

M E M O R A N D U M

TO: Council Members, AP, and SSC  
FROM: Jim H. Branson  
Executive Director  
DATE: September 12, 1980  
SUBJECT: FCMA Amendments Workgroup Meeting

*ACTION REQUIRED*

*Review the Summary of Meeting and comment on next steps.*

BACKGROUND

The FCMA Amendments Workgroup met on August 28, 1980 in Anchorage. The purpose of the meeting was to consider any needed revisions to the FCMA.

A list of 19 different topics that had been addressed by the Council in the last five oversight hearings was distributed at the meeting. This summary, Attachment C-2(a), was used to focus discussion on topics of current concern to the Council. A summary of the discussions at the meeting is provided as Agenda Item C-2(b).

The Council should review these discussion items and provide guidance on the next steps to be taken.

REQUESTED FCMA CHANGES  
or CLAIRIFICATION by NPFMC

	6-21-78 Lokken	3-07-79 Branson	6-07-79 Branson	7-10-79 Tillion	10-11-79 Tillion
1. Exemption of FCMA from NEPA, EO 12044, APA, and FACA.		X	X	X	X
2. Limit SOC review period to 60 days or less with "no action" meaning approval.	X	X	X	X	X
3. Increase observer coverage to at least 20%.		X	X	X	X
4. Redefine OY as range rather than point.			X	X	X
5. Increase period covered by emergency regulations from 45/45 to 90/90 days.				X	X
6. Clarify status of "licensed" versus "registered" vessels.			X		
7. Is search warrant required for boardings; clarify authority of U.S. enforcement officials to routinely board foreign and U.S. fishing vessels.			X	X	
8. Allow Council review of allocations.	X		X	X	X
9. Allow FMP and proposed regulations to be processed together and require conformity of NMFS regulations to provisions of FMP.			X	X	
10. Expand permit sanctions on foreign fishing violators.			X	X	X
11. Redefine baseline for FCZ.			X		
12. Remove limit on license fees for U.S. fishermen.			X		
13. Allow NPFMC to conduct public hearings outside Alaska.			X	X	
14. Request voting membership of Alaska on PFMC.			X	X	X
15. Verification of non-Federal status of Council staff.			X	X	X
16. Compensation for some SSC members.			X	X	X
17. Study relationship of FCMA with MMPA, CZMA, ESA, Nickelson, Maine Sanctuaries.			X	X	X
18. Additional funds for data and NMFS staff.		X	X	X	X
19. Improve selection process for Council membership.				X	X

\*In Breaux Bill

MEETING SUMMARY: FCMA AMENDMENTS WORKGROUP

August 28, 1980

The FCMA Amendments Workgroup met in Anchorage on August 28, 1980. Clem Tillion, Harold Lokken, Guy Thornburgh, Sig Jaeger, Robert McVey, Rick Lauber, Donald Bevan, Bart Eaton, John Harville, Jim Campbell, Bob Mace, Jeff Stephen, Patrick Travers, Jim Branson, and the Council staff attended.

A summary of the different changes that have been proposed by the Council during the last five oversight hearings was provided to the workgroup to focus discussion. The purpose of the meeting was to examine these past issues and consider any other revisions that might be required to the FCMA.

Below is a summary of discussion for each of the 19 issues examined at the meeting.

1. Exemption of FCMA from NEPA, EO 12044, APA, and FACA.

FCMA should be the controlling legislation. Environmental and economic impacts should be addressed in the FMP to save time and labor.

2. Limit SOC review period to 60 days or less with "no action" meaning approval.

The group restressed the need for this modification to the FCMA.

3. Increase observer coverage to at least 20%.

This issue has been addressed in the new fisheries development bill by Breaux.

4. Redefine OY as a range rather than point.

Current FMP's are defining OY in three ways: as a point, as a range, and procedurally.

5. Increase period covered by emergency regulations from 45/45 to 90/90 days.

Not specifically addressed.

6. Clarify status of "licensed" vs. "registered" vessels.

NOAA's current position is that a state can enforce its own laws for vessels registered in that state, except when the state laws are inconsistent with the FCMA. The presence of an FMP would not limit a state's ability to regulate its vessels. In Alaska, when a vessel purchases a "license" it is technically "registered" to fish in Alaska. More research is needed to clarify this terminology.

7. Is search warrant required for boarding: clarify authority of U.S. enforcement officials to routinely board foreign and U.S. fishing vessels.

Not specifically addressed by workgroup because the Courts have ruled on this point already.

8. Allow Council review of allocations.

The workgroup agreed that the Council should recommend a consultation relationship with the Secretary in these determinations. In the case of repeated violations, rather than revoking a foreign vessel's permit, their nation's allocation for the next year could be diminished by the amount of fish allocated to ships convicted of violations. This method would be helpful in enforcement, since the foreign nations would have to assist in enforcement in order to protect their allocations.

9. Allow FMP and proposed regulations to be processed together and require conformity of NMFS regulations to provisions of FMP.

The only comment by the workgroup was that the regulations are really what fishermen are interested in, not the FMP itself.

10. Expand permit sanctions on foreign fishing violators.

It was suggested that the Council may wish to specify clarification that a permit sanction may be imposed prior to a full public hearing in order to encourage expeditious handling of the trial in the instance of foreign fishing violations.

11. Redefine baseline for FCZ.

No comments.

12. Remove limit on license fees for U.S. fishermen.

The question was raised on how money will be generated to cover administrative costs once foreign fishing is phased out. Viable alternatives will be needed to compensate for a phase-out. The Executive Director was requested to draft a flexible but tight document for review of the workgroup, including this question in the draft legislation.

13. Allow NPFMC to conduct public hearings outside Alaska.

No comments.

14. Request voting membership of Alaska on PFMC.

No new comments.

15. Verification of non-Federal status of Council staff.

It was agreed that it was necessary to re-affirm the Council's position that the staff is not Federal. Caution was urged, however to clarify this legislatively only if passage were guaranteed.

16. Compensation for some SSC members.

No additional comments.

17. Study relationship of FCMA with MMPA, CZMA, ESA, Nicholson<sup>e</sup> Act and Marine Sanctuaries.

Thornburgh indicated that Alaska Department of Fish and Game will be developing a possible amendment to the Marine Mammals Protection Act. They have hired a Washington, D.C. attorney to help them with this.

18. Additional funds for data and NMFS staff.

No additional comments.

19. Improve selection process for Council membership.

No additional comments.

A 20th suggestion was added to the list, that being a thorough examination of the National Standards, specifically regarding the Regional Director's authority to close an area to protect U.S. fishermen from gear conflicts for other than resource reasons. It was suggested that the Processor Preference Amendment is in conflict with National Standard No. 5. The question was raised whether to change the National Standard or the Processor Preference section of the Act. Discussion followed on the various interpretations of the Processor Preference Amendment. It was suggested that additional distinction is necessary between floating and shore-based processors.

Two other subjects were addressed: (1) tuna; and (2) the possibility of a separate council for California. With regard to tuna, it makes sense that each nation should harvest tuna as it comes through that section of the world. The FCMA says that a resource should be managed by the area in which it exists. On the second item, the formation of a separate Council for California should be protested since that would decrease funds that could be used for all the Councils.

The Workgroup suggested that model legislation should be drafted to incorporate the above discussion topics.