


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke   
Executive Director

DATE: June 18, 1992

SUBJECT: International Fisheries

**ACTION REQUIRED**

- (a) Report on regulations proposed to monitor influx of fish products originating in the Russian EEZ.
- (b) NOAA-GC report on Sen. Stevens' proposal to restrict U.S. operations if affiliated with foreign operations in the Donut Hole. Take action as appropriate.
- (c) Status report on establishing permit conditions disallowing U.S. vessels from fishing in the Donut.

**BACKGROUND**

Monitoring the influx of fish products from the Russian EEZ

Last January the Council heard concerns from industry over the influx of halibut and other fisheries products from the Russian EEZ. U.S. vessels are legally operating in the Russian territorial waters and returning their catch to U.S. ports. U.S. regulations would prohibit such catches in U.S. waters, but do not restrict the current practice. NMFS advised it was developing regulations to monitor landings. They would include check-in/check-out procedures, reporting requirements, and requiring returning vessels to offload prior to fishing in the U.S. EEZ. The regulations would pertain not only to halibut, but also to landings of other species. The Council wrote to the Secretary encouraging approval of regulations as quickly as possible, by emergency action if necessary. A final rule should be published soon under the Foreign Affairs exemption.

In related action, NMFS also is developing rules that will require vessels that have fished beyond our EEZ to offload prohibited species such as crab, halibut, salmon and herring before fishing in the U.S. EEZ. Another rule will make it illegal to land halibut under 32 inches, regardless of origin.

Copies of the above proposed rules will be available in your supplemental folders.

### Restrictions on U.S. operations affiliated with foreign operators in the Donut Hole

Last September the Council asked NOAA General Counsel to investigate the legal issues involved in developing regulations and permit conditions that would prohibit any vessel or processing facility from participating in fisheries under the Council's jurisdiction if they were affiliated with foreign operations in the Donut Hole.

In January, NOAA-GC gave a preliminary opinion that the Secretary could implement such regulations, however, they would be difficult to enforce because there is little information on foreign investment, and therefore, enforcement could be a problem. She suggested that the Council would not need to take further action other than asking the Secretary to proceed with such regulations. A final opinion from NOAA GCAK is under C-4(a) .

### Permit Restrictions on U.S. Vessels in the Donut Hole

In December the Council approved proposed regulations drafted by NOAA GC that will require any vessel owner or operator who applies for a federal groundfish permit to agree that the vessel will not be used to fish in the Donut during the fishing year. The Council requested the Secretary to expedite these permit restrictions to be effective early in 1992.

In January NMFS reported that regulations were in process to modify federal fishing permits that would make it illegal to fish in the Donut by federally permitted vessels. It would also be illegal for any vessel fishing in the Donut without a permit to have pollock on board while in the U.S. EEZ. NMFS will report progress on these regulations.



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
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AGENDA C-4(a)  
JUNE 1992

DATE: April 20, 1992

MEMORANDUM FOR: North Pacific Fishery Management Council

THROUGH: Lisa L. Lindeman *Lisa Lindeman*  
Alaska Regional Counsel  
Alaska

FROM: Robert Babson **RB**  
Attorney  
GCAK

SUBJECT: Application of Fisheries Regulations to Foreign  
Parent and Subsidiary Corporations

#### INTRODUCTION

The North Pacific Fishery Management Council has recently passed a resolution which provides that:

regulations be adopted and permit conditions be implemented that would prohibit any vessel or processing facility from participating in any fishery under the Council's jurisdiction if any such vessel or processing facility is owned in whole or in part by any corporation, partnership or person that also directly or indirectly owns, leases, or charters in whole or in part a vessel that engages in the harvesting, processing, or purchasing of fish taken from the international waters of the Bering Sea. The term "participating in any fishery" includes delivery of fish by a harvesting or tending vessel to a floating or shore-based processing facility and receipt of fish by a floating or shore-based processing facility. (Emphasis added).

Under this proposal, the Council would condition the right to participate in the harvest of groundfish in the Exclusive Economic Zone of the United States (EEZ) off the coast of Alaska, or the right to process such groundfish, upon whether or not the applicant: (1) owns vessels that fish in the "Doughnut Hole" (DH); or (2) owns, or is owned by another entity, foreign or domestic, that owns, directly or through affiliates, vessels that participate in the DH fishery.

In order to fully understand how the proposed regulation will apply, the following examples may be of some assistance. In each



In order to fully understand how the proposed regulation will apply, the following examples may be of some assistance. In each example, US Corp, a domestic corporation, owns Vessel 1, a United States documented vessel, which is permitted to participate in the groundfish fishery in the EEZ in Alaska. Given the language emphasized above, the proposed regulation would require that Vessel 1's groundfish permit be terminated in each example:

Example 1: US Corp is a domestic corporation which is owned by United States citizens. US Corp owns two United States documented vessels: Vessel 1 fishes in the EEZ, Vessel 2 fishes in the DH.

Example 2: Same as Example 1, except that US Corp is owned by US Parent, a domestic corporation owned by United States citizens. Vessel 2 is owned by US Parent.

Example 3: US Corp is a domestic corporation which is owned by Foreign Parent, a foreign corporation. US Corp owns Vessel 1; Foreign Parent owns Vessel 2 (foreign-flagged); which fishes in the DH.

Example 4: Same as Example 3, except that Vessel 2 is owned by Foreign Affiliate, a foreign corporation owned by Foreign Parent.

In addition, the proposed regulation would deny the right to receive fish harvested in the EEZ in Alaska to shore-based processing facilities in the following situation:

Example 5: Shoreside Corp, a domestic corporation, owns a shore-based processing facility in Alaska which receives fish caught in the EEZ off Alaska. Shoreside Corp is owned by Foreign Parent, a foreign corporation. Foreign Parent, either in its own name, or through a foreign affiliate, owns a foreign documented vessel which fishes in the DH.

#### SUMMARY

The legal issue presented by the proposed regulation is whether the Secretary can deny a federal groundfish permit to a vessel or shore-based processing facility because its owner's corporate affiliates, either foreign or domestic, own, charter, or lease vessels which participate in the DH fishery. After review of the applicable provisions of the Magnuson Act, as well as the obligations of the United States under applicable treaty and customary international law, we are of the opinion that the Council's proposed action can be legally implemented. The matter is not completely free from doubt, however, and the proposal's defensibility may well depend upon the scope of the regulation. In particular, the relationship between the domestic corporation

seeking a groundfish permit and its corporate affiliate (for whose activities in the DH it is being held responsible), may well be determinative. The more direct that relationship, as measured by the percentage of ownership and/or control of the corporations in question, the more legally defensible the program will be; the more indirect and attenuated, the less defensible.

Finally, given the federal government's almost complete lack of information on these corporate relationships, especially relationships involving foreign corporations, it must be pointed out that the program will be difficult to enforce.

## DISCUSSION

### I. MAGNUSON ACT

In-so-far as compliance of the Council's proposal with the provisions of the Magnuson Act is concerned, the controlling case is National Fisheries Institute, Inc. v. Mosbacher, 732 F. Supp. 210 (D.D.C. 1990) (hereinafter "NFI"). Under the ruling in NFI, a measure applied to persons and entities within and subject to United States jurisdiction is not invalid merely because it has the effect of regulating their activities in international waters, so long as the measure is necessary to achieve statutorily permissible conservation and management objectives. The court held that it is not an impermissible extraterritorial application of United States law simply because of such extraterritorial effects.

The Council, based upon sound scientific evidence, is proposing to place conditions on harvesting within the EEZ that are intended to indirectly affect harvesting outside the EEZ of stocks that the Council has determined are the same or interdependent. So long as adverse effects of the DH fishery can be shown upon the fishery/marine resources of the EEZ, the Council's proposal should be legally defensible. The court's holding in NFI with respect to the question of extraterritorial application of United States law is applicable to the Council's proposal as well, in that the proposal will apply only to United States vessels fishing within the EEZ.

Another basis for the court's holding in NFI was the "territorial effects doctrine", as interpreted in Laker Airways v. Sabena, Belgian World Airways, 731 F.2d 909 (D.C. Cir. 1984). In Laker (an antitrust case), the court held that "[i]t has long been settled law that a country can regulate conduct occurring outside its territory which causes harmful results inside its territory." Regulation under the "territorial effects doctrine" may not be unreasonable. According to the Restatement (Third) of Foreign Relations Law (hereinafter "Restatement"), indicia of reasonableness which seem applicable to the Council's proposed action are:

The extent to which the [regulated] activity...has substantial, direct and foreseeable effect within the territory;

Here, the impact of overfishing in the DH on the overall health of the stock and on its abundance and availability within the EEZ apparently has been scientifically established.

The connection between the regulating state and the person principally responsible for the regulated activity;

Here, the person principally responsible for the regulated activity is the corporate parent, subsidiary, or affiliate of the person seeking a groundfish permit.

The character of the activity being regulated and the importance of regulation to the regulating state;

Clearly, a strong case can be made for the importance of regulating DH harvesting activities. See Restatement, Section 403(2).

## II. TREATY OBLIGATIONS

The primary legal concern under applicable treaty will be the issue of "national treatment." National treatment is generally defined as "treatment accorded within the national territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of such Party." Department of State, Treaty of Friendship, Commerce and Navigation, Standard Draft (Analysis and Background), Department of State Publication (1981), Part 1 at 42.

Thus, to the extent foreign-owned or -controlled entities are affected by the proposed regulation in a manner or to a degree different than their U.S. counterparts, they may assert that the regulation constitutes a denial of "national treatment." In order for such a challenge to be successful: 1) there must be a treaty or other agreement in effect that in fact accords national treatment under the circumstances; 2) the regulation must have a discriminatory effect; and 3) the discriminatory effect must be deliberate and without other valid basis.

The United States presently has Treaties of Friendship, Commerce, and Navigation (FCN) with two countries, Japan and Korea, which grant national treatment to the citizens of each party. A third FCN with Poland, with similar national treatment requirements, has been signed but not yet ratified by the Senate. Each of these FCN's, however, contains an exception to the requirement for national treatment relating to "national fisheries" (Japan and Korea) or "national resources" (Poland). The Department of State

has interpreted the applicability of the "national fisheries" exception contained in these FCN's as being synonymous with "fisheries jurisdiction." Thus, the requirement that the parties afford national treatment to the citizens of the other party doing business in their country does not apply to the host state's management of its fisheries. In the context of the Council's proposed regulation, the "national fisheries" exceptions to the "national treatment" requirements contained in these FCN's clearly applies to the activities of vessels within the EEZ. In addition, given Congress' recent inclusion of shore-based processing facilities under the permitting authority of the Magnuson Act, it seems probable that the "national fisheries" exception is applicable to such shore-based facilities as well. The net effect of all this is that we do not believe that foreign entities, whether involved with domestic corporations owning vessels or shore-based processing facilities, will be able to successfully raise a "national treatment" objection to the Council's proposed regulation.

### III. CUSTOMARY INTERNATIONAL LAW

The exclusive right of the United States, under international law, to regulate fishing activities within the EEZ is well-settled. The United Nations Convention on the Law of the Sea (the "Convention"), U.N. Pub. No. E.83.V.5 (1983), represents the consensus view of customary international law as it has evolved on the question of exclusive economic zones and clearly recognizes the principal of exclusive fisheries jurisdiction within such zones.<sup>1</sup> The provisions of the Convention, which provide the basis for the current U.S. program conducted pursuant to the Magnuson Act, suggest that, within its EEZ, the United States is required, based upon the best available scientific evidence, to determine and achieve maximum sustainable yields of living marine resources, and is permitted to regulate the harvesting of these stocks in a way that supports local industry, reflects the interdependency of some stocks,<sup>2</sup> and discriminates absolutely against non-U.S. interests.

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<sup>1</sup> The United States voted against approval of the Convention, primarily because of concerns regarding the text's treatment of deep sea-bed mining issues. However, "...by express or tacit agreement accompanied by consistent practice, the United States, and states generally, have accepted the substantive provisions of the Convention...as statements of customary law binding them apart from the Convention." Restatement, Part V, Introductory Note at 5.

<sup>2</sup> In particular, Article 61.3 of the Convention permits the coastal state to take into account the "interdependence of stocks." This is significant because, to the extent Bering Sea pollock inside and outside the EEZ are biologically differentiable yet

Finally, a brief comment seems in order concerning the unlikely possibility that the Council's proposed regulation could be held to constitute an expropriatory act under international law. If the Council's proposal has the effect of substantially denying an existing foreign enterprise the opportunity to make a profit, particularly if it does so in a discriminatory manner, the regulation could be held to be expropriatory, in which case compensation would be required. See Restatement, Section 712 Reporters' Notes 5 and 6.

#### IV. PRACTICAL CONSIDERATIONS

One question which will undoubtedly arise in any Court's review of the Council's regulation will concern the extent to which a corporation may be held responsible for the activities of its affiliates. Or, alternatively, the extent to which the activities of those corporate affiliates may be indirectly regulated through the regulated entity. This is especially relevant when the corporate affiliate is a foreign corporation engaged in activities in international waters. The first issue that must be addressed is whether or not the Council will require that the foreign corporate affiliate "control" (or be controlled by) the regulated entity (i.e., the domestic corporation seeking a permit to fish in the EEZ). We believe that to require such "control" before denial of a groundfish permit to a domestic corporation based upon the activities of its parent corporation or its affiliates will make the proposed regulatory scheme much more legally defensible.

Assuming that such corporate control will be required leads directly to the question of what "control" means. For purposes of the Anti-Reflagging Act, Congress determined that one of the indicia of "control" is majority ownership (more than 50%) of the voting stock of the corporation. We are informed that under certain Department of Commerce export regulations, "control," although also defined in terms of percentage of ownership of stock, is defined at some level less than 50%.

Finally, the above discussion of the ownership of corporate stock leads directly to the primary problem with the Council's proposal, which is not necessarily legal, but rather, practical. At present, the government's only source of information regarding the ownership makeup of the domestic corporations presently engaging in harvesting groundfish in the EEZ in Alaska, or processing same, will be the corporations themselves. Information about their

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interdependent, this provision of the Convention provides a basis under international law for regulating the taking of one stock in order to achieve maximum sustainable yield with respect to the other.



corporate parents and their affiliates, especially if such parent corporations are foreign, is non-existent. The inevitable result of this situation is that the program, as proposed by the Council, will be difficult to enforce.

cc: F/AK - Steven Pennoyer  
DCG - Jay S. Johnson  
ENS - David C. Flannagan  
GCF - Margaret F. Hayes

From WDC 5/6/92

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"299 Regs" Billing Code: 3510-22

DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
50 CFR Part 299  
[Docket No. ]  
U.S. Nationals Fishing in the Russian Fisheries  
Agency: National Marine Fisheries Service (NMFS), NOAA, Commerce

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** NMFS issues an interim final rule that revises the procedures for owners and operators of U.S. vessels to conduct fishing operations for fishery resources over which the Government of the Russian Federation exercises sovereign rights or fishery management authority. This interim final rule (1) substitutes "the Russian Federation" for "the Union of Soviet Socialist Republics" wherever it appears, (2) makes it a violation of the Magnuson Fishery Conservation and Management Act (Magnuson Act) for U.S. vessel owners to fail to submit final applications to fish in the Russian economic zone (Russian EZ) through the NMFS and provide certain information to NMFS concerning the receipt of a permit issued for these activities by the Russian Federation, and (3) sets out reporting and recordkeeping requirements when the U.S. vessel departs and reenters the U.S. exclusive economic zone (EEZ). These revisions will improve U.S. fisheries management in the EEZ.

**EFFECTIVE DATE:** [Insert Date of Filing with the Federal Register]  
Comments on this interim final rule must be received by [Insert date 45 days from date of filing with the FEDERAL REGISTER].

**ADDRESS:** Send comments to the Operations Support and Analysis Division, F/OM1, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland, 20910. Telex number 467856 (US COM FISH CI), FAX number (301) 588-4967.

Comments regarding the estimate of the paperwork burden or any other aspect of the collection of information under §§299.3(a)(2), 299.5(b), 299.5(c)(1)(i)(ii) and 299.5(c)(2)(i)(ii) should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20235, Attention: NOAA Desk Officer.

**FOR FURTHER INFORMATION CONTACT:** John D. Kelly, (301) 713-2337.

**SUPPLEMENTARY INFORMATION:** U.S. nationals have been eligible to engage in fishing operations in the Russian EEZ. Since the United States and the former Union of Soviet Socialist Republics signed the Agreement on May 31, 1988. On July 17, 1989, NMFS issued an interim final rule that specified the procedures for U.S.

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nationals to conduct fishing operations for fishery resources over which the former Union of Soviet Socialist Republics exercised sovereign rights of fishery management authority (54 FR 29896). Since that date and owing to significant political changes within that country, new governments have been established in the Republics making up the former Soviet Union. The Department of State has determined that all rights and obligations due under the Mutual Fisheries Agreement with the former Soviet Union have now been assumed by the Russian Federation. Therefore, references to "the Union of Soviet Socialist Republics" or "Soviet(s)" or "U.S.S.R." in 50 CFR Part 299, are changed to "Russian Federation" or "Russia" wherever they appear.

In addition, NMFS has encountered certain problems in identifying the U.S. fishing vessels that are authorized to fish in the Russian EEZ. These problems are particularly acute when such vessels may have aboard products that are claimed to have been taken from the Russian Federation EEZ, but are of a species or product that could as well have been taken or processed in the EEZ. In some cases, the fish would have been illegally taken if, in fact, they had been taken in the EEZ.

With this interim final rule, NMFS revises certain sections of 50 CFR 299 governing U.S. nationals fishing in the Russian EEZ by:

1. Requiring the responsible U.S. vessel owner to send copies of the final application for that vessel to fish in the Russian zone to NMFS;
2. Requiring the responsible U.S. vessel owner to provide a copy of the permit issued by the Russian authorities for that vessel together with any conditions or restrictions imposed subsequent to the application to NMFS; and
3. Establishing certain reporting and recordkeeping requirements prior to departing the EEZ for the Russian EEZ, and on reentry into the EEZ either to fish, or to land in a U.S. port fish taken in the Russian EEZ, and requiring maintenance of copies of such reports for a period of three years.

During the years since the Agreement was signed, U.S. activity has significantly increased in the Russian EEZ. However, NMFS has received very little information concerning U.S. fishing activities in the Russian EEZ. At the same time, NMFS has observed increased landings in U.S. ports of undocumented fish, allegedly harvested from the Russian EEZ in joint ventures. Some of these species or product-types would have been unlawful if harvested or processed in the EEZ. NMFS is concerned that some portion of these landings may actually consist of fish illegally harvested and processed in the EEZ. In order to obtain better information concerning U.S. fishing activities in the Russian EEZ and to document the origin and quantity of fish that are harvested in fishing operations in the Russian EEZ and brought into the EEZ, NMFS is amending the interim final regulations to require reporting and recordkeeping by the owners of these U.S. vessels and to make mandatory compliance with the permit

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application procedures described in these regulations by owners and operators of U.S. vessels intending to fish in the Russian EEZ.

Therefore, NMFS revises 50 CFR part 299 to require U.S. vessel owners and operators applying to fish in the Russian EEZ to submit such applications to NMFS and include in such applications the information required by section 299.3, and to provide to NMFS copies of any resulting permits issued by the responsible Russian authorities and descriptions of the activities approved in the Russian EEZ for permitted vessels.

In addition, part 299 is revised to require U.S. vessel owners and operators to report fish and fish production carried onboard when departing the EEZ for operations in the Russian EEZ and to report additional production derived from the Russian EEZ when reentering the EEZ and prior to conducting any fishing operations in the EEZ following reentry. Finally, part 299 is amended to prohibit violations of the above requirements and make such violations subject to the penalties of the Magnuson Act.

#### **Classification**

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) determined that this rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson Act and other applicable law.

This rule is authorized under the Magnuson Act 16 U.S.C. 1822(a)(4)(A), which authorizes the Secretary of State in cooperation with the Secretary of Commerce to enter into reciprocal fishing agreements, and 16 U.S.C. 1855(g), which authorizes the Secretary of Commerce to promulgate regulations necessary to carry out the provisions of the Magnuson Act.

This action is exempt from the provisions of Executive Order (E.O.) 12291 under section 1(a)(2) because the regulations are issued with respect to a foreign affairs function of the United States and because it implements certain provisions of the Agreement with the Russian Federation that govern the activities of U.S. vessels and their vessel owners when operating in the Russian EEZ and when exiting and reentering the EEZ in association with operations in the Russian EEZ.

This action is not subject to section 553 of the Administrative Procedures Act (APA) because it involves a foreign affairs function. Although not required by law to do, the Assistant Administrator is soliciting public comments on this rule, and will consider them to the extent discretion exists to make modifications consistent with national law and the Agreement.

Because neither the APA nor any other statute requires public notice and opportunity to comment upon this rule, the Regulatory Flexibility Act does not apply and no regulatory flexibility analysis has been prepared.

This rule contains an increase in the burden hours previously approved for the related collection-of-information and is subject to the Paperwork Reduction Act (44 U.S.C. 3501 et.

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exercises sovereign rights or fishery management authority" mean fishery resources within the Russian EE, fishery resources of the Russian continental shelf, and anadromous species that originate in the waters of Russia, whether found in the Russian EE or beyond any exclusive economic zone or its equivalent.

(v) The term "support" means any operation by a vessel assisting fishing by another vessel, including--

- (1) Transferring or transporting fish or fish products, or
- (2) Supplying a fishing vessel with water, fuel, provisions, fishing equipment, fish processing equipment, or other supplies.

(w) The term "vessel of the United States," "U.S. vessel," "fishing vessel of the United States," or "U.S. fishing vessel," as the context requires, means a vessel or a fishing vessel that is documented or numbered under the laws of the United States or of any State, or otherwise subject to the jurisdiction of the United States.

**§ 299.3 Procedures.**

(a) Application for annual permits. (1) General. U.S. vessel owners and operators, intending to fish in the Russian EE, or for Russian fishery resources, may obtain application forms and copies of applicable laws and regulations of the Russian Federation from NMFS, 1335 East-West Highway, Silver Spring, Maryland 20910. Attention: Office of Fisheries Conservation and Management, F/CM1. The completed application must be submitted to the same office.

(2) Application Information. Applications must include the following information:

- (i) The vessel name;
- (ii) The vessel type;
- (iii) The vessel's U.S. Coast Guard documentation number or State registration number;
- (iv) The vessel's port of registration;
- (v) The name of the vessel owner;
- (vi) The type of fishing operation being proposed i.e. fishing, exploration connected with the fishing operation, transport or support operations;
- (vii) The objects of fishing operations, i.e., the requested species and tonnage amounts involved in the operation;
- (viii) The type of fishing gear to be employed;
- (ix) The vessel's registered net tonnage;
- (x) The vessel's cargo capacity, i.e., type of storage capacity (freezer or dry storage), number of holds and actual hold capacity in metric tonnage of fishery products;
- (xi) The vessel's engine power (h.p.) and maximum speed (in knots);
- (xii) The vessel's gross registered tonnage, its overall length (in meters), and the depth (in meters);
- (xiii) The vessel's International Radio Call Sign (ICRS);
- (xiv) The vessel's radio control frequencies;
- (xv) The vessel's radiotelephone frequencies;
- (xvi) The masters name, and address;

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(xvii) The number of crew members; and  
(xviii) Any other information requested by the application form or otherwise required by the competent authorities of Russian Federation.

(b) Other Application Information. Vessel applications for motherhip, processing and transport vessels are not required to identify fishing gear or fishing quotas if they do not intend to engage in harvesting activities. However, if such vessel should receive a quota, then fishing gear and quota must be listed. Although not specifically required, in order to facilitate processing, NMFS requests that permit applications for more than 10 vessels be grouped by type and fishing area, and that applicants provide the name, address, telephone, and FAX number(s) of an individual who will be the official point of contact for an application.

(1) NMFS will review each application, and if it is determined to be complete, NMFS will forward it to the Department of State for submission to the competent authorities of the Russian Federation. NMFS will notify the permit applicant when the permit is submitted to the Russian Federation, and will return incomplete applications to the applicant.

(2) The competent authorities of the Russian Federation will review each application, determine whether to issue a permit, establish such conditions and restrictions related to fishery management and conservation as may be needed, and determine the fees that will be required. Those authorities will inform the U.S. Fisheries Attache in Moscow of such determinations and the proposed conditions and restrictions and fees, who will then inform the Assistant Administrator and the Department of State. The Department of State, after consulting with the Assistant Administrator, will then notify the competent authorities of the Russian Federation of the acceptance or rejection of the conditions and restrictions and, in the case of a rejection, of its objections. In the event the Department of State notifies the competent authorities of the Russian Federation of its objections to a decision not to issue a permit, or to specific conditions and restrictions, the two governments may consult with respect to these issues. The Department of State after consulting with the Assistant Administrator may submit a revised application.

(3) In addition to submitting applications to NMFS, U.S. applicants are advised that they may wish to communicate directly with the Russian Federation with regard to the status of their applications or permits. Owners and operators should make all direct contacts and work with Russian industry, and government authorities.

**§ 299.4 Permit issuance.**

(a) Acceptance. Upon acceptance of the conditions and restrictions by the Department of State, and after the payment of all fees, the competent authorities of the Russian Federation will approve the application. The Russian Federation will issue

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to the vessel owner a permit for each fishing vessel for which it has approved an application. That vessel will thereupon be authorized by the Russian Federation to fish in accordance with the Agreement and the terms and conditions set forth in the permit. The vessel owner may not transfer the permit to any other vessel or person. Any such transfer, or the sale or other transfer of the vessel, will immediately invalidate the permit. The vessel owner must notify NMFS of any change in the permit application information submitted to NMFS under §299.3, at the address specified in that section within seven calendar days of the change.

(b) Copies. The vessel owner and operator must mail a copy of each permit issued for that vessel by the Russian Federation seven calendar days of its receipt to the address specified in §299.3.

(c) Validity. Any permit issued by the Russian Federation with respect to a vessel subject to this part will be deemed to be a valid permit only if:

(i) A completed permit application has been forwarded to the competent authorities of the Russian Federation as provided in §299.3(b)1();

(ii) Such application has been approved and a permit issued by the competent authorities of the Russian Federation as provided in §299.4(a); and

(iii) The U.S. Department of State has notified the competent authorities of the Russian Federation that it has accepted the conditions and restrictions as provided in §299.4(a), provided that, any transfer or sale specified in §299.4(a), any failure to submit a notice or permit copy required by §299.4(b) or by any other provision of this part, any failure to submit changes in permit application information in the manner specified in §299.4(a), or any failure to pay the required permit fee, will render the permit invalid.

(d) Port calls. U.S. fishing vessels which have been issued permits pursuant to the Agreement are authorized to enter the ports of Murmansk, Korf, Oktyabrski, and Provideniya in Russia to purchase bait, to replenish ship's stores or fresh water, to obtain bunkers, to provide rest for or make changes in their crews, to obtain repairs and other services normally provided in these ports, and, as necessary, to receive permits. Authorized vessels en route to one of the designated ports to receive a permit will be treated as non-fishing vessels, so long as such vessels observe the provisions of the Agreement. All such entries are subject to the applicable laws and regulations of the Russian Federation. U.S. nationals making port calls in Russia or entering the territory of the Russian Federation must comply with the laws and regulations of Russia applicable to persons within the territorial jurisdiction of the Russian Federation. Entry of U.S. fishing vessels to ports of the Russian Federation will be permitted subject to notice to INPLOT, forwarded by the vessel's agent or owner using Telex, teletype, or telegram so as to be received four days in advance of the port entry.

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Information concerning communication procedures may be obtained from the Fisheries Attache, Embassy of the Russian Federation, 1609 Decatur Street, Washington, DC 20011.

(e) Visas. Multiple entry visas valid for six months for entry into the ports specified in paragraph (d) of this section may be obtained by submitting crew lists to the Fisheries Attache, Embassy of the Russian Federation, at the address listed in paragraph (d) of this section. The crew list must be submitted at least 14 days prior to the first entry of the vessel into a port of Russia. An amended (supplemental) crew list may be submitted subsequent to the departure of a vessel from a U.S. port, subject to these provisions, provided that any visa issued thereunder will be valid only for six months from the date of issuance of the original crew list visa. Notification of entry to a port of Russia pursuant to paragraph (d) of this section must specify if shore leave is requested under such multiple entry visa.

(f) Emergency medical treatment. In cases where a U.S. seaman is evacuated from his vessel to Russia for emergency medical treatment, authorities of the United States will ensure that the seaman departs from Russia within 14 days after release from the hospital.

(g) Exchange of crews. The exchange of crews of U.S. fishing vessels in a port in Russia specified above in paragraph (d) of this section will be permitted subject to submission to the Embassy of the Russian Federation, Washington, DC, at the address listed in paragraph (b) of this section, of applications for individual transit and crewman visas for replacement crewmen. Applications must be submitted 14 days in advance of the arrival of the crewmen at a port of Russia and must indicate the names, dates, and places of birth, the purpose of the visit, the vessel to which assigned, and the nodes and dates of arrival of all replacement crewmen. Individual passports or seaman's documents must accompany each application. Subject to its national laws and regulations, the Embassy of the Russian Federation will affix transit and crewman visas to each passport or seaman's document before it is returned. In addition to the above requirements, the Fisheries Attache, Embassy of the Russian Federation, Washington, DC, must receive, 14 days in advance of arrival, the name of the vessel and date of its expected arrival, a list of names, dates and places of birth for those crewmen who will be admitted to a port of Russia, and the dates and manner of their departure from the port of Russia.

(h) Research vessels. Special provisions will be made as necessary regarding the entry into ports of the United States or Russia of research vessels of the two countries which are engaged in a mutually agreed research program in accordance with the Agreement. Requests for entries of such research vessels should be forwarded to the competent authorities of the relevant government through diplomatic channels.

(i) Soviet-imposed sanctions. (1) The Russia Federation will impose appropriate fines, penalties, or forfeitures in accordance



(1) The date [month and day, and time (hour and minute Greenwich Mean Time (GMT) and position (latitude and longitude) at which the vessel will depart the EEZ for the Russian EEZ; and (11) The weight in metric tons (to the nearest hundredth of a metric ton) of all fish and fish product (listed by species and product codes) on board the vessel at the time it will depart the

the following information: must receive the following information: before the vessel departs from the EEZ for the Russian EEZ, NMS (1) Depart Report (action code DEPART). At least 24 hours by telex to (907) 586-7013, the following reports: (a) Activity reports. The owner and operator of a vessel subject to this part must submit to NMS Alaska Region, Juneau, Russian permit.

467886 (US COM FISH CI) within 5 calendar days of receipt of the The report must be telexed to (301) 588-4967 or telexed to (7) Type of permit (i.e. catcher). (8) Authorized fishing gear; and (9) Authorized catch quota in tons;

coordinates; (4) Authorized areas of fishing operations in geographic (3) Duration of permit (i.e. 1/1-12/31/91); (2) Russian Federation permit number;

(1) Vessel name; containing the following information: Headquarters, Silver Spring, MD., a vessel permit report operator of a vessel subject to this part must submit to NMS (b) Vessel permit information report. The owner and Juneau, Alaska, telex to (907) 586-7013.

submitted to NMS under this part must be delivered by private or commercial communications facilities to NMS Alaska Region, otherwise specified in this part, any report required to be time (GMT) unless otherwise specified in this part. Unless and accurate reports and records required by this section, in English, and in the format specified, based on Greenwich Mean operator of a vessel subject to this part must maintain timely (a) General. The owner and

229.5 Recordkeeping and Reports. The owner and operator of a vessel subject to this part must maintain timely and accurate reports and records required by this section, in English, and in the format specified, based on Greenwich Mean time (GMT) unless otherwise specified in this part. Unless submitted to NMS under this part, any report required to be commercial communications facilities to NMS Alaska Region, Juneau, Alaska, telex to (907) 586-7013.

(b) Vessel permit information report. The owner and operator of a vessel subject to this part must submit to NMS Headquarters, Silver Spring, MD., a vessel permit report containing the following information: (1) Vessel name; (2) Russian Federation permit number; (3) Duration of permit (i.e. 1/1-12/31/91); (4) Authorized areas of fishing operations in geographic coordinates;

(5) Authorized catch quota in tons; (6) Authorized fishing gear; and (7) Type of permit (i.e. catcher). The report must be telexed to (301) 588-4967 or telexed to 467886 (US COM FISH CI) within 5 calendar days of receipt of the Russian permit. (a) Activity reports. The owner and operator of a vessel subject to this part must submit to NMS Alaska Region, Juneau, Alaska, telex to (907) 586-7013, the following reports: (1) Depart Report (action code DEPART). At least 24 hours before the vessel departs from the EEZ for the Russian EEZ, NMS must receive the following information: the following information:

(2) In the case of arrest and seizure of a U.S. vessel by Russian authorities, notification will be given promptly through diplomatic channels informing the United States of the facts and actions taken. (3) The Russian Federation will release U.S. vessels and their crews promptly, subject to the posting of reasonable bond or other security. (4) The sanctions for violations of limitations or restrictions on fishing operations will be appropriate fines, penalties, forfeitures, or revocations or suspensions of fishing privileges.

with the laws, for violations of its relevant laws or regulations. (2) In the case of arrest and seizure of a U.S. vessel by Russian authorities, notification will be given promptly through diplomatic channels informing the United States of the facts and actions taken. (3) The Russian Federation will release U.S. vessels and their crews promptly, subject to the posting of reasonable bond or other security. (4) The sanctions for violations of limitations or restrictions on fishing operations will be appropriate fines, penalties, forfeitures, or revocations or suspensions of fishing privileges.

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(a) Protection of marine mammals. U.S. nationals and vessels fishing for fishery resources over which the Russian Federation exercises sovereign rights or fishery management authority may not harass, hunt, capture, or kill any marine mammal within the Russian EEZ, attempt to do so, except as may be provided for by an international agreement to which both the United States and Russia are parties, or in accordance with specific authorization and controls established by the Russian Federation. The

(b) Compliance with Russian law. U.S. nationals and vessels exercising sovereign rights or fishery management authority must comply with the relevant laws and regulations of the Russian Federation. U.S. nationals and vessels fishing for fishery resources over which the Russian Federation exercises sovereign rights or fishery management authority must comply with all provisions, conditions, and restrictions of any applicable permit. U.S. vessels must have a valid permit as provided in §299.4(a) in order to fish for fishery resources over which Russia exercises sovereign rights or fishery management authority.

(c) Recordkeeping. The owner and operator of a vessel subject to this part must retain all copies of all reports required under this section on board the vessel for one year after the end of the calendar year in which the report was generated. The owner and operator must retain and make such records available for inspection upon the request of an authorized officer at any time during the three year period after the end of the calendar year in which the report was generated, or not such records are aboard the vessel. (Insert Tables 1 and 2).

(2) Return (Action code RETURN). At least 24 hours before a vessel that has been in the Russian EEZ enters the EEZ, KMR must receive the following information:

- (1) The date (month and day), time (hour and minute), GMT, and position (latitude and longitude to the nearest degree and minute) at which the vessel will enter the EEZ; and
- (1) The weight in metric tons (to the nearest hundred or a metric ton) of all fish and fish products (listed by species and product codes) on board the vessel at the time it will enter the EEZ, and the areas (Russian EEZ, U.S. EEZ, or other) in which such fish products were harvested or received.
- (1) All reports must specify: the appropriate action code ("DRAPE" or "RETURN"); the vessel's name and international radio call sign (ICR); the sender's name and telephone number, and FAX, TELEX, and COMBAT numbers; and the date (month and day, and time (hour and minute GMT) that the report is submitted to KMR and the intended date and U.S. port of landing. See tables 1 and 2 for product and species codes.

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provisions of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 et seq., also apply to any person or vessel subject to the jurisdiction of the United States while in the Russian EEZ, and it shall not be a defense to any violation of the MMPA that the person or vessel was acting in accordance with any permit or authorization issued by the Russian Federation.

(d) Cooperation with enforcement procedures. (1) The operator of, or any person aboard, any U.S. vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer of the Russian Federation to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record, and catch for purposes of enforcing the relevant laws and regulations of Russia.

(2) The operator of or any person aboard, any U.S. vessel subject to this part, must comply with directions issued by authorized officers of the Russian Federation in connection with the seizure of the vessel for violation of the relevant laws or regulations of the Russian Federation.

(3) U.S. nationals and vessels subject to this part must pay all fines and penalties and comply with forfeiture sanctions imposed by the Russian Federation for violations of the relevant laws and regulations of the Russian Federation.

(4) The operator of, and any person aboard, any U.S. vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer of the United States to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record, and catch for purposes of enforcing the Magnuson Act the Agreement, and this part.

(e) Compliance with observer requirements. The owner of, operator of, and any person aboard, any U.S. vessel fishing in the Russian EEZ or for Russian fishery resources, to which a Russian observer is assigned must--

(1) Allow and facilitate, on request, boarding of a U.S. vessel by the observer;

(2) Provide to the observer, at no cost to the observer or the Russian Federation, the courtesies and accommodations provided to ship's officers;

(3) Cooperate with the observer in the conduct of his or her official duties; and

(4) Reimburse the Russian Federation for the costs of providing an observer aboard the vessel.

#### **§ 299.7 Prohibited acts.**

It shall be unlawful for any U.S. national or vessel, or the owner or operator of any such vessel:

(a) To fish for Russian fisheries resources without a valid permit issued by the competent authorities of the Russian Federation;

(b) While fishing for Russian fisheries, to violate the provisions, conditions, and restrictions of applicable permits;

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(c) To violate the relevant laws and regulations of Russia;  
(d) To harass, hunt, capture, or kill any marine mammal within the Russian EE, or to attempt to do so, except as provided in §299.6(c);

(e) To fail to comply immediately with enforcement and boarding procedures specified in §299.6(d);

(f) To refuse to allow an authorized officer of the Russian Federation to board and inspect a vessel subject to this part for purposes of conducting any search, inspection, arrest, or seizure in connection with the enforcement of the relevant laws and regulations of the Russian Federation;

(g) To assault, resist, oppose, impede, intimidate, threaten, or interfere with, in any manner, any authorized officer of the Russian Federation in the conduct of any search, inspection, seizure, or arrest in connection with enforcement of the relevant laws and regulations of the Russian Federation;

(h) To fail to pay fines or penalties or comply with forfeitures imposed for a violation of the relevant laws and regulations of the Russian Federation;

(i) While fishing in the Russian EE, or for Russian fishery resources, to refuse or fail to allow a Russian observer to board a vessel subject to this part;

(j) To fail to provide to a Russian observer on board a vessel fishing in the Russian EE the courtesies and accommodations provided to ship's officers;

(k) To assault, resist, oppose, impede, intimidate, threaten, interfere with, harass, or fail to cooperate, in any manner, with a Russian observer placed aboard a vessel subject to this part;

(l) To fail to reimburse the Russian Federation for the costs incurred in the utilization of Russian observers placed aboard such vessel;

(m) To refuse to allow an authorized officer of the United States to board and inspect a vessel subject to this part for purposes of conducting any search, inspection, arrest, or seizure in connection with the enforcement of the Magnuson Act or this part;

(n) To assault, resist, oppose, impede, intimidate, threaten, or interfere with, in any manner, any authorized officer of the United States in the conduct of any search, inspection, seizure, or arrest in connection with enforcement of the Magnuson Act or this part;

(o) To resist a lawful arrest for any act prohibited under the Magnuson Act or this part;

(p) To interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by the Magnuson Act or this part;

(q) To possess, have custody or control of, ship, transport, offer for sale, sell, purchase, transship, import, export, or traffic in any manner, any fish or parts thereof taken or retained, landed, purchased, sold, traded, acquired, or

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possessed, in any manner, in violation of the relevant laws and regulations of the Russian Federation, the Magnuson Act, or this part;

(r) To enter the Russian EEZ to fish unless a permit application has been submitted to the competent authorities of the Russian Federation by the U.S. Department of State, as provided in this part;

(s) To refuse to allow an authorized officer to inspect any record required to be kept under the Magnuson Act, the Agreement, or any provision of this part;

(t) To refuse, or to fail, to submit fishing gear, fish, proceeds, fishing permit, fish-related records (such as reports, logs, tally sheets, fish tickets, and charts), or other property, subject to such person's control, to inspection, detention, or seizure by an authorized officer, or to interfere with or prevent by any means, such inspection;

(u) Make or use any false statement or representation, oral or written, to an authorized officer, or to conceal any material fact (including by omission), concerning any matter subject to investigation by that officer under the Magnuson Act, the Agreement, or this part;

(v) Falsify or fail to make, keep, or submit, any report or record required to be made, kept, or submitted under the Magnuson Act, the Agreement or this part in the manner, or within the time, required by this part;

(w) To fish for Russian fisheries or to possess fish taken in Russian fisheries on board a vessel subject to this part without a valid permit or other valid form of authorization issued by the competent authorities of the Russian Federation on board the vessel;

(x) Make a false statement in an application for a permit subject to this part;

(y) Falsify, or fail to report to NMFS, any change in the information contained in a permit application subject to this part within 15 calendar days of such change;

(z) Attempt to do, cause to be done, or aid and abet in doing, any of the foregoing.

## **§ 299.8 Penalties.**

In addition to any fine, penalty, or forfeiture imposed by the Russian Federation, nationals and vessels of the United States violating the prohibitions of §299.7 are subject to the fines, penalties, and forfeitures and the adjudicative procedures provided in the Magnuson Act, 16 U.S.C. 1855, 1860, 1861, and any other applicable laws and regulations of the United States.



United States Department of State

*Bureau of Oceans and International  
Environmental and Scientific Affairs*

*Washington, D.C. 20520*

DATE: June 18, 1992

**RAPIFAX TRANSMISSION** 2 PAGE(S) TO FOLLOW

TO: NPFMC - CLARENCE PAUTZKE  
PFMC - LARRY SIX

FAX NUMBERS: 907 271-2817; FTS 423-6831

FROM: GEORGE HERRFURTH - Office of Fisheries Affairs

FAX NUMBER: FTS 647-1106; PHONE: FTS 647-2009

SUBJECT: U.S.-Russia Joint Statement on Fishing in the Central  
Sea: A call for a voluntary suspension of fishing

Here is a copy of a U.S.-Russia Joint Statement on fishing in the central Bering Sea that was issued during the Bush-Yeltsin Summit Meeting on June 17, 1992, together with the White House press release on the statement. The Joint Statement calls for a voluntary suspension of fishing in the central Bering Sea by all concerned.

## THE WHITE HOUSE

## Office of the Press Secretary

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**For Immediate Release****June 17, 1992****JOINT STATEMENT ON THE NEED FOR VOLUNTARY SUSPENSION  
ON FISHING IN THE CENTRAL BERING SEA**

In the course of the state visit by the President of Russia to the United States of America, the sides recalled the joint statement on Bering Sea Fisheries Conservation issued at the summit meeting of June 4, 1990. The sides noted with concern that, in spite of four international conferences held since that joint statement to develop an international regime for the conservation and management of living marine resources of the central Bering Sea, the pollock resource in that region has suffered a precipitous decline, which could upset the balance of the Bering Sea ecosystem as a whole.

In light of the dependence of the U.S. and Russian coastal communities on the living marine resources of the Bering Sea, the sides noted that, more than ever, strong and urgent conservation measures must be taken, including a prohibition on fishing in the central Bering Sea. The sides reiterated that, in accordance with international law as reflected in the relevant provisions of the 1982 United Nations Convention on the Law of the Sea, all concerned states, including coastal states and fishing states, should cooperate to ensure the conservation of these resources. Accordingly, the sides called for all the states fishing in the central Bering Sea to abide by a voluntary suspension of fishing activities in the area in question, consistent with steps already taken by Russia and the United States to conserve the resource.

# # #

# Salmon treaty would put a stop to fish waste

By DAVID WHITNEY  
Daily News reporter

WASHINGTON — A treaty that would end high-seas salmon fishing in the North Pacific Ocean was hailed this week as a fitting counterpart to a U.N. resolution banning driftnet fishing by the end of the year.

Witnesses told the Senate Foreign Relations Committee that the two measures should end fishing practices that they believe have devastated salmon stocks originating in the Pacific Northwest and Alaska. And the measures will stop the massive slaughter of marine mammals, sea turtles and birds killed by the driftnets, they said.

"We are marking the end of an era and the beginning of a new one," said David Colson, deputy assistant secretary at the State Department in charge of oceans and fisheries affairs.

The salmon treaty between the United States, the Russian Federation, Canada and Japan would ban fishing for salmon and steelhead trout outside the four nations'

200-mile exclusive economic zones.

Speedy Senate ratification is expected. The treaty already has been ratified by the Japanese Diet.

Accidental netting of salmon stocks during fishing operations for other kinds of fish would be discouraged. Under terms of the agreement, salmon found on board any vessel would be presumed to have been caught illegally.

The treaty would allow the search of any vessel from the four nations fishing on the high seas and the seizure of boats caught with salmon on board. The vessels would be turned over to their country of origin for prosecution under standards intended to be uniform among the treaty signers.

"The agreement will completely dispel any remaining uncertainty over the propriety of high seas enforcement actions," said Sen. Frank Murkowski, R-Alaska, a member of the panel and author of a treaty provision calling for certificates of origin to be used by fish wholesalers to further discourage the illegal salmon trade.

Catching salmon far out in the ocean is widely regarded as wasteful because so many are small and immature. Fish that are not brought up in the nets often die and sink to the ocean's bottom or are fatally injured by the nets.

By focusing salmon fishing on near-shore areas as the fish return to spawn, the expectation is that more juvenile salmon will mature into adulthood and that, over time, stocks returning to spawn will improve.

Richard Lauber, chairman of the North Pacific Fishery Management Commission, said the treaty ends 50 years of negotiations to get Japan to stop fishing for U.S.-origin salmon.

He said the issue first arose in 1937 when a huge Japanese mother ship collecting fish from smaller catcher boats was spotted in Bristol Bay just off the Alaska coast and in "the heart of the sockeye salmon run."

Various measures were taken over the years to negotiate restrictions on the Japanese salmon fleets, but it was not until last

year when the U.N. driftnet resolution was adopted that Japan began to curb the industry.

Under that resolution, Japan and other Asian nations that use the environmentally destructive nets are to reduce their fishing efforts by half next month and end use of the nets entirely by Jan. 1.

During Wednesday's hearing, Murkowski charged that Japan was not fully complying with the spirit of the resolution because its huge squid driftnet fleet would be cut only from 456 vessels last year to 426 on July 1.

But Colson said the State Department has no complaints about Japanese compliance, saying Japan has agreed to end early its directed salmon driftnet industry involving 109 vessels.

Japan's squid fleet, however, has been most associated with illegal harvesting of salmon. Murkowski urged the State Department to be vigilant in its dealings with Japan to ensure it doesn't tolerate any cheating on either the driftnet resolution or the salmon treaty.