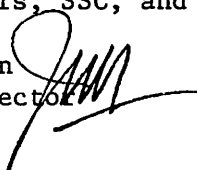


MEMORANDUM

TO: Council Members, SSC, and AP
FROM: Jim H. Branson
Executive Director 
DATE: July 18, 1980
SUBJECT: FCMA Amendments HR 7039 and S. 2765

ACTION REQUIRED

Information. Council may wish further comment on the Bills.

BACKGROUND

HR 7039: (the Breaux Bill) Council reviewed HR 7039 at the May, 1980 meeting. Because of the time limitation, a telegram with their comments was sent to Congressman Breaux immediately following the meeting. I followed with a detailed letter on May 28th. Copies of these are attached. No further action on HR 7039 is expected in the House until after the Labor Day recess in September.

S. 2765: (the Magnuson Bill) A copy of S. 2765 is attached. It has been referred to the Committee on Commerce, Science and Transportation. No further action is expected until after the Labor Day recess.

COPY

AGENDA E-2(b)
JULY, 1980

May 28, 1980

Honorable John B. Breaux, Chairman
Subcommittee on Fisheries, Wildlife
Conservation & the Environment of the
Committee on Merchant Marine & Fisheries
House of Representatives
Washington, D. C. 20515

Dear Congressman Breaux:

I would like to expand on the telegram sent by Vice-Chairman Harold Lokken commenting on H.R. 7039, the American Fisheries Promotion Act. I sincerely regret that we have been unable to comment on the act any sooner. I know that it is well along in the markup process but the Council had not had a chance to consider it until their meeting last week in Kodiak. I hope you will be able to consider our comments.

The Council has not commented on loan and capital construction programs in the past. However, we have found that those programs can drastically affect the course of management and we do need to consider them and contribute as much as we can to the development of funding programs for both fishermen and industry. In the last few years the Capital Construction Program and the Title XI loan guarantee program have contributed heavily to the expansion of the fishing fleet in the North Pacific, particularly in the king and Tanner crab fisheries. In many respects this has been good. Conversely, it has contributed to over expansion in both those fisheries and has tended to produce boats that are overbuilt for crab but still inadequate for the developing bottomfish industry. There is a very strong incentive for successful fisherman to invest heavily in the capital construction program. The immediate tax benefits are so great that it is foolish not to. Unfortunately the trend has been to use capital construction funds to get into bigger and bigger boats, rather than use the money for a larger equity in more moderate construction. Building bigger, more powerful boats simply because the equity was available to do so has contributed to fuel inefficiency and increased mortgage and insurance costs, as well as increased maintenance and operating costs.

Because the crab fisheries have been spectacularly successful the last several years many non-fishermen have been encouraged to speculate in new boat construction. Consortiums of investors from outside the fishing industry have built a number of very large fine vessels through the loan guarantee program. That bubble has probably burst. During the 1979 crab season there were many more boats in the fishery, the market was depressed and the price down by approximately 40%. As a result many of those new boats are now in dire financial straits. If financing for fleet expansion had not been as available as it has been for the past

several years the effect on the fleet would not have been nearly as severe.

In essence, the Council believes that any capital construction program, loan or loan guarantee program should be narrowly focused on unutilized or underutilized fishery resources. Further expansion in fisheries such as salmon, shrimp, or crab will only have an adverse affect on the resources and the participants. Eventually many of those fisheries will probably have some system of limited access. At that time we may be faced with "buy back" programs like those now used in overcrowded west coast salmon fisheries. Those programs, instituted at public expense to reduce the number of boats and fishermen competing for a sharply limited resource, are terribly expensive. Further construction and expansion in any fully utilized fishery should be discouraged.

The Council did not discuss the provision in H.R. 7039 limiting loans and capital construction fund benefits to companies of at least 75% U.S. ownership. Some flexibility in that standard might be desired. A large percentage of the companies in the industry in Alaska are owned in part by foreigners. Participation by countries with more than a 25% foreign equity might be subject to a phase-out over a reasonably short period of time, rather than an absolute restriction against participation.

We strongly favor increasing foreign fees. We have been telling NMFS for three years that the fee schedule for foreign fishing permits is unrealistically low, neither in line with the value of the fish taken or with prevailing fee schedules around the world. We endorse the provision of section 302 that adds to other fees paid by foreign fishermen a surcharge of 10% of the ex-vessel value of the catch. This would go a long way toward fully funding the management and enforcement costs of the FCMA relating to the foreign fishery and, coupled with increasing operating costs, should contribute significantly to the phase-out of foreign fishing in U.S. waters.

The goal of the Council since it's inception has been to phase-out all foreign fishing within the CFZ. Unfortunately we are still a long way from that goal. American fishermen catch less than 2% of the groundfish taken off Alaska and it will be several years before we harvest a significant portion of that resource. We are very much in favor of an orderly phase-out of foreign fishing as quickly as possible, but are somewhat hesitant to endorse the five year schedule in H.R. 7039. It is extremely doubtful that U.S. industry or the fishing fleet could possibly be geared up within that time to take the 1,300,000 plus tons of bottomfish currently being taken by foreigners off Alaska. Market conditions and U.S. production costs will probably prevent that much expansion within that time frame. Another approach might be to reduce the total allowable foreign fishery (TALFF) by reduction of optimum yield (OY) for economic reasons whenever a foreign fishery impacts the development and orderly expansion of the American groundfish fishery. We have had some success with that approach in the Tanner crab fishery where U.S. and Japanese fishermen compete on the same market.

The North Pacific Council has campaigned for a strong observer program for over three years. The fishery management plans developed for groundfish

depend heavily upon observer coverage for accurate catch reporting, and particularly for controlling catches of prohibited species such as halibut and salmon. We have not asked for 100% coverage, although we recognize that would be ideal. Because of the great number of ships in the fishery off Alaska and the complicated logistics of getting observers on and off ships our goal has been coverage that would give us statistically satisfactory data and a manageable program. We have used 20% coverage of all fisheries at all times as a minimum requirement, recognizing that more coverage would certainly enhance the credibility of our data. To date we have not achieved 20% coverage; in some segments of the foreign fleet off Alaska it has been as low as 3 or 4 percent and overall never better than 13%, although some of the fleets have 100% coverage, particularly the mothership crab and groundfish operations. The problem has been getting line item funding through NMFS for the observer program. Since the entire program is paid for by the foreigners, it seems almost insane to suffer from inadequate coverage. If the indications of foreign under-reporting obtained from the current observer program are true accurate foreign reporting, even with current low fee schedule, would substantially increase receipts.

We fully endorse the Bill's provision for mandatory consideration of foreign trade barriers in the allocation process. Any lever we can use to enhance market opportunities and reduce our negative balance of payments should be used. Authority to do so through explicit expression of congressional intent would be very valuable.

The North Pacific Fishery Management Council wishes to commend your initiative for carrying this bill forward and expresses support for the general intent of that legislation. We will be pleased to respond to any request for further information or advice.

Sincerely,

Jim H. Branson
Executive Director

cc: Congressman Donald E. Young
Senator Mike Gravel/Tom Roach
Senator Ted Stevens/Steve Perles
Lucy Sloan/National Federation of Fishermen

96TH CONGRESS
2D SESSION

S. 2765

To amend the Fishery Conservation and Management Act of 1976, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 28 (legislative day, JANUARY 3), 1980

Mr. MAGNUSON (for himself, Mr. JACKSON, and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Fishery Conservation and Management Act of 1976, and for other purposes.

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 "Fishery Conservation and
4 Management Act Amendments of 1980".

5 SEC. 2. FISHERY ALLOCATIONS.

6 Section 201(e) of the Fishery Conservation and Man-
7 agement Act (16 U.S.C. 1821(e)) is amended by striking the
8 second sentence thereof and inserting in lieu thereof the fol-
9 lowing sentence: "All such determinations shall be made by

1 the Secretary of State and the Secretary on the basis of the
2 following criteria:

3 “(1) whether, and to what extent, the fishing
4 fleets of such nations have complied with United States
5 law and foreign fishing regulations;

6 “(2) whether, and to what extent, such nations
7 impose tariff or nontariff trade barriers on the importa-
8 tion of United States fish products;

9 “(3) whether, and to what extent, such nations or
10 individuals of such nations have agreed to purchase
11 fish or fish products from United States processors or
12 United States fishermen;

13 “(4) whether, and to what extent, such nations
14 require the fish harvested from the fishery conservation
15 zone for their domestic consumption;

16 “(5) whether, and to what extent, the fishing ves-
17 sels of such nations have traditionally engaged in fish-
18 ing in such fishery;

19 “(6) whether such nations have cooperated with
20 the United States in, and made substantial contribu-
21 tions to, fishery research and the identification of fish-
22 ery resources;

23 “(7) such other matters concerning fisheries and
24 fishery development as the Secretary of State, in coop-
25 eration with the Secretary, deems appropriate.”.

1 SEC. 3. OBSERVERS.

2 (a) Section 201 of the Fishery Conservation and Man-
3 agement Act of 1976 (16 U.S.C. 1821) is amended by adding
4 at the end thereof the following new subsection:

5 "(i) OBSERVER PROGRAM.—(1) The Secretary shall es-
6 tablish a program under which a United States observer shall
7 to the extent practicable be stationed aboard each foreign
8 fishing vessel while that vessel is within the fishery conserva-
9 tion zone and is—

10 "(A) engaging in fishing; or

11 "(B) accepting United States harvested fish
12 through transfer at sea.

13 "(2) United States observers, while aboard foreign fish-
14 ing vessels, shall carry out such scientific and other functions
15 at the Secretary deems necessary or appropriate to carry out
16 the purposes of this Act.

17 "(3) In addition to any fee imposed under section
18 204(b)(10) of this Act and section 10(e) of the Fishermen's
19 Protective Act of 1967 (22 U.S.C. 1980(e)) with respect to
20 foreign fishing for any year after 1980, the Secretary shall
21 impose, with respect to each foreign fishing vessel for which
22 a permit is issued under such section 204, a surcharge in an
23 amount sufficient to cover all the costs of providing a United
24 States observer aboard that vessel. The failure to pay any
25 surcharge imposed under this paragraph shall be treated by
26 the Secretary as a failure to pay the permit fee for such

1 vessel under section 204(b)(10). All surcharges collected by
2 the Secretary under this paragraph shall be deposited in the
3 Foreign Fishing Observer Fund established by paragraph (4).

4 “(4) There is established in the Treasury of the United
5 States the Foreign Fishing Observer Fund. The Fund shall
6 be available to the Secretary as a revolving fund for the pur-
7 pose of carrying out this subsection. The Fund shall consist
8 of the surcharges deposited into it as required under para-
9 graph (3). All payments made by the Secretary to carry out
10 this subsection shall be paid from the Fund, only to the
11 extent and in the amounts provided for in advance in appro-
12 priation Acts. Sums in the Fund which are not currently
13 needed for the purposes of this subsection shall be kept on
14 deposit or invested in obligations of, or guaranteed by, the
15 United States.”.

16 (b) The amendment made by this section shall take
17 effect on October 1, 1980, and shall apply with respect to
18 permits issued under section 204 of the Fishery Conservation
19 and Management Act of 1976 after December 31, 1980.

20 **SEC. 4. PERMIT FEES.**

21 (a) Section 204(b)(10) of the Fishery Conservation and
22 Management Act of 1976 (16 U.S.C. 1824(b)(10)) is amend-
23 ed by striking the last sentence thereof and inserting in lieu
24 thereof the following new sentence: “In determining the level
25 of such fees, the Secretary shall ensure that the fees, at a

1 minimum, fully recover all the direct and indirect conserva-
2 tion and management, research, enforcement, and adminis-
3 trative costs resulting from foreign fishing in the fishery con-
4 servation zone, including but not limited to: the full costs
5 incurred by the Department of Commerce, the Regional
6 Fishery Management Councils, the department in which the
7 Coast Guard is operating, State agencies, and universities as
8 a result of foreign fishing in the fishery conservation zone;
9 and the estimated lost income to United States fishermen and
10 processors resulting from foreign fisheries' generation of mor-
11 talities of species fully utilized by vessels of the United
12 States.”.

13 (b) The amendment made by this section shall take
14 effect beginning with the 1981 harvesting season, as defined
15 by the Secretary.

16 **SEC. 5. NORTHERN MARIANAS.**

17 (a) Section 3(21) of the Fishery Conservation and Man-
18 agement Act of 1976 (16 U.S.C. 1802(21)) is amended by
19 inserting “the Northern Mariana Islands,” immediately after
20 “Guam,”.

21 (b) Section 302(a)(8) of the Fishery Conservation and
22 Management Act of 1976 (16 U.S.C. 1852(a)(8)) is amended
23 to read as follows:

24 “(8) WESTERN PACIFIC COUNCIL.—The Western Pa-
25 cific Fishery Management Council shall consist of the State

1 of Hawaii, American Samoa, Guam, and the Northern Mari-
2 ana Islands and shall have authority over the fisheries in the
3 Pacific Ocean seaward of such States and any other State
4 that is not represented on the Pacific Fishery Management
5 Council or the North Pacific Fishery Management Council.
6 The Western Pacific Council shall have 13 voting members,
7 including 8 appointed by the Secretary pursuant to subsec-
8 tion (b)(1)(C) (at least one of whom shall be appointed from
9 each of the State of Hawaii, American Samoa, Guam, and
10 the Northern Mariana Islands).”.

11 (c)(1) Notwithstanding the provisions of section 4132 of
12 the Revised Statutes of the United States (46 U.S.C. 11), or
13 any other provision of law, the Secretary of the department
14 in which the Coast Guard is operating shall cause the vessel
15 M/V Olwol, owned by the government of the Trust Territory
16 of the Pacific Islands and in the custody of the government of
17 the Northern Mariana Islands, to be documented as a vessel
18 of the United States, upon compliance with the usual require-
19 ments, with the privilege of engaging in the coastwise trade
20 and the fisheries so long as such vessel is owned by the gov-
21 ernment of the Trust Territory of the Pacific Islands and is in
22 the custody of the government of the Northern Mariana Is-
23 lands, owned by the government of the Northern Mariana
24 Islands, or owned by a citizen of the United States or a citi-
25 zen of the Northern Mariana Islands.

1 (2) For the purpose of paragraph (1) of this subsection, a
2 "citizen of the Northern Mariana Islands" is defined as: (1)
3 an individual citizen of the Trust Territory of the Pacific Is-
4 lands who is exclusively domiciled, within the meaning of
5 section 1005(e) of the Covenant to Establish a Common-
6 wealth of the Northern Mariana Islands in Political Union
7 with the United States of America (48 U.S.C. 1681 (note)) in
8 the Northern Mariana Islands; (2) a partnership, unincorpo-
9 rated company, or association whose members are all citizens
10 of the Northern Mariana Islands as defined above; or (3) a
11 corporation incorporated under the laws of the Northern Mar-
12 iana Islands, of which the president or other chief executive
13 officer and the chairman of the board of directors are citizens
14 of the Northern Mariana Islands as defined above, and no
15 more of its directors than a minority of the number necessary
16 to constitute a quorum are not citizens of the Northern Mari-
17 ana Islands as defined above.

18 **SEC. 6. NOTICE OF AVAILABILITY OF MANAGEMENT PLANS.**

19 Section 305(a) of the Fishery Conservation and Man-
20 agement Act of 1976 (16 U.S.C. 1855) is amended by insert-
21 ing immediately after "Federal Register (A)" the words "a
22 notice of availability of".

1 **SEC. 7. SALE OF SEIZED FISH.**

2 Section 310(d)(2) of the Fishery Conservation and Man-
3 agement Act of 1976 (16 U.S.C. 1860(d)(2)) is amended to
4 read as follows:

5 “(2) Any fish seized pursuant to this Act may be sold or
6 otherwise disposed of pursuant to the order of a court of com-
7 petent jurisdiction or, if perishable, in a manner prescribed by
8 regulations of the Secretary or the Secretary of the depart-
9 ment in which the Coast Guard is operating.”

○