from Meacham
pm 1/27

Attachment #13

NPFC/ID #1

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

360 K STREET — SUITE 105
ANCHORAGE 99501

January 25, 1977

Mr. Charles H. Meacham
Director
International Fisheries and
External Affairs
Office of the Governor
Pouch A, State Capitol Building
Juneau, Alaska 99811

Dear Mr. Meacham:

You have requested the opinion of this Department as to whether the 1953 convention for the high seas fisheries of the North Pacific Ocean between the United States, Canada, and Japan conforms to the Fishery Conservation and Management Act of 1976 (FCMA) or whether, in the alternative, the convention must be renegotiated pursuant to §202(b) of the Act.

Section 202(b) of the FCMA provides:

> (b) TREATY RENEGOTIATION. -- The Secretary of State, in cooperation with the Secretary, shall initiate, promptly after the date of enactment of this Act, the renegotiation of any treaty which pertains to fishing within the fishery conservation zone * * * and which is <u>in any manner</u> inconsistent with the purposes, policy, or provisions of this Act, in order to conform such treaty to such purposes, policy, and provisions. It is the sense of Congress that the United States shall withdraw from any such treaty, in accordance with its provisions, if such treaty is not renegotiated within a reasonable period of time after such date of enactment. [Emphasis added]

By using the underscored words, it would appear the Congress intended that a treaty be renegotiated unless it strictly conforms to the provisions of the FCMA, including its "purposes" and "policy".

There appear to be numerous instances in which the convention does not conform with the FCMA. However, we understand that your major

concern is with salmon. Consequently, we have listed below what, in our assessment, are several of the major conflicts between the FCMA and the convention with respect to salmon resources.

1. Article IV(1)(b)(ii) of the convention indicates that the management direction is to obtain a maximum sustained yield of fisheries resources subject to the convention. The FCMA, on the other hand, specifies that fisheries will be managed on the basis of optimum yield. The definition of "optimum" in §3(18) of the FCMA indicates that there is a substantial difference between these two terms.

2. Section 102(2) of the FCMA places salmon under the exclusive fishery management authority of the United States throughout their migratory range. The convention does not recognize this concept, and in fact operates against it.

3. Article II of the convention sets forth procedures to be followed with respect to the development of positions and recommendations for management measures. The mention of hearings and advisory committees indicates that it is expected the public will be involved to some degree in the decisionmaking process. However, the convention hardly contains the detailed mandate for public involvement found in the FCMA, which establishes regional fishery management councils and a lengthy procedure for the adoption of management plans and regulations.

4. Section 2(a)(3) of the FCMA states that "[i]nternational fishery agreements have not been effective in preventing or terminating the overfishing of * * * valuable fishery resources." One of the principal purposes in establishing the convention was to eliminate high seas fishing of salmon of North American origin by Japan; this has not been accomplished. It is a fair assumption that the Congress had this convention in mind (among others) when it inserted the provision in the FCMA on renegotiation of treaties.

5. The convention operates to permit foreign nationals to engage in fishing for salmon which would otherwise be subject to the exclusive fishery management authority of the United States under the FCMA. The FCMA, in §201(d), makes available for foreign harvest only that portion of the optimum yield of a resource which is in excess of the needs of US vessels. Were the convention not in effect, the absence of any surplus of salmon of Alaskan origin would mean that, under the terms of the FCMA, no salmon would be available for allocation to foreign nationals. Consequently, the FCMA would prohibit any high seas fishing by Japan for salmon subject to the exclusive fishery management authority of the United States.

6. The convention provides that prosecution and punishment of violators will be undertaken by the country of the offending party. The FCMA does not impose any duty upon the United States to deliver a violator to his country of origin for trial; rather, complete

enforcement authority is vested in the United States.

In view of the foregoing, it is our opinion that the convention must be renegotiated pursuant to §202(b) of the Fishery Conservation and Management Act of 1976.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Jeff Haynes
Jeff Haynes
Assistant Attorney General

THE SEAL OF THE STATE OF ALASKA