

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 preservation of halibut between the United States and Canada conforms to the Fishery Conservation and Management Act of 1976 or whether, in the alternative, the convention must be renegotiated pursuant to §202(b) of the Act. For the reasons set out below, it is our view that the convention must be renegotiated.

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 in any manner 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".

MEMORANDUM FOR THE RECORD

Subject: [Illegible]
Reference: [Illegible]

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The following constitutes at least a partial list of the instances in which the convention, in our assessment, is not in accord with the FCMA.

1. Article I of the convention contains an express direction that halibut be managed under the principle of maximum sustained yield. In numerous sections of the FCMA (the most applicable of which is § 201(d)), the Congress has directed that fisheries be managed to obtain an optimum yield. The definition of "optimum" in §3(18) of the FCMA indicates that these terms are by no means synonymous.
2. The convention sets forth a procedure for the adoption of conservation and management regulations. There is no provision for emergency regulations, however, and we understand that this has led to difficulties in the past. The FCMA does permit the adoption of emergency regulations under §305(e) to respond to a management crisis, and this is generally considered to be an essential administrative option.
3. Article III(f) of the convention authorizes regulations fixing the "size and character" of fishing appliances, but does not permit control of the quantity of gear employed by each vessel. Section 303(b)(4) of the FCMA expressly allows this important measure to be implemented. Similarly, the convention makes no provision for limitation of access into the halibut fishery; this is sanctioned by the FCMA in §303(b)(6).
4. The convention operates to permit foreign nationals to engage in fishing for resources which would otherwise be subject to the exclusive fishery management jurisdiction of the United States. 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. The current status of halibut stocks adjacent to Alaska would appear to indicate the absence of any such excess.
5. While regulations have been adopted under the convention respecting sport fishing, the convention itself is directed at controlling the impact of commercial fishing. The convention does not have as a stated purpose "to promote domestic commercial and recreational fishing" as does the FCMA in §2(b)(3). Therefore, the management emphasis of the two is not the same.
6. Article II of the convention provides that prosecution and punishment of violators will be undertaken by the country of the offending party. The FCMA permits the United States to take necessary judicial action against a violator regardless of his nationality.
7. The stated purposes of the FCMA, which are reinforced by the provisions dealing with the contents of management plans, demonstrate

The following provisions are proposed to be included in the Convention which will be adopted in our agreement. It is not intended to be a complete list of the provisions of the Convention.

1. Article I of the Convention contains an explicit statement that the Convention is intended to be a permanent and exclusive arrangement for the management of the fisheries of the United States and Alaska. It also states that the Convention is intended to be a permanent and exclusive arrangement for the management of the fisheries of the United States and Alaska.

2. The Convention shall provide for the establishment of a permanent and exclusive arrangement for the management of the fisheries of the United States and Alaska. It shall also provide for the establishment of a permanent and exclusive arrangement for the management of the fisheries of the United States and Alaska.

3. Article III of the Convention shall provide for the establishment of a permanent and exclusive arrangement for the management of the fisheries of the United States and Alaska. It shall also provide for the establishment of a permanent and exclusive arrangement for the management of the fisheries of the United States and Alaska.

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5. While negotiations have been entered under the Convention, the Convention shall provide for the establishment of a permanent and exclusive arrangement for the management of the fisheries of the United States and Alaska. It shall also provide for the establishment of a permanent and exclusive arrangement for the management of the fisheries of the United States and Alaska.

6. Article IV of the Convention shall provide for the establishment of a permanent and exclusive arrangement for the management of the fisheries of the United States and Alaska. It shall also provide for the establishment of a permanent and exclusive arrangement for the management of the fisheries of the United States and Alaska.

7. The Convention shall provide for the establishment of a permanent and exclusive arrangement for the management of the fisheries of the United States and Alaska. It shall also provide for the establishment of a permanent and exclusive arrangement for the management of the fisheries of the United States and Alaska.

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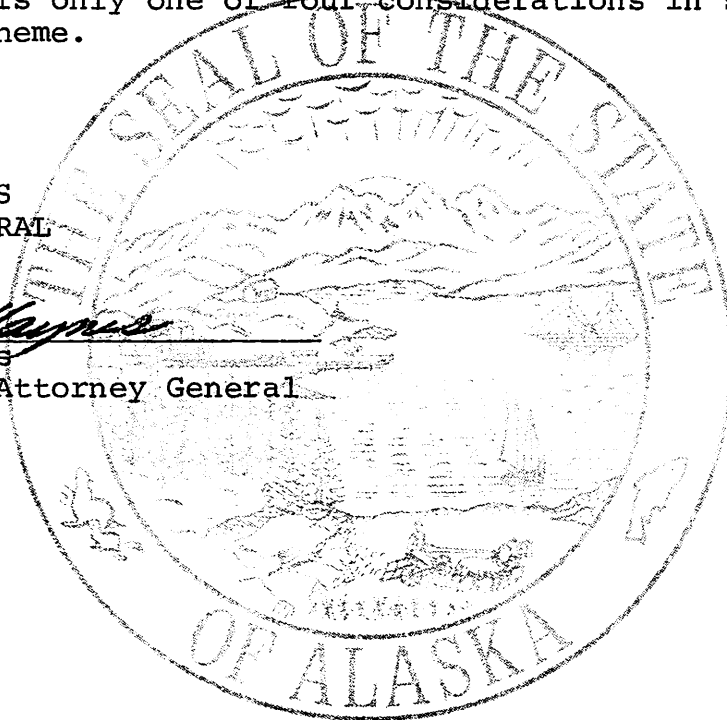
the high priority placed by Congress on obtaining comprehensive and effective management and protection of valuable living marine resources. For several reasons, the convention does not appear to possess the machinery to meet this management goal. First, the maximum sustained yield directive has contributed at least partially to overfishing of halibut stocks. Second, the convention does not permit control of either directed or incidental fisheries conducted by nonparties which impact halibut stocks. Third, the authority vested in the convention for the high seas fisheries of the North Pacific Ocean pervades that of the halibut convention in the eastern Bering Sea. Fourth, the convention does not mandate comprehensive management plans developed in accordance with specified standards and accompanied by thorough public involvement, as does the FCMA.

8. Finally, by its existence, the convention in effect recognizes traditional fishing rights of Canadians in halibut stocks which would otherwise reside strictly within the jurisdiction and authority of the United States. While the United States would not be prohibited from allocating some halibut to Canada if the necessary prerequisites were met, §201(e) of the FCMA provides that traditional participation in a fishery is only one of four considerations in selecting an allocation scheme.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Jeff Haynes
Jeff Haynes
Assistant Attorney General



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA
vs.
JAMES EARL RAY

Defendant

Memorandum Opinion

On July 1, 1968, the Court received a motion for summary judgment filed by the United States of America. The motion is based on the fact that the defendant, James Earl Ray, has admitted to the crime of which he is charged. The Court has reviewed the facts and the law and finds that summary judgment should be granted to the United States of America.

THE COURT

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