

M E M O R A N D U M

TO: Council, SSC, and AP Members
FROM: Jim H. Branson *CLP*
Executive Director
DATE: May 10, 1982
SUBJECT: Halibut Moratorium

ACTION REQUIRED

Informational. (Action on the limited entry RFP is under Agenda Item E-1.)

BACKGROUND

The Northern Pacific Halibut Act of 1982 (S. 2244) containing the enabling legislation for the halibut moratorium passed the Senate on April 22 after being amended by Senator Stevens to allow the rural coastal villages of Alaska a three-year period to establish a commercial halibut fishery in areas in the Bering Sea north of 56°N latitude. This three-year period presumably would start in 1982. The language of the Bill and the amendments is provided as Agenda Item C-2(a).

The House passed the Senate version on May 4 and the legislation now only requires the President's signature to become law.

The legislation came too late to allow a moratorium to be in place before the beginning of the halibut season on May 11. NMFS is still trying to decide when and how to implement the moratorium; Pat Travers should have a report at this meeting on next steps to be taken.

In addition to numerous letters regarding the moratorium and limited entry, we have received three resolutions passed in Kodiak by the Chamber of Commerce, the City, and the Burrough. The Chamber's Resolution is included here as Agenda Item C-2(b). The other two resolutions are essentially identical to the Chamber's.

A proposal review group met on May 17-18 to evaluate responses to the halibut limited entry RFP. Selection of the prospective contractor will be taken up under Agenda Item E-1.

Joint Resolution 448, requiring the President to designate the week of April 25, 1982, as Jewish Heritage Week.

The PRESIDING OFFICER. The joint resolution will be stated.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 448) to authorize and request the President to issue a proclamation designating April 25 through May 2, 1982, as "Jewish Heritage Week."

The PRESIDING OFFICER. Is there objection to the present consideration of the joint resolution?

There being no objection, the Senate proceeded to the consideration of the joint resolution.

Mr. ROBERT C. BYRD. Mr. President, I fully support this resolution, and I ask unanimous consent that my name be added as a cosponsor of the Senate joint resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I send to the desk the names of Senators who are cosponsors of Senate Joint Resolution 181, a companion measure presently in the Judiciary Committee. I ask unanimous consent that their names be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The names are as follows:

Mr. D'AMATO, Mr. BOSCHWITZ, Mr. MOYNIHAN, Mr. LEVIN, Mr. DURENBERGER, Mr. HEFLIN, and Mr. RIEGLE.

The joint resolution (H.J. Res. 448) was ordered to a third reading, was read the third time, and passed.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the joint resolution was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NORTHERN PACIFIC HALIBUT ACT OF 1982

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 462, S. 2244.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2244) to give effect to the Protocol Amending the Convention for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, signed at Washington, March 29, 1979.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

UP AMENDMENT NO. 873

Mr. STEVENS. Mr. President, on behalf of the chairman of the committee, Senator PACKWOOD, I send to the desk two amendments.

The PRESIDING OFFICER. The amendments will be stated.

The assistant legislative clerk read as follows:

The Senator from Alaska (Mr. STEVENS), for Mr. PACKWOOD, proposes an amendment numbered 873.

Mr. STEVENS. Mr. President, I ask unanimous consent that the amendments be considered en bloc and that reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

Amend page 17, strike line 3 and "vide," on line 4 and insert:

"Sec. 13. There are hereby authorized to be appropriated such sums as may be necessary for the Secretary of State to provide for fiscal year 1983 and beyond."

On page 6, line 7, insert the following immediately before the period: "Provided, That the Regional Council may provide for the rural coastal villages of Alaska the opportunity to establish a commercial halibut fishery in areas in the Bering Sea to the north of 58 degrees north latitude during a three year development period."

The PRESIDING OFFICER. The question is on agreeing to the amendments en bloc.

The amendment (UP No. 873) was agreed to.

Mr. STEVENS. Mr. President, I thank the distinguished chairman, Mr. PACKWOOD, for including the amendment to this protocol which I requested. The amendment provides rural coastal villages in Alaska the opportunity to participate in the commercial halibut fishery if a limited access scheme is adopted by our North Pacific Fishery Management Council.

At the February 1982 meeting of the International Pacific Halibut Commission, representatives of the village fishermen from the Pribilof Islands and the Nunivak/Nelson Island vicinity requested that the halibut fisherman, composed of groups represented on the Commission's Conference Board provide an opportunity for participation in the halibut fishery. The representatives proposed that the years 1979-81 be used as the base years for the existing halibut fishermen. The village fishermen were to be given an additional 3 years to enter the fishery and develop a harvest level that would serve as their base. If they were able to develop a commercial halibut fishery, they would be given shares in the limited entry program that correspond to the catch level that they achieve and if they did not the fishery would be limited to those fishermen who had fished during the 1979-81 period.

Residents of these villages are to have 3 years to establish themselves. In order to do this and not be subject to premature cutoffs in the fishing season because of attainment of the Bering Sea area quota, these fishermen are to be allowed to fish during the months of June and July without any limitations. By the end of the 3-year period, they will have established themselves and become a part of the limited entry system or if they do not pursue a commercial halibut fishery, they will not receive shares in the limited entry system.

The Conference Board members also recognized that the fishing effort in the Bering Sea area is concentrated in the southern regions near the Aleutian Islands and that the more northern areas have not experienced the harvest that could possibly be directed there.

Mr. GORTON. Mr. President, as a member of the Senate Commerce Committee, I have had an opportunity to consider this important legislation in committee, and I am pleased today to rise in support of it on the Senate floor.

S. 2244, the implementing legislation for the halibut treaty between the United States and Canada, is a statement of the positive relationship enjoyed by our country and Canada in management of the halibut fishery, a resource of tremendous economic value. In the spirit of continuing to build upon this relationship, agreements were reached between the United States and Canada regarding the halibut fishery of the Northern Pacific Ocean and the Bering Sea. A treaty was signed in March 1979, and that treaty was ratified by the Senate in March 1980.

S. 2244 provides for U.S. Commissioners to the International Pacific Halibut Commission, outlines the authority of the Secretaries of State and Commerce, contains procedures for halibut management, contains direction for the North Pacific Fishery Management Council, and authorizes sums for implementation of the legislation. In addition, S. 2244 provides authority to the Council and to the Secretary of Commerce to establish a system of limited access, provided that such a system comports with all of the requirements of the Magnuson Fishery Conservation and Management Act.

S. 2244 represents the culmination of years of effort by both United States and Canadian negotiators in reaching an understanding as to management of a valuable and important fishery resource, a significant share of which is produced by the Seattle-based fleet. I am happy to have had an opportunity to play a role in the contribution this legislation will make to the enhancement and promotion of United States/Canada fishing relations.

The PRESIDING OFFICER. The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2244

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Northern Pacific Halibut Act of 1982".

SEC. 2. As used in this Act the term: (a) "Convention" means the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, signed at Ottawa, Canada on March 2, 1953, as amended by the Protocol Amending the Convention, signed at Wash-

Packwood is Sponsor Passed Senate 4/22 No Co-Sponsors

Sen. Howard H. Callahan & Fletcher

ington March 29, 1979, and includes the regulations promulgated thereunder.

(b) "Commission" means the International Pacific Halibut Commission provided for by article III of the Convention.

(c) "Fishery conservation zone" means the fishery conservation zone of the United States established by section 101 of the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.).

(d) "Convention waters" means the maritime areas off the west coast of the United States and Canada described in article I of the Convention.

(e) "Halibut" means fish of the species *Hippoglossus stenolepis* inhabiting Convention waters.

(f) "Fishing vessel" means—

(1) any vessel engaged in catching fish in Convention waters or in processing or transporting fish loaded in Convention waters;

(2) any vessel outfitted to engage in any activity described in paragraph 1; or

(3) any vessel in normal support of any vessel described in paragraph (1) of (2).

(g) "Secretary" means the Secretary of Commerce.

Sec. 3. (a) The United States shall be represented on the Commission by three United States Commissioners to be appointed by the President and to serve at his pleasure. The Commissioners shall receive no compensation for their services as Commissioners. Each United States Commissioner shall be appointed for a term of office not to exceed 2 years, but is eligible for reappointment. Any United States Commissioner may be appointed a term of less than 2 years if such appointment is necessary to ensure that the terms of office of not more than two Commissioners will expire in any 1 year. A vacancy among the United States Commissioners shall be filled by the President in the manner in which the original appointment was made, but any Commissioner appointed to fill a vacancy occurring before the expiration of the term for which the Commissioner's predecessor was appointed shall be appointed only for the remainder of such term. Of the Commissioners—

(1) one shall be an official of the National Oceanic and Atmospheric Administration; and

(2) two shall be knowledgeable or experienced concerning the Northern Pacific halibut fishery; of these, one shall be a resident of Alaska and the other shall be a nonresident of Alaska. Of the three commissioners described in paragraphs (1) and (2), one shall be a voting member of the North Pacific Fishery Management Council.

(3) Commissioners shall not be considered Federal employees except for the purposes of injury compensation or tort claims liability as provided in section 8101 of title 5, United States Code, et seq. and section 2671 of title 28, United States Code, et seq. Section 3(a) shall take effect on the 90th day after the date of enactment of the Act.

(b) The Secretary of State, in consultation with the Secretary, may designate from time to time alternate United States Commissioners to the Commission. An Alternate United States Commissioner may exercise, at any meeting of the Commission, all powers and duties of a United States Commissioner in the absence of a duly designated Commissioner for whatever reason. The number of such alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of authorized United States Commissioners that will not be present.

Sec. 4. The Secretary of State, with the concurrence of the Secretary, may accept or reject, on behalf of the United States, recommendations made by the Commission in

accordance with article III of the Convention and paragraph 14 and 15 of the annex to the Convention.

Sec. 5. (a) The Secretary shall have general responsibility to carry out the Convention and this Act.

(b) In fulfilling this responsibility, the Secretary—

(1) shall, in consultation with the Secretary of the department in which the Coast Guard is operating, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this Act; and

(2) may, with the concurrence of the Secretary of State, cooperate with the duly authorized officials of the Government of Canada.

(c) The Regional Fishery Management Council having authority for the geographic area concerned may develop regulations governing the United States portion of Convention waters, including limited access regulations, applicable to nationals or vessels of the United States, or both, which are in addition to, and not in conflict with regulations adopted by the Commission. Such regulations shall only be implemented with the approval of the Secretary, shall not discriminate between residents of different States, and shall be consistent with the limited entry criteria set forth in section 303 (b)(8) of the Magnuson Fishery Conservation and Management Act. If it becomes necessary to allocate or assign halibut fishing privileges among various United States fishermen, such allocation shall be fair and equitable to all such fishermen, based upon the rights and obligations in existing Federal law, reasonably calculated to promote conservation, and carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of the halibut fishing privileges. Provided, That the Regional council may provide for the rural coastal villages of Alaska the opportunity to establish a commercial halibut fishery in areas in the Bering Sea to the north of 56 degrees north latitude during a three-year development period.

Sec. 6. Any agency of the Federal Government is authorized upon request of the Commission, to cooperate in the conduct of scientific and other programs, and to furnish on a reimbursable basis, facilities and personnel for the purposes of assisting the Commission in carrying out its duties under the Convention. Such agency may accept reimbursement from the Commission.

Sec. 7. It is unlawful—

(a) for any person subject to the jurisdiction of the United States—

(1) to violate any provision of the Convention, this Act or any regulation adopted under this Act;

(2) to refuse to permit any enforcement officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Convention, this Act or any regulation adopted under this Act;

(3) to forcibly assault, resist, oppose, impede, intimidate or interfere with any enforcement officer in the conduct of any search or inspection described in paragraph (2);

(4) to resist a lawful arrest or detention for any act prohibited by this section;

(5) 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 the Convention, this Act, or any regulation adopted under this Act; or

(6) to interfere with, delay or prevent, by any means, the apprehension, arrest or detention of another person, knowing that

such person has committed any act prohibited by this section.

(b) for any foreign fishing vessel, and for the owner or operator of any foreign fishing vessel, to engage in fishing for halibut in the fishery conservation zone, unless such fishing is authorized by, and conducted in accordance with the Convention, this Act and regulations adopted under this Act.

Sec. 8. (a) Any person who is found by the Secretary after notice and opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 7 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$25,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violation, the degree of culpability, and history of prior offenses, ability to pay, and such other matters as justice may require.

(b) 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 and the Attorney General. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, in accordance with rules prescribed pursuant to section 2112 of title 28, United States Code. The findings, and order of the Secretary shall be set aside by such 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) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed 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.

(d) 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.

Sec. 9. (a) A person is guilty of any offense if he commits an act prohibited by section 7(a), (2), (3), (4), or (6); or section 7(b).

(b) Any offense described in subsection (a) is punishable by a fine of not more than \$50,000 or imprisonment for not more than 6 months, or both; except that if in the commission of any offense the person uses a dangerous weapon; engages in conduct that caused bodily injury to any officer authorized to enforce the provisions of this Act, or places any such officer in fear of imminent bodily injury the offense is punishable by a fine of not more than \$100,000, or imprisonment for not more than 10 years or both.

(c) There is Federal jurisdiction over any offense described in this section.

Sec. 10. (a) Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish taken or retained, in any manner, in connection with or as a result of the commission of

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act prohibited by section 7 shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(b) Any district court of the United States shall have jurisdiction, upon application by the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) and any action provided for under subsection (d).

(c) 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 pursuant to this Act or for which security has not previously been obtained under subsection (d). 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 officers or other persons designated for such purpose by the Secretary.

(d)(1) Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under section 11(d) shall—

(A) stay the execution of such process; or

(B) discharge any fish seized pursuant to 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 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 pursuant to an order of such court. 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 such court.

(2) Any fish seized pursuant to this Act may be disposed of pursuant to the order of a court of competent jurisdiction or, if perishable, in a manner prescribed by regulations of the Secretary or the Secretary of the department in which the Coast Guard is operating.

(e) For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an act prohibited by section 7 were taken or retained in violation of the Convention and this Act.

Sec. 11. (a) The Convention, this Act, and any regulation adopted under this Act, shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, and of any State agency, in the performance of such duties.

(b) 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 such Secretaries under subsection (a) to en-

force the Convention, this Act or any regulation adopted under this Act may—

(1) with or without a warrant or other process—

(A) arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by section 7;

(B) board, and search or inspect, any fishing vessel which is subject to this Act;

(C) at reasonable times enter, and search or inspect, shoreside facilities in which fish taken subject to this Act are processed, packed or held;

(D) seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, an act prohibited by section 7;

(E) seize any fish (wherever found) taken or retained in the course of an act prohibited by section 7, or the proceeds of the sale of such fish; and

(F) seize any other evidence related to an act prohibited by section 7;

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

(3) exercise any other lawful authority.

(c) If any officer authorized to enforce this Act (as provided for in this section) finds that a fishing vessel is operating or has been operated in the commission of an act prohibited by section 7, such officer may, in accordance with regulations issued jointly by the Secretary and the Secretary of the department in which the Coast Guard is operating, issue a citation to the owner or operator of such vessel in lieu of proceeding under subsection (b). If a permit has been issued pursuant to this Act for such vessel, such officer shall note the issuance of any citation under this subsection, including the date thereof and the reason therefor, on the permit. The Secretary shall maintain a record of all citations issued pursuant to this subsection.

(d) The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under this Act. Any such court may, at any time—

(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.

(e) When requested by the appropriate authorities of Canada, officers or employees of the Coast Guard, the National Oceanic and Atmospheric Administration or any other agency of the United States may be directed to attend as a witness, and to produce such available records and files or duly certified copies thereof as may be necessary for the prosecution in Canada of any violation of the Convention or any Canadian law relating to the enforcement thereof.

(f)(1) In cooperation with such other agencies as may be appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations as are deemed necessary to carry out the purposes of this Act.

(2) For the purpose of all investigations which, in the opinion of the Secretary, are necessary and proper for the enforcement of this Act, the Secretary or any officer designated by him is empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Secretary deems relevant or material to the inquiry. Such attendance of witnesses and the production of such documentary evidence may be required from any

place in the United States at any designated place or hearing.

(3) Process of the Secretary may be served by anyone duly authorized by him either

(A) by delivering a copy thereof to the individual to be served, or to a member of the partnership to be served, or the President, Secretary, or other executive officer or director of the corporation to be served; or the agent designated for service of process;

(B) by leaving a copy thereof at the residence or the principal office or place of business of such individual, partnership, or corporation; or

(C) by mailing a copy thereof by registered or certified mail addressed to such individual, partnership, or corporation at his or its residence or principal office or place of business. The verified return by the individual so serving such complaint, order, or other process setting forth the manner of service shall be proof of same, and the returned post office receipt for such complaint, order, or other process mailed by registered or certified mail shall be proof of the service of the same.

Sec. 12. There is hereby authorized to be appropriated for fiscal year 1983 and beyond, such sums as may be necessary for carrying out the Convention and this Act, including—

(a) necessary travel expenses of the United States Commissioners or alternate Commissioners; and

(b) the United States share of the joint expenses of the Commission: *Provided*, That the Commissioners shall not, with respect to commitments concerning the United States share of the joint expenses of the Commission, be subject to section 262(b) of title 22, United States Code, insofar as it limits the authority of United States representatives to international organizations with respect to such commitments.

Sec. 13. There are hereby authorized to be appropriated such sums as may be necessary for the Secretary of State to provide for fiscal year 1985 and beyond, by contract, grant, or otherwise, facilities for office and any other necessary space for the Commission. Such facilities shall be located on or near the campus of the University of Washington in the State of Washington and shall be provided without regard to the cost-sharing provisions in the Convention.

Sec. 14. The Northern Pacific Halibut Act of 1937, as amended (50 Stat. 325, 67 Stat. 494, 79 Stat. 902), is repealed as of the ninth day after the date of enactment of this Act.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

WAIVING CONGRESSIONAL BUDGET ACT

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 473, Senate Resolution 347, the budget waiver to accompany Calendar No. 463.

The PRESIDING OFFICER. The resolution will be stated by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 347) waiving section 402(a) of the Congressional Budget Act of

KODIAK AREA CHAMBER OF COMMERCE

May 6, 1982



Jim Branson, Executive Director
North Pacific Fisheries Management Council
Suite 32 - 333 West 4th
P. O. Mall Bldg.,
Anchorage, Alaska 99510

Dear Mr. Branson,

The future of Alaska's third largest industry, fishing, the future of Alaska's first, or close second, largest private sector employer, the future of a major segment of Alaska's small businesses, and the future of Alaska's communities whose economic survival depends on fisheries, appears to be being determined outside of Alaska.

The Northern Pacific Halibut Act of 1982 recently enacted by the U. S. Congress grants potential majority control of the Alaskan halibut fishery to the North Pacific Fishery Management Council. Said Council advocates the share quota system of allocation of fishery resources, which could be the harbinger of events to come in other Alaskan fisheries as well.

We share with you the mutual concern for the State of Alaskan fisheries, the businesses, the communities and most importantly, the people, Alaskans, whose efforts have contributed to ALL of Alaska, and whose economic survival depends on being able to continue to work and develop the Alaskan fisheries industry.

We urge you to closely examine this issue and join in the effort to preserve the Alaskan fisheries for the greatest benefit of all Alaskans.

Enclosed are copies of resolutions recently passed by local public and private sector entities relative to this critical issue. It is hoped that the information in each will assist you in formulating your action in support of the goals of developing a stronger, economically diversified Alaskan economy for Alaskans.

Your viewpoints, comments and action taken are respectfully requested.

Thank you for your consideration.

Sincerely,

KODIAK AREA CHAMBER OF COMMERCE

Ken Damm
President

Enclosure

MAY 10 1982	Exec. Dir.	
	Deputy Dir.	
	Admin. Off.	
	Exec. Sec.	
	Staff Asst. 1	
	Staff Asst. 2	
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KODIAK AREA CHAMBER OF COMMERCE

RESOLUTION 02-582

A RESOLUTION OF THE KODIAK AREA CHAMBER OF COMMERCE
OPPOSING THE SHARE QUOTA SYSTEM OF ALLOCATION OF FISHERIES RESOURCES.

WHEREAS, the North Pacific Fishery Management Council on March 25, 1982, enacted a moratorium on new entrants to the Alaska halibut fishery, and directed that a shares-quota system of allocation of the fishery be prepared for the 1983 season, and

WHEREAS, the United States Senate recently passed SB 2244 giving the Council the necessary authority to enact such a system, and

WHEREAS, the bill is expected to pass the U. S. House of Representatives without any public hearings, and

WHEREAS, the proposed share system will allocate permanent fishing shares consisting of a fixed percentage of the halibut to individual fishermen based on their average harvests of the past three years as a percent of the total harvest, and

WHEREAS, it is intended that these shares may thereafter be bought, sold, or leased by the initial shareholders, and that individual shareholders may purchase additional shares from willing sellers up to an aggregate of two percent or possibly higher, of the total quota per shareholder, and

WHEREAS, it appears inevitable that these shares will concentrate to fewer and fewer people, theoretically as few as 50, if two percent is the maximum allowed per person, and

WHEREAS, the annual value of the halibut harvest in Alaska approaches \$50,000,000 to the fishermen, and

WHEREAS, it has been conservatively estimated that the value of the halibut shares could be three to five times the value of their annual allowed catch, or approximately \$250,000,000, creating an undeserved windfall to the initial shareholders, and an even greater burden to future potential shareholders, and

WHEREAS, THIS HALIBUT SHARE QUOTA SYSTEM IS BEING USED AS A PRECEDENT AND PROTOTYPE FOR OTHER ALASKAN FISHERIES BY STATE AND FEDERAL FISHERY MANAGERS, and

WHEREAS, under the shares system a fisherman's catch will be dependent solely on the number of shares he owns (his wealth) rather than his abilities as a fisherman, and

WHEREAS, such a system will concentrate the increasing wealth of our fisheries into fewer and fewer hands, creating great inequities of opportunity in our fishing communities particularly among the young, and

WHEREAS, Alaska fishery managers presently have a variety of regulatory tools, such as harvest levels, sex and size limits, gear restrictions, area closures, et cetera, and our fisheries and generally very healthy biologically, and

WHEREAS, the share system greatly hinders fishermen from being able to diversify among various fisheries, thus depriving them of a key element for economic survival as small businessmen, and

WHEREAS, the Alaska fisheries industry is the first, or close second, largest private sector employer in the State, and as such, too vital to the people and the economy to risk all the inherent dangers and inequities of such an irreversible, unnecessary management plan as the shares system, and

WHEREAS, the entire economy of Alaskan coastal communities such as Kodiak is small businesses dependently interfacing with the fisheries industry and providing economic and logistic support to the independent fishermen, and

WHEREAS, the Kodiak Area Chamber of Commerce considers the rich abundant fisheries resources in the waters surrounding Kodiak and Alaska to be a renewable PUBLIC resource which serves a primary purpose, along with providing food for the people of the world, of sustaining the livelihoods and economy of the people and communities of our island and State, and

WHEREAS, the idea of permanently turning over the ownership of our public resource to a few private hands totally contradicts the principle of free enterprise, and is contrary to the fundamentals upon which our country is founded,

NOW, THEREFORE, BE IT RESOLVED that the Kodiak Area Chamber of Commerce is opposed to the share quota system of allocation of ANY fisheries resources in Alaska, and that this resolution be communicated to the following people:

The President
Ronald Reagan

The Honorable Jay S. Hammond
Governor of Alaska

The Honorable Ted Stevens
United States Senate

The Honorable Frank H. Murkowski
United States Senate

The Honorable Donald Young
The United States House of Representatives

The Honorable John Breaux
The United States House of Representatives

The Honorable Gerry Studds
The United States House of Representatives

NPFMC, Chairman, Clem Tillion

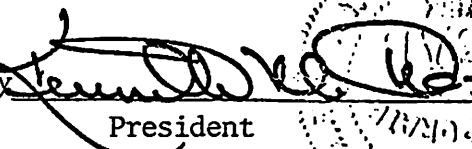
Alaska Legislature

Mssrs. Steve Cowper, Tom Fink, Bill Sheffield,
Dave Rose, Dick Randolph

PASSED AND APPROVED this 3rd day of MAY, 1982

by the Kodiak Area Chamber of Commerce.

KODIAK AREA CHAMBER OF COMMERCE

By 
President

ATTEST:

By 
Managing Director

Calendar No. 462

97TH CONGRESS
2^D SESSION

S. 2244

[Report No. 97-323]

To give effect to the Protocol Amending the Convention for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, signed at Washington, March 29, 1979.

IN THE SENATE OF THE UNITED STATES

MARCH 22 (legislative day, FEBRUARY 22), 1982

Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, reported the following original bill, which was read twice and placed on the calendar

A BILL

To give effect to the Protocol Amending the Convention for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, signed at Washington, March 29, 1979.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Northern Pacific Halibut
- 4 Act of 1982".

5 SEC. 2. As used in this Act the term:

1 (a) "Convention" means the Convention between the
2 United States of America and Canada for the Preservation of
3 the Halibut Fishery of the Northern Pacific Ocean and
4 Bering Sea, signed at Ottawa, Canada on March 2, 1953, as
5 amended by the Protocol Amending the Convention, signed
6 at Washington March 29, 1979, and includes the regulations
7 promulgated thereunder.

8 (b) "Commission" means the International Pacific Hali-
9 but Commission provided for by article III of the Convention.

10 (c) "Fishery conservation zone" means the fishery con-
11 servation zone of the United States established by section
12 101 of the Magnuson Fishery Conservation and Management
13 Act of 1976 (16 U.S.C. 1801 et seq.).

14 (d) "Convention waters" means the maritime areas off
15 the west coast of the United States and Canada described in
16 article I of the Convention.

17 (e) "Halibut" means fish of the species *Hippoglossus*
18 *stenolepis* inhabiting Convention waters.

19 (f) "Fishing vessel" means—

20 (1) any vessel engaged in catching fish in Conven-
21 tion waters or in processing or transporting fish loaded
22 in Convention waters;

23 (2) any vessel outfitted to engage in any activity
24 described in paragraph 1; or

1 (3) any vessel in normal support of any vessel de-
2 scribed in paragraph (1) of (2).

3 (g) "Secretary" means the Secretary of Commerce.

4 SEC. 3. (a) The United States shall be represented on
5 the Commission by three United States Commissioners to be
6 appointed by the President and to serve at his pleasure. The
7 Commissioners shall receive no compensation for their serv-
8 ices as Commissioners. Each United States Commissioner
9 shall be appointed for a term of office not to exceed 2 years,
10 but is eligible for reappointment. Any United States Commis-
11 sioner may be appointed for a term of less than 2 years if
12 such appointment is necessary to ensure that the terms of
13 office of not more than two Commissioners will expire in any
14 1 year. A vacancy among the United States Commissioners
15 shall be filled by the President in the manner in which the
16 original appointment was made, but any Commissioner ap-
17 pointed to fill a vacancy occurring before the expiration of the
18 term for which the Commissioner's predecessor was appoint-
19 ed shall be appointed only for the remainder of such term. Of
20 the Commissioners—

21 (1) one shall be an official of the National Oceanic
22 and Atmospheric Administration; and

23 (2) two shall be knowledgeable or experienced
24 concerning the Northern Pacific halibut fishery; of
25 these, one shall be a resident of Alaska and the other

1 shall be a nonresident of Alaska. Of the three commis-
2 sioners described in paragraphs (1) and (2), one shall
3 be a voting member of the North Pacific Fishery Man-
4 agement Council.

5 (3) Commissioners shall not be considered Federal
6 employees except for the purposes of injury compensa-
7 tion or tort claims liability as provided in section 8101
8 of title 5, United States Code, et seq. and section 2671
9 of title 28, United States Code, et seq. Section 3(a)
10 shall take effect on the 90th day after the date of en-
11 actment of the Act.

12 (b) The Secretary of State, in consultation with the Sec-
13 retary, may designate from time to time alternate United
14 States Commissioners to the Commission. An Alternate
15 United States Commissioner may exercise, at any meeting of
16 the Commission, all powers and duties of a United States
17 Commissioner in the absence of a duly designated Commis-
18 sioner for whatever reason. The number of such alternate
19 United States Commissioners that may be designated for any
20 such meeting shall be limited to the number of authorized
21 United States Commissioners that will not be present.

22 SEC. 4. The Secretary of State, with the concurrence of
23 the Secretary, may accept or reject, on behalf of the United
24 States, recommendations made by the Commission in accord-

1 ance with article III of the Convention and paragraphs 14
2 and 15 of the annex to the Convention.

3 SEC. 5. (a) The Secretary shall have general responsi-
4 bility to carry out the Convention and this Act.

5 (b) In fulfilling this responsibility, the Secretary—

6 (1) shall, in consultation with the Secretary of the
7 department in which the Coast Guard is operating,
8 adopt such regulations as may be necessary to carry
9 out the purposes and objectives of the Convention and
10 this Act; and

11 (2) may, with the concurrence of the Secretary of
12 State, cooperate with the duly authorized officials of
13 the Government of Canada.

14 (c) The Regional Fishery Management Council having
15 authority for the geographic area concerned may develop
16 regulations governing the United States portion of Conven-
17 tion waters, including limited access regulations, applicable
18 to nationals or vessels of the United States, or both, which
19 are in addition to, and not in conflict with regulations adopt-
20 ed by the Commission. Such regulations shall only be imple-
21 mented with the approval of the Secretary, shall not discrimi-
22 nate between residents of different States, and shall be con-
23 sistent with the limited entry criteria set forth in section 303
24 (b)(6) of the Magnuson Fishery Conservation and Manage-
25 ment Act. If it becomes necessary to allocate or assign hali-

1 but fishing privileges among various United States fishermen,
2 such allocation shall be fair and equitable to all such fisher-
3 men, based upon the rights and obligations in existing Feder-
4 al law, reasonably calculated to promote conservation, and
5 carried out in such manner that no particular individual, cor-
6 poration, or other entity acquires an excessive share of the
7 halibut fishing privileges. *> Insert*

8 SEC. 6. Any agency of the Federal Government is au-
9 thorized upon request of the Commission, to cooperate in the
10 conduct of scientific and other programs, and to furnish on a
11 reimbursable basis, facilities and personnel for the purposes of
12 assisting the Commission in carrying out its duties under the
13 Convention. Such agency may accept reimbursement from
14 the Commission.

15 SEC. 7. It is unlawful—

16 (a) for any person subject to the jurisdiction of the
17 United States—

18 (1) to violate any provision of the Conven-
19 tion, this Act or any regulation adopted under this
20 Act;

21 (2) to refuse to permit any enforcement offi-
22 cer to board a fishing vessel subject to such
23 person's control for purposes of conducting any
24 search or inspection in connection with the en-

*Provided That the Regional Council may provide for the rural
coastal villages of Alaska the opportunity to establish a commercial
halibut fishery in areas in the Bering Sea to the north of 56° N
during a 3-year development period.*

(1) 63, 84)

1 enforcement of the Convention, this Act or any reg-
2 ulation adopted under this Act;

3 (3) to forcibly assault, resist, oppose, impede,
4 intimidate or interfere with any enforcement offi-
5 cer in the conduct of any search or inspection de-
6 scribed in paragraph (2);

7 (4) to resist a lawful arrest or detention for
8 any act prohibited by this section;

9 (5) to ship, transport, offer for sale, sell, pur-
10 chase, import, export or have custody, control or
11 possession of, any fish taken or retained in viola-
12 tion of the Convention, this Act, or any regulation
13 adopted under this Act; or

14 (6) to interfere with, delay or prevent, by
15 any means, the apprehension, arrest or detention
16 of another person, knowing that such person has
17 committed any act prohibited by this section.

18 (b) for any foreign fishing vessel, and for the
19 owner or operator of any foreign fishing vessel, to
20 engage in fishing for halibut in the fishery conservation
21 zone, unless such fishing is authorized by, and conduct-
22 ed in accordance with the Convention, this Act and
23 regulations adopted under this Act.

24 SEC. 8. (a) Any person who is found by the Secretary,
25 after notice and opportunity for a hearing in accordance with

1 section 554 of title 5, United States Code, to have committed
2 an act prohibited by section 7 shall be liable to the United
3 States for a civil penalty. The amount of the civil penalty
4 shall not exceed \$25,000 for each violation. Each day of a
5 continuing violation shall constitute a separate offense. The
6 amount of such civil penalty shall be assessed by the Secre-
7 tary, or his designee, by written notice. In determining the
8 amount of such penalty, the Secretary shall take into account
9 the nature, circumstances, extent, and gravity of the prohibit-
10 ed acts committed and, with respect to the violation, the
11 degree of culpability, and history of prior offenses, ability to
12 pay, and such other matters as justice may require.

13 (b) Any person against whom a civil penalty is assessed
14 under subsection (a) may obtain review thereof in the appro-
15 priate court of the United States by filing a notice of appeal
16 in such court within 30 days from the date of such order and
17 by simultaneously sending a copy of such notice by certified
18 mail to the Secretary and the Attorney General. The Secre-
19 tary shall promptly file in such court a certified copy of the
20 record upon which such violation was found or such penalty
21 imposed, in accordance with rules prescribed pursuant to sec-
22 tion 2112 of title 28, United States Code. The findings and
23 order of the Secretary shall be set aside by such court if they
24 are not found to be supported by substantial evidence, as pro-
25 vided in section 706(2) of title 5, United States Code.

1 (c) If any person fails to pay an assessment of a civil
2 penalty after it has become a final and unappealable order, or
3 after the appropriate court has entered final judgment in
4 favor of the Secretary, the Secretary shall refer the matter to
5 the Attorney General of the United States, who shall recover
6 the amount assessed in any appropriate district court of the
7 United States. In such action, the validity and appropriate-
8 ness of the final order imposing the civil penalty shall not be
9 subject to review.

10 (d) The Secretary may compromise, modify, or remit,
11 with or without conditions, any civil penalty which is subject
12 to imposition or which has been imposed under this section.

13 SEC. 9. (a) A person is guilty of any offense if he com-
14 mits an act prohibited by section 7(a) (2), (3), (4), or (6); or
15 section 7(b).

16 (b) Any offense described in subsection (a) is punishable
17 by a fine of not more than \$50,000 or imprisonment for not
18 more than 6 months, or both; except that if in the commission
19 of any offense the person uses a dangerous weapon, engages
20 in conduct that causes bodily injury to any officer authorized
21 to enforce the provisions of this Act, or places any such offi-
22 cer in fear of imminent bodily injury the offense is punishable
23 by a fine of not more than \$100,000, or imprisonment for not
24 more than 10 years or both.

1 (c) There is Federal jurisdiction over any offense de-
2 scribed in this section.

3 SEC. 10. (a) Any fishing vessel (including its fishing
4 gear, furniture, appurtenances, stores, and cargo) used, and
5 any fish taken or retained, in any manner, in connection with
6 or as a result of the commission of any act prohibited by
7 section 7 shall be subject to forfeiture to the United States.
8 All or part of such vessel may, and all such fish shall, be
9 forfeited to the United States pursuant to a civil proceeding
10 under this section.

11 (b) Any district court of the United States shall have
12 jurisdiction, upon application by the Attorney General on
13 behalf of the United States, to order any forfeiture authorized
14 under subsection (a) and any action provided for under sub-
15 section (d).

16 (c) If a judgment is entered for the United States in a
17 civil forfeiture proceeding under this section, the Attorney
18 General may seize any property or other interest declared
19 forfeited to the United States, which has not previously been
20 seized pursuant to this Act or for which security has not
21 previously been obtained under subsection (d). The provisions
22 of the customs laws relating to—

- 23 (1) the disposition of forfeited property;
24 (2) the proceeds from the sale of forfeited prop-
25 erty;

1 (3) the remission or mitigation of forfeitures; and
2 (4) the compromise of claims;
3 shall apply to any forfeiture ordered, and to any case in
4 which forfeiture is alleged to be authorized, under this sec-
5 tion, unless such provisions are inconsistent with the pur-
6 poses, policy, and provisions of this Act. The duties and
7 powers imposed upon the Commissioner of Customs or other
8 persons under such provisions shall, with respect to this Act,
9 be performed by officers or other persons designated for such
10 purpose by the Secretary.

11 (d)(1) Any officer authorized to serve any process in rem
12 which is issued by a court having jurisdiction under section
13 11(d) shall—

14 (A) stay the execution of such process; or

15 (B) discharge any fish seized pursuant to such
16 process;

17 upon the receipt of a satisfactory bond or other security from
18 any person claiming such property. Such bond or other secu-
19 rity shall be conditioned upon such person delivering such
20 property to the appropriate court upon order thereof, without
21 any impairment of its value, or paying the monetary value of
22 such property pursuant to an order of such court. Judgment
23 shall be recoverable on such bond or other security against
24 both the principal and any sureties in the event that any con-
25 dition thereof is breached, as determined by such court.

1 (2) Any fish seized pursuant to this Act may be disposed
2 of pursuant to the order of a court of competent jurisdiction
3 or, if perishable, in a manner prescribed by regulations of the
4 Secretary or the Secretary of the department in which the
5 Coast Guard is operating.

6 (e) For purposes of this section, it shall be a rebuttable
7 presumption that all fish found on board a fishing vessel
8 which is seized in connection with an act prohibited by sec-
9 tion 7 were taken or retained in violation of the Convention
10 and this Act.

11 SEC. 11. (a) The Convention, this Act, and any regula-
12 tion adopted under this Act, shall be enforced by the Secre-
13 tary and the Secretary of the department in which the Coast
14 Guard is operating. Such Secretaries may, by agreement, on
15 a reimbursable basis or otherwise, utilize the personnel, serv-
16 ices, equipment (including aircraft and vessels), and facilities
17 of any other Federal agency, and of any State agency, in the
18 performance of such duties.

19 (b) Any officer who is authorized by the Secretary, the
20 Secretary of the department in which the Coast Guard is
21 operating, or the head of any Federal or State agency which
22 has entered into an agreement with such Secretaries under
23 subsection (a) to enforce the Convention, this Act or any reg-
24 ulation adopted under this Act may—

25 (1) with or without a warrant or other process—

1 (A) arrest any person, if he has reasonable
2 cause to believe that such person has committed
3 an act prohibited by section 7;

4 (B) board, and search or inspect, any fishing
5 vessel which is subject to this Act;

6 (C) at reasonable times enter, and search or
7 inspect, shoreside facilities in which fish taken
8 subject to this Act are processed, packed or held;

9 (D) seize any fishing vessel (together with its
10 fishing gear, furniture, appurtenances, stores, and
11 cargo) used or employed in, or with respect to
12 which it reasonably appears that such vessel was
13 used or employed in, an act prohibited by section
14 7;

15 (E) seize any fish (wherever found) taken or
16 retained in the course of an act prohibited by sec-
17 tion 7, or the proceeds of the sale of such fish;
18 and

19 (F) seize any other evidence related to an act
20 prohibited by section 7;

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

23 (3) exercise any other lawful authority.

24 (c) If any officer authorized to enforce this Act (as pro-
25 vided for in this section) finds that a fishing vessel is operat-

1 ing or has been operated in the commission of an act pro-
2 hibited by section 7, such officer may, in accordance with
3 regulations issued jointly by the Secretary and the Secretary
4 of the department in which the Coast Guard is operating,
5 issue a citation to the owner or operator of such vessel in lieu
6 of proceeding under subsection (b). If a permit has been
7 issued pursuant to this Act for such vessel, such officer shall
8 note the issuance of any citation under this subsection, in-
9 cluding the date thereof and the reason therefor, on the
10 permit. The Secretary shall maintain a record of all citations
11 issued pursuant to this subsection.

12 (d) The district courts of the United States shall have
13 exclusive jurisdiction over any case or controversy arising
14 under this Act. Any such court may, at any time—

15 (1) enter restraining orders or prohibitions;

16 (2) issue warrants, process in rem or other proc-
17 ess;

18 (3) prescribe and accept satisfactory bonds or
19 other security; and

20 (4) take such other actions as are in the interest
21 of justice.

22 (e) When requested by the appropriate authorities of
23 Canada, officers or employees of the Coast Guard, the Na-
24 tional Oceanic and Atmospheric Administration or any other
25 agency of the United States may be directed to attend as a

1 (B) by leaving a copy thereof at the residence or
2 the principal office or place of business of such individ-
3 ual, partnership, or corporation; or

4 (C) by mailing a copy thereof by registered or cer-
5 tified mail addressed to such individual, partnership, or
6 corporation at his or its residence or principal office or
7 place of business. The verified return by the individual
8 so serving such complaint, order, or other process set-
9 ting forth the manner of service shall be proof of same,
10 and the returned post office receipt for such complaint,
11 order, or other process mailed by registered or certified
12 mail shall be proof of the service of the same.

13 SEC. 12. There is hereby authorized to be appropriated
14 for fiscal year 1983 and beyond, such sums as may be neces-
15 sary for carrying out the Convention and this Act, includ-
16 ing—

17 (a) necessary travel expenses of the United States
18 Commissioners or alternate Commissioners; and

19 (b) the United States share of the joint expenses
20 of the Commission: *Provided*, That the Commissioners
21 shall not, with respect to commitments concerning the
22 United States share of the joint expenses of the Com-
23 mission, be subject to section 262(b) of title 22, United
24 States Code, insofar as it limits the authority of United

1 witness, and to produce such available records and files or
2 duly certified copies thereof as may be necessary for the pros-
3 ecution in Canada of any violation of the Convention or any
4 Canadian law relating to the enforcement thereof.

5 (f)(1) In cooperation with such other agencies as may be
6 appropriate, the Secretary may conduct or cause to be con-
7 ducted such law enforcement investigations as are deemed
8 necessary to carry out the purposes of this Act.

9 (2) For the purpose of all investigations which, in the
10 opinion of the Secretary, are necessary and proper for the
11 enforcement of this Act, the Secretary or any officer desig-
12 nated by him is empowered to administer oaths and affirma-
13 tions, subpoena witnesses, take evidence, and require the pro-
14 duction of any books, papers, or other documents which the
15 Secretary deems relevant or material to the inquiry. Such
16 attendance of witnesses and the production of such documen-
17 tary evidence may be required from any place in the United
18 States at any designated place or hearing.

19 (3) Process of the Secretary may be served by anyone
20 duly authorized by him either—

21 (A) by delivering a copy thereof to the individual
22 to be served, or to a member of the partnership to be
23 served, or the President, Secretary, or other executive
24 officer or a director of the corporation to be served; or
25 the agent designated for service of process;

1 States representatives to international organizations
 2 with respect to such commitments. *RM/13*

3 ~~SEC. 13. The Secretary of State is authorized to pro-~~ *Insert*
 4 ~~vide~~ by contract, grant, or otherwise, facilities for office and *below*
 5 any other necessary space for the Commission. Such facilities
 6 shall be located on or near the campus of the University of
 7 Washington in the State of Washington and shall be provided
 8 without regard to the cost-sharing provisions in the
 9 Convention.

10 SEC. 14. The Northern Pacific Halibut Act of 1937, as
 11 amended (50 Stat. 325, 67 Stat. 494, 79 Stat. 902), is re-
 12 pealed as of the ninetieth day after the date of enactment of
 13 this Act.

*Section 13. There are hereby authorized
 to be appropriated such sums as may be
 necessary for the Secretary of State
 to provide for fiscal year 1983 and
 beyond.*

1 SEC. 14. The Northern Pacific Halibut Act of 1937, as
2 amended (50 Stat. 325, 67 Stat. 494, 79 Stat. 902), is re-
3 pealed as of the ninetieth day after the date of enactment of
4 this Act.

○

Joint Resolution 448, requiring the President to designate the week of April 25, 1982, as Jewish Heritage Week.

The PRESIDING OFFICER. The joint resolution will be stated.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 448) to authorize and request the President to issue a proclamation designating April 25 through May 2, 1982, as "Jewish Heritage Week."

The PRESIDING OFFICER. Is there objection to the present consideration of the joint resolution?

There being no objection, the Senate proceeded to the consideration of the joint resolution.

Mr. ROBERT C. BYRD. Mr. President, I fully support this resolution, and I ask unanimous consent that my name be added as a cosponsor of the Senate joint resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I send to the desk the names of Senators who are cosponsors of Senate Joint Resolution 181, a companion measure presently in the Judiciary Committee. I ask unanimous consent that their names be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The names are as follows:

Mr. D'AMATO, Mr. BOSCHWITZ, Mr. MOYNIHAN, Mr. LEVIN, Mr. DURENBERGER, Mr. HEFLIN, and Mr. RIEGLER.

The joint resolution (H.J. Res. 448) was ordered to a third reading, was read the third time, and passed.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the joint resolution was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NORTHERN PACIFIC HALIBUT ACT OF 1982

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 462, S. 2244.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2244) to give effect to the Protocol Amending the Convention for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, signed at Washington, March 29, 1979.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

UP AMENDMENT NO. 873

Mr. STEVENS. Mr. President, on behalf of the chairman of the committee, Senator Packwood, I send to the desk two amendments.

The PRESIDING OFFICER. The amendments will be stated.

The assistant legislative clerk read as follows:

The Senator from Alaska (Mr. STEVENS), for Mr. PACKWOOD, proposes an amendment numbered 873.

Mr. STEVENS. Mr. President, I ask unanimous consent that the amendments be considered en bloc and that reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

"Amend page 17, strike line 3 and "vide," on line 4 and insert:

"Sec. 13. There are hereby authorized to be appropriated such sums as may be necessary for the Secretary of State to provide for fiscal year 1983 and beyond."

On page 6, line 7, insert the following immediately before the period: "Provided, That the Regional Council may provide for the rural coastal villages of Alaska the opportunity to establish a commercial halibut fishery in areas in the Bering Sea to the north of 56 degrees north latitude during a three year development period".

The PRESIDING OFFICER. The question is on agreeing to the amendments en bloc.

The amendment (UP No. 873) was agreed to.

Mr. STEVENS. Mr. President, I thank the distinguished chairman, Mr. Packwood, for including the amendment to this protocol which I requested. The amendment provides rural coastal villages in Alaska the opportunity to participate in the commercial halibut fishery if a limited access scheme is adopted by our North Pacific Fishery Management Council.

At the February 1982 meeting of the International Pacific Halibut Commission, representatives of the village fishermen from the Pribilof Islands and the Nunivak/Nelson Island vicinity requested that the halibut fisherman, composed of groups represented on the Commission's Conference Board provide an opportunity for participation in the halibut fishery. The representatives proposed that the years 1979-81 be used as the base years for the existing halibut fishermen. The village fishermen were to be given an additional 3 years to enter the fishery and develop a harvest level that would serve as their base. If they were able to develop a commercial halibut fishery, they would be given shares in the limited entry program that correspond to the catch level that they achieve and if they did not the fishery would be limited to those fishermen who had fished during the 1979-81 period.

Residents of these villages are to have 3 years to establish themselves. In order to do this and not be subject to premature cutoffs in the fishing season because of attainment of the Bering Sea area quota, these fishermen are to be allowed to fish during the months of June and July without any limitations. By the end of the 3-year period, they will have established themselves and become a part of the limited entry system or if they do not pursue a commercial halibut fishery, they will not receive shares in the limited entry system.

The Conference Board members also recognized that the fishing effort in the Bering Sea area is concentrated in the southern regions near the Aleutian Islands and that the more northern areas have not experienced the harvest that could possibly be directed there.

Mr. GORTON. Mr. President, as a member of the Senate Commerce Committee, I have had an opportunity to consider this important legislation in committee, and I am pleased today to rise in support of it on the Senate floor.

S. 2244, the implementing legislation for the halibut treaty between the United States and Canada, is a statement of the positive relationship enjoyed by our country and Canada in management of the halibut fishery, a resource of tremendous economic value. In the spirit of continuing to build upon this relationship, agreements were reached between the United States and Canada regarding the halibut fishery of the Northern Pacific Ocean and the Bering Sea. A treaty was signed in March 1979, and that treaty was ratified by the Senate in March 1980.

S. 2244 provides for U.S. Commissioners to the International Pacific Halibut Commission, outlines the authority of the Secretaries of State and Commerce, contains procedures for halibut management, contains direction for the North Pacific Fishery Management Council, and authorizes sums for implementation of the legislation. In addition, S. 2244 provides authority to the Council and to the Secretary of Commerce to establish a system of limited access, provided that such a system comport with all of the requirements of the Magnuson Fishery Conservation and Management Act.

S. 2244 represents the culmination of years of effort by both United States and Canadian negotiators in reaching an understanding as to management of a valuable and important fishery resource, a significant share of which is produced by the Seattle-based fleet. I am happy to have had an opportunity to play a role in the contribution this legislation will make to the enhancement and promotion of United States/Canada fishing relations.

The PRESIDING OFFICER. The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2244

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Northern Pacific Halibut Act of 1982".

SEC. 2. As used in this Act the term: (a) "Convention" means the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, signed at Ottawa, Canada on March 2, 1953, as amended by the Protocol Amending the Convention, signed at Wash-

Handwritten note: Packwood is Sponsor No. 60 - Sponsors Passed Senate 4/22

ington March 29, 1979, and includes the regulations promulgated thereunder.

(b) "Commission" means the International Pacific Halibut Commission provided for by article III of the Convention.

(c) "Fishery conservation zone" means the fishery conservation zone of the United States established by section 101 of the Magnuson Fishery Conservation and Management Act of 1978 (16 U.S.C. 1801 et seq.).

(d) "Convention waters" means the maritime areas off the west coast of the United States and Canada described in article I of the Convention.

(e) "Halibut" means fish of the species *Hippoglossus stenolepis* inhabiting Convention waters.

(f) "Fishing vessel" means—

(1) any vessel engaged in catching fish in Convention waters or in processing or transporting fish loaded in Convention waters;

(2) any vessel outfitted to engage in any activity described in paragraph 1; or

(3) any vessel in normal support of any vessel described in paragraph (1) of (2).

(g) "Secretary" means the Secretary of Commerce.

Sec. 3. (a) The United States shall be represented on the Commission by three United States Commissioners to be appointed by the President and to serve at his pleasure. The Commissioners shall receive no compensation for their services as Commissioners. Each United States Commissioner shall be appointed for a term of office not to exceed 2 years, but is eligible for reappointment. Any United States Commissioner may be appointed a term of less than 2 years if such appointment is necessary to ensure that the terms of office of not more than two Commissioners will expire in any 1 year. A vacancy among the United States Commissioners shall be filled by the President in the manner in which the original appointment was made, but any Commissioner appointed to fill a vacancy occurring before the expiration of the term for which the Commissioner's predecessor was appointed shall be appointed only for the remainder of such term. Of the Commissioners—

(1) one shall be an official of the National Oceanic and Atmospheric Administration; and

(2) two shall be knowledgeable or experienced concerning the Northern Pacific halibut fishery; of these, one shall be a resident of Alaska and the other shall be a nonresident of Alaska. Of the three commissioners described in paragraphs (1) and (2), one shall be a voting member of the North Pacific Fishery Management Council.

(3) Commissioners shall not be considered Federal employees except for the purposes of injury compensation or tort claims liability as provided in section 8101 of title 5, United States Code, et seq. and section 2671 of title 28, United States Code, et seq. Section 3(a) shall take effect on the 90th day after the date of enactment of the Act.

(b) The Secretary of State, in consultation with the Secretary, may designate from time to time alternate United States Commissioners to the Commission. An Alternate United States Commissioner may exercise, at any meeting of the Commission, all powers and duties of a United States Commissioner in the absence of a duly designated Commissioner for whatever reason. The number of such alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of authorized United States Commissioners that will not be present.

Sec. 4. The Secretary of State, with the concurrence of the Secretary, may accept or reject, on behalf of the United States, recommendations made by the Commission in

accordance with article III of the Convention and paragraph 14 and 15 of the annex to the Convention.

Sec. 5. (a) The Secretary shall have general responsibility to carry out the Convention and this Act.

(b) In fulfilling this responsibility, the Secretary—

(1) shall, in consultation with the Secretary of the department in which the Coast Guard is operating, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this Act; and

(2) may, with the concurrence of the Secretary of State, cooperate with the duly authorized officials of the Government of Canada.

(c) The Regional Fishery Management Council having authority for the geographic area concerned may develop regulations governing the United States portion of Convention waters, including limited access regulations, applicable to nationals or vessels of the United States, or both, which are in addition to, and not in conflict with regulations adopted by the Commission. Such regulations shall only be implemented with the approval of the Secretary, shall not discriminate between residents of different States, and shall be consistent with the limited entry criteria set forth in section 303 (b)(8) of the Magnuson Fishery Conservation and Management Act. If it becomes necessary to allocate or assign halibut fishing privileges among various United States fishermen, such allocation shall be fair and equitable to all such fishermen, based upon the rights and obligations in existing Federal law, reasonably calculated to promote conservation, and carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of the halibut fishing privileges. Provided, That the Regional council may provide for the rural coastal villages of Alaska the opportunity to establish a commercial halibut fishery in areas in the Bering Sea to the north of 56 degrees north latitude during a three-year development period.

Sec. 6. Any agency of the Federal Government is authorized upon request of the Commission, to cooperate in the conduct of scientific and other programs, and to furnish on a reimbursable basis, facilities and personnel for the purposes of assisting the Commission in carrying out its duties under the Convention. Such agency may accept reimbursement from the Commission.

Sec. 7. It is unlawful—

(a) for any person subject to the jurisdiction of the United States—

(1) to violate any provision of the Convention, this Act or any regulation adopted under this Act;

(2) to refuse to permit any enforcement officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Convention, this Act or any regulation adopted under this Act;

(3) to forcibly assault, resist, oppose, impede, intimidate or interfere with any enforcement officer in the conduct of any search or inspection described in paragraph (2);

(4) to resist a lawful arrest or detention for any act prohibited by this section;

(5) 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 the Convention, this Act, or any regulation adopted under this Act; or

(6) to interfere with, delay or prevent, by any means, the apprehension, arrest or detention of another person, knowing that

such person has committed any act prohibited by this section.

(b) for any foreign fishing vessel, and for the owner or operator of any foreign fishing vessel, to engage in fishing for halibut in the fishery conservation zone, unless such fishing is authorized by, and conducted in accordance with the Convention, this Act and regulations adopted under this Act.

Sec. 8. (a) Any person who is found by the Secretary after notice and opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 7 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$25,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. Indetermining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violation, the degree of culpability, and history of prior offenses, ability to pay, and such other matters as justice may require.

(b) 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 and the Attorney General. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, in accordance with rules prescribed pursuant to section 2112 of title 28, United States Code. The findings, and order of the Secretary shall be set aside by such 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) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed 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.

(d) 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.

Sec. 9. (a) A person is guilty of any offense if he commits an act prohibited by section 7(a), (2), (3), (4), or (6); or section 7(b).

(b) Any offense described in subsection (a) is punishable by a fine of not more than \$50,000 or imprisonment for not more than 6 months, or both; except that if in the commission of any offense the person uses a dangerous weapon, engages in conduct that caused bodily injury to any officer authorized to enforce the provisions of this Act, or places any such officer in fear of imminent bodily injury the offense is punishable by a fine of not more than \$100,000, or imprisonment for not more than 10 years or both.

(c) There is Federal jurisdiction over any offense described in this section.

Sec. 10. (a) Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish taken or retained, in any manner, in connection with or as a result of the commission of any

act prohibited by section 7 shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(b) Any district court of the United States shall have jurisdiction, upon application by the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) and any action provided for under subsection (d).

(c) 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 pursuant to this Act or for which security has not previously been obtained under subsection (d). 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 officers or other persons designated for such purpose by the Secretary.

(d)(1) Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under section 11(d) shall—

(A) stay the execution of such process; or

(B) discharge any fish seized pursuant to 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 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 pursuant to an order of such court. 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 such court.

(2) Any fish seized pursuant to this Act may be disposed of pursuant to the order of a court of competent jurisdiction or, if perishable, in a manner prescribed by regulations of the Secretary or the Secretary of the department in which the Coast Guard is operating.

(e) For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an act prohibited by section 7 were taken or retained in violation of the Convention and this Act.

Sec. 11. (a) The Convention, this Act, and any regulation adopted under this Act, shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, and of any State agency, in the performance of such duties.

(b) 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 such Secretaries under subsection (a) to en-

force the Convention, this Act or any regulation adopted under this Act may—

(1) with or without a warrant or other process—

(A) arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by section 7;

(B) board, and search or inspect, any fishing vessel which is subject to this Act;

(C) at reasonable times enter, and search or inspect, shoreside facilities in which fish taken subject to this Act are processed, packed or held;

(D) seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, an act prohibited by section 7;

(E) seize any fish (wherever found) taken or retained in the course of an act prohibited by section 7, or the proceeds of the sale of such fish; and

(F) seize any other evidence related to an act prohibited by section 7;

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

(3) exercise any other lawful authority.

(c) If any officer authorized to enforce this Act (as provided for in this section) finds that a fishing vessel is operating or has been operated in the commission of an act prohibited by section 7, such officer may, in accordance with regulations issued jointly by the Secretary and the Secretary of the department in which the Coast Guard is operating, issue a citation to the owner or operator of such vessel in lieu of proceeding under subsection (b). If a permit has been issued pursuant to this Act for such vessel, such officer shall note the issuance of any citation under this subsection, including the date thereof and the reason therefor, on the permit. The Secretary shall maintain a record of all citations issued pursuant to this subsection.

(d) The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under this Act. Any such court may, at any time—

(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.

(e) When requested by the appropriate authorities of Canada, officers or employees of the Coast Guard, the National Oceanic and Atmospheric Administration or any other agency of the United States may be directed to attend as a witness, and to produce such available records and files or duly certified copies thereof as may be necessary for the prosecution in Canada of any violation of the Convention or any Canadian law relating to the enforcement thereof.

(f)(1) In cooperation with such other agencies as may be appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations as are deemed necessary to carry out the purposes of this Act.

(2) For the purpose of all investigations which, in the opinion of the Secretary, are necessary and proper for the enforcement of this Act, the Secretary or any officer designated by him is empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Secretary deems relevant or material to the inquiry. Such attendance of witnesses and the production of such documentary evidence may be required from any

place in the United States at any designated place or hearing.

(3) Process of the Secretary may be served by anyone duly authorized by him either—

(A) by delivering a copy thereof to the individual to be served, or to a member of the partnership to be served, or the President, Secretary, or other executive officer or a director of the corporation to be served; or the agent designated for service of process;

(B) by leaving a copy thereof at the residence or the principal office or place of business of such individual, partnership, or corporation; or

(C) by mailing a copy thereof by registered or certified mail addressed to such individual, partnership, or corporation at his or its residence or principal office or place of business. The verified return by the individual so serving such complaint, order, or other process setting forth the manner of service shall be proof of same, and the returned post office receipt for such complaint, order, or other process mailed by registered or certified mail shall be proof of the service of the same.

Sec. 12. There is hereby authorized to be appropriated for fiscal year 1983 and beyond, such sums as may be necessary for carrying out the Convention and this Act, including—

(a) necessary travel expenses of the United States Commissioners or alternate Commissioners; and

(b) the United States share of the joint expenses of the Commission: *Provided*, That the Commissioners shall not, with respect to commitments concerning the United States share of the joint expenses of the Commission, be subject to section 262(b) of title 22, United States Code, insofar as it limits the authority of United States representatives to international organizations with respect to such commitments.

Sec. 13. There are hereby authorized to be appropriated such sums as may be necessary for the Secretary of State to provide for fiscal year 1985 and beyond, by contract, grant, or otherwise, facilities for office and any other necessary space for the Commission. Such facilities shall be located on or near the campus of the University of Washington in the State of Washington and shall be provided without regard to the cost-sharing provisions in the Convention.

Sec. 14. The Northern Pacific Halibut Act of 1937, as amended (50 Stat. 325, 67 Stat. 494, 79 Stat. 902), is repealed as of the ninth day after the date of enactment of this Act.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

WAIVING CONGRESSIONAL BUDGET ACT

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 473, Senate Resolution 347, the budget waiver to accompany Calendar No. 463.

The PRESIDING OFFICER. The resolution will be stated by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 347) waiving section 402(a) of the Congressional Budget Act of