

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director



DATE: June 17, 1988

SUBJECT: Legislative Update

ACTION REQUIRED

Information only.

BACKGROUND

Since the last Council meeting Congress has been very active on a few select issues concerning the fishing industry. The Marine Mammal Protection Act has received considerable attention recently but is covered under a separate agenda item (C-2). Other Congressional actions of interest are:

A. Vessel Safety

On April 14, 1988 the House Merchant Marine and Fisheries Committee marked up H.R. 1841, the Commercial Fishing Industry Vessel Safety and Compensation Act of 1987. Title I of the bill concerns claims and compensation for temporary injury to crew members on harvesting, processing and tender vessels and Title II establishes safety requirements for such vessels. An outline of the bill follows.

TITLE I.

1. Seamen suffering a temporary injury on harvesting, processing or tender vessels must be compensated as follows:
 - (a) For each day during the compensation period the vessel is on a voyage, the greater of 66-2/3% of the wages or share the seaman would have otherwise received or \$30, plus
 - (b) \$30 a day for each day during the compensation period the vessel is not on a voyage.
2. Compensation will start on the day of the injury and last until the seaman could return to the vessel, the date a medical determination is made that the seaman cannot return to the vessel within 150 days of the date of the injury, or 150 days after the date of the injury, whichever is earlier.

3. An injured seaman must notify the vessel owner or operator in writing within 14 days of the injury. Failure to provide this notice would bar legal action to recover compensation.
4. Refusal to submit to a medical exam requested by a crew member's employer would disqualify that crew member from receiving the compensation provided for in the legislation.
5. No legal action for compensation may be brought against a crew member's employer for a temporary injury that is compensated under the legislation and is not a permanent injury. A crew member may still sue for losses due to permanent injury, injuries caused by gross negligence or willful misconduct or for failure by his employer to provide medical care (cure).
6. If an employer fails to provide compensation for a temporary injury as required by the legislation, the injured crew member may sue for twice the amount of compensation due plus the cost of bringing the action and attorney's fees.

TITLE II.

1. Harvesting, processing and tender vessels must be equipped with:
 - (a) Fire extinguishers rated for fuel fires,
 - (b) at least one life preserver or other life saving device for each person on board,
 - (c) flame arrestors or backfire tracks on inboard gasoline engines,
 - (d) vented engine and fuel tank compartments and,
 - (e) Visual distress signals.
2. Documented vessels must also carry:
 - (a) EPIRBs,
 - (b) lifeboats or life rafts,
 - (c) survival suits for all on board (required for vessels operating in the Atlantic north of 32°N latitude or south of 32°S latitude and vessels operating in other waters north of 35°N latitude or south of 35° south latitude),
 - (d) radio equipment sufficient to communicate with the Coast Guard,
 - (e) navigational equipment, and
 - (f) first-aid supplies.
3. Vessels built after December 31, 1988 that have crews larger than 16 must also carry:
 - (a) Radars and fathometers,
 - (b) lifesaving equipment, survival suits, signaling devices, bilge pumps and bilge alarms, and
 - (c) fire protection and fire fighting equipment.

4. Vessels less than 36 feet in length and not operating on the high seas are exempt from the life raft requirement.
5. The Secretary of Transportation must promulgate regulations regarding the operating stability of documenting harvesting, processing and tender vessels built, or converted, after December 31, 1988.
6. Processing vessels must be certified to be in compliance with survey and classification requirements established by the American Bureau of Shipping. This provision may be modified by a floor amendment.
7. A 17-member Commercial Fishing Industry Vessel Advisory Committee is created to advise the Secretary of Transportation on marine insurance and vessel safety issues.
8. Within two years of the legislation's enactment, the Secretary of Transportation must submit a plan to Congress for the licensing of operators of fishing, processing and tender vessels.
9. Before January 1, 1990 the National Academy of Engineers, in consultation with the Secretary of Transportation, the National Transportation Safety Board and the Commercial Fishing Industry Vessel Advisory Committee must prepare a study of safety problems on fishing, processing and tender vessels and recommend whether to implement a vessel inspection program.

H.R. 1841 is scheduled for floor action in the House on June 27, 1988; however, only Title II may be brought to the floor because of opposition to Title I by trial lawyers. No action is currently scheduled for the Senate's safety and compensation legislation, S. 849.

B. Fishing Gear Stowage and Check-in/Check-out Requirement for Foreign Vessels

On May 3, 1988 Representative Bonker introduced H.R. 4512, a bill to amend the Magnuson Fishery Conservation and Management Act to provide for more effective enforcement of restrictions on foreign fishing. The bill attempts to resolve the problem of illegal foreign fishing in the EEZ by vessels fishing in the "donut" or crossing the EEZ to and from the donut. Key provisions of the bill are:

- (1) Any foreign vessel with a permit issued under the MFCMA must stow its fishing gear below decks while transiting the U.S. EEZ.
- (2) The Secretary of State must negotiate with GIFA nations to include a gear stowage provision in each GIFA. This inclusion would apply the stowage requirement to all fishing vessels from a GIFA country. GIFAs must also be modified to include a requirement that a foreign country's fishing vessels notify the Coast Guard by radio before entering or leaving the U.S. EEZ to provide vessel identity and contents.

- (3) If, within six months of the bill's enactment a nation has not agreed to amend its GIFA to include the gear stowage and radio check-in/ check-out requirements, its fishing fees will be increased and it will be certified under the Pelly Amendment to the Fishermen's Protective Act. Importation into the U.S. of fishery products from a nation certified under Pelly may be prohibited.
- (4) A fishery enforcement fund is to be established in the Department of the Treasury. All fines collected under the MFCMA for foreign fishing violations would go into this account as supplemental funding for Coast Guard enforcement.

Although Representative Bonker has requested a hearing by the Fish and Wildlife Subcommittee on H.R. 4512, no action has been scheduled. There is some interest within NOAA/NMFS in imposing a gear stowage requirement by way of regulation and Draft Rules may be circulated in the near future.

In a related matter, the Fisheries Agency of Japan issued a formal notice to all Japanese trawlers operating in the North Pacific to cover their fishing gear with canvas while transiting the U.S. EEZ. Additionally, the vessels are to be equipped with a naval navigation satellite system, to keep contact position records during fishing trips and are to submit these records to the Agency when they return to port.

C. U.S.-U.S.S.R. Comprehensive Fisheries Agreement

The comprehensive fisheries agreement signed in Moscow on May 31, 1988 is to be implemented as a GIFA. Consequently, it is subject to a 60-day Congressional review before it may become effective.

The agreement has not yet been transmitted to the House and Senate. Unless it is received by Congress: there may not be 60 calendar days of continuous session left in this Congress since the House has an adjournment target of October 5 and the Senate, a date of October 9. Congress may, therefore, take affirmative action after transmittal by adopting a joint resolution giving effect to the agreement. Meanwhile, the existing Soviet GIFA and the Interim Access Agreement signed last February are still in effect.

D. Anti-Fouling Paint

On May 24, 1988 the House passed and sent to the President the Senate-amended version of H.R. 2210 which prohibits the use of anti-fouling paint containing organotin. Organotin leaching from anti-fouling paint has proven to be very toxic to marine and freshwater organisms.

E. Budgets

During their visit to Washington, DC last month the Alaska-Pacific Northwest industry delegation discussed possible budget increases for North Pacific and Pacific Councils, the Coast Guard, PacFIN, and NMFS. Currently the Council and NMFS funding proposed for FY 1989 is at the FY 1988 level without the Graham-Rudmann reductions; however, the budget process is ongoing and some additions to the 1988 base may still be made. The Coast Guard budget is in somewhat better condition. By mid- to late summer the Coast Guard should

receive \$60 million in supplemental funding for the current fiscal year and funding for next year should be at least at the 1988 level before reductions. Attached [C-1(a)] is a listing of the additions suggested by the delegation and letters from Senators Adams, Evans and Murkowski supporting the increases. Two recent actions by the Reagan Administration that are of interest to the Council are described below.

F. Bering Sea Fishermen's Association Petition for Regulations

At the January 18-22, 1988 meeting the Council voted to support a petition from the Bering Sea Fishermen's Association that the Secretary of Commerce implement regulations establishing procedures for the enforcement of the MFCMA in the international waters of the North Pacific Ocean and Bering Sea. The petition focused on the interception of U.S.-origin herring and salmon stocks outside the EEZ. The petition was denied on June 16, 1988. The draft Federal Register notice setting out the reasons for the denial is attached [C-1(b)]

G. Extension of Territorial Sea

An interagency working group has been formed by the Reagan Administration to consider the extension of the outer boundary of the U.S. territorial sea to 12 nautical miles. The extension is to be made by Presidential Proclamation in early September. The proclamation will state that the extension is for national security and foreign relations purposes. The proclamation will also state that it is not intended to change federal/state relationships regarding legal authority in the territorial sea; however, that issue will probably be, eventually, decided by Congress. The assertion of a 12-mile territorial sea is the majority position. Currently only 13 nations still have 3-mile territorial seas.

Fiscal 1989 Budget Additions to 1988 Base	\$ M
North Pacific and Pacific Councils	.250
Bering Sea Groundfish Research Includes Donut Pollock and Foreign Survey replacement	3.100
Domestic Observer Program Includes Marine Mammal Program	2.500
West Coast Groundfish Research	1.450
NMFS Alaska, Northwest, and Southwest Regions Fishery management and enforcement	.800
PacFIN	1.115
Pacific Salmon Treaty	.939
Columbia River Hatcheries	2.111
Total NMFS	12.264

COMMITTEES:
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INDIAN AFFAIRS
INTELLIGENCE

United States Senate

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June 8, 1988

The Honorable Ernest F. Hollings
Chairman
Subcommittee on Commerce, Justice, State,
the Judiciary and Related Agencies
Senate Committee on Appropriations
146 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Fritz:

I am writing to lend my strong support to requests for full funding of various fisheries programs in FY 1989. Commercial fisheries contribute approximately \$17 billion annually to the GNP, and are vital to the welfare of many coastal states, including my own.

I want to focus on four areas in particular. First is funding for continued implementation of programs required by the U.S.-Canada Pacific Salmon Treaty. The treaty is a hard-won, vital element in maintaining and restoring valued Pacific salmon runs. FY 89 funding of \$7.168 million for the Department of Commerce and \$2.326 million for the State Department will ensure that the necessary activities can be undertaken during the coming year.

Second on the list is the Pacific Fisheries Information Network, known as PacFIN. This is a data collection and analysis network built upon cooperation among existing state systems, and as such, is extraordinarily cost-effective. It has been operated with grant monies in the past, but this source is drying up, and a new, stable source of continued funding is needed. During FY 89, the required PacFIN funding level is \$1.115 million.

Third is funding for general Federal fisheries management and research programs. Pacific Northwest and Alaska domestic fisheries, especially those in the Gulf of Alaska and the Bering Sea, are rapidly developing and undergoing a consequential need for more concentrated effort by Federal agencies. In particular, there is a tremendous need for increased research on Bering Sea groundfish and for the creation of a reliable domestic observer program. Funding at the following levels is needed: a) Bering

The Honorable Ernest F. Hollings
June 8, 1988

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Sea Groundfish Research -- \$3.1 million; b) Domestic Observer Program -- \$2.5 million; c) North Pacific and Pacific Fishery Management Councils -- \$250,000; d) National Marine Fisheries Service Alaska, Northwest and Southwest regional funding for fishery management and enforcement -- \$800,000; and, e) West Coast Groundfish Research -- \$1.45 million.

Finally, I want to call your attention to the need for continuing the Columbia River Fisheries Development Program, which provides for hatchery operations and research, and for work on fish passage through the many man-made barriers on the Columbia system. This program is also a key U.S. contribution to our obligations under the U.S. Canada Salmon Treaty. A total of \$15.2 million is needed for this program in FY 89.

These are all important matters, and while I recognize it is difficult to satisfy all requests, I strongly urge your support for these in particular. Thank you for your consideration.

Sincerely,


Frank H. Murkowski
United States Senator

Thank you!

United States Senate

WASHINGTON, D.C. 20510

June 2, 1988

The Honorable Ernest F. Hollings
Chairman

Appropriations Subcommittee on Commerce, Justice, State, the
Judiciary and Related Agencies
146 Dirksen
Washington DC 20510

Dear Fritz:

It is our understanding that the Subcommittee on Commerce, Justice, State, and the Judiciary will soon be considering appropriations requests for FY 1989. Outlined in this letter are a few items of great importance to our state that we would like to call to the Subcommittee's attention. We would greatly appreciate your consideration of these items for inclusion in the FY 1989 appropriations bill.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

PacFIN FUNDING

PacFIN is a cooperative marine fish data collection analysis and monitoring system built on existing state systems to meet federal management obligations. This system is crucial to effective implementation of the Pacific Fishery Management Council's Fishery Management Plans for both groundfish and salmon.

Since its inception, PacFIN has been funded by programmatic grants to the Regional Management Councils and by ad hoc monies from NMFS. These sources are expected to be at minimal levels by FY 1989. A stable, adequate source of funding is required to maintain the FMP's. Without such funding, federal fish management will be significantly impaired. Our request for FY 1989 is \$1.115 million.

COLUMBIA RIVER FISHERIES DEVELOPMENT PROGRAM

The Columbia River Fisheries Development Program was mandated by the Mitchell Act in 1938 (P.L. 77-502). The Mitchell Act directs the Federal Government to mitigate the impacts of the federal hydroelectric projects built on the Columbia River. This program has provided funds for fish passage facilities, hatchery research and the operation of 24 hatcheries in Washington and Oregon. We also strongly believe these hatcheries are required to meet U.S. obligations under the U.S. Canada Pacific Salmon Treaty.

We ask that \$15.2 million be made available for this program in FY 1989. This request includes costs for operations and routine

maintenance, and reflects an increase for long-needed rehabilitation capital improvements.

PACIFIC SALMON TREATY FUNDING

Funding for the Pacific Salmon Treaty supports the management of salmon stocks harvested under the terms of the U.S./Canada Treaty. These funds are for fact-finding programs conducted jointly by the state, Indian tribes, and the federal government, and are essential to the success of this treaty.

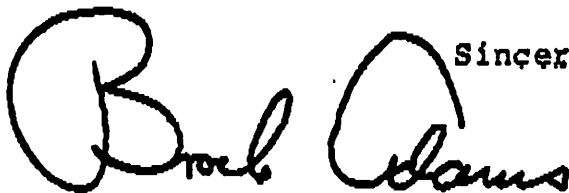
We ask that \$7.168 million be made available for Commerce Department activities under this treaty, and that \$2.326 million be made available for State Department activities. These figures represent modest increases in the amounts appropriated by Congress for FY 1988.

FISHERIES RESEARCH AND MANAGEMENT PROGRAMS

Proper federal management of the fisheries resource off of the coasts of Washington and Oregon, and in the gulf of Alaska and the Bering Sea is vitally important to the fishing industry in Washington state. We are therefore asking that additional funds be made available to the federal management and scientific programs listed below. The amounts given reflect recommended increases over the FY 88 baseline.

1. North Pacific and Pacific Fishery Management Councils - \$250,000
2. Bering Sea Groundfish Research (includes research on pollock stocks in the "Donut Hole") - \$3.1 million
3. Domestic Observer Program (includes possible increases in observers required by possible amendments to the Marine Mammal Protection Act) - \$2.5 million
4. West Coast Groundfish Research - \$1.45 million
5. NMFS Alaska, Northwest, and Southwest Regions - Fishery Management and Enforcement - \$800,000.

Thank you for your consideration of these requests.

 Sincerely,

Brock Adams
United States Senator



Daniel T. Evans
United States Senator

AGENDA C-1(b)
JUNE 1988

Billing Code 3510-22

DEPARTMENT OF COMMERCE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

50 CFR 611

[Docket No. 80520-8120]

Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), NOAA,
Commerce.ACTION: Notice of decision on petition for rulemaking; Bering
Sea Fishermen's Association

SUMMARY: NOAA publishes notice of its decision on a petition for rulemaking submitted by the Bering Sea Fishermen's Association. The notice summarizes the comments received and NOAA's decision not to undertake the rulemaking requested by the petition at this time. The agency continues to work to develop a comprehensive solution to address issues relating to the harvest of U.S. exclusive economic zone (EEZ) resources from waters beyond the EEZ.

Background: NOAA published a notice of receipt of a petition for rulemaking submitted by the Bering Sea Fishermen's Association on November 5, 1987 (52 FR 42469). The petition asked the United

States Department of Commerce, pursuant to the Magnuson Fishery Conservation and Management Act, (Magnuson Act) 16 U.S.C. 1801 et seq. to adopt a rule prohibiting foreign fishing for anadromous species of U.S. origin in the international waters of the North Pacific Ocean and the Bering Sea. The rule submitted provided for observer coverage and a permit system for any fishing for anadromous species outside the EEZ. Petitioners also proposed that foreign fishing for anadromous species be defined to include fishing by a foreign fishing vessel for squid, pollock, and other nonanadromous species in the international waters of the North Pacific Ocean and Bering Sea at times of the year and with gear that can reasonably be expected to result in the taking of anadromous species. The notice provided a 60-day comment period. NOAA extended the comment period on the petition for rulemaking at 52 FR 49464 (December 31, 1987), until February 29, 1988, at the request of the North Pacific Fishery Management Council.

Eight comments were received. These were from the Governor of Alaska; the U.S. Coast Guard; the Department of State; the American High Seas Fisheries Association; Garvey, Schubert and Barer (on behalf of the Japan Fisheries Association); Professor William T. Burke; Harold Sparck and Associates; and the North Pacific Fishery Management Council. The majority of comments opposed issuing a rule in response to the petition and are summarized as follows: The Secretary has no jurisdiction to

regulate foreign fisheries for nonanadromous species beyond the U.S. EEZ; it is difficult to determine the country of origin of each anadromous fish; far-reaching questions of international law must be considered in relation to U.S. enforcement authority beyond the EEZ; the suggested regulation is in conflict with Article 66 of the United Nations Law of the Sea Treaty (UNCLOS); insufficient scientific information is available to support the requested rule; the petition relies on an improper interpretation of the Magnuson Act; and the suggested action is inconsistent with the Secretary's interpretation of the Magnuson Act that the foreign catch of species fully utilized by the domestic industry be minimized, but not prohibited. Three comments favored the petition for rulemaking and are summarized as follows: The suggested rule would greatly reduce high seas interception of Alaska salmon and steelhead and provide for better enforcement; and it would prevent foreign fleets from fishing on stocks of U.S.-origin anadromous fish.

Discussion: NOAA has considered the petition and comments in conjunction with other issues relating to the management of U.S. resources taken in foreign fisheries conducted beyond the EEZ. For the time being, NOAA has decided not to undertake the requested rulemaking for the following reasons: (1) NOAA is unable to address satisfactorily the practical considerations relating to enforcement of the action proposed. NOAA continues to examine the available science, as well as U.S. boarding

authority and sanctions, in the context of enforcing salmon interception prohibitions beyond the EEZ. While scientific knowledge about salmon is considerable, it is far from complete. It is difficult to prove that U.S. salmon are illegally aboard a vessel because the current scientific methodologies do not permit reliable identification of individual salmon as U.S.-origin fish. The principal methods used for tracing stocks of salmon are area tagging, scale pattern analyses, and electrophoretic separation of proteins. These procedures are generally accepted by the scientific community as capable of indicating the origin of salmon stocks. However, each method is subject to challenge when applied in enforcement actions. Scale pattern analyses do not guarantee accurate results as the method is subject to the individual interpretations and differing opinions of the analysts. Further, the scale pattern data base does not include samples for all age groups and from all geographical areas, and is therefore subject to some degree of uncertainty. Electrophoretic analysis involves a chromatographic separation procedure where amino acids from a fish are separated on a gel plate and analyzed. To provide valid results, samples must be preserved at very low temperatures (-60° to -80° c) to avoid degradation. Consequently, application of this method to fish preserved in normal freezer boxes may provide inaccurate results. While tagging provides irrefutable evidence as to the origin of an individual fish, very few fish are tagged. Other identification techniques, such as mitochondrial DNA analysis and

FTIR analysis of scales, are still under development. None of the methods mentioned, excluding tagging, are equally effective for all species; moreover, all are time-consuming, require special equipment and training, and are therefore done only in shore-based laboratories. Further, reliability of the determinations varies statistically by technique, species, and individual sample. While the continent of origin can be readily determined, differentiating between U.S. and Canadian fish is difficult, and the distribution of intermingling stocks of North American and Asian stocks further complicates the situation. In the areas of overlap there is no meaningful way to predict proportions of fish that will be encountered because numerous factors (strength of a year group, weather patterns, ocean temperatures, etc.) influence migration. Analytic techniques used to determine country of origin require a stable laboratory environment to be accurate; at-sea testing is not yet technologically feasible. Consequently, identifying precise areas and times when U.S.-origin salmon are certain to be present, as suggested by the petition, is not currently possible.

(2) NOAA recognizes that under the Magnuson Act, the United States has jurisdiction over U.S.-origin salmon beyond the EEZ except when they are found within the EEZ of another nation. The United Nations Convention on the Law of the Sea (UNCLOS) also provides that states in whose rivers anadromous stocks originate shall have the primary interest in, and responsibility for, such

stocks. Though the U.S. government did not sign the UNCLOS, the President has stated the U.S. intention to accept and act in accordance with its provisions relating to traditional uses of the oceans, which generally confirm existing law and practice. The U.S. Department of State (DOS) further confirms that U.S. policy is to exercise jurisdiction over anadromous fish consistent with Article 66 of UNCLOS. In pertinent part, article 66 provides that "Enforcement of regulations regarding anadromous stocks beyond the exclusive economic zone shall be by agreement between the state of origin and other states concerned." In accord with Article 66, and U.S. policy, NOAA is working with the DOS to ensure effective flag state enforcement of U.S. regulations governing U.S.-origin anadromous stocks beyond the U.S. EEZ.

The United States is currently working to develop a fishery management regime for fisheries beyond the EEZ that will protect the long-term viability of all Bering Sea resources, including anadromous species, and provide for the collection of reliable scientific information on conservation of those resources. To this end, (a) NOAA published on April 25, 1988, (53 FR 13410) an emergency rule changing the definition of fish to include fish taken outside the EEZ; (b) NOAA published on April 25, 1988 (53 FR 13422) an advance notice of proposed rulemaking seeking comments on options to respond to illegal fishing in the U.S. EEZ of the Bering Sea, as well as the possibility of harvests in

adjacent areas that threaten U.S. stocks; (c) NOAA has met and will continue to meet with the Soviet Union (whose waters adjoin our EEZ) to discuss joint concerns over the Central Bering Sea; (d) NOAA will also be meeting with the Japanese during the summer of 1988 to discuss a variety of fisheries enforcement issues in the Bering Sea (including illegal harvests of salmon); and (e) the United States and the Soviet Union have agreed to invite scientists from concerned countries to a scientific symposium during the summer of 1988 to address the conservation requirements of Bering Sea fishery resources; and (f) NOAA is working with the DOS, the U.S. Coast Guard, and other Federal agencies to seek greater information about unregulated driftnet fishing activities beyond our EEZ that may be adversely affecting U.S. marine resources. The newly enacted Driftnet Impact Monitoring, Assessment, and Control Act of 1987 provides the means for the United States to enter into monitoring and enforcement agreements with foreign nations regarding driftnet fishing which results in the taking of U.S. marine resources, including salmon, on the high seas. NOAA recently asked the DOS to immediately initiate negotiations with concerned Asian countries on these issues.

In view of the above, NOAA believes it would be premature to promulgate a rule responding to the petition submitted by the Bering Sea Fishermen's association. NOAA will continue to work with the DOS to arrive at long-term solutions to international

fishery issues that bear upon the protection of U.S.-origin anadromous species in the Bering Sea. The agency has concluded that undertaking the rulemaking suggested by the petitioner at this time is likely to compromise these ongoing efforts while offering little in the way of actual stock protection due to the inherent practical difficulties of enforcement. NOAA chooses to continue efforts to establish a comprehensive management regime applicable to all resources in the Central Bering Sea and the North Pacific Ocean. These efforts are intended to produce better scientific information and techniques to ensure the long term viability of U.S.-origin anadromous fish.

Dated:
