)

	<u>House</u>	<u>Senate</u>
1990	75	76
1991	76	94 (\$6.5 for enforcement, \$5 for research)
1992	77	98
1993	78	102
1994	--	107
1995	--	111

Other House Items

The House bill has additional items on:

- Atlantic Tuna Convention
- Fishermen's Protective Act
- Report on Kodiak NMFS Lab
- Completion of pending appointments to Councils
- Atlantic Sea Scallop FMP
- Atlantic Bluefish FMP
- Atlantic Swordfish FMP
- Atlantic Mackerels

The House expresses the sense of Congress on Coastal Communities in North Pacific:

Finds that (1) U.S. has unique obligations to Pribilofs under Fur Seal Act of 1966, (2) the government and Pribilof residents have made significant financial investments to create a non-sealing economy, (3) the commercial fishing industry is important to the economy of coastal communities in Alaska including the numerous small villages on the coast of Alaska adjacent the Bering Sea, and (4) residents of a number of different states participate in the Alaska fisheries.

Therefore it is the sense of Congress that the North Pacific Fishery Management Council should include in fishery management plans such measures as may be necessary to meet the economic needs of all individuals and communities which are dependent on the living marine resources in the EEZ of Alaska.

Other Senate Items

The Senate bill has additional items on:

- Approval of GIFA with German Democratic Republic
- Atlantic Tuna Convention
- Fishermen's Protective Act
- Authorization for NOAA Marine Fisheries Program Act, Anadromous Fish Conservation Act, Interjurisdictional Fisheries Act of 1986, and Central, Western, and South Pacific Fishery Development Act.
- Capital Construction Fund
- Coast Guard authority to ensure fishing vessel safety.