

M E M O R A N D U M

TO: Council, SSC, and AP members

FROM: Clarence G. Pautzke *Clem*
Executive Director

DATE: April 6, 1988

SUBJECT: Bering Sea International Waters

ACTION REQUIRED

- (a) Preliminary results of NMFS/NWAFRC pollock survey.
- (b) Senate Commerce Committee hearings on Bering Sea enforcement.
- (c) Management initiatives for the international waters.
- (d) Review NMFS proposed rules on the definition of "fishing" and controlling foreign fishing in the international waters.

BACKGROUND

(a) Pollock Survey

Jim Traynor will report the preliminary results of the NMFS survey in February of pollock stocks in the Donut Hole.

(b) Senate Commerce Committee Hearings

Vice-Chairman John Peterson testified on behalf of the Council at the hearings on March 16. His testimony and a summary of that of others is item C-4(a). U.S. and State Senate Resolutions on the Donut are provided for your information under item C-4(b).

(c) Management Initiatives

Since our last Council meeting, the State Department has taken the initiative to establish an interagency workgroup to develop alternatives for management of the international waters and has started bilateral discussions with the Soviets. Ambassador Ed Wolfe will brief the Council on developments in management of the donut as well as related issues such as the status of INPFC, whaling certification, and marine mammal permits. A closed session will be held on Wednesday at noon for a detailed briefing on foreign relations.

(d) NMFS Proposed Rules

NMFS is publishing in the Federal Register a proposed emergency rule that will change the definition of "fishing" in the foreign regulations to make it less restrictive and thereby require all foreign processors that process within the U.S. EEZ to have a foreign vessel permit. Now vessels can process fish from the Donut Hole inside our EEZ without a permit. With the rules changed and a permit required, vessels will have to comply with all reporting, observer, and enforcement requirements of foreign processors that process fish caught in the EEZ.

NMFS also is publishing an Advanced Notice of Proposed Rulemaking to receive public comments on three possible measures that NMFS/NOAA may use to monitor harvests in the Bering Sea. They include:

1. Requiring foreign fishing vessels carrying U.S. observers within the EEZ to continue carrying them into the Donut Hole.
2. Allowing processing and support activities in the EEZ only for fish harvested inside U.S. waters.
3. Requiring inspection of foreign fishing vessels entering and leaving the EEZ in the Bering Sea.

Copies of these proposed rules should be available by Council meeting time.

(e) U.S. and China to Exchange Data

Item C-4(c) is an agreement between the People's Republic of China and the U.S. to exchange fisheries data from the Donut area.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

(Docket No.)

Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency Final Rule.

SUMMARY: NOAA issues an emergency rule to change the definition of "fishing" to include processing, transfer, and supply activities supporting the harvest of fish outside the U.S.

Exclusive Economic Zone (EEZ). The change will improve enforcement of the Magnuson Fishery Conservation and Management Act (Magnuson Act), and will allow NOAA to monitor more closely harvests in the entire Bering Sea ecosystem.

EFFECTIVE DATE: Effective upon publication. Comments will be accepted on or before [insert date 30 days after publication].

ADDRESS: Send written comments to Alfred J. Bilik, Fees and Permits Branch, F/TS21, National Marine Fisheries Service, 1825 Connecticut Avenue, N.W., Washington, D.C. 20235. Telex 467856 US COM FISH CI.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, (202) 673-5319.

SUPPLEMENTARY INFORMATION: Under the Magnuson Act, the United States claims exclusive rights to conserve and manage all fish

within the EEZ and all U.S.-origin anadromous species and Continental Shelf fishery resources beyond the EEZ that are not within the EEZ of another nation. In the past, however, NOAA has by regulation narrowed this assertion of management authority by defining "fishing" to include only activities supporting the harvest of "fish over which the United States exercises exclusive fishery management authority." This definition is narrower than the definition of "fishing" in the Magnuson Act, which does not so qualify "fish." The result of this regulatory definition is that activities such as processing and transfers of fish harvested outside the EEZ are beyond the scope of the permitting, recordkeeping, and reporting requirements of the foreign fishing regulations.

In the last major revision to these regulations, NOAA proposed (at 49 FR 50510, December 28, 1984) to broaden the definition by dropping the restrictive phrase. In the final rulemaking (at 50 FR 34964, August 28, 1985), however, the narrower definition was retained with the explanation that "[t]he United States asserts jurisdiction over support activities in the FCZ [fishery conservation zone] only if the supported harvest activity involves fish under U.S. management authority."

At the time, it was thought that enforcement problems, particularly with transfers from harvesting to transport vessels, could be adequately addressed by adding a rebuttable presumption at 50 CFR 611.3(a)(1)(ii). The discovery of illegal fishing

and the suspicion of extensive poaching in the EEZ, along with growing concern that resources in an area of the central Bering Sea are jeopardized by unrestrained harvests, necessitate an assertion of additional management authority and a revision in the definition.

The problems that NOAA must address are explained more fully in an Advance Notice of Proposed Rulemaking (ANPR), published today at 53 FR _____. Foreign fishing vessels (FFVs) accustomed to operating in the EEZ are being replaced by American fleets. Some of these displaced FFVs are relocating their efforts to the "donut hole," a portion of the central Bering Sea entirely surrounded by the EEZs of the U.S. and the U.S.S.R. Others may be fishing illegally within U.S. waters, but reporting their catch as having been harvested in the "donut hole." There are indications that some FFVs have been abusing the right to fish within the central Bering Sea to the detriment of the interests of the U.S., whose waters provide many of the spawning grounds for the resources beyond.

In the past year, the Coast Guard has documented aerial sightings of FFVs in the Bering Sea EEZ, but either could not identify the vessels or could not prove they were engaged in harvesting activities. A Mexican shark vessel was boarded in the EEZ off San Diego, but could not be seized until it was later observed harvesting sharks.

Then on January 13, 1988, as many as seven trawler-processors of Japanese registry--some with markings concealed--were videotaped fishing without valid permits on Bowers Ridge, 35 miles inside the U.S. EEZ, despite the fact that foreign nations have received no allocations of Alaskan groundfish in 1988. Some of these vessels were found two weeks later in the "donut hole" and claimed they had been there all along. U.S. enforcement officials are concerned that unregulated fisheries in the "donut hole" provide an opportunity for FFVs fishing illegally within the U.S. EEZ to avoid detection by enforcement patrols.

The reported catch from the "donut hole" has increased dramatically from about 15,000 metric tons in 1980 to about 993,000 metric tons in 1986. There is considerable doubt as to whether the resource base in the central Bering Sea is productive enough to support the level of reported harvests. If the harvest in the "donut hole" is actually as high as reported, U.S. scientists are concerned that this level of fishing could adversely affect the entire Bering Sea ecosystem.

On the other hand, some of the reported catch from the "donut hole" may actually have been illegally taken in the EEZ. To deter poaching by FFVs crossing the EEZ boundary from the "donut hole," NOAA must have more control over and more information about these vessels' activities. The ANPR presents several options: requiring an FFV carrying an observer within

the U.S. EEZ to continue carrying that observer on any voyage to the "donut hole"; prohibiting processing and other support activities in the EEZ unless the fish were harvested in U.S. waters; and requiring check-in/check-out inspections for FFVs conducting "fishing" operations in the EEZ.

Until NOAA chooses among the regulatory options and publishes a final rulemaking, and unless NOAA opts for restricting support operations to EEZ-harvested fish, the definition of "fishing" must be revised to eliminate the existing loophole. Fishing operations in the EEZ supporting the harvest of "donut hole" fish should not be exempt from the permit, reporting, and recordkeeping requirements of the foreign fishing regulations.

NOAA therefore amends the definition of "fishing" to delete the qualifying phrase, "fish over which the United States exercises exclusive fishery management authority." This means that FFVs conducting certain operations in the U.S. EEZ--processing or transferring fish or supplying other FFVs--must have a permit under § 611.3(a)(1), even though the fish may have been harvested outside U.S. waters. Moreover, FFVs conducting these operations must make reports and maintain the logs required by §§ 611.4 and 611.9 of the foreign fishing regulations.

Not wishing unnecessarily to burden freedom of navigation on the high seas, NOAA redefines "support" to encompass all transfer and supply operations in the EEZ, but to include transport operations only if they support harvest operations in the EEZ.

Vessels with fishery products aboard are entitled to freedom of passage through the EEZ, so long as they conduct no support operations in the zone.

These revisions will allow NOAA to monitor more closely the activities of these vessels in the EEZ and in the "donut hole." Conforming amendments are also made to §§ 611.1(a) and 611.3(a)(1).

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law. Because of the suspected magnitude of ongoing illegal fishing in the U.S. EEZ and possibly intense harvests in the "donut hole," the Assistant Administrator also finds it impracticable and contrary to the public interest to provide notice and an opportunity for public comment.

NOAA Directive 02-10, published at 45 FR 49312 (July 24, 1980), adopts internal procedures to implement the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq. Under those procedures, programmatic functions with no potential for significant environmental impacts are generally excluded from NEPA requirements. This emergency rule is not expected to have direct impacts on fishery resources in the EEZ. It is intended to improve enforcement of U.S. fishery regulations and to collect additional information on "donut hole" harvests, and thus indirectly to benefit U.S. fishery resources.

The Assistant Administrator has also determined that this rule will have no impact on the Coastal Zone Management Program of any State.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in § 8(a)(1) of that order. This rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

This rule contains a collection of information requirement previously approved by OMB and given OMB control number 0648-0075.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Recordkeeping and reporting requirements.

Date:

Signature:

William E. Evans
Assistant Administrator for Fisheries

For the reasons set out in the preamble, 50 CFR 611 is revised as follows:

PART 611--FOREIGN FISHING

1. The authority citation for 50 CFR Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 611.1, paragraph (a) is revised to read as follows:

(a) This part governs all foreign fishing under the Magnuson Fishery Conservation and Management Act. Foreign vessels which are not operated for profit and are conducting recreational fishing only must comply with the provisions of this section, § 611.2, § 611.6(a)(1), applicable portions of § 611.7, and § 611.15.

3. In § 611.2, the definition of "Fishing or to fish" and the definition of "support" are revised to read as follows:

Fishing or to fish means any activity, other than scientific research, which does, is intended to, or can reasonably be expected to result in catching fish or removing fish from the water. Fishing also includes the acts of scouting, processing and support.

Support means any operation by a vessel assisting fishing by foreign or U.S. fishing vessels, including--

(a) Transferring fish or fish products;

(b) Transporting fish over which the United States exercises exclusive fishery management authority, or fish products made from such fish; or

(c) Supplying water, fuel, provisions, fishing equipment, fish processing equipment, or other supplies to a fishing vessel.

4. In § 611.3, paragraph (a)(1) is revised to read as follows:

(a) General. (1) Each FFV fishing under the Magnuson Act must have on board a completed permit form for a permit issued under this section, unless it is engaged only in recreational fishing.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

(Docket No.)

Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: NOAA seeks comments on regulatory and other options to respond to illegal fishing in the U.S. Exclusive Economic Zone (EEZ) of the Bering Sea, and to the possibility of harvests in an adjacent area that threaten U.S. stocks.

The options include: (1) requiring foreign fishing vessels (FFVs) carrying U.S. observers within the EEZ to continue carrying them on any voyage beyond the EEZ in the Bering Sea; (2) allowing processing and support activities in the EEZ only for fish harvested inside U.S. waters; and (3) requiring inspection of FFVs entering and leaving the EEZ in the Bering Sea. Implementation of one or more of these options would allow NOAA to monitor more closely harvests in the Bering Sea and to combat illegal fishing within the EEZ.

DATES: Comments must be filed on or before [insert date 30 days after publication].

ADDRESS: Send written comments to Alfred J. Bilik, Fees and Permits Branch, F/TS21, National Marine Fisheries Service, 1825 Connecticut Avenue, N.W., Washington, D.C. 20235. Telex 467856 US COM FISH CI

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, (202) 673-5319.

SUPPLEMENTARY INFORMATION:

The remote Bering Sea, despite hostile weather and sea conditions, is the world's most productive fishing ground. The Bering Sea's primary production areas that support a wide variety of fish and shellfish are located almost entirely within the U.S. EEZ and the U.S.S.R. economic zone (EZ). A small portion of the central Bering Sea, entirely surrounded by the two zones and referred to as the "donut hole," supports fisheries based on pelagic resources such as Alaska pollock and several species of anadromous Pacific salmon and steelhead.

The United States has implemented fishery conservation, management, and development policies, consistent with international law, that are rapidly displacing foreign fishing fleets from the EEZ. In the EEZ off Alaska, the phase-out of foreign fishing has ended foreign directed fishing, at least for the first part of 1988, and is reducing the dependence of the U.S. harvesting sector on foreign fish processing vessels.

As a result, displaced FFVs are either relocating their efforts to the "donut hole," or may be fishing illegally within U.S. waters but may be reporting their catch as having been harvested in the "donut hole." There are indications that some FFVs have been abusing the right to fish within the central Bering Sea to the detriment of the interests of the U.S., whose waters provide many of the spawning grounds for the resources beyond.

The Coast Guard has documented numerous aerial sightings of FFVs in the Bering Sea EEZ, but either could not identify the vessels or could not prove they were engaged in harvesting activities. Then on January 13, 1988, as many as seven modern trawler-processors of Japanese registry were videotaped from a privately chartered airplane as they were fishing on Bowers Ridge, 35 miles inside the U.S. EEZ, despite the fact that no foreign nation has received an allocation for Alaska groundfish in 1988. Several of the vessels had concealed their identification numbers. There is little doubt that these vessels entered the EEZ from or on their way to the "donut hole." U.S. enforcement officials are concerned that unregulated fisheries in the "donut hole" provide an opportunity for FFVs to fish illegally within the U.S. EEZ and avoid detection by enforcement patrols.

In addition to providing a sanctuary for FFVs poaching in the EEZ, the "donut hole" may be a "last frontier" for foreign

fishing vessels. During certain times of the year, Alaska pollock form large spawning aggregations subject to deepwater trawling in the "donut hole." Vessels from Japan, the Republic of Korea, Poland, the People's Republic of China, and possibly from North Korea and Taiwan have recently fished there. The reported catch from the "donut hole" has increased dramatically from about 15,000 metric tons in 1980 to about 993,000 metric tons in 1986. The "donut hole" is the only area in the Bering Sea ecosystem where FFVs can take significant amounts of fish free of even the mildest conservation limitations. If the harvest in the "donut hole" is actually as high as reported, U.S. scientists are concerned that this level of fishing could adversely affect the entire Bering Sea ecosystem. Continued unrestrained fishing in the "donut hole" may ultimately adversely affect the conservation efforts of the United States in the EEZ.

NOAA is responding to these problems by implementing an Emergency Final Rule, published today at 53 FR _____, to change the definition of "fishing" to improve enforcement and to gather additional information on Bering Sea harvests. NOAA is considering other options that, individually or in combination, would address the situation.

Option 1 - Observers

Late last year, the North Pacific Fishery Management Council (Council) recommended that NOAA condition foreign fishing

permit authorizations for vessels which support U.S. fishing vessels in the Bering Sea and Aleutian Islands groundfish fishery, and which also conduct directed fishing operations in the adjacent waters beyond the EEZ. The condition was that the flag nation be required to agree that such vessels would carry U.S. observers while fishing in the "donut hole."

NOAA replied that it could not implement the recommendation until adequate preparations were completed. Permit authorizations were approved for 1988 without the recommended condition, but applicant nations were notified that the Council's recommendation was under consideration and that the authorizations might be amended under the provisions of 50 CFR 611.3(1) at a later date.

This notice is published in compliance with § 611.3(1)(3) as a proposed "additional restriction." NOAA proposes to implement an "extended" observer program by amending the 1988 foreign fishing permit authorizations that allow vessels to receive Alaska groundfish from U.S. vessels under the Bering Sea and Aleutian Islands Groundfish Fishery Management Plan. Appropriate authorizations would be amended by adding an item (c) to the section entitled "Other Activities Authorized and Additional Conditions and Restrictions Applicable to Permits":

- (c) If requested by the Regional Director, Alaska Region, the named vessels must carry a U.S. observer aboard

when conducting fishing operations in waters of the Bering Sea beyond the seaward boundary of the EEZ of any nation.

This observer program would further conservation and management of Bering Sea groundfish because of the probable relation between removals from the "donut hole" and stocks in the EEZ. A bilateral arrangement between a foreign nation and the U.S. for an observer program in the "donut hole" would be an acceptable substitute for compliance with the observer condition.

Comments on this option will be considered in any decision to amend existing authorizations.

Option 2 - Support Limitations

It is extremely rare for FFVs to be caught conducting unauthorized harvesting operations in the EEZ, as Japanese trawlers were observed doing January 13. The unusual circumstances of this discovery lead to the conclusion that such illegal fishing may be commonplace. We suspect most such activities occur at night, during bad weather, or by monitoring the whereabouts of U.S. enforcement patrols. FFVs encountered merely processing or transferring fish in the Bering Sea EEZ have been effectively exempt from the foreign fishing regulations, because of our inability to disprove that the fish involved were taken outside the EEZ.

Today's emergency rulemaking revises the definition of "fishing" so that all processing and transfer activities in the EEZ will be subject to U.S. permitting and reporting requirements. But, since a permitted support vessel would still have a legitimate reason for being in the Bering Sea EEZ, enforcement officials would have difficulty in distinguishing whether any fish aboard came from the EEZ or from outside waters. (FFV logs usually do not implicate the vessel as having fished illegally in the EEZ.)

One approach to this enforcement problem is to limit processing and transfer operations in the Bering Sea EEZ to activities involving only fish that is harvested in U.S. waters. This could be accomplished by amending § 611.93, either (1) by directly prohibiting in the EEZ any activities supporting the harvest of fish taken seaward of the Bering Sea management area (BSMA), as defined in § 611.93(a)(1); or (2) by requiring FFVs entering the BSMA to conduct joint ventures with U.S. fishing vessels to enter with empty holds. Mere transit the BSMA with non-EEZ fish aboard would be allowed. Either alternative could be combined with Option 3, described below.

Option 2 essentially would require vessels engaged in "donut hole" fishing to remain outside the EEZ, or to conduct processing operations in Alaskan internal waters, if allowed by the Governor of Alaska. "Donut hole" operations and fishing in U.S. waters

would be separated in time and space. The only way an FFV could hide "donut" fish or fish illegally taken in the EEZ would be by underlogging, which is subject to detection by observers or by enforcement boardings.

While Option 2 is attractive from an enforcement viewpoint, it sacrifices opportunities to gain information on Bering Sea harvests. FFVs operating only in the "donut hole" would have no need for U.S. permits, and thus would not be subject to reporting, inspection, or observer requirements. It would also place burdens on foreign fishing fleets, which prefer the calmer waters of loading zones inside the EEZ for transfer operations.

Option 3 - Inspections

It has been suggested that all FFVs entering the Bering Sea EEZ with the intent of conducting support operations should be required to make a port call in Alaska to be inspected; exit inspections of such vessels would also be mandatory. This could be accomplished by amending the regulations governing foreign fishing in the Bering Sea and North Pacific Ocean (§ 611.90(f)).

This proposal could not be carried out under the present budget of the National Marine Fisheries Service (NMFS). During 1987, there were 4,364 foreign fishing vessel entries to and exits from the EEZ off Alaska. The NMFS Enforcement Office in

Alaska estimates a cost of \$95,000 per month, plus salaries, to ensure full inspection of each FFV entering and exiting the EEZ. Without assistance from a private or other governmental source, this option is not viable.

Option 3A, a variation on 100 percent inspection, would be to inspect in port only some of the FFVs entering and exiting the Bering Sea management area (BSMA), as defined in § 611.93(a)(1). Section 611.90(f) would be revised to add an inspection opportunity before the FFV leaves the BSMA and to clarify that entry and exit inspections may occur at sea or in port. Within the 24 hours following a BEGIN or SHIFT (into a BSMA area) message, NOAA would send notice to the FFV that it must come to port to be inspected before it could begin any "fishing" operation (as redefined in today's emergency rulemaking). Within the 24 hours following a CEASE message, NOAA would send notice to come to port before leaving the BSMA. If no notice were received, the FFV would be free to begin fishing or to leave the area. The cost of Option 4A would obviously depend on the number of FFVs called into port.

Either option would facilitate inspection of fish, fish products, and fishing gear aboard vessels that conduct fishery support operations in the Bering Sea management area. BEGIN messages, which must include the amount of fish and fish products on board upon entry into the EEZ, could be verified.

The capacity of vessels arriving with empty holds could be measured, to be compared with cargoes upon exit. Inspection would provide some cross-checking with reports on transfers within the BSMA. And, since some FFVs would be entering the BSMA after harvesting fish in the "donut hole," some information pertinent to that fishery could be gathered.

On the other hand, the proposal would impose substantial costs in lost fishing time, fuel, and pilotage fees on foreign vessels. More important in enforcement terms, one-point inspection would not stop all illegal poaching. An FFV could still proceed to the "donut hole" but re-enter the EEZ at night, during bad weather, or by monitoring U.S. enforcement activities. After loading up with fish, the FFV could check in, ascribe its load to harvest in the "donut," and conduct transfer or joint venture operations in the BSMA. On its way out, the FFV would reverse the strategy, poaching after being inspected in port.

NOAA is allowing only 30 days for comments on these proposals due to the urgency of the situation. We recognize that the two purposes of the rulemaking--improving enforcement and collecting information--cannot each be accomplished to the maximum extent by any of the proposed options; we are seeking an appropriate balance. NOAA also welcomes suggestions for additional measures.

Date:

Signature:

William E. Evans
Assistant Administrator for Fisheries

1 STATEMENT OF MR. JOHN. G. PETERSON, VICE CHAIRMAN, NORTH
2 PACIFIC FISHERY MANAGEMENT COUNCIL, ANCHORAGE, ALASKA

3 Mr. Peterson. Thank you, Mr. Chairman and Senator Evans.

4 I am John Peterson, Vice Chairman of the North Pacific
5 Fishery Council. And I certainly appreciate the opportunity
6 of appearing here to present testimony on behalf of the
7 council on this extremely important matter.

8 My testimony has been already delivered to the committee,
9 and I will briefly summarize what has been said. I will not
10 touch on matters of enforcement or illegal fishing. But I
11 would like to point out that we have two serious problems to
12 face. The first is that we must stop all illegal fishing in
13 our zone, and we must control or stop the harvest in the
14 donut. There seems to be some considerable agreement on that.

15 However, effective enforcement really does not solve the
16 problem of uncontrolled fishing in the donut. The most
17 reasonable scientific hypothesis indicates one stock of
18 pollock in the Bering Sea, and fish caught in the donut are
19 of the same stock as those caught in our zone. The council
20 cannot provide an effective management regime without control
21 of the harvest. As it is now, we manage the fish and the
22 foreigners catch it.

23 There are several approaches to this problem that come to
24 mind. The first is to do nothing, status quo, which is
25 simply not acceptable.

1 Multilateral agreements is a second possibility, but th
2 procedure is much too time consuming. And ^{while} ~~whole~~ the X
3 negotiations for agreement and implementation and actual
4 compliance are going on, the unrestrained fishing in the
5 donut continues. And the greater the harm to our resource,
6 the longer it goes on.

7 I am pleased to hear that the State Department has
8 undertaken negotiations with the Soviet Union because these
9 stocks of pollock occur in their zone as well as ours. We
10 have heard there are going to be problems on establishing a
11 moratorium. But the option of bilateral agreement with the
12 Soviets requires establishment of a fishery enforcement line
13 plus agreed upon methods of determining the total harvest.

14 And then there needs to be an agreement on how that
15 harvest is split. In other words, how much fish is there to
16 be harvested and who gets it?

17 Considerable scientific information and research will be
18 needed, and we are going to need the funds to support that.

19

20

21

22

23

24

25

1 Bilateral agreements take a lot of time. This is not
2 going to be a simple agreement, but fishing must be stopped
3 in the donut, and I am not sure that these negotiations will
4 do that.

5 The North Pacific Council in its letter of January 25
6 requested the Department of State to determine the
7 feasibility of extending unilaterally U.S. fisheries
8 jurisdiction in the Bering Sea westward to the 1867
9 Convention line. Now, the Council is fully aware of the
10 gravity of that request, understanding the problems of
11 national security, oil and gas deposits, and the environment
12 and perhaps other matters. But notwithstanding those
13 concerns, to extend fisheries jurisdiction to the Convention
14 line brings essential fisheries conservation and management
15 to that area.

16 We feel that an enormous resource, and the industry
17 dependent upon it, is at risk, and this risk is important
18 enough to require immediate and firm action.

19 Existing marine boundaries and jurisdictional matters
20 make the donut very unique, and because of these unique
21 characteristics, the situation does not seem to fit any
22 existing customary international law. Perhaps innovative,
23 new international law is required in this case.

24 Incidentally, the Convention of 1867 was motivated in
25 part by fisheries concerns. The Territory of Washington

1 requested President Andrew Johnson to secure fishing rights
2 to the Russian shores of North America. It started with a
3 fisheries matter. In addition, it seems at the present time
4 that the Soviet Union is abiding by that Convention line on
5 fisheries enforcement matters, their version of the line,
6 incidentally, not ours. And as we all know, the United
7 States has auctioned provisional oil and gas leases in the
8 ~~NAVARIN~~ ^{NAVARIN} Basin, using the Convention line as the westward
9 boundary.

10 These conditions seem to provide a sufficient basis for
11 the firm action we request; an interim but immediate
12 extension of U.S. fisheries jurisdiction should be achieved
13 before the end of this year, 1988, with final boundaries and
14 management regimes to be negotiated with the Soviet Union as
15 soon as possible. In this regard, we respectfully request
16 that the Industry and our Council be allowed to participate
17 in these discussions in at least an advisory capacity.

18 To preserve the enormous fishery resources which provide
19 essential raw material to the U.S. industry, the donut must
20 be closed to unrestrained foreign fishing, and those
21 resources must be managed in a wise and rational manner.

22 Thank you, Mr. Chairman, very much.

23 [The prepared statement of Mr. Peterson follows:]
24
25

1 Senator Adams: Thank you very much, Mr. Peterson.

2 Pursuant to what I announced earlier, that I at least
3 would try to observe, we will submit most of our questions in
4 writing, but Mr. Hjelle, I had one question that I wanted to
5 ask you as a veteran fisherman.

6 We have heard the traffic of Dr. Aron on the stocks
7 themselves, and we are trying to focus on whether what we
8 have got up there is a take within the -- this is one of the
9 focuses, as mentioned by a number of the witnesses, of
10 whether it is a take within the donut of a stock that is
11 moving, or if the donut is simply being used as a staging
12 area to move in illegally into the Russian and into the U.S.
13 zones.

14 Now, you have been up there a long time, and it has been
15 a long time since I have been up there.

16 Give me your opinion, would you?

17 Mr. Hjelle: My firm belief is, Senator, that at times
18 there might be fish going through the donut area, but for
19 fish to be there on a consistent basis like it is on a shelf,
20 the answer is absolutely not.

21 Senator Adams: That was my impression of it, that the
22 fish are on the shelf and that we basically have here an
23 illegal fishing problem, that it is being used as a staging
24 area as opposed to sustaining the catch, and I am asking you
25 this as somebody who has just been there a long time.

Summary of Written Testimony
Provided at the March 16, 1988
Senate Committee Hearing
on
Fishery Management & Enforcement in the Bering Sea

Senator Brock Adams

- Americanization has forced foreign vessels into the "donut" and into illegal fishing.
- We must have better information regarding what is going on in the "donut."
- We must have better enforcement of our fisheries laws:
 - We will work with the Coast Guard on budget needs.
 - Current enforcement policy will soon be outdated.
 - With Americanization, we will have less leverage on foreign vessels in EEZ.
 - In future, enforcement requirements imposed on foreign vessels will be conditions for passage through EEZ.
 - Interference with the right of innocent passage is an extremely sensitive issue but it must be addressed.

Senator Frank Murkowski

- Unrecorded and illegal fishing threatens the entire ecosystem.
- We must have better information on stocks in the "donut."
- We should strengthen fisheries management and enforcement efforts within the EEZ by taking such actions as:
 - Check-in/check-out requirements for foreign fishing vessels in the EEZ.
 - Coast Guard adoption of a covert approach to surveillance actions.
 - Require transponders on foreign fishing vessels.
- Fisheries in the "donut" must be regulated.
- Prospects for a multilateral agreement are extremely remote but we must pursue that solution.
- If rapid, substantive progress on multilateral agreement is not possible, we must take action such as bilateral agreements with the Soviets.

Representative Don Young

- Illegal fishing deprives U.S. fishermen and processors of resources and market opportunities and also jeopardizes the health of Bering Sea stocks.
- Illegal fishing compounds management problems.
- In the short term, we must:
 - Require foreign fishing vessels to check in and check out of the EEZ as a permit condition.
 - Suspend, revoke, or deny permits to vessels suspected of illegal fishing.
 - Provide supplemental funding to the Coast Guard in FY 1988.
- In the long term, we must:
 - Call on all nations fishing in the "donut" to implement a moratorium on fishing for groundfish in the area.
 - Immediately negotiate a multilateral agreement controlling access to the "donut" and providing for research and enforcement.

Ambassador Ed Wolfe

- Department of State is developing an interagency strategy with the Department of Commerce, Department of Defense, Department of Justice and Department of Transportation to deal with all international, legal and policy issues regarding fishing in the international waters of the Bering Sea.
- January 26-28, 1988 in Moscow, the Department of State formed a U.S.-U.S.S.R. bilateral workgroup on Bering Sea fisheries.
- First meeting of U.S.-U.S.S.R. workgroup will take place in DC in April to discuss legal, scientific and enforcement issues.
- Department of State supports action to prevent and prosecute illegal foreign fishing, including:
 - Inspection of foreign fishing vessels.
 - Denial of permits for vessels found in violation of U.S. law.
 - Analysis of transshipment data.
 - Dedication of more resources to fisheries enforcement.

Admiral Paul Yost, Commandant, U.S. Coast Guard

- Since August 1986 Coast Guard has detected 15 foreign vessels fishing illegally in U.S. EEZ.
- Since June 1987 six cutter patrols and 25 overflights have been conducted in the "donut" area.
- Cutters and aircraft have observed vessels harvesting fish within the "donut."
- Coast Guard resources are currently "stretched" and enforcement in FY 1988 will decrease from last year's level because of funding problems.
- In FY 1988 the Coast Guard will reduce Alaska cutter patrol days by 54% and aircraft patrol hours by 55%.
- Coast Guard has had preliminary discussions with Navy and Air Force regarding assistance in Bering Sea surveillance.
- NOAA has contributed the use of a P-3 aircraft.
- Satellite transponders have been tested and are limited in usefulness.
- Aircraft and cutters are the best method for fisheries patrols and surveillance.

James E. Douglas, Jr., Deputy Asst. Administrator-NOAA

- Since most of the Bering Sea is probably a single ecosystem, any significant level of fishing in "donut" will reduce the amount of fish that can be taken elsewhere.
- NOAA has issued Notices of Violations and Assessment to six Japanese vessels for fishing in the EEZ without permits and to two unidentified vessels for concealing their numbers.
- NOAA has dispatched a P-3 Orion aircraft to Adak to assist the Coast Guard in fishery patrols.
- NOAA is also taking the following actions:
 - Adoption of an emergency regulation requiring permits for transfers of fish and fish supplies within the EEZ if the fish involved were taken beyond the EEZ.
 - Publication of proposed regulations that require foreign processing and support vessels to submit to import inspections and to carry U.S. observers into the "donut" if they also operate in the EEZ. Also, regulations would allow fishery support in the EEZ only if the fish are harvested within the zone.
- NOAA scientists are working to provide better information to the NPFMC regarding Bering Sea pollock stocks.

- NOAA, State Department and Coast Guard will meet with a Soviet delegation in April to discuss fisheries in the "donut."

Steve Pennoyer, State of Alaska

Testimony mainly related to high seas interception of U.S.-origin salmon and herring. Testimony also focused on the point that the issues of high seas fisheries beyond the U.S. EEZ are interrelated since they all harvest stocks also harvested by U.S. fishermen.

Ted Evans, Executive Director, Alaska Factory Trawlers

- In the short term, unaccounted harvests of Alaskan pollock stocks:
 - Will reduce American fishermen's catch per unit of effort, thereby increasing costs of American pollock products and making those products less competitive on the world market.
 - Average size of Alaska pollock will be smaller and more difficult to market.
 - More Alaskan pollock products will be placed into world markets competing with U.S.-produced products.
- In the long term, we will see:
 - Serious depletion of Alaskan pollock stocks.
 - Failures of American fisheries businesses.
- The U.S. must:
 - Establish a regulatory regime that better enforces the EEZ boundaries.
 - Pursue bilateral discussions with the Soviets regarding the "donut."
 - Consider imposition of a moratorium in the "donut" if bilateral agreement with the Soviets is not possible.

Henry Mitchell, Executive Director, Bering Sea Fishermen's Assn.

- Since 1979 BSFA has been involved in efforts to reduce interception of Alaska herring and salmon stocks in fisheries in the "donut" and other waters adjacent to the EEZ.
- BSFA has repeatedly pointed out to the Coast Guard that the Japanese were receiving advance notice of enforcement patrols.
- Alaska herring and salmon stocks intercepted by foreign vessels are very important to the subsistence and cash economies of most Western Alaskan villages.

- The U.S. should, with the Soviet Union, assert joint jurisdiction over the "donut,"
- Permits issued under GIFAs should be conditioned to allow for the placement of U.S. observers on all foreign fishing vessels in the North Pacific and Bering Sea.
- Nations with GIFAs should voluntarily reduce fishing activities in the North Pacific and Bering Sea until a comprehensive fisheries management regime can be developed.
- Congress must increase fisheries management and enforcement budgets.

Barry Collier, President, Pacific Seafood Processors Assn.

- Restrictive laws, budget problems, and diplomacy have constrained serious attempts to protect the fishery resources of the North Pacific.
- We must not go back to "business as usual" once the furor over the most recent illegal fishing episode has subsided.
- Illegal fishing threatens the biologic and economic health of the fishery in the Alaska EEZ.
- The NPFMC has adopted a conservative management regime for Bering Sea pollock, otherwise, stocks would be in very bad shape.
- There is considerable evidence of illegal foreign fishing in the EEZ for salmon, crab, halibut and sablefish.
- We must use every means possible to protect our fishery resources.
- The current system is not effective.

Bob Alverson, Executive Director, Fishing Vessel Owners Assn.

Also speaking on behalf of the Deep Sea Fishermen's Union.

- To address illegal foreign fishing, the U.S. should require countries with GIFAs to install and maintain transponders on their fishing vessels.
- In the long term, the U.S. should conclude a bilateral agreement with the Soviets regarding fisheries management in the "donut."
- A multilateral agreement is an obvious solution to the problem but would be difficult to achieve and could only be realistic if the U.S. established an interim unilateral conservation regime for the "donut."
- The U.S. should pursue unilateral extension of fisheries jurisdiction as a last resort.

Lee Alverson, representing the Highliners

- Dr. Alverson presented a report that documented substantial illegal foreign fishing in the Alaska EEZ since passage of the MFCMA.

March 16, 1988

CONGRESSIONAL RECORD — Extensions of Remarks

IN HONOR OF RICK SPEER—
 V.F.W. VOICE OF DEMOCRACY
 WINNER

HON. DOUGLAS APPLIGATE

OF OHIO
 IN THE HOUSE OF REPRESENTATIVES
 Wednesday, March 16, 1988

Mr. APPLIGATE. Mr. Speaker, I had the distinct honor last week of being a member of the head table during the Veterans of Foreign Wars' congressional banquet at which our distinguished colleague from Alabama, the Honorable WILLIAM NICHOLS, received the VFW Congressional Award for outstanding service to the Nation.

Besides the honor that was bestowed on BILL NICHOLS, the winners of the VFW 1988 Voice of Democracy Scholarship Program were also announced at the banquet held on March 8, with Frederick Wayne Speer, a senior at the Zweibrucken American High School in West Germany, taking first place.

I must admit that I and many of the thousands of people who gathered at the Sheraton Hotel that evening were deeply impressed and touched by the eloquence expressed by Rick in his speech, "American's Liberty—Our Heritage."

I would like to take this opportunity to provide my colleagues in the House with the full remarks that Rick gave to a captive audience last week. I'm certain that each and every Member of this Chamber will be affected by the touching statement from one of America's students. I fully expect that we'll all be hearing a lot more about this distinguished young man throughout the future.

Mr. Speaker, I wish to extend my utmost congratulations to Rick and to his parents, Mr. and Mrs. Corbett D. Myers. I will long remember the evening that he held the attention of the mighty and the powerful in Washington through the smooth and forceful delivery of his remarks.

Statement of Mr. Speer to follow.

AMERICA'S LIBERTY—OUR HERITAGE
 (By Frederick W. Speer)

It is, and yet it is not. It is a glimmer of hope for mankind, and yet it is not unlike the holy grail—perfection, but somehow always just out of reach... except in America. It is a principle which is our birthright, yet it is an idea which has been contemplated through the millenniums by men and women who have asked themselves: What is it? What is that sacred, but elusive, idea that we call liberty?

Is liberty a bell, like the famous bell of Philadelphia which, though cracked, still tolls the golden notes of freedom? If liberty were just a bell, then the Czar Kolokol bell outside the Kremlin in Moscow would also be a symbol of personal freedom. And since this bell in the Soviet Union weighs a hundred and ninety-three tons, making it the largest bell on the face of the earth, we would expect it to produce far more liberty than our own special bell in Philadelphia. But from the rusty bronzen throat of the Czar Kolokol bell do not flow the blessed melodies of liberty.

Is liberty, then, a statue, like that world-renowned status of ours in New York harbor which holds aloft a glowing torch and gazes out at the tired, poor, teeming masses which long to immigrate to the great land of freedom? If liberty were just a statue, then the Brancusi statue in the Milepogang Museum of Art in Bucharest, Roma-

nia, would also be a symbol of that sacred idea contemplated by the great thinkers of the past. The Brancusi statue, like our own, is that of a woman standing, holding in her upraised hand a torch, but from this torch do not radiate the blessings of liberty.

Clearly, liberty is not merely a statue or a bell. But if it is not made of iron or marble, or fashioned out of any kind of inanimate matter, then why did it matter so much to Patrick Henry that he demanded death as its only alternative? The people of the present join those of the past in asking: What is liberty, besides just a word that sounds good with "and justice for all"?

Liberty is the precious heirloom of our heritage, bequeathed by our nation's courageous founding fathers to every man, woman, and child fortunate enough to be a United States citizen, to secure freedom and liberty as our birthrights, the brave soldiers of our armed forces have fought and toiled in the face of incredible resistance since the founding of our great nation over two hundred ten years ago. They've helped keep liberty alive in America. All our citizens have kept our land a vestige of hope in a world where freedom of speech, press, and religion are as rare as flawless diamonds.

America has made it her mission to see the day when all the world's people will enjoy the same inalienable rights guaranteed to us by the brave, brilliant men and women of our heritage. Thanks to them, America is the champion of liberty, a nation founded on that noble principle and dedicated to translating the ingenious philosophy of our Constitution directly into reality. Tilton said, "Liberty will not descend to a people: A people must raise themselves to liberty". How very true, and how very many times in our history America has raised herself to this most priceless of all commodities.

However, simply recognizing the triumphs of our past is not enough. The fact that George Washington heroically crossed the Delaware, that Elizabeth Katy Stanton crusaded for women's rights, that Martin Luther King, Jr., peacefully rallied for racial equality—these deeds of vision and valor mean nothing if we of the present are content to coast along on the ever-waning momentum of the past. We face the perpetual responsibility of keeping liberty alive and well, if not through extraordinary or heroic feats, then through quiet, dedicated patriotism in everything we do. The young people of today face this noble duty, along with the middle-aged and the elderly. Indeed, all Americans share the same ultimate challenge: to insure that one day our Statue of Liberty will be joined by the Brancusi State of Romania in radiating freedom to all who gaze upon their torches, to ensure that one day our Liberty Bell will be joined by the Czar Kolokol Bell of Moscow, and that all the world's other bells, from Belfast to Belgrade to Leningrad, will ring out in unison and toll the harmonious chorus of liberty, the precious heirloom of our heritage.

CRITICAL MINERALS MINING
 EXPERIMENTAL PROGRAM

HON. NICK JOE RAHALL II

OF WEST VIRGINIA
 IN THE HOUSE OF REPRESENTATIVES
 Wednesday, March 16, 1988

Mr. RAHALL. Mr. Speaker, today I am introducing legislation to establish a mining experimental program on critical minerals within the Bureau of Mines. The specific purpose of this

program would be to develop mining, mineral processing and other technologies that will substantially reduce the dependency of this Nation on critical minerals produced in the Republic of South Africa.

This legislation transcends the debate over whether the United States should impose additional sanctions on South Africa. I think we all can agree that there are national security implications associated with the reliance on any essential commodity from any politically volatile country, be it minerals from South Africa or crude oil flowing through the Persian Gulf.

In this regard, the United States is heavily dependent on South Africa for a number of strategic and critical minerals, including chromium, manganese, platinum, vanadium, and cobalt.

The Comprehensive Anti-Apartheid Act of 1986 [CAAA] did not impose an outright prohibition on imports of South African strategic and critical minerals for this very reason. Pursuant to the CAAA, 10 minerals were certified as strategic and critical and exempted from the act's sanctions.

However, the CAAA in section 504(b) directed the President to develop a program which reduces the dependence of the United States on these minerals.

The development of such a program makes good sense, even if it is not associated with anti-Apartheid legislation. There are great advances we could be making to reduce our minerals dependency through the development of substitute materials, primary and secondary recovery techniques and the development of alternative supply sources both domestically and in non-Council for Mutual Economic Assistance countries.

Yet, the administration has made very little effort to develop this program and I think this not only defies the letter and intent of a duly enacted law but undermines the security of this Nation.

The legislation I am introducing today seeks to establish a credible program aimed at reducing U.S. dependence on these strategic and critical minerals.

RESOLUTION INTRODUCED TO
 HALT ILLEGAL FISHING IN
 THE NORTH PACIFIC

HON. JOHN MILLER

OF WASHINGTON
 IN THE HOUSE OF REPRESENTATIVES
 Wednesday, March 16, 1988

Mr. MILLER of Washington. Mr. Speaker, I rise to introduce a resolution that is the first step toward stopping the illegal fishing in our rich fishing grounds in the North Pacific. This illegal activity is costing the American fishing industry millions of dollars. It is undermining our efforts to manage and preserve one of our most important resources. It is jeopardizing the creation of thousands of jobs in a strong, growing industry. And this illegal fishing is making a mockery of the "Americanization" of our exclusive economic zone. This resolution calls upon the appropriate Government agencies to enforce existing laws that allow the United States to require position indicating beacons on foreign fishing vessels.

March 16, 1988

According to the text of the governing international fishing agreements with Japan and other countries which fish in the North Pacific, the United States can require that "appropriate position-fixing and identification equipment, as determined by the Government of the United States is installed and maintained in working order on each fishing vessel." Moreover, no new legislative authority is required from Congress as the Magnuson Fisheries Conservation and Management Act in 16 U.S.C. 1821(c)(2)(C) expresses gives the United States authority to require transponders if they permitted in the GIFA with another nation.

Mr. Speaker, this resolution is cosponsored by my colleagues Congressmen DON BONKER, ROD CHANDLER, NORM DICKS, MIKE LOWRY, and DON YOUNG. I am delighted that they have joined me in taking this first step toward stopping the thievery in the North Pacific. Our resolution states three things. First, and most important, we call on the United States to exercise its acknowledged right to require position-fixing and identification equipment on foreign fishing, fish processing and fish tender vessels operating in our exclusive economic zone. Second, we argue that based on the text of the GIFA that a strong case can be made that the same regulations apply to vessels fishing in international waters adjacent to U.S. waters in the Bering Sea and North Pacific. That means the so-called donut hole area in the Bering Sea. Third, we want some response from the Federal Government within 60 days.

I understand a similar resolution is being developed in the Senate.

Congressman DON BONKER and I just held a hearing on the status of fishery exports. Congressman MIKE LOWRY joined us for that hearing and we heard from Assistant Secretary of State Ed Wolfe about illegal fishing. Ambassador Wolfe spoke favorably of our objective of requiring position-fixing equipment on foreign fishing vessels. He cautioned us that he was speaking as an official of the State Department and his views had not yet been endorsed by the administration. I am hopeful that Ambassador Wolfe's view will become administration policy.

Mr. Speaker, this resolution speaks of certain equipment. It does not mandate a specific type of equipment. Rather, our objective is to see that the provision in the G.I.F.A.S. is implemented promptly. The Coast Guard, the State Department and the National Marine Fisheries Service are our experts on this technology. They have the expertise to properly determine the type of transponder or other appropriate equipment which should be "installed and maintained in working order on each fishing vessel" of the foreign governments operating in the North Pacific.

I also want to point out that we are trying to be good neighbors with these nations. We are not asking them to do anything they have not already agreed to. I believe that the United States is within its rights to require position-fixing equipment on vessels fishing in international waters commonly referred to as the donut hole area. Under international agreements, we can regulate the at-sea harvesting of anadromous fish like salmon caught outside of our 200-mile zone. It is commonly known among the fishermen from the United States that catching mixed stocks on the high seas will result in taking some anadromous fish. If

the foreign fishing vessels are taking some salmon then they are subject to our regulations and they must install the appropriate equipment. We are not usurping international law, we are enforcing agreements negotiated in good faith.

Mr. Speaker, the resolution I am introducing today is carefully crafted. It is a reasoned response to a serious problem. It is easy to understand and relatively easy to implement. I urge my colleagues to support it. It is time to bell the cat and stop the theft of our fish.

H. RES. 402

Mr. MILLER of Washington (for himself, Mr. BONKER, Mr. CHANDLER, Mr. DICKS, Mr. LOWRY, and Mr. YOUNG of Alaska)

RESOLUTION

Calling for the United States to require appropriate position-fixing and identification equipment on foreign fishing vessels operating in the United States Exclusive Economic Zone in the Bering Sea and North Pacific Ocean or fishing in international waters adjacent to the United States Exclusive Economic Zone in the Bering Sea and North Pacific Ocean.

Whereas, evidence of substantial illegal fishing by vessels registered to foreign nations has been found in the Bering Sea and North Pacific Ocean;

Whereas, foreign fishing in the so-called "donut hole" area of the Bering Sea is not subject to necessary and appropriate conservation and management and appears to have served as a sanctuary for vessels engaged in illegal fishing in the Exclusive Economic Zone of the United States;

Whereas, the Governing International Fishery Agreements with foreign nations fishing in the Exclusive Economic Zone of the United States recognize the authority of the United States to require that "appropriate position-fixing and identification equipment, as determined by the Government of the United States is installed and maintained in working order on each fishing vessel" of such foreign nations;

Whereas, foreign nations which are parties to Governing International Fishery Agreements recognize the authority of the United States with respect to fishery resources in the Exclusive Economic Zone of the United States and to anadromous fish stocks originating in the waters of the United States while present in such Exclusive Economic Zone and in areas beyond national fisheries jurisdictions recognized by the United States; and

Whereas, the Magnuson Fishery Conservation and Management Act in 16 U.S.C. 1821(c)(2)(C) expresses the sense of Congress that Governing International Fishery Agreements shall bind foreign fishing nations to install and maintain in working order on each fishing vessel such "position-fixing and identification equipment" as the Secretary of the Department in which the Coast Guard is operating determines to be appropriate.

Resolved, the House of Representatives hereby,

(1) Calls for the United States to exercise its authority under the Governing International Fishery Agreements with nations fishing in the United States Exclusive Economic Zone or fishing in international waters adjacent to the Exclusive Economic Zone in the Bering Sea and North Pacific Ocean to install and maintain in working order on each fishing vessel appropriate position-fixing and identification equipment; and

(2) that the Secretary of Commerce, after consultation with the Secretary of Defense, the Secretary of State and the Secretary of

Transportation report to the Congress within 60 days of passage on progress toward achieving the objective of this resolution and the cooperation of such foreign nations.

SHARPEVILLE SIX AND THE DEATH SENTENCE IN SOUTH AFRICA

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 16, 1988

Mr. DYMALLY. Mr. Speaker, I have read the attached materials and feel that my colleagues in the House of Representatives would benefit from the information contained therein:

SHARPEVILLE SIX AND THE DEATH SENTENCE IN SOUTH AFRICA

I. FACTS

The Sharpeville Six Case

On December 1, 1987, the highest court in South Africa, the Appellate Division of the South African Supreme Court in Bloemfontein, denied the appeal of six (6) South African political activists who were convicted of murder and subversion, on December 10, 1985. All six have been sentenced to death. The six condemned people are Mojalefa Sefatsa, aged 33, Oupa Moses Diniso, aged 31, Reid Malebo Mokoena, aged 25, Theresa Ramashamola, aged 27, Duma Joshua Khumalo, aged 27, and Francis Don Mokhesi, aged 31. They have been commonly referred to as "The Sharpeville Six", citing the location of the incident which led to their arrest and conviction.

The arrest of The Sharpeville Six took place in a context of widespread civil unrest which erupted in the Vaal Triangle townships south of Johannesburg in early September 1984, and eventually spread through South Africa. It was the imposition a month earlier of a revised Constitution that touched off this new level of resistance. Popular opposition to the constitutional changes which continued to deny political participation to the 73% black majority and offered only limited participation to the Colored and Asian population groups was spontaneous. In addition, the government appointed "township councils" to implement the established Nationalist Party policies in the townships. These new township councils were also authorized to manage public services in these areas but were given no new revenue sources. In an effort to create sufficient revenues, local authorities levied rent and tax increases on endemically impoverished residents already hard-pressed by rising prices and high unemployment. The new financial demands on township residents coupled with the bitterness over the new Constitution sparked the worst outbreak of violence since the Soweto protests of 1976.

Thousands of angry township residents demonstrated en masse their opposition. Mass meetings were held throughout the area. Boycotts of work and school were launched. Protest marches against the rent

¹ Of the accused persons who originally numbered eight, two members Motsiri Gideon Mokone, aged 21 and Motsaki Christian Mokobany, aged 23 were acquitted of the most serious charge of murder and convicted of public violence and subversion. They were sentenced to eight years. Hereinafter, "defendants" or "accused" will refer exclusively to "the Sharpeville Six".

America in Congress assembled, That this Act may be cited as the "Recreation and Public Purposes Amendment Act of 1987."

SEC. 2. Section 3 of the Act of June 14, 1936, as amended (43 U.S.C. 869-2), is redesignated as subsection 3(a) and new subsections (b), (c) and (d) are added to the section to read as follows:

(b) Notwithstanding the provisions of subsection (a) of this section, the Secretary is authorized under this Act to convey title with a limited reverter provision to lands to be used for the express purpose of solid waste disposal or to lands to be used for purposes which the Secretary finds may include, or result in the release of, hazardous substances. Such limited reverted provision shall provide that the reverter provisions of subsection (a) of this section shall be effective only if the lands are not used for the stated purposes within 5 years of the date of conveyance of title by the Secretary. Pricing for conveyances of land for purposes identified in this subsection shall be in accordance with the provisions of section 2 of this Act except that no compensation shall be required for the inclusion of only a limited reverter in the patent. Said document shall also include a provision that the lands shall not under any circumstances revert to the United States by operation of law if the lands are used for solid waste disposal or for purposes which the Secretary finds may include or result in the release of hazardous substances. For purposes of this section the term 'hazardous substances' is defined in the same terms as it is defined in the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.)

(c) With regard to patents for lands for solid waste disposal or for purposes which may result in the release of hazardous substances issued pursuant to this Act, the Secretary is authorized, on application of a holder of such a patent or on his own motion with the concurrence of a person authorized to act on behalf of a holder of such a patent, to issue a document releasing the reverter provision contained in such patent, without payment of any compensation therefor, on a finding that those lands have been or are being used for solid waste disposal or for purposes which may result in the release of hazardous substances. A release issued pursuant to this authority shall provide that the lands covered by the patent shall not under any circumstances thereafter revert to the United States by operation of law. On issuance of a document releasing a reverter provision, the lands shall cease to be subject to the provisions of subsection 3(a) of this section.

(d) With regard to lands leased pursuant to this act for solid waste disposal or for purposes which may result in the release of hazardous substances, the Secretary is authorized, on application of the lessee, to issue a patent for such lands to the lessee without payment of any compensation therefor, on finding that the lands have been or are being used for solid waste disposal or for purposes which may result in the release of hazardous substances. Notwithstanding the provisions of subsection (a) of this section, patents issued pursuant to this subsection shall not contain a reverter provision and the lands so patented shall not under any circumstances thereafter revert to the United States by operation of law. On issuance of the patent the lands shall cease to be subject to the provisions of subsection (a) of this section."

SEC. 3. Nothing in this Act shall be construed to affect the applicability and operation of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 et seq.), as amended, and the

Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.), as amended.

By Mr. ADAMS:

S.J. Res. 277. Joint resolution to express the sense of the Congress on the need to establish effective management of fishing in the international waters of the Bering Sea; to the Committee on Foreign Relations.

MANAGEMENT OF FISHING IN THE INTERNATIONAL WATERS OF THE BERING SEA

Mr. ADAMS. Mr. President, I rise to introduce a joint resolution expressing the sense of the Congress on unregulated fishing in the Bering Sea. The Senate today earlier passed a joint resolution on this same issue sponsored by Senator STEVENS. I supported that joint resolution, but also indicated that I was concerned about its international legal implications, and intended to introduce an alternative which presented the administration with actions that could be realistically carried out in the near future. I do not believe this joint resolution is inconsistent with the statement the Senate has already made on this subject by passing Senator STEVEN's joint resolution. Indeed, it draws inspiration from both the Stevens resolution and another resolution introduced on this issue by Senator MURKOWSKI. Instead, I believe my joint resolution complements this earlier actions by suggesting additional options that the administration can use to resolve this issue.

The fishery resource within the Bering Sea is one of the largest and most productive mixed stock fishery resources in the world. Because of the international jurisdictional configuration of the Bering Sea, management of this resource presents a major challenge. The perimeter of the Bering Sea is entirely within the exclusive economic zones of either the United States or the Soviet Union, but within the interior of the Bering Sea is an area of international waters commonly known as the Doughnut Hole.

Unfortunately fish resources rarely respect international boundary lines as drawn on a map. In a Senate Commerce Committee meeting I chaired last week on this issue, we heard Dr. William Aron, head of the Northwest Alaska Fisheries Science Center in Seattle which does the scientific research on the Bering Sea for the National Marine Fisheries Service, hypothesize that with one exception in Soviet waters, the pollack in the Bering Sea constitute one large, interrelated stock. In addition, other fish species such as salmon regularly cross international boundaries as part of their migratory patterns.

If fish don't know what lines on a map mean, people do. In the last several years, fishing in the Doughnut region has increased from a reported level of 15,000 metric tons of pollack harvested in 1980 to 1 million metric tons of pollack harvested in 1988. This increase has been largely caused by the success of our national policy in Americaniz-

ing exploitation of fishery resources within our exclusive economic zone. Accelerated American participation in the North Pacific fishery has meant less fish for foreign fishermen, and they have looked elsewhere.

Clearly, this increased level of effort in the Doughnut region has a probable impact on pollack stocks located in both the United States and Soviet exclusive economic zones. In addition, there is almost certainly a bycatch of U.S. origin salmon involved in the Doughnut fishery. Unless efforts are made to establish an effective management regime in the Doughnut, and for the Bering Sea fishery resource as a whole, both this invaluable resource and the thriving industry involved in its harvest are at serious risk.

The Doughnut region also causes particular problems for U.S. enforcement efforts inside our own exclusive economic zone. Many experienced American fishermen feel that the waters in the Doughnut region can not support the level of effort claimed by foreign fishermen. They feel instead that foreign fishermen use the Doughnut region as a staging ground for illegal fishing forays into U.S. waters. These concerns were given new credibility early this year when a private U.S. industry group videotaped several foreign vessels fishing illegally in U.S. waters near the Doughnut region. United States fishermen have responded to this incident by calling for improved enforcement efforts in our own waters, and establishment of effective management and conservation measures in the Doughnut region. In response to their concerns, I called for, and chaired hearings by the Senate Commerce Committee on this issue.

At these hearings, we heard many suggestions on how to address this problem. Development of solutions, however, is complicated by the nature of international law. The basic authority for international ocean law is the Convention of the Law of the Sea. The United States did not sign this treaty, but recognizes it as customary international law as regards fisheries and navigation issues. Customary international law is, to a large extent, based on what nations do, and what other nations let them get away with doing. Because current law on this subject so deeply respects traditional rights of navigation such as the right of innocent passage, and these rights are so important to our national security interests as they affect the rights of our Navy at sea; our Government has been traditionally very cautious about asserting rights that could be limited to our detriment in other parts of the world.

Therefore, development of methods of establishing management over the fishery resources in the Doughnut region must take into account the sensitivities of our Government on issues affecting navigation in the high seas. The resolution I am introducing today

does just that. It requests that our Government take actions that are either consistent with interpretations of international law generally accepted around the world, or based on existing national legal authority.

First, the joint resolution encourages the President to continue existing bilateral discussions with the Soviets on our mutual interests in the Doughnut region. The resolution further encourages the swift development of mutual management and conservation goals, and immediate implementation of those goals as is consistent with recognized principles of international law.

Much attention and hope has been focused on these bilateral negotiations as the source of a possible solution to the problems in the Doughnut. I would like to caution everyone against putting all of our eggs in a Soviet basket. Any change for the worse in our overall relationship with the Soviets, and joint efforts such as this tend to slip into a cold war freeze until overall relationships thaw again. Development of mutual goals for the Doughnut with the Soviets is a positive step, but it should not be our only one.

This joint resolution, therefore, additionally requests that the President ask all nations with fishing vessels operating in the Bering Sea to immediately enter into meaningful and good faith multilateral negotiations regarding development of an international multilateral management regime of the fishery resource within the Doughnut region. This negotiating process should take into consideration the interests of the coastal States, both in terms of mutually developed management goals, and in terms of the interests of coastal State fishermen in extending their harvest into the Doughnut region. It should conversely also consider the interests of fishing States in maintaining their historical level of effort in these waters.

The joint resolution also asks the President to ask all of these nations to also agree to provide an appropriate international organization with accurate and timely information about level of effort in the Bering Sea, and to agree to share scientific data on the nature of the fish resource in the Bering Sea.

Finally, the joint resolution asks the President to exercise existing authority under the Magnuson Act, and ask that all nations that have entered into current Governing International Fishery Agreements with the United States install and maintain in working order appropriate position-fixing identification equipment on all of their fishing boats within U.S. waters or within the Doughnut region. Assertion of the right to require transponders on vessels in the Doughnut is based on the fact that all GIFA's recognize sole U.S. jurisdiction over high-seas salmon of U.S. origin, which are known to migrate through the Doughnut region.

This would serve two purposes. First, it would help us deal with the enforce-

ment problems caused by the proximity of the Doughnut region to some of our richest areas. The information gained from transponders would help us more effectively target our enforcement resources. Second, it would send a signal that the United States, while respectful of the limits placed by international law on its ability to impact activities in the Doughnut, intends to utilize all available legal authority in an effort to address this issue.

Mr. President, I believe this joint resolution presents the administration with a number of things that it can do now to address the Doughnut issue. I believe these proposals are based on accepted interpretations of international law, or on existing national law; and therefore do not represent acts which would set unfortunate precedents in terms of customary international law. Finally, to restate my earlier remarks, this joint resolution is in no way inconsistent with the joint resolution passed earlier today. That joint resolution, which I supported, was a shot across the bows, a statement that the United States intends to protect its interests in the Doughnut region. This joint resolution tells the administration that it already has some of the tools necessary to do the job. ●

ADDITIONAL COSPONSORS

S. 533

At the request of Mr. THURMOND, the name of the Senator from Wisconsin (Mr. KASTEN) was added as a cosponsor of S. 533, a bill to establish the Veterans' Administration as an executive department.

S. 542

At the request of Mr. ARMSTRONG, the name of the Senator from Washington (Mr. EVANS) was added as a cosponsor of S. 542, a bill to recognize the organization known as the "Retired Enlisted Association, Incorporated."

S. 618

At the request of Mr. DURENBERGER, the name of the Senator from California (Mr. CHANSTON) was added as a cosponsor of S. 618, a bill to amend title XVIII of the Social Security Act to provide coverage under part B of Medicare for therapeutic shoes furnished to individuals with severe diabetic foot disease.

S. 703

At the request of Mr. SPECTER, the name of the Senator from Arizona (Mr. DECONCINI) was added as a cosponsor of S. 703, a bill to amend title 18, United States Code, including the Child Protection Act, to create remedies for children and other victims of pornography, and for other purposes.

S. 756

At the request of Mr. LAUTENBERG, the name of the Senator from Colorado (Mr. WIRTH) was added as a cosponsor of S. 756, a bill to ensure the amounts paid for home improvements to mitigate indoor air contaminants

such as radon gas qualify for the tax deduction for medical care expenses.

S. 1081

At the request of Mr. BINGAM, the name of the Senator from Idaho (Mr. CHAFFET) was added as a cosponsor of S. 1081, a bill to establish a coordinated National Nutrition Monitoring and Related Research Program, and a comprehensive plan for the assessment of the nutritional and dietary status of the U.S. population and the nutritional quality of the U.S. food supply, with provision for the conduct of scientific research and development in support of such program and plan.

S. 1346

At the request of Mr. MATSUNAGA, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 1346, a bill to amend the National Labor Relations Act to give employers and performers in the performing arts rights given by section 8(e) of such act to employers and employees in similarly situated industries, to give employers and performers in the performing arts the same rights given by section 8(f) of such act to employers and employees in the construction industry, and for other purposes.

S. 1518

At the request of Mr. ROCKEFELLER, the name of the Senator from Washington (Mr. EVANS) was added as a cosponsor of S. 1518, a bill to amend the Motor Vehicle Information and Cost Savings Act to provide for the appropriate treatment of methanol and ethanol, and for other purposes.

S. 1673

At the request of Mr. CHAFER, the name of the Senator from Alaska (Mr. MURKOWSKI) was added as a cosponsor of S. 1673, a bill to amend title XIX of the Social Security Act to assist individuals with a severe disability in attaining or maintaining their maximum potential for independence and capacity to participate in community and family life, and for other purposes.

S. 1761

At the request of Mr. DURENBERGER, the name of the Senator from Indiana (Mr. QUAYLE) was added as a cosponsor of S. 1761, a bill to amend the Internal Revenue Code of 1986 to provide that a decedent's spouse may enter into a cash lease of farm and other real property with family members and still qualify for the special estate tax valuation of the property.

S. 1776

At the request of Mr. ARMSTRONG, the names of the Senator from Hawaii (Mr. INOUE), the Senator from South Carolina (Mr. THURMOND), the Senator from Missouri (Mr. DANFORTH), and the Senator from Oregon (Mr. PACKWOOD) were added as cosponsors of S. 1776, a bill to modernize circulating coin designs, of which one reverse will have a theme of the bicentennial of the Constitution.

also clearly have the right to set policies to protect public health and moral standards.

Also, some have argued that because farmers are recipients of certain Federal subsidies, they would be forced to hire handicapped individuals not capable of working with farm equipment. The legislation and committee report spells out no new requirement or coverage of farmers. In fact, since the first civil rights statute was enacted in 1964, farmers receiving crop subsidies have been excluded from coverage because they are the "ultimate beneficiaries." The committee report specifically reconfirms that the bill "would not authorize imposition of any requirements with respect to farm employment, since farm employees are not beneficiaries of the farm subsidy. In the same sense, a "small provider" exception was added to specify that "small providers, such as pharmacies or grocery stores, are not required to make significant structural alterations to their existing facilities to ensure accessibility to handicapped persons."

Unfortunately, disinformation has been put out recently that is more destructive and ill-conceived than the kind of campaign waged against Supreme Court nominee Judge Robert Bork only a few months ago. I firmly believe that this clarifying legislation will not result in a rash of fallacious lawsuits that could not have occurred before or after the Grove City case.

I don't blame people for being concerned that the Congress could write legislation that would intrude into the rights of the majority while purportedly protecting a minority. However, this legislation does not do that. It is balanced, bipartisan, and was written and revised in the same spirit of fairness as the original civil rights legislation from the early 1960's.

CONCLUSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, has morning business been closed?

The PRESIDING OFFICER. Morning business is closed.

UNCONTROLLED FISHING IN THE BERING SEA

Mr. BYRD. Mr. President, there is a resolution to express the sense of the Senate on the need to stop uncontrolled fishing in the international waters of the Bering Sea. Under the agreement as entered, I believe that the majority leader is authorized to call that resolution off the calendar after consultation with the Republican leader.

There is a 20-minute time limitation on the resolution, and I ask this question: Was not a rolcall vote ordered on the resolution?

The PRESIDING OFFICER. The yeas and nays have been ordered. Mr. BYRD. I thank the Chair.

Mr. President, I understand that some of the Senators who are the principals in regard to this resolution are tied up in committee hearings at the moment. I am going to ask that the Senate stand in recess until 12 o'clock. This will give Senators an opportunity to be available at noon, and a vote will occur around 12:20 or 12:30.

That being the case, Senators will be on notice that such vote is going to occur, and that will be a 15-minute rolcall vote.

Mr. President, I ask unanimous consent that the rolcall vote, when it occurs, be a 15-minute rolcall vote and call for the regular order be automatic.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 12 NOON TODAY

There being no objection, the Senate, at 11:18 a.m., recessed until 12 noon; whereupon the Senate reassembled when called to order by the Presiding Officer (Mr. DASCHLE).

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNCONTROLLED FISHING IN INTERNATIONAL WATERS OF THE BERING SEA

Mr. BYRD. Mr. President, in accordance with the order that was previously entered in the agreement on Friday, I now ask that the Chair lay before the Senate Senate Resolution 396. It is a sense of the Senate resolution that expresses the sense of the Senate on the need to stop uncontrolled fishing in the international waters of the Bering Sea.

The PRESIDING OFFICER. The resolution will be stated by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 396) to express the sense of the Senate on the need to stop uncontrolled fishing in the international waters of the Bering Sea.

The PRESIDING OFFICER. Under the previous order, debate on the resolution is limited to 20 minutes, equally divided in the usual form, with no amendments in order.

The Senator from Rhode Island.

Mr. PELL. Mr. President, today the full Senate is considering Senate Resolution 396—a nonbinding resolution relating to uncontrolled fishing in the Bering Sea. While I intend to vote for this resolution, I want to express some

reservations which I have concerning it.

In the first place, through an honest error this resolution was not referred to or cleared for consideration by the Foreign Relations Committee on Friday. The Committee on Foreign Relations should have been consulted in view of the fact that the resolved clause specifically directs the Secretary of State to take certain actions, which clearly places this matter within jurisdiction of the Foreign Relations Committee.

Having said that, I appreciate fully the concerns that the Senators from the Northwest are attempting to address in this resolution. I fully understand the importance of preserving the health and vitality of the fishing industry.

It would have been preferable if this resolution had been referred to the Committee for proper action so that full consideration could be given to it. I would hope in the future, and I understand in the future, that such resolutions will be so referred to the committee.

This resolution is specifically crafted to deal with a unique problem, confronting fishing in an area of the Bering Sea. The sponsors have developed a proposal which calls upon the Secretary of State to undertake multilateral negotiations to solve the problem. A multilateral arrangement to deal with the problem of overfishing is certainly consistent with other efforts in the past to negotiate specific international plans for various specific species of fish in international waters. A multilateral arrangement to deal with the Bering Sea problem is far preferable to unilateral action by the United States.

Mr. President, I would have opposed any effort which attempted unilaterally to extend the exclusive economic zone of the United States beyond the current 200-mile limit. This would clearly be a violation of customary international law. The implications of such action would be serious and detrimental to U.S. interests.

Others would quickly follow, with serious ramifications for the fishing industry of many States, including my own State of Rhode Island. The fishing industry nationwide would be adversely affected.

It would also have serious implications on U.S. national security, namely, the protection of the U.S. freedom of navigation, which is always threatened by creeping jurisdictional claims of coastal States.

I am confident it is not the intention of the sponsors of this resolution to unilaterally extend the exclusive economic zone. I believe it is their intention to develop the multilateral solution to the unique problem that is confronting an area of the Bering Sea, the so-called Doughnet area. The solution does not extend American jurisdiction over the international waters.

and is intended to be consistent with international law.

On that basis, I intend to support the resolution.

Finally, I would emphasize that two objections have been raised with me concerning the resolution. First, it should not be conceived of as extending the 200-mile zone, and second, it should not be detrimental to U.S. efforts to open up foreign markets to U.S. fish products. I would not support this resolution if either were the case.

I yield the floor.

Mr. BYRD. Mr. President, I suggest the absence of a quorum. I ask unanimous consent that the time not be charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, let me begin by thanking my good friend, the chairman of the Foreign Relations Committee, Senator PELL, of Rhode Island, for his most gracious comments concerning this resolution.

There is no question that it does transcend the boundary of the Commerce Committee's jurisdiction and, in fact, is related to the jurisdiction of the Foreign Relations Committee. However, due to the timing of the circumstances we face right now, with the Soviet Foreign Minister in town, with negotiations going on between the Soviet Union and our country on the very subject of the nonmilitary relationship between our two countries, we felt it an urgent matter for this resolution to be brought before the Senate.

I did not request the vote, but I am happy that there will be a vote so there will be a strong showing of support—at least I hope there will be a strong showing of support—for the concept that Senators HOLLINGS, EVANS, BREAU, DOLE, and I are presenting to the Senate today.

In the North Pacific and Bering Sea, we have an interesting situation created by the 200-mile area off of the Soviet Union on the west and the 200-mile area under our jurisdiction on the east. There is at one point in the North Pacific-Bering Sea where there is what we call the "hole in the Doughnut." Some people just call it the "Doughnut," but it is really the "hole in the Doughnut." It is 4,500 square miles. This area, completely surrounded by the 200-mile limits of the Soviet Union and the United States, is an area that is not subject to the domestic law of either nation, although we do claim the right to pursue jurisdiction over those species of fish and marine life that originate under our jurisdiction. And so do the Soviets.

We have now, I think, established that there are foreign fishing vessels that use the "Doughnut" as a sanctuary, and that they actually fish in our waters and the waters of the Soviet Union. I have had some discussions with the Soviets on this matter, and I believe they have the same feeling.

The interesting thing is that in terms of bottom-fishing within our 200-mile limit, the size of which is staggering compared to the "Doughnut." All fishermen logged a catch of about 200 million metric tons in 1986. In the "Doughnut," which is only 4,500 square miles, 1 million metric tons of fish were reported caught in 1986. Our fishermen, when they fish in the waters of the "Doughnut," are not successful. They are not catching fish. Certainly, they are not catching anything like the amount of fish they catch as they get back up on the continental shelf in the great fishing grounds of the State of Alaska.

The difficulty is that we really do not have the statistics that are necessary to prove where the fish are. We believe we can get the information we need if we can declare this area a sanctuary, not for fishermen, but for the fish themselves. We are asking our fishermen and the Soviet fishermen to agree that this area be closed to fishermen, that it become a sanctuary, because if the current uncontrolled level of fishing continues, this area will become like the Sea of Japan. It will become a barren area. Even though it may not produce the fish that our 200-mile limit and the Soviet 200-mile area produce through the harvesting processes of the fishermen, it is an area where the fish intermingle. We think this is an area of substantial importance to the foodchain of the North Pacific. The only prudent course in our area is to make this area a temporary sanctuary for fish. This resolution asks our Secretary of State to negotiate with the Soviet Union to reach an agreement to declare a moratorium on all fishing within the "Doughnut" and to find a way through joint action to penalize the fishermen from those countries who will not join us in that moratorium.

The world has seen moratoriums in international waters that protected marine life, and we have uniformly joined those actions. I hope that all of the nations in the world that have fishing vessels operating in this area will join us. But in any event, the very least we can do is establish a moratorium now on all fishing and seek a multilateral agreement to protect the fish.

If there is to be fishing in "Doughnut," it should only be done in a manner that regulates the fishing, as it is regulated in the Soviet 200-mile zone and in ours.

Here in the center of these two zones that have probably the world's greatest supply of protein left is a hole which is a haven for bandits, and that is what this resolution is all about.

I am pleased to yield such time as my friend from Washington may have on this matter.

The PRESIDING OFFICER. The Senator from Alaska has 3 minutes and 40 seconds remaining. The Senator from Washington.

Mr. EVANS. Mr. President, I will be brief. I am pleased to join with the senior Senator from Alaska in support of this resolution. We on the Pacific coast, as well as fishermen on the Atlantic coast, have worked hard to protect and manage the fisheries resource within the economic zone of the United States, the so-called 200-mile limit. Those efforts have resulted in the establishment of the Pacific Fishery Council and a North Pacific Fishery Council.

We have some very serious past experiences that teach us that we have simply got to do a better and more comprehensive job of controlling fishing in these areas. We have, for all practical purposes, lost a major crayfishery because we overfished. We have had serious problems in the past with our salmon fishery because we have occasionally overfished the stock.

These councils and fisheries leaders in the past have carefully attempted to build this big, extremely important economic resource of bottom fishing to what it is today. Not too many years ago, almost all bottom fishing inside the American economic zone in the North Pacific was carried out by foreign fishermen. Gradually, we have developed our own American boat with American fishermen, and the shore and at sea processing to go along with it.

Now, virtually all fishing within the economic zone is by American fishermen, primarily Alaskans and Washingtonians.

In the State of Washington, for instance, last year, bottom fishing, as an economic resource, exceeded salmon fishing in terms of dollar return to Washington fishermen.

It is terribly important that we do recognize and understand the difference between our economic zone and international waters. We are in a peculiar position here with the international waters in the center of the Bering Sea surrounded by the national waters off Alaska, of the United States, and the Soviet Union.

Unfortunately, the fish do not understand international boundaries, and they easily move back and forth from international waters to the economic zone of the United States. The problems we now face are twofold: First there is fishing without any control without any folding of information into consideration of the allowable catch to foreign vessels within the international zone. But perhaps more important, the fact simply is that the American economic zone and foreign fishing vessels are encroaching regula-

ly into American waters, fishing illegally, and catching for too large a share of the total catch. If we are to maintain the resource, regulation is necessary in order to ensure that that resource will always be there.

I do support strongly the resolution of my colleagues from Alaska.

Senate Resolution 396 expresses the sense of the Senate on the need to stop uncontrolled fishing in the international waters of the Bering Sea. This resolution requests that the Secretary of State conclude both a bilateral, and multilateral agreement.

For the purposes of the bilateral agreement, the State Department is to begin negotiations with the Soviet Union to conclude an agreement establishing a moratorium on all fishing in the Doughnut. Also to ensure that such a moratorium remain in effect until an agreement with other interested nations is reached addressing the need for conservation and management of the resources in the Doughnut.

Following establishment of the moratorium, negotiations are to be initiated for the purpose of concluding a multilateral agreement. The multilateral agreement should establish an international fishery management regime for the Doughnut, provide for the gathering of appropriate scientific data. This agreement would aim to protect the long-term viability of the fishery resources within the Bering Sea.

It must be clear that these agreements deal solely with the conservation of fishery resources and will not, in any manner, impose unlawful restrictions on the internationally recognized freedoms of navigation.

The resolution that is being introduced today is a first step in our continuing work to find solutions to resolve a problem that has serious economic and international ramifications. The problem is illegal foreign fishing in the United States exclusive zone (EEZ) off Alaska, particularly in and around the so-called Doughnut areas. The U.S. fishing industry has long been convinced that there has been substantial unauthorized and illegal foreign fishing in the EEZ. It is only now, after our fishermen took it upon themselves to obtain hard evidence, that the issue is receiving the attention it deserves. And, it has our attention and the administration's. This is a problem not only if fishery conservation but also one of international affairs. And, unfortunately, this is a problem that lacks a clear mechanism affording a solution.

Our concerns are based on several factors. First, fish that are indigenous to United States waters are showing up in large quantities for sale in Japanese markets. There is evidence that recorded shipments of processed products from the U.S. zone may exceed legal catches from both the U.S. EEZ and doughnut area. Second, U.S. fishermen have observed foreign vessels

within U.S. waters in areas where no joint ventures occurred and where no foreign fishing was authorized. Large numbers of foreign vessels have been sighted in the U.S. zone in areas where no foreign trawling is authorized.

There is no reason for these boats to be there other than fishing. Additionally, in our efforts to completely Americanize the fishing industry, foreign countries previously permitted to fish in our zone are no longer receiving fish allocations. Some of these foreign fishing efforts have simply moved to the international waters of the doughnut region. Due to this displacement, there is the obvious concern that with the decrease and elimination of foreign fish allocations in the EEZ, the incentive for illegal fishing has increased.

As it developed, these concerns were clearly justified. This past January, the Alaska Factory Trawler Association chartered a plane to search for illegal fishing. This expedition sighted seven vessels fishing illegally, and noted other vessels in the area which may have been involved in similar illegal activities. Four of the seven vessels were identified as Japanese by their vessel identification numbers. We do not claim this problem lies solely with the Japanese—there are other nations actively fishing in and around the Doughnut area. The point is that the vessels sighted were fishing illegally in the U.S. EEZ. This industry initiative served to prove what a good share of the U.S. industry already believed. The results of these efforts raised the attention of many—generating this hearing today.

As I mentioned earlier, this is not solely a matter of illegal fishing. There is also an important management principal at stake, as well. I believe it makes sense not to harvest fish in the Doughnut area, until we have better information on the status of stocks in that area. We need a clearer definition of the actual impact of fishing in the Doughnut area on the stocks from the U.S. EEZ. We need more information on the actual stocks harvested in the Doughnut and we need to know their origin. These questions and others should be answered before decisions concerning appropriate resource management can take place within the U.S. EEZ. These questions also require answers before we can assess which management regime, if any, will be most beneficial to the conservation and sustainability of the Bering Sea resources. Should we find that few stocks inhabit the Doughnut, then we can only conclude that substantial illegal fishing is occurring in our zone and we should concentrate our efforts on surveillance and enforcement.

We need a balanced approach to solving the problem of illegal foreign fishing. This resolution will not and cannot be the complete solution. There are many questions yet to be answered. This resolution, however, does offer a short-term answer—pro-

tecting a resource that requires more information and thought so that we continue to sustain the Bering Sea fishery resources. It also looks toward a long-term solution by requesting that a multilateral agreement be concluded. And, this approach is reasonable because our resolution recognizes that inherent in all potential solutions is the effect and impact upon U.S. international relations. A thorough assessment of all possibilities is critical to the existence of our fishery resource.

I urge my colleagues to join in our efforts to stop illegal fishing in the U.S. EEZ.

The PRESIDING OFFICER. The Chair informs the Senator from Alaska technically the amount of time he had allocated under the order, has expired. There is 5 minutes and 57 seconds remaining on the other side.

Mr. STEVENS. Mr. President, it is my understanding it was to be equally divided. There is no Member on the other side wishing to speak on it. They have cosponsored it, and we are happy to have their support. If it is our prerogative to use that time, and I believe it is, I hope my colleague from Alaska could use the remainder of the time.

The PRESIDING OFFICER. The Chair would interpret it as such, and under those conditions recognize the Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I would like to commend Senator STEVENS for the resolution being considered today. It is clearly time to face up to the realities associated with unregulated fishing in the Bering Sea.

The senior Senator, in moving this legislative action, proposes immediate action with the Soviet Union to close the so-called Doughnut Hole by bilateral agreement. I have submitted a similar resolution. It slightly differs from that of my senior colleague with regard to the manner in which action is to be initiated. Specifically, my resolution suggests a multilateral effort with the other nations involved, under a strict time deadline calling for agreement prior to June of this year.

If the affected nations did not agree to taking corrective action with regard to the closure of the Doughnut Hole, then we would initiate bilateral action between the United States and the Soviet Union.

The resolution is a sense of the Senate resolution. It also has the sponsorship of the senior Senator from Washington, Senator EVANS, and I want to thank him for his willingness to work with me on this important matter.

Mr. President, I would like the entire text of my resolution printed in the Record at this time.

S. RES. 397

Whereas the Bering Sea contains fishery resources considered to represent the single largest and most productive concentration of mixed species in the world;

Whereas the perimeter of the Bering Sea consists entirely of waters within the exclusive economic zones of either the United States or the Soviet Union, wherein fisheries harvests are regulated to provide for appropriate levels of fishing consistent with good conservation practices;

Whereas the central Bering Sea contains an area of international waters generally known as the "Doughnut Hole," which is subject to unregulated and largely unmonitored fishing by a variety of nations;

Whereas the precise extent and composition of the resources of the Doughnut Hole are unknown, but are believed by most scientists to include salmon, heering and Alaska pollock, and other species either originating in or closely linked to populations observed within the exclusive economic zones of the United States or the Soviet Union;

Whereas the only species historically fished in the Doughnut Hole are salmon, which are anadromous species solely under the jurisdiction of their country of origin;

Whereas harvests for Alaska pollock were only recently established but have increased dramatically over a very short period of time, from approximately 15,000 metric tons in 1980 to approximately one million metric tons in 1986;

Whereas the types of fishing gear in use in the Doughnut Hole take a variety of species in addition to those targeted by the fishing vessel;

Whereas fishing activity in the Doughnut Hole may affect stocks under the jurisdiction and management of the United States or the Soviet Union, or both;

Whereas discussions between the United States and the Soviet Union are being facilitated for the purpose of conferring on mutual concerns involving fisheries in the Doughnut Hole;

Whereas the continuation of unregulated fishing in the Doughnut Hole may pose a serious threat to the stability of the fishery resources of the Bering Sea, and could cause a disastrous decline in globally important fish populations;

Whereas there is evidence that the Doughnut Hole is being used as a staging area and refuge for vessels fishing in defiance of United States law and international principles on stocks within the United States exclusive economic zone;

Whereas principles of international law obligate fishing nations to cooperate with coastal nations on conservation measures undertaken to protect the rights of coastal nations with regard to stocks which may be affected by fishing activities in international waters;

Whereas nations having fishing fleets operating in the Doughnut Hole have repeatedly failed to respond to requests for accurate and complete data on fishing effort and harvest levels for both targeted and incidentally caught species, and other information critical to the conservation of the fishery resources of the Bering Sea;

Whereas these fishing nations have failed to implement enforcement measures adequate to ensure that vessels operated by their nationals are in compliance with international fishery agreements with those nations;

Whereas there is a need to develop effective fishery research, management, and enforcement measures to guide and regulate fisheries in the Doughnut Hole;

Whereas action must immediately be taken to prevent unregulated fishing activity from jeopardizing the continued health of Bering Sea fishery resources in the absence of such measures: Now, therefore, be it

Resolved, It is the sense of the Senate that: (1) unregulated fisheries in the international waters of the Bering Sea should be halted pending the completion of a comprehensive international agreement providing for appropriate and necessary fisheries research, management, and enforcement efforts;

(2) the President should seek the immediate consent of all nations having fishing fleets operating in the Bering Sea to—

(a) cease all fisheries in the international waters of the Bering Sea beginning on June 1, 1988, and extending until such time as a comprehensive agreement has been reached among the interested coastal and fishing nations;

(b) allow any nation observing the moratorium to enforce the moratorium with respect to fishing vessels operating under its own flag or the flag of any other nation;

(3) it is appropriate to proceed with scheduled discussions with the Soviet Union on the Doughnut Hole issue in consideration of mutual concerns for the welfare of continental shelf and anadromous resources affected by fisheries occurring in the international waters of the Bering Sea;

(4) in the event any nation having a fishing fleet operating in the Bering Sea fails to agree to the conditions set out under Sec. 2 (a) and (b) of this resolution, the President should then seek the concurrence of the Soviet Union to a bilateral agreement providing for—

(a) the declaration of an immediate moratorium on all fishing in the international waters of the Bering Sea until such time as agreement has been reached among interested coastal and fishing nations on research, management and enforcement regimes sufficient to ensure the continued well-being and productivity of Bering Sea resources;

(b) such joint and separate measures as may be necessary to ensure the effectiveness of the agreement in the event fishing vessels of any nation are found to be fishing in the international waters of the Bering Sea after the bilateral agreement becomes effective; and

(c) recognition that such action is undertaken solely for the purpose of conservation of the resources of the Bering Sea, and has no effect on any other issue regarding the rights of nations on the high seas;

(5) immediately upon the cessation of fishing in the international waters of the Bering Sea under Sec. (2) or (4) of this resolution, the Secretary of State should request interested nations to participate in multilateral negotiations for the purpose of developing an agreement providing for research, management and enforcement measures necessary to allow fisheries in those waters to resume in a manner consistent with the conservation and continued productivity of the affected fishery and other resources;

(6) the Secretary of State, in cooperation with the heads of other concerned agencies of the United States, should develop and present to Congress no later than June 1, 1988, a plan providing for effective fisheries enforcement in the Bering Sea, the elements of which may include, but are not limited to—

(a) port-call check-in and check-out requirements for all foreign vessels entering the U.S. exclusive economic zone for any fishery-related purpose;

(b) bonding requirements for nations and/or companies with fishery vessels operating in the Bering Sea;

(c) transponder requirements for vessels entering the U.S. exclusive economic zone for any fishery related purpose;

(d) accelerated deployment of advanced vessel detection systems such as long surface-search radars.

Mr. MURKOWSKI. Mr. President, I thank the Chair, and I thank my senior colleague for his willingness to accommodate me. I thank the majority side as well.

Mr. President, we are facing the possibility of a disaster of global proportions in the Bering Sea.

The Bering Sea contains the largest and most productive concentration of species used for human consumption but at present fisheries in the international waters of the Bering Sea are exploiting these resources in a completely uncontrolled fashion. Pollock harvests from this area, for example, have gone from just 15,000 metric tons in 1980 to approximately 1 million metric tons in 1986. A collapse of resources due to overfishing would be a disaster of global proportions.

I applaud the efforts of my colleague, Senator STEVENS, and commend the Members of this body for the swift passage today of a resolution condemning these uncontrolled fisheries. Fisheries in the international waters of the Bering Sea must be halted immediately, and remain halted until the successful conclusion of a comprehensive fisheries agreement among interested nations. I want to know, Mr. President, that we have a complete agreement on that point.

I am concerned, however, about the reaction of our own State. It may have to a call to move directly into bilateral negotiations with the Soviet Union to declare and enforce a moratorium. It is my belief that it is preferable to see if a multilateral approach to a closure is possible, and not, to seek a bilateral at that time.

For that reason, I am offering a second resolution which presents an alternative, but equally strong approach. The main difference is procedural, in that the first step would be a call for an immediate multilateral agreement on closure and enforcement. If other nations did agree to this appeal to reason with short time, we would take the necessary steps.

My resolution sets forth a three-step procedure.

First, we should call upon all nations to establish and observe a fishing moratorium, and to agree that any nation serving the closure may enforce it with respect to the vessels of any other nation. It is critical to the continued welfare of the fishery resources of the Bering Sea that such a closure be in place quickly, and for that reason we should also assert that agreement on these points must be reached within a specific period of time. The deadline contained in the resolution is June 1, 1988, which provides ample time for the nations concerned to make this simple yes or no decision.

Second, in the event any nation fails to agree to these points, we should seek a bilateral agreement with the Soviet Union declaring a fisheries moratorium in these waters and establishing procedures whereby the moratorium may be enforced.

Third, after a closure is in effect, we should seek a comprehensive multilateral agreement among the United States and nations with vessels which now fish in these waters. This final step would establish the specific fisheries research, management, and enforcement measures necessary to allow the interested nations to resume fishing under controlled conditions consistent with principles of resource conservation and the rights of concerned nations.

This approach has been carefully crafted to recognize the obligations of all concerned nations to participate in decisions made so that fisheries in international waters will be conducted in a responsible manner, while at the same time maintaining the strength of purpose necessary to resolve the situation we face today.

Should there be any hesitation on the part of the administration to move forward as Senator STEVENS has suggested, this approach offers a reasonable and acceptable solution, and I urge my colleagues support for it.

Mr. ADAMS: Mr. President, I would like to say a few words about the resolution being offered by my good friend from Alaska, Senator STEVENS. Just last week, at my request, the Commerce Committee held hearings on the Doughnut Hole issue. Those hearings confirmed what many of us already knew: Our fishing resources in the Bering Sea are in jeopardy. The hearings also demonstrated just how complicated it will be to fashion a practical and effective remedy which realistically addresses the problems we face. The resolution now before us puts the Senate on record as favoring negotiations with the Soviet Union on a bilateral agreement establishing a moratorium on fishing in the donut, to be followed by initiation of multilateral negotiations on an international fisheries management regime for the Doughnut.

I support this resolution as a statement by the U.S. Senate that something must be done about this situation. While I support this resolution as a moral mandate, as a call to action, I believe that the hearing record demonstrates that there are some real problems with this plan in terms of its consistency with existing international law. I am, therefore, introducing later on today an alternative resolution which I believe presents the administration with actions that can be realistically and pragmatically carried out in the immediate future. I hope to work with my colleagues in an effort to develop additional solutions to this pressing problem. In the meantime, I support this resolution as the symbolic statement it is rather than as a defini-

tive statement of where we ought to be going.

Mr. MITCHELL: Mr. President, I wish to express reservations concerning Senate action on Senate Resolution 396, which would express the sense of the Senate concerning unregulated fisheries in international waters of the Bering Sea.

The resolution calls on the Secretary of State to initiate negotiations immediately with the Soviet Union to establish a moratorium on all fishing in the area known as the Doughnut Hole, lying beyond both United States and Soviet fisheries jurisdiction. It also calls for unspecified measures to be taken against all nations which do not abide by such a moratorium. All of this would occur prior to negotiation of a multilateral, international fisheries management agreement for the area.

I am troubled by implications of this resolution. It is open to debate whether the course of action it urges would represent a functional extension of United States and Soviet fisheries jurisdiction beyond 200 miles. There has been no careful consideration of its language by the Commerce Committee or the Foreign Relations Committee. The resolution was introduced on March 18, 1988, only 3 days ago, before the weekend, and it has come directly to the full Senate for a vote.

I am not unsympathetic to the interests of Alaskan fishermen which are reflected in this resolution. However, I am concerned about setting any precedent relative to fisheries jurisdiction, which might adversely affect American interests in other regions, such as New England. I am very much troubled by the lack of consideration given to the broader implications of this resolution. I cannot believe that the Senate would take a position on a specific issue, such as the Bering Sea, which would set an adverse precedent relative to broader United States interests. Therefore, I strongly believe that this resolution should be construed only narrowly. It should not be interpreted as establishing any new precedent, nor as urging any action which conflicts with well-established principles of international law.

Mr. STEVENS: Mr. President, we yield back the remainder of the time. The PRESIDING OFFICER: All time have been yielded back, the question is on the resolution. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON: I announce that the Senator from Louisiana [Mr. BREAUX], the Senator from Arkansas [Mr. BUMPERS], the Senator from Connecticut [Mr. DODD], the Senator from Tennessee [Mr. GORE], the Senator from Hawaii [Mr. INOUE], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Massachusetts [Mr. KERRY], the Senator from New Jersey

[Mr. LAUTENBERG], the Senator from Michigan [Mr. RIEGLE], the Senator from North Carolina [Mr. SANFORD], and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

Mr. SIMPSON: I announce that the Senator from Missouri [Mr. BOND], the Senator from Kansas [Mr. DOLE], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Utah [Mr. GARN], the Senator from New Hampshire [Mr. HUMPHREY], the Senator from Nebraska [Mr. KARNES], the Senator from Indiana [Mr. LUGAR], the Senator from Arizona [Mr. MCCAIN], the Senator from Virginia [Mr. TABLER], and the Senator from California [Mr. WILSON] are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota [Mr. DURENBERGER] and the Senator from California [Mr. WILSON] would each vote "yea."

The PRESIDING OFFICER: Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 78, nays 0, as follows:

Rollcall Vote No. 64 Leg. J. 1987-88

YEAS—78

- | | | |
|-----------|------------|-------------|
| Adams | Glenn | Nickles |
| Armstrong | Graham | Nunn |
| Baucus | Gramm | Packwood |
| Bentsen | Grassley | Pell |
| Bingaman | Harkin | Prosser |
| Boren | Hatch | Proxmire |
| Bochowitz | Hattfield | Pryor |
| Bradley | Elect | Quayle |
| Burdick | Heflin | Reid |
| Byrd | Heins | Rockefeller |
| Chafee | Helms | Roth |
| Chiles | Hollings | Rudman |
| Cochran | Kassebaum | Sarbanes |
| Cohen | Kasten | Sasser |
| Conrad | Kennedy | Shelby |
| Cranston | Leahy | Simon |
| D'Amato | Levin | Simpson |
| Danforth | Matsunaga | Specter |
| Daschle | McClure | Stafford |
| DeConcini | McConnell | Stevens |
| Dixon | Melcher | Symms |
| Domenici | Metzenbaum | Thurmond |
| Evans | Mikulski | Wallace |
| Exon | Mitchell | Warner |
| Ford | Moynihan | Weicker |
| Fowler | Murkowski | Wirth |

NOT VOTING—22

- | | | |
|-------------|------------|---------|
| Biden | Gore | McCain |
| Bond | Humphrey | Riegle |
| Breaux | Inouye | Sanford |
| Bumpers | Johnston | Stennis |
| Dodd | Karnes | Trible |
| Dole | Kerry | Wilson |
| Durenberger | Lautenberg | |
| Garn | Lugar | |

So the resolution (S. Res. 396) was agreed to, as follows:

S. Res. 396

Whereas the fishery resources of the Bering Sea constitute one of the largest and most productive mixed stock fishery resources in the world;

Whereas the international waters of the Bering Sea, known as the "Hole in the Doughnut" or the "Doughnut," are entirely surrounded by the Exclusive Economic Zones of the United States and the Soviet Union;

Whereas historically, fishing within the "Doughnut" has been limited to the high

seas Japanese mothership salmon fleet, which is scheduled to be phased out by 1994;

Whereas, in recent years, there has been a massive increase in the level of fishing activity in the "Doughnut," from a reported level of fifteen thousand metric tons of pollock harvested in 1980 to one million metric tons of pollock harvested in 1986;

Whereas, photographic evidence obtained by the U.S. Coast Guard and American citizens has documented that vessels of foreign nations are using the "Doughnut" areas as a staging ground for raids into the U.S. EEZ for the purpose of illegally fishing U.S. stocks;

Whereas, the fishery stocks managed by the United States and the Soviet Union within their respective EEZ's are believed to be interrelated with those in the "Doughnut";

Whereas, continuation of unregulated fishing in and around the "Doughnut" could precipitate a collapse of the Bering Sea fishery stocks, threatening one of the world's largest renewable food resources;

Whereas, nations currently operating high seas fishing fleets have failed both to institute effective enforcement measures to ensure compliance with existing international conservation regimes and to provide accurate data concerning harvest levels, catch composition, and location of fishing effort in the Bering Sea;

Whereas, immediate action to protect Bering Sea fishery resources is needed, and the lack of cooperation and enforcement effort by high seas fishing nations under existing agreements make negotiation of an effective multilateral fishery management regime impossible in the near future; and

Whereas, the United States and the Soviet Union will presently discuss the problem of unregulated fishing in the "Doughnut," and the world's fishing nations have imposed moratoriums in the past to protect harvestable resources until such time as sufficient scientific evidence exists upon which to base a sound management regime; Now, therefore, be it

Resolved, It is the sense of the Senate that—

- (1) the Secretary of State should—
 - (A) immediately initiate negotiations with the Soviet Union for the purpose of concluding a bilateral agreement that—
 - (i) establishes a moratorium on all fishing in the "Doughnut,"
 - (ii) calls upon all fishing nations to observe such a moratorium,
 - (iii) sets forth the measures that will be taken by the United States and the Soviet Union against other nations that do not abide by such a moratorium, and
 - (iv) ensures such a moratorium will remain in effect until such time as the United States and the Soviet Union have entered into an agreement with a majority of other interested nations for the conservation and management of fishery resources in the "Doughnut";
 - (B) following the establishment of the moratorium, initiate negotiations for the purpose of concluding a multilateral agreement that—
 - (i) establishes an international fishery management regime for the "Doughnut";
 - (ii) provides for the collection and use of sufficiently reliable scientific information on the nature, origin, migratory patterns, life cycle, composition, abundance of fish stocks in the "Doughnut," and any other information which is needed to ensure effective conservation of Bering Sea fishery resources;
 - (iii) protects the long term viability of the fishery resources of the entire Bering Sea; and

(C) report to the Committee on Commerce, Science, and Transportation the results of the interagency task force investigation into enforcement options for fishery management in the Bering Sea; and

(2) both agreements negotiated by the Secretary should include language that clearly recognizes that the agreements were executed solely for the purpose of fishery conservation and in no way impose any unlawful restrictions on the internationally recognized rights and freedoms of vessel transit.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. McCLURE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, there is a concurrent resolution on the calendar to express the sense of the Congress on the proposed revisions of the United States agreement for nuclear cooperation with Japan.

Mr. President, my attention has been called to the joint resolution which was introduced by the two leaders, and that resolution is on the calendar. Under the built-in time agreement, any Senator may call up that resolution at any time. And there is a time limitation of 10 hours on the resolution. That time can be reduced by a nondebatable motion. I had indicated that I would probably call this up today because otherwise any Senator may do so, as I already indicated, at any time.

In order to maintain the control of the program as best I can, I intend to go to that resolution at this time so that it will be disposed of, and will not be sitting on the calendar as a possible candidate for a motion by another Senator at another time.

Mr. McCLURE. Would the distinguished majority leader yield?

Mr. BYRD. Yes, I am happy to yield.

Mr. McCLURE. Of course, as the Senator has indicated, those items on the calendar can be brought up by any Senator at any time but customarily they are not brought up without the support of the leadership. Is that not correct?

Mr. BYRD. Customarily, they are not. This is one of those expedited procedure items. Senators are being treated to a diet of these more and more these days. I hope that the Senate will not avail itself of this type of approach too often, but it is becoming the approach all too often.

Mr. McCLURE. Would the Senator yield?

Mr. BYRD. Yes, I would be happy to yield.

Mr. McCLURE. The only reason that I mention that is I do not want to pass up noting that indeed if the leader were opposed to it being brought up it either would not be brought up, or the majority leader is inviting that other items on the calendar

in similar position would similarly be brought up upon the motion of an individual Senator which many in body may desire. But I suspect leadership does not.

Mr. BYRD. Yes. The problem with this item is that unlike other calendar items—which if motioned up by any Senator would in all likelihood except in some very narrow circumstances be subject to debate—if called up would be subject to unlimited debate. This item is not subject to unlimited debate. It is a highly privileged motion. I just thought we might as well dispose of this possibility today.

Mr. HATCH. Would the Senator yield?

Mr. BYRD. Yes, I would be happy to yield.

Mr. HATCH. As I understand the pending business, if this does not displace it—and I have no objection to it displacing it—it is S. 79, is that correct? (Mr. SHELBY assumed the Chair.)

Mr. BYRD. That is the unfinished business.

Mr. HATCH. Can the Senator give us some idea when we will be on that bill, so that those of us who have to manage it can come at the appropriate time?

Mr. BYRD. The Senator has a good question. Inasmuch as he is managing the bill and is having some physical difficulties, I appreciate his question. I do not know how much time would be taken for debate on the proposed agreement.

Mr. HATCH. I have one more question of the distinguished majority leader, and I notice that the distinguished Senator from Ohio has a question. Is the Senator going to file cloture on S. 79 today? If he is, that is fine.

Does he intend to file cloture on S. 79 today?

Mr. BYRD. I did not file it on Friday because it was laid down that day. I indicated to the distinguished acting Republican leader, Mr. Simpson, that I would not file it that day. I could file it today; I might file it today. I have not really decided.

Mr. McCLURE. Mr. President, will the Senator yield on that point? Mr. BYRD. I yield.

Mr. McCLURE. There are a growing number of people who are concerned about the practice of filing cloture on a bill even before the debate has barely started, because, for many of us, that becomes a germaneness question, a means to require germaneness, rather than it having any relevance to the question of whether or not there will be any attempt to forestall the consideration of the bill as a result of extended debate.

I would hope that the distinguished majority leader would not file cloture on a matter that nobody is threatening to filibuster, when the debate has merely started.

STATE OF ALASKA

THE LEGISLATURE

1988

Source

CSSJR 57(Res)

Legislative
Resolve No.

51



Relating to foreign fishing in the international water of the Bering Sea.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS the Magnuson Fishery Conservation and Management Act has contributed to the rapid "Americanization" of the fisheries within the 200-mile Exclusive Economic Zone (EEZ) off Alaska's coast; and

WHEREAS harvesters and processors in the United States are increasing their ability to utilize the vast fisheries resources in the EEZ, including, but not limited to groundfish, salmon, and herring; and

WHEREAS Alaska's coastal communities are benefiting from the economic activity caused by the Americanization of the fisheries resources off Alaska's coast; and

WHEREAS those fishery resources are worth billions of dollars annually to the United States; and

WHEREAS the area of the Bering Sea outside the EEZ of the United States and outside the jurisdiction of the Soviet Union is not managed by any country or international organization; and

WHEREAS the fish stocks in the EEZ are not stationary, but circulate beyond the 200-mile boundary, where they are subject to unlimited and uncontrolled harvesting that is detrimental to the stocks; and

WHEREAS the extent of the harvest in the international water of the Bering Sea is unknown, but is estimated to be in excess of 1,000,000 metric tons a year; and

WHEREAS Japanese, Chinese, Polish, and South Korean

commercial fishing vessels conduct harvest operations in the international water of the Bering Sea; and

WHEREAS unregulated foreign fishing in the international water of the Bering Sea adversely affects United States fishing efforts in the EEZ and the development of markets for United States fishery products; and

WHEREAS this area is used as a staging area for illegal fishing within the United States' EEZ by foreign vessels; and

WHEREAS the lack of observers and the lack of accurate data on the fishery resources and harvest level in the international water of the Bering Sea significantly hinder decision-making on stocks in the United States' EEZ; and

WHEREAS prompt action is necessary to protect the fishery resources of the United States that migrate into international water and to protect the integrity of the Magnuson Act;

BE IT RESOLVED by the Alaska State Legislature that the President of the United States is respectfully requested to seek negotiations with the Soviet Union to implement harvesting controls in this area; and be it

FURTHER RESOLVED that the President of the United States is respectfully requested to direct the Secretary of Defense, the Secretary of State, and the Secretary of Commerce to work collectively to monitor fishing activities in the Bering Sea; and be it

FURTHER RESOLVED that the President of the United States is respectfully requested to seek agreements with foreign nations whose vessels fish in the international water of the Bering Sea that would provide for annual reporting of fishing activities in that area; and be it

FURTHER RESOLVED that the Secretary of Commerce is respectfully requested to direct that, in accordance with the permit conditions established by the North Pacific Fishery Management Council, the United States observer program be expanded to include foreign fishing vessels operating in the international water of the Bering Sea; and be it

FURTHER RESOLVED that the Commandant of the United States Coast Guard is respectfully requested to order increased patrols in the international water of the Bering Sea; and be it

FURTHER RESOLVED that the United States government take steps necessary to prevent the overharvest of fishery resources of United States origin in the international water of the Bering sea, including the extension of United States' jurisdiction over the area.

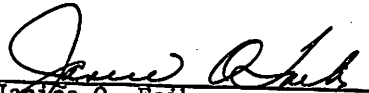
COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States; to the Honorable George Shultz, Secretary of State; to the Honorable C. William Verity, Jr., Secretary of Commerce; to Admiral Paul A. Yost, Jr., Commandant, United States Coast Guard; to James C. Campbell, Chairman, North Pacific Fishery Management Council; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

AUTHENTICATION

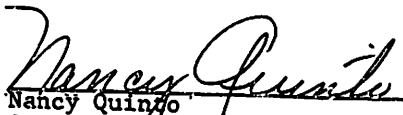
The following officers of the Legislature certify that the attached enrolled resolution, CS FOR SENATE JOINT RESOLUTION NO. 57 (Resources)

_____ was passed in conformity with the requirements of the constitution and laws of the State of Alaska and the Uniform Rules of the Legislature.


Passed by the Senate February 10, 1988


Janice O. Falks
President of the Senate


ATTEST:

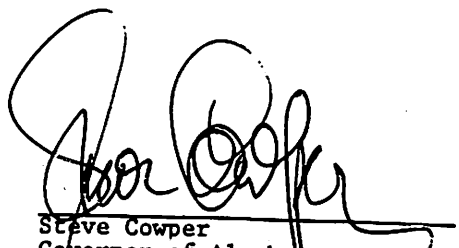

Nancy Quinzo
Secretary of the Senate

Passed by the House February 26, 1988


Ben Grussendorf
Speaker of the House

ATTEST:


Irene Cashen
Chief Clerk of the House


Steve Cowper
Governor of Alaska

The Department of State wishes to draw the attention of the Embassy of the People's Republic of China to the Governing International Fishery Agreement between the Government of the United States of America and the Government of the People's Republic of China (the Agreement). The Agreement has established a strong fisheries relationship between the United States and the People's Republic of China. The Government of the United States wishes to confirm its understanding regarding certain aspects of that Agreement.

Article XII of the Agreement provides for the United States and the People's Republic of China to cooperate in the compilation of the best available scientific information for the management and conservation of stocks of mutual interest. In this regard, the Government of the United States wishes to emphasize the importance of maintaining accurate records on fisheries harvests and fishing effort in areas of the Bering Sea beyond national fisheries jurisdictions. The Government of the United States understands that the Government of the People's Republic of China is willing to exchange available statistics with the Government of the United States on harvests and incidental takes of target species, anadromous species, marine mammals, seabirds, and other living marine resources, and fishing effort in this region

delineated by biweekly periods and by one degree longitude by one-half degree latitude statistical blocks. Such statistics shall be provided by July of each year for the fishing season ending in April of the same year.

If this understanding is acceptable to the Government of the People's Republic of China, it is proposed that this note and the Embassy's note in reply thereto shall constitute an agreement between the two Governments, which shall enter into force on the date of the Embassy's reply.

Department of State,

Washington, September 23, 1987.

EPL

No.004/88

The Embassy of the People's Republic of China presents its compliments to the State Department of the United States of America and has the honour to reply to the latter's note of September 23, 1987 as follows:

In order to develop fishery cooperation between China and the United States and establish long-term and stable friendly relations in this regard, the Government of the People's Republic of China agrees to provide the Government of the United States of America with the production data of Chinese fishing vessels operating in the high sea of the Eastern Bering Sea. The Chinese Government also agrees that this note and the above-mentioned note of the State Department of the United States serve as an appendix to the International Fishery Agreement between the People's Republic of China and the United States of America.

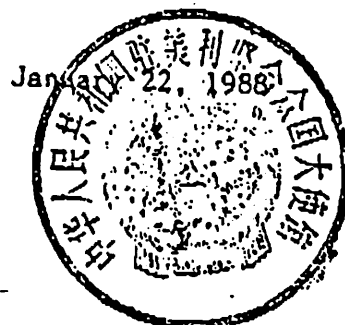
To ensure smooth conduct of this operation, the U.S side is requested to provide the Chinese side with the following information:

- 1) the U.S department specifically in charge of this operation;
- 2) the code number of the high sea area (the area code number indicated in the note by 1 degree longitude and by 1.5 degree latitude statistical blocks);
- 3) the way to set the standard of fishing effort (whether based on hours, number of nettings or days).

As collection and study of the above-mentioned production data is something new for the relevant department and staff on the Chinese side, the U.S Government is requested to show the understanding in case of delay in reporting or misinterpretation in the course of the operation.

The Embassy of the People's Republic of China avails itself of this opportunity to renew to the Department of State of the United States of America the assurances of its highest consideration.

Department of State
United States of America



The Department of State refers the Embassy of the People's Republic of China to its note No. 004/88, dated January 22, 1988.

The following is in response to the request made by the Embassy of the People's Republic of China in the aforementioned note:

1. The National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, is the United States agency specifically in charge of this operation.
2. The code numbers by which the high seas areas are to be denoted are provided in the enclosed table entitled "Bering Sea Data System".
3. Fishing effort data should be provided in terms of the numbers of hours trawled and, if available, the number of hauls made and the number of days fished per statistical block.

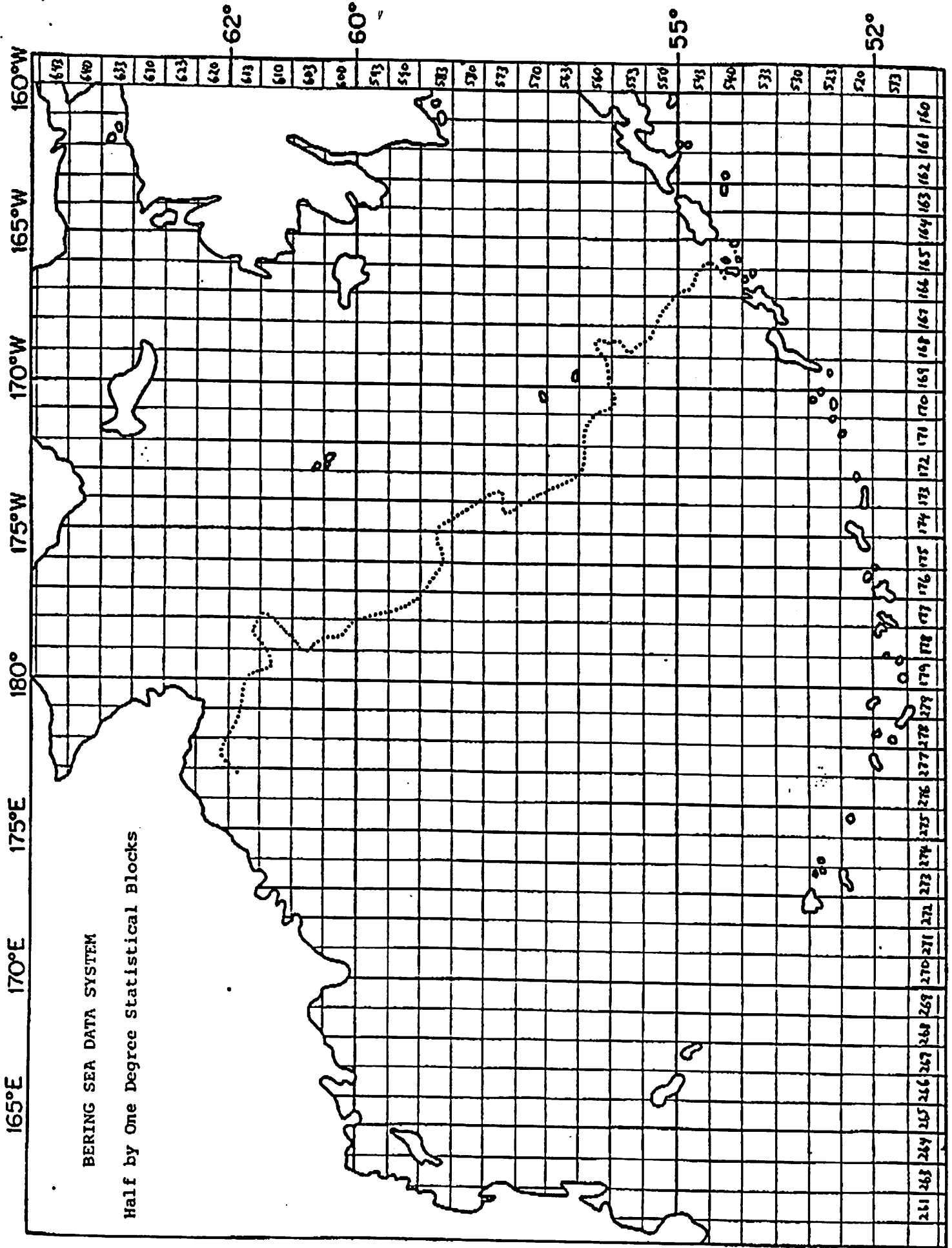
Enclosure:

As stated.

Department of State,

Washington, March 21, 1988.

llw



Friday, March 25, 1988, The Anchorage Times

Business

New bill

Rule requires foreign ships to stow gear when in U.S. waters

WASHINGTON (AP) — Members of the House Merchant Marine and Fisheries Committee Thursday asked the Reagan administration for a new rule to make foreign trawlers stow their fishing gear before crossing American waters.

The lawmakers said the rule, which would apply to foreign vessels without permits to fish in the U.S. economic zone, would help cut down on illegal fishing.

"There's only one reason for foreign ships to have their nets out when they're in our waters, and that's to fish illegally," said Washington Democratic Rep. Don Bonker.

Bonker said that at present, foreign fishing vessels operate with "impunity" in U.S. waters.

But you hear that the Coast Guard is on the way, they haul up their nets and act like they're just motoring toward international waters," said Bonker.

Rep. Mike Lowry, D-Wash., said the rule would be a "deterrent" to illegal fishing and help "separate those that are obeying the law from those that aren't."

Violation of the rule could result in a \$25,000 fine. Lawmakers said that the National Oceanic and Atmospheric Administration could use its existing authority to issue such a regulation.

Bob Ford, who focuses on Pacific fisheries issues at the State Department, said the department would review the request and "check with technical agencies" to determine whether it is possible.

Business

Rule requires foreign ships to stow gear when in U.S. waters

Coast Guard officials have said that the foreign vessels play a "sophisticated game of 'cat and mouse'" to avoid U.S. surveillance and are usually able to pull up their nets before enforcement ships arrive on the scene.

Seven Japanese trawlers were videotaped from a private plane allegedly fishing 38 miles inside the U.S. zone in January. NOAA has issued civil fines totalling \$200,000 against the owners and operators of the boats involved in that incident.

In a letter to William Evans, assistant NOAA administrator, the lawmakers said "the proposed regulation would not impose any undue burden on transiting, foreign fishing vessels.

Business

Rule requires foreign ships to stow gear when in U.S. waters

The lawmakers said Canada currently enforces similar restrictions against U.S. fishermen travelling in Canadian waters.

"It's not by itself going to solve the problem, but we are trying to be creative and use all the tools we can," said Rep. John Miller, R-Wash., who has suggested foreign fishing vessels carry devices so their lites could track their movement through U.S. waters.

Bonker said a U.S. rule would be a "logical, moderate step to deal with an illegal fishing situation that is out of control."

For more than a year now, American fishermen and the U.S. Coast Guard have suspected that foreign fishing ships slip into the American fishing zone off Alaska to fish.

Business

Rule requires foreign ships to stow gear when in U.S. waters

Coast Guard officials have said that the foreign vessels play a "sophisticated game of 'cat and mouse'" to avoid U.S. surveillance and are usually able to pull up their nets before enforcement ships arrive on the scene.

Seven Japanese trawlers were videotaped from a private plane allegedly fishing 38 miles inside the U.S. zone in January. NOAA has issued civil fines totalling \$200,000 against the owners and operators of the boats involved in that incident.

In a letter to William Evans, assistant NOAA administrator, the lawmakers said "the proposed regulation would not impose any undue burden on transiting, foreign fishing vessels.

Business

Rule requires foreign ships to stow gear when in U.S. waters

Coast Guard officials have said that the foreign vessels play a "sophisticated game of 'cat and mouse'" to avoid U.S. surveillance and are usually able to pull up their nets before enforcement ships arrive on the scene.

Seven Japanese trawlers were videotaped from a private plane allegedly fishing 38 miles inside the U.S. zone in January. NOAA has issued civil fines totalling \$200,000 against the owners and operators of the boats involved in that incident.

In a letter to William Evans, assistant NOAA administrator, the lawmakers said "the proposed regulation would not impose any undue burden on transiting, foreign fishing vessels.

BBHMC AMERICANIZES

by Steve Levinson

Reacting to the results of the decision by the North Pacific Fisheries Management Council not to allocate fish to the North Pacific Longline Gillnet fleet this year, officials of the Bristol Bay Herring Marketing Cooperative have had to seek other markets for their fishermen. The longstanding joint venture with the Japanese group ended when NPFMC's decision made it unprofitable for the longliners to come to Togiak this season.

"We had hoped to phase out the joint venture by 1989," said BBHMC President William "Doc" Nicholson. "This year was to have been a 50/50 mix of foreign and domestic markets, but we're Americanized now."

Nicholson said BBHMC talked with 15 or 16 U.S. processors who will buy herring at Togiak this year. They got some interesting responses, he said, spurred by very positive developments in the Togiak Herring Management Program.

"American processors were standing in line to talk to us. Most of them bought from purse seiners in past years, but they realized that BBHMC fishermen were the largest producers over the last seven seasons. American processors want a piece of that action."

Three of the buyers will provide exclusive tenders for the gillnet fleet. A fourth won't promise that, but did promise adequate coverage during the season.

"The tender situation is really tight just now," Nicholson said. "The opilio season

opens May 1. There has to be more time and advance notice to schedule tenders for Togiak in the future. For next year we plan to start negotiations right after the salmon season this summer."

Nicholson said that BBHMC has one offer of a joint venture for any unfilled capacity from a Korean firm. He plans to discuss that with Governor Cowper at the fisheries conference next week.

"The Korean company is interested in handling up to 75 boats, but they would have to apply for an Internal Waters Permit (from the state) by Apr. 15 if the domestic capacity couldn't handle all our market. We've notified the state people it might happen. "The Governor is concerned about local families, since each boat represents three people who are heads of household," Nicholson added.

Nicholson commented that if one large processor with long ties to Dillingham were to contract with BBHMC, no joint venture would be needed, but as of two weeks ago, they wouldn't deal with a cooperative on a contractual basis.

"I've notified them that they would have

(Continued on Page 9)

to contact us by 10 a.m. Apr. 15. If we have not heard by then, we will seek a joint venture with the Korean firm."

Nicholson expects as many as 45 new entrants to the fishery this year, an increase he attributes to the possibility of a limited entry being imposed on the Togiak fishery. "Some of these new guys will be people who have never wet a line or dropped a net in the water before," he said.

The Commercial Fisheries Entry Commission has received three petitions to create limited entry here, Nicholson said. He expects some public notice about them shortly.

"BBHMC has no stance on limited entry, but we have always encouraged the full participation of local residents in the fishery," Nicholson concluded.

Nicholson explained that while seiners have about a 70 percent "hit" ratio of catching fish when they deploy their nets, gillnetters hit 100 percent of the time. "It's a consistent catch record," he said.

Nicholson declined to identify which buyers are close to inking agreements with BBHMC, but said that they are very close to signing two contracts this week and expect to complete some major deals by the end of next week.

"BBHMC was well known as an 'over the side' market for the Japanese tenders. It created some tense relationships with domestic processors. Now both of us are

interested in sitting down. We're open to talks."

Nicholson said this year is truly earthshaking in its developments, since domestic processors have been adamant about not dealing with cooperatives by contract, preferring instead to work with individual fishermen and boats.

"We've gotten some interesting concessions. There will be a lower roe percentage cutoff. Normally it's about eight percent, but we're reaching compromises.

"Domestic processors that we'll sign with promise to buy the whole catch. There'll be no dumping or roe stripping. "After the season some of the smaller processors agreed to a profit-sharing arrangement with BBHMC fishermen."

Nicholson said that arrangement will be a 50/50 sharing after expenses of tendering, raw fish tax and a (small) co-op assessment are subtracted. The profit sharing formula will be based on an F.O.B. Togiak price, he said, not Seattle or Tokyo. "This eliminates price negotiations," Nicholson said. "Most U.S. buyers don't know what the grounds price will be at this time."

Two U.S. processors have agreed to handle as many as 100 boats on that basis, Nicholson said. "The larger processors can't do it (profit share)," Nicholson said, "because they can't treat BBHMC fishermen differently from the way they treat their other fishermen."

Reports From Polish Vessels FV Parma and FV Dalmor

At the invitation of the Polish government two NWAFC scientists were placed aboard commercial fishing vessels operating in the donut in the Bering Sea. Pierre Dawson and Mike Brown, both of the REFM Division at the Center, have been collecting biological information in cooperation with Polish scientists since the middle of March.

The biological program included the following elements:

1. Determine catch rates in the Basin. Included would be estimates of search time, haul duration and total catch. It will be necessary to take some biological samples.
2. Determine species composition of catches in the Aleutian Basin.
3. Determine characteristics of the commercial gear used by the Polish vessels.
4. Sample the commercial catches to estimate:
 - a. age and length composition. Samples of the catch would be taken to collect otoliths and measure for length frequencies.
 - b. sexual maturity.
 - c. stomach contents. The amount and variety of food consumed by pollock in the Basin is of interest to our scientists.
5. Collect copies of echosounder records made during search and fishing operations.
6. Compare morphology of fresh and previously frozen pollock. Photographs of fresh pollock will be taken on board for morphometric analyses. Those same pollock will be frozen whole and returned to Seattle for further morphometric work to compare the two techniques.
7. Collect whole pollock for morphometric and meristic analysis in Seattle.
8. Conduct tagging feasibility study. If the ship is drifting for any length of time over concentrations of pollock, then pollock would be captured with hook and line gear. Catch

rates during different periods of time and at different rates of echo sounder intensity would be compared. If suitable seawater tanks exist on board pollock will be kept to determine short term survivability from different depths of capture.

9. Conduct ichthyoplankton studies. If the ship is so rigged, sample for pollock larvae and measure oceanographic conditions.
10. Conduct studies of pollock parasites.

Reports from the scientists aboard the Polish vessels are summarized below:

3/30/88 The entire Polish fleet of 25 vessels was fishing within a 15 mile radius in the southeast corner of the donut, next to the boundary at 55-40N, 175-57W. There were no significant catches from 2/8 until 3/21. (The U.S. biologists did not board until 3/15). From 3/21 to 3/30 the Dalmor averaged 6.5 t/hr and 36 t/day.

4/4/88 Now fishing at 55-38N, 176-56W. Catches averaging 16 t/hr and 54 t/day.

4/6/88 From 3/21 to 3/27:

Females:

Near spawning: 11%	Spawning: 7%
Size: range 41-56 cm	Avg. Size: 48.63 cm

Males:

Size: range 40-54 cm	Avg. Size: 46.81 cm
----------------------	---------------------

Catch Composition:

1) Pollock:	.9987696	
2) Squid:	.0009000	
3) King salmon:	.0005928	Avg. Size: 1.866 kg
4) Lumpsuckers:	.0005317	

From 3/28 to 4/3:

Females:

Near spawning: 3%	Spawning: 2%
Size: range 40-55 cm	Avg. Size: 48.08 cm

Males:

Size: range 40-52 cm	Avg. Size: 46.42 cm
----------------------	---------------------

On 3/26, one Japanese trawler was observed in the Donut, and on 4/5, one Japanese trawler and one Korean were observed in the Donut. No vessels from other nations were seen or reported.

Congress of the United States

House of Representatives

Washington, D.C. 20515

March 24, 1988

Dr. William Evans
Assistant Administrator for Fisheries
National Oceanic and Atmospheric Administration
1825 Connecticut Avenue
Washington, D.C. 20235

Dear Dr. Evans:

We are writing to express our support for the Administration's recent action assessing civil penalties against the Japanese fishing vessels observed fishing without a Federal fishing permit in the Bering Sea within our nation's Exclusive Economic Zone. Clearly, any unregulated fishing within our waters poses a very serious threat to the management of our fishery resources.

We are concerned, however, that our existing regulations for foreign fishing within U.S. waters do not go far enough to adequately ensure compliance with U.S. law. We urge you to promulgate regulations to require all foreign fishing vessels who transit our zone without a fishing permit to stow all fishing gear below deck or, if this is not possible, to remove the gear and place it where it would not be readily available for fishing. We believe that such regulatory action is within your current authority and consistent with accepted international practices.

Canada currently enforces similar restrictions against U.S. fishermen transiting Canadian waters. We have enclosed a copy of Canada's Coastal Fisheries Protection Regulations under the Coastal Fisheries Protection Act for your review.

We believe the proposed regulation would not impose any unnecessary burden on transiting foreign fishing vessels. Foreign vessels who are simply transiting our zone have absolutely no need to be prepared to fish and can very easily set up their fishing gear when they have left U.S. waters and arrived at their fishing destination.

We are hopeful that you will consider this proposed regulation without delay.

Sincerely,

Walter B. Jones
Chairman
Committee on Merchant Marine
and Fisheries

Gerry Studds
Chairman
Subcommittee on Fisheries and
Wildlife Conservation and the
Environment

Don Bonker
Member of Congress

Mike Lowry
Member of Congress

John Miller

John Miller
Member of Congress

STATEMENT OF THE FISHERIES AGENCY OF JAPAN
BEFORE THE SENATE COMMITTEE ON COMMERCE,
SCIENCE & TRANSPORTATION
CONCERNING BERING SEA FISHERIES ISSUES
MARCH 30, 1988

I. INTRODUCTION

Two distinct issues were raised during the hearing held on March 16, 1988 on Bering Sea fisheries matters. The first issue relates to recent allegations with respect to illegal fishing by Japanese vessels in the United States 200-mile zone and fears by U.S. industry spokesmen that illegal fishing by foreign fishermen may damage the fishery resources on which the U.S. industry depends. The second issue relates to the management of the fisheries lawfully taking place in the international waters of the Bering Sea. These issues are separate and we will comment separately on them.

II. THE MANAGEMENT ISSUE

A. Japan's Fisheries in the International Waters of the Bering Sea are of Critical Economic Importance to the Japanese Fishing Industry

The Bering Sea has for several decades supplied a significant portion of the seafood products entering the Japanese market. Both the Japanese fishing industry and the Japanese consumer depend heavily upon Japan's continued access to these resources, especially pollock.

Since 1976, the implementation of extended fisheries management jurisdiction by the United States and the

Soviet Union has reduced the access of Japanese fishing vessels to the traditional fishing grounds within 200 miles of those nations in the Bering Sea. In 1988 for the first time, Japan has received no allocations from the United States 200-mile zone. These developments have had drastic impacts on the Japanese fishing industry.

Faced with this grim economic situation, the Japanese fishing industry has had no choice but to develop the alternative fisheries still available to it. In this context, the pollock fishery which the Japanese fishing industry has developed in the international waters of the Bering Sea (the so-called "donut" or "donut hole" area) is now critical to our industry. In 1986 Japanese fishing vessels harvested approximately 700,000 metric tons of pollock from this area, with ninety-eight vessels permitted to fish in this area. Because of its proximity to northern Japan, this area has become important not only to Japan's distant water fishermen, but also to our shore-based fishing and processing industry. Altogether, approximately 200,000 Japanese citizens are now wholly or partially dependent upon the Bering high sea fishery. Thus, while Japan recognizes the need to develop an international mechanism to conserve and manage the fish resources in this area, Japan cannot accept any management arrangement to which Japan is not a party.

B. A Multilateral Mechanism is Needed for Management of the Fisheries in the International Waters of the Bering Sea

Japan, Poland, Republic of Korea and the People's Republic of China have conducted fisheries in the so-called donut area for several years. The Soviet Union, the United States and several other nations may also have an interest in conducting such fisheries. The relationship of the fish resources found in this area to fish resources found in the neighboring 200-mile zones of Japan, Korea, Canada, the U.S. and the U.S.S.R. are imperfectly understood; however, it is likely in our view that several distinct sub-populations of different origin mingle in this area. For all of these reasons, the Government of Japan believes that a multilateral mechanism is needed to develop an appropriate scientific basis for management and to manage the fisheries in this area.

The Government of Japan considers the implementation of an effective management regime for the international waters of the Bering Sea important to the preservation of Japan's fisheries in this area. In November 1987, Japan proposed to the United States and Canada that the multilateral organization contemplated by Article IV of the International Convention for the High Seas Fisheries of the North Pacific Ocean ("INPFC convention") be established to deal with the donut issue. Article IV provides for the creation of a new international

organization separate from INPFC with a membership which would include all nations participating in the North Pacific fisheries. Although some in the United States have recently suggested that there is an emergency with respect to the management of the donut stocks, the United States Government has yet to respond to Japan's proposal. The Government of Japan believes that further delay in developing a multilateral mechanism to deal with these issues is inconsistent with the interests of all concerned.

C. There is No Immediate Emergency with Respect to Bering Sea Pollock Resources

Japan shares the U.S. concern with respect to unregulated fishing in the international waters of the Bering Sea. As previously stated, Japan believes it imperative to begin the process of implementing a multilateral management regime covering this area. However, the apparent perception in the United States that all fishing presently taking place in the donut area is "unregulated" is in fact false. Japanese fishing effort in this area is subject to Japanese domestic regulation. Accordingly, we do not expect the harvests of Japanese vessels to increase significantly in this area above the catch level reached in 1986 (700,000 m.t.).¹

1 Japanese domestic regulations limit the number of vessels authorized to fish in North Pacific and Bering Sea. Assuming no radical change in the access of Japanese vessels to the U.S. and Soviet 200-mile zones, the level of effort in the donut area should remain about the same as in 1986.

The best scientific information available indicates that the pollock harvests which have occurred in the donut area in recent years are not a threat to the health of the pollock resources in the U.S. 200-mile zone. The combined pollock harvests in the U.S. zone and in the donut area in 1986 were about 2.2 million m.t. -- a harvest level near the mid-point of the Acceptable Biological Catch range (1.41 million m.t. to 2.82 million m.t.) proposed by the Scientific and Statistical Committee of the North Pacific Fishery Management Council in September 1987 for U.S. 200-mile zone pollock resources alone. A research survey conducted in the Aleutian Basin including the donut area by Japan's Far Seas Fisheries Laboratory in the summer of 1987 found preliminarily a pollock biomass of 9.10 million m.t. in that area -- a population approximately equal to that found in the U.S. zone. Clearly, even if the stocks in the two areas comprise a single genetic population, there are large quantities of pollock in the donut area that have not been included in U.S. population estimates. When the additional pollock resources in the Aleutian Basin including the donut area are considered, the combined harvests in the two areas reflect exploitation at a rate lower than the exploitation rate used by U.S. managers to set the allowable harvest level for U.S.

pollock resources (23% of exploitable biomass). Since the combined harvests in the donut area and in the U.S. zone have been lower than the exploitation rate used to set harvest levels in the U.S. zone, it is quite clear that the harvests in the donut area pose no threat to U.S. pollock stocks.²

While the Government of Japan shares the U.S. concern with respect to the alleged violation of U.S. laws by Japanese fishermen, the Government of Japan believes that recent assertions by U.S. industry spokesmen with respect to the potential magnitude of illegal fishing in the U.S. 200-mile zone are vastly exaggerated. As an example, in written testimony submitted to this Committee, Natural Resources Consultants (NRC) speculates that as much as 5 million m.t. may have been removed from the U.S. 200-mile zone off Alaska and the donut area in 1986 compared to a reported catch of 2.86 million m.t. However, NRC's assertions are based entirely on an analysis by the Southwest Alaska Municipal Conference (SAMC) of transshipment data collected by the National Marine Fisheries Service (NMFS) -- an analysis which NRC admits

-
2. At the December meeting of the North Pacific Council, scientists from the Northwest and Alaska Fisheries Center (NOAA) stated that the 1987 pollock survey showed no adverse impacts from the large 1986 harvest in the donut area, suggesting that the fisheries in the donut area may have no direct impact on the number of fish available for harvest in the U.S. 200-mile zone.

it is "unable at this time to verify."³ In a letter to the North Pacific Council dated December 30, 1987, the Alaska Regional Director of NMFS discredited the SAMC analysis, stating that duplication and errors in the transshipment data made the SAMC analysis unreliable and further that, in the view of NMFS Enforcement, "known catches in and outside of our 200-mile zone are in reasonable accord with the transfer data, even as presented by [SAMC]." Thus, there is simply no reason to believe that unreported or illegal harvests are of a magnitude that threatens the health of Bering Sea fish stocks.⁴

D. Sound Relations Between the United States and Japan On Fisheries Matters are Essential to Both Nations

Japan is the world's largest market for seafood products and the United States is a major beneficiary of

-
3. "NRC is unable at this time to verify the accuracy of the SAMC transshipment data which is key to current estimates of round weight harvest." Statement of Natural Resources Consultants to the Committee on Commerce, Science and Transportation ("Evidence Documenting Illegal Foreign Fishing"), March 1988, at p. 16-17. Japanese industry representatives have recently been advised that a subsequent NMFS review of the SAMC study has in fact revealed "major errors" in that study.
 4. To believe the recent speculation with respect to the magnitude of illegal and unreported catches requires a belief that fishermen who would surreptitiously enter the U.S. 200-mile zone to steal over 2 million metric tons of fish would report the transshipment of their stolen fish to the National Marine Fisheries Service. This possibility is too unlikely to be given credence.

that market. In 1987 the U.S. Department of Commerce has estimated that Japan purchased U.S. seafood products valued at over \$1.1 billion -- out of total U.S. exports of about \$1.85 billion. In addition, Japanese companies made purchases of over \$100 million through "over-the-side" joint venture contracts with U.S. fishermen. These figures compare to total U.S. fish exports in 1977 of about \$520 million and exports to Japan in that year of about \$219 million.

Japan is by far the largest customer for U.S. seafood products. The Office of the United States Trade Representative recently reported that Japan purchased almost 70% of all U.S. fish exports in 1987.

By contrast, Japan exported fish products to the United States in 1986 with a value of only \$454 million, creating a trade surplus in favor of the U.S. in such products of approximately \$650 million.

Japan has cooperated with the United States to increase Japanese purchases still further, modifying domestic trade regulations thought by the U.S. to impede the flow of U.S. seafood products into Japan. In 1987 Japan agreed to change its import quota system to eliminate restrictive impact of its import quotas on U.S. Pacific herring and pollock products. This step was perceived favorably by the U.S. fishing industry, which is now making substantial additional investment in surimi

processing facilities. The U.S. Commerce Department now anticipates an increase of \$100 million in U.S. pollock exports in 1988, as well as continued improvement in the terms of trade in herring.

In addition to the large trade surplus which the U.S. enjoys in the trade of fish products with Japan, the U.S. has benefitted from positive relations with Japan on fisheries matters in many other ways. Through the INPFC mechanism, Japan has agreed to restrict the operations of its fishermen so as to substantially reduce the incidental catch of salmon of North American origin in Japan's high seas salmon fisheries. These agreements have contributed to a boom in the abundance of Alaskan salmon since 1978. In addition, Japan has implemented unilateral measures to restrict its squid driftnet fishermen to waters where salmon are unlikely to be present. Japan has already consented to accept U.S. scientific observers on board the Japanese squid driftnet vessels. Finally, Japan has consistently cooperated with the United States on the exchange of scientific data concerning the fish resources of the North Pacific. In particular, Japan is cooperating with the U.S. in research efforts to evaluate the size and structure of the pollock stocks of the Bering Sea. Particularly, U.S. observers had already been accepted to be placed on board a Japanese research vessel in this season.

Japan and the United States are mutually interdependent in fisheries matters. Sound relations between our two countries on these matters are dependent upon recognition of this fact.

E. Japan's Right to Fish in the International Waters of the Bering Sea is Established Under International Law

The international fisheries presently conducted by several nations, including Japan, the Republic of Korea, Poland and the People's Republic of China, in the donut area are an exercise of long recognized high seas freedoms. The right of Japanese nationals to fish in this area beyond the 200-mile zones of any nation is firmly established in customary international law, as well as in the 1982 Convention on the Law of the Sea.⁵

III. THE ENFORCEMENT ISSUE

A. The Japanese Government has Acted Expeditiously to Investigate Allegations of Specific Violations.

The Government of Japan (GOJ) takes very seriously the recent allegations that Japanese fishing vessels have engaged in unlawful fishing within the U.S. 200-mile zone. The Japanese government immediately initiated an investigation of the alleged violations. This investigation

5. Japan, unlike the United States, has signed the 1982 Convention in 1983.

has included sending a patrol vessel to the Bering Sea to conduct inspections of the vessels identified by the U.S., questioning the owners of these vessels, interviewing the captains and fishing masters of these vessels on their return to port, inspecting their catches in port and reviewing all pertinent vessel logs and records. Intensive investigation is still going on. If the violations are established in accordance with the requirements of Japanese law, the GOJ will impose the maximum penalties on those responsible.

B. The Japanese Government has Taken Steps to Prevent Future Violations

In addition, Japan has taken the following steps to prevent future violations:

The Government of Japan has reiterated prior administrative guidance directing all Japanese vessels fishing in the North Pacific and Bering Sea to strictly observe the boundary of the U.S. 200-mile zone. In addition, our Government dispatched additional fisheries inspectors to the fishing ports of northern Japan to inspect catches as they are offloaded and dispatched a patrol vessel to monitor Japanese fishing operations in the international waters of the Bering Sea.

The Government of Japan has required that by August 1988 all Japanese vessels with North Pacific fishing permits must install equipment which will continuously record the vessel's position through the Naval Navigation Satellite System (NNSS). All such vessels will be

required to submit the resulting position records to the Japan Fisheries Agency for regular review. With appropriate safeguards against tampering, we believe that this equipment will produce accurate records of the positions of all Japanese fishing vessels operating in the North Pacific and Bering Sea. This should have a significant positive effect in preventing future violations of both domestic and international fisheries boundaries by Japanese vessels.

Finally, the Government of Japan has instructed all Japanese fishing vessels transiting the U.S. 200-mile zone to cover and seal their nets with canvas in order to eliminate any suspicion on the U.S. side that such vessels are fishing illegally in the U.S. zone -- and in order to minimize any temptation to do so.

In order to understand the actual patterns of fishing operations in international waters, the GOJ obliges fishing vessels to submit their effort plans on a quarterly basis. The GOJ is also prepared to request vessels operating in international waters to report time and location of check in and out from international waters and their noon locations to our enforcement vessels.

In addition to the foregoing, the Japanese Government is open to discussing with appropriate U.S. authorities whether additional measures should be implemented voluntarily by the fishing nations involved or on a multilateral basis to prevent future violations.

IV. CONCLUSION

Recent speculation by the U.S. industry that large quantities of fish have been taken illegally from the U.S. zone is based upon data that the U.S. government itself says are inaccurate and unreliable. Further, to believe this speculation requires acceptance of a premise that is simply not believable; namely, that vessels illegally fishing in the U.S. zone would contact the U.S. authorities to report transfers of massive amounts of illegally caught fish.⁶

Japan has a substantial economic interest in the stability of the pollock resources of the Bering Sea, particularly in the donut area. Accordingly, Japan has repeatedly urged the United States to join with the nations engaged in fishing in the donut area to establish a multilateral mechanism to conserve and manage these resources. The involvement of several nations in the fisheries in this area and the probable interaction of stocks of various origins there dictates a multilateral

6. It is equally unlikely that massive amounts of fish were harvested illegally by vessels lawfully permitted to operate in the U.S. zone. As the Alaska Regional Director of NMFS stated in his December 30, 1987 letter, "the nearly 100 percent coverage of TALFF and JV fisheries by well trained (U.S.) observers makes it extremely improbable that large amounts of fish could be (underlogged)" by permitted vessels in these fisheries.

resolution to the management problem in accordance with established principles of international law. The Government of Japan again urges the United States to join with Japan and the other nations with an interest in these fisheries to begin work on such a multilateral resolution. For the United States to embark on any approach which would disregard Japan's substantial and legitimate interests in the fisheries of the donut area would be inconsistent with the mutually beneficial relationship our two nations now enjoy on fisheries matters and would shake that relationship to its foundations.

With regard to enforcement issues and allegations to the Japanese fishing vessels, the Government of Japan has taken immediate steps, not only to investigate the violations which have been alleged, but to prevent future violations. Although Japanese enforcement resources, like those of the United States, are limited, Japan is making every effort to cooperate with the U.S. on enforcement matters. Within the limits of its resources, the GOJ is willing to discuss other steps it might take to improve compliance with laws by Japanese fishermen.

NWAFRC
REFM
DIV.

Effects of Catch Under-reporting on the Estimation of Pollock Abundance in the Eastern Bering Sea.

In recent years there has been growing evidence of unreported catch within the eastern Bering Sea and Aleutian Islands. The majority of the unreported catch is believed to have originated in international waters outside the U.S. FCZ. However, recent evidence suggests that foreign vessels have been engaged in unlawful fishing within the U.S. FCZ. Questions have been raised as to the magnitude of the unreported catch and what the implications are to abundance estimates. The magnitude of unreported catch is difficult to address in an adequate manner with the data available, however, the effect of unreported catch on abundance and quota estimates can be addressed from theoretical and practical standpoints.

The stock structure of pollock in the Bering Sea is not known and available evidence can be used to support several stock hypotheses. The NPFMC has identified two management areas for pollock, eastern Bering Sea and Aleutian Islands. Abundance estimates are developed annually for these two areas.

For the eastern Bering Sea, extensive fisheries and biological sampling have occurred since the mid-1960s. In addition, hydroacoustic-trawl surveys have been conducted since the late-1970s. The survey data has been used to make direct estimates of pollock abundance. Fisheries data have also been used to back calculate the population (ie. Catch-age analysis). Since the hydroacoustic-trawl surveys were instituted in 1979, there has been good agreement between survey and catch-age analysis results which suggests that the catch-age analysis is generally reflective of pollock abundance levels and trends. The last hydroacoustic-trawl survey was conducted in 1985 and catch-age analysis is complete through 1986. The 1985 survey estimate was 9.4 million t and the catch-age analysis 8.6 million t.

The results of pollock catch-age analyses have been used to derive projected yield and population estimates (see 1987 RAD). These projections are based on the most recent years population estimate from catch-age analysis and estimates of future recruitment and levels of fishing.

In the 1987 RAD a forecast was made assuming projected recruitment, 1986-1987 catch levels and catch patterns for exploitable (ages 3-9) pollock (Table 1).

Table 1. Projected exploitable pollock biomass on the eastern Bering Sea shelf.

<u>Year</u>	<u>F</u>	<u>Total Biomass</u>	<u>Catch</u>
86	0.21	6,828,919	1,092,065
87	0.25	6,710,408	1,177,787
88	0.31	6,081,261	1,388,296
89	0.31	4,758,054	1,094,519

Under this scenario it is estimated that the stock of pollock in the eastern Bering Sea at the beginning of 1988 will be about 6 million t and near 5 million t in 1989 if anticipated recruitment and harvest occurs in 1988.

If actual catch had been double that reported in 1986-87 and if it is assumed that all the catch was taken from the eastern Bering Sea shelf biomass, the projections shown in table 2 are derived.

Table 2. Projected exploitable pollock biomass on the eastern Bering Sea shelf with catches 2X reported catch.

<u>Year</u>	<u>F</u>	<u>Total Biomass</u>	<u>Catch</u>
86	0.42	6,828,919	2,004,786
87	0.75	5,136,860	2,219,948
88	0.41	4,861,578	1,400,490
89	0.31	4,000,096	947,082

Under this scenario, with twice the reported catch in 1986 and 1987, the estimated biomass in 1988 decreases to under 5 million t.

It is unlikely that this amount of catch was taken from the eastern Bering Sea biomass. Although it is felt that current analyses (Table 1) are an accurate reflection of harvests and the condition of pollock stocks in the eastern Bering Sea, the potential impact of a significant unreported catch can not be fully resolved until the results of the 1988 hydroacoustic-trawl survey are available later this year. Reports from the 1988 fishery indicate high catch rates and pollock abundance, so we do not expect the 1988 survey estimate to differ significantly from the projected abundance levels (Table 1).

All available data suggest that pollock on the eastern Bering shelf have not been significantly affected by unreported harvests or removals in the Aleutian Basin outside the U.S. FCZ. The relationship of pollock in the Basin to those on the shelf is unclear, but evidence suggests that pollock in the Basin may derive from the shelf population and pollock that move from the shelf to the Basin do not return to the shelf. In this situation the emigration to the Basin is accounted for in population models as natural mortality.

With regard to the Aleutian Island stock, data are insufficient to reach any definitive conclusions. Harvests have been reported from this stock since 1980, a relatively short time and observer data are not sufficient to accurately estimate the age composition of the catch. The only quantitative data available for this stock is the triennial bottom trawl survey. These data would not provide an accurate estimate of abundance if pollock vertical distribution in this area is similar to that for the eastern Bering Sea.