


MEMORANDUM

TO: Council, AP, and SSC Members

FROM: Clarence G. Pautzke 
Executive Director

DATE: November 30, 1989

SUBJECT: Legislative Update

ACTION REQUIRED

Status reports on Magnuson Act Reauthorization and other current legislation.

BACKGROUND

Magnuson Act Reauthorization

The current authorization period of the MFCMA expired on September 30. Since then, the Act has been in effect on a "continuing resolution" basis until Congress can approve the prepared reauthorization/amendment package. On October 5 the House Merchant Marine and Fisheries Committee met to markup the subcommittee's September 14 draft amendment document. A copy of their report is provided as item C-1(a). Changes of particular interest to the North Pacific Council include:

- Specification that the Council has the primary lead in preparing its research (i.e., observers) plan.
- A "sense of Congress" amendment was added to state that the Council should give consideration to the needs of Alaskan coastal communities.
- FMPs should contain flexibility to allow adjustments for lost fishing time due to weather.
- The critical language of National Standard #1 was left unmodified.
- Two additional seats (one from Washington, one from Oregon) are to be added to the Council.

Senators Stevens and Murkowski introduced their own bill on November 17 based on the House Committee version. Differences of interest in Senate 1900 bill include:

- Quarterly apportionment of all TACs to all user groups.
- Prohibit from the Gulf of Alaska vessels that process their own catch or process catches received from other vessels.
- Prohibit the stripping of pollock roe and discard of useable flesh.

- Provide that prohibited species of fish incidentally caught in association with pollock be retained and sold with proceeds deposited into a fund for use by the Council for conservation and management purposes.
- Allocate up to 43% of the pollock TAC to shoreside processing.
- Allocate 5% of the Bering Sea OY to economically disadvantaged communities.
- Maintain the status quo on North Pacific Council seats.
- Require all public testimony provided to the Council be under oath.

The bill has been referred to the Senate's Commerce, Science, and Transportation Committee.

I have been informed that differences of opinion on a variety of issues (primarily Alaska/Northwest issues and the inclusion of tuna) will prevent rapid development of MFCMA legislation in the Senate and that no Senate action on the proposed inclusion of amendments is anticipated until early 1990.

Merchant Marine Act Amendment

In September I reported that Congressman Studds had attached a rider to the MFCMA amendment to rewrite Section 607 of the Merchant Marine Act which would terminate the Capital Construction Fund and Fisheries Obligation Guarantee Program. The Council was specifically asked to comment on the proposal and your comments were forwarded to the House following the September meeting. In response to the Council's and other's recommendations, this amendment was subsequently dropped from the MFCMA amendment package.

Seafood Inspection

Several bills were introduced this session to establish a national seafood inspection program. All proposals are designed to ensure the quality and wholesomeness of all fish products intended for human consumption in the U.S. The House held a hearing on November 9 to receive positions of agencies, proponents, and opponents of the legislation. Further action will likely be scheduled for sometime next spring.

Oil Spill Litigation

On November 9 the House approved legislation that sets new liability standards on the oil and shipping industry for spills. In addition, the House authorized states to maintain even tougher standards, reversing a 13-year policy that has held up Congressional approval of a spill bill. It also approved a provision lifting all liability limits for accidents caused by gross negligence or willful misconduct. This latter provision has been sharply criticized since some believe gross negligence or willful misconduct is difficult to prove in court. Without such a finding, oil companies would be responsible for no more than \$150 million, with the rest of the damages paid out of a national fund capitalized by the public through a tax on domestic and imported oil. Further, the House approved a requirement that all new tankers be built with double hulls and existing ships refitted with double hulls over the next five years. The House legislation has now gone into conference with the Senate. Further action is anticipated during the next session.

MARKUP REPORT

COMMITTEE: House Merchant Marine and Fisheries

DATE: October 5, 1989

SUBJECT: H.R. 2061 -- Reauthorization of the Magnuson Fishery Conservation and Management Act, the Atlantic Tunas Convention Act, the Fishermen's Protective Act, and other matters

MEMBERS
PRESENT: Jones (D-NC); Davis (R-MI); Studds (D-MA); Young (R-AK); Hubbard (D-KY); Shumway (R-NY); Hughes (D-NJ); Fields (R-TX); Hutto (D-FL); Schneider (R-RI); Tauzin (D-LA); Bateman (R-VA); Hertel (D-MI); Saxton (R-NJ); Dyson (D-MD); Miller (R-WA); Carper (D-DE); Coble (R-NC); Bosco (D-CA); Weldon (R-PA); Tallon (D-SC); Herger (R-CA); Ortiz (D-TX); Saiki (R-HI); Brennan (D-ME); Bunning (R-KY); Clement (D-TN); Inhofe (R-OK); Solarz (D-NY); Goss (R-FL); Pallone (D-NJ); Laughlin (D-TX); Lowey (D-NY); Unsoeld (D-WA)

OPENING STATEMENTS: Studds noted the bipartisanship reflected in the Subcommittee's reported bill. Young agreed, but noted one very controversial amendment that would come up. Saiki spoke in favor of the amendment she and Pallone would be offering to bring tuna under U.S. jurisdiction.

AMENDMENTS

1. Studds offered an en banc set of technical amendments. Jones offered an amendment to the amendment. The en banc amendment would require governors to nominate at least one commercial fishing representative to each Regional Fishery Management Council. The Jones amendment thereto would also require the governor to nominate at least one recreational fishing representative. Young suggested striking the whole thing. Studds suggested that since the governors are not limited in the number of nominations they submit, the best way to handle this whole issue would be to cover it in report language. This was agreed to unanimously, and any language in this regard was struck from the en banc amendment, which was passed by voice vote.

2. Jones offered a "sense of the Congress" amendment which stated that the South Atlantic Fishery Management Council should develop an amendment to the Fishery Management Plan for Coastal Migratory Pelagics (i.e., mackerels) to make sure that all fishermen have an opportunity to participate equitably in the fishery before the quota is fully taken and the fishery closed. The amendment was passed by voice vote.

3. Jones offered an amendment revising the judicial review provisions of the Act. Upon request, the staff explained that

under framework fishery management plans, fishermen often do not know how regulations will impact them until framework decisions are made, and the 30-day limitation for seeking judicial review has long passed. Bosco supported the view that fishermen often do not know what their case is. The amendment passed by voice vote.

4. Jones offered technical amendments relating to GIFA's, foreign fishing permits, Council procedural matters and Secretarial action, which were passed by voice vote.

5. Studds offered an amendment to direct the Secretary of Commerce, working through ICCAT, to achieve an international conservation program for swordfish. The Secretary would be required annually to report to Congress on his progress. The amendment was passed by voice vote.

6. Young offered an amendment to allow the North Pacific Fishery Management Council to prepare the research plan contained in the Subcommittee's reported bill. Hutto asked why the North Pacific was the only Council being authorized to do this, and Young responded that the other Councils had objected. Unsoeld stated that she would not oppose the amendment, but noted that in her view the NMFS Alaska Fisheries Center would be a better place to have this job done, and that she hoped the Council would not be parochial. The amendment was passed on voice vote.

7. Young offered a "sense of the Congress" amendment which stated that the North Pacific Fishery Management Council should give consideration to the needs of coastal communities in Alaska. Unsoeld stated that in her view this amendment did not give any support to calls for a shoreside preference. The amendment was passed by voice vote.

8. Hughes offered a "sense of the Congress" amendment which stated that the Secretary should reinstate joint Council jurisdiction over the fishery management plan for swordfish. He stated that this was needed to get the plan moving. Tauzin asked whether this applied only to swordfish, and Hughes answered that it did. The amendment was passed by voice vote.

9. Saxton offered a "sense of the Congress" resolution which stated that the United States should seek international conservation and management measures for swordfish. Studds offered an amendment to the amendment which would direct the Secretary to take action, and specifically to seek a minimum size requirement. Saxton stated that the minimum size requirement might not be the best way to manage this fishery and that the Congress should not be this specific. Studds argued that the majority of scientific opinion favored this approach, and that serious action was needed. The Studds amendment and the Saxton main amendment were each approved by voice vote.

10. Bosco offered an amendment to require that fishery

management plans consider and offer adjustments for fishing time lost to weather. He noted that in short seasons fishermen could be closed out because of a few days lost to weather. The amendment was passed by voice vote.

11. Bosco offered an amendment to drop the Subcommittee's new language for National Standard #1, and return to the language of the Act as it now stands. He argued that the Act currently adopts the right balance between long-term conservation and the economic health of the industry. Studds argued that the need for more conservation was predominant in industry comments at public hearings on the bill, and this was the Subcommittee's response. Young stated that he agreed with Studds' assessment of the public comment, and that he has supported the Subcommittee language, but that he has recently heard from constituents who wanted no change from the current language of the Act. The amendment was passed by voice vote.

12. Ortiz offered an amendment to strike the Subcommittee language which terminated the fisheries financial assistance programs. He stated that they did not contribute to overcapitalization and were needed by the industry. Schneider noted that these programs helped the U.S. fishing industry to meet foreign competition. Studds argued that these programs had outlived their usefulness, that it did not make sense for the government to encourage any new vessels to enter the fishing industry, and that elimination of the programs could save the taxpayers \$5 million to \$6 million each year. He argued that lack of access to capital was not the problem facing the industry today. Ortiz argued that fishermen was facing escalating insurance and other costs while imported product was allowed in for free. The amendment passed by voice vote.

13. Miller offered an amendment to expand the class of withdrawals from capital construction funds that could be considered qualified. The amendment passed by voice vote.

14. Miller offered an amendment to change the makeup of the North Pacific Fishery Management Council, by adding two seats for Washington and one for Oregon. He noted that these were national resources, not Alaskan, and that the vast majority of the fishing was done by citizens from Washington and Oregon. Unsoeld argued that no other State could appoint the majority of members on a Council, that the issue was fair representation, and that the Seattle industry had made the investments necessary to develop the North Pacific fisheries. Young argued that Washington and Oregon are already represented on two Councils, that they are successful under current circumstances, that Washington already has a majority of the members on the Councils scientific committee, that there are no examples of discrimination, and that Council make-up could not consistently change because of changing fishery circumstances.

Hughes offered a substitute that would increase the Washington

and Oregon representation, but not by as much as sought by the Miller/Unsoeld amendment. It would result in 6 members from Alaska and 6 from Washington and Oregon, with the NMFS Regional Director as the swing vote. He argued that this was not a perfect solution but a fair and reasonable compromise. The Hughes substitute was agreed to and the amendment passed by voice vote.

15. Brennan offered an amendment to prohibit the possession or sale in interstate commerce of lobster smaller than the minimum size contained in the fishery management plan for lobsters. Studds supported the amendment, noting that it would get at the problem of drastically undersized Canadian lobsters. Tauzin supported the amendment, citing the need to address unfair competition from other countries whose fishermen are not under conservation regulations similar to our fishermen. The amendment passed by voice vote.

16 Saiki offered an amendment to include tuna under the exclusive fishery management authority of the United States. She noted that the Act included every other migratory fish, and that this change was needed to assure proper data collection and management. Studds noted that the current language was a carefully crafted compromise. Solarz asked what the logic of the distinction between tuna and other highly migratory species was. Studds stated that there was no logic to it, that it was a political compromise necessary to get the law passed, and that he had not supported it originally. Carper asked whether the United States was the only major fishing nation that did not exercise jurisdiction over tuna, and Saiki answered in the affirmative. The amendment passed by voice vote.

17. Unsoeld offered an amendment to require the Secretary of Defense to report on how DOD could help the Coast Guard enforce the Act. Davis stated that this could cause the bill to be sequentially referred to the Armed Services Committee. Unsoeld withdrew the amendment in order not to slow down the bill.

18. Tauzin offered an amendment that directly copied Senate language requiring the Secretary of State to conduct negotiations to protect sea turtles, and prohibiting the importation of shrimp after May 1, 1991, unless the exporting countries met certain requirements. Ortiz argued in favor, noting that 75% of our shrimp consumption comes from other countries. Schneider objected calling this a surprise amendment that was extremely controversial and deserved more careful consideration. Saxton stated that he was afraid that the amendment could cause the bill to be sequentially referred to the Ways and Means Committee. Studds objected to the way the amendment was being offered, noting that his staff had tried to ascertain Tauzin's intentions for a month, and had only found out about this amendment one hour into the markup. He stated his willingness to work on this issue, but not under these circumstances. Tauzin stated that he was only trying to get treatment for shrimp fishermen similar to

that the Committee had earlier voted for lobster fishermen. Davis asked whether this would cause the bill to be sequentially referred to the Ways and Means Committee and counsel (Welch) stated that in his opinion it would. The Committee took a break.

Tauzin withdrew his amendment and offered a substitute that dropped the import limitation provisions in order to avoid sequential referral. The amendment was agreed to by voice vote.

19. Tauzin offered an amendment to require that a study of TED's be conducted including fishermen, and that while the study was being conducted fishermen would not be required to use TED's. Hutto offered an amendment to require the study to be completed in one year, which Tauzin agreed to and was adopted. Tauzin charged that the scientific information on TED's was flawed and that it had been collected in a way to support the TED's regulation. Ortiz stated that his office had been contacted by a former NMFS employee who had said that TED's data had been manipulated and had resigned in protest. Tauzin argued that shrimp fishermen do not see turtles, and that there were better ways of protecting them, such as captive breeding programs. Hughes asked what the status of the National Academy of Sciences study was, and Tauzin responded that it was delayed, and perhaps not available until March. Schneider objected to the helter-skelter way the amendment was being offered, on such a controversial proposal. Studds argued that if this was included in the bill, every environmental group in the country would oppose it and doom it, and restated his willingness to hold hearings and look into this issue. Tauzin noted the need to act before October 15 to avoid major financial penalties to shrimp fishermen. He stated that the Gov. Sununu and Secretary Mosbacher would be in a position to suspend the regulations if the Committee could send a signal. Studds disagreed. Tauzin requested a recorded vote. The amendment was defeated, 14-22. (See below) Bogco stated that he was sympathetic to the shrimp fishermen, but voted against the amendment because he believed it would jeopardize the whole bill.

The bill as amended was brought up and passed by voice vote.

RECORDED VOTE ON TEDS

Yea

Jones
Hubbard (Jones by proxy)
Hughes
Hutto
Tauzin
Dyson (Jones by proxy)
Gorski (Jones by proxy)
Ortiz
Bennett (Jones by proxy)
Pickett (Jones by proxy)
Clement (Jones by proxy)
Laughlin (Jones by proxy)
Young (Davis by proxy)
Fields

Nay

Studds
Foglietta (Studds by proxy)
Hertel
Lipinski (Jones by proxy)
Carper
Bosco
Tallon (Jones by proxy)
Hochbrueckner (Jones by proxy)
Solarz (Jones by proxy)
Pallone
Lowe (Jones by proxy)
Unsoeld
Davis
Lent (Davis by proxy)
Schneider
Saxton (Davis by proxy)
Miller
Coble
Weldon (Davis by proxy)
Saiki (Schneider by proxy)
Bunning (Davis by proxy)
Goss

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