

M E M O R A N D U M

TO: Council, AP and SSC Members

FROM: Clarence G. Pautzke
Executive Director



DATE: April 6, 1988

SUBJECT: Legislative Update

ACTION REQUIRED

Information only.

BACKGROUND

Fisheries and ocean-related issues continue to occupy an important spot on the Congressional agenda this year. Following are descriptions of Congressional actions in this area since the last Council meeting.

Vessel Safety

On February 24, 1988 the House Merchant Marine and Fisheries Committee held a mark-up session on H.R. 1841, the Commercial Fishing Industry Vessel Safety and Compensation Act. The Council was briefed on this legislation at the December 1987 meeting.

At the mark-up, the Committee separated Title II from the rest of the bill. Title II sets safety standards and equipment requirements for commercial fishing, fish processing and fish tender vessels. That section was reported out of Committee.

Title I, which relates to compensation limits for injuries suffered in the course of employment on fishing, fish processing, or fish tender vessels, was retained in Committee and will proceed on a separate schedule. The Committee is scheduled to mark up that section on April 14.

Seafood Inspection

On March 24, 1988 the House Committee on Agriculture, the Subcommittee on Livestock, Dairy and Poultry, held a hearing on H.R. 3735, a bill providing for research on microbiological contamination of agricultural products, including seafood products. A Subcommittee mark-up on that bill is expected sometime in May.

There has been no action as yet this year on S. 1813, the Safe Foods Standards Act introduced by Senator Leahy on October 23, 1987. The Council was briefed on this bill in December. It is expected that Committee hearings will be held on S. 1813 in May.

Representative Studds is expected to introduce legislation regarding seafood inspection within the next month.

Marine Mammal Protection Act

The MMPA is up for reauthorization this year but no substantive legislative changes have surfaced to date. However, on March 16, 1988 Representatives Studds, Young, Jones and Davis introduced H.R. 4189 which is a straight reauthorization of the Act through FY 1993. A hearing on this bill is tentatively scheduled for May 10 by the House Fisheries & Wildlife Subcommittee.

On April 13, 1988 the Senate Commerce Committee and the National Ocean Policy Study will hold a hearing on the intentional take of tuna porpoises. During that hearing, NOAA is to present an overview of the Marine Mammal Protection Act.

U.S. Fish Exports

On March 9, 1988 Representative Bonker sponsored the second of a series of hearings by the House Committee on Foreign Affairs, Subcommittee on International Economic Policy & Trade. Attached [Item C-1(a)] is a report on that hearing prepared by the NOAA Office of Legislative Affairs.

Marine Research Centers

On February 17, 1988 Senator Mitchell introduced S. 2068, the Marine Research Act of 1988, to create ten multi-state regional marine research centers. The centers are to consist of existing marine research institutions in each region and are to provide a regional focus for planning, coordinating and conducting marine scientific research. The legislation authorizes \$29.5 million for each fiscal year, 1989-1993. Companion legislation, H.R. 4231, was introduced in the House on March 23, 1988.

Budgets

To date, several hearings have been held in Washington on the NOAA and Coast Guard budgets for FY 1989. At this time it does not appear that there will be any increases for either budget. In fact, level funding is questionable at this time. The Senate Committee on Appropriations, Subcommittee on Transportation, will hold a hearing on April 28, 1988 on FY 1989 Coast Guard appropriations.

Diesel Fuel Taxes

Several bills have been introduced in both the House and Senate to reinstate the excise tax exemption for certain users of diesel fuel. Until April 1, 1988, off-highway users of diesel fuel, such as farmers and fishermen, were exempt from the 15¢ per gallon excise tax. The Omnibus Budget Reconciliation

Act of 1987, which was enacted in December, changed the collection of the diesel excise tax from the retail level to the wholesale level. By implementing this change, the Reconciliation Act removed the excise tax exemption for off-highway users.

Although no legislation was enacted prior to the April 1, 1988 effective date for the tax change, there will be an attempt to reinstate the exemption by October 1, 1988.

HEARING REPORT
March 9, 1988

SUBJECT: Fisheries Exports

COMMITTEE: House Committee on Foreign Affairs, Subcommittee on International Economic Policy and Trade

MEMBERS

PRESENT: Bonker (D-WA); Lowry (D-WA); and Miller (R-WA)

WITNESSES: Ambassador Ed Wolfe, Department of State (DOS); Carmen Blondin, NOAA/NMFS; Rich Parker, Office of the U.S. Trade Representative (statement for the record); and Daniel Conable, Foreign Agricultural Service (FAS), U.S. Department of Agriculture (USDA)

STATEMENTS: Bonker stated that this was the second of a series of hearings planned on fish trade. He discussed two reasons why the U.S. wasn't doing better in fish exports: 1) unfair trade practices and 2) a lack of commitment on the Administration's part to promote/facilitate export enhancement for fish products. Miller discussed the fish trade deficit and stated that his aim is to open more foreign markets to American fish products rather than deny the American consumer their choice of products from abroad. He stated that his goal is more trade, not less.

Wolfe commented on the problem of alleged illegal fishing in the Bering Sea and on DOS' efforts to address multinational fisheries in the high seas area known as the "donut hole." He discussed the bilateral talks that took place with the USSR in January and the agreement to establish a U.S./USSR bilateral working group to consider the legal, scientific, and enforcement aspects of the Bering Sea high seas. The Departments of Commerce, Defense, Transportation and Justice are involved in formulating an Administration position, as well as considering available domestic measures to avoid the problem in the future.

Blondin discussed the EXPORT NOW campaign launched by President Reagan and Secretary of Commerce Verity, as well as trends in exports, the fisheries trade deficit, trade negotiations and NMFS' trade promotion activities. He concluded by stating that the major trends in fisheries trade are favorable, and that short-term prospects are positive, especially in Asian markets.

Parker's statement stated that we are in a time of intense government activity in enforcing and strengthening the rules of free and fair trade in fisheries products. His statement also discussed recent trade developments with countries such as Japan, Canada, the EC, Korea and Taiwan, as well as the role of the General Agreement on Tariffs and Trade (GATT) in U.S. fisheries policy.

THE WHITE HOUSE

Office of the Press Secretary
(Santa Barbara, California)

For Immediate Release

April 6, 1988

TEXT OF A LETTER FROM THE PRESIDENT
TO THE SPEAKER OF THE HOUSE OF REPRESENTATIVES
AND THE PRESIDENT OF THE SENATE
(Retyped from copy at the Council Office)

April 6, 1988

Dear Mr. Speaker: (Mr. President)

On February 9, 1988, Secretary of Commerce C. William Verity certified under Section 201(e) of the Magnuson Fishery Conservation and Management Act of 1976, as amended (Packwood-Magnuson Amendment)(16 U.S.C. 1821(e)) and Section 8 of the Fishermen's Protective Act of 1967, as amended (Pelly Amendment)(22 U.S.C. 1978), that Japan has conducted whaling activities that diminish the effectiveness of the International Whaling Commission (IWC) conservation program. This letter constitutes my report to the Congress pursuant to subsection (b) of the Pelly Amendment.

The certification of the Secretary of Commerce was based on the issuance by the Government of Japan of permits to its nationals, allowing them to kill Southern Hemisphere minke whales for research purposes, despite a 1987 resolution adopted by the IWC. This resolution recommended that Japan not issue permits until uncertainties in their scientific research proposals had been resolved. A revised Japanese research proposal had been reviewed by a special meeting of the IWC Scientific Committee and had not succeeded in satisfying the Committee that the defects in the research program had been cured.

Shortly after the Secretary's certification, the IWC adopted a second resolution on February 14, 1988, recommending that Japan not proceed with its revised research program. Japan has continued its whaling activities notwithstanding this second resolution.

Given the lack of any evidence that Japan is bringing its whaling activities into conformance with the recommendations of the IWC. I am directing the Secretary of State under the Packwood-Magnuson Amendment to withhold 100 percent of the fishing privileges that would otherwise be available to Japan in the U.S. Exclusive Economic Zone. Japan has requested the opportunity to fish for 3,000 metric tons of sea snails and 5,000 metric tons of Pacific whiting. These requests will be denied. In addition, Japan will be barred from any future allocations of fishing privileges for any other species, including Pacific cod, until the Secretary of Commerce determines that the situation has been corrected.

The sanctions being imposed are the strongest possible under the Packwood-Magnuson Amendment. The immediate and prospective effects of a 100 percent reduction of fishing allocations coupled with Presidential review in the near future is the most effective means of encouraging Japan to embrace the IWC conservation program. Therefore, I will not impose at this time the sanctions available under the Pelly Amendment against Japanese fish products imported into the United States. I am asking Secretary Verity, in cooperation with Secretary Schultz, to monitor Japanese whaling practices during the next few months and to report to me no later than December 1, 1988.

I also am directing the Secretary of Commerce and the Secretary of State to continue consultations with our IWC partners to ensure that we bring to a halt all whaling that diminishes the effectiveness of the IWC's conservation program, specifically including that under Japan's contested research program. Our actions taken today and in the future should encourage all nations to adhere to the conservation programs of the IWC.

Sincerely,

RONALD REAGAN



UNITED STATES DEPARTMENT OF
COMMERCE
NEWS

WASHINGTON, D.C. 20230

OFFICE
OF THE
SECRETARY

G 88-13

Contact: Brian Gorman
(202) 377-8090 (O)
(202) 682-1252 (H)

U.S. Withholds Fishing
Privileges From Japan

FOR IMMEDIATE RELEASE

The President today reported to Congress his actions to encourage all nations to adhere to the conservation programs of the International Whaling Commission (IWC).

Among those actions, the United States toughened its constraints against Japan for that country's whaling activities by withholding 100 percent of the directed fishing privileges that would otherwise be available to Japan in the U.S. Exclusive Economic Zone.

Last February, following confirmation that Japanese were killing minke whales in the Antarctic under a contested research whaling plan, Commerce Secretary C. William Verity notified the president -- in a process called "certification" -- that Japan's whaling was "diminishing the effectiveness" of the IWC's conservation program.

Today's action, the strongest permitted by the Packwood-Magnuson Amendment to a federal fishing law, denies Japan's request to harvest 3,000 metric tons of sea snails and 5,000 metric tons of Pacific whiting. In addition, Japan will be barred from any future allocations of any other fish, including Pacific cod, until the secretary of commerce determines the situation has been corrected.

Under a companion federal law, the Pelly Amendment, the president could have embargoed up to 100 percent of Japan's fishery products entering the United States. Instead, he asked the secretary of commerce and the secretary of state to monitor Japan's whaling practices and report to him by Dec. 1, saying that a total withholding of Japan's directed fisheries allocation, coupled with a presidential review, is the best means of encouraging Japan to conform with the IWC's conservation program.

#

4/6/88

Japan Barred From Fishing in U.S. Waters Over Whale-Killing

By Cass Peterson
Washington Post Staff Writer

President Reagan yesterday cut off Japan's fishing privileges in U.S. waters because of its continued killing of whales, but he declined to impose trade sanctions against Japanese fish exports to the United States.

The action was stronger than required under U.S. law, which mandates a 50 percent reduction in fishing privileges for nations violating an international whale conservation treaty. But the action disappointed conservation groups, which had urged tougher steps to bring Japan into compliance.

"We're saving face on both sides of the Pacific, but we're not saving whales," said Ken Cook of the World Wildlife Fund. "This will hurt some, no question about that. But it's not hurting enough."

Last February, Commerce Secretary C. William Verity notified the White House that Japan's decision to kill 300 minke whales this year for scientific purposes would "diminish the effectiveness" of the conservation program set up by the International Whaling Commission.

Japan stopped commercial whaling last year under an agreement with the United States but later announced it would permit its whaling fleet to kill whales in the Southern Hemisphere for research.

Environmental groups called the program a "transparent ruse" for continued whaling.

The International Whaling Commission also recommended that the Japanese whaling program be abandoned.

Verity's decision automatically triggered a 50 percent cutback in Japanese fishing rights in U.S. waters

and set the stage for the White House to take stronger action, including barring Japanese fish products from the United States.

Japan exports \$550 million worth of fish products, including pearls and pearl jewelry, to the United States each year. The United States exports nearly twice that much in fish products to Japan.

In a letter to Congress, Reagan said Japan's requests to take 3,000 metric tons of sea snails and 5,000 metric tons of Pacific whiting from U.S. waters will be denied.

"In addition, Japan will be barred from any future allocations of fishing privileges for any other species, including Pacific cod, until the secretary of commerce determines that the situation has been corrected," he wrote.

Reagan said he had asked the Commerce and State

departments to monitor Japanese whaling practices and report their findings by Dec. 1.

Conservationists contend that the sanctions are inadequate and may encourage other nations with powerful whaling interests to resume hunting under the guise of scientific research.

According to Cook, the Japanese cabinet already has approved research whaling for another year and Norway has expressed interest in taking whales for scientific purposes.

"It's consistent with the way we've dealt with Japan on this issue before," Cook said.

"They're ignoring a bilateral agreement, an international convention and the sentiments of a majority of U.S. citizens. It goes to show that, just by lobbying, you can protect any industry you want," he added.

Eaters Beware

Poisoning Cases Lead to Calls for U.S. To Inspect Seafood

About 75% Goes to Market
Without Being Checked;
Riskier Than Red Meat

Growing Worry: Bootleggers

By BRUCE INGERSOLL

Staff Reporter of THE WALL STREET JOURNAL
Morty Bennett eats a scallop and shrimp entree at a Chinese restaurant in Miami. Soon his face and hands begin to puff up, and his ear lobes, fingers and feet start to tingle painfully. Then he develops a skin rash, lesions on his lips and a 103-degree fever, which put him in the hospital. The eventual diagnosis: neurotoxic shellfish poisoning.

Outside a seafood packing plant in Port Bolivar, Texas, a 100-foot-long pile of crab shells is crawling with maggots. Inside, the toilet doesn't work and the rusty equipment can't be sanitized because the plant doesn't have hot water. Flies swarm through holes in the ceiling, cockroaches flee into the bowed walls, and workers haul trash and cooked crabmeat around on the same cart.

Most seafood eaters never give a second thought to the safety of the delicacies they eat. Maybe they should. About 75% of U.S. seafood goes to market without being checked for impurities or tested for toxins and viruses. Texas health officials did a down on the Port Bolivar plant, but state programs are spotty. Now, after a string of seafood-poisoning outbreaks, including the first cholera cases in the U.S. since 1911, consumer groups and some lawmakers are calling for the federal government to inspect seafood the way it checks beef and poultry.

The Great Scandal

"It's the great American fish scandal," says Ellen Haas, the executive director of Public Voice for Food and Health Policy, a Washington, D.C., consumer group. "The worst of it is that a lot of people assume all fish are checked for hazards."

Seafood consumption in the U.S. reached a record 14.7 pounds a person last year. But while fish is a low-fat, nutritious alternative to beef and chicken, "the potential danger from human consumption of seafood is greater than it has ever been from red meat and poultry," says Michael Windham, Louisiana's director of meat and seafood inspection. Many seafood plants on the Gulf Coast are "almost like dumps," Mr. Windham says. "If it's important to have as many as 30 meat inspectors in a single plant, why don't we have at least one in a seafood plant?"

So far, the situation seems to be getting worse rather than better. The Commerce Department agency that conducts a voluntary inspection program for the fishing industry is inspecting less and less—11% of the seafood consumed last year, down from 19% in 1981. The Food and Drug Administration, which is responsible for screening 2.9 billion pounds of seafood imports a year, manages to inspect only a tiny fraction of the shipments. And several states aren't meeting their obligations under a program set up to protect consumers from cholera, hepatitis and paralytic poisoning from shellfish.

Headaches and Cramps

In Maine, 18 vacationers on a coastal island were stricken last summer with terrible headaches, stomach cramps and diarrhea after feasting on broiled tuna. Dr. Eric Brown, one of the victims, feared that he was "dealing with some weird toxin that was going to wipe out the entire group" until he reached a poison-control hotline. The diagnosis: scombroid fish poisoning.

In New York City, three Russian immigrants—one man last year and an elderly couple in 1985—died of botulism after eating *kapchunka*, a salted, ungutted whitefish. The *kapchunka* didn't have enough salt to keep bacteria from producing the botulin toxin.

Most seafood poisonings aren't fatal. But, says Dr. Hubert DuPont, the chairman of internal medicine at the University of Texas Medical School, "we're talking about lots of absenteeism from work and school and a lot of suffering."

Very Wholesome

The National Fisheries Institute, a trade group for seafood processors, insists that the health threat is being overdrawn. "The bulk of the product is very wholesome and perfectly acceptable," says Lee Weddig, the group's executive vice president. Nevertheless, the group supports expanded federal inspection.

Nobody knows the number of seafood-borne illnesses in the U.S. The last survey by the federal Centers for Disease Control was for 1982, when contaminated fish and shellfish were blamed for 24% of the traceable outbreaks of food poisoning.

The most complete statistics on seafood sickness are compiled in New York. A report last year by the New York State Health Department indicates that seafood is riskier to eat than either beef or poultry. Even though consumers ate much less of it, seafood caused 20% of the state's reported food-poisoning outbreaks in 1985, while poultry caused 9% and beef 6%.

But at least 95% of all food-poisoning cases go unreported. And in seafood cases, the symptoms are usually misdiagnosed as something else, such as allergic reactions or the flu. The symptoms of paralytic shellfish poisoning—tingling sensations, dizziness and nausea—are sometimes mistaken for drunkenness.

A coalition of 20 consumer and environmental groups is lobbying Congress to scrap the patchwork of federal and state inspection programs in favor of a comprehensive, mandatory inspection system administered by the Agriculture Department. Senate Agriculture Committee Chairman Patrick Leahy, a Vermont Democrat, has included seafood inspection in a food-safety bill and plans to hold hearings this spring.

Consumer activists don't have much faith in the voluntary program run by the Commerce Department's National Marine Fisheries Service, which inspects and grades seafood only for processors that pay for the service. In grading fish, its inspectors focus as much on the eye appeal of a fish fillet as its wholesomeness. "It's a marketing tool," says an agency official. "When business is bad, they need us; when it's good, they don't."

Only 7% of the 1,900 seafood processors currently participate. A dozen processors in the Pacific Northwest dropped out this year after they failed to gain the "marketing edge they paid for," says Richard Cano, the Fisheries Service's director of inspection.

The FDA makes do with 114 inspectors to screen food imports at 300 ports of entry. In 1986, only 5% of the 167,000 seafood shipments were examined on the wharf or tested; the rest were waved through. Of the shipments tested for chemical contaminants and other hazards, most involved swordfish suspected of high mercury levels.

Equally daunting is the FDA's task of inspecting sanitary conditions at 1,900 seafood plants. FDA inspectors stop by only once every three to four years, and they seldom take any enforcement action. "We just can't get around to each plant as often as we'd like with the small number of people we have," says an agency spokesman. "You can be sure that salmon and tuna packers who could have a potential botulism problem are inspected every year."

State health officials pick up some of the slack, but with varying vigor. In many states, says a Louisiana official, inspectors "may come by and say, 'Hello, how you all doing?' and then they're gone."

At New York's Fulton Fish Market, Rudolph Albanese is the only health inspector. Each weekday morning before dawn, he wades into the frenzy of the nation's largest seafood emporium to collect samples of clams and oysters for bacteria testing and to examine a smattering of fish. "I use my nose if I have to," says the 64-year-old city sanitarian. But most of the catch goes unchecked.

Oysters, clams and mussels pose special hazards to consumers, particularly patrons of raw bars. These mollusks filter bacteria, viruses and toxic substances out of polluted water and concentrate them in their flesh.

The National Shellfish Sanitation Program—a cooperative venture by 23 coastal states, the FDA and the industry—helps protect the public against contaminated shellfish. But in a report last May, the FDA cited "major deficiencies" in the sanitation efforts of seven states. Maine opened some polluted shellfish beds to harvesting. California and Oregon weren't doing enough sampling to detect the "red tides" of micro-organisms that cause paralytic shellfish poisoning. Texas and Louisiana, the largest shellfish producers, tolerated filthy conditions and poor refrigeration at oyster-shucking houses. And many of the states hadn't adequately surveyed oyster and clam beds for pollution.

The FDA hasn't yet punished any of the states, preferring to rely on peer pressure from other states to prod them into doing better. It also says that the seven deficient states have made considerable progress in the past year.

A growing worry is bootleggers who harvest contaminated shellfish from off-limits beds. A shellfish shortage has driven up prices, and the risks of getting caught are low, particularly in states that are short on patrol boats. "How do you stop somebody with a motorboat and flashlight from going out at night and harvesting oysters from closed beds?" asks Dr. Robert Tauxe, the assistant chief of enteric diseases at the Centers for Disease Control.

In part, FDA officials blame lenient judges for the rise in bootlegging. Repeat violators frequently get off with light fines. In certain Louisiana parishes, bootleggers aren't prosecuted, even though dozens of people have contracted cholera in recent years from eating Louisiana shellfish.

The industry, while reviling the bootleggers, remains deeply divided on the inspection issue. Most of the small fry, including commercial fishermen and family-owned processors, resist the idea of a single federal watchdog with overarching authority. "Why build one more layer of bureaucracy?" asks Casey Todd, the owner of a Crisfield, Md., oyster-shucking and crabmeat-picking plant. "Why don't they beef up the FDA?"

The major processors seem ready to embrace mandatory federal inspection as long as they can dictate what form it takes and taxpayers will foot the bill. "A lot of the product is great, but some fish slips through that isn't top drawer," says Robert Brubaker, the president of King & Prince Seafood Corp. in Brunswick, Ga. "The whole seafood industry could benefit from an improved inspection system."

He and other U.S. industry leaders insist, though, that imports should be subject to the same degree of scrutiny. And they balk at the approach used in meat and poultry plants—continuous inspection of production lines. Instead, they favor unannounced checks by roving, rather than in-house, inspectors focusing on "critical control points" in seafood processing.

At Congress's request, the Commerce Department's Fisheries Service is designing a model surveillance program along these lines. But because the plan won't be finished until mid-1990, several seafood processors and purveyors have set up their own product-safety laboratories. "To fill the void, we have taken the testing into our own hands," says Roger Berkowitz, an owner of Boston-based Legal Sea Foods Inc. "We have to be absolutely on the safe side."

TESTIMONY OF
JAMES E. DOUGLAS, JR.
DEPUTY ASSISTANT ADMINISTRATOR FOR FISHERIES
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
DEPARTMENT OF COMMERCE

BEFORE THE
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
UNITED STATES SENATE

APRIL 13, 1988

Mr. Chairman and Members of the Committee:

I am James E. Douglas, Jr., Deputy Assistant Administrator for Fisheries, of the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA). With me today are Dr. Nancy Foster, Director of the National Marine Fisheries Service's (NMFS) Office of Protected Resources and Habitat Programs and Mr. E. Charles Fullerton, Director of the NMFS Southwest Region.

The Department of Commerce supports reauthorization of the Marine Mammal Protection Act (MMPA) of 1972. Since its enactment, the MMPA has been an important element of our Nation's wildlife conservation efforts. The MMPA recognized that marine mammals are an important element of marine ecosystems and are resources of great aesthetic, recreational and economic significance, and established a comprehensive program for marine mammal conservation. The MMPA has been a key factor in the recovery of several populations. For example, the mortality of porpoise in the U.S. tuna purse-seine fishery has been reduced significantly, seal and sea lion populations along the west and northeast coasts are

increasing, and the gray whale has recovered to near its original abundance.

We have made significant progress in managing marine mammals, but a number of challenges remain. There are increasing numbers of interactions between marine mammal populations and human activities. These interactions are having serious effects on people, marine mammals and other marine resources. Marine mammals are being entangled in fishing gear, injured in collisions with boats, and sometimes illegally killed. People and businesses are being affected by damage to fishing gear and reductions of catch of fisheries resources. To give you an idea of how large the problem is, incidental taking associated with fisheries in U.S. waters involves over 20 species and 10,000 marine mammals. It is becoming more and more difficult to manage the taking of these marine mammals so as to allow the three-billion-pound American fisheries to continue. Our greatest challenge is to develop effective management strategies to deal with these interactions while keeping adverse effects on both the marine mammals and marine user groups to a minimum.

We support authorizing appropriations for the marine mammal protection activities of the Department of Commerce at a level of \$7,320,000 for fiscal year 1989 and at such sums as may be necessary for fiscal year 1990. However, we believe the MMPA needs to be revised to strengthen the enforcement provisions of the Act and to allow Federal agencies a broader range of management options

to address present and future marine mammal-human interaction problems.

Depletion

The area of immediate concern is the lack of authority to allow takes of depleted marine mammals incidental to commercial fishing operations. Unless this issue is resolved, the fishing industry could be faced with severe economic losses.

Under the MMPA, a species is considered depleted if it is below its optimum sustainable population (OSP) level. Takes from depleted populations are allowed only under limited circumstances, including subsistence by Native Alaskans, small takings incidental to activities other than commercial fishing, and scientific research. No taking of depleted species is allowed incidental to commercial fishing. Gathering data to make determinations of the status of species with respect to OSP is very costly and time consuming. Thus we are not able to make valid scientific determinations regarding depletion for most species of marine mammals in a timely manner. If a species' status relative to its OSP cannot be determined, under the MMPA, as judicially interpreted, permits to take that species incidental to commercial fishing cannot be issued. This is true even if the taking would not significantly affect the biological status of the population.

NMFS has interpreted its authority under the MMPA to include discretion to issue permits for incidental taking if the populations covered by the permit are within OSP, without proving

4

that all other species that might be taken are also within OSP. However, in a recent decision involving a permit allowing a take of Dall's porpoise incidental to the Japanese salmon fishery, the United States Court of Appeals rejected NMFS's interpretation. In a two to one decision, the court ruled that NMFS did not have the authority to issue a permit for Dall's porpoise since other marine mammals (such as the fur seal) which were not demonstrably at OSP also were likely to be taken.

Unless this decision is overturned or Congress amends the Act, NOAA may not be able to renew the general permits to the U.S. domestic fishing industry that expire at the end of 1988 because depleted species or species of unknown status might be taken. NMFS has begun the administrative process necessary to consider the reissuance of the general permits, and a range of alternatives is being evaluated in a draft environmental impact statement. However, some of these alternatives could not be implemented under the Court of Appeal's interpretation of existing law.

The fishing industry and the conservation community both recognize the seriousness of the problem and have formed a working group to develop a solution acceptable to all. This group is working to develop an amendment to the MMPA that would provide greater latitude in managing populations of marine mammals that are depleted or of unknown status by allowing a take of depleted species incidental to commercial fishing provided that there are adequate safeguards for the affected marine mammal populations. We

5

look forward to receiving the group's recommendations and will incorporate them, as appropriate, into our own legislative proposal.

Nuisance Animals

Some pinniped populations on the west and northeast coasts have increased to the point where they frequently damage other marine resources and cause significant losses of fishing gear and catch. Many of these interaction problems have not been resolved effectively. For example, since 1983, Federal and State authorities have attempted to prevent California sea lions from decimating a small run of steelhead trout in Lake Washington. Despite using harassment, taste aversion conditioning, and other non-lethal measures, we have not been successful in reducing predation by these sea lions. NOAA, the fishing industry and the conservation community are working together to determine how to deal adequately with nuisance animals.

Enforcement

Effective administration of the MMPA hinges upon NOAA's ability to fully enforce its provisions. We believe that the MMPA's enforcement provisions are inadequate in a number of respects. The enforcement authority found in other statutes administered by NOAA, most notably the Magnuson Fishery Conservation and Management Act and the Endangered Species Act, is superior to the MMPA. For example, the MMPA does not specify a standard for judicial review of administrative civil penalty

6

actions and does not provide NMFS with sufficient subpoena and forfeiture authority or the ability to impose maritime liens and recover storage costs for seized marine mammal products. Shortly, we will submit to the Congress technical amendments to correct these deficiencies by making MMPA enforcement provisions more consistent with those in the Magnuson Act and other natural resource protection statutes.

Sale of Fur Seal Skins Taken in the Subsistence Harvest

Aleut residents of the Pribilof Islands want to sell fur seal skins taken in their annual subsistence harvest. Under the MMPA, by-products of the subsistence harvest cannot be sold unless first made into authentic articles of native handicraft. However, the Aleuts want to sell raw skins to fur processors in the U.S. and abroad.

The purpose of the MMPA's prohibition on commercial sale of subsistence harvest by-products is to limit the take of marine mammals to only those needed for legitimate subsistence and handicraft uses. Sale of raw skins may provide additional incentive to harvest the seals beyond subsistence needs. Further, other Native Alaskans might seek to sell subsistence by-products such as ivory and teeth that were not made into traditional handicraft. Changes to the Native subsistence provisions of the Act would be acceptable to NOAA if the take remained truly for subsistence and if it could be adequately enforced. We will be

7

happy to work with the Congress if it decides to address this issue.

Tuna/Porpoise

Porpoise Mortality

Congress amended the MMPA in 1984 to extend the general permit held by the American Tunaboat Association and to continue the quota on the taking of porpoise of 20,500 per year in the eastern tropical pacific (ETP). This allows the U.S. tuna fleet to continue fishing for yellowfin tuna in association with porpoise stocks some of which may be depleted. The 1984 amendments also required NOAA to undertake a five-year assessment of the affected porpoise stocks. This assessment has been underway since 1986. Besides using data collected on research vessels, NOAA is developing statistical methods to use information collected by observers on tuna vessels to monitor changes in the relative abundance of the stocks. In 1991, NOAA will determine whether the stocks of porpoise affected by the multinational tuna fishery are increasing, decreasing or stable.

The U.S. industry has remained below the 20,500 quota every year since the Act was amended in 1984, except for 1986 when the quota was reached in October. We are, however, quite concerned over porpoise mortality in the foreign segment of this fishery.

8

The incidental take levels for the last four years were:

<u>Year</u>	<u>U.S. Vessels</u>	<u>Non-U.S. Vessels</u>	<u>Total</u>
1984	17,732	15,018	32,750
1985	19,205	36,032	55,297
1986	20,692	103,905	124,597
1987	13,992	64,505	78,497

Import Regulations

NOAA recently published regulations governing the importation of yellowfin tuna that we believe will greatly assist us in reducing porpoise mortality. In developing these regulations, the problem we faced was establishing requirements strict enough to immediately begin the reduction of porpoise mortality without causing foreign nations to develop alternative tuna markets and continue to fish for tuna without regard to porpoise mortality. We believe these regulations satisfy the major concerns of the conservation community and the industry. They provide for an observer program to monitor and report porpoise mortality, an annual certification program to assure compliance with U.S. requirements in order to continue exporting tuna to U.S. markets, and a comparability test that distinguishes variability in performance between small and large fleets of foreign nations.

Specifically, foreign nations purse seining in the ETP and wishing to export yellowfin tuna to the U.S. must prove to us that they have laws and regulations designed to protect porpoise. Their regulations and porpoise-saving gear must be comparable to those of

9

the U.S. In addition, each nation must submit observer data collected on porpoise mortality. Starting next year, annual mortality rates must show improvement to remain "comparable." This improving trend in mortality must continue and by 1991 a foreign kill rate must be no greater than 25 percent above the U.S. rate if they have large fleets like Mexico, or 75 percent for smaller fleets.

We believe this gradually improving mortality rate meets the intent of the 1984 amendments. The alternative, imposing an immediate and equal mortality rate comparison test, would result in an almost total prohibition of import of yellowfin tuna from these nations. As a result of a U.S. prohibition, foreign nations would most likely develop alternative tuna markets and continue fishing for tuna associated with porpoise completely outside the jurisdiction of the MMPA. In addition to reduced porpoise protection, unrealistic requirements could put the U.S. tuna processors, especially those in Puerto Rico, at a severe disadvantage in the world-wide tuna industry.

We believe the most effective way to reduce porpoise mortality by all nations is through an international program among nations fishing for tuna associated with porpoise. Currently, the Inter-American Tropical Tuna Commission is an effective partner in an international porpoise research program to reduce porpoise mortality in the ETP. This observer program provides the only source of scientific estimates of porpoise mortality for the

10

international fleet. We will continue our cooperation and support for this international program in an effort to further reduce non-U.S. porpoise mortality.

Status of Populations

The NMFS is responsible for over 100 species of marine mammals. Some of these populations are healthy or increasing, and others have been reduced or are still declining. Each year we prepare an annual report that includes updated information on the status of marine mammal populations. We submitted a copy of our most recent report to the Congress in August 1987. We have concentrated our efforts on those species that are depressed or are affected by man's activities. We are conducting stock and impact assessments for species taken in domestic fisheries in connection with the reissuance of the general permits. These assessments will be available later this year.

Dall's Porpoise

For management purposes NOAA has determined that there are three populations of Dall's porpoise within U.S. waters: a Bering Sea, a western Pacific and an eastern Pacific population. The western Pacific and Bering Sea populations total over 950,000 and are well within their OSP. The eastern Pacific population is currently under review as part of the stock assessments for reissuance of general permits.

11

We are concerned over the impacts of the high seas squid gillnet fisheries on the North Pacific populations.

Dall's porpoise are taken in the Japanese salmon gillnet fishery within and outside of the U.S. Exclusive Economic Zone (EEZ) in the North Pacific Ocean and Bering Sea. In 1987, NMFS issued Japan a general permit that allowed a taking of about 6,000 Dall's porpoise during a 3-year period based on a determination that the stocks would not be disadvantaged. Based on the previously noted recent Court ruling, the Dall's-porpoise permit is not valid since species that are not at OSP, such as the fur seal, would also be taken, albeit in small number. Therefore, the Japanese salmon fishery may not operate this summer in the U.S. EEZ as contemplated by the International North Pacific Fisheries Convention (INPFC). As a result, Japan may withdraw from, or seek to renegotiate the INPFC. This would allow them to fish in areas where the take of North American origin salmon and marine mammals would be higher than when Japan fishes inside the U.S. EEZ and targets Asian stocks of salmon. Additionally, the denial of the Dall's porpoise permit will eliminate a cooperative U.S.-Japanese research program to place U.S. scientific observers on Japanese high seas squid driftnet vessels that operate entirely beyond our EEZ.

Northern Fur Seal

The Pribilof Island population of North Pacific fur seal has declined from about 2.2 million in the 1950's to 800,000 today.

The causes of the decline remain under investigation. In 1986, NMFS published a proposed rule to designate the population as depleted, and we expect in the near future to publish a final rule designating the population as depleted.

Since 1985, a subsistence harvest of fur seals has been conducted by Aleut residents of the Pribilof Islands following regulations under the Fur Seal Act and the MMPA. About 2,000 subadult male seals are harvested for food each summer. Season, sex and age limits are set to protect the seal herd and estimated harvest ranges are reconsidered each year.

Steller Sea Lion

The Steller (Northern) sea lion population in Alaska has also declined significantly from about 140,000 in the 1950's to 68,000 in 1985. Most of the decline has occurred since the late 1970s. The causes of the decline remain under investigation, and fisheries-related mortality factors, including incidental take, directed killing by fishermen, changes in prey species, and entanglement in discarded fishing gear and other debris, have been examined as possible causes. NMFS is currently considering whether to propose this population for designation as depleted.

Six domestic general permits expiring in 1988 authorize an incidental take of a total of 2,130 Steller sea lions annually in the North Pacific. If Steller sea lions are found to be depleted, NMFS cannot issue permits for their incidental take, nor can it, under the Court of Appeal's decision on Dall's porpoise, issue

permits for other species if inevitably these animals will be taken.

California Sea Lion

The California sea lion is another species that is taken incidentally in commercial fishing operations. This species interacts with almost every fishery on the west coast, causing most of the estimated \$600,000 annual damage from marine mammals to California's commercial fisheries. Despite an incidental mortality of 2,000 to 3,000 animals a year, the population has increased from about 40,000 animals in 1972 to 80,000 animals today and is continuing to increase at about 6.5% per year.

In the past, NOAA has issued general permits authorizing the incidental take of California sea lions because the population was large, inhabited its known historic range, and was increasing despite the level of incidental mortality. However a recent assessment shows that the population may be below OSP. If this is true, general permits to allow a take of this species are in jeopardy. This is a good example of how the very limited management options available for depleted species may result in severe economic consequences even though we believe the stocks can tolerate the expected level of incidental mortality.

Hawaiian Monk Seal

The status of the Hawaiian monk seal has not changed substantially since its listing as endangered in 1976. The population was last estimated in 1985 at 1,488 animals. NMFS is

14

implementing a recovery plan that was developed in 1983 by the Hawaiian monk seal recovery team. As recommended by the team and others, NMFS has designated as critical habitat several areas in the northwestern Hawaiian Islands. Research includes yearly counts of pups at all major breeding locations and studies of physiology, feeding habits and the effects of marine debris.

Bowhead Whales

NOAA's National Marine Mammal Laboratory has continued to fund research by the Alaska Eskimo Whaling Commission and North Slope Borough on the endangered bowhead whale. Expanded studies have resulted in a population estimate for the western Arctic stock of whales at 7,200 (plus or minus 2,400) based on both visual and acoustic survey data collected during the 1985 spring migration. The International Whaling Commission's (IWC) Scientific Committee accepted this population estimate in 1987. Although the Committee recommended that it remain a Protection Stock, it supported the continued subsistence harvest of bowheads by Alaskan natives. The U.S. aboriginal subsistence proposal of 32 strikes in 1987 and 35 strikes in 1988 was unanimously accepted by the IWC, indicating the strength of the scientific analyses leading to the current population estimate and proposed strike limits.

Right Whales

Although protected from whaling since 1931, right whale populations have shown little evidence of recovery. Fewer than 200 remain in the North Pacific, a few hundred in the North Atlantic,

15

and about 3,000 in the Southern Hemisphere. The North Atlantic Right Whale Consortium, funded through NMFS' Northeast Fisheries Center, is continuing research on the North Atlantic stock. Research efforts are focused on the population's breeding and foraging habitat; using fluke photographs for identification and tracking of individual whales; and consolidating all available data. Concerns for the right whales include entanglement in fishing gear, the effects of whale watching, dredging, and vessel traffic particularly in the calving grounds off the southeast United States. In consultation with the right whale recovery team, we are developing a recovery plan for North Atlantic and Pacific stocks of right whales which is expected to be adopted by the end of 1988.

Humpback Whale

The humpback whale population in the western north Atlantic is estimated at about 5,800 animals, with over 3,500 having been individually identified. The population in the Pacific is estimated at about 1,600. The greatest impacts on the species today occur from entanglement in fishing gear, pollutants, vessel traffic and habitat destruction. A recovery team has been appointed and is presently reviewing a draft recovery plan which addresses these concerns. A plan is expected to be adopted late this year.

California Gray Whale

Although severely depleted by whaling, the California stock of gray whale has been increasing and has recovered to near its pre-exploitation population size. The population is estimated at about 18,000 animals. Because of its recovery, we will review the status of this species and the existing threats to the population to determine whether or not it should remain listed as an endangered species.

Activities and Accomplishments

The remainder of my testimony focuses on other aspects of NOAA's marine mammal program, including some other issues and significant accomplishments.

Permit Program Review

As part of our marine mammal management program, NMFS issues and monitors permits for scientific research and public display. Currently there are over 400 active permits. Recently a number of concerns involving this program have been brought to our attention. This has prompted NMFS to review the policies, criteria and procedures we use in evaluating applications and in issuing and monitoring these permits. This review will be conducted in close consultation with the scientific community, the public display industry, environmental organizations and other interested parties. Regulatory and policy changes resulting from this review we hope will resolve most of the permit concerns raised.

Federal Coordination

NMFS works closely with other Federal agencies, such as the Minerals Management Service, Environmental Protection Agency and the Corps of Engineers, in their project planning to ensure that marine mammal concerns have been addressed and the requirements of the MMPA have been satisfied. We also coordinate our marine mammal programs with the Marine Mammal Commission and U.S. Fish and Wildlife Service. This March, NMFS and the Fish and Wildlife Service published proposed regulations to implement the 1986 amendment to the MMPA that allows a small take of depleted marine mammals incidental to activities other than commercial fishing. Taking can only be allowed if it will have a negligible impact on the species and regulations must be issued that include permissible methods of taking and means of minimizing impacts. We are now considering allowing six oil companies to take by harassment a small number of bowhead and gray whales incidental to oil and gas exploration activities in the Beaufort and Chukchi Seas.

Strandings

Two unusual stranding episodes recently occurred along the U.S. Atlantic Coast. The first, involving bottlenose dolphins, started in July 1987 along the coasts of New Jersey, Delaware, Maryland, and Virginia. During the fall, as the dolphin population migrated south for the winter, larger than normal numbers of strandings occurred along the coasts of the Carolinas and Georgia. Although the rate has declined markedly, strandings are still

occurring, but not beyond Central Florida. To date we have documented a loss of 744 dolphins.

Pathological examinations have shown that the dolphins died from massive bacterial infections. These bacteria normally are found in these dolphins and it is questionable whether the animals would have been vulnerable to such infections unless they had been affected by disease, toxins, stress, or other factors which weaken the immune system. Although viruses have been isolated from dead dolphins, it is not known if these were the cause of the mortalities.

The second stranding episode primarily concerned humpback whales in the vicinity of Cape Cod. Beginning in late November of 1987 and ending in early February 1988, a total of 21 whales died. This included 15 humpback whales, 4 minke whales and 2 fin whales. We believe that the whales died from biotoxins ingested when feeding on large amounts of mackerel. The source of the biotoxin, which concentrates in the internal organs of fish, is unknown.

In dealing with each of these incidents, NOAA has cooperated with the Marine Mammal Commission, the Smithsonian Institution and other local, state and Federal agencies in establishing investigative response teams. The efforts of local marine aquaria, academia, and the environmental community were very important in helping NOAA respond effectively to these emergencies, and are much appreciated.

Entanglement

To address the problem of marine plastic pollution, NOAA has conducted several studies on debris and fishing gear entanglement issues. Base funding will allow for further support of related activities. NOAA has been working with Japan, Taiwan and Korea to address the proliferation of plastic in the North Pacific Ocean. The Driftnet Impact Monitoring, Assessment, and Control Act, which was enacted in December 1987, requires the U.S. to negotiate observer and enforcement agreements with these and other governments pursuing high seas driftnet fisheries in the North Pacific. Steps have been initiated with the Department of State to begin these negotiations.

NOAA also recommended that the Congress support early ratification of Annex V of the International Convention for the Prevention of Pollution from Ships (MARPOL), which, with limited exceptions, prohibits the disposal into the sea of all plastics. With the U.S. accession, Annex V will enter into force internationally in 1989.

In April 1987, 30 U.S. Senators wrote to President Reagan expressing their concern over increasing amounts of plastic debris in the ocean and asked that the Administration help Congress develop a strategy to reduce problems caused by plastic in the marine environment. In response, NOAA is chairing an Interagency Marine Debris Task Force established to assess the problem and the need for research, identify potential reduction measures, and

consider alternative actions to address the problem of plastic marine pollution. Reviews, studies and workshops addressing these tasks are now underway and the report of the Task Force is expected later this year.

Whale Watching

Since the late 1970's, NMFS has been concerned that marine mammals, especially the great whales, may be adversely affected by activities associated with whale watching. In November 1987, NMFS issued interim regulations governing approaching humpback whales in Hawaiian waters. Previous guidelines addressing whale watching in Hawaiian waters were not effective in preventing these whales from being harassed. To provide better protection for all whales, NMFS will sponsor a whale watching workshop in October 1988. The workshop will bring together members of the scientific community, the environmental community, and the industry, with the purpose of reviewing available information to determine the effects of whale watching and how any adverse effects can be kept to a minimum. NOAA will use the results of this workshop to formulate a national policy and action plan. We believe this is the best way to develop a program that all parties can support.

Conclusion

Mr. Chairman, in conclusion we support reauthorizing this important wildlife conservation act at levels for the Department of Commerce of \$7,320,000 for fiscal year 1989 and at such sums as may be necessary for fiscal year 1990.

In addition, we believe that the continuing problem of marine mammal and marine user interactions is significant and warrants your attention during this reauthorization process. Unless we have more options in managing depleted species, some U.S. fisheries will not be able to continue without violating the MMPA.

I thank the committee for this opportunity to express the views of the Department, and will try to answer any questions you may have.