APR 25 1978

MEMORANDUM FOR: Eldon V. C. Greenberg
General Counsel

From: Richard E. Gutting, Jr.
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Subject: Proposed Policy Governing Applications for Permits by Foreign Vessels for Purchasing or Receiving U.S. Harvested Fish in the Fishery Conservation Zone

ISSUE

Does the Secretary have the authority under the Fishery Conservation and Management Act of 1976 (FCMA) to deny applications for permits authorizing foreign vessels to receive U.S. harvested fish from U.S. fishing vessels in the Fishery Conservation Zone (FCZ) on the basis that U.S. fish processors have the capacity or intent to receive and process the fish concerned?

ANSWER

The FCMA provides no express authority to the Secretary to deny these applications on this ground. The Secretary, however, has broad discretion and it could be inferred from section 2 of the FCMA that she has authority to deny these applications on this ground alone. The basis for this inference, however, is tenuous. In our opinion, the Secretary does not have sufficient authority to disapprove these applications on this ground alone.

BACKGROUND

During 1977 the Secretary received inquiries and applications for permits under section 204 of the FCMA from various persons who desired to use foreign processing and transport vessels to purchase, process and ship fish caught by U.S. fishermen. In view of the public interest in these fishing operations and the need for additional information,

the National Marine Fisheries Service (NMFS) published an Advance Notice of Proposed Rulemaking in the Federal Register on June 17, 1977 (42 FR 30875) and held eighteen public hearings in July and August, 1977 on the issues raised.

On February 8, 1978, a proposed interim policy was published in the Federal Register (43 FR 5398) for public review and comment. This proposed policy stated that permit applications submitted to receive fish from U.S. vessels in the FCZ would be considered on a case-by-case basis. Permits would be granted under this proposed policy if U.S. harvesting capacity for the target species (determined in terms of capability and intent) exceeded U.S. processing capacity for that species (also determined in light of capability and intent). Additionally, the Secretary would evaluate each permit application against eleven socio-economic and other factors.

Public comments on the proposed policy were received until February 23, 1978. Several comments on the proposed policy questioned the Secretary's authority under the FCMA to regulate these activities of foreign vessels in the FCZ except for reasons concerning the conservation and management of fishery resources. Further, there were objections to giving preferential treatment to domestic processors over foreign processors. No comments pointed to any clear authority of the Secretary under the FCMA to deny a permit in order to protect the economic interests of domestic fish processors.

DISCUSSION

1. The Vessels Require A Permit.

Under Section 204(a) of the FCMA, "no foreign fishing vessel shall engage in fishing within the fishery conservation zone . . . unless such vessel has on board a valid permit issued under this section for such vessel." (Emphasis added.)

a. The Vessels Are Foreign Fishing Vessels.

The first issue is whether a vessel documented or registered by a foreign nation and engaged in the processing and transportation of fish is a "foreign fishing vessel" for

purposes of Section 204.

There is no definition of "foreign fishing vessel" in the FCMA. Section 3(11), however, defines "fishing vessel" as a vessel

> "which is used for, equipped to be used for, or of a type which is normally used for . . . fishing, or . . . aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing."

The storage, processing and transportation of fish by a vessel are among the activities which bring a vessel within this definition of a "fishing vessel." Moreover, the activities in question would, in our opinion, constitute activities which "aid or assist" fishing in the FCZ.

Section 3(12) of the FCMA defines "foreign fishing" as "fishing by a vessel other than a vessel of the United States." It follows that the vessels in question are "foreign fishing vessels" under section 204.

b. <u>The Vessels Are Fishing.</u>

The next issue is whether these vessels would be "fishing" for purposes of the FCMA. This term is defined in Section 3(10) to mean:

> "(A) the catching, taking, or harvesting of fish;
> (B) the attempted catching, taking, or harvesting of fish;
> (C) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or
> (D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C)."

Subsection (D) provides that "fishing" includes "any operations at sea in support of, or in preparation for" the catching, taking or harvesting of fish. No express reference is made to such activities as the storage, processing or transportation of fish in this definition, in contrast to the list of activities set forth in the definition of "fishing vessel" under section 3(11).

The references to "processing" and "transportation" in section 3(11) suggest that these activities are ones "relating to fishing" and not "fishing." They become "fishing", in our view, when they are "in support of" or "in preparation for" an activity such as the harvesting of fish. Such condition appears to be satisfied in the applications in question. Moreover, the present foreign fishing regulations include a definition of "fishing" at 50 CFR §611.2(p)(3) as follows:

> "[A]ny operation at sea in support of [harvesting], including, but not limited to:
>
> (i) Processing or freezing fish or fish products;
> (ii) Transferring or transporting fish or fish products...."

We conclude, therefore, that the vessels in question require a permit under section 204(a) because they are "foreign fishing vessels" which are "fishing" in the FCZ.

2. The Grounds For Disapproving Applications.

Section 204(b)(9), the only section in the FCMA which expressly refers to the disapproval of permit applications, provides clear authority to the Secretary to deny applications. It is of little help, however, in assessing the extent of this authority. This section provides:

> "If the Secretary does not approve any application submitted by a foreign nation under this subsection, he shall promptly inform the Secretary of State of the disapproval and his reasons therefor. The Secretary of State shall notify such foreign nation of the disapproval and the reasons therefor. Such foreign nation, after taking into consideration the reasons for disapproval, may submit a revised application under this subsection."(Emphasis added.)

No guidance is given concerning what are the appropriate "reasons" for disapproval.

Section 204(b)(6) of the FCMA, which refers to the approval of permit applications, provides some guidance on the extent of the Secretary's authority. This section provides:

"After receipt of any application transmitted under paragraph (4)(A), the Secretary shall consult with the Secretary of State and, with respect to enforcement, with the Secretary of the department in which the Coast Guard is operating. The Secretary, after taking into consideration the views and recommendations of such Secretaries and any comments submitted by any Council under paragraph (5), may approve the application, if he determines that the fishing described in the application will meet the requirements of this Act."(Emphasis added.)

Under the first sentence the Coast Guard is to comment with respect to enforcement. The FCMA, however, does not expressly indicate what factors the Secretary of State is supposed to comment on. Additionally, the public can submit comments to the Regional Councils which, in turn, can submit written comments which they "deem appropriate" on the application to the Secretary under section 204(b)(5). Once again, however, there is no express provision stating what factors are "appropriate."

Under the second sentence of section 204(b)(6), the Secretary must take the views and recommendations of the Secretary of State, and Coast Guard, and the comments of the Council "into consideration" prior to approving an application. The acts of "consulting" and "considering" are mandatory, not discretionary. It is reasonable to infer that the views, recommendations and comments considered in 204(b)(6) are factors which must be considered in the approval/disapproval process. No mention is made, however, of the weight to be accorded these views, recommendations and comments. Moreover, it does not follow that any particular view, recommendation or comment necessarily provides a basis for disapproval of a permit application. The Secretary, however, appears to have substantial discretion in weighting these comments and in relying upon them as grounds for disapproval of an application.

The statement in section 204(b)(6) that the Secretary "may" approve applications if the "requirements" of the FCMA are satisfied, implies that even if the "requirements" are satisfied, the Secretary has authority to deny a permit application. Once again, however, the FCMA is silent concerning which grounds are appropriate in exercising this

discretion. This language also implies that the Secretary cannot approve the application unless the "fishing" described in the application meets "the requirements of the Act."

Section 204(b)(6), therefore, raises two issues: (1) is it a "requirement of the Act" that domestic fish processors be given protection? and, (2) if not, does the Secretary nevertheless have discretion to give them protection by denying the applications in question?

a. The Requirements of the Act

A permit is required under section 204(a) because the activity in question is "fishing" by a "foreign fishing vessel." This language is found only in section 204(a). There are, however, several requirements with respect to "foreign fishing" set forth in Title II of the FCMA. In our opinion, these requirements apply.

The requirements with respect to foreign fishing are set forth in section 201(a) as follows:

> "After February 28, 1977, no foreign fishing is authorized within the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond the fishery conservation zone, unless such foreign fishing -
>
> (1) is authorized under section (b) or (c);
> (2) is not prohibited by subsection (f); and
> (3) is conducted under, and in accordance with, a valid and applicable permit issued pursuant to section 204."

The first requirement provides that the "fishing" described in the application be authorized under a governing international fishing agreement (GIFA) between the U.S. and the vessel's flag-nation. Therefore, if a foreign flag processing vessel is applying for a permit to receive U.S. - caught fish, the permit could not be approved unless the flag-nation has a GIFA with the United States. While the absence of an applicable GIFA is a reason for denying an application, the contents of existing GIFA's contain no such reasons, since they are devoid of any terms calling for special treatment for U.S. processors, either with respect to the approval or disapproval of permits, or the imposition

of conditions and restrictions which will be contained in any permit.

The requirement in section 201(a)(2) applies to reciprocity, the specifics of which are detailed in section 201(f):

> "Foreign fishing shall not be authorized for the fishing vessels of any foreign nation unless such nation satisfies the Secretary and the Secretary of State that such nation extends substantially the same fishing privileges to fishing vessels of the United States, if any, as the United States extends to foreign fishing vessels."

Therefore, if the flag nation of the applicant vessel has a practice of prohibiting U.S. processing and transport vessels from receiving fish in that nation's fishery conservation zone, there would be a ground for denial of the application, assuming the proper determinations have been made by the Secretary and the Secretary of State.

Section 201(a)(3) requires that foreign fishing be conducted under a valid permit issued under section 204. When an application for a permit is received under section 204(b), section 201(g) requires that a preliminary management plan shall be prepared for the fishery concerned if no fishery management plan exists. The inference is that a plan must be in effect to govern foreign fishing. Another requirement of the Act, therefore, is that a plan be in effect for the fishery concerned before the application is approved.

When a permit is issued, Section 204(b)(7) requires the Secretary to include the following conditions and restrictions in each such permit:

> "(A) All of the requirements of any applicable fishery management plan, or preliminary fishery management plan, and the regulations promulgated to implement any such plan.
> (B) The requirement that no permit may be used by any vessel other than the fishing vessel for which it is issued.
> (C) The requirements described in section 201(c)(1),(2), and (3).
> (D) Any other condition and restriction related to fishery conservation and management which the Secretary

prescribes as necessary and appropriate."

Subparagraphs (B) and (C) refer to certain requirements concerning GIFA's and permits which have been discussed. The preliminary management plans and fishery management plans referred to in subparagraph (A) must be consistent with the national standards for conservation and management set forth in section 301(a). These national standards refer to "conservation and management" measures. Subparagraph (D) refers to "other" requirements "related to fishery conservation and management." These other requirements can be established outside the procedures which apply to plans under subparagraph (A).

The term "conservation and management" is defined at section 3(2) of the FCMA to refer:

> "...to all of the rules, regulations, conditions, methods, and other measures (A) which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining, any fishery resource and the marine environment; and (B) which are designed to assure that --
>
> (i) a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis;
>
> (ii) irreversible or long-term adverse effects on fishery resources and the marine environment are avoided; and
>
> (iii) there will be a multiplicity of options available with respect to future uses of these resources."(Emphasis added)

The failure of this definition to refer to fish processors suggests that the effect which approving a permit application may have on domestic fish processors is not relevant to whether the decision is consistent with the "conservation and management" of the fishery concerned.

It might be argued, however, that subparagraph (B) with its reference to "food supply" provides a basis for a requirement that domestic fish processors be protected. The

phrase in question, however, refers to the taking of a food supply and not the processing of it. Moreover, the reference is to a food supply and not the food supply of the United States. Finally, a policy against the entry of businesses into the market seems inconsistent with the requirement that a "multiplicity of options" be maintained.

It is conceivable that one might argue, through reference to several other definitions in the FCMA, that the interests of on-shore processors are among the interests to be protected by "conservation and management" considerations. The definition of "conservation and management" uses the term "fishery resources", which is defined in the FCMA as: "any fishery, any stock of fish, any species of fish, and any habitat of fish." (Section 3(9); emphasis added.) The term "fishery", in turn, is defined in section 3(7) to mean --

> "(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and (B) any fishing for such stocks." (Emphasis added.)

The term "fishing" as defined in section 3(10) means --

> "(A) the catching, taking, or harvesting of fish;
> (B) the attempted catching, taking, or harvesting of fish;
> (C) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or
> (D) any operation at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).
>
> Such term does not include any scientific research activity which is conducted by a scientific research vessel." (Emphasis added.)

Through this chain of definitions, it is theoretically possible to argue that the processing of fish on shore is "fishing" under section 3(10)(C) and therefore processing constitutes a "fishery resource" which the Secretary is authorized to protect under her authority to impose "conservation and management" measures. Under this line of

argument, the operation of an on-shore processing facility may provide a market for the fishermen's catch and thus could "reasonably be expected to result in the catching ...of fish." (Section 3(10)(C).)

Such an argument, however, is inconsistent with section 3(10)(D) which includes processing within the definition of "fishing" but only if it is "at sea." It also raises serious questions concerning the classes of land-based activities which fall within the definition of "fishing". For example, every person in the country who purchases fish in a supermarket helps to create a demand for fish. Under this argument, it "can reasonably be expected" that any activities which create a demand for fish may indirectly "result in the catching ...of fish." Thus all activities involving buying or eating fish would be "fishing." This is unreasonable.

In our view the logical interpretation of Section 3(10)(C) would restrict its application to activities at sea which directly result in the catching of fish. An activity on land which merely provides an incentive to catch fish is insufficiently related to the catching of fish to constitute "fishing" under Section 3(10)(C). This conclusion is consistent with the legislative history of the FCMA which at no point indicates that the term "fishing" was intended to include on-shore processing. It is also consistent with section 2(b)(1) which refers to the need to manage the fishery resources off the coasts of the U.S.

It follows from the foregoing discussion of the phrase "conservation and management" and the definition of this term in section 3(2) that the Secretary is not required under sections 201(a)(3) and section 204(b)(7) to protect domestic processors in granting or denying the applications in question.

This conclusion is consistent with section 201(d) of the FCMA which provides that the total allowable level of foreign fishing (TALFF) with respect to a fishery:

> "... shall be that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States..." (Emphasis added.)

This section is properly interpreted to limit the harvest of fish by foreign vessels and not the receipt, processing or transportation of fish by a foreign vessel. Thus, for

example, a purchase by foreign vessels of a given quantity of fish caught by U.S. vessels would not be counted against TALFF. Similarly, a quantity of fish caught by a foreign vessel and transferred to another foreign vessel would not be counted twice. Thus, under this section, the level of the U.S. harvest of fish limits the level of the foreign harvest of fish in the FCZ.

No comparable provision is found in the FCMA with respect to the level of U.S. processing of fish. The inference is that the amount of U.S. processing activity was not intended to limit the level of foreign processing and is not, therefore, a basis which requires the Secretary to deny the permits in question.

b. The Discretionary Authority of the Secretary

As stated in the previous discussion, the Secretary has discretion to disapprove the permit applications under section 204(b)(6) even if the requirements of the FCMA are satisfied. However, the FCMA gives no express guidance concerning how this discretion is to be exercised.

In instances such as this one, where there is little direct guidance to be derived from the statute itself, courts consider whether an agency's interpretation of its authority serves to further the purposes of the legislation in a reasonable and sound manner. As the Supreme Court said In Re Permian Basin Area Rate Cases, 390 U.S. 747, 776 (1968):

> "This Court has repeatedly held that the width of administrative authority must be measured in part by the purposes for which it was conferred.

The statement of findings, purposes and policies in section 2 of the FCMA suggests that while the primary purposes of the FCMA are to protect off-shore fishery resources and promote the interests of domestic fishermen, one purpose of the FCMA is to protect all citizens, including domestic processors. This section, therefore, provides a basis for arguing that the Secretary does have authority to deny these applications to protect the interests of domestic processors.

Overfishing was clearly the major concern of Congress

during its consideration of the FCMA. Section 2(a)(2), for example, states:

> "As a consequance of increased fishing pressure and because of the inadequacy of fishery conservation and management practices and controls ... certain stocks of such fish have been overfished to the point where their survival is threatened..."

See also, sections 2(a)(3), 2(a)(4), 2(a)(5) and 2(a)(6) which refer to "overfishing." These findings led Congress to include as a purpose of the FCMA the taking of immediate action "to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources ..."(Section 2(b)(1).)

A second purpose of the FCMA was to promote commercial and recreational fishing. This purpose is reflected in the finding of section 2(a)(3) which provides that:

> "Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation. Many coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources at an ever-increasing rate over the past decade. The activities of massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, interfered with domestic fishing efforts, and caused destruction of the fishing gear of United States fishermen.(Emphasis added.)

The reference to "related activities" is not repeated in the purposes and policies of the FCMA. Section 2(b)(3), for example, provides that another purpose of the Act is:

> "to promote domestic commercial and recreational fishing under sound conservation and management principles. " (Emphasis added.)

As we argued previously, the term "fishing" does not include on-shore processing. Moreover, the version of section 2(b)(3) which originally passed the House referred to the promotion of the "commercial and recreational fishing industries." This reference was narrowed in the Senate-House Conference to refer only to "fishing." This suggests

a Congressional intention to exclude processing.

A review of the legislative history, however, indicates a Congressional concern for the economic situation of the U.S. fishing industry including market considerations and balance of payment problems.

> "In a particular rich fisheries area - that of Georges Bank - 88% of the total catch was taken by U.S. fishermen as recently as 1960. As of 1972, the figures were turned around and foreign fishing accounted for over 89% of the total catch from the Georges Bank area... this statistic reflects untold economic disruption for our individual fishermen and, of course, an increasingly adverse balance of payments for the Nation as increasing market demand for fish products has been met by imports... (Certain) species are underutilized and need proper management and marketing support..."
> (Senator Hathaway, A Legislative History of the Fishery Conservation and Management Act of 1976, page 450 & 451; emphasis added)

* * *

> "Today, the United States imports over 60% of its fish products needs. In 1974, the U.S. balance of trade deficit in fishery products along amounted to nearly 1.5 billion dollars. It has been estimated that if imports of foreign fisheries products were replaced by domestic production, the additional economic impact on the U.S. economy would approach 3 billion dollars and result in an increase of 200,000 man-years in employment... I do not think we can ignore the statistics, which show an ever increasing foreign catch off our shores, and ever increasing amount of imports of our own fishery products, and increasing deficit in our balance of payments on fishery products, the declining employment not only in the fishing industry itself, but in related shorebased industries, and the total disregard for the future of the species themselves."
> (Senator Stevens, Legislative History, supra at 547)

* * *

> "Meanwhile, our consumption of fish has doubled in the past 20 years, causing us to import fish in unprecedented quantities thus perpetrating any balance of payments deficit in fish products which has increased by over 318 per cent since 1960." (Congressman Biaggi (Co-sponsor), Legislative History, supra at 934)

Several provisions of section 2, reflect this broad Congressional concern. Section 2(a)(7) sets forth the following finding:

> "A national program for the development of fisheries which are underutilized or not utilized by United States fishermen, including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby." (Emphasis added.)

The specific reference is to "fishermen" and not processors. Processors are included only as a part of an interest in realizing a broad range of economic benefits for "citizens" from the Act. This finding led Congress to the declaration of purpose set forth at section 2(b)(6) as follows:

> "to encourage the development of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska." (Emphasis added.)

The reference again is to "fishermen" and not "processors." The legislative history of this section suggests that this distinction was intended. The version of this section as originally passed by the Senate stated an intent "to encourage the development of a domestic capability to harvest and process" fishery resources. The reference to processing, however, was deleted in the Senate-House Conference.

Moreover, during subsequent debate concerning bottom fish off Alaska, an interest in protecting only domestic harvesting was expressed. (Cong. Rec. S-4502; March 29, 1976.) This suggests that Congress intended to realize the broad economic benefits referred to in the legislative

history through promotion of domestic fishermen and the conservation of fishery resources.

Section 2(b)(5) is also relevant in assessing the purposes of the FCMA. It calls for the participation of the "fishing industry" as well as the States and consumer and environmental organizations in preparing, monitoring and revising the plans developed by the Regional Fishery Management Councils, as follows:

> "[One of the purposes of this Act is] to establish Regional Fishery Management Councils to prepare, monitor, and revise such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States"(Emphasis added.)

The term "fishing industry" is not defined but would include, in our view, both domestic and foreign processors. Certainly, the reference to the "fishing industry" in subdivision (A) provides no basis for establishing a preference between domestic and foreign processors.

Section 2(b)(5)(B) provides that the Regional Councils shall prepare, monitor and revise plans under circumstances "which take into account the social and economic needs of the States." The needs of the "fishing industry" are not mentioned. To the extent it can be argued that the needs of domestic fish processors are coextensive with the "social and economic needs of the States," section 2(b)(5)(B) requires that these needs be taken "into account" by Regional Councils. This section, however, does not refer to the Secretary nor does it refer to these as interests the Secretary may take into account in considering applications under section 204. Moreover, it is not at all clear that the needs of the States, consumers, and environmental organizations were viewed by Congress as being the same as the needs of domestic processors.

Section 2(c) of the FCMA, which sets forth Congressional policy, is replete with references to "conservation and management," which the prior analysis shows does not refer to on-shore fish processing activities. It also fails to articulate a policy of discriminating in favor of processors. This section provides, in pertinent

part, that it is the policy of the Congress in the FCMA:

> "(1) to maintain without change the existing territorial or other ocean jurisdiction of the United States for all purposes other than the conservation and management of fishery resources, as provided for in this Act;
>
> (2) to authorize no impediment to, or interference with, recognized legitimate uses of the high seas, except as necessary for the conservation and management of fishery resources, as provided for in this Act;
>
> (3) to assure that the national fishery conservation and management program ...involves, and is responsive to the needs of, interested and affected States and citizens...
>
> (4) to permit foreign fishing consistent with the provisions of this Act..." (Emphasis added.)

Sections 2(c)(1) and (2) clearly indicate that the U.S. assertion of jurisdiction out to 200 miles is not to be construed as an interference with recognized legitimate uses of the ocean, except as may be necessary in the interests of "conservation and management." Section 2(c)(3) again refers to the establishment of a national program for "conservation and management," and section 2(c)(4) states that foreign fishing will be permitted consistent with the provisions of the FCMA.

The effect of section 2(c)(4) upon the Secretary's discretion to determine optimum yield in a preliminary management plan was discussed in the first opinion of the Circuit Court in Maine v. Kreps, 563 F. 2nd 1043, 1049(1st Cir 1977), as follows:

> "Congress plainly did not intend the cardinal aim of the Act -- the development of a United States' controlled fishing conservation and management program designed to prevent overfishing and to rebuild depleted stocks -- to be subordinated to the interests of foreign nations. But within a framework of progress towards this goal, the Secretary is directed and empowered within specified limits to accommodate foreign fishing."

The FCMA apparently was not conceived as an assertion of an "economic zone" to be manipulated solely for the benefit of the U.S. harvesting and processing industries. For example, if maximizing potential benefits to U.S. industry by the elimination of all foreign competition were the goal of the FCMA, the Act would not have allowed foreign vessels to fish for the "surplus" of the optimum yield of the fishery. Clearly, allowing foreign vessels to fish for species which U.S. fishermen also seek, or allowing foreign fishing in a manner (e.g., trawling) which causes mortality to species U.S. fishermen seek, has an adverse effect on the U.S. catch-per-unit-of-effort. If the FCMA were truly an anti-competitive law, it would not have been designed to let foreign vessels reduce, in any way, the density or quantity of fish which U.S. fishermen seek. It would appear, therefore, that Congress deemed full utilization of fishery resources, and international comity, more important than total protection and promotion of even the harvesting sector of the U.S. industry.

The only policy statement in section 2(c) which provides a basis for a policy favoring the interests of domestic processors is the reference in section 2(c)(3) which calls for a conservation and management program which "involves, and is responsible to the needs of ...citizens." This phrase, however, cannot be viewed in isolation from the rest of the FCMA and its legislative history.

Neither the FCMA nor its legislative history directs the Secretary to restrict the access of U.S. fishermen to foreign markets so as to benefit domestic processors. Yet, this is precisely what would happen if the Secretary denied foreign vessels the opportunity to receive fish caught by U.S. fishermen. Such a result is contrary to numerous statements in the FCMA and its legislative history suggesting that the Act was intended to benefit U.S. fishermen.

As is apparent from the discussion above, the FCMA is intended to achieve certain goals ultimately benefitting all citizens (including fish processors) and the national economy. It was the belief and intention of Congress that these goals should be attained by : (1) the conservation and management of the fishery resources and (2) giving domestic fishermen preferential access to these resources.

These two principles should prevail in instances where conflicts arise. In the case in question, a potential conflict exists between the development of the fish processing industry and the market opportunities of domestic fishermen. While the FCMA does not directly address this conflict, section 2 of the Act and the Act's legislative history indicate that the harvest opportunities of domestic fishermen should be maximized to the extent consistent with the conservation and management of the fishery resources concerned. We conclude, therefore, that the FCMA does not provide the Secretary with sufficient authority to disapprove the permit applications in question on the sole ground that domestic fish processors have the intent or capacity to purchase the fish concerned.

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(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before May 19, 1978.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

APRIL 26, 1978.

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[4710-09]

DEPARTMENT OF STATE

[Public Notice 595]

FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

1978 Foreign Fishing Allocations by Nation

AGENDA ITEM II

MAY 1978

These tables show the 1978 foreign fishing allocations by nation made by the Department of State and pursuant to section 201(e) of the Fishery Conservation and Management Act of 1976. They are designed to fit the spaces indicated for such allocations in the 1978 Foreign Fishing Regulations, published in the FEDERAL REGISTER November 28, 1977 (42 FR 60681).

Except as otherwise noted, these initial allocations are retroactively effective as of January 1, 1978.

Dated: April 24, 1978.

JAMES A. STORER,
Director,
Office of Fisheries Affairs.

TABLE I.—*Northwest Atlantic foreign fishing allocations by nation, 1978*

[Metric tons]

Nation	Silver hake	Red hake	Shortfinned squid	Longfinned squid	Atlantic mackerel	River herring[1]	Butterfish	Other finfish
Bulgaria	830	20	198	19	11	5	2	430
Cuba	4,530	2,080	10	190	70	39	40	• 2,765
European Economic Community								
Federal Republic of Germany	20	20	10	500	6	2	105	225
France	20	20	1,000	10	11	5	2	425
Italy	20	20	980	1,640	28	12	345	1,080
German Democratic Republic	0	0	0	0	0	0	0	0
Japan	20	20	2,357	2,950	56	23	622	2,172
Mexico	20	20	2,000	3,000	105	44	1,263	4,076
Poland	20	20	3,275	320	38	16	67	1,474
Romania	0	0	0	0	0	0	0	0
Spain	20	20	7,000	5,000	125	52	1,053	4,886
U.S.S.R.	37,390	23,160	3,672	380	672	279	80	25,220
Reserved	2,510	2,000	3,000	5,000	78	32	421	3,047
Initial TALFF	45,400	27,400	23,500	19,000	1,200	500	4,000	46,800

[1] Includes alewife, blueback herring, and hickory shad.

TABLE II.—*Washington, Oregon, California trawl fishery: Foreign fishing allocation by nation, 1978*

[Metric tons]

Nation	Pacific hake	Jack mackerel	Flounders	Rockfishes including Pacific Ocean perch	Sablefish	Other species
Mexico	15,000	100	30	239	39	144
Poland	8,700	1,950	10	80	10	51
U.S.S.R.	50,300	1,950	50	400	50	250
Reserved	15,000	0	0	0	0	0
Initial TALFF	89,000	4,000	90	710	90	445

TABLE IV.—*Gulf of Alaska trawl fishery: Foreign fishing allocation by nation, 1978*

[Metric tons]

Nation	Pollock	Pacific Ocean perch	Other rockfishes	Flounders	Sablefish[1]	Atka mackerel	Pacific cod[2]	Squid	Other species
Japan	28,800	4,650	1,000	15,800	6,950	2,000	8,200	20	4,030
Mexico	10,000	1,596	744	100	100	100	4,000	745	2,000
Poland	3,900	630	126	100	50	1,030	350	10	395
Republic of Korea	19,870	3,203	675	100	800	100	100	20	1,535
U.S.S.R.	44,770	7,225	1,535	1,500	100	21,570	2,330	50	25,000
Reserved	10,000	1,596	0	0	0	0	4,000	745	0
Initial TALFF	117,340	18,900	4,080	17,600	8,000	24,809	16,980	1,600	12,960

[1] Central and Western Gulf of Alaska.
[2] Sable and Pacific cod are subject to revision.

TABLE V.—*Bering Sea and Aleutians Islands trawl and herring gillnet fishery: Foreign fishing allocations by nation, 1978*

[Metric tons]

Nation	Cod	Pollock	Yellowfin sole	Other flounders	Herring	Atka mackerel	Snails	Squid
Japan	38,850	792,300	63,900	83,800	2,580	2,000	3,000	9,570
Republic of Korea	100	60,000	100	100	20	100	0	50
Republic of China	50	5,000	50	50	10	100	0	10
U.S.S.R.	17,500	92,700	41,950	55,050	6,060	22,600	0	70

TABLE V.—*Bering Sea and Aleutians Islands trawl and herring gillnet fishery: Foreign fishing allocations by nation, 1978*—Con.

Nation	Cod	Pollock	Yellowfin sole	Other flounders	Herring	Atka mackerel	Snails	Squid
Reserved	0	0	0	0	0	0	0	0
Initial TALFF	56,500	950,000	106,000	139,000	8,670	24,800	3,000	10,000

	Pacific Ocean perch		Tanner crab,[1]	Sablefish		Other Species	
	Bering Sea	Aleutians	Bering Sea	Bering Sea	Aleutians	Bering Sea	Aleutians
Japan	3,100	6,200	15,000	1,870	1,170	45,415	25,900
Republic of Korea	300	700	0	200	125	2,600	1,600
Republic of China	25	50	0	65	40	240	135
U.S.S.R.	3,075	8,050	0	265	165	11,145	6,365
Reserved	0	0	0	0	0	0	0
Initial TALFF	6,500	15,000	15,000	2,400	1,500	59,600	34,000

[1]Preliminary allocation. Japan notified Mar. 4, 1978.

TABLE III.—*Western Pacific Ocean seamount groundfish fishery: foreign fishing allocation by nation, 1978*

[Metric tons]

Nation	Pelagic armorhead, alfonsins, and other groundfish
Japan	1,000
U.S.S.R.	1,000
Reserved	0
Initial TALFF	2,000

NOTE.—Foreign nations notified Feb. 8, 1978.

TABLE VI.—*Atlantic and Gulf of Mexico billfish and sharks: Foreign fishing allocations by nation, 1978*

[Metric tons]

Nation	Billfish	Sharks[1]
Cuba	0	1,000
Reserved	0	150

[1]Allocated Apr. 24, 1978.

[FR Doc. 78-11575 Filed 4-27-78; 8:45 am]

[4810-07]

[Public Notice CM-8/50]

SHIPPING COORDINATING COMMITTEE, SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

Notice of Meeting

The Working Group on Radio Communications of the Shipping Coordinating Committee's (SEC) Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 1:30 p.m. on May 18, 1978 in Room 8442 of the Department of Transportation, 400 Seventh Street S.W., Washington, D.C.

The purpose of the meeting is to prepare position documents for the Nineteenth Session of the Subcommittee on Radio Communications of the Intergovernmental Maritime Consultative Organization (IMCO) to be held in London September 4-8, 1978. In particular, the Working Group will discuss the following topics:

Code of Safety Requirements for Mobile Offshore Drilling Units.

Operational Standards for Shipboard Radio Equipment.

Operational Requirements for Emergency Position-indicating Radio Beacons and Portable Radio Apparatus for Survival Craft.

Matters resulting from the World Maritime Administrative Radio Conference, 1974, and the Work of the International Radio Consultative Committee.

Requests for further information should be directed to Lt. F. N. Wilder, United States Coast Guard (G-OTN/74), Washington, D.C. 20590, telephone 426-1345.

The Chairman will entertain comments from the public as time permits.

RICHARD K. BANK,
Chairman,
Shipping Coordinating Committee.

APRIL 24, 1978.

[FR DOC. 78-11550 Filed 4-27-78; 8:45 am]

[4810-22]

DEPARTMENT OF THE TREASURY

Office of the Secretary

TRIGGER BASE PRICES AND "EXTRAS" FOR IMPORTED STEEL MILL PRODUCTS

I am hereby announcing additional trigger base prices and "extras" for imported steel mill products. These trigger prices pertain to certain steel wire, barbed wire and cold finished bars, rails and alloys. The Treasury Department will use these trigger prices to monitor imports of basic steel mill products in connection with the "trigger price mechanism." A description of the trigger price mechanism may be found in the "Background to the final rulemaking which amended regulations to require the filing of a Special Summary Steel Invoice (SSSI) with all entries of imported steel mill products (43 FR 6065).

These base prices and extras are based upon evidence made available to the Treasury Department by the Japanese Ministry of International Trade and Industry (MITI), as well as other information available to the Department. The methodology used in developing these trigger prices is essentially the same as that described in the FEDERAL REGISTER notice of January 9, 1978 (43 FR 1464). However, these trigger prices are based upon the production costs of the smaller Japanese fabricating mills, rather than the six integrated Japanese steel mills.

The trigger prices being announced today will be used by the Customs Service to collect information at the time of entry on all shipments of the products covered which are exported after the date of publication of this notice. However, the following rules will be applied to entries of these products covered by contracts with fixed price terms concluded before the publication date of this notice:

1. Contracts with fixed price terms between unrelated parties: If the importer documents at or before the time of entry that the shipment is being imported under such a contract with an unrelated party, the entry will not trigger an investigation even if the sales price is below the trigger price, provided that entry is made on or before June 30, 1978. However, failure to initiate an investigation will not diminish the right of affected interested persons to file a complaint with respect to such imports under the established procedures for antidumping cases.

2. Contracts between related parties: If the importer documents at the time of entry that the shipment is being imported under a contract with a related party and the shipment is to be resold to an unrelated purchaser in the United States under a contract with fixed price terms concluded