


MEMORANDUM

TO: Council, AP, SSC Members

FROM: Jim H. Branson 
Executive Director

DATE: September 18, 1986

SUBJECT: Legislative Update

ACTION REQUIRED

- (a) Information only.
- (b) Review proposed MFCMA amendment for approval and decide whether to forward it to other Regional Councils for their consideration.
- (c) Information only.
- (d) Decide what issues should be discussed at the next Council Chairmen's meeting.

BACKGROUND

- (a) Report of Reauthorization Committee, including comment on NOAA Fishery Management Study. Information only.

The Council's Reauthorization Committee met in Anchorage on July 29, 1986 to review pending legislation and prepare comments on the NOAA Fishery Management Study. The Committee's draft comments were included in the August 6 Council mailing. The final comments were mailed to NOAA on August 25 and included in the August 26 Council mailing. NOAA's Blue Ribbon Panel was scheduled to meet the week before this Council meeting to review comments and finalize the management study. Copies of the final report will be sent to you as soon as they arrive at the Council office. Public comments on the report received at the Council office are included as Attachment A.

- (b) Review draft of amendment to the MFCMA.

The Council will meet as a workgroup on September 23, 1986 to review a proposal that would replace the FMP process in the MFCMA with a regulatory process. The document the Council members will consider at the workshop is included as Attachment B. The results of the workgroup meeting will be reviewed at the full Council meeting on September 25 at which time the Council will decide whether to approve the proposal and forward it to the other Regional Councils for their consideration. Included as Attachment C is a schedule of meetings for the other Councils through the end of the year.

(c) Review of recent Congressional action.

On August 12, 1986 the House passed a fisheries package as an amendment to S. 991. The MFCMA reauthorization portion of the House amendment is nearly verbatim H.R. 1533. A description of the House legislation appears below.

I. House Fisheries Package - an Amendment to S. 991

A. MFCMA Amendments

1) U.S. Fishery Management Authority

- a) Exclusive Economic Zone. The Fishery Conservation Zone is redesignated as the Exclusive Economic Zone (EEZ) and the U.S. claims sovereign rights over all fishery resources in the EEZ except highly migratory species.

2) Foreign Fishing

- a) Permit Approval. The Secretary of Commerce may approve foreign fishing permit applications in whole, or in part.
- b) Reciprocity. Whether a foreign nation extends reciprocal fishing privileges to U.S. vessels is included in the list of factors to be considered by the Secretary of State before making allocations to that foreign nation.
- c) Sanctions. The Secretary of Commerce's authority to levy sanctions against foreign fishing vessels is expanded to apply to the commission of prohibited acts by the owner or operator of a foreign fishing vessel and the list of sanctions is expanded to include the denial of a permit.
- d) Temporary Permit Denial or Suspension. The Secretary of Commerce may, after certain findings, temporarily deny or suspend a foreign fishing permit pending the outcome of administrative enforcement proceedings.
- e) Facilities for U. S. Observers. The Secretary of Commerce is required to prescribe minimum health and safety standards for U.S. observer facilities on foreign fishing vessels in the U.S. E.E.Z.
- f) Bilateral Fishing Agreements. The Secretary of State, with concurrence from the Secretary of Commerce and after consultation with the appropriate Regional Fishery Management Council, may enter into a bilateral fishing agreement with a foreign nation (with a GIFA) that:
- (a) May last for all or part of the term of the GIFA;
 - (b) Specifies dispute resolution procedures;
 - (c) May exempt the foreign nation from current allocation release schedules;
 - (d) May guarantee a fixed percentage of an annual TALFF;
 - (e) May reduce or eliminate foreign fishing fees;

- (f) May obligate the foreign nation to limit its export of fish products to the U.S.;
- (g) May obligate the foreign nation to specify actions it will take to open its markets to U.S. fishery products.

3) Council Composition and Operations

- a) Terms of Council Members. The Secretary of Commerce may adjust the terms of appointed Council members to ensure the number of terms expiring each year are more nearly equal over the three-year appointment cycle.
- b) Disclosure of Financial Interests. Appointed Council members, Council nominees, and Executive Directors must file statements disclosing any financial interests they, their spouses, minor children, business partners, or any organization (except the Council) in which they are an officer, director, trustee, partner or employee may have in any harvesting, processing or marketing activity that may be undertaken in any fishery within the appropriate Council's jurisdiction.
- c) Conflict of Interest. Council members are exempted from the application of the Federal criminal conflict of interest statute, 18 U.S.C. Section 208, as long as they are in compliance with the financial disclosure requirements.
- d) Qualifications of Council Members. Appointed Council members must be individuals who are knowledgeable and experienced with regard to the management, conservation, or recreational or commercial harvest of the fishery resources of the geographical area concerned. In making Council appointments, the Secretary of Commerce must ensure fair apportionment on a rotating or other basis of the active participants involved in the fisheries under the Council's jurisdiction.
- e) Consultation by Governors. Before submitting the names of Council nominees to the Secretary of Commerce, a governor must first consult with representatives of the commercial and recreational fishing interests of the state regarding those nominees.
- f) Fair Representation. The Secretary of Commerce shall ensure, "to the extent practicable," that those persons dependent upon fisheries within the respective jurisdictions of the Regional Councils are fairly represented as voting members of that Council.
- g) Advisory Panel Participation. Each Council must specify procedures that will ensure that its committees and advisory panels are involved, on a continuing basis, in the development and amendment of FMPs.

h) Required FMP Provisions.

(1) All FMPs must take into consideration and may provide for temporary adjustments of access to fisheries if vessels are prevented from participation because of weather or other ocean conditions.

(2) All FMPs must include readily available information concerning the significance of habitat to the fishery and contain assessments regarding the effects which changes to that habitat may have upon the fishery.

i) Discretionary FMP Provisions.

(1) A system for limiting access to a fishery must be approved by at least 3/4 of the voting members of a Council and 2/3 of the fishermen presently participating in the fishery. Permits, shares or rights created by the access limitation system could not be sold.

(2) Councils may, in conjunction with access limitation, implement a fishery compensation plan to provide for the purchase of vessels, financial assistance to modify vessels for use in other fisheries, or other financial compensation as established by the Council. Compensation plans may be funded through fees levied against U.S. fishermen and must be approved by 2/3 of the fishermen presently participating in the subject fishery and at least 3/4 of the voting members of a Council.

j) Fishery Habitat Concerns. Councils may comment on or make recommendations concerning any activity by any state or Federal agency that may affect the habitat of a fishery resource under that Council's jurisdiction. A Federal agency must respond in writing to the Council within 45 days after receiving comments.

k) Disclosure of Confidential Data. NMFS and Council staff members responsible for FMP development and monitoring are given access to confidential fisheries data.

4) Secretarial Action

a) Fishery Research. The comprehensive program of fishery research mandated by §304(e) must be carried out in cooperation with the Councils and is expanded to include information on the economics of the fisheries. The Secretary must also annually review and update those programs and make the results of the review and update available to the Councils.

b) Secretarial Review of FMPs and Amendments.

(1) The Secretary must begin formal review of a management plan or amendment on the fifth day after the date on which a Council transmits to the Secretary what it characterizes as a final plan or amendment. The review process may be further streamlined by:

- (i) Reducing the 75-day public comment period to 60 days after the receipt date, in the case of a Council submitted plan or amendment, or 60 days after the date a Secretarial plan or amendment has been submitted to a Council. [Sections 304(a)(1)(B) and 304(c)(2)(A)(ii) respectively]
 - (ii) Reducing the time period the Secretary has to make changes in proposed regulations submitted with FMPs or amendments from 30 days to 15 days after the receipt date. [Section 304(a)(1)(C)]
 - (iii) Reducing the time period the Secretary must wait to disapprove or partially disapprove a plan from 75 days to 60 days after the receipt date.
 - (iv) Reducing the time period the Secretary has for publishing in the Federal Register proposed regulations to implement a Secretarial plan or amendment from 30 days to 15 days after the date of submission of the plan or amendment to the appropriate Council. [Section 304(c)(2)(A)(iii)]
 - (v) Reducing the time period for submission of Council comments concerning a Secretarial plan or amendment from 75 days to 60 days after the Secretary submits the plan or amendment to the appropriate Council. The Secretary may implement a Secretarial plan or amendment after the 60-day comment period as opposed to the current 75-day waiting period. [Section 304(c)(2)(B)]
- (2) After receipt of a plan or amendment, the Secretary must immediately make a preliminary evaluation to decide , (1) if it is consistent with the National Standards and, (2) sufficient in scope and substance to warrant Secretarial review. If the decision is affirmative, the Secretary must then proceed with the formal Secretarial review process. If the decision is negative, the Council must be notified in writing of the disapproval.
- c) State Jurisdiction.
- (1) Management authority over crab resources in the federal intrusion areas of Southeast Alaska is delegated to the State of Alaska.
 - (2) The current requirement that Secretarial preemption of state fisheries management may take place only after notice and a hearing was retained by the House; however, a provision was added that allows the Secretary, after finding that an emergency exists, to preempt state fishery management in territorial waters without notice and an opportunity for a hearing. A state may request a post-preemption hearing, but the authority to preempt state fisheries management shall terminate on the 20th day after the date on which the hearing was requested unless the hearing is completed before that date.

5) Violations and Enforcement

- a) False Statements. It will be unlawful for anyone to knowingly and willfully submit to a Council, the Secretary of Commerce, or the governor of a state false information regarding any matter that the Council, Secretary or governor is considering for the purposes of carrying out the MFCMA.
- b) Civil Penalties.
- (1) The procedures for appealing a civil penalty assessed under the MFCMA are clarified.
 - (2) A final civil penalty assessed against a vessel for the commission of a prohibited act constitutes a maritime lien on the vessel.

6) Appropriations and Other Provisions

- a) MFCMA Reauthorization. Reauthorization will be through FY 1987 at the following appropriation levels: 1986 - \$69 million; 1987 - \$70.8 million. The House Appropriations Committee approved \$8 million for the Regional Fishery Councils for FY 1987. This is an additional \$4.3 million to the \$3.7 million proposed by the Administration. In floor action on July 18, the House voted to reduce the \$1.1 billion appropriation for NOAA Operations Research and Facilities (OR&F) by 5%. Council appropriations are included in the OR&F category. The House did not express any intent regarding the manner in which the 5% reduction is to be applied--whether across the board or to selected items. Some are of the opinion that it may be applied to the Appropriation Committee's add-ons. If the reduction is applied across the board, the House appropriation for Councils will be \$7.6 million, if to add ons--\$7.785 million, if to selected items--any level between zero and \$8 million. On August 14, the Senate Appropriations Committee approved \$7.7 million for the Councils in FY87. The exact level of funding may be set in conference this fall.
- b) NOAA Vessels. The Secretary of Commerce is prohibited from replacing the NOAA fishery research vessels operated by the Atlantic Marine Center with chartered vessels during fiscal years 1986 and 1987.
- c) Law of the Sea. Section 401 regarding the effect of the MFCMA on the Law of the Sea Treaty is deleted.

B. Other Amendments

- 1) Seafood Marketing Councils. The creation of seafood marketing councils to promote "one or more species of fish and fish products of that species" will be possible under this provision. Applications for marketing council charters would be made to the NOAA Administrator's office. Marketing council members would serve

without compensation, but would be reimbursed for expenses incurred in performance of their council duties. Councils would be funded through self-imposed assessments, as well as voluntary contributions.

- 2) NOAA Estuarine Programs Office. The NOAA Administrator is authorized to establish an estuarine program's office for the purposes of developing and implementing a national estuarine strategy. The new office will also coordinate the estuarine activity within the federal government with that of state agencies.
- 3) Under and Assistant Secretaries of Commerce for Oceans and Atmosphere. The office of NOAA Administrator will be redesignated as the Under Secretary of Commerce for Oceans and Atmosphere and the office of NOAA Deputy Administrator will be redesignated as the Assistant Secretary of Commerce for Oceans and Atmosphere.
- 4) Chief Scientist of NOAA. The President is authorized to appoint a chief scientist of NOAA to be the principle scientific advisor to the Administrator.
- 5) Amendment to the Fishermen's Protective Act of 1967. Reimbursement authority under the Fishermen's Protective Act will be transferred from the Secretary of Commerce to the Secretary of State.
- 6) Marine Fisheries Programs. The following authorizations were approved:
 - a) The NOAA Marine Fisheries Program Authorization Act-- through FY1989.
 - b) The Anadromous Fish Conservation Act--through FY1989.
 - c) The Central, Western and South Pacific Development Act--through FY1988.
 - d) The Atlantic Tunas Convention Act--through FY1989.
- 7) Great Lakes Fishery Commission. The number of U.S. commissioners is increased from 3 to 4, finite terms of office are established for the U.S. commissioners and an alternate commissioner will be appointed.
- 8) Interjurisdictional Fisheries Research. The Commercial Fisheries Research and Development Act of 1964 is repealed and a program is created whereby the States are able to use matching Federal funds for fisheries programs where direct and legitimate Federal and State interests exist. The purpose of the program is, "to promote and encourage management of priority interjurisdictional fishery resources throughout their range.

II. Other Legislation

A. S. 2611

On June 26, 1986 Senator Stevens introduced S. 2611, entitled the Driftnet Impact Monitoring, Assessment and Control Act of 1986 designed to improve

efforts to improve, assess and reduce the adverse impacts of high seas driftnets on marine life. A copy of the bill was included in the August 6 Council mailing. Included as Attachment D is Japan's response to that bill. S. 2611 may be included in the package of fisheries legislation the Senate will try to move before the end of this Congress.

B. S. 2700

On July 30, 1986 Senator Weicker (R. CT.) introduced S. 2700 to establish a National Marine Policy Development Commission. The Commission would be charged to review government and private ocean and atmospheric activities and make appropriate policy recommendations. The Commission will have eighteen months to complete its task. Senator Weicker's bill is similar in concept to S.R. 2853 passed by the House in 1983. That bill would also have created an ocean policy commission but was never acted upon by the Senate. There are no plans to move S. 2700 during the remainder of this Congress, but Senator Weicker intends to hold hearings during the early part of the next Congress.

C. H.R. 5347

On August 6, 1986 Representative Mikulski (D. MD.) introduced H.R. 5347 entitled the Ocean Wilderness Act of 1986, which would require the Secretary of Commerce, after public hearings, to recommend to Congress that certain areas of the U.S. EEZ be protected as wilderness areas. According to the sponsor, the bill recognizes the need for multiple uses of the ocean and was introduced to generate discussion of the need for ocean use planning in this country. No committee action has as yet been scheduled on the bill.

D. H.R. 5013

On August 13 the House defeated H.R. 5013, the Commercial Fishing Vessel Liability and Safety Act of 1986, by a vote of 241 to 181. The Council was briefed on this bill at the June Council meeting. The bill may be amended and resubmitted in the next Congress.

E. H.R. 5232

H.R. 5232, a proposed amendment to Title 11 of the Merchant Marine Act (the Fisheries Obligation Guarantee Program, formerly known as the Fishing Vessel Obligation Guarantee Program), is being used as a vehicle to amend Section 306(c) of the MFCMA to allow foreign fish processing within the territorial waters of Norton Sound. This matter was pending as of the date of this memo. Any final action will be reported at the Council meeting.

F. Soviet GIFA

No recent action has been taken to renew the extension of the Soviet GIFA. The current extension expires on December 31, 1986 and no one in Congress is interested in raising the issue while the Daniloff matter is unsettled. The proposed extension may become effective without Congressional action, but to meet the 60-day requirement in Section 203 of the MFCMA Congress must stay in session until October 5. Both houses are currently scheduled to adjourn on October 3 with no plans to hold a "lame-duck" session; however, some Congressmen are saying there is no possibility of adjournment before October 10.

(d) Issues for Council Chairmen's Meeting

The Council Chairmen may meet at some time in December or January. Listed below are issues the Council may wish to recommend for consideration by the Chairmen.

- (1) Council liaison in Washington, DC. Senator Stevens recently wrote to the Council strongly endorsing a Council liaison office in Washington, DC. Senator Stevens cited as advantages to the creation of the office the facilitation of communications between the Councils and Congress and an improvement in the ability to track FMPs and amendments through the Secretarial approval process. Senator Stevens' letter was included in the August 6 Council mailing.
- (2) MFCMA Amendment.
- (3) NOAA Fishery Management Study.

AGENDA C-1
SEPTEMBER 1986
ATTACHMENT A

COMMENTS ON NOAA FISHERY MANAGEMENT STUDY

PACIFIC FISHERY MANAGEMENT COUNCIL

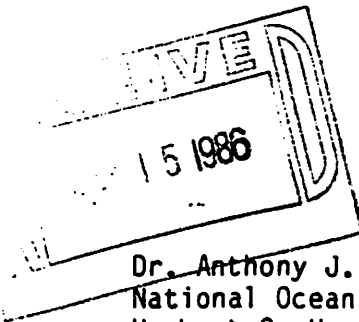
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Dr. Anthony J. Calio, Administrator
National Oceanic and Atmospheric Administration
Herbert C. Hoover Building, Room 5128
14th and Constitution Avenue, NW.
Washington, DC 20230

August 29, 1986

ACTION	DATE TO	INITIAL
		J

Dear Tony:

We were pleased to hear that you extended the comment period on the National Oceanic and Atmospheric Administration (NOAA) Fishery Management Study of June 30, 1986 until September 8, 1986. This has given the Council a better opportunity to review the report and submit its comments. Since there will be no full Council meeting until mid-September, I appointed a committee to review the report, prepare comments, submit those comments to all the Council members for their reaction, then prepare this report to you.

The 11-member study group and staff are to be congratulated for their efforts on the report. Although you will see in the following comments that we have some serious concerns over a few of the conclusions and recommendations, it is well that the subjects be aired at this time. Our comments follow.

General Comments

Although the report is constructive and useful in many respects, it has two basic flaws: (1) the extremely heavy emphasis on the need to separate "conservation" and "allocation" decisions and the administrative responsibility for these decisions and (2) the assumption that better qualified Council members would be selected by the suggested review committee procedure.

The first is a matter of overwhelming importance. From an administrative standpoint, vesting NOAA with the authority to determine allowable catches, while relegating the Council to the task of allocating these catches among competing users, would effectively place the federal government in total control of the fishery management process. Moreover, there would be no escaping a constant, time consuming, and often acrimonious dispute between councils and NOAA about the allowable catch and the impact of alternative allocation decisions thereon.

The latter point deserves further elaboration. It is simply impossible to determine an appropriate allowable catch for any given period absent consideration of who is to harvest the fish and when and where they are to be harvested. For example, an optimal harvest would be very different for a total catch dominated by commercial harvests as compared to a recreational

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harvest. Similarly, the total number and poundage of fish to be taken in the salmon fishery would be significantly different depending on whether the bulk of the harvest is to be taken by ocean trollers or by net fisherman in terminal fisheries. Contrary to the inadequate discussion in the report, the intertwining of the conservation and allocation decisions is not happenstance--it is inherent in the nature of the fishery management problem.

The National Marine Fisheries Service (NMFS) does not have the expertise to set harvest levels for all species. The field offices would have to work very closely with state agencies, and we can foresee all kinds of duplication and overlap in both obtaining and processing the necessary data. Moreover, it would be naive to think that a total allowable catch for a given species significantly lower than that which the states desire would not provoke a vicious and counterproductive political battle. The present Council system provides a far more effective forum for exposing all points of view and reaching acceptable compromises.

We recommend that the study group or NMFS document each specific instance when allocation considerations have overridden conservation responsibilities, before making recommendations for major changes in the system. If this is clearly a problem, we suggest that NMFS use its review authority to "crack down" on councils which are setting "overly liberal" harvest limits.

The definition of acceptable biological catch is confusing and offers little guidance. It does not address rebuilding, multispecies fisheries, the need for non-numeric optimum yields (OY) or nonquota OYs in some cases.

The suggested procedure for determining Council membership seems equally naive. The proposed nine man board to select Council members will inevitably be subjected to intense political pressure because significant personal and group interests are involved. We find it astonishing that the authors of the report say that the nine man board would have "broad" geographic and user representation. How that could be accomplished with nine members escapes us. We suggest that the Secretary refuse to appoint any of the three names submitted by governors if none are knowledgeable or experienced. The governors would then have to submit new lists.

Specific Comments

Of the nine recommendations in the executive summary, Numbers 1, 2, 3, 5, 7, and 8 could be supported with only partial reservations. We are highly skeptical of Number 4, since it would almost certainly result in a corresponding decline in present sources of funding from the federal government, and--if large enough--would constitute a real burden on an already hard pressed industry. We are also skeptical of the extent to which funds collected in that fashion would actually be used for the betterment of the fisheries--experience suggests otherwise. With respect to recommendation Number 6, there is little we can say, since it is already firmly established as policy. Nevertheless, we are concerned about the strongly protectionist tone of some of the specifics. Recommendation Number 9 is unexceptionable, but really

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constitutes a motherhood statement.

The statement of convictions on pages 1 and 2 is fine with the exception of Number 4.

The statement on the purposes of fishery management on page 3 is acceptable, but it might be pointed out that Number 4 duplicates Number 2 and Number 6 duplicates Number 1.

Most of the discussion on pages 4 and 5 regarding deficiencies of operations under the Magnuson Fishery Conservation and Management Act (Act) is acceptable, but some exceptions should be noted. First, Item "a" is not a statement of fact. Overfishing is defined in the NOAA guidelines and under its definition we do not have a species of marine fish that has been overfished. The report further confounds the issue on pages 62 and 63. Overfishing is not defined in National Standard Number 1 as implied on page 62. Second, Item "b" is not particularly meaningful. If conservation is defined properly to include social and economic as well as biological considerations, our Council, at least, has done a pretty fair job. We would hate to see us go back to a purely biological definition of conservation, which seems to be implied here. Third, Item "h" is pointless. There will always be conflicts among users as long as valuable resources are involved and as long as total yields are below market demands. Nothing is suggested in the report to better deal with the problem of conflicts among users (particularly, since the report does not seem to recognize that this is simply another statement of the allocation problem). These conflicts can best be addressed by the councils adopting appropriate procedures for getting the conflicting users to work out their differences. With respect to Item "j," joint ventures in harvesting operations have flourished because they are economically efficient and financially beneficial to both parties. We endorse policies that develop American processing activities; however, until all aspects of harvesting, processing, and marketing of underutilized resources are integrated within the domestic industry, we will encourage joint ventures that will increase American participation in the utilization of these resources.

The findings and conclusions on pages 6 and 7 have already been discussed above. If it is accepted that conservation and allocation must be considered jointly, the regional management approach, as presently constituted, seems to stand out head and shoulders above the other alternatives. The one suggested by the authors of the report would be tremendously disturbing, would involve duplication of effort, and would require endless hours of argument to resolve differences between federal, state, and Council entities. The highly useful forum for the expression of public opinion developed by the Council system would almost certainly be shunted aside as far as the determination of allowable catch is concerned.

We find the recommendation on page 13 to eliminate the Western Pacific and Caribbean Fishery Management Councils to be inconsistent with the recommendation on page 19 to include highly migratory species in the fishery conservation zone under the jurisdiction of the councils.

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In the list of continuing problems on page 14, the report cites a lack of a firm legal basis for managing species like striped bass. Actually, striped bass is the one exception to this otherwise correct statement. Last year Congress enacted a management regime specifically for striped bass.

The first three recommendations (a, b, and c) on pages 14 and 15 are similar to those in the draft NMFS Policy on Interjurisdictional Fishery Management, which has never been adopted for public review. Item "c" to secure commitments for funding is a laudable, but probably unrealistic recommendation. Unfortunately, the Federal Administration is never going to commit in advance to fund anything. Items "d" and "e" are legislative solutions to force interstate cooperation in the management of territorial sea fisheries. While this is not a problem in the Pacific area, some forcing mechanism may be required for Atlantic coast species. If so, we expect that the states would prefer a "carrot" approach like the one in H.R. 1028, where states are provided matching federal funds for developing and implementing management plans which meet certain standards. The Interstate Marine Fisheries Commissions now provide a forum for developing such plans, but there is no means to force compliance, and of course, there is inadequate funding. The alternative of federal preemption of predominately territorial sea fisheries will be difficult for states to swallow (Item "e").

The discussion of fishery management priorities is convincing and well developed.

We are inclined to agree with the recommendation on page 19 regarding highly migratory species. These provisions were inserted in the Act as a continuation of former tuna policy, but have failed to produce the desired results. Instead, they have lead to serious political losses, since no one else in the world, except Japan, agrees with the U.S. position.

As indicated above, we feel that the matter of fees and licenses deserves much more detailed consideration than page 20 of this report provides. We recommended earlier that the tight restriction on fees be relaxed to permit the industry itself to suggest research and data collection activities which would be beneficial and which they would be willing to pay for. On the other hand, if the gate is open too wide, we may find, as has been the case with other similar legislation, that the fishing industries, both commercial and recreational, are simply being used to help cut the deficit.

It is to be hoped that the councils will be given more latitude in the area of limited entry as recommended in the discussion on pages 21 and 22.

On page 24, Item "h", is a strange recommendation to refrain from further negotiations for the Governing International Fisheries Agreements. Our experience in the Pacific and North Pacific areas suggests that we need more, not less, competition for available total allowable level of foreign fishing. That is one of the principal levers that has been used successfully to expand opportunities for American fishermen and, to a lesser extent, American processors. As world demand for fish products begins to outstrip supplies, it

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would be highly desirable for us to extract as much as possible out of our exportable surpluses.

With respect to habitat, we share the authors' concern with habitat matters, but would like to express a concern of our own. Almost without exception, habitat matters occur within the jurisdiction of the individual states (and, in some cases, are a result of federal activities--e.g., Corps of Engineers and Bureau of Reclamation). While we heartily endorse Council participation along the lines that we have already developed--selective and hard hitting where we can actually accomplish something--any major extension of Act entities into detailed habitat matters seems likely to involve some direct conflict with the states. This may not be inherently bad, but it does seem likely to develop some rather time consuming and expensive operations.

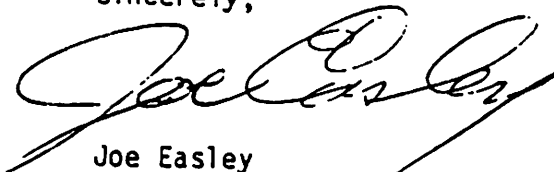
The legislative proposals beginning on page 28 (A through D and F) address those recommendations in the report with which we disagree; therefore, we oppose them. It is doubtful that Proposal E will serve any useful purpose.

In closing, we would like to emphasize once more that we consider the two basic flaws in the report to be (1) the separation of "conservation" and "allocation" decisions and (2) the suggested review committee procedure to select council members. Our experience has shown that the more we open up the process, the better the results. The above changes would have the effect of restricting access and closing the fishery management process. We have been successful in alleviating much of the controversy from the process in the last few years and believe the recommended changes would reverse this trend.

I am enclosing the letter I received from Bill Yallup, a council member from the Yakima Indian Tribe, which expresses views from the tribal perspective on the report.

Thank you again for extending the comment period deadline. We stand ready to discuss any of the above matters with you or the panel and provide additional supporting information if necessary.

Sincerely,



Joe Easley
Chairman

JCG:rcb
Enclosure

August 26, 1986

Mr. Joe Easley, Chairman
Pacific Fishery Management Council
Metro Center, Suite 420
2000 SW First Avenue
Portland, OR 97201

Dear Joe:

The Council's response letter to Dr. Anthony J. Calio concerning the National Oceanic and Atmospheric Administration (NOAA) Fishery Management Study, June 30, 1986, meets with my general approval. However, I would like to elaborate on several points.

I totally agree that "the intertwining of the conservation and allocation decisions is not happenstance". Now with U.S./Canada Salmon Interception Treaty in place and with the U.S. v. Oregon plan to be submitted in the near future it is important for NOAA to realize that both allocation and conservation are critical issues. Strict management for escapement goals would have severely curtailed ocean salmon fisheries over the past two years but, negotiations with Puget Sound tribes and the Columbia River tribes have resulted in more meaningful fisheries for everyone. Allowing NOAA to set the acceptable biological catch would effectively hamstring negotiators in the U.S./Canada and U.S. v. Oregon processes who have spent arduous hours establishing rebuilding schedules for salmon stocks.

Another point is that habitat issues are best left in the hands of local jurisdiction. In the Columbia Basin, detailed habitat issues will be resolved in sub-basin planning under U.S. v. Oregon and activities carried out under the Northwest Power Act. While it is important for the Council to be concerned about habitat issues, the appropriate states, tribes and federal agencies are better equipped to deal the details of a particular sub-basin. For the Council to become more involved in local habitat issues would be costly and lead to duplication of work already done by local agencies.

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In closing I would like to commend the committee that drafted the response comments for their hard work.

Sincerely,

Bill Yallup
William Yallup
Council Member



NATIONAL WILDLIFE FEDERATION

1412 Sixteenth Street, N.W., Washington, D.C. 20036-2266 (202) 797-6800

RECEIVED SEP 16 1986	ACTION	ROUTE TO	INITIAL
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8 September 1986

Hand Delivered

Dr. Anthony Calio
 Administrator
 National Oceanic and Atmospheric Administration
 U.S. Department of Commerce
 14 th and E Streets, NW
 Washington, DC 20230

Dear Dr. Calio:

The National Wildlife Federation (NWF) appreciates the opportunity to comment on the National Oceanic and Atmospheric Administration's (NOAA) Fishery Management Study. The quality of marine fishery management in the U.S. is of vital concern to the NWF's 4.5 million members and supporters and our affiliated organizations.

In recent years, NWF has appeared numerous times before House and Senate committees to make recommendations on funding of marine fishery management programs, on reauthorization of the Fishery Conservation and Management Act (FCMA) and other fishery-management-related acts, and to discuss new legislation that would help improve fishery resources and their management. The record is clear: the NWF supports the wise use of fishery resources; fishery management activities should be conducted according to principles of sound biology and emphasize protection, restoration, and enhancement of fishery habitat as a means to ensure continued productivity of fishery resources for the benefit of all users. It is in this tradition that we offer the comments listed below--often simple restatements of NWF positions repeated many times before.

Listed below are our comments on the Fishery Management Study's "Recommendations" provided in Section IV of the Study, and recommendations for legislative changes to the FCMA.

A. Separating Conservation and Allocation.

In principle, the NWF supports the Study's recommendation to make fishery resource conservation the paramount objective of fishery management. Separating fishery conservation decision making from decisions on fishery allocation is a laudable goal. Allocation should be considered only within the context of an acceptable level of harvest predetermined by biological conditions of the stock(s), the associated food base, and habitat quality and quantity. As the

Study points out, for other models of resource maintenance, "conservation decisions are based on resource availability." However, what is not emphasized is that habitat quality and quantity are the primary factors providing for the subsequent productivity of living marine resources, not necessarily harvest of those resources, as the overwhelming focus of the study seems to imply.

The Study recommends "alternative institutional arrangements" by which to implement fishery management. Technically, we see numerous dilemma facing the institution(s) charged with attempting to follow the conservation/allocation recommendations of the Study--problems such as determining a sound conservation quota in the face of interactions between allocation and population biology of the managed stock and other fish stocks, especially where stocks are competing for the same forage or where one managed stock serves as forage for another managed stock. Such dilemmas face managers under current fishery management structures. Nonetheless, the recommendations of the Study, if implemented effectively, would lead to improved fishery management.

Implementing an institutional arrangement to administer the dual management functions of conservation and allocation presents another set of problems. The Study reviews numerous such arrangements, several of which have the potential to be effective in terms of providing reasonable opportunity for resource protection, while ensuring the participation of fishery users and the public in resource allocation decision making. Most reasonable among these, and we consider these concepts only, are Shared Management Options, "Conservation by NOAA; Allocation by the Existing Councils", "Conservation and Allocation by the Existing Councils Operating as Independent Federal Agencies", and "Conservation and Allocation by a Combination among State/Federal/Interstate Marine Fisheries Commission Structures."

The Study's recommended organizational structure (Conservation by NOAA; Allocation by the Existing Councils) merits consideration. However, given the past record of NOAA (National Marine Fisheries Service, NMFS), we would feel comfortable with such an arrangement only if the agency (NMFS) were thoroughly restructured to ensure that a new agency ethic of resource stewardship/conservation was adopted in word and deed. We have strong reservation that the agency could engage in a "conservation mission" at this time. To conduct its role in fishery conservation properly, the agency would have to change its very nature, from being an advocate of users of the resource to being an advocate of the resource. Emphasis would have to shift from industry development to maintenance, protection, and enhancement of the living marine resource--especially habitat. The agency would have to develop an ethic similar to that held by the U.S. Fish and Wildlife Service. Indeed, given the tenor of the Study, it would make sense to take the step advocated by many in the conservation community--including the NWF--of making the NMFS part of the Fish and Wildlife Service and thus consolidate federal responsibility for fishery management into a single agency. Reorienting the NMFS to a mission of resource stewardship would come naturally, and duplication of efforts between the

agencies--albeit efforts sometimes directed toward different goals--would be eliminated.

B. Fishery Management Plan Process.

The Study finds that there is a perception that Secretarial action on Fishery Management Plans (FMPs) has included review of policy judgments of the Councils. The contributors to the Study were too kind to the Secretary when discussing his role in reviewing FMPs. The actions of the Secretary have been blatantly obstructive to decision making associated with Council management of fisheries. The current situation is intolerable. Recommendations of the Study could eliminate some of the meddlesome and politically motivated delay and revision associated with the current FMP approval process by the Secretary. However, we recognize the continued need for final federal approval of actions taken under the FCMA by the Secretary. The Study recommends that Secretarial review of FMPs be confined to assessing an FMPs consistency with applicable law--we agree. However, we add that the Secretary must continue to have the duty to review the record of development of an FMP, to ensure that the public's right to participate in the process was protected.

The Study recommends a 60-day Secretarial review period for FMPs (or amendments), where failure to provide a final response would constitute FMP approval. The NWF supports this recommendation.

Also, the Study discusses what appears to be an alternate review process--or an appeals process--to Secretarial actions. These avenues for added review warrant additional discussion, however on the basis of information included in the Study, the most reasonable approach would be to establish an independent review or appeals body of nationally recognized experts, appointed by the Secretary to long terms of office.

Finally, detailed documentation by the Secretary of the technical or other basis and rationale for disapproval of FMPs (or parts/amendments) is fully reasonable to expect. To say that the Secretary is not doing so currently, is to say the Secretary is operating outside the public's best interest.

C. Council System.

We agree that the current procedure to nominate and appoint individuals to the Councils has flaws. A few appointments (very few considering the number of Council and advisory panel members) can be considered nothing more than political favors. Council members should be more than casually "knowledgeable and experienced" with fishery resources and their management. In addition, Council members should be capable of rendering objective decisions based on an objective and intelligent analysis of fishery-related information. Council members should not be appointed solely on the basis of advocating a particular ideology or of promoting a particular public or private interest. All

Council members should be fair-minded and approach their job as objective resource managers.

The Study makes several recommendations for change in the Council membership process. We are in general agreement on most of these recommendations, with the following exceptions. With respect to creating a National Review Board to choose Council members, we could support such a board only if rigorous standards were maintained in the selection of review board members. Each board member should have as their primary interest the well-being of the fishery resource and be able to evaluate each nominee in an objective manner. Political or special interest-related appointees have no place on such a board.

In addition, we object to providing for mandatory representation of any special interest group on the Councils--either as a Council member or as a special advisor (we do not extend this principle to membership on special advisory bodies where the purpose of the body is to provide for representation of special interest groups).

D. Number of Councils.

We disagree with the Study's conclusion that the Western Pacific and Caribbean Councils be eliminated. Extended federal jurisdiction for fisheries carries with it a clear federal responsibility for the federal government to participate in the management of resources in the federal zone. Federal fishery resources are held in trust by the federal government for all U.S. citizens and thus, the management of such resources requires federal overview.

E. Interjurisdictional Management.

In general, the study points to a real and pressing set of problems that will be difficult to solve no matter what institutional arrangement is designed to coordinate management of fisheries that cross state(s)-federal borders. We agree with the statements in the Study that the federal government (and we add "in cooperation with the states) needs to a) "[c]learly define relative Federal, State, Tribal, and local governmental authorities and responsibilities...", b) "establish policies delineating responsibilities and defining the mechanisms for implementation of coordinated management...", c) "secure commitments for long-term [research]...", d) "legislate the basis for federal support of the research and data collection required to carry out interjurisdictional fishery management [NWF testified before Congress in support of H.R. 1028, (see enclosed)--an example of legislation referred to by the Study]."

The Study also recommends a federal role in management of interjurisdictional fisheries. Although the NWF agrees with the concept of an "interjurisdictional fishery management act," and we detailed our rationale before congress recently (see enclosed), the recommendations of the study need further clarification. And, in

general, any federal management of fisheries that currently are a state responsibility would have to be carefully designed. As a starting point for discussion, we first would consider modification of the already established Interstate Fisheries Management Commissions to accomplish interjurisdictional fishery management needs.

F. Fishery Management Priorities.

This section refers to the "major functions of fishery management," and focuses on research, catch and effort data, and enforcement as the highest priorities in fishery management. Although we agree these are important fishery management functions, we would urge that "habitat maintenance/protection" be included among the high priority fishery management needs. The first priority for research is to gain a better understanding of the relationship between a fishery (and its production) and its environment (the complex of physical/biological factors that regulate its production). It follows that maintenance of habitat quality and quantity is the bottom line to maintaining--and thus managing--the production of fisheries. Even without management of harvest, a well maintained and healthy environment will continue to have the capacity to produce fish. However, without habitat, no amount of harvest management will affect long-term fishery production.

In general, we agree with the study's evaluation of research and other priority work needs. We would add to priority research topics the need to evaluate more fully the relationship between habitat alteration (quality and quantity) and production of fisheries.

G. Highly Migration Species.

We agree with the Study's recommendation to include the management of tuna among the Councils' responsibilities. Our current policy toward tuna management has nothing to do with the continued participation by the U.S. in international tuna management forums. Our policy now simply allows U.S. fishermen to "legally" act as "outlaw" fishermen in the zones of extended jurisdiction for fisheries of other countries.

H. Fees and licensing for Marine Fishing.

The NWF supports collecting license fees for consumptive use of natural resources to help defray management of those resources. Tonnage fees for commercial users should be imposed, and such fees should be based on the relative value of the resource harvested. We support state licensing, and collection of fees from anglers fishing in saltwater. We would support the states sharing a portion of their fishing license fees with the federal government, if those fees were used to augment (not replace) current recreational fishing related management activities of the federal government. Such fees must be divided equitably between the state

and federal government on the basis of the percentage recreational fishing effort in the Exclusive Economic Zone relative to fishing in state's territorial waters (to ensure anglers fishing in these areas got fair treatment in use of their contributions). In addition, the states and anglers should have strong say over how these "user-contributed" fees are spent by the federal government.

I. Limited Entry.

One could say the free enterprise system in the U.S. gives each citizen equal opportunity to enter into business--as well as the potential to go broke. On one hand, the objective of fishery management should not be to provide job security to a "chosen few." By separating conservation from allocation an allowable level of harvest would be set. Harvesting that allowable limit of fish should have no detrimental effect on the long-term stability of the resource. Thus, the public's resource is protected (provided the harvest quota has not been circumvented). On the other hand, too many fishermen competing for a limited number of fish can lead to fishermen ignoring safety precautions, inadvertent (or purposeful) overharvest, and extreme political/social pressure on the fishery management system and managers. The industry should take the lead in working with the federal government to insure the economic well-being of its own members, within the constraints imposed by use of the resource in a biologically-sound manner.

J. Full Domestic Utilization.

We have no comment on the recommendations on full utilization, except to caution that emphasis on "full" utilization by influencing market factors or creating new markets should not occur at the expense of other fishery resources. For example, some fishery resources might best serve as forage for other fish and our best interest might be served by not harvesting the forage directly, regardless of the potential to develop markets.

K. Habitat.

In general we support the Study's findings on habitat. However, the recommendations fall short of what is needed to protect vital fishery resources.

While the Study recognizes that fishery management agencies are not generally charged with primary authority for habitat protection/regulation, it seems to neglect the fact that interagency agreements often exist to ensure that--at a minimum--the concerns of fishery management agencies (both federal and state) are given consideration in habitat-related activities. Although this level of participation often is equivalent to "responsibility without authority", it does give fishery managers a role in habitat protection that can be used in a positive manner, and a role that can be expanded. The Study embraces the NMFS Habitat Policy and supports its implementation. So does the NWF.

In addition, we have been working to give Congressional endorsement to the provisions of the policy. But, the Study suggests the NMFS policy is something more than it is.

Emphasized in the policy are opportunities that exist through the FCMA for addressing fishery habitat needs. The policy suggests that the Councils include in their FMPs information on habitat requirements of the fishery. It also specifies that NMFS habitat program staff will assist the Councils in this task.

The policy provides a reasonable approach to follow for addressing fishery habitat concerns in fishery management planning. But it stops short of giving the process real meaning. It is simply an internal policy. It carries no force of law or even a hint of Congressional endorsement. In terms of guidance to the Councils, it simply provides a set of recommendations. It does not provide increased ability to maintain or enhance fishery habitats to the Councils or to NMFS. It seeks to accomplish worthwhile internal goals, but the impacts to fisheries occur almost entirely because of activities external to NOAA. For a national policy on fishery habitat to have meaning it must be embraced by Congress. Congress must set the policy through legislative action.

The FCMA should, but unfortunately does not, provide the Councils with Congressional authority to address habitat requirements of the fishery and for federal fishery managers to have a significant level of control over activities, especially federal activities, that affect production of federally managed fisheries (see attached NOAA memo, 7 August 1979, to the Mid-Atlantic Council from Joel G. MacDonald, NOAA Staff Attorney).

The FCMA must recognize that good federal fishery management requires good habitat management by all federal agencies. Currently, FCMA provides the Councils and National Marine Fisheries Service no clear direction or authority in addressing habitat concerns for fisheries.

The NWF recommends amending FCMA to provide Congressional recognition of the Councils' role in habitat and make that mean something (specific recommendations are listed at the end of these comments).

The basis of our proposal is two-fold. First, to ensure that the production requirements of fisheries are addressed in fishery management plans, FCMA should be amended to include those parts of the NMFS Habitat Conservation Policy that pertain to the Councils

And second, our proposal seeks to ensure that federal actions do not jeopardize fisheries under federal management. Essentially we are making a good-government argument. Effective management of fisheries requires effective habitat management and that should mean that one federal agency should not conduct or license an activity that would jeopardize or preempt the mission of another federal agency.

Enactment of our proposal would not change or add to any ongoing state or federal programs. It would increase the authority of federal fishery managers, who already have the responsibility but not the authority, to protect federally managed fisheries from potentially adverse activities conducted by other federal agencies, such as dam licensing and ocean dumping of wastes.

Specifically, we suggest that FCMA be amended to require that fishery management plans include information on the life requirements of the fishery by adding a new series of "required plan contents." These changes would codify the NMFS Habitat Conservation Policy. According to the NMFS policy, all habitat data required for management plans will be provided by NMFS. Where data on habitat are unavailable for a fishery, then that unavailability should not be allowed to impede Secretarial adoption of a management plan. Instead, we hope that inadequacies in the habitat data base will trigger increased survey and research efforts by NMFS and cooperative efforts with the states -- research targeted to fishery management needs.

Next, we suggest adding language to FCMA that would require federal intra- and inter-agency cooperation on fishery management planning. We envision such additions obligating all federal agencies to evaluate the effects of their activities on approved fishery management plans where fisheries could be affected adversely. The language we suggest would empower the Secretary of Commerce to mandate changes in activities, for example, to federal permits issued for dredge and fill activities by the U.S. Army Corps of Engineers, if the proposed activity would affect a fishery under federal management. The NMFS already reviews permits for such activities. Where a fishery would be affected adversely, our proposal gives NMFS greater authority to mitigate for or reduce adverse affects.

And last, we suggest that the citizen's right to file suit against the government for non-enforcement of provisions of FCMA be clarified. We do not propose a means to impede plan development. We want only to ensure that once a plan is adopted, provisions of the law are enforced.

Congress has not provided the Councils responsibility to provide habitat information in fishery management plans. At present, information on a fish's habitat is not afforded any particular significance by federal agencies making decisions that affect habitat.

In some instances where federal fisheries management has been jeopardized by threats to fish habitat, Councils have taken action. The Gulf Council, in particular, expends considerable effort in addressing threats to fisheries they manage. They have done so even though their actions and opinions have no more significance under existing statutes than do opinions expressed by private individuals.

Congress never intended that the Councils advise the government on its federal permits and development actions. The Council's job is

to develop fishery management plans. We have no argument with Councils that wish to comment on federal development actions. We believe our legislative proposal offers an alternative and less burdensome means to influence federal decisions on habitat for fish under federal management.

Fisheries under federal management are a subset of fish and wildlife of extraordinary significance to the nation -- all federal agencies conducting activities that affect fisheries habitat should have an affirmative duty to take into account the effects of their actions on federally-approved fishery management plans. This connection must be made in the statutory language of the FCMA. These concepts underlie our proposal.

The following "habitat" amendments were developed through consultation with the Regional Councils, state agencies, the Marine Fisheries Advisory Committee, fishermen organizations, conservation groups, and numerous individuals knowledgeable in marine fishery management. The proposals that follow are not drafted as statutory language but as concepts worded carefully in "plain" English:

Proposed Amendments to FCMA

1. Regional Fishery Management Councils should address habitat needed for production of a fishery, and, where appropriate, its food-base or other essential resources in Fishery Management Plans. This change would codify the National Marine Fisheries Services (NMFS), habitat policy adopted 25 November 1983.
 - a. In Fishery Management Plans, the Regional Councils should identify and discuss to the extent possible for the fishery (and, where appropriate, its food-base), 1) current and probable future habitat conditions, 2) life requirements and habitat important to production, and 3) measures or actions to conserve, restore, or enhance habitat essential to production.
 - b. Incomplete information on habitat in a Fishery Management Plan due to data unavailability or uncertainty of analysis should not constitute a criterion for disapproval of a Fishery Management Plan by the Secretary.
 - c. The NMFS should have responsibility to provide Councils all habitat information needed for inclusion in Fishery Management Plans. Such responsibility should include, but not be limited to, providing research, survey work, cooperating with other Federal agencies and the States in gathering information, data compilation and analysis, and initial draft documents. Council staff should serve, at a maximum, as the liaison between the NMFS habitat programs and the Council, and as final reviewers of habitat information to ensure, at a minimum, consistency in format of habitat information in Fishery Management Plans (the NMFS habitat policy identifies the role of NMFS in providing the Councils information to fulfill habitat requirements of Fishery

Management Plans).

- d. The NMFS should be responsive to the Council's needs for further data collection or analysis to address habitat needs for fisheries, especially where adequate data are unavailable. (Fulfillment of this requirement could result in redirection of existing habitat research and assessment programs to ensure that such programs more closely fit fishery management needs.)
 - e. Regional Council requests to the Secretary of Commerce and other Federal officials for information on habitat needed for fishery management plans should be responded to by the individuals to whom the request was made within a set and reasonable period. When such requests cannot be met within that period, the Secretary and other Federal officials should provide the Council an explanation of the reasons why the request can not be met, or provide a time table, which should include a description of tasks, for addressing the request.
2. The effect of Federal activities on federally approved Fishery Management Plans should be considered and accounted and/or mitigated for in an affirmative manner by the Federal agency carrying out, funding, or authorizing the activity.
- a. Where it is determined that a proposed Federal action or activity would impact adversely a fishery under Federal management, then the Federal agency proposing the activity should be required to mitigate the effects of that activity. Mitigation should be undertaken at the same time as the proposed activity to assure immediate protection for the fishery.
 - b. The Secretary of Commerce (Administrator of the Act) should be empowered to ensure that all Federal agencies follow the requirements of paragraph a (above), and where a Federal agency refuses to mitigate its activities to protect federally managed fisheries from significant harm, the Secretary should have authority to condition the Federal agency's actions to ensure protection of the federally managed fishery.
 - c. The NMFS should be responsible for reviewing activities of Federal agencies that would affect habitat of fisheries under Federal management (already an ongoing NMFS activity). Such review should not be a responsibility of Regional Councils.
 - d. If a Regional Council wishes to comment on a Federal activity that would affect a fishery managed by the Council, then any recommendations made by the Council to the Secretary of Commerce and other Federal officials should be responded to by those individuals within a set and reasonable period. If such recommendations are not followed, a detailed explanation of the reasons why such recommendations were not followed

Dr. Anthony Calio
8 September 1986

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should be provided to the Council by the Secretary or other Federal official to whom the recommendations were made.

3. The citizen's right to file suit and recover attorney fees under the Act should be clarified.

* * *

I hope these comments will be usefull as you evaluate the recommendations of the study.

Sincerely,

RUDOLPH A. ROSEN, Ph.D.
Fishery Resource Specialist
Fisheries and Wildlife Division



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September 11, 1986

Dr. Anthony J. Calio, Administrator
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
Washington, D. C. 20230

Re: NOAA Fishery Management Study

Dear Dr. Calio:

Thank you for this opportunity for the Pacific Seafood Processors Association (PSPA) to comment on the June 30, 1986 draft report, "NOAA Fishery Management Study". The Committee that prepared this document should be congratulated and commended on their efforts. Though we do not agree with all the recommendations from the Committee this document has been a good discussion device for the industry. We look forward to reviewing any subsequent legislation and/or Council actions being considered to implement the direction of this document.

Our specific comments will follow the format as identified in the recommendations section of the study.

1.) "Separating Conservation and Allocation"

The Committee recommends separating the process of determining the Allowable Biological Catch from the allocation process by giving the responsibility of setting the ABC of each fishery to NOAA at the national level and the responsibility of allocation to the Councils.

PSPA agrees with the Committee's intent to depoliticize the process in which the ABC's are established but questions their recommendation. Specific ABC's should be established with the best available biological information. Upon consideration of this data the Council family must take into consideration any allocative history of the fishery. This is a two step process within the Council system. All decisions regarding a specific fishery should only be made with the advice of the users of the resource both harvesters and processors. Continuation of this Council process will give the interested public the ability to provide valuable comments. The allocative history of the fishery has to be taken into consideration as the specific ABC's are reviewed and adopted.

The maximum economic benefit of a fishery to the United States must be a priority consideration as the Council establishes specific OY's and makes subsequent allocations. The Council has the authority to set conservative OY levels thus reducing TALFF and JVP for the economic benefit of fully DAP fishing operations. This will allow for the greatest economic benefit to the United States.

2.) "The Fishery Management Plan Process"

PSPA agrees that Secretarial review of a Fishery Management Plan or amendment should be completed within 60 days of receipt and any notice of disapproval should be in writing specifically identifying those segments of the MFCMA with which the plan failed to comply.

3.) "Council System"

PSPA opposes the creation of a national review board to screen candidates for the fishery management council membership. The present system of appointing Council members, although not perfect, has been satisfactory. Using the existing system the Secretary of Commerce should identify to the Governors the standards necessary for Council consideration.

4.) "Number of Councils"

We support the elimination of the Caribbean and Western Pacific Councils but oppose extending jurisdiction over tuna.

5.) "Interjurisdictional Management"

PSPA supports the goal of better interjurisdictional coordination for the management of our fishery resources. However, we do question the practicality of establishing federal standards for coordinated management of interjurisdictional fisheries not presently subject to management under the MFCMA. Fisheries agencies could better address this issue in a timely manner through "joint cooperative management agreements" between the states involved.

6.) "Fishery Management Priorities"

The Committee concluded that the highest priorities of federal fishery management are biological research, long-term catch and effort data, and enforcement. Funds now used for less important activities could be shifted to these high priority activities. PSPA strongly supports this recommendation but objects to the idea that fishery management should be funded through user fees. Management of the fisheries under the MFCMA is clearly a federal responsibility which should be funded through general revenues.

7.) "Highly Migratory Species"

PSPA objects to extending jurisdiction under the MFCMA to highly migratory species.

8.) "Fees and Licensing for Marine Fishing"

Fishery management is a federal responsibility conducted for the general welfare of the public, therefore, it should be funded by general revenues.

9.) "Full Domestic Utilization"

PSPA strongly supports the majority of the recommendations made by the Committee on pages 23 and 24 of the report. To clarify our position please refer to the issues of support elaborated below. The U.S. seafood industry must have the following to achieve the goal of maximum economic development of the U.S. seafood industry. No priority is intended by order of listing.

A.) During the interim period TALFF and JVP should be allocated to achieve the maximum economic development of the U.S. seafood industry (e.g., TALFF or JVP in exchange for agreements to reduce tariffs on U.S. fish products, priority access to foreign markets for U.S. fish products, and to ensure TALFF and JVP products are not shipped back into the U.S.) All administrative and legislative remedies should be pursued to eliminate unfair duties, quotas and other foreign trade barriers. An environment providing preferential market access for U.S. processors is required for full domestic utilization. Foreign countries fishing or processing in the EEZ must be required to provide preferential market access in their home markets for fish products processed by U.S. processors. "Fish and chips" has been utilized very effectively to gain equal market access for U.S. harvesters. It is now time that these same methods be utilized to gain preferential access for U.S. processed products.

B.) Legislatively require all foreign processors operating in the U.S. EEZ to comply with all federal and state laws and regulations relating to human rights, safety, minimum wage, sanitation, pure food, habitat and environmental protection. In lieu of compliance, assess the foreign processors with fees that equalize the cost of such compliance to U.S. processors. American processors are required to comply with a myriad of laws and regulations which substantially increase their costs of doing business. Foreign processors operating in the U.S. FCZ are generally not in compliance with these laws and regulations. While it is a matter of U.S. policy to protect its citizenry and environment with these laws and regulations, the unintended result is to give considerable cost advantages

to foreign processors operating in the U.S. economic zone. It is reasonable to expect that foreign nations operating within U.S. jurisdiction should either comply with U.S. law or compensate the U.S. for noncompliance.

C.) Provide DAP fishermen preferred access to fishing grounds by time and area when establishing DAP quota priorities. The current system of allocating fish has been designed to give DAP first priority, JVP second and TALFF last. The Councils wrestle with the problem of setting OY, reviewing permit applications and finally establishing quotas for the three categories. However, this practice does not establish true priority. There is no priority on the fishing grounds since all operations fish simultaneously and in the same areas. True priority should provide preference by time, area and quota thereby providing DAP fishermen the advantage of fishing while the CPUE is at its highest level and the cost of production is lowest. All DAP operations, catcher processors/shoreside processing facilities/floating processors would be managed the same.

D.) Place all JVP operations under the jurisdiction of the Councils including internal water JVPs. Control of the allocation process must rest with a single authority. In some instances internal water JVPs have been established when totally U.S. interests have been capable of processing the entire harvest.

E.) A means to further the goals of the seafood industry would be to:

1.) Stop negotiating additional GIFAs. This authority within the MFCMA should be relinquished. The need for additional foreign entrants no longer exists for TALFF and/or JVP operations.

2.) Eliminate the basket clause from the Act. Linking fishery allocations and thereby fish supplies to outside, non-related events causes continuing uncertainty and serves no useful purpose for the U.S. seafood industry.

F.) TALFF and JVP operations fishing in the EEZ should pay for that privilege. This total fee structure should be evaluated to equalize all user fees.

G.) Under the current allocation system joint venture permit restrictions must be established to encourage maximum economic development of the U.S. seafood industry.

Dr. Anthony J. Calio
September 11, 1986
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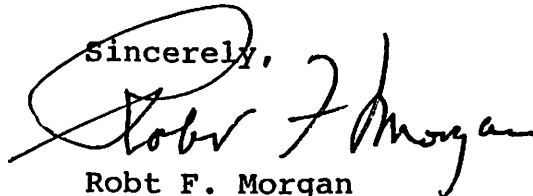
H.) Finally, it is necessary to provide legislation for the phase out of foreign fishing and processing as follows:

1.) Eliminate TALFF on those species and in those areas in which the previous years DAP catch exceeds 25% of the total catch or the JVP catch exceeds 75% of the total catch or where the combined DAP/JVP catch equals 65% of the total catch. Under this recommendation elimination of TALFF is irreversible regardless of changes in the harvest level or economic or social factors.

2.) Eliminate JVP on those species and in those areas where the DAP catch exceeds 50% of the total catch. Under this recommendation elimination of JVP is irreversible regardless of changes in harvest levels or economic or social factors.

Some U.S. harvesters contend that Americanization of the North Pacific groundfish resources is occurring and that any deviation from the status quo management and allocation process is not justified. However, maximum economic development for all sectors of the U.S. seafood industry is not being achieved, and cannot be achieved simply by transferring allocations from TALFF to JVP. Further, the impediments to maximum economic development (as discussed above) must be eliminated or so altered as to create a fair market system.

Sincerely,



Robt F. Morgan
President

RFM:gg

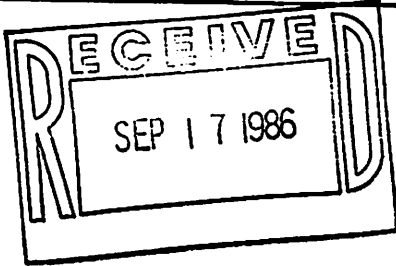
CC: Congressman Don Bonker
Congressman John Breaux
Senator Daniel Evans
Senator Slade Gorton
Congressman Mike Lowry
Congressman John Miller
Senator Frank Murkowski
Senator Ted Stevens
Congressman Don Young
Chairman James O. Campbell
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Mr. William G. Gordon
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September 4, 1986

Dr. Anthony J. Calio,
Administrator
National Oceanic and Atmospheric Administration
United States Department of Commerce
Washington, DC 20230

Dear Dr. Calio:

This is in reference to the NOAA Fishery Management Study, dated June 30, 1986.

The Study was subject to careful consideration by the Council's Administrative Subcommittee, with the participation of a majority of the Council voting members. Thus, even if it will not be considered by the full Council, as no meeting has been scheduled to be held before the end of the extended comment period, the following comments represent the position of the majority of Council members.

On the first instance, our Administrative Subcommittee recognizes the great dedication and efforts of the "Blue Ribbon Committee", appointed by you to examine alternatives to the existing fishery management structure as created by the Magnuson Fishery Conservation and Management Act. Definitely, it represents a good effort to evaluate the situation of fisheries management in the U.S. The Study presents some recommendations that will provide you with new alternatives for actions in your commitment to improve the system.

Several of its recommendations are very sensible and they merit further study and consideration. However, in our perception, most of the key recommendations, related to the Council system, represent academic concepts of fisheries management disassociated from the realities of life. In other words, we feel that the Study represents a theoretical exercise in fisheries management rather than a realistic, down to earth, approach to the situation.

The most relevant assumptions in formulating the basic recommendations of the Study are listed under Part II, B, #2. (Page 4), "Deficiencies of Operations Under the Act". The assumptions are the following:

- a. Overfishing remains a problem in some fisheries and a threat in others. (Emphasis supplied)
- b. The various interpretations of optimum yield have, in some cases, permitted allocation considerations to override conservation responsibilities. (Emphasis supplied)

Based on these assumptions, the Study recommends that there be "a clear separation between the conservation decision and the allocation decision." The Study does not believe that these two decisions can be made by the same body. Thus, it recommends that NOAA determine what they refer to as "acceptable biological catch" (ABC) for each fishery, at a national level, and that the Councils be responsible for allocations.

We feel that the Study conveys the message, in a subtle way, that Congress was in error when it assigned both conservation and allocation responsibilities to the Councils. The Study states that the integrity of the system will be better preserved if this responsibility is divided between NOAA (NMFS) and the Councils. Surprisingly, however, the Study fails to document the supposed improper discharge of the management responsibility under the Council system.

It is clear from the Magnuson Act and the Legislative record that it was the intention of Congress to provide flexibility in the system (in the conservation and allocation of the fishery resources) when it established in the Act that "The term optimum, with respect to the yield from a fishery, means the amount of fish--

- A) Which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and
- B) Which is prescribed as such on the basis of the maximum sustainable yield from such a fishery, as modified by any relevant economic, social, or ecological factor. (Emphasis supplied)

We have difficulties in realizing clearly what the recommendations of the Study will really accomplish considering that:

1. The integrity of the Maximum Sustainable Yield (MSY) is preserved under the Council system because:

- a) It is determined on the basis of best available scientific information, as provided by NMFS.
- b) The Regional Directors or designees participate in the determination of MSY and Optimum Yield (OY) in their capacity of Council voting members.
- c) The Secretary can overrule a Council determination of MSY, during the Secretarial approval process, if not satisfied with the scientific basis for it.

If the ABC is calculated with the same scientific precision and methodology as the MSY, then its determination under NOAA or a Council will necessarily come to be the same. Or, does the Study envision that there will be substantial differences? Why?

The OY might vary, as instructed by Congress, on the basis of relevant economic, social or ecological factors. If the Committee believes that some irregularities have occurred in the determination of OY, they should document it. If they have occurred, there are ways under the present system (Secretarial action) to remedy the situation, but such a case should not be used as a reason for changing the present Council system and to start experimenting with unproven ideas on fishery management, as the Study proposes.

We feel that Congress was absolutely correct in establishing that relevant economic, social, or ecological factors be taken in consideration in determining OY. Thus, we also feel that if NOAA accepts the Study recommendations, it will have a long way to go to convince Congress that the system should be changed in order to base, exclusively on biological considerations, the rate of use of the fishery resources, disregarding factors that affect people.

The report pretends to establish that the management system created under the Magnuson Act is responsible if "overfishing remains a problem in some fisheries and a threat in others," but they present no evidence to substantiate their position. If any problem remains at present, it could be traced back to the laissez-faire situation that existed before the Magnuson Act was adopted.

The recommendation to bring back to NMFS, NOAA, the conservation responsibilities is not appropriate as NMFS, NOAA has not demonstrated to be effective in fishery conservation. The record is clear in sustaining that most of the problems associated with overfished stocks could be traced to that period when NMFS was responsible for the management of the U.S. fisheries. The system established by Congress recognized this situation and that was, precisely, why the Councils were created.

Regarding other aspects of the Study, allow us to comment

briefly on the need to improve the process of nominating Council members. Even if we are in agreement that the present system needs improvements, the alternate system proposed by the Study would transfer, to the Federal Government, the nominating power of the States. Our Council members do not support this proposal. They feel that the States should maintain the prerogative of making the nominations. It is worth mentioning, at this point, that the Secretary of Commerce has the authority to reject any and all nominees which do not meet the necessary qualifications, to guarantee the best Council performance.

In relation to that part of the Study (IV-H-Page 20) on "Fees and Licensing for Marine Fishing", please find attached a copy of our July 1, 1986, letter on the subject to Congressmen Walter B. Jones and William Carney, of the House Subcommittee on Oversight and Investigations, Committee of Merchant Marine and Fisheries. As you will notice, our Council opposed the proposal for the establishment of a licensing system, and to collect fees from recreational fishermen. We understand that the proposal received very little support and was ruled out by the above-mentioned Subcommittee. As you may have realized, the Study recommendations on this respect (license and users fee for all users) are not supported, at this point in time, by our Council members.

We are forced, once more, to defend the permanency of the Caribbean Fishery Management Council. According to the Study, there are few interjurisdictional fisheries for the Western Pacific and Caribbean Councils to manage. Therefore, they recommend that both Councils be eliminated and that the Islands, State, Commonwealth and Territorial Governments manage non-tuna fisheries within their jurisdictions (to be determined later on).

The study also recommends that the United States extend the fishery management jurisdiction to highly migratory species, and, because of the "great abundance of tuna in the Western and Central Pacific, the Pacific Island should be included in the international, regional or other management of tuna."

Our Council members interpret the recommendation to eliminate the Caribbean Council as based, unfortunately, on ignorance of the fisheries and of the role of this Council, or in obvious discrimination. Are we, or are we not, part of the same society? Are we, or are we not, U.S. citizens?

In 1981, at the request of the House Committee on Merchant Marine and Fisheries, the National Marine Fisheries Service addressed the future of the Caribbean Council in the light of a legal opinion rendered by NOAA Legal Counsel on the extension of Puerto Rico's jurisdiction to manage fisheries, from 3 to 10.35 statute miles. In that occasion, NMFS stated to the House Committee that the mandate for FMPs for the FCZ is very much in place in spite of the extended jurisdiction. The DOC General

Counsel pointed out, that the change in Puerto Rican jurisdiction "does not affect the Council's authority under the Magnuson Act. While the effect of PL-96-205 lessens the need of federal management, it does not eliminate it."

NMFS also pointed out in that occasion that:

"the need for Puerto Rico and the U.S. Virgin Islands to work together as neighboring states is as real in the CFMC area as it is in any other Council area. The mechanism has been established; it is functioning; and the needs are presumably been met. To a great extent, the Council concept is just now beginning to demonstrate that the FCMA is a truly workable approach to resource management in the FCZ. To seriously alter the status quo for the CFMC would mangle those management concepts now in place."

"To address why the CFMC should be treated as an exception vis-a-vis all other Councils is almost impossible. With the enactment of FCMA, options were available as to organizing the Caribbean area management responsibilities. Decisions were made to form the CFMC."

In a memorandum from Mr. Roland Smith to the Regional Director, Southeast Region, dated December 21, 1981, on the future of the CMFC in light of NOAA's legal opinion, he stated that the NMFS has concluded "that the Council retain major substantial responsibilities which warranted continued support for its operations and that this position in support of the CFMC was reflected by the Assistant Administrator's testimony before the House Committee on Merchant Marine on Fisheries." Please notice that all the above statements were made even before the swordfish fishery was discovered in this area.

On this same issue, the Council/NOAA Task Group stated the following in their draft Report "An Evaluation of the Implementation of the Magnuson Fishery Conservation and Management Act":

1. "Alignment of Council Management Responsibilities."

"Issue. The Inspector General's Report expresses concern about the need for continuing the island Councils (Caribbean and Western Pacific) as separate Councils. The report argues that (a) most of the fishery resources they manage fall under territorial jurisdiction, and (b) because the geographical areas of the two Councils are remote from NMFS enforcement resources and extend over a vast region, adequate enforcement is unrealistic. The report contends that continued support of the two Councils at the current level unnecessarily drains funds from other more critical fishery management areas."

"Conclusions and Recommendations."

"1. Although a number of options have been proposed for reducing costs by consolidating or eliminating Councils--such as creating one or two East Coast Council(s), consolidating or eliminating the Caribbean and Western Pacific Councils, or combining Gulf and South Atlantic Councils--these proposals have failed to demonstrate how substantial cost savings can be achieved. The Task Group concluded that the original number and jurisdiction of the Councils should be retained."

"The legislative history of the Act indicates Congress deliberated at great length over the number and geographical responsibilities of the Councils. It is clear that the present distribution of Council regions was all planned around regional problems and fishery resources. Changing the present structure would disrupt the continuity of the relationship of the Councils with industry and other constituents and could lead to serious deficiencies in resource management as new geographical responsibilities are sorted out and new FMPs are developed. As a result of consolidation, efficiency would suffer since larger decisionmaking bodies are less efficient. Fewer decision-making bodies would reduce opportunities for public participation, particularly from fishermen and communities affected by management decisions. Loss of public participation risks loss of public support, which could diminish the effectiveness of existing fisheries management."

"2. The existence of the island Councils has been questioned because of failure to prepare many FMPs and seemingly high costs associated with their administration. The Task Group believes a Federal presence and authority is needed in the outposts of the U.S. EEZ. The international communications being conducted by the Western Pacific and Caribbean Councils are particularly valuable in promoting U.S. fishing interests. The Task Group believes that cost-savings related to consolidation of the two Councils with others would be small. Subjecting all the Councils to fiscal and programmatic accountability measures would accomplish the same purpose without diminishing the Federal presence provided by both Councils. A main thrust of the Council system versus other management systems is to make the fishery decision process available to a broad spectrum of the public, thus acting as a sounding board for Federal management."

"3. The Task Group noted that not all Councils operate in a similar manner. This can most often be traced to regional differences in the philosophy of government or management. Thus, combining the Councils could just as

readily reduce as increase, the efficiency, number, or quality of FMP's. This observation is supported by the difficulties experienced in joint Council preparation of FMPs. Councils are likely to have the same basic interest in conservation and management, but sometimes incompatible regional concepts make it difficult to reach agreement on the preferred method of management. Current regional jurisdictions are aligned with the principal fisheries, and allow for reasonable representation of the fishing constituency of each affected State."

The Study recommends also that the U.S. extends management jurisdiction to highly migratory species. Aside from the fact that the U.S. tuna fleet is based in Puerto Rico and that Puerto Rico is the leading tuna processor, tuna seems to be also abundant in the Caribbean. How does the Committee recommend that it be managed?

On the issue of the magnitude of the interjurisdictional fisheries, NMFS has also stated in a previous report that:

"The CFMC area has a complex international boundary situation which interfaces to the Dominican Republic, the British Virgin Islands, (Venezuela and France) and Saba of the Netherlands Antilles. Interactive fishing between the U.S. FCZ and the zones of these foreign states is relatively small in magnitude but very important at local level. The FCMA has mandated the form and substance of fishery management and the CFMC is the established forum for identifying the requirements for maintaining U.S. interests in this regime utilizing the vested interests of the Puerto Ricans and the U.S. Virgin Islanders in the process. It is difficult to assess the reassignment of this role to another Council. Without the CFMC, the Puerto Rican and U.S. Virgin Islands governments would need to establish some new entity to identify and advance their respective interests. Even so, interactions between such an entity, NMFS, and their responsible Council will be complicated, if at all possible. The interaction between DOC, DOS, FWS, and USCG, and the Councils as mandated in the FMCA may be relatively low-key in the CFMC at the present time. However, it is taking place. How could the USCG, for example, be effectively interactive on Caribbean requirements if they were, in effect, mingled in the Gulf or South Atlantic area of the activities of the USCG."

"Another important consideration is the fact that as a part of the United States, Puerto Rico and the Virgin Islands have a vested interest in Caribbean area fishery resources that are of concern to such institutions as WECAFC and IOCARIBE. The CFMC is an important bridge-

head in fishery management dialogue in the Caribbean and can be effectively utilized in the future to represent U.S. interests as an involved member of the area."


As a last comment on this aspect of the Report, we would like to bring to your attention the March, 1986 (No. 3) bulletin (copy attached) of the National Coalition for Marine Conservation. Please notice their editorial as to the fishing situation of the Caribbean and the need for management. Three months later (June, 1986), the "Blue Ribbon" Committee recommends the elimination of the Council because there are few inter-jurisdictional fisheries to manage. Definitely, the facts point either to ignorance on the part of the Committee members, or to subtle discrimination, which we refuse to accept.

May we suggest that, whenever possible, representation from the Caribbean (and the Western Pacific) be included when appointing committees to study and make recommendations on fisheries matters. Both areas possess different and unique characteristics as compare to most of Continental U.S. fisheries.

We appreciate very much the opportunity to comment on some aspects of the Study. We will be glad to further expand on our previous comments as well as comment on other aspects we have not covered in this letter, because of time constraints, should you consider it convenient and additional time is provided for this purpose.

We are confident that this issue, including the NOAA/Council Task Force Report, will be subject to further consideration and discussion. The coming Councils Chairmen's meeting would be an appropriate forum.

Sincerely yours,


Omar Muñoz-Roure
Executive Director

cc: CFMC Members
Executive Directors, Fishery Management Councils

Attachments

COMMENTS ON
NOAA FISHERY MANAGEMENT STUDY
dated June 30, 1986

SUBMITTED BY
THE AMERICAN SHIP BUILDING COMPANY
TAMPA, FLORIDA

H. ALLEN FERNSTROM
- PRESIDENT

SEPTEMBER 12, 1986

September 11, 1986

Dr. Anthony J. Calio, Administrator
National Oceanic and Atmospheric Administration
United States Department of Commerce
Washington, D.C. 20230

Dear Dr. Calio:

I would like very much to comment on the NOAA Fishery Management Study (NOAA FMS) of June 30, 1986 and several of its recommendations. These comments are offered from my position as president of the American Ship Building Company, a major domestic shipbuilder listed on the New York Stock Exchange. Our company announced in May of this year our plans to enter the domestic fishing industry as builder, owner, and operator of a fleet of floating fish processing plants. We expect to contract directly with American fishermen, individuals as well as fleet owners, for the supply of fish for our plants and market our products primarily to the American initially. Eventually we would sell on the international market as well.

Our planned operations are targeted on the Alaska Pollock in the Fishery Conservation Zone, with the first vessel scheduled to commence operations late in 1987 with the assumption that the various regulatory bodies are truly serious about the Americanization of the entire fishing industry and not just isolated segments.

Dr. Anthony J. Calio

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For the past 18 months our company has conducted exhaustive studies of the Alaska Pollock fishery and have concluded that there is a long range potential for a reasonable return on our investment. Over the next several years we expect to place in service six of these large floating processors. These processors with their associated harvesting boats, and supply and transport vessels will represent an investment of over \$300,000,000 and provide direct jobs for over 2500 United States citizens. The first processor alone will represent the largest single investment in a fish processing plant to date in this country, to the best of our knowledge.

Therefore, the enclosed comments will be those of a new domestic processor, concerned with those factors which impede the orderly development and expansion of the domestic processing industry rather than those of a shipbuilder. These comments relate to separating conservation and allocation, full domestic utilization and the council member selection process.

Your panel, individually and collectively, are to be commended for a job well done. Although we have differences on some points, others we endorse with enthusiasm. Overall we found the organization and clarity of the study especially noteworthy.

Dr. Anthony J. Calio

Page 3

The issues in the subject of fisheries management are complex and a full consideration of all views is certainly warranted. Although we are new members of the fish processing industry, our studies and our discussions with the present major primary processors show a consensus of genuine fear that our industry can be lost to foreign interests if the effect of any changes in management policy and any changes thereto are not very carefully considered.

I and members of my staff would be pleased to meet with you and your staff at your convenience to give a detailed briefing of our plans for our entrance into the Alaskan Pollock fishery next year.

Again we appreciate the opportunity to present these comments and extend our thanks for the efforts and contributions in this study made by yourself, the panel members, and your staff. We look forward to working with you, achieving our mutual goals, helping with the United States balance of payments problem and conserving this vital renewable resource for future generations.

Very truly yours,

H. Allen Fernstrom

President

Enclosure

HAF:seh

SEPARATING CONSERVATION AND ALLOCATION

NOAA_FMS_Recommendation

Conservation by NOAA; Allocation by the Existing Councils

AMSHIP_Comment

The logic for separating these functions is sound, and the proposed methods for effecting this separation should work well in most fisheries. However, within those fisheries that are still controlled and exploited by foreign interests, with major joint venture processing and directed foreign fishing, conservation and allocation are inseparable. In this situation the entity that sets the optimum yield controls the level of foreign effort.

This leaves the door open to political pressures and manipulation of acceptable biological catch at the national level. The only check for this is the ability of the councils to set optimum yield. However, it is not clear in the recommendations that the councils will have absolute authority in setting optimum yield. Furthermore, the proposed changes in the council member selection process are likely to lead to a council that is more receptive to pressure from other Federal Departments in Washington D.C.

In the case of the Alaskan Pollock fishery, pressure to increase OY has generally not come from local sources. When the fishery is totally domesticated we can expect this situation to change. Until such time, however, we feel the present system probably affords more protection for the resource than does the system that is recommended in the study.

We recommend, therefore, that the councils be given absolute authority in setting optimum yield, provided, of course, that this level is kept below the acceptable biological catch level.

SELECTION OF COUNCIL MEMBERS

NOAA_FMS Recommendation:

Revising Council appointment procedures and creation of a special review board to determine qualifications of nominees.

AMSHIP Comment:

It is felt that the system proposed introduces potential for major abuses of the Council member selection process while offering no improvement over the present gubernational nomination procedure. Among them:

- On what basis would the nine member board be selected?
- Who would determine their qualifications?
- How would objectivity be guaranteed by that system?
- How would the board guarantee effective representation of interests of the industry, academia, and the public at large better than the present system?

We strongly recommend against the proposed system and that the Secretary simply refrain from appointing a gubernational nominee whenever it can be proven that the nominee is not qualified. It is obvious that a background in fisheries does not guarantee success or effectiveness as a council member. Interest, integrity, leadership and ability to learn could sometimes be better predictors of effectiveness.

FULL DOMESTIC UTILIZATION

NOAA EMS Recommendations:

- a. Pursue all administrative and legislative remedies to eliminate unfair duties, restrictive quotas and trade barriers.

b. Require those foreign countries fishing or processing in the FCZ to provide free market access in their home markets for any fish products of the United States.

AMSHIP Comment:

These are steps that should have been taken long ago. It is inconceivable that we allow foreign nations access to our fish when they discriminate against us when we approach their markets with those same fish. We cannot allow foreign nations to perpetuate their control over U.S. property in this fashion.

NOAA FMS Recommendation:

c. Require foreign processors operating in the U.S. economic zone to comply with all Federal and State laws and regulations relating to human rights, safety, minimum wage, sanitation, pure food, habitat and environment. In lieu of compliance, assess the foreign processors with fees that equalize the cost of such compliance to U.S. processors.

AMSHIP Comment:

We are certainly in agreement with the aims of this recommendation, and we should also not give foreign operators an advantage in competing against Americans by exempting them from the laws that restrict U.S. processors.

However, we see enormous difficulties in attempting to enforce U.S. Federal and State laws and regulations upon fishing and processing vessels of other sovereign nations. We also see difficulties in assessing equalizer fees.

NOAA_FMS_Recommendations:

d. Provide fishermen fishing for domestic processors preferred access to fishing grounds by time and area when establishing quota priorities.

AMSHIP_Comment:

If the United States government is truly serious about total domestic utilization, domestic operations should be given priority access to the resource. Obviously the cost of the raw fish is a major component of the total cost of fish processing. The cost of fish is tied directly to catch per unit of effort. Because of the importance of the cost of fish to the processor, even small reductions in catch per unit of effort lead to large reductions in profitability. Shore plants are particularly vulnerable to this, but all domestic processors pay more for fish due to reduced catch per unit of effort that are the result of foreign fishing.

We feel that American fishermen and American processors should jointly benefit when fishing is best and there is no compelling reason why the best fishing should be shared with the foreigners. If any sharing is to be done with the foreigners it should be on a marginal basis.

NOAA FMS Recommendation:

e. Assess user fees on all operations to cover the cost of resource management.

AMSHIP Comment:

This is the only equitable solution; those who benefit from management should pay for it. The alternative is, perhaps, inadequate appropriations from general tax revenues which could lead to insufficient management. This could cost more in one year than the present value of all the user fees that would ever be collected and permanent damage to the fishery.

However, there must be safeguards to insure that any user fees collected must be used for the designated purpose and also that management activities are kept simple, reasonable, effective and efficient considering all aspects of the fishery.

NOAA FMS Recommendation:

f. Amend the Jones and Nicholson Acts and any other Federal legislation that hampers development of the fishing industry.

AMSHIP Comment:

WE ARE TOTALLY AND UNALTERABLY OPPOSED TO ANY AMENDMENTS TO THE JONES AND NICHOLSEN ACTS THAT WOULD SERVE TO INJURE THE AMERICAN SHIPBUILDING, BOAT BUILDING AND REPAIR AND RELATED EQUIPMENT AND SUPPLY INDUSTRIES. BECAUSE OF THE PRESENT STRENGTH OF THE FOREIGN FISH HARVESTING, PROCESSING AND MARKETING OPERATIONS, ANY WEAKENING OF PROTECTION OF AMERICAN INTERESTS WOULD DESTROY ALL HOPES FOR MEANINGFUL PARTICIPATION BY DOMESTIC PROCESSORS.

Foreign fishing companies already possess fleets of fishing and processing vessels that are sufficient to take the entire U.S. pollock resource. Even under the current laws, many in the industry expect the foreigners to attempt to "re-flag" their fleets using shell corporations as the titular vessel owners and thus "Americanize" the fishery overnight.

U.S. processors would never have been given a chance due to the fact that the markets in the home countries of these operators are closed. If one doubts that this type of activity would occur, one would only need look at the industry to industry agreement with regards to the purchase of surimi. The Japanese fishing companies are still building mother ships even though they face restricted access to pollock around the world and they claim that they have accepted the fact Americanization will take place within five years. We feel it is because their definition of Americanization is different than our own.

No wholesale re-flagging has occurred to date: however, the threat of its occurrence is discouraging investment by many companies at this time.

If it were to appear that re-flagging of the foreign fleet were inevitable the American Ship Building Company would have no choice but to abandon our plans to enter the Alaskan Pollock fishery and watch, with the rest of the United States, the loss of thousands of American jobs and probable permanent damage to the resource.

Conversely the rate of growth of the American processing industry would accelerate markedly if this threat were removed. Therefore we recommend that regulations and/or legislation be implemented that effectively bans the re-flagging of foreign processing vessels for use in the Alaska Pollock industry. Existing re-flagged vessels such as the Golden Alaska could be grandfathered to permit their continued operation.

NOAA EMS Recommendation:

h. "Stop negotiating governing international fishing agreements with additional nations and restrict application of the basket clause (Section 201 (e) (1) (E) (viii) of the Act)."

AMSHIP Comment:

Almost everyone agrees that there are enough nations operating in our EEZ already. A possible exception might be made for a country that was willing to purchase finished products from a truly domestic processor. Until total phase out of foreign fleets has been accomplished, preference should be granted to those countries who open their markets to our domestic processors. To the extent that we can exchange fishing rights for meaningful development assistance, we should limit the granting of these rights to fisheries related matters and not used as instruments of national policy to reward a country for a particular action or policy completely unrelated to fisheries.

NOAA FMS Recommendation:

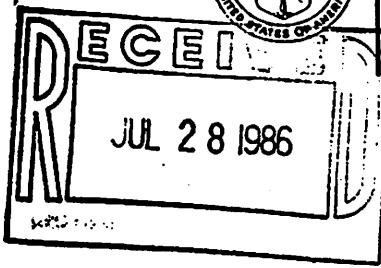
- i. Induce investment in processing facilities by developing some system of allocation that provides assured supplies of raw material throughout the year.

AMSHIP Comment:

Immediate action on this concept would allow us to "kill two birds with one stone." The full development of the domestic processing industry will represent an investment of many hundreds of millions of dollars. Investments of this magnitude are never made in ignorance.

Perpetuation of the open access policies of the past will inevitably lead to over capitalization, reduced profitability and economic instability in the industry. The fact that this problem has not been dealt with is impeding the investment in the processing industry now. Over captitalization of the fishery can be prevented if either the harvesting or the processing sector holds some form of property rights to the fish. If fishermen are unwilling to shoulder the responsibility inherent in such a logical management systems, then it is likely that processors would be willing to bear those responsibilities.

We, as a company, would also like to work cooperatively with the harvesting sector and the regulatory bodies to acheive the goal of this recommendation.



**UNITED STATES DEPARTMENT
National Oceanic and Atmosph**

AGENDA C-1
SEPTEMBER 1986
ATTACHMENT B

Office of General Couns	ROUTE TO	INITIAL
P.O. Box 1668	Exec. Dir.	J
Juneau, Alaska	Deputy Dir.	
Telephone (907) 586-7414	Admin. Off.	V
	Exec. Sec.	
July 25, 1986	Staff Asst. 1	
	Staff Asst. 2	
	Staff Asst. 3	
	Economist	
	Sec./Bkkr.	
	Sec./Typist	

TO: DGC - Jim Brennan
NPFMC - Jim Branson ✓
NPFMC - Jim Campbell

FROM: GCAK - Pat Travers *Pat*

SUBJECT: Drafting Service on Revision of the Magnuson Act

As we have discussed, attached is the draft I have prepared of a revision of the Magnuson Act that would incorporate a wide variety of the changes that have been discussed at various times by the Council and its advisory groups, in light of administrative experience and the changed circumstances of the fisheries.

Of course, the draft does not necessarily reflect the position of either Dr. Calio or the NOAA Office of General Counsel on any particular point, and is provided only as a drafting service to the Council.

I will be ready to discuss the particulars of the draft with the Council's reauthorization committee at its meeting in Anchorage on Tuesday, July 29.

Attachment



AN ACT

To provide for the conservation and management of marine fisheries,
and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the "Marine Fisheries Act of 1987".

TABLE OF CONTENTS

Sec. 2. Findings, purposes, and policy.

Sec. 3. Definitions.

TITLE I -- AUTHORITY OF THE UNITED STATES AND FISHING BY FOREIGN VESSELS

Sec. 101. Exclusive fishery conservation and management authority.

Sec. 102. Fishing by foreign vessels.

TITLE II -- NATIONAL FISHERY CONSERVATION AND MANAGEMENT PROGRAM

Sec. 201. Regional fishery management councils.

Sec. 202. Regulations specifically governing fisheries.

Sec. 203. Other regulations.

Sec. 204. Judicial review.

Sec. 205. State jurisdiction.

Sec. 206. Fishery research and data gathering.

TITLE III -- PROHIBITED ACTS, ENFORCEMENT, AND PENALTIES

- Sec. 301. Prohibited acts.
- Sec. 302. Enforcement.
- Sec. 303. Written warnings.
- Sec. 304. Civil penalties.
- Sec. 305. Sanctions against licenses, permits, and other authorizations.
- Sec. 306. Civil forfeitures.
- Sec. 307. Criminal offenses.

TITLE IV -- MISCELLANEOUS PROVISIONS

- Sec. 401. Jurisdiction of courts.
- Sec. 402. Repeals.
- Sec. 403. Confidentiality of information.
- Sec. 404. Marine Fisheries Conservation and Management Fund.

SEC. 2. FINDINGS, PURPOSES, AND POLICY

(a) FINDINGS.--The Congress finds and declares the following:

(1) The fish off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the continental shelf appertaining to the United States, and the anadromous species which spawn in United States rivers or estuaries, constitute valuable and renewable natural resources. These fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.

(2) Commercial and recreational marine fishing constitutes a major source of employment and contributes significantly to the economy of the Nation. Many coastal areas are dependent upon fishing and related activities, and their economies can be badly damaged by the overfishing of fishery resources, by the destruction of marine fish habitat, and by unwise fishery management measures. They are also increasingly dependent upon the access of their fishery products to markets in foreign nations.

(3) A national program for the conservation and management of the marine fishery resources of the United States is necessary to prevent overfishing and protect marine fish habitat, and to promote the realization of the full potential of the Nation's marine fishery resources. This program should give special attention to the development of marine fishery resources which have in the past not been used fully by the United States fishing industry, including groundfish off Alaska.

(4) Under the Magnuson Fishery Conservation and Management Act, the development of such a program has begun. The primary purpose of that Act, the management and elimination of foreign fisheries off the coasts of the United States, has now been accomplished. The further development of this program requires new legislation that takes account of the great expansion of the United States fishing industry under the Magnuson Fishery Conservation and Management Act and the experience gained in the past development and implementation of the program.

(b) It is therefore declared to be the purposes of the Congress in this Act--

(1) to promote the further development of the United States fishing industry, both commercial and recreational, under sound conservation and management principles, with special attention to the development of marine fishery resources which have in the past not been used fully by that industry, including groundfish off Alaska;

(2) to accomplish this by continuing the national program begun under the Magnuson Fishery Conservation and Management Act, modifying that program to take account of current conditions in the United States fishing industry and the experience gained in the past development and implementation of that program.

(c) POLICY.--It is further declared to be the policy of the Congress in this Act--

(1) to maintain without change the existing territorial or other ocean jurisdiction of the United States for all purposes, and to authorize no impediment to, or interference with, recognized uses of the oceans that is inconsistent with that existing jurisdiction;

(2) that the national program for the conservation and management of marine fishery resources is based upon the best scientific information available; involves, and is responsive to the needs of, interested and affected States and individuals; promotes the economic health of the United States fishing industry, especially its competitiveness in domestic and foreign markets; and draws upon all Federal, State, and private resources that are available for research, management, and enforcement;

(3) that conservation and management measures under this Act are practical and effective, and do not duplicate or supersede unnecessarily such measures that have been adopted under other Federal or State law.

SEC. 3. DEFINITIONS

As used in this Act, unless the context otherwise requires—

"Anadromous species" means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters.

"Authorized officer" means any officer who is authorized by the Secretary, the Secretary of the department in which the Coast Guard is operating, or the head of any Federal or State agency which has entered into an agreement with those Secretaries under section 302(a), to enforce the provisions of this Act.

"Conservation" means all of the regulations, conditions, methods, and other measures which are required or useful to rebuild, restore, or maintain the biological and physical health of any fishery resource and the marine environment.

"Continental shelf" means the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, of the United States, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such areas.

"Continental shelf fishery resources" means any sedentary species that are, at the harvestable stage, either immobile on or under the seabed, or unable to move except in constant contact with the seabed or subsoil of the continental shelf.

"Council" means any regional fishery management council established under section 201 of this Act.

"Exclusive economic zone" means the zone contiguous to the territorial sea of the United States which extends to a distance 200 nautical miles from the baseline from which the territorial sea is measured, or to a distance that has been negotiated with neighboring coastal nations or has otherwise been determined in accordance with equitable principles.

"Fish" means all forms of marine animal and plant life other than marine mammals, birds, and highly migratory species.

"Fishery" means one or more stocks of fish which can be treated as a unit for purposes of conservation and management on the basis of geographic, scientific, technical, recreational, or economic characteristics or method of catch, and any fishing for such stocks.

"Fishery resource" means any fish, any fishery, and any fish habitat.

"Fishing" or "to fish" means harvesting, processing, receiving, scouting, and support, but does not include scientific research.

"Foreign vessel" means a vessel other than a United States vessel.

"Geographical area concerned", with respect to a Council, means the States seaward of which that Council has authority over fisheries.

"Harvesting" or "to harvest" means any activity which does, is intended to, or can reasonably be expected to result in catching fish or removing fish from the water.

"Highly migratory species" means the species of tuna that migrate over great distances in the ocean.

"Management" means all of the regulations, conditions, methods, and other measures which are required or useful to carry out the provisions of this Act, but do not have as their primary purpose the maintenance of the biological and physical health of any fishery resource or the marine environment.

"Maximum sustainable yield" means the largest annual catch of fish, measured either by quantity or by value, that can be taken from a fishery over a long period of time under prevailing environmental conditions.

"Optimum yield" means the amount of fish harvested from a fishery that will provide the greatest overall benefit to the Nation, prescribed on the basis of an assessment of the maximum sustainable yield of that fishery and all relevant ecological, economic, and social factors, with particular reference to food production and recreational opportunities.

"Overfishing" means a level of fishing mortality that impairs the capacity of a fishery to maintain or recover to a level at which it can produce maximum sustainable yield.

"Person" means any individual, any corporation, partnership, association, or other entity, and any Federal, State, local, or foreign government or any entity of any such government.

"Processing" or "to process" means the preparation of fish to render it suitable for human consumption or long-term storage, including but not limited to cleaning, cooking, canning, smoking, salting, drying, and freezing.

"Receiving" or "to receive" means the taking of fish on board by one vessel directly from another vessel.

"Scouting" means any operation by a vessel exploring for the presence of fish by visual, acoustic, or other means which do not involve harvesting.

"Secretary" means the Secretary of Commerce or his designee.

"State" means each of the several States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, the Territories of American Samoa, Guam, and the Virgin Islands, and any other commonwealth, territory, or possession of the United States.

"Stock of fish" means all or part of a species, subspecies, geographical grouping, or other category of fish capable of conservation and management as a unit.

"Support" means any operation by a vessel other than harvesting, processing, receiving, or scouting that assists fishing by another vessel, including but not limited to transferring or transporting fish, and supplying another vessel with water, fuel, provisions, fishing equipment, or other supplies.

"Treaty" means any international agreement that is a treaty within the meaning of section 2 of article II of the Constitution.

"United States", when used in a geographical sense, means all the States thereof.

"United States processor" means a facility located within the United States or a United States vessel that is used or equipped to be used for processing.

"United States vessel" means any vessel documented under the laws of the United States; or any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 et seq.) and measuring less than 5 net tons or used exclusively for pleasure.

TITLE I -- AUTHORITY OF THE UNITED STATES AND FISHING BY FOREIGN VESSELS

SEC. 101. EXCLUSIVE FISHERY CONSERVATION AND MANAGEMENT AUTHORITY

(a) IN GENERAL.--The United States shall exercise exclusive fishery conservation and management authority, in the manner provided for in this Act, over the following:

(1) All fish within the exclusive economic zone.

(2) All anadromous species throughout the migratory range of each such species beyond the exclusive economic zone; except that such authority shall not extend to such species during the time they are found within the territorial sea or exclusive economic zone, or the equivalent, of any foreign nation, to the extent recognized by the United States.

(3) All continental shelf fishery resources beyond the exclusive economic zone.

(b) HIGHLY MIGRATORY SPECIES.--The exclusive fishery conservation and management authority of the United States does not extend to highly migratory species.

SEC. 102. FISHING BY FOREIGN VESSELS

(a) HARVESTING.--(1) After December 31, 1988, no foreign vessel may be used to harvest fish within the exclusive economic zone, or anadromous

species or continental shelf fishery resources beyond that zone, unless such harvesting is authorized by treaty.

(2) No foreign vessel may be used to harvest fish within the boundaries of any State.

(3) Notwithstanding any other provision of this Act, Title II of the Magnuson Fishery Conservation and Management Act shall govern the use of foreign vessels to harvest fish in the exclusive economic zone, and anadromous species and continental shelf fishery resources beyond that zone, until January 1, 1989.

(4) The Secretary shall promulgate regulations under section 203, and may promulgate regulations under section 202, to govern the use of foreign vessels to harvest fish in the exclusive economic zone, and anadromous species and continental shelf fishery resources beyond that zone, that is authorized by treaty after December 31, 1988.

(5) Notwithstanding any other provision of this Act, a person may use a foreign vessel which is not operated for profit to engage in recreational fishing within the exclusive economic zone or the boundaries of a State in accordance with regulations promulgated by the Secretary under section 203 and conditions and restrictions imposed by the Governor of the State in which such fishing will occur or his designee. Such fishing shall comply with all applicable Federal and State laws.

(b) PROCESSING AND RECEIVING.--(1) No foreign vessel may be used to process or receive fish within the boundaries of any State or the exclusive economic zone, or to process or receive anadromous species or continental shelf fishery resources beyond that zone, unless

(A) that fish has previously been processed by a United States processor; or

(B) the Secretary has determined under regulations promulgated under section 202 that such fish will not otherwise be processed by any United States processor.

(2) In addition to the requirements of subparagraph (1) (B), no foreign vessel may be used within the boundaries of any State to process or receive fish that has not previously been processed by a United States processor, unless the Governor of that State has granted permission for such processing or receiving.

(c) SCOUTING AND SUPPORT.--To the extent authorized by other law, a foreign vessel may be used for scouting or support within the boundaries of any State and the exclusive economic zone, and for scouting or support beyond such zone in fishing for anadromous species or continental shelf fishery resources. The Secretary may promulgate regulations under section 203 to govern such scouting and support by foreign vessels.

TITLE II -- NATIONAL FISHERY CONSERVATION AND MANAGEMENT PROGRAM

SEC. 201. REGIONAL FISHERY MANAGEMENT COUNCILS

(a) ESTABLISHMENT.--There are established eight regional fishery management councils, as follows:

(1) NEW ENGLAND COUNCIL.--The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. The New England Council shall have 17 voting members, including 11 appointed by the Secretary in accordance with subsection (b) (2), at least one of whom shall be appointed from each such State.

(2) MID-ATLANTIC COUNCIL.--The Mid-Atlantic Fishery Management Council shall consist of the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, and Virginia and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. The Mid-Atlantic Council shall have 19 voting members, including 12 appointed by the Secretary in accordance with subsection (b) (2), at least one of whom shall be appointed from each such State.

(3) SOUTH ATLANTIC COUNCIL.--The South Atlantic Fishery Management Council shall consist of the States of North Carolina, South Carolina, Georgia, and Florida and shall have authority over the fisheries

in the Atlantic Ocean seaward of such States. The South Atlantic Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b) (2), at least one of whom shall be appointed from each such State.

(4) CARIBBEAN COUNCIL.--The Caribbean Fishery Management Council shall consist of the Virgin Islands and Puerto Rico and shall have authority over the fisheries in the Caribbean Sea and Atlantic Ocean seaward of such States. The Caribbean Council shall have 7 voting members, including 4 appointed by the Secretary in accordance with subsection (b) (2), at least one of whom shall be appointed from each such State.

(5) GULF COUNCIL.--The Gulf of Mexico Fishery Management Council shall consist of the States of Texas, Louisiana, Mississippi, Alabama, and Florida and shall have authority over the fisheries in the Gulf of Mexico seaward of such States. The Gulf Council shall have 17 voting members, including 11 appointed by the Secretary in accordance with subsection (b) (2), at least one of whom shall be appointed from each such State.

(6) PACIFIC COUNCIL.--The Pacific Fishery Management Council shall consist of the States of California, Oregon, Washington, and Idaho and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Pacific Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b) (2), at least one of whom shall be appointed from each such State.

(7) NORTH PACIFIC COUNCIL.--The North Pacific Fishery Management Council shall consist of the States of Alaska, Washington, and Oregon and shall have authority over the fisheries in the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska. The North Pacific Council shall have 11 voting members, including 7 appointed by the Secretary in accordance with subsection (b) (2), 5 of whom shall be appointed from the State of Alaska and 2 of whom shall be appointed from the State of Washington.

(8) WESTERN PACIFIC COUNCIL.--The Western Pacific Fishery Management Council shall consist of the States of Hawaii, American Samoa, Guam, and the Northern Mariana Islands and shall have authority over the fisheries in the Pacific Ocean seaward of such States and of the other commonwealths, territories, and possessions of the United States in the Pacific Ocean. The Western Pacific Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b) (2), at least one of whom shall be appointed from each of the States of which the Council consists.

Each Council shall reflect the expertise and interest of its constituent States in the fisheries over which that Council is granted authority.

(b) VOTING MEMBERS.--(1) The voting members of each Council shall be:

(A) The principal State official with marine fishery management responsibility and expertise in each constituent State, who is designated as such by the governor of the State, so

long as that official continues to hold that position, or the designee of that official.

(B) The regional director of the National Marine Fisheries Service for the geographic area concerned, or his designee, except that if two regional directors are within that area, the Secretary shall designate which of them shall be the voting member.

(C) The members required to be appointed by the Secretary in accordance with subsection (b) (2).

(2) (A) The members of each Council required to be appointed by the Secretary must be individuals who are knowledgeable or experienced with regard to the conservation, management, or recreational or commercial harvest of the fishery resources of the geographical area concerned.

(B) The Secretary shall appoint the members of each Council from a list of individuals submitted by the Governor of each applicable constituent State. Each such list shall include the names and pertinent biographical data of not less than three individuals for each applicable vacancy. The Secretary shall review each list submitted by a Governor to ascertain if the individuals on the list are qualified for the vacancy on the basis of the knowledge or experience required by subparagraph (A). If the Secretary determines that any individual is not so qualified, he shall notify the appropriate Governor of that determination. The Governor shall then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the individual in question.

(C) Whenever the Secretary makes an appointment to a Council, he shall make a public announcement of such appointment not less than 45 days before the first day on which the individual is to take office as a member of the Council.

(3) Each voting member appointed to a Council by the Secretary in accordance with subsection (b) (2) shall serve for a term of 3 years.

(4) When the seat of a voting member of a Council becomes vacant before the expiration of that member's term of office, the Secretary shall appoint a successor for the remainder of that term in the same manner as he appointed the original member.

(5) The Secretary may remove for cause any member of a Council required to be appointed by the Secretary in accordance with subsection (b) (2) if the Council concerned first recommends removal by not less than two-thirds of the members who are voting members. A recommendation of a Council to remove a member must be in writing and accompanied by a statement of the reasons upon which the recommendation is based.

(c) NONVOTING MEMBERS.--(1) The nonvoting members of each Council shall be:

(A) The regional or area director of the United States Fish and Wildlife Service for the geographical area concerned, or his designee.

(B) The commander of the Coast Guard district for the geographical area concerned, or his designee; except that, if two

or more Coast Guard districts are within that area, the commandant of the Coast Guard shall designate the commander for this purpose.

(C) The Executive Director of the Marine Fisheries Commission for the geographical area concerned, if any, or his designee.

(D) One representative of the Department of State designated for this purpose by the Secretary of State, or his designee.

(2) The Pacific Council shall have one additional nonvoting member who shall be appointed by, and serve at the pleasure of, the Governor of Alaska.

(d) COMPENSATION AND EXPENSES.--The voting members of each Council who are not employed by the Federal government or by any State or local government shall receive compensation at the daily rate for GS-18 of the General Schedule when engaged in the actual performance of duties for that Council. The voting members of each Council, any nonvoting member described in subsection (c) (1) (C), and the nonvoting member appointed under subsection (c) (2) shall be reimbursed for actual expenses incurred in the performance of Council duties, and other nonvoting members may be reimbursed for such actual expenses.

(e) TRANSACTION OF BUSINESS.--

(1) A majority of the voting members of any Council shall constitute a quorum, but one or more such members designated by the Council may hold hearings. All decisions of any Council shall be by majority vote of the voting members present and voting.

(2) The voting members of each Council shall select a Chairman for that Council from among the voting members.

(3) Each Council shall meet in the geographical area concerned at the call of the Chairman or upon the request of a majority of its voting members.

(4) If any voting member of a Council disagrees with respect to any matter which is transmitted to the Secretary by that Council, that member may submit a statement to the Secretary setting forth the reasons for that disagreement.

(f) STAFF AND ADMINISTRATION.--

(1) Each Council may appoint and assign duties to an Executive Director and such other full- and part-time administrative employees as the Secretary determines are necessary to the performance of its functions.

(2) Upon the request of any Council, and after consultation with the Secretary, the head of any Federal agency is authorized to detail to that Council, on a reimbursable basis, any of the personnel of that agency, to assist that Council in the performance of its functions under this Act.

(3) The Secretary shall provide to each Council the administrative and technical support services that are necessary for the effective functioning of that Council.

(4) The Administrator of General Services shall furnish each Council with the offices, equipment, supplies, and services that he is authorized to furnish to any other agency or instrumentality of the United States.

(5) The Secretary and the Secretary of State shall furnish each Council with relevant information concerning developments in and United States relations with foreign nations that are relevant to that Council's responsibilities.

(6) Each Council shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this Act, in accordance with subsection (i) and regulations promulgated by the Secretary under section 203. Each Council shall publish and make available to the public a statement of its organization, practices, and procedures.

(7) The Secretary shall pay--

(A) the compensation and expenses provided for in subsection (d);

(B) appropriate compensation to employees appointed under paragraph (1);

(C) the amounts required for reimbursement of other Federal agencies under paragraphs (2) and (4);

(D) the actual expenses of the members of the committees and panels established under subsection (g); and

(E) such other costs as the Secretary determines are necessary to the performance of the functions of the Councils.

(g) COMMITTEES AND PANELS.--

(1) Each Council shall establish and maintain, and appoint the members of, a scientific and statistical committee to assist it in the development, collection, and evaluation of any statistical, biological, economic, social, and other scientific information that is relevant to the performance of the functions of that Council under this Act.

(2) Each Council shall establish such other advisory panels as are necessary or appropriate to assist it in carrying out its functions under this Act.

(h) PROCEDURAL MATTERS.--(1) The Federal Advisory Committee Act (5 U.S.C. App. 1) shall not apply to the Councils or to the scientific and statistical committees or advisory panels of the Councils.

(2) The following guidelines apply with respect to the conduct of business at meetings of a Council, and of the scientific and statistical committee and advisory panels of a Council:

(A) Unless closed in accordance with paragraph (3), each regular meeting and each emergency meeting shall be open to the public.

(B) Emergency meetings shall be held at the call of the chairman or equivalent presiding officer.

(C) Timely public notice of each regular meeting and each emergency meeting, including the time, place, and tentative agenda of the meeting, shall be published in local newspapers in the major fishing ports in the geographical area concerned, and in other major fishing ports having a direct interest in any affected fishery, and such notice may be given by any other means that will result in wide publicity. Timely notice of each regular meeting shall also be published in the Federal Register.

(D) Interested persons shall be permitted to present oral or written statements at meetings concerning the matters on the agenda.

(E) Minutes of each meeting shall be kept and shall contain a record of the persons present, an accurate description of

matters discussed and conclusions reached, and copies of all statements filed.

(F) Subject to the procedures established by the Council under paragraph (4), and regulations promulgated by the Secretary under section 203 concerning confidentiality, the minutes required under subparagraph (E), and the records or other documents that were made available to or prepared for or by the Council, committee, or panel at or for a meeting, shall be available for public inspection and copying at a single location in the offices of the Council.

(3) Each Council, scientific and statistical committee, and advisory panel--

(A) shall close any meeting, or portion thereof, that concerns matters or information that bears a national security classification; and

(B) may close any meeting, or portion thereof, that concerns matters or information that pertains to national security, employment matters, or briefings on litigation in which the Council is interested;

If any such meeting or portion thereof is closed, the Council, committee, or panel concerned shall publish notice of the closure in local newspapers in the major fishing ports in the geographical area concerned, and in other fishing ports having a direct interest in any affected fishery, including the time and place of the meeting. Paragraphs (2) (D) and (2) (F) shall not apply to any meeting or portion thereof that is so closed.

(4) Each Council shall establish appropriate procedures applicable to it and to its committee and advisory panels for ensuring the confidentiality of the statistics that may be submitted to it by Federal or State authorities or by private persons, including, but not limited to, procedures for the restriction of Council employee access and the prevention of conflicts of interest. Such procedures must, in the case of statistics submitted to the Council by a State, be consistent with the laws and regulations of that State concerning the confidentiality of such statistics.

(i) FUNCTIONS.--Each Council shall, in accordance with the provisions of this Act--

(1) develop and adopt under section 202 any regulations specifically governing the fisheries under its authority that are necessary and appropriate for the conservation and management of those fisheries;

(2) submit to the Secretary comments upon any regulations affecting the fisheries under its authority that are proposed by the Secretary under section 202 or section 203, or suggesting the necessity of such regulations;

(3) conduct public hearings, at appropriate times and in appropriate locations in the geographical area concerned, or in any other area after consultation with the Council for that area, concerning the necessity and development of regulations by the Council under section 202, the necessity and merits of regulations proposed by

the Secretary under section 202 or 203, and the general implementation by the Council of its responsibilities under this Act;

(4) submit to the Secretary such reports as may be requested by the Secretary, or may otherwise be appropriate;

(5) conduct any other activities which are provided for in this Act, or which are necessary or appropriate to the foregoing functions.

SEC. 202. REGULATIONS SPECIFICALLY GOVERNING FISHERIES

(a) GENERAL.--A Council may adopt and the Secretary may promulgate regulations specifically governing any fisheries under the authority of that Council that are necessary or appropriate for the conservation or management of those fisheries, in accordance with this section.

(b) CONSERVATION AND MANAGEMENT MEASURES.--The conservation and management measures for which regulations under this section may provide include, but are not limited to, the following:

(1) limitations on the fish that may be taken in a fishery, based on the number, size, weight, sex, species, or other characteristics of those fish;

(2) limitations on the areas and times in which fishing may take place;

(3) limitations on and requirements for the use or possession of fishing gear, vessels, and vessel equipment, including equipment to facilitate enforcement of this Act;

(4) limitations on fishing practices that are harmful to any fish habitat;

(5) allocations of a fishery among persons engaged in it;

(6) limitations on the participation of persons in any fishery, including the establishment of markets for the purchase and sale by the Secretary and by other persons of opportunities for such participation;

(7) requirements that a license, permit, or other authorization be obtained from the Secretary by any person or vessel engaged in a fishery;

(8) requirements that any person engaged in a fishery keep logs or other records, make reports, submit to inspections, and host observers or other data gatherers, in order to produce information about any fishery that is relevant to its conservation and management;

(9) requirements that any person engaged in a fishery pay to the Secretary fees or other charges that are based upon the costs of the conservation and management of that fishery, or upon the economic value of the opportunity to participate in that fishery, which may be determined by auction or other market-related means; and

(10) determinations under section 101(b)(1)(B) of the amounts of fish that may be taken in a fishery but will not be processed by any United States processor.

(c) REQUIREMENTS.--Regulations under this section shall meet the following requirements:

(1) They shall be designed to prevent overfishing.

(2) They shall be based upon the best scientific information available.

(3) They shall promote the achievement of the optimum yield of each fishery, to the extent this is consistent with other requirements of conservation and management.

(4) They shall be based upon a recognition of the likelihood that a single stock of fish may be subject to more than one fishery, and of the interrelationships among stocks of fish.

(5) They shall be fair and equitable, treating residents of different States in a uniform manner; and being based upon a recognition of the historical participation of affected persons in a fishery, the extent of their dependence upon it, their ability to adjust to new conservation and management measures, and their social and cultural needs.

(6) They shall be designed to promote the development of the United States fishing industry, both commercial and recreational, to the extent this is consistent with the requirements of conservation, and to discourage the development of monopolistic practices in that industry.

(d) PROCEDURE.--

(1) DEVELOPMENT AND ADOPTION BY THE COUNCIL.--(A) When the Council has developed a proposed regulation under this section, it shall publish in the Federal Register a notice of proposed adoption of that

regulation, which shall comply with all requirements for a notice of proposed rulemaking published under section 553 of title 5, United States Code. Interested persons shall have the opportunity to comment to the Council on the proposed regulation for a period of at least 45 days after publication of the notice of proposed adoption in the Federal Register.

(B) After considering the comments received under subparagraph (A) and all other relevant information, the Council may adopt a proposed regulation, as modified in light of such comments and other information, by publishing in the Federal Register a notice of adoption of that regulation. The notice of adoption shall summarize and respond to all significant comments received under subparagraph (A), and shall comply with all other requirements for a final rulemaking notice published under section 553 of title 5, United States Code.

(C) After adopting a regulation, the Council shall transmit it to the Secretary, together with the whole record of the Council's adoption of the regulation. For the purposes of this paragraph, the whole record of the Council's adoption of a regulation shall consist of the following:

(i) the relevant portions of the minutes and other written records of meetings of the Council and any of its committees and panels at which the regulation was considered;

(ii) all written comments submitted by interested persons on the regulation;

(iii) the notice of proposed adoption and notice of adoption of the regulation; and

(iv) copies or summaries of all other information and final analyses upon which the Council relied in adopting the regulation.

(D) (i) Within 45 days after receiving a regulation and the whole record of the adoption of that regulation from the Council, the Secretary shall determine, solely on the basis of that record, whether the regulation complies with the requirements of this Act and other applicable law.

(ii) If the Secretary determines that all or part of that regulation complies with those requirements, he shall before the end of the 45-day period promulgate that regulation or part thereof by publishing in the Federal Register a notice of promulgation. The notice of promulgation shall incorporate the notice of adoption of the regulation by reference, and shall together with it comply with all requirements under section 553, title 5, United States Code, for a final rulemaking notice. The regulation or part thereof shall then become effective in accordance with the provisions of that section.

(iii) If the Secretary determines that all or part of that regulation does not comply with the requirements of this Act and other applicable law, he shall before the end of the 45-day period return that regulation or part thereof to the Council, together with a written statement of the reasons for his determination and of his suggestions for Council action on the matter. He may also take any action that may be authorized under paragraph (2).

(iv) If the Secretary does not take the action required by this subparagraph within the 45-day period after he receives a

regulation and the whole record of its adoption from the Council, the regulation as it is set forth in the notice of adoption shall immediately become effective.

(E) If the Secretary returns all or part of a regulation to the Council without promulgation, the Council shall reconsider that regulation or part thereof in light of the Secretary's statement of reasons and suggestions. The Council may then take one or more of the following actions:

(i) It may retransmit the regulation or part thereof to the Secretary, together with a written statement of its reasons for believing that regulation or part thereof to comply with the provisions of this Act and other applicable law, and with any additions to the whole record of the adoption of that regulation that may be necessary to reflect the Council's reconsideration.

(ii) It may adopt the regulation or part thereof in modified form, complying with any requirements that would apply under the circumstances to a rulemaking under section 553 of title 5, United States Code, and transmit the modified regulation or part thereof to the Secretary, together with any additions to the whole record of the adoption of that regulation that may be necessary as a result of the Council's action.

(iii) It may decline to take any further action on the returned regulation or part thereof.

(F) Within 30 days after receiving a transmittal from the Council under subparagraph (E) (i), and within 45 days after receiving such a transmittal under subparagraph (E) (ii), the Secretary shall take the action that he determines to be required under subparagraph (D). If the Secretary does not take this action within the period specified in this subparagraph, the retransmitted or modified regulation or part thereof as it is set forth in the notice of adoption shall immediately become effective.

(G) When waiver of prior notice and opportunity for comment would be appropriate in a rulemaking under section 553 of title 5, United States Code, the Council may adopt a regulation under this section by transmitting the regulation and the whole record of its adoption to the Secretary, without having first published notices of proposed adoption and adoption of the regulation. Within 15 days after receiving the transmittal from the Council, the Secretary shall take the action that he determines to be required under subparagraph (D). Any notice of promulgation that the Secretary may publish for the regulation under subparagraph (D) (ii) shall provide that the regulation shall become effective immediately for a period of not more than 180 days, and shall provide that interested persons shall have the opportunity to comment to the Council on the regulation for a period of at least 45 days. The Council and the Secretary shall then take action on the regulation under subparagraphs (B) through (F).

(2) DEVELOPMENT AND PROMULGATION BY THE SECRETARY.—The Secretary may develop and promulgate regulations under this section in accordance with section 553 of title 5, United States Code, and other applicable law, and without following the procedures prescribed in paragraph (1), if he determines that such regulations are necessary to prevent damage to any fishery resource, and

(A) he has submitted to the Council a written statement suggesting the adoption by it of such regulations, including a written statement under paragraph (1) (D) (iii), and the Council has declined, or the Secretary reasonably determines that it will decline, to take such action within the time necessary to prevent such damage; or

(B) he reasonably determines that the Council cannot take action under paragraph (1) within the time necessary to prevent such damage.

The Council shall comment upon any regulations that are proposed by the Secretary under this paragraph.

(3) NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE.—The Secretary and each Council shall jointly prepare an environmental impact statement under section 102(2) (C) of the National Environmental Policy Act that treats comprehensively the potential effects on the human environment of all the fisheries under the authority of that Council. This statement shall be reviewed and, if necessary, revised every 2 years after its original filing. Compliance with this paragraph by the Secretary and the Council shall satisfy all requirements of section 102 of the National Environmental Policy Act that apply to regulations under this section.

(e) RELATIONSHIP TO STATE LAWS AND REGULATIONS.--In adopting and promulgating regulations under this section, the Council and the Secretary shall consider the extent to which existing State laws and regulations are sufficient for the conservation and management of the fisheries under the authority of the Council. Regulations under this section may require persons engaged in a fishery to comply with any laws and regulations for the conservation and management of that fishery that an adjacent coastal State may enact or promulgate, except to the extent they are determined by the Council or the Secretary to be inconsistent with the provisions of this Act or other applicable law.

SEC. 203. OTHER REGULATIONS

The Secretary may promulgate any regulations, other than regulations under section 202, that are necessary or appropriate to carry out the provisions of this Act, in accordance with section 553 of title 5, United States Code.

SEC. 204. JUDICIAL REVIEW

Regulations promulgated by the Secretary under sections 202 and 203 shall be subject to judicial review to the extent authorized by, and in accordance with, chapter 7 of title 5, United States Code, if a petition for such review is filed within 30 days after the date on which the regulations are promulgated; except that

- (1) section 705 of such title is not applicable, and
- (2) the appropriate court shall only set aside any such regulation on a ground specified in section 706(2) (A), (B), (C), or (D) of such title.

SEC. 205. STATE JURISDICTION

(a) IN GENERAL.--

(1) Except as provided in subsection (b), nothing in this Act shall be construed to extend or diminish the jurisdiction or authority of any State within its boundaries.

(2) For the purposes of this Act, except as provided in subsection (b), the jurisdiction and authority of a State shall extend--

(A) to any pocket of waters that is adjacent to the State and totally enclosed by lines delimiting the territorial sea of the United States under the Geneva Convention on the Territorial Sea and Contiguous Zone or any successor convention to which the United States is a party;

(B) with respect to the body of water commonly known as Nantucket Sound, to the pocket of water west of the seventieth meridian west of Greenwich; and

(C) to the waters of southeastern Alaska that are--

(i) north of the line representing the international boundary at Dixon Entrance and the westward extension of that line; east of 138 degrees west longitude; and not more than three nautical miles seaward from the coast, from the lines extending from headland to headland across all bays, inlets, straits, passes, sounds, and entrances, and from any island or group of islands, including the islands of the Alexander Archipelago, except Forrester Island; or

(ii) between the islands referred to in clause (i), except Forrester Island, and the mainland.

(3) Except as otherwise provided by paragraph (2), or under section 202(e), a State may not directly or indirectly regulate fishing by any vessel outside its boundaries, unless that vessel is registered under the law of that State.

(b) EXCEPTION.--(1) If the Secretary finds, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, that any State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the implementation of a regulation under section 202 governing a fishery that is engaged in primarily in and beyond the exclusive economic zone, the Secretary shall promptly notify that State and the appropriate Council of that finding and of his intention to regulate that fishery

within the boundaries of that State, except in its internal waters, in order to ensure compliance with that regulation.

(2) If the Secretary assumes responsibility under this subsection for the regulation of any fishery within the boundaries of a State, that State may at any time thereafter apply to the Secretary for reinstatement of its authority over that fishery. If the Secretary finds that the reasons for which he assumed such regulation no longer prevail, he shall promptly terminate such regulation.

SEC. 206. FISHERY RESEARCH AND INFORMATION GATHERING

(a) AUTHORITY OF THE SECRETARY.--The Secretary shall conduct a comprehensive program of fishery research and information gathering to carry out and further the purposes, policy, and provisions of this Act. The Secretary may promulgate regulations under section 202 to condition the participation of any person in a fishery or the application to that person of any conservation or management measure on participation by that person in specified fishery research and information gathering activities.

(b) ESTABLISHMENT OF PRIVATE ASSOCIATIONS.--The Secretary may promulgate regulations under section 203 to provide for the establishment, upon the vote of at least two-thirds of the persons engaged in any fisheries, of a private association for the purpose of conducting research and gathering information concerning those fisheries. These regulations shall conform to the extent practicable to the analogous provisions of the

Seafood Marketing Councils Act. Any private association established under this subsection may require all persons engaged in the fisheries concerned to pay such assessments as the Secretary may authorize in the regulations to carry out its purposes, and may determine the uses authorized by the Secretary in the regulations to which the funds so collected shall be put.

TITLE III -- PROHIBITED ACTS, ENFORCEMENT, AND PENALTIES

SEC. 301. PROHIBITED ACTS

It is unlawful for any person--

- (1) to violate any provision of this Act or any regulation, license, permit, or other authorization issued under this Act;
- (2) to fish after the revocation or during a period of suspension of a license, permit, or other authorization required for such fishing under this Act;
- (3) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of any fish taken or retained in violation of this Act, or any regulation, license, permit, or other authorization issued under this Act;
- (4) to refuse to permit any officer authorized to enforce this Act to board a vessel subject to that person's control for purposes of conducting any search or inspection in connection with such enforcement, or to assault, resist, oppose, impede, intimidate, harass, or interfere with any such officer in the conduct of any such search or inspection; or
- (5) to resist a lawful arrest for any violation of this section, or to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that person to have committed such a violation.

SEC. 302. ENFORCEMENT

(a) RESPONSIBILITY.--The provisions of this Act shall be enforced by the Secretary and the Secretary of the Department in which the Coast Guard is operating. Those Secretaries may, by agreement, on a reimbursable basis or otherwise, use the personnel, services, equipment, aircraft, vessels, and facilities of any other Federal agency, including all elements of the Department of Defense, and of any State agency, in the performance of this duty.

(b) AUTHORITY OF AUTHORIZED OFFICERS.--

(1) Any authorized officer may--

(A) without a warrant or other process--

(i) arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by section 301;

(ii) board, and search or inspect, any vessel to enforce the provisions of this Act;

(iii) seize any vessel, together with its fishing gear, furniture, appurtenances, stores, and cargo, that reasonably appears to have been used or employed in the violation of any provision of this Act;

(iv) seize any fish, wherever found, that reasonably appears to have been taken or retained in violation of any provision of this Act;

(B) execute any warrant or other process issued by any court of competent jurisdiction; and

(C) exercise any other lawful authority.

(2) An authorized officer or other person charged by the Secretary with law enforcement responsibilities who is performing a duty related to enforcement of a law concerning fishery resources or other marine resources may arrest any person without a warrant—

(A) for an offense against the United States committed in his presence; or

(B) for a felony cognizable under the laws of the United States, if he has reasonable grounds to believe that the person to be arrested has committed or is committing a felony.

This arrest authority may be conferred upon an officer or employee of a State agency, subject to such conditions and restrictions as are set forth by agreement between the State agency, the Secretary, and, with respect to enforcement operations in the exclusive economic zone, the Secretary of the Department in which the Coast Guard is operating.

SEC. 303. WRITTEN WARNINGS

If the Secretary or any authorized officer finds that a person has violated any provision of this Act, the Secretary or that officer may issue a written warning to that person, in accordance with regulations issued jointly by the Secretary and the Secretary of the department in

which the Coast Guard is operating. The Secretary shall maintain a record of all citations issued under this section.

SEC. 304. CIVIL PENALTIES

(a) ASSESSMENT OF PENALTY.--Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have violated any provision of this Act shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$50,000 for each violation. Each day of a continuing violation shall constitute a separate violation for purposes of calculating the maximum penalty under this section. The amount of each civil penalty under this section shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violations of this Act and, with respect to the violator, the degree of culpability, any history of previous offenses, information provided by the violator concerning the violator's ability to pay, and any other matters that justice may require.

(b) REVIEW OF CIVIL PENALTY.--Any person against whom a civil penalty is assessed under subsection (a) may obtain review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified

copy of the record upon which the violation was found and the penalty imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Secretary shall be set aside by the court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(c) ACTION UPON FAILURE TO PAY ASSESSMENT.—If any person against whom a civil penalty has been assessed under this section fails to pay that penalty after its assessment has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary under subsection (b), the Secretary may refer the matter to the Attorney General of the United States, who shall recover the amount of the penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review. The Secretary shall also revoke any license, permit, or other authorization issued to that person, or to any vessel owned or operated by that person, without hearing, in accordance with section 305. The Secretary may also pursue such other means to collect the amount of the penalty as are otherwise authorized for the collection of debts due the United States.

(d) COMPROMISE OR OTHER ACTION BY SECRETARY.—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(e) SUBPENAS.—For the purposes of conducting any hearing under this section or section 305, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person under this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Secretary and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

SEC. 305. SANCTIONS AGAINST LICENSES, PERMITS, AND OTHER AUTHORIZATIONS

(a) GENERALLY.—If the Secretary finds that any person has violated any provision of this Act, the Secretary may revoke, suspend, or impose additional conditions and restrictions upon any license, permit, or other authorization issued to that person under this Act, and terminate or limit the eligibility of that person for any future such license, permit, or other authorization. Except as provided by subsections (b) and (c), action by the Secretary under this section shall be after notice and an

opportunity for a hearing in accordance with section 554 of title 5, United States Code, and subject to review in the manner provided for by section 304(b).

(b) TEMPORARY ACTION WITHOUT HEARING.--Notwithstanding subsection (a), the Secretary may take action under this section for a period no longer than 30 days upon notice without opportunity for a prior hearing, if he determines that such action will contribute to the conservation and management of the fisheries concerned pending the completion of hearing proceedings under subsection (a).

(c) MANDATORY ACTION FOR NONPAYMENT OF PENALTY.--Notwithstanding subsection (a), the Secretary shall take action under this section upon notice without opportunity for a prior hearing against any person against whom a civil penalty or criminal fine under this Act has become final and unappealable, and who has not paid that penalty or fine when due. The Secretary shall terminate action under this subsection upon payment of that penalty or fine, together with interest thereon at the prevailing rate.

SEC. 306. CIVIL FORFEITURES

(a) IN GENERAL.--Any vessel, including its fishing gear, furniture, appurtenances, stores, and cargo, used, and any fish or the fair market value thereof taken or retained, in any manner, in connection with or as a result of the violation of any provision of this Act shall be subject to

forfeiture to the United States. Such vessel and such fish or the fair market value thereof shall be forfeited to the United States by order of any appropriate district court of the United States, upon application by the Attorney General on behalf of the United States.

(b) JUDGMENT.--If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States which has not previously been seized under this Act or for which security has not previously been obtained under subsection (c). The provisions of the customs laws relating to--

- (1) the disposition of forfeited property,
- (2) the proceeds from the sale of forfeited property,
- (3) the remission or mitigation of forfeitures, and
- (4) the compromise of claims,

shall apply to any forfeiture ordered, and to any case in which forfeiture is alleged to be authorized, under this section, unless such provisions are inconsistent with the purposes, policy, and provisions of this Act. The duties and powers imposed upon the Commissioner of Customs or other persons under such provisions shall, with respect to this Act, be performed by authorized officers or other persons designated for that purpose by the Secretary.

(c) PROCEDURE.--(1) Any officer authorized by an appropriate district court of the United States to serve any process in rem under this Act may--

(A) stay the execution of such process; or

(B) discharge any fish seized under such process;

upon the receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon (i) such person delivering such property to the appropriate court upon order thereof, without any impairment of its value, or paying the monetary value of such property under an order of such court; and (ii) any other condition that the Secretary certifies to the appropriate court will contribute to the conservation and management of any fishery. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by the appropriate court.

(2) Any fish seized under this Act may be sold, subject to the approval and direction of the appropriate court, for not less than the fair market value thereof. The proceeds of any such sale shall be deposited with such court pending the disposition of the matter involved.

(d) REBUTTABLE PRESUMPTION.--For purposes of this section, it shall be a rebuttable presumption that all fish found on board a vessel which is seized in connection with a violation of this Act were taken or retained as a result of such violation.

SEC. 307. CRIMINAL OFFENSES

(a) OFFENSES.--A person is guilty of an offense if that person violates--

- (1) section 102(a) (1) or (2);
- (2) section 102(b); or
- (3) section 301(4) or (5).

(b) PUNISHMENT.--(1) Any offense described in subsection (a) (1) or (2) is punishable by a fine of not more than \$200,000.

(2) Any offense described in subsection (a) (3) is punishable by a fine of not more than \$100,000, or imprisonment for not more than 6 months, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any authorized officer, or places any authorized officer in fear of imminent bodily injury, the offense is punishable by a fine of not more than \$200,000, or imprisonment for not more than 10 years, or both.

TITLE IV -- MISCELLANEOUS PROVISIONS

SEC. 401. JURISDICTION OF COURTS

The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this Act. In the case of the Commonwealth of the Northern Mariana Islands, the appropriate court is the United States District Court for the Northern Mariana Islands. In the case of American Samoa, the appropriate court is the United States District Court for the District of Hawaii. In the case of Guam and any other Commonwealth, territory, or possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Guam. Any such court may, at any time, except as otherwise provided in this Act,--

- (1) enter restraining orders or prohibitions;
- (2) issue warrants, process in rem, or other process;
- (3) prescribe and accept satisfactory bonds or other security; and
- (4) take such other actions as are in the interest of justice.

SECTION 402. REPEALS

Subject to section 102(a)(3), the Magnuson Fishery Conservation and Management Act is repealed, except for section 205 of that Act, subsection (a)(1) of which is amended to read as follows--

"(1) he has been unable, within a reasonable period of time, to conclude with any foreign nation an international fishery agreement

allowing vessels of the United States equitable access to fisheries over which that nation asserts exclusive fishery management authority, as recognized by the United States, because that nation has refused to commence negotiations or failed to negotiate in good faith;".

SEC. 403. CONFIDENTIALITY OF INFORMATION

The Secretary shall promulgate regulations under section 203 to maximize the confidentiality of any information submitted by or obtained from any person under this Act, to the extent that this is consistent with the requirements of conservation and management.

SEC. 404. MARINE FISHERIES CONSERVATION AND MANAGEMENT FUND

There is established in the Treasury of the United States the Marine Fisheries Conservation and Management Fund. The Fund shall be available to the Secretary as a revolving fund for the purpose of carrying out this Act. All fees, penalties, forfeitures, fines, and other charges that are paid under this Act shall be deposited into the Fund. The Secretary shall make payments from the fund only to the extent and in the amounts provided for in advance in appropriation Acts. Sums in the Fund which are not currently needed to carry out this Act shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

REGIONAL FISHERY COUNCIL MEETING SCHEDULE
Through December 31, 1986

1. New England Council
September 9-10 - Danvers, MA
October 21-22 - Nantucket, MA
December 2-3 - Danvers, MA
2. Mid-Atlantic Council
September 30-October 1 - Ronkonkoma, Long Island, NY
November 12-13 - Virginia Beach, VA
3. South Atlantic Council
October 27-31 - St. Simons Island, GA
(Joint meeting w/Gulf Council)
December 1-5 - Charleston, S.C.
4. Gulf Council
October 27-31 - St. Simons Island, GA
(Joint meeting w/S. Atlantic Council)
5. Caribbean Council
October 14-16 - San Juan, PR
6. Pacific Council
November 19-20 - Portland, OR
7. Western Pacific Council
November 10-12 - Guam

**JAPANESE GOVERNMENT'S COMMENTS AND CONSTRUCTIVE
ALTERNATIVES TO THE DRIFTNET IMPACT, MONITORING,
ASSESSMENT AND CONTROL BILL OF 1986 (S 2611).**

September 12, 1986

Following are the Japanese Government's comments on and constructive alternatives to the "Driftnet Impact, Monitoring, Assessment and Control Bill of 1986" (S2611). These remarks follow upon discussions of this bill held on August 1 and August 5 between our representative and Senator Stevens together with members of his staff. The Japanese Government fully recognizes U.S. concern about the problem of marine debris in the North Pacific and Bering Sea. The discussions helped the Japanese side to understand how members of U.S. Congress perceive the problem. We appreciate that Senator Stevens extended an invitation to Senator Kamenaga and leaders of the Japan Fisheries Association to visit Alaska and view the problem first hand. We believe a site visit would be most constructive and are ready to send representatives of the Japan Fisheries Association to observe the actual situation with respect to plastics pollution in the coastal area of Alaska as well as the impact of countermeasures.

The Japanese side intends to voluntarily conduct the following activities and proposes that the U.S. side also undertake the activities recommended below.

(i) With regard to salmon driftnet fisheries, Japan will continue its research on incidental take by driftnets and its research on marine mammal resources both by salmon research vessels and the vessel dedicated to Dall's porpoise research. We will expand and strengthen research activities by the Fisheries Agency on squid driftnet fisheries. To the extent practicable Japan will consider the boarding of U.S. scientists on Japanese squid driftnet fishing vessels.

(ii) With regard to land-based salmon fisheries, we are ready to consult with the United States side at INPFC meetings relating to how U.S. observation can be made.

(iii) We plan to dispatch Fisheries Agency enforcement vessels throughout the fishing season in order to prevent Japanese squid driftnet vessels from trespassing their northern boundary.

(iv) In order to more accurately assess the degree of incidental take by the driftnet fisheries, the Fisheries Agency is considering to make reports on such incidental takes by both salmon driftnet and squid driftnet fisheries mandatory.

(v) With regard to marine debris, both U.S. and Japan should strengthen their research activities on this subject and we propose the following: a) This year, 29 Japanese research vessels and enforcement vessels have been conducting sighting surveys on marine debris, the result of which will be considered to be reported to the INPFC; b) In 1987, the Japanese side will consider strengthening and expanding the above research and initiate an analysis of behavior of lost driftnets in the ocean; c) the Japanese side is willing to actively participate in discussions concerning plastic marine debris at the International Maritime Organization which is the appropriate international forum for the resolution of such problems. We also request that the U.S. side initiate research similar to that which Japan is undertaking and ratify Annex V of the MARPOL (73/78) Convention as soon as possible.

(vi) With regard to the identification of origin of lost driftnets and development of biodegradable nets: a) Under current Japanese regulations, all salmon driftnets are required to affix at each end of the net the name of the vessel as well as its owner. Only after such identification is verified by enforcement officials of the Fisheries Agency are vessels permitted to leave port. The Japanese side is further considering establishing as a mandatory requirement that both salmon driftnets and squid driftnets be marked every 1 tan (approximately 45 meters) so that the type of fisheries using the net can be identified. We request that the same identification requirements be made for U.S. driftnets. b) Currently, all Japanese trawl motherships, large sized trawl fishing vessels and salmon motherships have incineration facilities installed onboard. For other vessels, the Japan Fisheries Association will actively promote that large size trash containers or incineration facilities be installed onboard and that all plastic waste be brought back to port or disposed onboard, and the Japanese Government will make continuing efforts within the scope of existing laws and regulations. We request that the U.S. side also to require the onboard incineration facilities or the bringing back of plastic waste home to U.S. fishing ports; c) We will continue to study the development of biodegradable nets. Any useful information we may receive from the U.S. side on this issue will be appreciated, including the research on technological innovation leading to the practical use of such nets. In that regard, we believe further improvement of technology is needed to develop practical techniques.

The Japanese comments concerning the text of S2611 are delineated below.

1. Definitions (Sec. 3). This section excludes from coverage "driftnets of less than one and one-half miles in length." This exclusion is inappropriate. Problems such as the incidental takes of marine mammals or seabird are relevant to all driftnets without regard to the length of the net. The impact of small driftnets used in U.S. coastal waters on seabirds or other animals is neither clear nor verifiable at this time. There is thus no justification for excluding driftnets of less than one and one-half miles in length.

2. Requirement of 100 percent observer coverage aboard Japanese mothership salmon fishing vessels (Sec. 4 (a) (1)). We oppose the requirement in the bill of 100 percent observer coverage. From the viewpoint of legal precedent and past practices the matter of observer coverage aboard Japanese salmon fishing vessels should be dealt with within the framework of the INPFC. If scientific needs so warrant, the Japanese side is prepared to discuss at INPFC meetings whether an increase in observer coverage is necessary.

3. Disapproval of any permit for a vessel which the Secretary determines to be inadequate for the health, safety, or welfare of observers (Sec. 4 (b)). We do not oppose the introduction of appropriate standards for protecting the health, safety or welfare of U.S. observers. However, in determining such standards, the following factors should be taken into consideration: a) the burden of such standards should be calculated so as to avoid overtaxing existing vessel facilities; b) the intended effect of such standards should not be to eliminate the presence of foreign vessels; and c) similar standards should also be applied to *U.S. vessels* accepting observers. Furthermore, even if such standards are not met, sanctions should not automatically include the disapproval or suspension of permits. Instead, sanctions should be applied in proportion to the degree of non-compliance as currently provided in MFCMA (Sec. 204 (12)).

4. Conclusion of arrangement with driftnet fishing nations for the purpose of monitoring and assesment of impact of driftnets (Sec. 4 (c)). This section would require the denial of permits to groundfish vessels if a government-to-government agreement is not met with respect to monitoring and research concerning driftnetting in waters beyond the jurisdiction of the United States. While the Japanese side is fully aware of the concern of the United States with respect to driftnetting, this provision is objectionable and unnecessary. In this regard, as has already been discussed, Japan is increasing voluntary

research activities relating to driftnetting. It is absolutely unacceptable to the Japanese side that the permits be denied to groundfish vessels if a government-to-government agreement is not reached with respect to driftnetting. It is highly inappropriate to seek to solve a matter of concern by imposing burdens on irrelevant third parties. The issues of driftnetting by vessels operating on the high seas and of marine debris, which relates to all vessels and land facilities of all nations, are not appropriate for coerced bilateral agreements.

5. Enforcement and Foreign fishing permit fees (Sec. 6). We oppose the provision in this section which provides that the U.S. enforcement cost for anadromous fish within the U.S. FCZ and on the high seas constitute for purposes of the "Foreign Fishing Fee Schedule" a part of the implementing costs of the MFCMA. Each contracting party has an obligation for joint enforcement and any cost. Thus the proposed provision is contrary to enforcement system under INPFC provisions and improperly imposes burdens on the irrelevant groundfish industry.

6. Net bounty system (Sec. 7). We do not oppose the concept of a net bounty system, for the purpose of recovering lost nets and plastics, however, we believe it inappropriate that such a scheme be funded by surcharging the groundfish industry operation within 200 miles of the U.S. To do so would effectively result in the penalization of an innocent third party groundfish industry. If some type of bounty system is enacted: (a) we are ready to require an organization to which an identified owner of any lost net belong to provide compensation for actual costs necessary for the recovery of those nets; and (b) if an owner of any lost net cannot be identified, the Japanese side proposes that nations conducting the fisheries in the North Pacific Ocean should study any workable system in which such countries conducting that fishery pay an equitable portion of the cost necessary to recover such nets.

7. Seabird Protection Zone within 60 miles of the Aleutian Islands (Sec. 9).

Japanese salmon fishermen have the right to operate as provided for in the INPFC Convention. The proposed provision for a 60-mile Seabird Protection Zone would thus be incompatible with the INPFC Convention. The Japanese side proposes that research for stock condition of seabirds affected and their incidental take by fisheries be promptly initiated. The Japanese side also intends to research the impact of incidental take by the Japanese fishery and therefore proposes that the U.S. side do the same with respect to the U.S. fishery. The Japanese side is willing to continue receiving American scientific observers onboard Japanese mothership salmon fishing vessels who monitor incidental takes of seabirds and proposes that a U.S.-Japan bilateral meeting of experts on seabirds be held to study and exchange views on the results of the research mentioned above. Nearly twenty percent of all catch taken by driftnet fishermen occurs within the proposed sanctuary. Loss of this catch would be economically catastrophic for the mothership salmon fleets and, in the absence of the sound scientific data gathered in the these proposed studies, cannot be justified.