

H.R. REP. 97-549, H.R. Rep. No. 549, 97TH Cong., 2ND Sess. 1982, 1982 U.S.C.C.A.N. 4320, 1982 WL 25149 (Leg.Hist.)

[P.L. 97-453](#), FISHERY CONSERVATION AND MANAGEMENT IMPROVEMENT
SEE PAGE 96 STAT. 2481
HOUSE REPORT (MERCHANT AND MARINE AND FISHERIES COMMITTEE)
NO. 97-549, MAY 17, 1982 (TO ACCOMPANY H.R. 5002)
SENATE REPORT (COMMERCE, SCIENCE AND TRANSPORTATION
COMMITTEE) NO. 97-519, AUG. 10, 1982 (TO ACCOMPANY
S. 2450)
[HOUSE CONFERENCE REPORT NO. 97-982](#), DEC. 20, 1982 (TO
ACCOMPANY H.R. 5002)
CONG. RECORD VOL. 128 (1982)
DATES OF CONSIDERATION AND PASSAGE
HOUSE DECEMBER 16, 20, 1982
SENATE DECEMBER 17, 21, 1982
THE HOUSE BILL WAS PASSED IN LIEU OF THE SENATE BILL. THE
HOUSE REPORT (THIS PAGE) AND THE HOUSE CONFERENCE REPORT
(PAGE 4364) ARE SET OUT.

(CONSULT NOTE FOLLOWING TEXT FOR INFORMATION
ABOUT OMITTED MATERIAL. EACH COMMITTEE REPORT IS A SEPARATE DOCUMENT ON
WESTLAW.)

HOUSE REPORT NO. 97-549
MAY 17, 1982

****4320 *1** THE COMMITTEE ON MERCHANT MARINE AND FISHERIES, TO WHOM WAS REFERRED THE BILL (H.R. 5002) TO IMPROVE FISHERY CONSERVATION AND MANAGEMENT HAVING CONSIDERED THE SAME, REPORTS FAVORABLY THEREON WITH AMENDMENTS AND RECOMMEND THAT THE BILL AS AMENDED DO PASS.

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***7 PURPOSE OF THE LEGISLATION**

THE PURPOSE OF THE LEGISLATION IS TO EXTEND THE AUTHORIZATION OF APPROPRIATIONS UNDER SECTION 406 OF THE MAGNUSON FISHER CONSERVATION*8 AND MANAGEMENT ACT (MFCMA) FOR THREE FISCAL YEARS. AUTHORIZATION LEVELS FOR THE CONDUCT OF THE FISH-

ERY CONSERVATION AND MANAGEMENT EFFORTS MANDATED BY THE ACT RISE FROM \$55,000,000 IN **4321 FISCAL YEAR 1983, TO \$60,000,000 IN FISCAL YEAR 1984, AND TO \$65,000,000 FOR FISCAL YEAR 1985.

IN ADDITION, THE LEGISLATION IS DESIGNED TO STREAMLINE AND SIMPLIFY FISHERY CONSERVATION AND MANAGEMENT EFFORTS AS WELL AS STRENGTHEN THE UNITED STATES' 'FISH AND CHIPS' POLICY. IN ACCOMPLISHING THESE PURPOSES, THE LEGISLATION AMENDS THE MFCMA TO: CLARIFY THAT FISHERY MANAGEMENT PLANS (FMPS) ARE TO ACHIEVE THE OPTIMUM YIELD FROM EACH FISHERY BY THE UNITED STATES FISHING INDUSTRY; PROHIBIT THE SECRETARY OF STATE FROM RELEASING MORE THAN FIFTY PERCENT OF A FOREIGN NATIONS FISHING ALLOCATION UNTIL A DETERMINATION IS MADE THAT THE CONCERNED FOREIGN NATION IS COMPLYING WITH THE REQUIREMENTS OF U.S. FISHERIES LAW; REMOVES THE EIGHT REGIONAL FISHERY MANAGEMENT COUNCILS; FROM TECHNICAL COMPLIANCE WITH THE FEDERAL ADVISORY COMMITTEE ACT (FACA); ALLOW THE COUNCILS TO ESTABLISH DATA COLLECTION PROGRAMS UNDER CERTAIN CIRCUMSTANCES; REQUIRE THE COUNCILS TO PREPARE DRAFT REGULATIONS TO IMPLEMENT FMPS AND FORWARD SUCH REGULATIONS TO THE SECRETARY OF COMMERCE AT THE SAME TIME THE FMP IS TRANSMITTED FOR APPROVAL; AND SET STRICT TIME LIMITS ON THE SECRETARY'S REVIEW OF SUCH FMPS AND REGULATIONS. THE BILL SPECIFICALLY EMPOWERS THE REGIONAL COUNCILS TO ESTABLISH AND IMPLEMENT, THROUGH THE NORMAL FMP PROCESS, FISHING VESSEL 'BUY-BACK' PROGRAMS AS PART OF A LIMITED ENTRY SYSTEM. FINALLY, THE BILL AUTHORIZES THE GOVERNOR OF A COASTAL STATE TO PERMIT FOREIGN PROCESSING VESSELS TO ENGAGE IN FISHING PROCESSING ACTIVITIES WITHIN THE INTERNAL WATERS OF THAT STATE IF: THE FOREIGN NATION CONCERNED HAS A GOVERNING INTERNATIONAL FISHERY AGREEMENT (GIFA) OR FISHERY TREATY WITH THE UNITED STATES; AND THE GOVERNOR DETERMINES THAT FISH PROCESSORS WITHIN THAT STATE HAVE NEITHER THE CAPACITY NOR INTENT TO UTILIZE THAT CAPACITY TO PROCESS ALL UNITED STATES HARVESTED FISH LANDED IN THAT STATE.

LEGISLATIVE BACKGROUND

H.R. 5002 WAS INTRODUCED ON NOVEMBER 17, 1981 BY MR. BREAUX AND MR. FORSYTHE, AND WAS REFERRED TO THE COMMITTEE ON MERCHANT MARINE AND FISHERIES.

THE LEGISLATION WAS DEVELOPED AT THE CONCLUSION OF THREE DAYS OF OVERSIGHT HEARINGS, HELD ON SEPTEMBER 24 AND 25, AND OCTOBER 14, 1981. THE LEGISLATION IS ALSO THE RESULT OF SIX DAYS OF OVERSIGHT HEARINGS CONDUCTED IN THE 96TH CONGRESS. THE FINDINGS OF THE SUBCOMMITTEE WITH REGARD TO THESE PRIOR HEARINGS AND THE RECOMMENDATIONS ARISING THEREFROM, ARE CONTAINED IN AN 'OVERSIGHT REPORT ON THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976 ', PRINTED ON SEPTEMBER 1, 1981, ORDERED REPORTED BY THE COMMITTEE ON MERCHANT MARINE AND FISHERIES ON DECEMBER 9, 1981 AND FILED WITH THE HOUSE OF REPRESENTATIVES ON MARCH 2, 1982 (H. REPT. 97-438).

PRIOR TO THE HEARINGS IN THE 97TH CONGRESS, A MEMORANDUM DISCUSSING PROPOSED AMENDMENTS DESIGNED TO IMPLEMENT MANY OF THE RECOMMENDATIONS CONTAINED IN THE OVERSIGHT REPORT WAS DISTRIBUTED TO POTENTIAL WITNESSES. DURING THE COURSE OF

THESE HEARINGS, TESTIMONY**4322 *9 WAS RECEIVED FROM: MR. WILLIAM GORDON, DEPUTY ASSISTANT ADMINISTRATOR FOR FISHERIES OF THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA), REPRESENTING THE DEPARTMENT OF COMMERCE, MR. THEODORE KRONMILLER, DEPUTY ASSISTANT SECRETARY OF STATE FOR OCEANS AND FISHERIES AFFAIRS, REPRESENTING THE DEPARTMENT OF STATE, CONGRESSMAN LEON PANETTA, CONGRESSMAN JAMES HOWARD, REPRESENTATIVE OF THE EIGHT REGIONAL FISHERY MANAGEMENT COUNCILS, MR. RONALD SKOOG, COMMISSIONER OF THE ALASKA DEPARTMENT OF FISH AND GAME REPRESENTATIVES OF DOMESTIC AND FOREIGN, COMMERCIAL AND RECREATIONAL FISHERMEN AND REPRESENTATIVES OF ENVIRONMENTAL ORGANIZATIONS.

GENERALLY, THE ADMINISTRATION WITNESSES, WHILE NOTING THAT PROBLEMS HAVE OCCURRED IN THE IMPLEMENTATION OF THE MFCMA, EXPRESSED THE BELIEF THAT SUCH PROBLEMS COULD BE SOLVED BY ADMINISTRATIVE ACTION OF THE DEPARTMENT OF COMMERCE. NOTABLE EXCEPTIONS TO THIS GENERAL RULE INCLUDED PROPOSED AMENDMENTS DESIGNED TO: ALLOW THE DEPARTMENT, WHEN A FISHERIES VIOLATION IS COMMITTED BY A FOREIGN FISHERMAN, TO SEIZE THE VALUE OF FISH ILLEGALLY CAUGHT, RATHER THAN ACTUALLY REDUCE THE FISH TO POSSESSION; ALLOW FOREIGN FISHERMEN FROM NATIONS NOT A PARTY TO A GIFA OR FISHERIES TREATY WITH THE U.S. TO PARTICIPATE IN RECREATIONAL FISHING TOURNAMENTS; RELIEVE THE SECRETARY OF COMMERCE FROM THE DUTY TO TRANSMIT TO THE COMMITTEE VARIOUS REPORTS AND FOREIGN PERMIT APPLICATIONS; PERMIT THE LEVYING OF FEES IN EXCESS OF ADMINISTRATIVE COSTS AS PART OF A COUNCIL APPROVED LIMITED ENTRY SYSTEM; AND REQUIRE COUNCIL DEVELOPMENT OF DRAFT REGULATIONS IMPLEMENTING FISHERY MANAGEMENT PLANS.

REPRESENTATIVES OF THE REGIONAL COUNCILS EXPRESSED STRONG SUPPORT FOR THE PROPOSALS ENDORSED BY THE ADMINISTRATION, AND FOR OTHER PROPOSALS THAT CLARIFIED THEIR ROLE AS THE PRINCIPAL ENTITY RESPONSIBLE FOR DAY TO DAY DECISIONS REGARDING FISHERY CONSERVATION AND MANAGEMENT. THIS VIEW WAS ALSO GENERALLY ENDORSED BY REPRESENTATIVES OF THE DOMESTIC, COMMERCIAL FISHING INDUSTRY. PARTICULAR ISSUES ADDRESSED BY BOTH THE COUNCILS AND THE DOMESTIC FISHING INDUSTRY INCLUDED: CONCERN THAT COUNCILS MIGHT BE REQUIRED TO DEVOTE INCREASINGLY SCARCE RESOURCES TO FISHERIES NOT CURRENTLY IN NEED OF CONSERVATION AND MANAGEMENT; THE NEED FOR MORE AND BETTER DATA AND INFORMATION ON THE VARIOUS FISHERY RESOURCES; CONCERN THAT THE FEDERAL REVIEW OF MANAGEMENT DECISIONS TAKEN BY THE COUNCILS TOO OFTEN RESULTED IN UNDESIRABLE ALTERATIONS TO THOSE DECISIONS; AND CONCERN OVER THE INORDINATE AMOUNT OF TIME IT OFTEN TAKES TO DEVELOP AND IMPLEMENT FISHERY MANAGEMENT PLANS OR AMENDMENTS TO SUCH PLANS.

DOMESTIC FISHERMEN, AS WELL AS REPRESENTATIVES OF FOREIGN FISHING INTERESTS AND THE PACIFIC NORTHWEST INDIAN TRIBES CAUTIONED AGAINST THE GRANT OF UNCONTROLLED AUTHORITY TO THE COUNCILS AND SOUGHT ASSURANCES THAT AN OPPORTUNITY WOULD BE PROVIDED TO MAKE SUBSTANTIVE INPUT TO THE COUNCIL DECISION MAKING PROCESS.

AFTER CONSIDERING ALL OF THE COMMENTS RECEIVED AT THESE HEARINGS, H.R. 5002 WAS INTRODUCED. A COPY OF THE LEGISLATION WAS TRANSMITTED TO ALL PARTIES WHO PRESENTED TESTIMONY AT THOSE HEARINGS AND THEIR ADDITIONAL WRITTEN VIEWS WERE CONSIDERED WHEN THE SUBCOMMITTEE MET IN OPEN MARK-UP ON MARCH 25, 1982, AND ADOPTED

BY UNANIMOUS VOICE VOTE AN AMENDMENT IN THE NATURE OF A SUBSTITUTE.

***10 **4323** ON APRIL 28, 1982, THE FULL COMMITTEE, BY UNANIMOUS VOICE VOTE, ORDERED H.R. 5002 REPORTED TO THE HOUSE, WITH FOUR ADDITIONAL AMENDMENTS.

THE AMENDMENTS

THE AMENDMENTS ADOPTED BY THE COMMITTEE: FURTHER CLARIFY THE PROCEDURE BY WHICH THE SECRETARY OF STATE CONDUCTS THE PROGRAM OF DELAYED FOREIGN NATION ALLOCATION RELEASES; DELETE THE MANDATORY REDUCTION IN A FOREIGN NATIONS ALLOCATION DUE TO FISHING ACTIVITY IN DEROGATION OF AN INTERNATIONAL CONSERVATION MEASURE TO WHICH THE UNITED STATES IS A PARTY; CLARIFY THE METHOD OF FUNDING THE PROGRAM FOR 100 PERCENT U.S. OBSERVER COVERAGE OF ALL FOREIGN FISHING VESSELS OPERATING WITHIN THE U.S. FISHERY CONSERVATION ZONE (FCZ); CLARIFY THE CIRCUMSTANCES UNDER WHICH FOREIGN NATIONALS MAY PARTICIPATE IN RECREATIONAL FISHING TOURNAMENTS IN U.S. WATERS; REINSTATE THE REGIONAL DIRECTOR OF THE NATIONAL MARINE FISHERIES SERVICE (NMFS) TO A VOTING POSITION ON THE REGIONAL FISHERY MANAGEMENT COUNCILS; REQUIRE THE APPOINTMENT OF TWO ADDITIONAL CITIZENS FROM THE STATE OF CALIFORNIA TO THE PACIFIC REGIONAL FISHERY MANAGEMENT COUNCIL; CLARIFY THE FACTORS TO BE CONSIDERED BY THE SECRETARY OF STATE IN MAKING FOREIGN FISHING ALLOCATIONS; AND REAUTHORIZE APPROPRIATIONS UNDER SECTION 8 OF THE CENTRAL, WESTERN, AND SOUTH PACIFIC FISHERIES DEVELOPMENT ACT ([16 U.S.C. 758 E-5](#)) FOR FISCAL YEARS 1983, 1984, AND 1985. ADDITIONAL DISCUSSION OF THE AMENDMENTS IS CONTAINED IN THE SECTION-BY-SECTION ANALYSIS OF THE BILL.

BACKGROUND AND NEED FOR THE LEGISLATION

THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT (MFCMA) WAS SIGNED INTO LAW ON APRIL 13, 1976. THE PURPOSE OF THIS HISTORIC ACT WAS TO PROVIDE FOR THE CONSERVATION AND MANAGEMENT OF IMPORTANT FISHERY RESOURCES FOUND OFF THE COASTS OF THE U.S. THE SIGNIFICANCE OF THIS LEGISLATION CAN BE APPRECIATED BY CONSIDERING THE FOREIGN AND DOMESTIC FISHERIES WHICH EXISTED IN THE TWENTY YEARS PRECEDING ITS ENACTMENT. DURING THIS PERIOD, THE WORLD PRODUCTION OF FISH MULTIPLIED MORE THAN THREEFOLD, FROM 20 MILLION METRIC TONS TO APPROXIMATELY 72.4 MILLION METRIC TONS, YET THE U.S. SHARE OF THE CATCH HOVERED BETWEEN 2.0 AND 2.2 MILLION METRIC TONS. WHILE THE U.S. HARVEST OF FISH REMAINED RELATIVELY STABLE, OTHER NATIONS WITH LARGE AND EFFICIENT FLEETS-- MANY OF WHICH WERE SUBSIDIZED-- EXPERIENCED SUBSTANTIAL INCREASES IN THE AMOUNT OF FISH HARVESTED OFF OUR COASTS. THIS SITUATION LED TO THE OVERFISHING OF AT LEAST TEN MAJOR COMMERCIAL STOCKS (ALASKA POLLOCK, CALIFORNIA SARDINES, HADDOCK, HALIBUT, HERRING, OCEAN PERCH, PACIFIC MACKEREL, SABLEFISH, YELLOWFIN SOLE, AND YELLOWTAIL FLOUNDER), CAUSING SERIOUS ECONOMIC CONSEQUENCES. FOR EXAMPLE, OVEREXPLOITATION OF THE HADDOCK FISHERY OFF NEW ENGLAND AND OF THE SARDINE FISHERY OFF CALIFORNIA RESULTED IN AN ACCUMULATED LOSS TO FISHERMEN IN

EXCESS OF HALF A BILLION DOLLARS BY 1974.

AS A MEANS OF MITIGATING THIS OVERFISHING PROBLEM AND ACHIEVING THE ACT'S OBJECTIVES OF MANAGING AND CONSERVING FISHERY RESOURCES, THE MFCMA ESTABLISHED A 197-MILE FISHERY CONSERVATION ZONE (FCZ) ADJACENT TO THE 3-MILE TERRITORIAL SEA. APPROXIMATELY 20 PERCENT OF THE WORLD'S FISHERY RESOURCES ARE CONTAINED WITHIN THIS 200-~~4324~~ 11 MILE LIMIT. THE MFCMA ALSO PROVIDED FOR THE CREATION OF EIGHT REGIONAL FISHERY MANAGEMENT COUNCILS WITH THE SPECIFIC RESPONSIBILITY OF DEVELOPING FISHERY MANAGEMENT PLANS FOR THE FISHERY RESOURCES FOUND IN THE FCZ. THESE PLANS WOULD IDENTIFY, FOR EACH FISHERY, THE OPTIMUM YIELD WHICH COULD BE HARVESTED ANNUALLY, THE U.S. HARVEST, THE TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING, AND THE MANAGEMENT RULES GOVERNING FOREIGN AND DOMESTIC HARVESTING, AMONG OTHER THINGS. THE SECRETARY OF COMMERCE IS RESPONSIBLE FOR THE REVIEW AND APPROVAL OF EACH OF THE PLANS PREPARED BY THE COUNCILS; AND THE SECRETARY OF STATE, IN CONSULTATION WITH THE SECRETARY OF COMMERCE, IS CHARGED WITH THE RESPONSIBILITY OF ALLOCATING, AMONG FOREIGN NATIONS, THE SURPLUS FISH NOT HARVESTED BY U.S. FISHERMEN.

ON JUNE 25 AND 26, JULY 10 AND 11, AND OCTOBER 11 AND 12, 1979, THE SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT CONDUCTED OVERSIGHT HEARINGS ON THE ACT. AT THE TIME OF THESE HEARINGS, THE MFCMA HAD BEEN IN EFFECT FOR MORE THAN THREE YEARS, YET NO COMPREHENSIVE CONGRESSIONAL REVIEW OR INVESTIGATION HAD BEEN CONDUCTED ON THE ACHIEVEMENTS OR PROBLEMS ASSOCIATED WITH THE IMPLEMENTATION OF THE ACT.

DURING THE SIX DAYS OF HEARINGS, THE SUBCOMMITTEE RECEIVED TESTIMONY FROM 73 INDIVIDUALS AND ADDITIONAL MATERIAL WAS SUBMITTED BY 58 OTHERS. WHAT THE SUBCOMMITTEE HEARD CONFIRMED THE VIEW THAT SIGNIFICANT PROGRESS HAD BEEN MADE IN ACHIEVING THE FISHER CONSERVATION AND MANAGEMENT GOALS AND OBJECTIVES OF THE ACT. AT THE SAME TIME, HOWEVER, A NUMBER OF WEAKNESSES WERE NOTED WHICH, IF CORRECTED, COULD SUBSTANTIALLY IMPROVE THE EFFECTIVE IMPLEMENTATION OF THE ACT. THIS WAS PARTICULARLY TRUE WITH RESPECT TO EFFORTS TO STIMULATE THE DEVELOPMENT AND CAPITALIZATION OF THE DOMESTIC FISHING INDUSTRY. SUBSEQUENT TO THESE HEARINGS, THE CONGRESS ENACTED THE THE AMERICAN FISHERIES PROMOTION ACT (AFPA). THE PRIMARY FOCUS OF THE AFPA WAS ON LEGISLATIVE ACTION THAT COULD FURTHER STIMULATE AND ENHANCE THE DEVELOPMENT OF THE U.S. FISHING INDUSTRY. THAT LEGISLATION DID NOT, HOWEVER, ADDRESS SEVERAL ISSUES RELATED TO THE MANAGEMENT PROCESS.

EARLY IN THE 97TH CONGRESS, SUBCOMMITTEE STAFF MET WITH REPRESENTATIVES OF THE EIGHT REGIONAL FISHERY MANAGEMENT COUNCILS TO DISCUSS FURTHER LEGISLATIVE AMENDMENTS DESIGNED TO STREAMLINE THE MANAGEMENT PROCESS AND CLARIFY U.S. FISHERIES POLICY. A SET OF PROPOSED AMENDMENTS WERE DEVELOPED WHICH SERVED AS THE BASIS FOR THREE ADDITIONAL DAYS OF OVERSIGHT HEARINGS, ON SEPTEMBER 24, 25 AND OCTOBER 14, 1981. THESE HEARINGS PROVIDED ADDITIONAL UPDATED INFORMATION ON SEVERAL ISSUES RAISED EARLIER AND ADDRESSED BY THE OVERSIGHT REPORT. A BRIEF DISCUSSION FOLLOWS.

AMONG THE UNRESOLVED PROBLEMS IDENTIFIED BY THE HEARINGS WAS THE MANNER IN

WHICH THE REGIONAL FISHERY MANAGEMENT COUNCILS ESTABLISHED AN OPTIMUM YIELD FOR EACH FISHERY UNDER U.S. JURISDICTION. SECTION 303(A)(3) OF THE ACT REQUIRES THAT EACH FISHERY MANAGEMENT PLAN SPECIFY THE OPTIMUM YIELD FOR THE FISHERY. SECTION 3(18) DEFINES THE TERM 'OPTIMUM' TO MEAN THAT AMOUNT OF FISH WHICH WILL PROVIDE THE GREATEST OVERALL BENEFIT TO THE NATION. THE STATUTE FURTHER PROVIDE THE GREATEST OVERALL BENEFIT TO THE NATION. THE STATUTE FURTHER PROVIDES THAT THE OPTIMUM YIELD IS TO BE PRESCRIBED ON THE BASIS OF THE MAXIMUM SUSTAINABLE YIELD FROM THE FISHERY, AS MODIFIED BY ANY RELEVANT ECONOMIC, SOCIAL, OR ECOLOGICAL FACTORS.

*12 **4325 SECTION 2(B) PROVIDES THAT ONE OF THE PURPOSES OF THE FCMA IS 'TO PROMOTE DOMESTIC COMMERCIAL AND RECREATIONAL FISHING UNDER SOUND CONSERVATION AND MANAGEMENT PRINCIPLES', CONSISTENT WITH THE NATIONAL STANDARDS ENUMERATED IN SECTION 301. IN DISCUSSING THE NATIONAL STANDARDS, THE REPORT OF THE COMMITTEE ON CONFERENCE, STATED THAT 'THESE STANDARDS . . . ARE DESIGNED TO ASSURE THAT MANAGEMENT PLANS AND REGULATIONS TAKE INTO ACCOUNT THE VARIABILITY OF FISH RESOURCES, THE INDIVIDUALITY OF FISHERMEN, THE NEEDS OF CONSUMERS AND THE OBLIGATIONS TO THE GENERAL PUBLIC, NOW AND IN GENERATIONS TO COME'. THE LANGUAGE OF THE CONFERENCE REPORT AND SECTION 2(B) CLEARLY INDICATE THAT ONE OF THE PURPOSES OF THE ACT IS TO PROMOTE THE DOMESTIC FISHING INDUSTRY.¹

CONGRESS HOPED THAT THE ACTIVE PURSUIT OF THIS UNDERLYING POLICY, THAT IS, THE GRANT OF PRIORITY ACCESS TO U.S. FISHERMEN TO THE FISHERY RESOURCES FOUND OFF THE COASTS OF THE UNITED STATES, WOULD RESULT IN THE RAPID REPLACEMENT OF FOREIGN FISHING EFFORTS WITHIN THE U.S. FCZ BY DOMESTIC FISHERMEN. THIS HOPE HAS NOT BEEN FULLY REALIZED, IN LARGE PART BECAUSE FOREIGN NATIONS HAVE CREATED TARIFF AND OTHER TRADE BARRIERS TO THE IMPORTATION OF U.S. HARVESTED FISH. THESE BARRIERS, WHICH PERPETUATE THE LACK OF ADEQUATE MARKETS FOR U.S. FISH PRODUCTS, ACT AS AN ARTIFICIAL BRAKE UPON THE DEVELOPMENT OF THE U.S. FISHING INDUSTRY.

IN AN EFFORT TO CREATE OR PRESERVE MARKETS FOR U.S. HARVESTED FISH, SOME COUNCILS HAVE TAKEN STEPS TO RESTRICT THE OPTIMUM YIELD FOR A FISHERY, THEREBY REDUCING THE AMOUNT OF FISH AVAILABLE FOR FOREIGN HARVEST THE COMMITTEE BELIEVES THAT FULL PROMOTION OF THE U.S. FISHING INDUSTRY COULD EASILY ENTAIL RESTRICTIONS ON THE LEVEL OF THE OPTIMUM YIELD, ALLOCATIONS OF FISH HELD IN RESERVE AND RESTRICTIONS ON AREAS AND TIMES WHEN FISHING CAN OCCUR. ALTHOUGH THE REGIONAL COUNCILS WERE NOT ESTABLISHED FOR THE PRINCIPAL PURPOSE OF DEVELOPING THE U.S. FISHING INDUSTRY, THE COMMITTEE BELIEVES THAT THE CONSERVATION AND MANAGEMENT TO THE RESOURCES IS INTIMATELY RELATED TO THE DEVELOPMENT OF THE INDUSTRY. IT IS MOST CERTAINLY WITHIN THE AUTHORITY OF THE COUNCILS TO ADOPT CONSERVATION AND MANAGEMENT MEASURES WHICH HAVE THE EFFECT OF PROMOTING THE INDUSTRY AND AMENDMENTS MADE IN H.R. 5002 REFLECT THIS VIEW.

OBSERVERS

AMONG THE MOST SEVERE LIMITATIONS TO BE SUCCESSFUL IMPLEMENTATION OF THE MFCMA HAD BEEN THE LACK OF AN EFFECTIVE ENFORCEMENT MECHANISM WHICH ENSURES COMPLI-

ANCE BY FOREIGN NATIONS WITH U.S. HARVESTING REGULATIONS. FOLLOWING THE MFCMA OVERSIGHT HEARINGS, THE COMMITTEE NOTED THAT THE ACT EXPRESSES THE SENSE OF THE CONGRESS THAT EACH FOREIGN NATION, FISHING IN THE FCZ PURSUANT TO A GOVERNING INTERNATIONAL FISHERY AGREEMENT, MUST PERMIT U.S. OBSERVERS TO BE PLACED ABOARD EACH OF ITS VESSELS WHILE THOSE VESSELS ARE FISHING IN THE FCZ. FURTHER, EACH NATION MUST AGREE TO REIMBURSE THE U.S. FOR THE COST OF THE OBSERVER PROGRAM. EACH NATION HAS AGREED TO THIS CONDITION IN ITS GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH THE UNITED STATES.

***13 **4326** THE COMMITTEE FURTHER NOTED THAT THE CURRENT LEVEL OF U.S. OBSERVER COVERAGE IS NOT ADEQUATE TO ENSURE FOREIGN COMPLIANCE. THE SUBCOMMITTEE RECEIVED TESTIMONY FROM BOTH THE REGIONAL COUNCILS AND THE NATIONAL MARINE FISHERIES SERVICE (NMFS) STRONGLY RECOMMENDING THAT OBSERVER COVERAGE BE INCREASED.

ACCORDING TO NMFS, UNDERREPORTING DOES OCCUR ON VESSELS WITHOUT OBSERVERS. A QUALIFIED NMFS ESTIMATE IS THAT UNDERREPORTING IS BETWEEN 25 AND 60 PERCENT ON THOSE VESSELS WITHOUT OBSERVERS. BECAUSE OF THE LACK OF TOTAL OBSERVER COVERAGE, HOWEVER, NMFS HAS NO WAY OF KNOWING HOW MANY FOREIGN MASTERS ARE UNDERREPORTING THEIR CATCHES.

THE GENERAL ACCOUNTING OFFICE (GAO), IN ITS ENFORCEMENT REPORT SOUGHT TO TEST THE ACCURACY OF THE HARVEST REPORTS SUBMITTED BY FOREIGN FISHING VESSELS. GAO SELECTED A SAMPLE OF 36 VESSELS AND COMPARED THEIR CATCH REPORTS WITH THOSE OF THE OBSERVERS. ALTHOUGH THE OBSERVER REPORTS DID NOT ALWAYS CORRESPOND PRECISELY TO THE TIMING OF THE VESSEL REPORTS (SUNDAY THROUGH SATURDAY), GAO'S ANALYSIS INDICATED THAT 21 OF THE 36 FOREIGN VESSELS UNDERREPORTED THEIR HARVEST.

ONE OF THE PURPOSES OF THE MFCMA IS TO PREVENT OVERFISHING OF THE RESOURCES FOUND OFF THE U.S. COASTS. IT IS NOT CONSISTENT WITH THIS PURPOSE TO ALLOW SIGNIFICANT FOREIGN DOMESTIC UNDERREPORTING OF CATCH LEVELS. THE CONSERVATION AND MANAGEMENT OF THESE FISH RESOURCES DEMAND A MORE ACTIVE ENFORCEMENT EFFORT INCLUDING AN EXPANDED OBSERVER PROGRAM ABOARD FOREIGN VESSELS. IN FACT, BOTH NMFS AND THE U.S. COAST GUARD HAVE CONCLUDED THAT 100 PERCENT OBSERVER COVERAGE IS THE MOST EFFECTIVE MEANS AVAILABLE IN THEIR EFFORTS TO ENFORCE THE MFCMA. THE ADMINISTRATION HAS SUBMITTED A REQUEST FOR SUPPLEMENTAL FUNDING FOR NMFS, INDICATING ITS DESIRE TO ACHIEVE 100 PERCENT OBSERVER COVERAGE.

THE COMMITTEE HAS BEEN ADVISED THAT THE COST OF 100 PERCENT OBSERVER COVERAGE WILL APPROXIMATE \$14.0 MILLION. FURTHERMORE, UNDER THE PRESENT SYSTEM, THE OBSERVER PROGRAM DEPENDS ON UNCERTAIN CONGRESSIONAL APPROPRIATIONS. IN LIGHT OF THE CRITICAL NEED FOR EFFECTIVE ENFORCEMENT THAT OBSERVER COVERAGE CAN PROVIDE, THE COMMITTEE IS CONCERNED THAT AN ADEQUATE LEVEL OF FUNDING WILL NOT BE PROVIDED.

IN ADDITION, THE COMMITTEE HAS RECEIVED EVIDENCE SUGGESTING THAT THE BENEFITS OF MAINTAINING U.S. OBSERVERS ON FOREIGN FISHING VESSELS COULD, UNDER CERTAIN LIMITED CIRCUMSTANCES, GO BEYOND ASSURANCES THAT FOREIGN NATIONS ARE COMPLYING WITH U.S. FOREIGN FISHING REGULATIONS. OTHER THAN FISHERY RESOURCES, SEVERAL OTHER LIVING MARINE RESOURCES ARE IMPACTED, PERHAPS ADVERSELY IMPACTED, BY THE ACTIVITIES OF

FOREIGN FISHING VESSELS OPERATING IN THE FCZ. OF PARTICULAR CONCERN IS THE JAPANESE HIGH SEAS SALMON FISHERY. IT HAS BEEN ESTIMATED THAT IN EACH SEASON AS MANY AS 763,000 SEABIRDS, REPRESENTING 17 DIFFERENT SPECIES, ARE KILLED WHEN THEY ARE ENTANGLED IN THE GILL NETS. UNFORTUNATELY, THESE FIGURES ARE ESTIMATES AND NO CLEAR DATA EXISTS. IT HAS PROVED, THEREFORE, MOST DIFFICULT, IF NOT IMPOSSIBLE, TO FORMULATE A RESPONSE TO THIS POTENTIAL PROBLEM THAT IS AGREEABLE TO ALL PARTIES. U.S. OBSERVERS ABOARD THESE VESSELS COULD AID IN THE DATA COLLECTION PROCESS NECESSARY TO BETTER UNDERSTAND THE NATURE OF THIS PROBLEM.

***14 **4327 RESEARCH-DATA PLANS**

AS EARLIER NOTED, THE COMMITTEE HAS IDENTIFIED SEVERAL AREAS OF FISHERY MANAGEMENT PLAN DEVELOPMENT WHICH, IF STREAMLINED, WOULD IMPROVE THE EFFECTIVENESS OF THE ACT. THE COMMITTEE NOTES THAT THE REGIONAL COUNCILS TAKE AN AVERAGE OF ONE TO ONE AND ONE-HALF YEARS TO DEVELOP A FISHERY MANAGEMENT PLAN. A PRINCIPAL REASON FOR THIS LENGTHY PREPARATION PERIOD IS THE LACK OF ADEQUATE BIOLOGICAL, ECONOMIC AND SOCIAL DATA ON WHICH TO BASE THE PLAN. INFORMATION SUBMITTED TO THE COMMITTEE BY EACH COUNCIL INDICATES THAT THE IDENTIFICATION OF THE DATA REQUIRED FOR THE PLAN GENERALLY DOES NOT OCCUR UNTIL THE COUNCIL BEGINS PLAN DEVELOPMENT. ADVANCE IDENTIFICATION OF THE GAPS IN EXISTING DATA AND OF RESULTING RESEARCH NEEDS WOULD BETTER ENABLE THE COUNCILS AND NMFS TO PLAN THE ACQUISITION OF THE REQUIRED DATA. ALL TOO OFTEN, THE COUNCIL IS PLACED IN THE POSITION OF TRYING TO DEVELOP A NECESSARY PLAN, NOTWITHSTANDING THE ABSENCE OF DATA OR THE PRESENCE OF DATA WHICH IS NOT AS COMPLETE AS THE COUNCIL WOULD LIKE.

ALTHOUGH A FISHERY MANAGEMENT PLAN MAY CURRENTLY SPECIFY THAT INFORMATION WHICH FISHERMEN AND PROCESSORS MUST SUBMIT IN ORDER TO COMPLETE GAPS IN EXISTING DATA AND TO HELP ENSURE THE EFFECTIVE MONITORING OF THE PLAN, NEITHER NMFS NOR THE COUNCILS CAN SEEK THE SUBMISSION OF DATA FROM FISHERMEN AND PROCESSORS IN THE ABSENCE OF AN APPLICABLE FISHERY MANAGEMENT PLAN. STATISTICS ON THE AMOUNT, LOCATION, VALUE AND PROCESSING OF THE U.S. HARVEST CAN BE IMPORTANT IN THE INITIAL DEVELOPMENT OF FISHERY MANAGEMENT PLANS.

SECRETARIAL REVIEW

ANOTHER TIME-CONSUMING PROCESS IN THE DEVELOPMENT OF FISHERY MANAGEMENT PLANS (FMPS) IS THE SECRETARIAL REVIEW PERIOD.

SECTION 304(A) REQUIRES THE SECRETARY OF COMMERCE TO REVIEW ANY FISHERY MANAGEMENT PLAN (OR ANY AMENDMENT TO ANY PLAN) TO DETERMINE ITS COMPLIANCE WITH THE NATIONAL STANDARDS CONTAINED IN SECTION 301 AND ANY OTHER LAW. THE SECRETARY'S REVIEW MUST BE COMPLETED WITHIN 60 DAYS AFTER THE SECRETARY RECEIVES THE FISHERY MANAGEMENT PLAN. IN 1978, 1979 AND 1980, THE 60 DAY REVIEW DEADLINE WAS NOT MET. THE FORMAL REVIEW PERIOD BY NMFS, ACTING ON BEHALF OF THE SECRETARY OF COMMERCE,

FOLLOWS AN INFORMAL CONSULTATION PERIOD ON THE DRAFT FISHERY MANAGEMENT PLAN THAT MAY LAST FOR MORE THAN A MONTH. THIS SYSTEM OF REVIEW IS JUSTIFIED BY NMFS ON TWO GROUNDS. FIRST, THEY ARGUE THAT IN THE ABSENCE OF SUCH AN EXTENDED REVIEW PERIOD, IT WOULD BE NECESSARY TO DISAPPROVE MORE PLANS. SECOND, IT IS ARGUED THAT THE CONSULTATIONS MAKE IT POSSIBLE FOR THE COUNCILS TO APPROPRIATELY MODIFY THEIR PROPOSED PLANS IN ORDER TO AVOID FORMAL DISAPPROVAL BY THE SECRETARY. TO REDUCE THESE DELAYS, THE COMMITTEE MADE A NUMBER OF AMENDMENTS TO THE ACT REQUIRING THE SECRETARY TO ACT WITHIN SPECIFIED TIME FRAMES.

STATUS AND ROLES OF THE COUNCILS AND COUNCIL STAFFS

SINCE THE ENACTMENT OF THE MFCMA, THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, THE DEPARTMENT OF COMMERCE, THE CIVIL SERVICE COMMISSION, THE GENERAL ACCOUNTING OFFICE, THE OFFICE OF MANAGEMENT AND BUDGET, THE GENERAL SERVICES ADMINISTRATION,**4328 *15 THE DEPARTMENT OF JUSTICE, AND THE INTERNAL REVENUE SERVICE HAVE ISSUED OPINIONS REGARDING THE LEGAL STATUS OF THE REGIONAL COUNCILS. LIMITED STATUTORY LANGUAGE AND A LEGISLATIVE HISTORY THAT IS NOT PERFECTLY EXPLICIT HAVE CONTRIBUTED TO THE LACK OF A COMPREHENSIVE DEFINITION OF THE COUNCILS' STATUS. THIS HAS RESULTED IN JUSTIFIABLE ANXIETY ON THE PART OF COUNCIL MEMBERS AND THEIR ADMINISTRATIVE STAFFS ABOUT THE LEGAL RESPONSIBILITIES THEY HAVE ASSUMED. IN TESTIMONY BEFORE THE SUBCOMMITTEE DURING EARLIER OVERSIGHT HEARINGS, THE NMFS WITNESS SUMMARIZED THE LEGAL STATUS OF THE COUNCILS AS FOLLOWS:

LEGAL OPINIONS ISSUED BY NOAA, THE CIVIL SERVICE COMMISSION, THE DEPARTMENT OF JUSTICE, THE OFFICE OF MANAGEMENT AND BUDGET, THE GENERAL SERVICES ADMINISTRATION, AND THE GENERAL ACCOUNTING OFFICE YIELD THE FOLLOWING AGENCY CONSENSUS DEFINITION OF THE LEGAL STATUS OF THE COUNCILS AT THE PRESENT TIME:

(A) THE REGIONAL FISHERY MANAGEMENT COUNCILS ARE FEDERAL INSTRUMENTALITIES CREATED BY STATUTE TO FULFILL A FEDERAL FUNCTION-- THE PREPARATION OF MANAGEMENT PLANS FOR FISHERY RESOURCES IN THE FEDERAL FISHERY CONSERVATION ZONE.

(B) THE COUNCILS ARE FUNDED BY FEDERAL APPROPRIATIONS, THEREFORE, USE OF COUNCIL FUNDS TO INFLUENCE THE LEGISLATIVE BRANCH WOULD BE IMPROPER.

(C) COUNCIL OPERATIONS ARE SUBJECT TO THE PROVISIONS OF THE ADMINISTRATIVE PROCEDURE ACT, THE FREEDOM OF INFORMATION ACT, THE PRIVACY ACT, AND [EXECUTIVE ORDER 12044](#) ([EXECUTIVE ORDER 12044](#) HAS BEEN SUPERSEDED BY [EXECUTIVE ORDER 12291](#)).

(D) THE FEDERAL ADVISORY COMMITTEE ACT APPLIES TO THE COUNCILS, TO THEIR ADVISORY PANELS, AND TO THEIR SCIENTIFIC AND STATISTICAL COMMITTEES.

(E) COUNCIL MEMBERS AND ADMINISTRATIVE STAFFS ARE NOT FEDERAL EMPLOYEES IN THE SENSE OF [5 U.S.C. 2105](#) BECAUSE THEY ARE NOT APPOINTED BY, OR SUBJECT TO THE SUPERVISION OF FEDERAL OFFICIALS IN THEIR DAY-TO-DAY ACTIVITIES. THE STAFFS OF THE COUNCILS LIKEWISE ARE NOT CIVIL SERVICE EMPLOYEES BECAUSE THEY ARE APPOINTED BY, AND SUBJECT ONLY TO THE SUPERVISION OF, THE COUNCIL MEMBERS.

(F) COUNCIL MEMBERS, AND ADMINISTRATIVE STAFFS ENJOY THE SAME PROTECTION FROM INDIVIDUAL LIABILITY FOR THEIR OFFICIAL ACTIONS AS ARE ENJOYED BY FEDERAL EMPLOYEES

GENERALLY.

(G) COUNCIL MEMBERS AND ADMINISTRATIVE STAFFS ARE SUBJECT TO FEDERAL CRIMINAL STATUTES COVERING BRIBERY AND CONFLICT OF INTEREST AND THE FEDERAL REGULATIONS BASED THEREON, INCLUDING THE ETHICS IN GOVERNMENT ACT.

(H) THE COUNCILS HAVE BOTH ADVISORY AND OPERATIONAL ROLES AND ENJOY SOME DEGREE OF INDEPENDENCE FROM THE SECRETARY.

THE COMMITTEE IS NOT IN FULL AGREEMENT WITH THIS ASSESSMENT OF THE LEGAL STATUS OF THE COUNCILS. AT THE OUTSET, THE COMMITTEE DISAGREES WITH THE INTERPRETATION THAT THE FEDERAL ADVISORY COMMITTEE ACT APPLIES TO THE COUNCILS. IT IS ONLY INTENDED THAT THE SPIRIT OF THIS ACT APPLY AND THAT THE PUBLIC BE GIVEN FULL AND ADEQUATE OPPORTUNITY TO PARTICIPATE IN THE DELIBERATIONS AND DECISIONS OF THE COUNCILS, THEIR ADVISORY PANELS, AND THEIR SCIENTIFIC AND STATISTICAL COMMITTEES.

THE FEDERAL ADVISORY COMMITTEE ACT (FACA) REQUIRES THAT EACH MEETING OF AN ADVISORY COMMITTEE BE OPEN TO THE PUBLIC AND THAT **4329 *16 ADVANCE NOTICE THEREOF BE PUBLISHED IN THE FEDERAL REGISTER. THE CONFERENCE REPORT ON THE MFCMA INDICATED THAT FACA IS TO APPLY TO THE REGIONAL COUNCILS AND NMFS HAS ISSUED REGULATIONS APPLYING FACA TO THE COUNCILS, THE COUNCILS' SCIENTIFIC AND STATISTICAL COMMITTEES, AND ALL COUNCIL ADVISORY PANELS.

THE COUNCILS ARE UNANIMOUS IN THEIR VIEW THAT FACA SHOULD NOT APPLY TO THE SCIENTIFIC AND STATISTICAL COMMITTEES OR TO COUNCIL ADVISORY PANELS. ONE REASON CITED FOR THIS VIEW INVOLVES CONFLICTING TIME PERIODS REQUIRED FOR CERTAIN ACTIONS UNDER FACA AND THE MFCMA, AS WELL AS FEDERAL REGISTER PUBLICATION DEADLINES. IF, FOR EXAMPLE, THE SECRETARY DISAPPROVES A FISHERY MANAGEMENT PLAN, THE MFCMA REQUIRES COUNCIL REVISIONS WITHIN 45 DAYS. IF THE COUNCIL MEETS ON THIS ISSUE AND SUBSEQUENTLY REQUESTS RECOMMENDATIONS FROM EITHER ITS SCIENTIFIC AND STATISTICAL COMMITTEE OR AN ADVISORY PANEL, IT COULD, BECAUSE OF THE 26 DAY FACA NOTIFICATION REQUIREMENT AND FEDERAL REGISTER PUBLICATION DEADLINES, BE EFFECTIVELY PRECLUDED FROM RECEIVING SUCH ADVICE. IT HAS, THEREFORE, BEEN PROPOSED THAT THE PUBLICATION OF MEETING NOTICES IN NEWSPAPERS OF GENERAL CIRCULATION BE SUBSTITUTED FOR FACA'S NOTIFICATION REQUIREMENTS.

ALTHOUGH THE COUNCILS GENERALLY DO NOT OBJECT TO THE APPLICABILITY OF FACA TO REGULAR COUNCIL MEETINGS, FACA EFFECTIVELY PRECLUDES EMERGENCY MEETINGS OR AGENDA CHANGES. THE COUNCILS HAVE SUGGESTED THAT THE LEAD TIME FOR NOTIFICATION BE SHORTENED OR THAT THE COUNCILS BE AUTHORIZED TO ADJUST THEIR AGENDA OR CONVENE EMERGENCY SESSIONS WITHOUT COMPLYING WITH FACA'S FEDERAL REGISTER NOTIFICATION REQUIREMENTS.

IT IS THE VIEW OF THE COMMITTEE, AS NOTED EARLIER, THAT FACA WAS PASSED IN ORDER TO ASSURE THAT THE PUBLIC BE GIVEN FULL AND ADEQUATE INPUT INTO THE DECISION-MAKING PROCESS OF FEDERAL ADVISORY COMMITTEES. THE COMMITTEE SUPPORTS THIS OBJECTIVE. THE COMMITTEE RECOGNIZES, HOWEVER, THAT THE NOTIFICATION REQUIREMENTS OF FACA HAVE FREQUENTLY CAUSED ADMINISTRATIVE DIFFICULTIES FOR THE COUNCILS, THEIR ADVISORY PANELS, AND THE SCIENTIFIC AND STATISTICAL COMMITTEES. THE COMMITTEE BELIEVES THAT THE LANGUAGE IN THE CONFERENCE REPORT HAS BEEN MISINTERPRETED. IT WAS THE INTENT

OF THE CONGRESS THAT THE PUBLIC BE MADE FULLY AWARE OF THE MEETINGS AND PROPOSED AGENDA OF THE COUNCILS AND THEIR SUBSIDIARY ORGANS. IT WAS NOT INTENDED FOR FACA TO BE RIGIDLY APPLIED. NOTICE BY PUBLICATION IN NEWSPAPERS OR APPROPRIATE TRADE JOURNALS WOULD APPEAR TO SATISFY THE PUBLIC NOTICE INTEREST.

SECTION 10(E) OF FACA REQUIRES THAT A DESIGNATED OFFICER OR EMPLOYEE OF THE FEDERAL GOVERNMENT CHAIR OR ATTEND EACH ADVISORY COMMITTEE MEETING. SINCE THE CONFERENCE REPORT HAS BEEN INTERPRETED TO APPLY FACA TO THE COUNCILS AND THEIR SUBGROUPS, NO MEETING CAN OCCUR UNLESS A FEDERAL OFFICIAL IS IN ATTENDANCE. MANY ADVISORY PANELS DO NOT HAVE FEDERAL MEMBERS, AND IN CASES WHERE THEY DO, IT IS NOT UNUSUAL FOR MEETINGS TO OCCUR WITHOUT A FEDERAL EMPLOYEE BEING PRESENT. AS A TECHNICAL MATTER, IT IS POSSIBLE THAT DECISIONS REACHED AT SUCH MEETINGS COULD BE HELD INVALID FOR FAILURE TO COMPLY WITH SECTION 10(E). THIS WAS NOT CONGRESS' INTENT. AS NOTED ABOVE, CONGRESS ONLY INTENDED THAT ADEQUATE PUBLIC NOTICE OF MEETINGS BE GIVEN SO THAT PUBLIC PARTICIPATION, TO THE MAXIMUM PRACTICAL EXTENT, BE ASSURED. MOREOVER, GIVEN THE COMMITTEE'S VIEW **4330 *17 OF THE LEGAL STATUS OF THE COUNCILS, THE LEVEL OF DIRECT FEDERAL CONTROL AND OVERSIGHT CONTEMPLATED BY THIS PROVISION OF FACA IS INAPPROPRIATE.

SIMILARLY, IT WAS NOT INTENDED THAT SECTION 10(F), WHICH PROVIDES THAT NO ADVISORY COMMITTEE SHALL HOLD ANY MEETING EXCEPT AT THE CALL OF, OR WITH THE ADVANCE APPROVAL OF, A DESIGNATED FEDERAL EMPLOYEE, APPLY TO THE COUNCILS AND THEIR SUBGROUPS. TO APPLY SECTION 10(F) WOULD GIVE THE SECRETARY OF COMMERCE VETO AUTHORITY OVER THE FREQUENCY AND SUBSTANCE OF COUNCIL MEETINGS. ALTHOUGH SUCH AUTHORITY HAS NOT BEEN EXERCISED, IT NEVERTHELESS REMAINS A TECHNICAL POSSIBILITY.

TO CARRY OUT THE ORIGINAL INTENT OF THE CONGRESS, H.R. 5002 AMENDS THE MFCMA TO MAKE FACA INAPPLICABLE TO THE COUNCILS AND TO ESTABLISH SIMPLIFIED PUBLIC NOTIFICATION PROCEDURES IN ITS PLACE.

JURISDICTION OF THE WESTERN PACIFIC COUNCIL

THE MFCMA ASSERTS U.S. MANAGEMENT AUTHORITY SEAWARD OF THE TERRITORIAL WATERS OF ALL STATES, COMMONWEALTHS, TERRITORIES, AND POSSESSIONS OF THE U.S. UNTIL RECENTLY, THE GOVERNOR OF THE NORTHERN MARIANAS HAD CONTENDED THAT THE MFCMA CANNOT CREATE AN FCZ AROUND THE ISLANDS, BECAUSE THERE IS NO U.S. TERRITORIAL SEA SURROUNDING THE NORTHERN MARIANAS AND, THEREFORE, NOTHING TO WHICH THE FCZ MAY BE ADJACENT.

THE U.S. GOVERNMENT HAD DISAGREED WITH THE GOVERNOR'S ANALYSIS. THE TRUSTEESHIP AGREEMENT SPECIFICALLY PROVIDES THAT THE U.S. CAN EXTEND TO THE TRUST TERRITORY ANY LAW OF THE U.S. WHICH IS DEEMED APPROPRIATE AND WHICH IS CONSISTENT WITH THE U.S. TRUSTEESHIP RESPONSIBILITIES. SECTION 502 OF THE COVENANT OF COMMONWEALTH, WHICH WAS ENACTED IN 1976, PROVIDES THAT THOSE LAWS APPLICABLE TO GUAM, WHICH WERE IN EFFECT WHEN THE CONSTITUTION OF THE COMMONWEALTH OF THE NORTHERN MARIANAS ENTERED INTO FORCE, WOULD BE APPLICABLE TO THE NORTHERN MARIANAS. WHEN THE CONSTITUTION OF THE COMMONWEALTH OF THE NORTHERN MARIANAS TOOK EFFECT ON JANUARY

9, 1978, IT WAS SUPPLEMENTED BY PRESIDENTIAL PROCLAMATION 4534, WHICH DID PROVIDE THAT ALL LAWS APPLICABLE TO GUAM WOULD ALSO BE APPLICABLE TO THE NORTHERN MARIANAS. SINCE THE MFCMA INCLUDES GUAM, IT HAS BEEN ASSUMED THAT THE NORTHERN MARIANAS ARE ALSO INCLUDED WITHIN THE MFCMA.

MOREOVER, THE COMMITTEE FEELS THAT IT WAS THE ORIGINAL INTENT OF THE MFCMA THAT THE MANAGEMENT AND CONSERVATION PROVISIONS OF THE ACT BE APPLICABLE TO THE WATERS SURROUNDING THE NORTHERN MARIANAS.

THE COMMITTEE ALSO FEELS A RESPONSIBILITY TO ENSURE THAT THE CONCERNS AND INTERESTS OF THE FISHERMEN OF THE NORTHERN MARIANAS ARE ADEQUATELY REPRESENTED ON THE WESTERN PACIFIC REGIONAL FISHERY MANAGEMENT COUNCIL. THE VOTING MEMBERS OF THE WESTERN PACIFIC COUNCIL CURRENTLY INCLUDE THE PRINCIPAL MARINE FISHERIES OFFICIALS OF HAWAII, AMERICAN SAMOA, AND GUAM, THE DIRECTOR OF THE NMFS SOUTHWEST REGIONAL OFFICE, AND SEVEN MEMBERS APPOINTED BY THE SECRETARY OF COMMERCE FROM LISTS SUBMITTED BY THE GOVERNORS OF HAWAII, AMERICAN SAMOA, AND GUAM. THE NORTHERN MARIANAS SHOULD BE MADE A STATUTORY MEMBER OF THE COUNCIL, THUS ENTITLING ****4331 *18** ITS PRINCIPAL MARINE FISHERIES MANAGEMENT OFFICIAL TO VOTING MEMBERSHIP ON THE COUNCIL. MAKING THE NORTHERN MARIANAS A STATUTORY MEMBER OF THE COUNCIL WOULD ALSO ALLOW THE GOVERNOR TO SUBMIT LISTS OF QUALIFIED INDIVIDUALS TO THE SECRETARY FOR APPOINTMENT TO THE AT-LARGE SEATS ON THE COUNCIL. SINCE INCLUDING THE NORTHERN MARIANAS ON THE COUNCIL WOULD INCREASE THE COUNCIL'S SIZE FROM 11 TO 12 VOTING MEMBERS, THE COMMITTEE BELIEVES THAT THE NUMBER OF AT-LARGE MEMBERS SHOULD BE INCREASED BY ONE, SO THAT THE COUNCIL WILL CONTINUE TO HAVE AN ODD NUMBER OF INDIVIDUALS AS IS THE CASE IN ALL COUNCILS. H.R. 5002 ACCOMPLISHES THIS PURPOSE.

AS NOTED ABOVE, THE MFCMA ESTABLISHES A 197-MILE FCZ CONTIGUOUS TO EACH STATE, COMMONWEALTH, TERRITORY, AND POSSESSION OF THE UNITED STATES. FOR PURPOSES OF THE ACT, THE DISTRICT OF COLUMBIA, THE COMMONWEALTH OF PUERTO RICO, AMERICA4 SAMOA, THE VIRGIN ISLANDS, AND GUAM ARE TREATED AS STATES. DESPITE THIS ASSERTION OF JURISDICTION, THE AUTHORITY OF THE WESTERN PACIFIC COUNCIL IS LIMITED, PURSUANT TO SECTION 302(A)(8), TO THE AREAS SEAWARD OF HAWAII, AMERICAN SAMOA AND GUAM. THUS, THE COUNCIL NOT ONLY LACKS MANAGEMENT AUTHORITY OVER THE FCZ ADJACENT TO THE NORTHERN MARIANAS, BUT ALSO JURISDICTION OVER FISHERY RESOURCES ADJACENT TO U.S. PACIFIC TERRITORIES SUCH AS MIDWAY, KINGMAN REEF, HOWLAND, BAKER, JARVIS, JOHNSTON, PALMYRA AND WAKE, NOTWITHSTANDING THE FACT THAT THE U.S. HAS ASSERTED MANAGEMENT AUTHORITY OVER THE FCZ ADJACENT TO THESE ISLANDS. THE RESULT IS THAT THE WESTERN PACIFIC COUNCIL IS UNABLE TO ASSERT MANAGEMENT AUTHORITY OVER ALL THE FISHERY RESOURCES OVER WHICH THE UNITED STATES HAS ASSERTED JURISDICTION. IT IS THE VIEW OF THIS COMMITTEE THAT THE JURISDICTIONAL AUTHORITY OF THE WESTERN PACIFIC COUNCIL SHOULD BE EXPANDED TO INCLUDE SUCH AREAS AND H.R. 5002 DOES SO.

INTERNAL WATERS PROCESSING

PRIOR TO 1981, ALASKA STATE LAW PROHIBITED THE ENTRANCE OF FOREIGN PROCESSING

VESSELS INTO THE INTERNAL WATERS OF ALASKA, UNLESS OTHERWISE APPROVED BY THE GOVERNOR AND THE ALASKA BOARD OF FISHERIES. HOWEVER, IN THAT YEAR A U.S. DISTRICT COURT DECISION HELD UNCONSTITUTIONAL A STATE RESTRICTION AGAINST FOREIGN PROCESSING VESSELS IN STATE WATERS AS AN UNDUE AND IMPERMISSIBLE BURDEN ON FOREIGN COMMERCE, AND HELD THAT ESTABLISHMENT OF SUCH A SYSTEM FAVORING DOMESTIC PROCESSORS REQUIRES ACTION BY THE FEDERAL GOVERNMENT.

THIS COURT ACTION RENEWED CONCERN AS TO WHETHER OR NOT EXISTING FEDERAL LAW, SPECIFICALLY THE MFCMA, PROHIBITED THE OPERATION OF FOREIGN FISH PROCESSING VESSELS IN THE INTERNAL WATERS OF ANY STATE. SECTION 307(2)(A) OF THE MFCMA PROHIBITS FOREIGN VESSELS FROM ENGAGING IN 'FISHING' WITHIN THE BOUNDARIES OF ANY STATE. THE TERM 'FISHING' IS DEFINED IN THE MFCMA TO INCLUDE SUPPORT ACTIVITIES WHEN CONDUCTED 'AT SEA.' AS THE POINT OF CONFUSION, THE TERM 'AT SEA' WAS FORMALLY INTERPRETED BY THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION AS 'ENCOMPASSING ALL OCEANIC WATERS EXTENDING OUTWARD FROM THE BASELINE OF THE TERRITORIAL SEA.' FOLLOWING THIS INTERPRETATION, 'FISHING' IN STATE WATERS, AS DEFINED IN THE MFCMA, WOULD REFER ONLY TO THE TERRITORIAL SEA AND NOT TO THE INTERNAL WATERS OF THE STATE. IT WOULD, THEREFORE, APPEAR THAT NO **4332 *19 EXTANT FEDERAL LAW PERTAINS TO THE REGULATION OF FOREIGN PROCESSING VESSELS WITHIN THE INTERNAL WATERS OF A STATE.

U.S. PROCESSOR INTERESTS ADVISED THE SECRETARY OF COMMERCE OF THEIR VIEW THAT FOREIGN HARVESTING AND PROCESSING ACTIVITIES IN STATE INTERNAL WATERS IS ABSOLUTELY PROHIBITED BY THE MFCMA. IN THIS INTERPRETATION, 'AT SEA' IS MEANT TO APPLY TO THOSE AREAS NOT ON LAND. IN CONTRAST, U.S. FISH HARVESTERS EXPRESSED CONCERN THAT U.S. SHORESIDE PROCESSING CAPACITY IS OFTEN INADEQUATE; THAT WITHOUT THE PROCESSING CAPACITY PROVIDED BY FOREIGN VESSELS, THEIR ABILITY TO REACH THEIR HARVESTING CAPACITY WOULD BE SEVERELY RESTRICTED.

SINCE EARLY 1981, THE PROBLEM OF UNRESTRICTED OPERATION OF FOREIGN PROCESSING VESSELS IN STATE INTERNAL WATERS HAS EXPANDED FROM ALASKA TO BECOME A NATIONAL CONCERN. H.R. 5002 ATTEMPTS TO CLARIFY THE SITUATION IN WHICH FOREIGN PROCESSORS MAY CONDUCT OPERATIONS IN THE INTERNAL WATERS OF A STATE.

CENTRAL, WESTERN AND SOUTH PACIFIC FISHERIES DEVELOPMENT ACT

THE PACIFIC ISLANDS DEVELOPMENT COMMISSION WAS ESTABLISHED IN FEBRUARY 1970 FOR THE PURPOSES OF PROMOTING THE DEVELOPMENT OF THE TUNA AND OTHER LATENT FISHERY RESOURCES OF THE CENTRAL, WESTERN AND SOUTH PACIFIC OCEAN. THE COMMISSION, WHICH CONSISTS OF REPRESENTATIVES OF THE GOVERNMENTS OF HAWAII, AMERICAN SAMOA, GUAM AND THE TRUST TERRITORY OF THE PACIFIC ISLANDS, IS DESIGNED TO EXPAND AND DIVERSIFY THE ECONOMIC BASE OF THIS REGION, PARTICULARLY THROUGH THE EXPLOITATION OF ENDEMIC NATURAL RESOURCES.

IN FEBRUARY 1972, THE CONGRESS ENACTED THE CENTRAL, WESTERN AND SOUTH PACIFIC FISHERIES DEVELOPMENT ACT IN SUPPORT OF THE COMMISSION'S EFFORTS. UNDER THE ACT, THE SECRETARY IS AUTHORIZED TO CONDUCT, DIRECTLY OR BY CONTRACT, A PROGRAM FOR THE DEVELOPMENT OF THE TUNA AND OTHER LATENT FISHERY RESOURCES OF THE REGION. THE

PROGRAM INCLUDES THE LOCATION AND STOCK ASSESSMENT AND MONITORING OF FISHERY RESOURCES GEAR AND HARVESTING TECHNOLOGY DEVELOPMENT, AND ECONOMIC ANALYSES OF THE EXISTING AND POTENTIAL FISHERIES. TO DATE, THE PROGRAM HAS MADE SOME SIGNIFICANT PROGRESS IN THE DEVELOPMENT OF THESE FISHERIES.

IN 1976, THE CONGRESS EXPANDED, THROUGH THE MFCMA, THE U.S. FISHERY JURISDICTION IN THIS AREA TO INCLUDE AN ADDITIONAL 7 MILLION SQUARE MILES OF OCEAN. IN THAT SAME YEAR, THERE WERE NO U.S. ALBACORE TUNA VESSELS OPERATING IN THE CENTRAL PACIFIC NORTH OF MIDWAY ISLAND. SINCE 1976, RESEARCH CONDUCTED UNDER THIS PROGRAM HAS RESULTED IN THE DISCOVERY OF THE EXISTENCE OF A SUBSTANTIAL ALBACORE RESOURCE IN THIS AREA. ESTIMATES OF THE POTENTIAL ANNUAL YIELD FOR THE AREA RANGE BETWEEN 16 AND 20 MILLION POUNDS VALUED AT \$14.4 MILLION TO \$23.4 MILLION TO U.S. FISHERMEN. WHILE A SUBSTANTIAL U.S. HARVESTING INDUSTRY HAS DEVELOPED IN THE AREA, THE POTENTIAL GROWTH IS EVEN MORE SIGNIFICANT.

A FURTHER ACCOMPLISHMENT OF THE PROGRAM HAS BEEN THE DEVELOPMENT OF A U.S. PURSE SEINE FISHERY FOR TUNA IN THE WESTERN PACIFIC. IN 1976, NO U.S. TUNA VESSELS OPERATED IN THIS AREA, YET INITIAL SURVEYS CONDUCTED UNDER THE PROGRAM INDICATED THE EXISTENCE OF A SUBSTANTIAL TUNA RESOURCE. AT THAT TIME, HOWEVER, IT WAS DETERMINED THAT CONVENTIONAL EASTERN PACIFIC TUNA GEAR AND TECHNIQUES WERE NOT ADEQUATE TO HARVEST THIS RESOURCE. RECENT RESEARCH AND **4333 *20 DEVELOPMENT PROJECTS CONDUCTED UNDER THE PROGRAM SUCCESSFULLY DESIGNED NEW GEAR AND HARVESTING TECHNIQUES WHICH HAVE ENABLED THE DEVELOPMENT OF A SUBSTANTIAL U.S. TUNA FISHERY IN THIS AREA. CURRENTLY, OVER 12 PERCENT OF THE ENTIRE U.S. TUNA FLEET, REPRESENTING OVER 20 PERCENT OF ITS CAPACITY, HAS REDIRECTED ITS EFFORTS TO THIS AREA. THIS SITUATION HAS PROVIDED THE NECESSARY RELIEF TO THE U.S. TUNA FLEET FROM THE POLITICAL UNCERTAINTIES IN THE TRADITIONAL EASTERN PACIFIC OCEAN FISHERY.

ALTHOUGH THE ACT BECAME EFFECTIVE IN 1972, THE TUNA PROGRAM WAS NOT INITIATED BY THE DEPARTMENT OF COMMERCE UNTIL FISCAL YEAR 1975. FURTHERMORE, THE DEPARTMENT HAS NEVER REQUESTED APPROPRIATIONS UNDER THE ACT, BUT RATHER HAS OBTAINED FUNDS FOR THE PROGRAM FROM THE NMFS SALTONSTALL-KENNEDY FUND (15 U.S.C. 713C-3). IN ADDITION, SUPPLEMENTARY FUNDING IS DERIVED THROUGH THE COMMISSION AND THE U.S. TUNA INDUSTRY. ALL SUCH FUNDS ACCRUE TO THE PACIFIC TUNA DEVELOPMENT FOUNDATION WHICH DIRECTS THE PROGRAM AND, THEREBY IMPLEMENTS THE ACT.

THE CURRENT AUTHORIZATION OF THE ACT EXPIRES ON SEPTEMBER 30, 1982. HOWEVER, BECAUSE THE SALTONSTALL-KENNEDY FUND HAS BEEN REDUCED SUBSTANTIALLY IN RECENT YEARS AND IS, THEREFORE, BEING USED TO CAPACITY FOR OTHER PURPOSES, AND BECAUSE OF THE SUBSTANTIAL PROGRESS AND POTENTIAL OF THIS PROGRAM, THE COMMITTEE FEELS THAT THERE IS A STRONG NEED TO EXTEND THE AUTHORITY OF THE DEPARTMENT OF COMMERCE TO MAKE APPROPRIATIONS NECESSARY TO CARRY OUT THIS PROGRAM.

SECTION-BY-SECTION ANALYSIS

THERE FOLLOWS A SECTION-BY-SECTION ANALYSIS OF H.R. 5002, ACCOMPANIED BY DISCUSSION WHERE APPROPRIATE.

SECTION 1

SECTION 1 OF THE BILL CONTAINS AN AMENDMENT REFERENCE, INDICATING THAT UNLESS SPECIFICALLY NOTED OTHERWISE IN THE BILL, ALL AMENDMENT REFERENCES SHALL BE CONSIDERED AS MADE TO 'AN ACT TO PROVIDE FOR THE CONSERVATION AND MANAGEMENT OF THE FISHERIES, AND FOR OTHER PURPOSES', APPROVED APRIL 13, 1976. THE SHORT TITLE FOR THIS LEGISLATION IS IN THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT (MFCMA).

SECTION 2

SECTION 2 AMENDS THE PURPOSES OF THE MFCMA, CLARIFYING THAT FISHERIES UNDER U.S. JURISDICTION ARE TO BE MANAGED SO THAT THE OPTIMUM YIELD WILL BE ACHIEVED AND MAINTAINED FROM EACH FISHERY BY THE UNITED STATES FISHING INDUSTRY. THIS CHANGE IN PURPOSE, IN COMBINATION WITH THE CHANGE DISCUSSED IN SECTION 5 PERTAINING TO NATIONAL STANDARD 1, IS DESIGNED TO STRENGTHEN THE POSITION OF THE UNITED STATES IN: (1) THE NEGOTIATION OF GOVERNING INTERNATIONAL FISHERY AGREEMENTS (GIFAS); AND (2) THE ESTABLISHMENT OF TOTAL ALLOWABLE LEVELS OF FOREIGN FISHING (TALFFS). THE COMMITTEE, IN USING THE TERM 'UNITED STATES FISHING INDUSTRY' INTENDS THE SECRETARY TO CONSIDER BOTH HARVESTING AND PROCESSING SECTORS OF THE U.S. COMMERCIAL FISHING INDUSTRY AS WELL AS RECREATIONAL INTERESTS.

***21 **4334** SECTION 3

SECTION 3 MAKES SEVERAL CHANGES TO THE MANNER IN WHICH NATIONALS OF FOREIGN COUNTRIES ARE ALLOCATED EXCESS U.S. FISHERY RESOURCES. FIRST, THIS SECTION AMENDS EXISTING SUBSECTION 201(D), WHICH PROVIDES A MECHANISM FOR THE PHASE OUT OF FOREIGN FISHERMEN FROM THE U.S. FISHERY CONSERVATION ZONE (FCZ), BY DELETING THE MANDATE OF THE SECRETARY OF STATE TO REALLOCATE TO FOREIGN NATIONALS, IN SUCCEEDING HARVESTING SEASONS, FISHERY RESOURCES HELD IN RESERVE BY THE REGIONAL FISHERY MANAGEMENT COUNCILS FOR THE FUTURE GROWTH OF THE U.S. FISHING INDUSTRY.

THIS CHANGE IS CONSISTENT WITH CONGRESS' PRIOR RECOGNITION OF THE FACT THAT THE FULL DEVELOPMENT OF THE U.S. FISHING INDUSTRY WILL NOT OCCUR UNLESS THERE EXISTS A STABILITY OF EXPECTATIONS REGARDING FUTURE ACCESS TO THE FISHERY RESOURCES OF THE U.S. FCZ. WHILE THE CONGRESS PREVIOUSLY BELIEVED THAT A ONE-YEAR PERIOD WOULD BE SUFFICIENT INDUCEMENT TO THE DOMESTIC INDUSTRY TO EXPAND ITS HARVESTING EFFORT, THE COMMITTEE NOW BELIEVES THAT LONGER PERIODS MAY BE NECESSARY.

IN ADDITION, AS NOTED IN THE DISCUSSION OF THE AMENDMENT MADE BY SECTION 2 AND THE CHANGE DISCUSSED IN SECTION 5 PERTAINING TO THE NATIONAL STANDARDS, THE COMMITTEE DOES NOT BELIEVE THAT THE LAW SHOULD AUTOMATICALLY REQUIRE THE ALLOCATION, TO FOREIGN NATIONALS, OF 'EXCESS' U.S. FISHERY RESOURCES. THUS, THE COMMITTEE BELIEVES THAT THE SECRETARY SHOULD NOT AUTOMATICALLY BE REQUIRED TO REALLOCATE TO FOR-

EIGN NATIONALS THOSE FISHERY RESOURCES THAT HAVE BEEN HELD IN RESERVE, BUT SHOULD CONSIDER ALL FACTORS THAT RELATE TO THE LONG RANGE ABILITY OF THE DOMESTIC FISHING INDUSTRY TO DEVELOP THAT PARTICULAR FISHERY.

SECTION 3 ALSO AMENDS SECTION 201(E) BY SPECIFYING THE MANNER IN WHICH THE SECRETARY OF STATE RELEASES FISHERY RESOURCES ALLOCATED TO FOREIGN NATIONS. PURSUANT TO THIS PROVISION, THE SECRETARY MAY NOT INITIALLY RELEASE FOR HARVESTING MORE THAN 50 PERCENT OF THE TOTAL AMOUNT OF FISH ALLOCATED TO A FOREIGN NATION. BY THIS PROVISION, THE COMMITTEE INTENDS TO GRANT THE SECRETARY THE DISCRETION TO: (1) INITIALLY WITHHOLD MORE THAN 50 PERCENT OF ANY NATIONS FISHERY ALLOCATION; AND (2) RELEASE MORE THAN 50 PERCENT OF ANY PARTICULAR FISHERY ALLOCATION, SO LONG AS THE AGGREGATE OF ALL RELEASES TO SUCH NATION DO NOT EXCEED 50 PERCENT OF THE TOTAL OF ALL INDIVIDUAL FISHERY ALLOCATIONS INITIALLY DETERMINED FOR THAT NATION. THE COMMITTEE IS AWARE THAT THE SEASONAL NATURE OF SOME FISHERIES AND THE MANAGEMENT AND CONSERVATION MEASURES ADOPTED BY THE UNITED STATES FOR SUCH FISHERIES WOULD, IF THE SECRETARY APPLIED THE 50 PERCENT REQUIREMENT ACROSS THE BOARD, EFFECTIVELY PRECLUDE A HARVEST BY FOREIGN NATIONALS DUE TO THE OPERATIONAL DIFFICULTIES ATTENDANT WITH PLANNING THE HARVEST. THE COMMITTEE BELIEVES THAT THE SECRETARY SHOULD TAKE THESE OPERATIONAL DIFFICULTIES INTO ACCOUNT IN HIS INITIAL RELEASE DECISION. AT THE SAME TIME, THE COMMITTEE BELIEVES THAT THE SECRETARY SHOULD CAREFULLY EXAMINE CLAIMS OF OPERATIONAL DIFFICULTIES, FOR IN NO EVENT MAY THE AGGREGATE 50 PERCENT LIMITATION BE BREACHED.

THIS NEW PROVISION ALSO REQUIRES THE SECRETARIES OF STATE AND COMMERCE, DURING AN APPROPRIATE PERIOD OF TIME FOLLOWING THE INITIAL RELEASE OF ANY PORTION OF A NATION'S ALLOCATION, TO DETERMINE WHETHER OR NOT SUCH NATION IS COMPLYING WITH THE 'FISH AND CHIPS' POLICY **4335 *22 SET FORTH IN SECTION 201(E) AND UPON WHICH THE INITIAL ALLOCATION WAS DETERMINED. IF THE SECRETARIES DETERMINE THAT THE FOREIGN NATION IS NOT COMPLYING WITH THIS POLICY, THE SECRETARY OF STATE IS REQUIRED TO REDUCE, IN A MANNER AND QUANTITY DEEMED APPROPRIATE, EITHER THE NEXT PORTION, IF ANY, OF SUCH ALLOCATION, OR, IF ALL OF THE ALLOCATION HAS BEEN RELEASED, THE NEXT ALLOCATION, IF ANY, MADE TO SUCH NATION. THUS, THE PENALTY FOR FAILURE TO COMPLY WITH U.S. FISHERY POLICY CAN RANGE FROM SLIGHT TO MOST SEVERE-- THE DENIAL OF ANY FUTURE ALLOCATION. THE COMMITTEE POINTS OUT THAT MUCH DISCUSSION WAS INVOLVED IN THE DECISION TO GRANT THE SECRETARY DISCRETION IN MAKING THE DECISION ON THE EXTENT TO WHICH A FOREIGN NATION'S ALLOCATION WOULD BE CUT UPON A FINDING OF NONCOMPLIANCE. THE COMMITTEE CAUTIONS THE SECRETARY THAT THIS PROVISION SHOULD NOT BE READ AS ALLOWING INSIGNIFICANT REDUCTIONS WHEN A FINDING OF NONCOMPLIANCE IS MADE. THE COMMITTEE INTENDS THAT ANY REDUCTIONS MADE BY THE SECRETARY ARE TO BE MEANINGFUL, CLEARLY TRANSMITTING TO SUCH FOREIGN NATION THE U.S. CONCERN OVER ITS UNWILLINGNESS TO TAKE ACTION PROMOTING THE DEVELOPMENT OF THE U.S. FISHING INDUSTRY AS SPECIFIED BY LAW.

AS A FURTHER EXPRESSION OF THE COMMITTEE'S DISPLEASURE WITH THE TRADITIONAL STATE DEPARTMENT PRACTICE OF CONSIDERING NON-FISHERY, FOREIGN RELATIONS ISSUES IN DECISIONS RELATED TO ITS RESPONSIBILITIES UNDER THE MFCMA, SECTION 3 FURTHER AMENDS

SECTION 201(E)(1)(H), THE SO-CALLED 'BASKET-CLAUSE'. THE AMENDMENT NARROWS THE FACTORS THAT MIGHT BE CONSIDERED BY THE SECRETARY, IN ADDITION TO THE SEVEN SPECIFICALLY LISTED IN SUBPARAGRAPHS 201(E)(1)(A)-(G), WHEN DECISIONS ARE BEING MADE ON FOREIGN FISHING ALLOCATIONS. THUS, THE , AMENDMENT PERMITS THE SECRETARY TO ONLY CONSIDER OTHER MATTERS , INVOLVING THE FISHERIES AND TRADE AFFAIRS. THE COMMITTEE WOULD HOPE THAT THE SECRETARY EMPHASIZES OTHER MATTERS PERTAINING TO FISHERIES, BUT DOES NOT NECESSARILY WANT TO PRECLUDE AN EXAMINATION OF OTHER TRADE RELATED ISSUES, ESPECIALLY AGRICULTURAL TRADE. BECAUSE FISHERMEN ARE OFTEN CONSIDERED AS 'FARMERS OF THE SEA,' THE COMMITTEE BELIEVES THAT A REASONABLE RELATIONSHIP EXISTS BETWEEN FISHERY AND OTHER AGRICULTURAL TRADE RELATIONSHIPS BETWEEN THE U.S. AND FOREIGN COUNTRIES. AN EXAMINATION OF THESE ISSUES IS NOT, THEREFORE, UNWARRANTED. THE COMMITTEE DOES WANT TO EMPHASIZE, HOWEVER, ITS DESIRE THAT THIS PROVISION NOT BE GIVEN GREATER WEIGHT THAN THE SEVEN SPECIFICALLY ENUMERATED IN THIS PARAGRAPH. RESORT TO THIS PROVISION SHOULD NEVER ENTAIL AN EXAMINATION OF POLITICAL OR OTHER FOREIGN POLICY ISSUES NOT RELATED TO FISHERIES AND TRADE.

SECTION 3 FURTHER MODIFIES TWO PROVISIONS RELEVANT TO THE OBSERVER PROGRAM MANDATED BY EXISTING LAW. FIRST, THE BILL SPECIFICALLY AUTHORIZES OBSERVERS TO CARRY OUT COMPLIANCE ACTIVITIES. THUS, NO QUESTION SHOULD BE RAISED BY FOREIGN NATIONALS OPERATING WITHIN THE UNITED STATES FCZ WITH REGARD TO EFFORTS BY U.S. OBSERVERS TO INSPECT HOLDS, COUNT FISH LANDED AND OTHERWISE ENSURE THAT SUCH FOREIGN NATIONALS ARE COMPLYING WITH THE PERMITS WHICH ALLOW THEM TO OPERATE IN THE FCZ. THIS AMENDMENT ALSO AUTHORIZES OBSERVERS TO CARRY OUT OTHER SCIENTIFIC PROGRAMS RELATING TO THE CONSERVATION OF LIVING RESOURCES AS THE SECRETARY DEEMS APPROPRIATE. IN THIS REGARD, THE COMMITTEE IS AWARE OF CONCERNS THAT HAVE BEEN RAISED REGARDING SEA BIRD MORTALITY AS A RESULT OF CERTAIN FOREIGN FISHING OPERATIONS AND BELIEVES THAT A PROPER FUNCTION OF U.S. OBSERVERS, WHEN NOT ENGAGED IN THEIR PRIMARY ACTIVITIES, IS THE COLLECTION OF BETTER **4336 *23 DATA AND INFORMATION AS TO THE EXTENT OF THIS PROBLEM. SIMILAR EFFORTS, FOCUSED ON OTHER KNOWN OR SUSPECTED PROBLEMS OF THIS TYPE WOULD ALSO BE APPROPRIATE-- AGAIN SO LONG AS IT DOES NOT IMPEDE THE ABILITY OF THE OBSERVER TO CARRY OUT HIS PRIMARY FUNCTION.

THE SECOND MODIFICATION INVOLVES THE METHOD OF FUNDING THE 100 PERCENT OBSERVER PROGRAM MANDATED BY THE AMERICAN FISHERIES PROMOTION ACT. UNDER THE PROVISIONS OF THIS BILL, THE REVOLVING OBSERVER FUND IS ABOLISHED AND A PERMANENT APPROPRIATION IS ESTABLISHED. THE SECRETARY OF COMMERCE SHALL HENCEFORTH LEVY A SURCHARGE ON FOREIGN FISHING VESSELS IN AN AMOUNT SUFFICIENT TO COVER ALL COSTS ASSOCIATED WITH THE STATIONING OF A U.S. OBSERVER ABOARD THAT VESSEL. THE SECRETARY IS DIRECTED TO USE THE COLLECTED SURCHARGE TO COVER SUCH OBLIGATIONS. AS UNDER CURRENT LAW, FAILURE TO PAY THE SURCHARGE SHALL BE TREATED AS A FAILURE TO PAY THE PERMIT FEE LEVIED UNDER SECTION 204(B)(10).

FINALLY, THIS SECTION OF THE BILL ADDS A NEW SECTION 201(J) WHICH PERMITS FOREIGN NATIONALS TO ENGAGE IN RECREATIONAL FISHING TOURNAMENTS IN U.S. WATERS, EVEN IF THE NATION OF WHICH THAT PERSON IS A CITIZEN DOES NOT HAVE A GOVERNING INTERNATIONAL FISHERY AGREEMENT (GIFA) OR OTHER FISHERIES TREATY WITH THE UNITED STATES. SUCH

FOREIGN NATIONAL MUST: (1) NOT BE OPERATING HIS FISHING VESSEL FOR PROFIT, AND (2) AGREE TO OBTAIN ANY PERMIT, PAY ANY FEE AND COMPLY WITH ANY CONDITIONS OR RESTRICTIONS IMPOSED. THE SECRETARY OF COMMERCE WILL MAKE DETERMINATIONS WITH REGARD TO ACTIVITIES BY SUCH VESSELS IN THE FEDERAL FCZ AND THE GOVERNOR OF EACH STATE WILL MAKE DETERMINATIONS WHEN THE PROPOSED ACTIVITY WOULD OCCUR IN STATE WATERS. IN NO CASE CAN THE FOREIGN VESSEL OPERATE IN A MANNER INCONSISTENT WITH APPLICABLE FEDERAL OR STATE LAW AND ANY APPLICABLE FISHERY MANAGEMENT PLAN.

SECTION 4

SECTION 4 OF THE BILL MAKES SEVERAL, ESSENTIALLY TECHNICAL CHANGES TO THE MANNER IN WHICH APPLICATIONS FOR PERMITS BY NATIONALS OF FOREIGN COUNTRIES ARE HANDLED.

FIRST, THE APPLICATION MUST SPECIFY THE HOLD CAPACITY OF THE VESSEL, IN ADDITION TO THE OTHER INFORMATION REQUIRED IN SECTION 204(B)(3).

SECOND, THE APPLICATION NO LONGER MUST BE SENT TO THE APPROPRIATE REGIONAL COUNCIL AND THE CONGRESS. INSTEAD, THE SECRETARY NEED ONLY SUBMIT A COPY OF THE APPLICATION TO THE DEPARTMENT IN WHICH THE COAST GUARD IS OPERATING AND A COPY OR SUMMARY OF THE APPLICATION TO THE APPROPRIATE COUNCIL, UPON THAT COUNCILS REQUEST.

THIRD, THE APPROPRIATE COUNCIL IS NO LONGER REQUIRED TO PREPARE AND SUBMIT WRITTEN COMMENTS ON EACH PERMIT APPLICATION, BUT MAY DO SO IF IT CHOOSES.

SECTION 5

SECTION 5 AMENDS EXISTING SECTION 301 IN TWO RESPECTS. FIRST, IT CLARIFIES THAT CONSERVATION AND MANAGEMENT MEASURES CONTAINED IN FMPS SHOULD BE DESIGNED TO PREVENT OVERFISHING WHILE ACHIEVING, ON A CONTINUING BASIS, THE OPTIMUM YIELD FROM EACH FISHERY BY THE UNITED STATES FISHING INDUSTRY. AS PREVIOUSLY NOTED, THE COMMITTEE INTENDS THAT THIS CHANGE CLARIFY ITS POSITION THAT TOTAL ALLOWABLE LEVELS OF FOREIGN FISHING (TALFFS) ARE NOT A RIGHT. WHILE THE COMMITTEE**4337 *24 BELIEVES THAT EVERY EFFORT SHOULD BE MADE TO UTILIZE FISHERY RESOURCES OF THE FCZ IN A MANNER COMPATIBLE WITH SOUND CONSERVATION AND MANAGEMENT PRACTICES, IT IS CONCERNED THAT BLIND ADHERENCE TO THIS PRINCIPLE WILL CONTINUALLY THWART THE FULL DEVELOPMENT OF OUR DOMESTIC INDUSTRY. THUS, SPECIFIC AUTHORITY IS GRANTED TO CONSIDER THE BEST INTERESTS OF THE DOMESTIC INDUSTRY IN THE ESTABLISHMENT OF OPTIMUM YIELD. THE COMMITTEE BELIEVES THIS AMENDMENT CLARIFIES THE INTENT BEHIND THE DEFINITION OF 'OPTIMUM ' CONTAINED IN SECTION 3(18) OF THE MFCMA, WHICH ALLOWS MODIFICATIONS BASED ON 'RELEVANT ECONOMIC, SOCIAL OR ECOLOGICAL FACTOR(S).'

AS NOTED ABOVE, THE DEFINITION OF 'OPTIMUM' IN SECTION 3(18) PROVIDES FOR THE CONSIDERATION OF ECONOMIC FACTORS IN ESTABLISHING THE OPTIMUM YIELD FOR A FISHERY. THE COMMITTEE WISHES TO BE EXPLICIT IN ITS VIEW THAT A RELEVANT ECONOMIC FACTOR WHICH CAN BE CONSIDERED IS THE NEED TO ENHANCE THE MARKET OPPORTUNITIES AVAILABLE TO U.S.

HARVESTED FISH AND TO BREAK DOWN FOREIGN TARIFF AND NON-TARIFF TRADE BARRIERS. IT IS CLEARLY WITHIN THE AUTHORITY OF THE REGIONAL COUNCILS TO ESTABLISH AN OPTIMUM YIELD FOR A FISHERY WHICH HAS THE EFFECT OF RESTRICTING FOREIGN FISHING FOR THE PURPOSE OF EXPANDING THE MARKETS AVAILABLE TO U.S. FISHERMEN. IF FOREIGN NATIONS CAN BUY FISH FROM THEIR FISHERMEN OPERATING IN THE U.S. ZONE, THERE MAY BE NO NEED OR INCENTIVE TO PURCHASE U.S. HARVESTED FISH. HOWEVER, THE COMMITTEE EXPECTS THE COUNCILS TO USE THIS AUTHORITY FOR THE BENEFIT OF THE U.S. FISHING INDUSTRY AND NOT SOLELY FOR THE PURPOSE OF EXCLUDING FOREIGN FISHERMEN FROM THE U.S. ZONE.

AS A POINT OF CONFUSION, NATIONAL STANDARD NO. 1 HAS OFTEN BEEN INTERPRETED TO MEAN THAT FISHERY FMPS MUST PROVIDE FOR THE FULL UTILIZATION OF THE OPTIMUM YIELD. THE RESULT OF THIS VIEW IS THAT ANY PART OF THE OPTIMUM YIELD WHICH WILL NOT BE USED BY U.S. FISHERMEN MUST BE MADE AVAILABLE TO FOREIGN FLEETS. THIS IS NOT SO. IT SHOULD BE CLEAR THAT THE PHRASE 'ACHIEVING THE OPTIMUM YIELD' MEANS ACHIEVING THAT YIELD BY U.S. FISHERMEN. U.S. CAPACITY IS, TO SOME EXTENT, DETERMINED BY THE LEVEL OF FOREIGN FISHING. IF FOREIGN NATIONS KNOW THEY WILL RECEIVE AN ALLOCATION IF THE U.S. DOES NOT HARVEST THE FISH, THERE IS AN INCENTIVE TO NOT PURCHASE U.S. HARVESTED FISH, THUS REDUCING THE U.S. HARVESTING CAPACITY BY RESTRICTING AN OTHERWISE AVAILABLE MARKET.

THE SECOND AMENDMENT CONTAINED IN SECTION 5 OF THE BILL CLARIFIES THE COMMITTEE'S INTENT WITH RESPECT TO THE EFFECT OF GUIDELINES PUBLISHED BY THE SECRETARY OF COMMERCE TO ASSIST IN THE DEVELOPMENT OF FMPS. THUS, THE BILL ADDS A NEW SENTENCE TO SECTION 301(B) STIPULATING THAT SUCH GUIDELINES SHALL NOT HAVE THE FORCE AND EFFECT OF LAW. THE COMMITTEE INTENDS THAT THE NATIONAL STANDARDS THEMSELVES, AND NOT THE INTERPRETATION OF SUCH STANDARDS AS CONTAINED IN THE GUIDELINES, ARE THE BASIS UPON WHICH THE ADEQUACY OF ANY PARTICULAR FMP IS TO BE JUDGED.

SECTION 6

THIS SECTION OF THE BILL MAKES SEVERAL AMENDMENTS DESIGNED TO CLARIFY THE ORGANIZATION, FUNCTIONS AND STATUS OF THE REGIONAL FISHERY MANAGEMENT COUNCILS.

FIRST, THE BILL ADDRESSES CONCERNS THAT CALIFORNIA HAS NOT BEEN ADEQUATELY REPRESENTED ON THE PACIFIC COUNCIL BY MANDATING THE ~~**4338~~ *25 APPOINTMENT OF TWO ADDITIONAL VOTING SEATS ON THAT COUNCIL TO RESIDENTS OF THAT STATE. THUS, IN ADDITION TO THE OBLIGATORY SEAT ALREADY HELD BY THE PRINCIPAL STATE OFFICIAL WITH MARINE FISHERY MANAGEMENT RESPONSIBILITY AND EXPERTISE, THE SECRETARY IS REQUIRED TO CHOOSE THREE CALIFORNIANS FOR VOTING MEMBERSHIP.

SECOND, THIS SECTION EXPANDS THE JURISDICTION AND SIZE OF THE WESTERN PACIFIC COUNCIL TO INCLUDE THE NORTHERN MARIANA ISLANDS AND OTHER U.S. POSSESSIONS IN THIS REGION.

THIRD, THE BILL REQUIRES THE SECRETARY TO ANNOUNCE THE APPOINTMENT OF NEW COUNCIL MEMBERS AT LEAST 45 DAYS PRIOR TO THE FIRST DAY SUCH PROSPECTIVE MEMBERS WILL ASSUME COUNCIL RESPONSIBILITIES. IN ADDITION, THIS NEW PROVISION ALLOWS THE SECRETARY OF COMMERCE TO REMOVE COUNCIL MEMBERS APPOINTED BY HIM FOR CAUSE, IF

THE COUNCIL ON WHICH THAT PERSON IS MEMBER FIRST RECOMMENDS SUCH REMOVAL BY A TWO-THIRDS VOTE OF ALL VOTING MEMBERS ON THE COUNCIL AND SUCH COUNCIL SUBMITS A STATEMENT TO THE SECRETARY CONTAINING THE REASONS FOR SUCH RECOMMENDATION.

FOURTH, THE BILL LOWERS THE RATE OF PER DIEM COMPENSATION FOR THE VOTING MEMBERS OF EACH COUNCIL WHO ARE NOT EMPLOYED BY FEDERAL, STATE OR LOCAL GOVERNMENTS FROM RATE FOR GS-18 OF THE GENERAL SCHEDULE OF THE UNITED STATES TO \$100. BY THIS CHANGE, HOWEVER, THE COMMITTEE DOES NOT INTEND TO IMPLY THAT IT IS PLACING ANY LESS IMPORTANCE ON THE DUTIES OF COUNCIL MEMBERS.

FIFTH, THE AMENDMENT EXPRESSLY MAKES INAPPLICABLE TO THE COUNCILS THE FEDERAL ADVISORY COMMITTEE ACT (FACA). AT THE SAME TIME, HOWEVER, THE AMENDMENT STIPULATES THE MINIMUM PROCEDURES THAT MUST BE MET BY ALL COUNCILS DURING THE COURSE OF THEIR DELIBERATIONS OVER CONSERVATION AND MANAGEMENT PRACTICES. THESE INCLUDE, BUT ARE NOT LIMITED TO REQUIREMENTS THAT: (1) ALL REGULAR AND EMERGENCY MEETINGS BE OPEN TO THE PUBLIC. A MANDATORY EXCEPTION TO THIS GENERAL RULE APPLIES WITH RESPECT TO ALL MEETINGS OR PORTIONS OF MEETINGS WHERE MATTERS OR INFORMATION PERTAINING TO NATIONAL SECURITY OR BEARING A SECURITY CLASSIFICATION ARE DISCUSSED. AT THE DISCRETION OF THE COUNCIL, MEETINGS OR PORTIONS OF MEETINGS WHEREIN COUNCIL EMPLOYMENT OR LITIGATION IN WHICH THE COUNCIL IS INTERESTED ARE BEING DISCUSSED MAY BE CLOSED; (2) EMERGENCY MEETINGS SHALL OCCUR AT THE CALL OF THE COUNCIL CHAIRMAN; (3) TIMELY NOTICE OF ALL REGULAR AND EMERGENCY MEETINGS AND THE AGENDA FOR SUCH MEETINGS SHALL BE PUBLISHED IN AT LEAST ONE NEWSPAPER OF GENERAL CIRCULATION (4) INTERESTED PERSONS SHALL BE AFFORDED THE OPPORTUNITY TO SUBMIT ORAL OR WRITTEN STATEMENTS REGARDING MATTERS BEFORE THE COUNCIL AT EACH SUCH MEETING; AND (5) FULL AND ACCURATE RECORDS OF THE PROCEEDINGS OF EACH SUCH MEETING SHALL BE AVAILABLE FOR PUBLIC INSPECTION AND COPYING. THESE REQUIREMENTS SHALL ALSO APPLY TO THE PROCEEDINGS OF THE SCIENTIFIC AND STATISTICAL COMMITTEE OF EACH COUNCIL AS WELL AS ALL ADVISORY PANELS ESTABLISHED BY THE COUNCILS. IN USING THE TERM ADVISORY PANELS, THE COMMITTEE INTENDS TO COVER PLAN DEVELOPMENT TEAMS, PLAN MANAGEMENT TEAMS, AND ANY OTHER FORMALLY CONSTITUTED WORK GROUP OR TEAM WHICH MEETS AT THE REQUEST OR DIRECTION OF THE COUNCILS.

THE COMMITTEE IS AWARE THAT NMFS HAS IMPOSED CERTAIN CONDITIONS ON THE REGIONAL COUNCILS AS A PREREQUISITE TO RECEIVING FUNDING UNDER THE MFCMA. ONE OF THESE CONDITIONS IS THAT MEETING **4339 *26 PLACES OF THE COUNCILS MUST BE APPROVED BY NMFS IF THE PER DIEM COSTS EXCEED A SPECIFIED AMOUNT. CONSISTENT WITH THE COMMITTEE'S INTENT THAT THE COUNCILS BE SEMI-AUTONOMOUS BODIES, THE COMMITTEE DOES NOT BELIEVE NMFS SHOULD PUT ITSELF IN THE POSITION OF APPROVING THIS TYPE OF COUNCIL ACTIVITY. THE COMMITTEE DOES NOT, HOWEVER, EXPECT THE COUNCILS TO BE WASTEFUL OF LIMITED FUNDS.

IN ADDITION, EACH COUNCIL IS REQUIRED TO ESTABLISH PROCEDURES TO ENSURE THE CONFIDENTIALITY OF STATISTICS THAT MAY BE SUBMITTED TO IT BY FEDERAL OR STATE AUTHORITIES. WITH RESPECT TO STATISTICS SUBMITTED BY STATE AUTHORITIES, THE COUNCIL PROCEDURES MUST BE CONSISTENT WITH THE APPLICABLE LAWS AND REGULATIONS OF THAT STATE. THE COMMITTEE STRESSES THAT THIS PROVISION IS NOT INTENDED TO GRANT THE COUNCILS

AUTHORITY TO REQUEST OR REQUIRE THE SUBMISSION OF CONFIDENTIAL INFORMATION.

SIXTH, THIS SECTION INCORPORATES A NUMBER OF CHANGES TO THE FUNCTIONS OF EACH COUNCIL, IDENTIFIED IN EXISTING SECTION 302(H). THE MOST IMPORTANT OF THESE CLARIFIES THAT COUNCILS ARE NOT REQUIRED TO PREPARE FMPS FOR EVERY FISHERY WITHIN THEIR GEOGRAPHICAL AREAS OF AUTHORITY. RATHER, SUCH PLANS SHOULD BE DEVELOPED FOR EACH SUCH FISHERY THAT REQUIRES CONSERVATION AND MANAGEMENT. WHILE THIS IS PRIMARILY A COUNCIL DETERMINATION, THE COMMITTEE DOES NOT INTEND THE COUNCILS TO UNREASONABLY DELAY OR TOTALLY IGNORE THE PREPARATION OF NECESSARY PLANS. IN DETERMINING WHETHER OR NOT AN FMP IS NECESSARY FOR ANY PARTICULAR FISHERY, THE COMMITTEE BELIEVES THAT SEVERAL FACTORS SHOULD BE TAKEN INTO ACCOUNT. THESE INCLUDE, BUT ARE NOT LIMITED TO, CONSIDERATIONS AS TO: (1) WHETHER OR NOT THE FISHERY IS BIOLOGICALLY STABLE ENOUGH TO JUSTIFY A FISHERY MANAGEMENT PLAN; (2) WHAT THE VALUE OR THE POTENTIAL VALUE OF THE FISHER IS; (3) WHETHER FISHERMEN FROM MORE THAN ONE STATE PARTICIPATE IN, OR ARE PLANNING TO PARTICIPATE IN, THE FISHERY; (4) WHETHER THE RESOURCE IS FOUND IN THE FCZ OFF MORE THAN ONE STATE; A4D (5) THE CONSISTENCY OF DIFFERENT STATES' REGULATIONS IF STOCKS ARE FOUND IN SIGNIFICANT NUMBERS BOTH WITHIN A NUMBER OF DIFFERENT STATES' WATERS AND THE FCZ. IN SHORT, THE COUNCILS WILL OFTEN BE REQUIRED TO BALANCE THE COMPETING INTERESTS OF DOMESTIC FISHERMEN. THE COMMITTEE BELIEVES THE COUNCILS SHOULD MAKE EVERY EFFORT TO TREAT ALL FISHERMEN IN AN EQUITABLE MANNER AND NOT TRADE OFF THE NEEDS OF ONE FISHERY FOR THE DESIRES OF ANOTHER.

TO ADDRESS PARTICULAR CONCERNS OF SEVERAL COUNCILS, THE AMENDMENTS ALLOW COUNCIL HEARINGS TO BE CONDUCTED OUTSIDE OF THEIR REGULAR AREA OF GEOGRAPHICAL AUTHORITY WHERE FISHERMEN FROM OUTSIDE SUCH COUNCIL'S AREAS ARE AFFECTED BY DECISIONS TAKEN BY THE COUNCIL, OR FISH IN A PARTICULAR FISHERY MIGRATE INTO, OR OCCUR IN, ANOTHER COUNCIL'S AREA. IN EITHER EVENT, THE COUNCIL WISHING TO CONDUCT A HEARING OUTSIDE OF ITS REGULAR GEOGRAPHICAL AREA MUST CONSULT WITH THE OTHER CONCERNED COUNCIL.

FINALLY, THIS SECTION DELETED THE MANDATORY REQUIREMENT FOR COUNCILS TO SUBMIT ANNUAL ACTIVITY REPORTS TO THE SECRETARY.

SECTION 7

SECTION 7 INCORPORATES A NUMBER OF CHANGES TO EXISTING DISCRETIONARY PROVISIONS THAT MAY BE INCORPORATED IN FISHERY MANAGED PLANS DEVELOPED BY THE COUNCILS.

***27 **4340** ONE OF THE MOST NOTABLE ADDITIONS IN EXPLICIT AUTHORITY FOR THE COUNCIL, IF IT CHOOSES, TO INCLUDE A VESSEL 'BUY-BACK' OR EQUIVALENT PROGRAM AS PART OF A LIMITED ENTRY SYSTEM. SUCH A SYSTEM COULD BE FUNDED BY FEES ASSESSED AGAINST FISHERMEN, IF THE COUNCIL SO CHOOSES. THE COMMITTEE WISHES TO MAKE CLEAR ITS INTENT THAT ANY SUCH SYSTEM WOULD REQUIRE AFFIRMATIVE ACTION BY THE COUNCILS, INCLUDING COUNCIL ESTABLISHMENT OF THE FEE SCHEDULE. A REVOLVING FUND WOULD BE ESTABLISHED IN THE TREASURY OF THE UNITED STATES AND EACH SEPARATE BUY-BACK OR EQUIVALENT PROGRAM WOULD HAVE A SEPARATE ACCOUNT WITHIN THE FUND. ALL FEES COLLECTED UNDER

THE PROGRAM WOULD BE DEPOSITED AND CREDITED TO THAT ACCOUNT. FURTHER, THE SECRETARY WOULD BE REQUIRED TO WITHDRAW SUCH CREDITED FUNDS AS NECESSARY FOR THE PROPER AND TIMELY ADMINISTRATION OF THE PROGRAM.

ANOTHER PROVISION OF SECTION 7 CLARIFIES THAT A COUNCIL MAY SET FORTH IN THEIR FMPS, THOSE FACTORS THAT THE COUNCIL BELIEVES IMPEDE THE FULL UTILIZATION OF THE OPTIMUM YIELD FOR THAT PARTICULAR FISHERY BY THE UNITED STATES FISHING INDUSTRY.

A THIRD PROVISION REQUIRES COUNCILS TO DEVELOP PROPOSED REGULATIONS TO IMPLEMENT FISHERY MANAGEMENT PLANS OR ANY AMENDMENTS THERETO. SUCH REGULATIONS ARE TO ACCOMPANY FMPS SUBMITTED TO THE SECRETARY FOR APPROVAL.

FINALLY, SECTION 7 PERMITS A COUNCIL TO PREPARE AND SUBMIT FOR SECRETARIAL APPROVAL, A DATA COLLECTION PROGRAM WHEN IT DETERMINES THAT STATISTICS AND OTHER DATA AVAILABLE TO IT ARE INSUFFICIENT OR UNRELIABLE FOR THE PURPOSES OF DETERMINING WHETHER AN FMP IS NEEDED OR ACTUALLY PREPARING AN FMP. THE PROPOSED DATA COLLECTION PROGRAM MUST SET FORTH THE COMPLETE PARAMETERS OF THE DATA COLLECTION EFFORT, INCLUDING A JUSTIFICATION AND OTHER MATTERS THAT THE COUNCIL DEEMS APPROPRIATE OR THE SECRETARY MAY REQUIRE.

THE SECRETARY IS REQUIRED TO REVIEW AND APPROVE OR DISAPPROVE THE PROPOSAL WITHIN 60 DAYS OF THE DATE IT IS SUBMITTED. IF THE SECRETARY DETERMINES THAT THE REQUEST FOR THE ADDITIONAL DATA OR INFORMATION IS JUSTIFIED, THE PROGRAM SHALL BE APPROVED. IF THE SECRETARY DETERMINES THAT THE NEED IS NOT JUSTIFIED OR THE METHODOLOGY FOR COLLECTING THE DATA IS INAPPROPRIATE, THE SECRETARY SHALL DISAPPROVE ALL OR PART OF THE PROGRAM, INFORM THE COUNCIL OF THE REASONS FOR SUCH DISAPPROVAL, AND PROPOSE SUGGESTIONS FOR IMPROVEMENTS.

THE COUNCIL WHICH HAS HAD A PROGRAM DISAPPROVED MAY, OF COURSE, RESUBMIT AN AMENDED PROPOSAL. ONCE THE SECRETARY APPROVES ANY DATA COLLECTION PROGRAM, HE MUST PROMULGATE REGULATIONS TO IMPLEMENT THAT PROGRAM.

THE COMMITTEE EMPHASIZES THAT THE PURPOSE OF THIS SECTION IS TO IMPROVE FISHERY MANAGEMENT, BY AVOIDING THE PREPARATION OF FISHERY MANAGEMENT PLANS WHERE A PLAN IS NOT NECESSARY, AND BY PROVIDING A SOUNDER DATA BASE FOR THOSE PLANS THAT ARE DEEMED NECESSARY. DATA-COLLECTION PROGRAMS FORMULATED BY THE COUNCILS SHOULD THEREFORE FOCUS ON NECESSARY, BIOLOGICAL, STOCK ASSESSMENT AND OTHER DATA WHICH WOULD COMPLIMENT THE EFFORTS OF NMFS IN ITS MARINE RESOURCES, MONITORING ASSESSMENT AND PREDICTION (MARMAP) AND ECONOMIC AND COMMERCIAL FISHERIES STATISTICS PROGRAMS.

***28 **4341 SECTION 8**

AS PREVIOUSLY NOTED, ONE OF THE PRINCIPLE AREAS OF CONTINUING CONCERN WITH IMPLEMENTATION OF THE MFCMA INVOLVED ISSUES RELATED TO THE TIMELY ADOPTION OF FISHERY CONSERVATION AND MANAGEMENT MEASURES AND ACTIONS BY THE FEDERAL GOVERNMENT IN REVIEWING SUCH MEASURES. THUS, SECTION 8 OF THE BILL CONTAINS THE GENERAL RULE THAT FMPS, OR AMENDMENTS THERETO, SHALL BE DEEMED APPROVED IF THE SECRETARY OF COMMERCE DOES NOT NOTIFY THE COUNCIL OF HIS APPROVAL, DISAPPROVAL OR

PARTIAL DISAPPROVAL WITHIN 90 DAYS FROM THE DATE HE RECEIVES SUCH FMP OR AMENDMENT. THIS 90-DAY PERIOD MAY ONLY BE EXTENDED ONCE, FOR ANY NUMBER OF CONSECUTIVE DAYS, UPON THE MUTUAL AGREEMENT OF BOTH THE COUNCIL AND THE SECRETARY.

IF THE SECRETARY DISAPPROVES, OR PARTIALLY DISAPPROVES, ANY FMP OR AMENDMENT WITHIN THE ALLOWED TIME PERIOD, SUBSEQUENT SECRETARIAL REVIEWS OF MODIFIED FMPS OR AMENDMENTS MUST BE ACCOMPLISHED WITHIN A FURTHER 45-DAY PERIOD. THIS PERIOD MAY ALSO BE EXTENDED ONCE FOR ANY NUMBER OF DAYS MUTUALLY AGREEABLE TO THE COUNCIL AND SECRETARY. ONCE THIS 45-DAY OR LONGER PERIOD HAS EXPIRED, THE PLAN OR AMENDMENT SHALL BE DEEMED APPROVED. IN COMPUTING THE 45-DAY, OR LONGER, TIME PERIOD DAYS BETWEEN THE INITIAL SECRETARIAL NOTIFICATION OF DISAPPROVAL OR PARTIAL DISAPPROVAL AND COUNCIL RESUBMISSION OF A MODIFIED PLAN OR AMENDMENT ARE TO BE DISREGARDED.

AT THIS POINT, IT SHOULD BE REEMPHASIZED THAT THE SECRETARY IS NOT TO SUBSTITUTE HIS JUDGMENT FOR THAT OF THE COUNCILS REGARDING HOW TO MANAGE A FISHERY. THE SECRETARY CAN DISAPPROVE A PLAN ONLY IF IT IS FOUND TO BE IN CLEAR VIOLATION OF THE NATIONAL STANDARDS OR A CLEAR VIOLATION OF LAW.

THE CONSULTATION PROCESS SHOULD BE COMPLETED, TO THE MAXIMUM EXTENT PRACTICABLE, PRIOR TO THE SUBMISSION OF THE PLAN FOR FINAL REVIEW. WHATEVER DIFFICULTIES ARE ASSOCIATED WITH THE DEVELOPMENT OF THE PLAN SHOULD BE RESOLVED DURING THE INFORMAL CONSULTATION PROCESS. THIS IS NOT POSSIBLE, HOWEVER, IF NMFS FAILS TO PROVIDE THE COUNCILS WITH COMMENTS ON THE PROPOSED PLAN IN A TIMELY MANNER. THE COMMITTEE IS DISTURBED BY EVIDENCE THAT NMFS'S INFORMAL COMMENTS ARE FREQUENTLY RECEIVED AFTER THE COUNCIL HAS CONDUCTED PUBLIC HEARINGS ON THE PLAN. THE PURPOSE OF THE PUBLIC HEARINGS IS TO RECEIVE PUBLIC INPUT AND TO EXAMINE ALL ISSUES WHICH MAY NECESSITATE CHANGES TO THE PROPOSED PLAN. THIS CANNOT BE DONE PROPERLY IF NMFS'S COMMENTS ARE NOT RECEIVED UNTIL AFTER THE HEARINGS.

THE COMMITTEE EXPECTS NMFS TO SUBMIT ITS INFORMAL COMMENTS SUFFICIENTLY IN ADVANCE OF THE PUBLIC HEARINGS ON THE PROPOSED PLAN SO THAT THE COUNCIL CAN CONSIDER THESE COMMENTS DURING THE PUBLIC HEARINGS. THE COMMITTEE ALSO EXPECTS NMFS TO CONFINE ITS COMMENTS DURING THE REVIEW PERIOD TO ISSUES RELATING TO COMPLIANCE WITH THE NATIONAL STANDARDS AND OTHER APPLICABLE LAW. THE REVIEW PERIOD SHOULD NOT BE ONE IN WHICH NMFS RAISES QUESTIONS OTHER THAN THOSE DIRECTLY RELATED TO WHETHER OR NOT THE PLAN COMPLIES WITH THE NATIONAL STANDARDS OR OTHER APPLICABLE LAW.

ANOTHER ELEMENT CONTAINED IN SECTION 8 OF THE BILL AUTHORIZES THE SECRETARY OF COMMERCE TO PREPARE AN FMP IF THE CONCERNED COUNCIL, BY NOT LESS THAN TWO-THIRDS OF THE VOTING MEMBERS, DETERMINES **4342 *29 THAT AN EMERGENCY INVOLVING A FISHERY EXISTS AND REQUESTS SUCH ACTION BY THE SECRETARY.

WITH RESPECT TO ALL PLANS OR AMENDMENTS PREPARED BY THE SECRETARY, HE IS REQUIRED TO DEVELOP PROPOSED IMPLEMENTING REGULATIONS. THUS, THE SECRETARY WILL TRANSMIT TO THE APPROPRIATE COUNCIL FOR REVIEW AND COMMENT ANY PROPOSED PLAN, AMENDMENT AND THE REGULATIONS TO IMPLEMENT SUCH.

FINALLY, SECTION 8 OF THE BILL CONTAINS A REVISION TO EXISTING SECTION 304(D) WHICH

WOULD ALLOW THE SECRETARY OF COMMERCE TO ENTER INTO COOPERATIVE AGREEMENTS WITH STATES FOR THE ADMINISTRATION OF A PERMIT SYSTEM ADOPTED BY THE COUNCILS PURSUANT TO SECTION 303(B)(1). UNDER SUCH AN ARRANGEMENT, THE AGREEMENT WOULD PROVIDE THAT ALL OR PART OF THE FEES ACCRUE TO THE AFFECTED STATES.

SECTION 9

SECTION 9 OF THE BILL AMENDS SECTION 305 OF THE ACT WHICH SETS OUT SECRETARIAL ACTIONS NECESSARY TO IMPLEMENT FMPS. THE FIRST CHANGE TO EXISTING LAW WOULD REQUIRE THE SECRETARY TO PUBLISH IN THE FEDERAL REGISTER, WITHIN 30 DAYS OF HIS APPROVAL OF AN FMP OR AN AMENDMENT TO SUCH PLAN THE PROPOSED REGULATIONS PREPARED BY EITHER THE COUNCIL OR THE SECRETARY, ANY SUGGESTED SUBSTANTIVE REVISIONS TO COUNCIL PROPOSED REGULATIONS, AND AN EXPLANATION OF WHY THE SECRETARY BELIEVES SUCH REVISIONS ARE NECESSARY. SECTION 9 WOULD CONTINUE TO ALLOW INTERESTED PERSONS A PERIOD OF 45 DAYS AFTER SUCH FEDERAL REGISTER PUBLICATION TO SUBMIT COMMENTS ON THE PLAN OR AMENDMENT TO SUCH PLAN AND THE REGULATIONS PUBLISHED BY THE SECRETARY.

IF THE SECRETARY DOES NOT PROMULGATE REGULATIONS TO IMPLEMENT AN FMP OR AN AMENDMENT TO AN FMP WITHIN 30 DAYS FOLLOWING THE CLOSE OF THE 45-DAY COMMENT PERIOD, THE REGULATIONS PROPOSED BY THE COUNCIL WITH RESPECT TO SUCH PLAN SHALL BE CONSIDERED TO HAVE BEEN PROMULGATED BY THE SECRETARY AND SHALL BE CONSIDERED EFFECTIVE ON THE DAY FOLLOWING SUCH 45-DAY PERIOD.

THIS SECTION OF THE BILL ALSO AMENDS SECTION 305(B) RELATING TO EMERGENCY ACTIONS OF THE SECRETARY. THE COMMITTEE NOTES THAT A GREAT DEAL OF CONTROVERSY HAS BEEN GENERATED OVER THE BASIS OF THE COMMERCE DEPARTMENT'S AUTHORITY TO IMPLEMENT EMERGENCY REGULATIONS. THE COMMITTEE NOTES THAT THE COMMERCE DEPARTMENT HAS CORRECTLY EXERCISED EMERGENCY AUTHORITY UNDER SECTION 305(E) FOR A VARIETY OF RESOURCE, ECONOMIC AND SOCIAL EMERGENCIES AFFECTING VARIOUS FISHERIES. FOR EXAMPLE, A DECISION IN 1977 TO PERMIT ADDITIONAL CATCHES OF COD, HADDOCK AND YELLOWTAIL FLOUNDER IN THE NEW ENGLAND GROUND FISH FISHERY UNDER EMERGENCY REGULATIONS WAS PREDICATED IN PART ON THE DETERMINATION THAT THE CLOSURE OF THE FISHERY 'COULD BRING ECONOMIC HARDSHIP TO THOSE FISHERMEN WHO DEPEND ON IT FOR THEIR LIVELIHOOD.'

MORE RECENTLY, THE POSITION HAS BEEN ADVANCED THAT THE SECRETARY'S AUTHORITY TO ISSUE EMERGENCY REGULATIONS IS LIMITED TO AN INSTANCE IN WHICH AN EMERGENCY INVOLVING THE STATUS OF THE FISHERY RESOURCE EXISTS. THE COMMITTEE DOES NOT AGREE WITH THIS INTERPRETATION AND NOTES WITH APPROVAL A RECENT ACTION BY THE SECRETARY TO PROMULGATE EMERGENCY REGULATIONS TO IMPLEMENT THE INTERIM FISHERY MANAGEMENT PLAN FOR ATLANTIC GROUND FISH.

***30 **4343** IN ORDER TO RESTATE THE INTENT OF THE COMMITTEE, THE WORD 'RESOURCE' HAS BEEN DELETED IN SECTION 305(E) TO ELIMINATE ANY AMBIGUITIES AS TO THE MEANING OF THIS SECTION.

YET ANOTHER CHANGE TO THIS SECTION OF THE EXISTING ACT, INCORPORATED IN SECTION 9, WOULD ALLOW THE SECRETARY TO PROMULGATE EMERGENCY REGULATIONS TO CONSERVE A PARTICULAR FISHERY UNTIL A PLAN CAN BE PREPARED AND IMPLEMENTED. THE SECRETARY

MAY TAKE THIS ACTION ONLY IF THE VOTING MEMBERS OF THE CONCERNED COUNCIL HAVE VOTED UNANIMOUSLY THAT AN EMERGENCY REGARDING THE FISHERY EXISTS AND THAT IMMEDIATE ACTION BY THE SECRETARY IS NECESSARY TO ALLEVIATE THE SITUATION. THE EFFECTIVENESS OF SUCH EMERGENCY REGULATIONS MAY BE EXTENDED FOR ONE 90-DAY PERIOD BEYOND THE SECOND 45-DAY PERIOD CURRENTLY PROVIDED FOR BY THE EXISTING STATUTE. SUCH ADDITIONAL 90-DAY EXTENTION SHALL ONLY BE GRANTED FOR THE PURPOSE OF ALLOWING THE PREPARATION OF AN FMP FOR THE CONCERNED FISHERY.

ANOTHER AMENDMENT INCORPORATED IN THIS SECTION OF THE BILL DELETES THE CURRENT REQUIREMENT FOR THE SECRETARY TO ANNUALLY REPORT TO THE CONGRESS AND THE PRESIDENT ON ALL ACTIVITIES OF THE COUNCILS AND THE SECRETARY WITH RESPECT TO FMPS, REGULATIONS TO IMPLEMENT SUCH PLANS, AND ALL OTHER ACTIVITIES RELATING TO THE CONSERVATION AND MANAGEMENT OF FISHERY RESOURCES UNDERTAKEN PURSUANT TO THE ACT.

AS NOTED IN THE BACKGROUND AND NEED SECTION OF THIS REPORT, ONE OF THE PRINCIPAL CONCERNS RAISED AT THE HEARINGS CONDUCTED BY THE SUBCOMMITTEE RELATED TO THE TIMELINESS OF ACTIONS TAKEN BY THE COUNCILS AND THE SECRETARY IN THE IMPLEMENTATION OF CONSERVATION AND MANAGEMENT MEASURES. SECTION 9 OF THE BILL WOULD ADD A NEW SECTION 305(H) TO THE MFCMA, INDICATING THAT NEITHER THE PAPERWORK REDUCTION ACT OF 1980, THE REGULATORY FLEXIBILITY ACT, OR [EXECUTIVE ORDER NUMBER 12291](#) SHALL AFFECT, IN ANY MANNER, THE TIME LIMITATIONS OR PROCEDURAL REQUIREMENTS SPECIFIED IN THE ACT, AS AMENDED BY THIS BILL, AS TO THE FUNCTIONS OF THE SECRETARY OR THE TAKING EFFECT OF CERTAIN PLANS AND REGULATIONS PROPOSED BY THE REGIONAL COUNCILS. THE COMMITTEE WISHES TO EMPHASIZE THAT THIS PROVISION IS NOT TO BE INTERPRETED AS EXEMPTING ACTIONS BY THE COUNCILS AND THE SECRETARY UNDER THIS ACT FROM THE REQUIREMENTS OF THE ABOVE NOTED LEGISLATIVE AND EXECUTIVE MANDATES. AT THE SAME TIME, HOWEVER, THE COMMITTEE WOULD NOTE THAT THE PROCEDURAL REQUIREMENTS SET FORTH IN THESE MANDATES ARE NOT ALWAYS COMPATIBLE WITH THE CONSERVATION AND MANAGEMENT NEEDS OF A LIVING MARINE RESOURCE. THEREFORE, THE COMMITTEE HAS ATTEMPTED TO STRIKE A BALANCE BETWEEN SUCH NEEDS AND THE LEGITIMATE CONCERNS ADDRESSED BY THESE MANDATES BY REQUIRING THE PROCEDURAL ASPECTS OF THESE MANDATES TO BE CONDUCTED CONCURRENTLY WITH ACTIONS TAKEN PURSUANT TO THIS ACT.

SECTION 10

SECTION 10 OF THE BILL INCORPORATES TWO CHANGES TO THE EXISTING SECTION 306 OF THE ACT. THE FIRST SUCH CHANGE WOULD ADDRESS THOSE LIMITED SITUATIONS WHERE FEDERAL WATERS ARE ENCLOSED BY STATE WATERS. THIS SITUATION MOST OFTEN OCCURS IN AREAS OF THE COASTLINE WHERE A PENINSULA OR OFFSHORE ISLANDS, THE TERRITORY OF A PARTICULAR STATE, ARE MORE THAN SIX MILES FROM THE MAINLAND. THE AMENDMENT WOULD GRANT JURISDICTION AND AUTHORITY TO THE STATES OVER SUCH FEDERAL**4344 *31 WATERS, BUT SOLELY FOR THE PURPOSES OF CONSERVING AND MANAGING FISHERY RESOURCES AS SET FORTH IN THE ACT.

THE SECOND AMENDMENT DEALS WITH THE ISSUE RAISED BY THE PRESENCE OF FOREIGN

PROCESSING VESSELS IN STATE INTERNAL WATERS. GENERALLY, THIS SECTION OF THE BILL WOULD PERMIT A FOREIGN FISHING VESSEL TO ENGAGE IN FISH PROCESSING ACTIVITIES WITHIN THE INTERNAL WATERS OF THE STATE IF: (1) THE FOREIGN NATION, UNDER WHICH SUCH VESSEL IS FLAGGED, WILL BE A PARTY TO A GIFA OR TREATY WITHIN THE MEANING OF SUBSECTION 201(B) OF THIS ACT DURING THE TIME THE VESSEL WILL ENGAGE IN SUCH FISH PROCESSING ACTIVITIES, AND (2) THE OWNER OR OPERATOR OF THE VESSEL APPLIES TO THE GOVERNOR OF THE CONCERNED STATE FOR, AND IS GRANTED, PERMISSION FOR THE VESSEL TO ENGAGE IN SUCH PROCESSING. THE GOVERNOR OF THE STATE MAY NOT GRANT SUCH PERMISSION IF HE DETERMINES THAT PROCESSORS WITHIN THAT STATE HAVE ADEQUATE CAPACITY AND WILL UTILIZE SUCH CAPACITY TO PROCESS ALL OF THE UNITED STATES HARVESTED FISH FROM THE FISHERY CONCERNED THAT ARE LANDED IN THAT STATE. FOREIGN FISHING VESSELS WHICH HAVE BEEN GRANTED PERMISSION TO CONDUCT FISH PROCESSING ACTIVITIES WITHIN THE INTERNAL WATERS OF A STATE ARE REQUIRED TO COMPLY WITH ALL APPLICABLE FEDERAL AND STATE LAWS WHILE OPERATING WITHIN THE INTERNAL WATERS OF THAT STATE. FOR THE PURPOSES OF THIS PROVISION, THE TERM 'FISH PROCESSING' HAS BEEN DEFINED TO INCLUDE, THE PERFORMANCE OF ANY ACTIVITY RELATED TO FISHING INCLUDING, BUT NOT LIMITED TO, PREPARATION, SUPPLY, STORAGE, REFRIGERATION OR TRANSPORTATION. FINALLY, THE PHRASE 'INTERNAL WATERS OF A STATE' HAS BEEN DEFINED TO INCLUDE ALL WATERS WITHIN THE BOUNDARIES OF A STATE EXCEPT THOSE SEAWARD OF THE BASE-LINE FROM WHICH THE TERRITORIAL SEA IS MEASURED.

THE COMMITTEE IS AWARE THAT MANY DIFFERENT INTERPRETATIONS CAN BE PLACED ON THE TEST OF CAPACITY AND UTILIZATION OF SUCH CAPACITY. THE COMMITTEE'S INTENT IN ERECTING THIS STANDARD WAS TO PARALLEL THE EXISTING STANDARD FOR JOINT VENTURES IN THE U.S. FCZ. THIS JOINT VENTURE TEST WAS ENACTED BY THE CONGRESS IN 1978 AMENDMENTS TO THE MFCMA. AT THAT TIME, EXTENSIVE DISCUSSION WAS CONTAINED IN BOTH HOUSE AND SENATE REPORTS CONCERNING THE INTENT OF THE CAPACITY AND UTILIZATION TEST. IN ADDITION TO PARALLELING THE STATUTORY TEST FOR THE CONDUCT OF FCZ JOINT VENTURES OPERATIONS, THE COMMITTEE STANDS BY THE GUIDANCE CONTAINED IN HOUSE REPORT 95-1334. THE COMMITTEE NOTES THAT A NUMBER OF JOINT VENTURE ARRANGEMENTS HAVE BEEN PROPOSED SINCE THE 1978 AMENDMENTS TO THE MFCMA BECAME LAW AND EXPECTS THAT THE CONCERNED GOVERNOR WILL BE GUIDED BY THE DISCUSSIONS AND INTERPRETATIONS THAT HAVE ACCOMPANIED THE IMPLEMENTATION OF THAT STATUTE.

SECTION 11

SECTION 11 OF THE BILL AMENDS SECTION 308 OF THE ACT WHICH SETS FORTH THE CIVIL PENALTIES AND REMEDIES AVAILABLE TO THE SECRETARY. THIS SECTION OF THE BILL WOULD GRANT TO THE SECRETARY DISCRETIONARY POWER TO ISSUE SUBPOENAS FOR THE PURPOSE OF CONDUCTING ANY HEARINGS REQUIRED BY THE ACT. THE PROVISION STIPULATES THAT WITNESSES SUMMONED BY SUCH SUBPOENAS SHALL BE PAID THE SAME FEES AND MILEAGE RATES THAT ARE PAID TO WITNESSES SUBPOENAED TO APPEAR IN THE COURTS OF THE UNITED STATES IN OTHER CIVIL MATTERS. WHERE A PARTY REFUSES TO OBEY A SUBPOENA SERVED UPON HIM PURSUANT TO THIS SECTION, ****4345 *32** U.S. DISTRICT COURTS FOR ANY DISTRICT IN WHICH SUCH

PERSON MIGHT BE FOUND, RESIDE, OR TRANSACT BUSINESS SHALL HAVE JURISDICTION, UPON APPLICATION BY THE UNITED STATES AND AFTER NOTICE TO SUCH PERSON, TO ISSUE AN ORDER REQUIRING THAT PERSON TO APPEAR AND GIVE TESTIMONY OR TO APPEAR AND PRODUCE DOCUMENTS, OR BOTH, AS REQUIRED BY THE SECRETARY. FAILURE TO OBEY SUCH ORDER MAY BE PUNISHED BY THE COURT ISSUING EACH ORDER AS CONTEMPT.

SECTION 12

SECTION 12 OF THE BILL DELETES CURRENT AUTHORITY FOR THE IMPRISONMENT FOR NOT MORE THAN ONE YEAR OF AN OWNER OR OPERATOR OF A VESSEL, OTHER THAN A VESSEL OF THE UNITED STATES, WHO HAS ENGAGED IN FISHING WITHIN THE BOUNDARIES OF A STATE OR WITHIN THE FCZ WITHOUT HAVING FIRST OBTAINED A VALID PERMIT. THIS PROVISION WOULD ONLY APPLY WITH RESPECT TO OFFENSES COMMITTED ON OR AFTER THE DATE OF ENACTMENT OF THIS LEGISLATION.

SECTION 13

SECTION 13 OF THE BILL AMENDS SECTION 310(A) BY ALLOWING THE SECRETARY TO SEIZE THE FAIR MARKET VALUE OF FISH FOUND ON BOARD A FISHING VESSEL WHICH HAS BEEN FOUND TO HAVE VIOLATED THE PROVISIONS OF SECTION 307 OF THE ACT. THIS CHANGE HAS BEEN MADE DUE TO THE FACT THAT THE CURRENT PROVISION ALLOWING ONLY THE SEIZURE OF THE FISH ITSELF IS OFTEN IMPOSSIBLE TO ACCOMPLISH IN TIMELY FASHION; THUS THE FISH HAVE NO REAL VALUE.

SECTION 14

SECTION 14 CONTAINS AMENDMENTS TO SECTION 406 OF THE ACT WHICH REAUTHORIZE ACTIVITIES CONDUCTED PURSUANT TO THE ACT FOR THREE FISCAL YEARS. THE LEVEL OF AUTHORIZED APPROPRIATIONS IS ESTABLISHED AT \$55,000,000 FOR FISCAL YEAR 1983, \$60,000,000 FOR FISCAL YEAR 1984, AND \$65,000,000 FOR FISCAL YEAR 1985. THE AUTHORIZATION LEVELS PROVIDED BY THE BILL CLOSELY MATCH THE CURRENT AND ANTICIPATED EXPENDITURES UNDER THE MFCMA. IN PREVIOUS YEARS, NMFS HAS FUNDED MFCMA ACTIVITIES FROM OTHER AUTHORITIES. THE AUTHORIZATION LEVELS APPROVED BY THE COMMITTEE REPRESENT THE TOTAL OF ALL DIRECT MFCMA EXPENDITURES. THE COMMITTEE NOTES WITH APPROVAL THAT NMFS HAS BEEN USING MFCMA AUTHORITY TO PROVIDE FUNDING TO ASSIST THE STATES AND THE SEVERAL INTERSTATE MARINE FISHERIES COMMISSIONS WHICH PARTICIPATE IN REGIONAL COUNCIL ACTIVITIES. THE COMMITTEE BELIEVES THAT THE PROVISION OF SUCH FUNDING IS AN APPROPRIATE USE OF FUNDS BECAUSE OF THE IMPORTANT CONTRIBUTIONS TO COUNCIL OPERATIONS MADE BY THE STATES AND THE COMMISSION.

SECTION 15

SECTION 15 CONTAINS A NUMBER OF TECHNICAL AND CONFORMING AMENDMENTS. THE FIRST SUCH AMENDMENT DELETES THE WORDS 'AT SEA' FROM THE DEFINITION OF THE TERMS 'FISHING' AND 'FISHING VESSEL' CONTAINED IN SECTIONS 3(10) AND 3(11) OF THE ACT. THIS PROVISION IS INTENDED TO CONFORM WITH THE NEW REGIME FOR FOREIGN FISH PROCESSING ACTIVITIES IN STATE INTERNAL WATERS DISCUSSED IN SECTION 10.

***33 **4346** THE SECOND AMENDMENT CONTAINED IN THIS SECTION AMENDS EXISTING SECTION 306(A). PURSUANT TO THE AMENDMENT, NO STATE MAY REGULATE, DIRECTLY OR INDIRECTLY, ANY FISHING WHICH IS ENGAGED IN BY ANY FISHING VESSEL OUTSIDE ITS BOUNDARIES UNLESS SUCH VESSEL IS REGISTERED UNDER THE LAWS OF SUCH STATE OR NUMBERED UNDER THE FEDERAL BOATING SAFETY ACT OF 1971.

THE THIRD AMENDMENT WOULD ALTER THE EXISTING SECTION 307 WHICH SETS FORTH PROHIBITED ACTS. THIS PROVISION PROVIDES EXCEPTIONS TO THE GENERAL RULE THAT IT IS UNLAWFUL FOR ANY VESSEL OTHER THAN A VESSEL OF THE UNITED STATES TO ENGAGE IN FISHING WITHIN THE BOUNDARIES OF ANY STATE. THE TWO EXCEPTIONS TO THIS GENERAL RULE PERTAIN TO RECREATIONAL FISHING AS DISCUSSED IN SECTION 3 OF THE BILL AND FISH PROCESSING ACTIVITIES DISCUSSED UNDER SECTION 10.

FINALLY, THIS SECTION CONTAINS AN AMENDMENT, SIMILAR TO THE AMENDMENT MADE IN SECTION 3 PERTAINING TO THE METHOD OF PAYING FOR U.S. OBSERVERS ABOARD FOREIGN FISHING VESSELS. UNDER THIS PROVISION, U.S. OBSERVERS REQUIRED ABROAD FOREIGN VESSELS PURSUANT TO THE ATLANTIC TUNAS CONVENTION ACT OF 1975, AS AMENDED, ARE TO BE FUNDED IN THE SAME MANNER AS THE 100 PERCENT OBSERVER PROGRAM MANDATED BY THE AMERICAN FISHERIES PROMOTION ACT (AFPA). THAT IS, THE SECRETARY OF COMMERCE IS EMPOWERED TO ASSESS A CHARGE AGAINST THOSE VESSELS REQUIRING U.S. OBSERVERS IN AN AMOUNT SUFFICIENT TO COVER ALL THE COSTS OF PROVIDING A U.S. OBSERVER ABOARD THAT VESSEL. THE SECRETARY IS REQUIRED TO USE SUCH FEES TO PAY THE COSTS OF THE U.S. OBSERVER.

SECTION 16

SECTION 16 EXTENDS THE AUTHORITY FOR APPROPRIATIONS TO CARRY OUT THE PURPOSES AND INTENT OF THE CENTRAL, WESTERN AND SOUTH PACIFIC FISHERIES DEVELOPMENT ACT OF 1972 (P.L. 92-444). THE ACT AUTHORIZES THE SECRETARY OF COMMERCE TO CARRY OUT, DIRECTLY OR BY CONTRACT, A PROGRAM FOR THE DEVELOPMENT OF THE TUNA AND OTHER LATENT FISHERY RESOURCES OF THIS REGION. SECTION 16 OF THE BILL EXTENDS THE AUTHORIZATION OF APPROPRIATIONS IN SECTION 8 OF THAT ACT AT A LEVEL OF \$5 MILLION FOR EACH OF FISCAL YEARS 1983, 1984 AND 1985.

COST OF THE LEGISLATION

IN THE EVENT THAT THE LEGISLATION IS ENACTED INTO LAW, AND THE AUTHORIZED FUNDING IS FULLY APPROPRIATED, THE MAXIMUM COST TO THE FEDERAL GOVERNMENT FOR FISCAL YEARS 1983, 1984 AND 1985 WOULD BE \$60 MILLION, \$65 MILLION AND \$70 MILLION RESPECTIVELY.

THE COMMITTEE HAS REVIEWED THE COST AND OUTLAY ESTIMATES OF THE CONGRESSIONAL BUDGET OFFICE AND BELIEVES THAT THEY ARE REASONABLE.

INFLATIONARY IMPACT STATEMENT

PURSUANT TO CLAUSE 2(1) OF RULE XI OF THE RULES OF THE HOUSE OF REPRESENTATIVES, THE COMMITTEE ESTIMATES THAT THE ENACTMENT OF H.R. 5002 WOULD HAVE NO INFLATIONARY IMPACT ON THE PRICES AND COSTS IN THE NATIONAL ECONOMY.

*34 **4347 COMPLIANCE WITH CLAUSE 2(1)(3) OF RULE XI

WITH RESPECT TO THE REQUIREMENTS OF CLAUSE 2(1)(3) OF THE RULE XI OF THE RULES OF THE HOUSE OF REPRESENTATIVES:

(A) THE SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT HELD 3 DAYS OF OVERSIGHT HEARINGS ON THE MAGNUSON FISHERY CONSERVATION ACT DURING THE 97TH CONGRESS ON JUNE, SEPTEMBER 24 AND 25, AND OCTOBER 14, 1981. IN ADDITION, THE SUBCOMMITTEE HELD A DAY OF HEARINGS ON H.R. 5002 ON MARCH 2, 1982.

(B) THE REQUIREMENTS OF SECTION 308(A) OF THE CONGRESSIONAL BUDGET ACT OF 1974 ARE NOT APPLICABLE TO THIS LEGISLATION.

(C) THE COMMITTEE ON GOVERNMENT OPERATIONS HAS SENT NO REPORT TO THE COMMITTEE ON MERCHANT MARINE AND FISHERIES PURSUANT TO CLAUSE 2(B)(2) OF RULE X.

(D) A LETTER WAS RECEIVED FROM THE DIRECTOR OF THE CONGRESSIONAL BUDGET OFFICE, PURSUANT TO SECTION 403 OF THE CONGRESSIONAL BUDGET ACT OF 1974 IN REFERENCE TO H.R. 5002 AND FOLLOWS HERewith:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
WASHINGTON, D.C., MAY 13, 1982.
HON. WALTER B. JONES.

CHAIRMAN, COMMITTEE ON MERCHANT MARINE AND FISHERIES, HOUSE OF REPRESENTATIVES, LONGWORTH HOUSE OFFICE BUILDING, WASHINGTON, D.C.

DEAR MR. CHAIRMAN: PURSUANT TO SECTION 403 OF THE CONGRESSIONAL BUDGET ACT OF 1974, THE CONGRESSIONAL BUDGET OFFICE HAS PREPARED THE ATTACHED COST ESTIMATE FOR H.R. 5002, A BILL TO IMPROVE FISHERY CONSERVATION AND MANAGEMENT, AND FOR OTHER PURPOSES.

SHOULD THE COMMITTEE SO DESIRE, WE WOULD BE PLEASED TO PROVIDE FURTHER DETAILS IN THIS ESTIMATE.

SINCERELY,
ALICE M. RIVLIN, DIRECTOR.

CONGRESSIONAL BUDGET OFFICE-- COST ESTIMATE

1. BILL NUMBER: H.R. 5002.

2. BILL TITLE: A BILL TO IMPROVE FISHERY CONSERVATION AND MANAGEMENT, AND FOR OTHER PURPOSES.

3. BILL STATUS: AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES, APRIL 28, 1982.

4. BILL PURPOSE:

THIS BILL MAKES NUMEROUS AMENDMENTS TO THE FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976, AND AUTHORIZES APPROPRIATIONS FOR FISCAL YEARS 1983 THROUGH 1985 TO OPERATE FISHERIES PROGRAMS UNDER THIS ACT.

AMONG THE AMENDMENTS TO THE ACT IS THE CREATION OF A VESSEL BUY-BACK REVOLVING FUND IN THE U.S. TREASURY TO BE FINANCED BY FEES ASSESSED ON FISHING VESSELS, IF THE SECRETARY OF COMMERCE CHOOSES TO ASSESS SUCH FEES. THE FUND COULD BE USED BY THE SECRETARY OF COMMERCE TO ADMINISTER VESSEL BUY-BACK PROGRAMS. SUCH PROGRAMS WOULD BE AIMED AT LIMITING THE FISHING EFFORT FOR SPECIES ON WHICH **4348 *35 THERE IS A FISHING QUOTA, BY BUYING AN APPROPRIATE NUMBER OF FISHING PERMITS OR VESSELS BACK FROM THE VESSEL OPERATORS.

IN ADDITION, THE BILL WOULD GRANT THE SECRETARY OF COMMERCE DIRECT SPENDING AUTHORITY FROM THE FOREIGN FISHING OBSERVER FUND, WHICH IS PRESENTLY SUBJECT TO APPROPRIATION ACTION. THE SECRETARY WOULD USE FEES COLLECTED FROM OWNERS OF FOREIGN FISHING VESSELS TO COVER THE COSTS OF PROVIDING OBSERVERS ABOARD SUCH VESSELS, AS WELL AS NECESSARY SUPPORT AND ANALYSIS COSTS.

5. COST ESTIMATE:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

THE COSTS OF THIS BILL FALL WITHIN BUDGET FUNCTION 300.

6. BASE OF ESTIMATE:

AUTHORIZATION LEVELS ARE THOSE STATED IN THE BILL. FOR PURPOSES OF THIS ESTIMATE, IT WAS ASSUMED THAT ALL SUMS AUTHORIZED WILL BE APPROPRIATED PRIOR TO THE START OF EACH FISCAL YEAR. ESTIMATED OUTLAYS WERE BASED ON HISTORICAL SPENDING PATTERNS FOR THESE AND SIMILAR FISHERIES PROGRAMS.

BASED ON INFORMATION FROM THE NATIONAL MARINE FISHERIES SERVICE, IT APPEARS THAT IMPOSITION OF A FEE SCHEDULE RELATED TO VESSEL BUY-BACK PROGRAMS IS UNLIKELY TO OCCUR PRIOR TO 1984, AT THE EARLIEST. PLANS AND REGULATIONS MUST BE SUBMITTED AND APPROVED PRIOR TO INITIATION OF SUCH A PROGRAM, AND THESE PRELIMINARY PROCEDURES ARE LIKELY TO TAKE AT LEAST A YEAR. ONCE AN APPROVED PLAN IS IN PLACE, A VESSEL BUY-BACK PROGRAM WOULD BE IMPLEMENTED BY THE SECRETARY OF COMMERCE. THE SECRETARY COULD CHOOSE TO IMPOSE A FEE ON VESSELS AT THE BEGINNING OF A YEAR FOR THAT YEAR'S ANTICIPATED EXPENDITURES OR TO ASSESS SMALLER FEES THROUGHOUT THE YEAR. IT IS ANTICIPATED THAT ANY FEES COLLECTED INTO THE FUND WOULD BE IN THE AMOUNT OF ANTICIPATED EXPENDITURES FROM THE FUND, AND THAT THE NET BUDGET IMPACT OF THIS FUND WOULD BE NEGLIGIBLE.

CONVERTING THE FOREIGN FISHING OBSERVER FUND TO A REVOLVING FUND RESULTS IN NO NET BUDGET IMPACT, ALTHOUGH IT REMOVES FUND SPENDING FROM THE APPROPRIATE PROCESS. AN ESTIMATED \$14 MILLION WOULD BE RECEIVED AND SPENT IN 1983, WITH RESPECTS AND COSTS INCREASING ABOUT \$1 MILLION PER YEAR THEREAFTER.

7. ESTIMATE COMPARISON: NONE.
8. PREVIOUS CBO ESTIMATE: NONE.
9. ESTIMATE PREPARED BY: ANNE E. HOFFMAN.
10. ESTIMATE APPROVED BY: C. G. NUCKOLS (FOR JAMES L. BLUM, ASSISTANT DIRECTOR FOR BUDGET ANALYSIS).

DEPARTMENTAL REPORT

H.R. 5002 WAS THE SUBJECT OF REPORTS FROM THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF COMMERCE AND FOLLOWS HERewith:

***36 **4349** U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
OFFICE OF THE ASSISTANT ATTORNEY GENERAL,
WASHINGTON, D.C., MARCH 3, 1982.
HON. WALTER B. JONES,
CHAIRMAN, COMMITTEE ON MERCHANT MARINE AND FISHERIES, HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

DEAR MR. CHAIRMAN: WE HAVE REVIEWED H.R. 5002, A BILL TO IMPROVE FISHERY CONSERVATION AND MANAGEMENT. IN MOST RESPECTS, THE BILL INVOLVES POLICY CONSIDERATIONS AS TO WHICH THE DEPARTMENT OF JUSTICE DEFERS TO THE DEPARTMENT OF COMMERCE. THE BILL WOULD AMEND THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT (MFCMA OR ACT), 16 U.S.C. 1801 ET SEQ. SEVERAL PROVISIONS OF THE BILL DO CONCERN MATTERS OF LITIGATION AND ENFORCEMENT, AND WE SUPPORT EACH SUCH PROVISION.

SECTION 11 OF THE BILL WOULD AMEND SECTION 309 OF THE ACT TO REMOVE IMPRISONMENT AS A PUNISHMENT FOR CONSERVATION RELATED OFFENSES BY FOREIGN FISHERMEN. THE BILL RETAINS THE CRIMINAL FINE PROVISION FOR THESE OFFENSES, AND DOES NOT REMOVE IMPRISONMENT AS A POSSIBLE PENALTY FOR ENFORCEMENT RELATED OFFENSES BY FOREIGN OR DOMESTIC FISHERMEN. WHILE THE AMENDMENT WILL NO DOUBT REDUCE THE LEVEL OF DETERRENCE, THE DEPARTMENT SUPPORTS IT BECAUSE IT WILL BRING DOMESTIC LEGISLATION INTO CONFORMANCE WITH PREVAILING INTERNATIONAL PRACTICE AND ENABLE THE UNITED STATES TO CONTINUE TO URGE OTHER NATIONS NOT TO INCARCERATE AMERICAN FISHERMEN.

SECTION 12 OF THE BILL WOULD ADD TO SECTION 310(A) OF THE ACT THE PHRASE 'OR THE VALUE THEREOF,' THEREBY AUTHORIZING THE SEIZURE BY THE UNITED STATES OF THE MONETARY EQUIVALENT OF FISH TAKEN OR RETAINED IN VIOLATION OF THE ACT. THIS WOULD ELIMINATE THE NECESSITY, IN THE CONTEXT OF CIVIL FORFEITURE LITIGATION, TO REDUCE THE FISH TO POSSESSION. IN SOME CASES HERETOFORE, THIS PRACTICE HAS OPERATED TO THE PREJUDICE OF THE GOVERNMENT, BECAUSE DELAYS ATTRIBUTABLE TO THE LACK OF APPROPRIATE STORAGE FACILITIES HAVE RESULTED IN SPOILAGE OF PERISHABLE FISH, THEREBY DIMINISHING OUR RECOVERY. THE AMENDMENT SHOULD SOLVE THIS PROBLEM BY ALLOWING SEIZURE OF THE PROCEEDS OF THE SALE BY THE ALLEGED WRONGDOER.

SECTION 3(2) OF THE BILL WOULD AMEND SECTION 201(1)(3) OF THE ACT BY SPECIFYING THAT ENFORCEMENT AS WELL AS SCIENTIFIC PURPOSES ARE AMONG THE PERMISSIBLE FUNCTIONS OF OBSERVERS PLACED ABOARD FOREIGN FISHING VESSELS. LIKE THE DEPARTMENT OF COM-

MERCE, WE FAVOR THIS PROVISION, WHICH WE VIEW AS CLARIFICATION OF CONGRESSIONAL INTENT WITH RESPECT TO THE APPROPRIATENESS AND IMPORTANCE OF OBSERVERS' ROLE IN MEASURING COMPLIANCE WITH THE LAW. OBSERVERS DATA HAS LONG BEEN USED FOR THIS PURPOSE UNDER THE MFCMA, AS WELL AS UNDER OTHER MARINE RESOURCES LAWS. IN MANY INSTANCES, OBSERVER DATA IS THE ONLY SOURCE OF EVIDENCE OF A VESSEL'S VIOLATION OF THE LAW.

SECTION 10 OF THE BILL WOULD AMEND SECTION 306(A) OF THE ACT IN ORDER TO GIVE STATES JURISDICTION, FOR PURPOSES OF THIS ACT ONLY, OVER CERTAIN POCKETS OF WATER WHICH APPEAR ON THE OFFICIAL LARGE-SCALE CHARTS DRAWN BY THE UNITED STATES IN APPLICATION OF THE GENEVA CONVENTION ON THE TERRITORIAL SEA AND CONTIGUOUS ZONE. THERE ARE SEVERAL PENDING CASES, IN WHICH THE ORIGINAL JURISDICTION OF THE SUPREME COURT HAS BEEN INVOKED, CONCERNING THE RESPECTIVE RIGHTS OF ~~4350~~ ~~37~~ THE UNITED STATES AND CERTAIN COASTAL STATES TO SUCH AREAS UNDER THE SUBMERGED LANDS ACT, 43 U.S.C. 1301 ET SEQ. UNDER THAT ACT AS INTERPRETED BY THE COURT, THE STATES HAVE RIGHTS ONLY TO LANDS UNDERLYING INLAND WATERS (AS DETERMINED BY REFERENCE TO THE GENEVA CONVENTION) AND A BELT OF TERRITORIAL SEA. THE UNITED STATES HAS RIGHTS TO ALL AREAS UNDER HIGH SEAS. SEE [UNITED STATES V. CALIFORNIA, 381 U.S. 139 \(1965\)](#); [UNITED STATES V. LOUISIANA, 391 U.S. 11 \(1969\)](#). WE HAVE NO OBJECTION TO THE AMENDMENT, WHICH WOULD ACKNOWLEDGE STATE REGULATION OF FISHERIES IN THESE POCKETS, WITHOUT PREJUDICE TO THE POSITION OF THE UNITED STATES IN THE PENDING LITIGATION. NOR WILL THE AMENDMENT IN ANY WAY BE INCONSISTENT WITH THE UNITED STATES' INTERNATIONAL STANCE REGARDING THE TREATMENT OF SUCH ENCLAVES AS HIGH SEAS. AS THE DEPARTMENT OF COMMERCE RECOMMENDS, THE AMENDING LANGUAGE SHOULD PERMIT FEDERAL PREEMPTION OF SUCH AUTHORITY OVER THESE AREAS UNDER SECTION 306(B).

THE OFFICE OF MANAGEMENT AND BUDGET HAS ADVISED THIS DEPARTMENT THAT THERE IS NO OBJECTION TO THE SUBMISSION OF THIS REPORT FROM THE STANDPOINT OF THE ADMINISTRATION'S PROGRAM.

SINCERELY,
ROBERT A. MCCONNELL,
ASSISTANT ATTORNEY GENERAL,
OFFICE OF LEGISLATIVE AFFAIRS.
U.S. DEPARTMENT OF COMMERCE,
OFFICE OF THE SECRETARY,
WASHINGTON, D.C., MAY 11, 1982.
HON. WALTER B. JONES,
CHAIRMAN, COMMITTEE ON MERCHANT MARINE AND FISHERIES, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.

DEAR MR. CHAIRMAN: THIS IS IN RESPONSE TO YOUR REQUEST FOR THE VIEWS OF THE DEPARTMENT OF COMMERCE ON THE AMENDMENTS TO H.R. 5002 AS APPROVED BY THE SUBCOMMITTEE ON MARCH 25, 1982, A BILL 'TO IMPROVE FISHERY CONSERVATION AND MANAGEMENT.'

H.R. 5002 WOULD MAKE A NUMBER OF CHANGES IN THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT ('THE ACT').

THE DEPARTMENT OPPOSES CERTAIN PROVISIONS OF H.R. 5002 AND THEREFORE MUST OPPOSE

THE BILL UNTIL IT IS SUITABLY MODIFIED. WHILE WE SUPPORT THE INTENT OF H.R. 5002 TO STREAMLINE THE PROCESS FOR APPROVING FISHERY MANAGEMENT PLANS (FMPS) AND AMENDMENTS, WE DO NOT SEE THAT THE PROPOSED AMENDMENTS WILL HAVE ANY SIGNIFICANT IMPACT UPON SHORTENING THE REVIEW TIME. WE BELIEVE MANY OF THE CONCERNS OF THE REGIONAL FISHERY MANAGEMENT COUNCILS (COUNCILS) CAN BE ADDRESSED ADMINISTRATIVELY AND WE ARE COMMITTED TO THIS COURSE OF ACTION. IN THIS REGARD WE ARE IMPLEMENTING MORE FLEXIBLE MANAGEMENT PROCEDURES SUCH AS DRAFTING MULTIYEAR FMPS, REQUESTING EXEMPTION FROM CERTAIN REVIEWS OF ANNUAL AND INSEASON ADJUSTMENTS PROVIDED FOR IN APPROVED FMPS, AND UPDATING GUIDANCE RELATIVE TO CLEARER AND MORE COMPREHENSIVE UNDERSTANDING OF SECRETARIAL REQUIREMENTS IN THE FMP REVIEW PROCESS.

SPECIFIC COMMENTS FOLLOW:

***38 **4351 SECTION 2. PURPOSES OF ACT**

SECTION 2(B)(4) WOULD BE AMENDED AS TO PURPOSES OF THE ACT TO CLARIFY CONGRESSIONAL INTENT THAT THE U.S. FISHING INDUSTRY SHOULD BE THE PRIMARY BENEFICIARIES OF EFFORTS TO DEVELOP U.S. FISHERIES.

THE DEPARTMENT SUPPORTS THIS CHANGE, WHICH WILL STRENGTHEN THE U.S. POSITION IN NEGOTIATING GOVERNING INTERNATIONAL FISHERIES AGREEMENTS (GIFAS) AND SETTING TOTAL ALLOWABLE LEVELS OF FOREIGN FISHING (TALFFS); HOWEVER, WE HAVE IN THE PAST INTERPRETED THE TERM 'FISHING INDUSTRY' TO ENCOMPASS RECREATIONAL INTERESTS AS WELL.

SECTION 3. FOREIGN FISHING

SECTION 201(D)(4)(B) WOULD BE AMENDED BY STRIKING THE STATEMENT 'SHALL BE ALLOCATED' AND INSERTING 'MAY BE ALLOCATED' IN THE SECTION DEALING WITH THE ALTERNATIVE TALFF CALCULATION UNDER THE ACT, AS AMENDED BY THE AMERICAN FISHERIES PROMOTION ACT.

THE DEPARTMENT OPPOSES THIS AMENDMENT. PRESENTLY, THE ACT STATES THAT IF SO-CALLED 'A & B' CRITERIA ARE MET (DETRIMENT TO THE U.S. INDUSTRY AND AVAILABILITY NEXT YEAR), THEN AMOUNTS SHALL BE DEFERRED FOR ALLOCATION IN THE SUCCEEDING HARVESTING SEASON. THIS IS CONSISTENT WITH THE ONE-TIME OPPORTUNITY AND BANKING CONCEPT OF THE AMERICAN FISHERIES PROMOTION ACT. AS PROPOSED, THE AMENDMENT WOULD SEEM TO CONTRAVENE NATIONAL STANDARD 1. ADDITIONALLY, THE CHANGE IN LANGUAGE OMITTS CRITERIA FOR THE EXERCISE OF THE DISCRETION TO WITHHOLD ALLOCATIONS.

SECTION 201(E)(2)(A)(I) WOULD BE AMENDED TO ENSURE THAT ACTIONS BY A FOREIGN NATION WHICH MAY DIMINISH THE EFFECTIVENESS OF SUCH AGREEMENTS AS THE INTERNATIONAL CONVENTION FOR THE HIGH SEAS FISHERIES OF THE NORTH PACIFIC OCEAN AND THE INTERNATIONAL CONVENTION FOR THE CONSERVATION OF ATLANTIC TUNAS COULD SUBJECT A FOREIGN NATION TO REDUCTION OR LOSS OF ITS ALLOCATIONS, AS IS NOW THE CASE FOR ACTIONS WHICH

MIGHT DIMINISH THE EFFECTIVENESS OF THE INTERNATIONAL CONVENTION FOR THE REGULATION OF WHALING.

THE DEPARTMENT SUPPORTS THIS AMENDMENT AS PROVIDING ADDITIONAL LEVERAGE TO MAKE INTERNATIONAL CONSERVATION REGIMES MORE EFFECTIVE.

SECTION 201(I)(3) AND (I)(5) WOULD BE AMENDED TO CLARIFY THAT U.S. OBSERVERS ABOARD FOREIGN VESSELS ARE RESPONSIBLE FOR CARRYING OUT ENFORCEMENT AS WELL AS SCIENTIFIC AND OTHER FUNCTIONS NECESSARY OR APPROPRIATE TO CARRY OUT THE PURPOSES OF THE ACT. THE AMENDMENT WOULD ALSO ESTABLISH A REVOLVING FUND FROM WHICH TO OPERATE THE OBSERVER PROGRAM ON A FEE FOR SERVICE BASIS.

THE DEPARTMENT SUPPORTS THE AMENDMENT WHICH WOULD STRENGTHEN THE COMPLIANCE ROLE OF THE OBSERVER PROGRAM. OBSERVER DATA HAVE BEEN USED FOR ENFORCEMENT AS WELL AS SCIENTIFIC PURPOSES SINCE THE ACT'S INCEPTION, CONSISTENT WITH THE TRADITIONAL USES OF OBSERVER DATA UNDER MARINE RESOURCE LAWS. THE AMENDMENT SERVES AS CONGRESSIONAL RECOGNITION OF THE INCREASING IMPORTANCE OF THE COMPLIANCE ASPECT OF OBSERVER DATA AS THE SECRETARY SEEKS TO ENSURE THE MOST EFFECTIVE AND EFFICIENT USE OF AVAILABLE ENFORCEMENT RESOURCES.

THE DEPARTMENT ALSO FAVORS THE CREATION OF A REVOLVING FUND FOR OBSERVERS ABOARD FOREIGN FISHING VESSELS, BUT BELIEVES IT WOULD BE PREFERABLE TO HAVE ONE REVOLVING FUND THAT WOULD RECEIVE AND DISBURSE**4352 *39 OBSERVER MONIES UNDER THE MAGNUSON ACT AS WELL AS THE ATLANTIC TUNAS CONVENTION ACT. THE DEPARTMENT RECOGNIZES THAT THIS MAY REQUIRE CERTAIN TECHNICAL AMENDMENTS TO THESE ACTS AND CONSOLIDATION OF THE TWO SPECIAL OBSERVER FUNDS THAT NOW EXIST.

SECTION 201 WOULD BE FURTHER AMENDED BY ADDING A NEW SUBSECTION (J) TO PERMIT FOREIGN VESSELS TO FISH RECREATIONALLY IN THE FISHERY CONSERVATION ZONE (FCZ) OR WITHIN THE BOUNDARIES OF A STATE.

AT PRESENT, RECREATIONAL FISHING FROM FOREIGN VESSELS IS PROHIBITED WITHIN THE BOUNDARIES OF ANY STATE AND MAY ONLY BE PERMITTED IN THE FCZ SUBSEQUENT TO NEGOTIATION OF A GIFA, DETERMINATION OF THE TOTAL ALLOWABLE LEVEL OF FISHING, ISSUANCE OF AN ALLOCATION, AND PAYMENT OF FEES. THIS PROCESS HAS DISCOURAGED FOREIGN PARTICIPATION IN RECREATIONAL FISHING IN THE FCZ. WHILE WE SUPPORT THE APPROACH TAKEN IN THE BILL TO ALLOW RECREATIONAL FISHING FROM FOREIGN VESSELS WHEN NOT PROHIBITED BY STATE LAW OR THE PROVISIONS OF ANY APPLICABLE FISHERY MANAGEMENT PLAN, THERE ARE SOME TECHNICAL CHANGES IN THE DRAFT LANGUAGE THAT WOULD ALLEVIATE POSSIBLE INTERPRETIVE PROBLEMS IN THE FUTURE.

FIRST, THE BILL USES THE TERMS 'TERRITORIAL SEA OF THE UNITED STATES' AND 'THE INTERNAL WATERS OF A STATE' WHEN REFERRING TO AREAS GENERALLY UNDER STATE FISHERY MANAGEMENT JURISDICTION. THIS DEFINITION WOULD NOT LEAVE EITHER THE STATE OR FEDERAL GOVERNMENTS WITH AUTHORITY TO PERMIT RECREATIONAL FISHING FROM FOREIGN VESSELS IN THE AREAS BETWEEN THREE AND NINE NAUTICAL MILES OFF THE COASTS OF TEXAS, PUERTO RICO, OR WESTERN FLORIDA. A MORE PRECISE TERM OF REFERENCE TO PERMIT STATE REGULATION WOULD BE 'WITHIN THE BOUNDARIES OF ANY STATE'.

SECOND, THE BILL IMPLIES THAT CONDITIONS TO BE IMPOSED BY THE SECRETARY OF COMMERCE ON FOREIGN VESSELS RECREATIONALLY FISHING IN THE FCZ ARE TO BE 'NECESSARY OR

APPROPRIATE TO INSURE THAT THE FISHING ACTIVITY OF SUCH FOREIGN VESSELS IS CONSISTENT WITH ANY APPLICABLE FISHERY MANAGEMENT PLAN IMPLEMENTED UNDER SECTION 395. WE DO NOT BELIEVE THE SECRETARY SHOULD BE LIMITED TO ENSURING COMPLIANCE WITH FMPS; SOME FISHERIES IN WHICH FOREIGN RECREATIONAL VESSELS WISH TO FISH MAY NOT BE COVERED BY AN FMP AND YET IT MIGHT STILL BE APPROPRIATE TO RESTRICT THEIR ACTIVITY. AS THIS BILL IS NOW DRAFTED, IT MIGHT BE NECESSARY TO DEVELOP AN FMP OR AN AMENDMENT TO SUCH PLAN FOR NO OTHER REASON THAN TO RESTRICT RECREATIONAL FISHING FROM FOREIGN VESSELS. THIS, IN OUR VIEW, WOULD NOT BE A USEFUL EFFORT. ADDITIONALLY, THE SECRETARY SHOULD HAVE THE DISCRETION TO CONDITION FCZ PERMITS IN SUCH A FASHION SO AS TO COMPLEMENT STATE REGULATORY GOALS WITHIN STATE BOUNDARIES. FOR EXAMPLE, ALTHOUGH NOT INCONSISTENT WITH ANY FMP, THE SECRETARY MIGHT WISH TO PROHIBIT FOREIGN RECREATIONAL FISHING IN THE FCZ IF THE ADJACENT STATE DOES NOT PERMIT SUCH FISHING. OUR CONCERNS ON THESE POINTS WOULD BE REMOVED IF THE LANGUAGE 'TO INSURE THAT THE FISHING ACTIVITY OF SUCH VESSELS IS CONSISTENT WITH ANY APPLICABLE FISHERY MANAGEMENT PLAN IMPLEMENTED UNDER SECTION 305' WERE DELETED FROM THE BILL.

THIRD, THE BILL FOLLOWS THE ACT IN NOT PROVIDING A DEFINITION OF RECREATIONAL FISHING. WE WOULD APPRECIATE A CLEARER EXPRESSION OF CONGRESSIONAL INTENT AS TO THE MEANING OF THIS TERM. FOR EXAMPLE, DOES THE COMMITTEE BELIEVE FOREIGN FLAG CHARTER FISHING BOATS SHOULD HAVE ACCESS TO THE FCZ AND STATE WATERS BECAUSE THE FISHING THEREFROM IS GENERALLY CONSIDERED TO BE RECREATIONAL, ALTHOUGH THE ****4353** ***40** OWNERS OPERATE SUCH VESSELS FOR PROFIT? MOREOVER, WE HAVE ENCOUNTERED A FEW INSTANCES IN WHICH CREW MEMBERS OF FOREIGN FLAG MERCHANT VESSELS WERE CAUGHT RECREATIONALLY FISHING FROM THEIR VESSELS WHILE IN PORT TO RECEIVE CARGO. WOULD THE COMMITTEE BELIEVE THIS PRACTICE TO BE ACCEPTABLE IF IN COMPLIANCE WITH STATE LAW?

SECTION 4. FOREIGN FISHING PERMITS

SECTION 204(B)(10) WOULD BE AMENDED TO DELETE THE REQUIREMENT FOR ANNUAL APPROPRIATIONS OF FISHERIES LOAN FUND REVENUES DERIVED FROM FOREIGN FISHING FEES.

THE DEPARTMENT OPPOSED THIS AMENDMENT AS IT IS INCONSISTENT WITH ADMINISTRATION POLICY TO RETAIN OVERSIGHT OVER FEDERAL EXPENDITURES.

SECTION 5. NATIONAL STANDARDS

SECTION 301(A) AND (B) WOULD BE AMENDED CONSISTENT WITH CONGRESSIONAL INTENT THAT THE U.S. FISHING INDUSTRY SHOULD BE THE PRIMARY BENEFICIARY OF U.S. FISHERY RESOURCES, AND WOULD CLARIFY THAT SECRETARIAL GUIDELINES DO NOT HAVE THE EFFECT OF LAW.

WHILE WE STRONGLY SUPPORT THE OBJECTIVE OF FULL DEVELOPMENT OF THE DOMESTIC FISHING INDUSTRY AND RECREATIONAL INTERESTS, WE DO NOT BELIEVE THAT A CHANGE IN THIS NATIONAL STANDARD IS NEEDED TO ACCOMPLISH IT. THE COUNCILS ALREADY HAVE AD-

EQUATE MEANS AVAILABLE TO ENCOURAGE THE DEVELOPMENT OF THE U.S. INDUSTRY WITHOUT ALTERING THE CONCEPT OF ACHIEVING FULL UTILIZATION OF OPTIMUM YIELD (OY). MOREOVER, THE AMERICAN FISHERIES PROMOTION ACT PROVIDED AN EXTRA INCENTIVE FOR DEVELOPING DOMESTIC FISHERIES BY ALLOWING A DIFFERENT METHOD OF CALCULATING THE TALFF BASED ON U.S. INDUSTRY PERFORMANCE AND A ONE-YEAR DEFERRAL OF CERTAIN AMOUNTS OF FISH UNDER SPECIFIED CIRCUMSTANCES. WE BELIEVE THAT THIS AMENDMENT COULD RESULT IN THE LOSS OF BENEFITS TO THE NATION THAT COULD BE SECURED WITHOUT IN ANY WAY INHIBITING FULL DEVELOPMENT OF U.S. INTERESTS.

THE AMENDMENT RELATIVE TO MANDATORY COMPLIANCE WITH NATIONAL STANDARD GUIDELINES IS NOT NECESSARY. GUIDELINES PREPARED BY THIS DEPARTMENT ARE BASED UPON THE NATIONAL STANDARDS AND INFORM THE COUNCILS OF THE SECRETARY'S APPLICATION OF THE NATIONAL STANDARDS SO THAT THEY WILL HAVE AN UNDERSTANDING OF THE BASIS ON WHICH FMPS WILL BE REVIEWED, AND A CONSISTENT APPLICATION OF THE NATIONAL STANDARD PRINCIPLES CAN BE MORE READILY OBSERVED. SECTION 602.10(E) OF THE DRAFT GUIDELINES READS IN RELEVANT PART: 'THE GUIDELINES ARE INTENDED AS AIDS TO DECISION MAKING; FMPS FORMULATED ACCORDING TO THE GUIDELINES WILL HAVE A BETTER CHANCE FOR EXPEDITIOUS SECRETARIAL REVIEW APPROVAL, AND IMPLEMENTATION. FMPS THAT ARE IN SUBSTANTIAL COMPLIANCE WITH WILL HAVE A BETTER CHANCE FOR EXPEDITIOUS SECRETARIAL REVIEW APPROVAL, THE GUIDELINES, THE ACT, AND OTHER APPLICABLE LAW MUST BE APPROVED.'

SECTION 6. FISHERY MANAGEMENT COUNCIL ORGANIZATION AND FUNCTIONS

SECTION 302(A)(1)-(7) WOULD BE AMENDED BY ADDING AN ADDITIONAL SECRETARIAL APPOINTED VOTING MEMBER TO EACH COUNCIL TO REPLACE THE VOTE WHICH WOULD BE REMOVED FROM THE NATIONAL MARINE FISHERIES SERVICE (NMFS) REGIONAL DIRECTORS.

***41 **4354** THE DEPARTMENT DOES NOT FAVOR THE REMOVAL OF THE VOTE FROM THE REGIONAL DIRECTORS AT THIS TIME; HOWEVER, IF THE AMENDMENT WERE TO BE PURSUED, WE WOULD SUGGEST REMOVING, RATHER THAN ADDING, A VOTING MEMBER FROM EACH COUNCIL TO MAINTAIN AN ODD NUMBER. WE BELIEVE THIS WOULD BE MORE COST EFFECTIVE.

SECTION 302(A) WOULD BE AMENDED TO INCREASE THE STATE OF CALIFORNIA'S VOTING REPRESENTATION ON THE PACIFIC FISHERY MANAGEMENT COUNCIL. SINCE H.R. 5002 WOULD REQUIRE THE NMFS REGIONAL DIRECTORS TO BECOME NONVOTING MEMBERS ON THE COUNCILS, THIS AMENDMENT WOULD REQUIRE THAT THE REGIONAL DIRECTOR'S VOTING SEAT BE FILLED BY APPOINTMENT OF AN INDIVIDUAL FROM CALIFORNIA.

THE DEPARTMENT DOES NOT FAVOR THE REMOVAL OF THE VOTE FROM ANY REGIONAL DIRECTOR AT THIS TIME. HOWEVER, IF THE REGIONAL DIRECTOR ON THE PACIFIC FISHERY MANAGEMENT COUNCIL WERE REMOVED FROM VOTING STATUS, WE WOULD NOT OPPOSE AN ADDITIONAL AT-LARGE MEMBER. THIS AT-LARGE MEMBER WOULD BE SELECTED FROM AMONG THE COLLECTIVE NOMINATIONS RECEIVED FROM ALL OF THE CONCERNED PACIFIC STATES, THEREBY PROVIDING ADEQUATE REPRESENTATION TO ALL INTERESTED GROUPS.

SECTION 302(A) WOULD BE FURTHER AMENDED TO INCREASE THE SECRETARIALLY APPOINTED VOTING MEMBERSHIP ON THE NORTH PACIFIC COUNCIL FROM 7 TO 8.

PRESENTLY, THE ACT CALLS FOR 5 VOTING MEMBERS FROM ALASKA AND 2 VOTING MEMBERS FROM WASHINGTON. AS WRITTEN, THE AMENDMENT DOES NOT INDICATE THE STATE REPRESENTATION OF THIS ADDITIONAL MEMBER. CONSEQUENTLY, WE ARE UNABLE TO COMMENT ON THE PROPOSED AMENDMENT.

SECTION 302(A)(8) WOULD BE AMENDED BY ADDING THE NORTHERN MARIANA ISLANDS TO THE WESTERN PACIFIC FISHERY MANAGEMENT COUNCIL, AND INCREASING THE VOTING MEMBERSHIP ACCORDINGLY.

THE DEPARTMENT BELIEVES THE NORTHERN MARIANA ISLANDS SHOULD BE REPRESENTED ON THE COUNCIL. ALTHOUGH THEY HAD URGED FOR SOME TIME THAT WE NOT RECOMMEND THEIR INCLUSION, IT NOW APPEARS THEY WANT TO BE REPRESENTED ON THE COUNCIL.

SECTION 302(B)(1)(B) WOULD BE AMENDED TO DELETE THE DESIGNATION OF THE NMFS REGIONAL DIRECTORS AS VOTING MEMBERS OF EACH COUNCIL.

AS PREVIOUSLY STATED, THE DEPARTMENT DOES NOT SUPPORT THE REMOVAL OF VOTING STATUS FROM THE REGIONAL DIRECTORS AT THIS TIME. WE ARE NOW CONSIDERING DELEGATING GREATER AUTHORITY FOR THE APPROVAL OF FMPS TO THE NMFS REGIONAL DIRECTORS IN ORDER TO STREAMLINE THE REVIEW PROCESS.

SECTION 302(B)(2) WOULD BE AMENDED BY ADDING THE REQUIREMENT THAT THE SECRETARY FINALIZE THE ANNUAL APPOINTMENTS TO FILL SEATS VACATED BY OUTGOING COUNCIL MEMBERS NOT LESS THAN 45 DAYS BEFORE THE INDIVIDUALS ARE TO TAKE OFFICE.

THE DEPARTMENT SUPPORTS THIS AMENDMENT, WHICH WOULD AFFORD A BRIEF OVERLAP BETWEEN OUTGOING AND NEW COUNCIL MEMBERS.

SECTION 302(B)(2) WOULD BE AMENDED BY ALSO GRANTING THE SECRETARY THE AUTHORITY TO REMOVE COUNCIL MEMBERS FOR CAUSE.

THE DEPARTMENT SUPPORTS THIS AMENDMENT.

SECTION 302(D) WOULD BE AMENDED TO REDUCE THE LEVEL OF COUNCIL COMPENSATION FROM THE GS-18 RATE TO \$100 PER DAY.

THE DEPARTMENT RECOGNIZES AND SUPPORTS THE NEED TO REDUCE THE COST OF ADMINISTERING THE ACT. THE CONGRESS MAY WANT, HOWEVER, TO ~~4355~~ ~~42~~ FIND OTHER WAYS OF DOING THIS IN THE AREA OF COUNCIL OPERATION IN LIEU OF REDUCING COUNCIL MEMBERS' COMPENSATION. IT IS THE DEPARTMENT'S BELIEF THAT \$100 PER DAY COMPENSATION MAY NOT ATTRACT HIGHLY QUALIFIED INDIVIDUALS TO COUNCIL MEMBERSHIP, PARTICULARLY IN HIGH COST OF LIVING REGIONS, SUCH AS ALASKA.

SECTION 302(F)(6) WOULD BE AMENDED BY ADDING NEW PROCEDURAL REQUIREMENTS FOR THE CONDUCT OF MEETINGS HELD BY THE COUNCILS AND THEIR ADVISORY PANELS (APS) AND SCIENTIFIC AND STATISTICAL COMMITTEES (SSCS) IN LIEU OF THE PRESENT PROCEDURES UNDER THE FEDERAL ADVISORY COMMITTEE ACT (FACA).

THE DEPARTMENT HAS PREVIOUSLY TESTIFIED IN SUPPORT OF THIS APPROACH; HOWEVER, IT COULD NOT SUPPORT THE PROCEDURES CONTAINED IN H.R. 5002, AS INTRODUCED, BECAUSE THEY WERE INADEQUATE TO ENSURE EFFECTIVE PUBLIC INPUT. FOR EXAMPLE, UNLIKE FACA, THERE WAS NO EXPLICIT REQUIREMENT THAT COUNCIL, AP, AND SSC MEETINGS BE OPEN TO THE PUBLIC. MOREOVER, THERE WAS NO PROCEDURE FOR CLOSING MEETINGS TO, FOR EXAMPLE, CONSIDER CLASSIFIED INFORMATION, REVIEW APPLICANTS FOR COUNCIL EMPLOYMENT, OR RECEIVE BRIEFINGS ON STRATEGY IN LITIGATION INVOLVING A COUNCIL OR ITS MANAGEMENT

PLANS. WE ARE PLEASED THAT THESE CONCERNS HAVE BEEN ADDRESSED PLANS. WE ARE PLEASED THAT THESE CONCERNS HAVE BEEN ADDRESSED, ALTHOUGH THE DEPARTMENT IS NOT AWARE OF ANY MAJOR PROBLEMS HAVING BEEN ENCOUNTERED BY THE COUNCILS IN MEETING FACA REQUIREMENTS.

SECTION 302(F) WOULD ADD A NEW PARAGRAPH (8) TO DIRECT EACH COUNCIL TO ESTABLISH PROCEDURES TO ASSURE THE CONFIDENTIALITY OF STATISTICS SUBMITTED TO IT BY FEDERAL OR STATE AUTHORITIES.

THE DEPARTMENT OPPOSES THIS AMENDMENT BECAUSE IT IS NOT NEEDED. THERE IS NOTHING IN THE ACT TO PRECLUDE COLLECTION OF VOLUNTARY DATA (AS LONG AS IT IS IN COMPLIANCE WITH THE PAPERWORK REDUCTION ACT), NOR TO PRECLUDE ESTABLISHMENT BY THE COUNCILS OF PROCEDURES DESIGNED TO PROTECT THE CONFIDENTIALITY OF VOLUNTARILY SUBMITTED DATA.

WE DO NOT BELIEVE THE COUNCILS SHOULD BE AUTHORIZED TO COLLECT MANDATORY DATA. SINCE THE COLLECTION OF FISHERY STATISTICS RELIES HEAVILY UPON THE CONFIDENCE THAT SENSITIVE DATA WILL BE PROTECTED, OUR POLICY IS TO MAINTAIN THE CONFIDENCE OF OUR SUPPLIERS OF DATA BY NOT ALLOWING DISCLOSURE TO COUNCILS OF UNAGGREGATED DATA SUBMITTED TO THE SECRETARY PURSUANT TO AN FMP. THIS NONDISCLOSURE POLICY IS SUBJECT TO CHANGE AS THE PERCEPTIONS OF THE PUBLIC CHANGE, BUT DOES NOT REQUIRE NEW LEGISLATIVE AUTHORITY, NOR AUTHORITY TO DEVELOP PROCEDURES TO PROTECT THE CONFIDENTIALITY OF THE DATA UNDER CHANGED CIRCUMSTANCES.

SECTION 302(H)(1) WOULD BE AMENDED TO CLARIFY A COUNCIL'S ROLE IN DETERMINING WHICH FISHERIES WITHIN ITS GEOGRAPHIC AREA REQUIRE CONSERVATION AND MANAGEMENT.

THE DEPARTMENT OPPOSES THIS AMENDMENT ON THE GROUNDS THAT THIS PROVISION IS UNNECESSARY SINCE WE ALREADY OPERATE WITH THIS POLICY. THE INITIAL DECISION TO DEVELOP A PLAN BELONGS WITH THE COUNCIL. APPROPRIATED CRITERIA FOR THIS DECISION ARE CONTAINED WITHIN THE DRAFT NATIONAL STANDARD GUIDELINES. THE SECRETARY, HOWEVER, SHOULD REVIEW THAT DECISION EARLY IN [THE PROCESS TO ENSURE THAT REGULATIONS IMPLEMENTING AN FMP WILL MEET THE REQUIREMENTS OF EXECUTIVE ORDER 12291](#).

***43 **4356** SECTION 302(H)(3) WOULD BE AMENDED TO ALLOW THE COUNCILS TO CONDUCT PUBLIC HEARINGS OUTSIDE THE PARTICULAR COUNCIL'S GEOGRAPHIC AREA OF AUTHORITY, UNDER CERTAIN CONDITIONS.

THE DEPARTMENT SUPPORTS THIS AMENDMENT, WHICH WOULD FACILITATE THE PARTICIPATION OF THOSE POTENTIALLY AFFECTED BY ANY PROPOSED MANAGEMENT MEASURE. A NUMBER OF THE INDIVIDUALS IN THE KING CRAB FISHERY OFF ALASKA ARE SEATTLE-BASED FISHERMEN. THEREFORE IT WOULD BE USEFUL AND PRODUCTIVE FOR THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL TO HOLD HEARINGS IN SEATTLE, WHICH IS OUTSIDE OF ITS GEOGRAPHIC JURISDICTION.

SECTION 302(H)(4) WOULD BE AMENDED TO DELETE THE REQUIREMENT FOR EACH COUNCIL TO SUBMIT AN ANNUAL ACTIVITIES REPORT.

THE DEPARTMENT SUPPORTS THE DELETION OF THIS REPORT AS BEING CONSISTENT WITH THE ADMINISTRATION'S BUDGETARY EFFORTS TO CURTAIL REPORTING REQUIREMENTS.

SECTION 7. CONTENTS OF PLANS

SECTION 303(B) WOULD BE AMENDED TO AUTHORIZE THE SECRETARY TO ESTABLISH FEES FOR DOMESTIC FISHERMEN, ALLOW FEES TO FUND A VESSEL 'BUY-BACK' OR EQUIVALENT PROGRAM, AND ESTABLISH A 'BUY BACK' FUND IN WHICH SUCH FEES WOULD BE DEPOSITED.

THE DEPARTMENT CONCURS WITH THAT PORTION OF THIS AMENDMENT WHICH WOULD PERMIT THE COLLECTION OF USER FEES FROM FISHERMEN BENEFITING FROM THE EXCLUSIVE RIGHTS TO HARVEST PROVIDED BY LIMITED ENTRY SYSTEMS. WE OPPOSE ESTABLISHING A VESSEL 'BUY-BACK' OR AN EQUIVALENT PROGRAM PERMITTING THE FEES FROM A LIMITED ACCESS SYSTEM TO BE USED AS A FUNDING DEVICE FOR SUCH A PROGRAM.

SECTION 303(B) PARAGRAPH (7) WOULD BE ADDED TO PROVIDE THAT ANY FMP MAY STATE THE FACTORS, IF ANY, WHICH HAVE IMPEDED FULL UTILIZATION OF THE OY OF THAT PARTICULAR FISHERY BY THE U.S. FISHING INDUSTRY, AND MEASURES WHICH WOULD BE USEFUL TO ELIMINATE THE OBSTACLES TO FULL DOMESTIC UTILIZATION OF THE OY.

THE DEPARTMENT OPPOSES THIS PROVISION, AS NOTHING NOW PREVENTS AN FMP FROM DISCUSSING THESE ISSUES. OF THE FMPS IMPLEMENTED BY FEDERAL REGULATIONS OR NEARING IMPLEMENTATION AS OF OCTOBER 10, 1981, MOST PROVIDE FOR FULL UTILIZATION OF THE PREVENT OY BY THE DOMESTIC INDUSTRY. THE REMAINING EIGHT FMPS OR PRELIMINARY FISHERY MANAGEMENT PLANS (PMPS) DISCUSS THE FACTORS THAT IMPEDE FULL DOMESTIC UTILIZATION AND PROVIDE, WHERE PRACTICABLE, MEASURES TO REDUCE THE IMPEDIMENT.

SECTION 303(B) WOULD BE AMENDED BY ADDING PARAGRAPH (F), WHICH WOULD GIVE COUNCILS AUTHORITY TO ESTABLISH DATA COLLECTIONS PROGRAMS WHERE STATISTICS AND OTHER DATA AVAILABLE TO THE COUNCIL ARE INSUFFICIENT OR UNRELIABLE FOR PREPARATION OR AMENDMENT OF FMPS, OR DETERMINING WHETHER AN FMP IS NEEDED.

THE DEPARTMENT OPPOSES THIS AMENDMENT. WHILE WE AGREE WITH THE COUNCILS THAT THERE IS A NEED TO IMPROVE THE DATA BASE FOR MANAGEMENT ACTIONS, THE PROPOSED DATA COLLECTION PROGRAM SEEMS CUMBERSOME TO ACCOMPLISH THE TASK. AS AN ALTERNATIVE, WE SUGGEST CLOSER COLLABORATION BETWEEN THE NMFS REGIONAL AND CENTER STAFFS, THE STATES, AND THE COUNCILS IN ADDRESSING DATA PROBLEMS. THE COUNCIL SCIENTIFIC AND STATISTICAL COMMITTEES SHOULD HAVE A MAJOR ROLE IN THE PLANS FOR MEETING DATA NEEDS.

***44 **4357** SECTION 303(C) WOULD BE AMENDED TO REQUIRE COUNCILS TO PREPARE PROPOSED REGULATIONS WITH FMPS.

THE DEPARTMENT STRONGLY SUPPORTS THIS PROVISION. THE PREPARATION OF REGULATIONS FOR AN FMP OFTEN SERVES AS A USEFUL DEVICE IN IDENTIFYING THE FMP'S STRENGTHS AND WEAKNESSES. FURTHER, WE BELIEVE THAT DRAFT REGULATIONS AVOID AMBIGUITIES IN INTERPRETATION, AND THEREBY ENSURE THAT THE COUNCILS' INTENTIONS ARE CLEARLY SET FORTH IN THE IMPLEMENTING REGULATIONS. WE ALSO SUPPORT THE PROPOSED AMENDMENT OF SECTION 305(A) CONCERNING PUBLICATION OF COUNCIL PROPOSED REGULATIONS AND A 45-DAY PUBLIC COMMENT PERIOD.

SECTION 8. ACTION BY THE SECRETARY

SECTION 304(A) WOULD BE AMENDED TO PRESUME SECRETARIAL APPROVAL OF AN FMP OR

AMENDMENT, UNLESS REJECTED WITHIN 90 DAYS OF ITS RECEIPT, OR WITHIN A SINGLE EXTENSION PERIOD AGREED UPON BY THE COUNCIL AND THE SECRETARY.

THE DEPARTMENT OPPOSES THE AMENDMENT AS BEING UNREALISTIC IN VIEW OF SECRETARIAL REVIEW REQUIREMENTS, WHICH MUST TAKE INTO ACCOUNT THE ANALYSIS OF NEW ISSUES AND ADDRESS CONCERNS OF INDUSTRY AND OTHERS RAISED DURING THE REVIEW PROCESS. SINCE APPROVED FMPS MUST BE IMPLEMENTED WITH REGULATIONS, THE REVIEW PROCESS INCORPORATES THE CURRENT REGULATORY REFORM INITIATIVES. WHILE TIMELY FISHERY MANAGEMENT IS OUR GOAL AND CERTAINLY IS IN THE NATIONAL INTEREST, LIMITING THE SECRETARIAL REVIEW TO 90 DAYS, AND TO SUCH AN ADDITIONAL PERIOD AS THE COUNCIL AND THE SECRETARY MAY AGREE UPON, IS NOT REALISTIC.

WE BELIEVE, HOWEVER, THAT THE OPPORTUNITY FOR SUBSTANTIAL IMPROVEMENT IN THE FMP AND REGULATION APPROVAL PROCESSES COULD BE REALIZED BY AMENDING THE ACT TO ENHANCE THE PARTNERSHIP ROLE OF THE SECRETARY AND THE COUNCILS IN DEVELOPING PROCESS CAN COMMENCE ONLY AFTER A PLAN IS APPROVED. NOT ONLY DOES THIS EXTEND THE ENTIRE PROCESS, BUT IT INJECTS A FALSE DICHOTOMY BETWEEN PLAN DEVELOPMENT AND REGULATION DEVELOPMENT THAT DISCOURAGES FULL AND EARLY PUBLIC PARTICIPATION IN THE PROCESS BY PLACING A PREMIUM ON RAISING NEW ISSUES AT THE SECRETARIAL STAGE.

A SIMPLE, BUT FAR REACHING, AMENDMENT WOULD TREAT THE SECRETARY AND COUNCILS AS PARTNERS IN ONE RULEMAKING PROCESS LEADING TO THE DEVELOPMENT OF A PLAN AND ITS IMPLEMENTING REGULATIONS. IN THAT PROCESS, AT THE SAME TIME AS A COUNCIL PUBLISHES A DRAFT PLAN FOR COMMENT AND PUBLIC HEARINGS, THE SECRETARY WOULD PUBLISH PROPOSED REGULATIONS. AS IS CUSTOMARY IN RULEMAKINGS, OTHER ACTIONS SUCH AS SCOPING MEETINGS, ADVANCED NOTICES OF PROPOSED RULEMAKINGS, OR OTHER APPROPRIATE PRELIMINARY STEPS COULD PRECEDE THE NOTICE OF PROPOSED RULEMAKING. AT THIS STAGE, THE COUNCILS AND THE SECRETARY WOULD BE REQUIRED TO COMPLY WITH OTHER APPLICABLE LAWS, SUCH AS THE NATIONAL ENVIRONMENTAL POLICY ACT AND THE ADMINISTRATIVE PROCEDURE ACT.

THE IMPORTANT POINT IS THAT THE SECRETARY WOULD PUBLISH THE NOTICE OF PROPOSED RULEMAKING SIMULTANEOUSLY WITH A COUNCIL'S FINAL STAGES OF PLAN PREPARATION. COMMENTS ON THE PLAN AND REGULATIONS WOULD BE SUBMITTED TO A COUNCIL AS IT FINALIZES ITS PLAN FOR SUBMISSION TO THE SECRETARY. THE PLAN AND REGULATIONS, MODIFIED AS ****4358 *45** APPROPRIATE BASED ON COMMENTS RECEIVED, AND A COUNCIL'S ANALYSES, WOULD BE SUBMITTED TO THE SECRETARY ALONG WITH THE RULEMAKING RECORD. THE RECORD WOULD BE COMPLETE AT THAT TIME AND THE SECRETARY WOULD PROMULGATE FINAL REGULATIONS AS SOON AS HE APPROVED THE PLAN. BASED UPON THE RECORD BEFORE HIM, THE SECRETARY MIGHT REJECT THE PLAN OR MODIFY THE REGULATIONS BEFORE PROMULGATION.

THIS PROCESS WOULD RETAIN FULL OPPORTUNITY FOR PUBLIC COMMENT AND HEARING IN THE REGION, WOULD FOSTER COMPLIANCE WITH ANCILLARY STATUTES AT AN EARLY DATE, AND DISCOURAGE SUBMISSION OF BELATED COMMENTS TO THE SECRETARY. FURTHERMORE, THE PROCESS COULD BE EASILY ADAPTED TO THE MORE COMPLEX RULEMAKING PROCEDURES CONTEMPLATED BY THE VARIOUS REGULATORY IMPROVEMENT BILLS NOW PENDING BEFORE CONGRESS. WE RECOMMEND THAT H.R. 5002 BE AMENDED TO SIMPLIFY THE PRESENT PROCESS AS SUGGESTED.

SECTION 304(B) WOULD BE AMENDED TO PROVIDE THAT AN INITIALLY DISAPPROVED OR PARTIALLY DISAPPROVED FISHERY MANAGEMENT PLAN, OR AMENDMENT THERETO, WOULD BE PRESUMED TO HAVE SECRETARIAL APPROVAL WHEN RESUBMITTED UNLESS REJECTED WITHIN 45 DAYS OF RESUBMISSION, OR WITHIN AN AGREED EXTENSION PERIOD.

THE DEPARTMENT OPPOSES THIS AMENDMENT SINCE IT WOULD NOT ALLOW SUFFICIENT TIME TO DEAL WITH SUBSTANTIVE ISSUES THAT MAY BE INTRODUCED WHEN A PLAN OR AMENDMENT IS RESUBMITTED. WE WOULD RECOMMEND 90 DAYS.

SECTION 9. IMPLEMENTATION OF PLANS

SECTION 304(D) WOULD BE AMENDED WITH RESPECT TO DOMESTIC FEES AND COOPERATION BETWEEN THE SECRETARY AND THE STATES.

THE INTENT OF THE SUBCOMMITTEE IN AMENDING THIS SECTION IS UNCLEAR. PAGE 19, LINES 16-22 OF H.R. 5002, AS REPORTED BY THE SUBCOMMITTEE, WOULD RETAIN THE REQUIREMENT THAT THE LEVEL OF FEES CHARGED PURSUANT TO SECTION 303(B)(1) NOT EXCEED THE ADMINISTRATIVE COSTS INCURRED BY THE SECRETARY. PAGES 19-20; LINES 23-24 AND 1-10, WOULD APPEAR TO AMEND SECTION 304(D) TO RETAIN THE ADMINISTRATIVE COSTS LIMITATION FOR ALL DOMESTIC PERMITS EXCEPT THOSE ISSUED PURSUANT TO SECTION 303(B)(6), WHERE A SYSTEM FOR LIMITING ACCESS TO A FISHERY IS ESTABLISHED. BOTH AMENDMENTS WOULD ALLOW THE SECRETARY TO ENTER INTO COOPERATIVE AGREEMENTS WITH THE STATES, UNDER WHICH THE STATES ADMINISTER THE PERMIT SYSTEM AND ALL OR PART OF THE FEES COLLECTED ACCRUE TO THE STATES.

AS NOTED EARLIER WITH RESPECT TO THE PROPOSED AMENDMENTS TO SECTION 303, THE DEPARTMENT IS NOT OPPOSED TO AN AMENDMENT ALLOWING FEES CHARGED PURSUANT TO SECTION 303(B)(6) TO EXCEED ADMINISTRATIVE COSTS. HOWEVER, THE DEPARTMENT IS OPPOSED TO THE USE OF THESE FEES FOR PURPOSES OF FUNDING BUY-BACK OR EQUIVALENT PROGRAMS AS DESCRIBED IN PROPOSED AMENDMENTS TO SECTION 303.

SECTION 305(A) WOULD BE AMENDED TO REQUIRE PUBLICATION IN THE FEDERAL REGISTER OF REGULATIONS PROPOSED BY THE COUNCIL OR THE SECRETARY, ALONG WITH ANY SUBSTANTIVE REVISION TO COUNCIL REGULATIONS BY THE SECRETARY AND AN EXPLANATION OF THOSE REVISIONS, WITHIN 30 DAYS AFTER THE SECRETARY PROPOSES OR APPROVES A PLAN OR AMENDMENT. THE PUBLIC WOULD ALSO BE PROVIDED 45 DAYS TO COMMENT ON THE PLAN, AMENDMENT, PROPOSED REGULATIONS, AND SUGGESTED REVISIONS.

***46 **4359** THE DEPARTMENT SUPPORTS THIS AMENDMENT.

SECTION 305(C) WOULD BE AMENDED TO SET CONDITIONS, INCLUDING TIME LIMITATIONS, FOR THE ISSUANCE OF SECRETARIAL IMPLEMENTING REGULATIONS TO FMPS.

WE ENCOURAGE COUNCIL-DRAFTED REGULATIONS AND WOULD SUPPORT THEIR PUBLICATION IN THE FEDERAL REGISTER FOR PUBLIC COMMENT WITH THE FMP. HOWEVER, WE OPPOSE THIS AMENDMENT BECAUSE THE SECRETARY'S RESPONSIBILITY TO IMPLEMENT THE COUNCIL'S PLANS THROUGH REGULATION WOULD BE INAPPROPRIATELY CONDITIONED. MANAGEMENT MEASURES, AS EXPRESSED THROUGH THE REGULATIONS, REPRESENT THE FOCAL POINT OF THE EFFECT ON THE PUBLIC, AND ARE THE END PRODUCT OF A JOINT EFFORT BY THE COUNCILS, THE SECRETARY, THE DEPARTMENT OF STATES, THE U.S. COAST GUARD, AND THE OFFICE OF MAN-

AGEMENT AND BUDGET. SUCH REVIEWS CONCERN NOT ONLY SUFFICIENCY WITH REGARD TO THE ACT, BUT ALSO CONFORMANCE TO ADMINISTRATION POLICIES AND REQUIREMENTS OF STATUTES DESIGNED TO ENSURE THAT FEDERAL REGULATIONS RESPOND TO PUBLIC CONCERN AND AVOID UNNECESSARY REGULATORY BURDENS. WHILE WE STRONGLY SUPPORT REDUCING THE CUMBERSOME NATURE OF THE FISHERY MANAGEMENT PROCESS, WE ARE CONCERNED THAT SUCH EFFORTS NOT FORCE ACCELERATION OF THE PROCESS AT THE EXPENSE OF DIMINISHING THE PROTECTIONS THAT CONGRESS PROVIDED THROUGH THE ADMINISTRATIVE PROCEDURE ACT, THE REGULATORY FLEXIBILITY ACT, THE PAPERWORK REDUCTION ACT, AND SIMILAR LEGISLATION. ALSO, AS A TECHNICAL MATTER, THE LANGUAGE AS DRAFTED COULD PRODUCE A SITUATION THAT WOULD MAKE POSSIBLE A RETROACTIVE EFFECTIVE DATE FOR REGULATIONS; THIS WOULD CREATE UNACCEPTABLE CONFUSION AND HARDSHIP ON ALL THOSE AFFECTED.

SECTION 305(E) WOULD BE AMENDED TO BROADEN THE SECRETARY'S EMERGENCY AUTHORITY TO INCLUDE NONRESOURCE PERSONS AND TO PERMIT EMERGENCY REGULATIONS IN THE ABSENCE OF A PLAN.

THE DEPARTMENT SUPPORTS POSSIBLE EXTENSION OF THE TWO 45-DAY EMERGENCY PERIODS FOR AN ADDITIONAL 90 DAYS. THE DEPARTMENT ALSO SUPPORTS BROADENING THE CIRCUMSTANCES JUSTIFYING EMERGENCY ACTION TO INCLUDE NON-RESOURCE REASONS. MANY NON-RESOURCE PROBLEMS ARISE IN FISHERIES WHICH NEED URGENT ATTENTION TO AVOID HARM TO BOTH FISHERIES AND PROCESSORS. AMENDMENT OF SECTION 305(E) TO PERMIT CONSIDERATION OF THESE NON-RESOURCE PROBLEMS WOULD BE A POSITIVE STEP.

AS FOR WHO SHOULD DETERMINE WHETHER AN EMERGENCY EXISTS, THE PRESENT PROVISION, WHICH ASSIGNS THIS AUTHORITY TO THE SECRETARY WHERE A MANAGEMENT PLAN EXISTS, IS PREFERABLE BECAUSE IT ASSURES A NATIONAL PERSPECTIVE. WHERE NO FMP EXISTS, ANY PROCEDURE PROPOSED TO PERMIT THE PROMULGATION OF EMERGENCY REGULATIONS MUST RECOGNIZE THAT INFORMATION IS NEEDED TO DETERMINE: WHETHER AN EMERGENCY DOES, IN FACT, EXIST; WHAT REGULATIONS ARE APPROPRIATE TO DEAL WITH THE SITUATION; AND WHETHER THEY ARE THE LEAST BURDENSOME MEANS TO ACCOMPLISH THE DESIRED EFFECT. IF EMERGENCY REGULATIONS WERE PROMULGATED, ABSENT THE DEGREE OF DATA COLLECTION AND ANALYSIS WHICH IS INVOLVED IN THE PREPARATION OF AN FMP, THE POTENTIAL FOR ERROR IS MAGNIFIED AND THE EFFECTS ON THE RESOURCE AND THE FISHING INDUSTRY MAY NOT CORRESPOND TO THAT WHICH IS INTENDED. IN SHORT, WE NEED TO BE VERY CAREFUL IN AMENDING THE ACT IN THIS AREA.

SECTION 305 WOULD BE AMENDED BY ADDING A NEW SECTION (H) TO EXEMPT CERTAIN PROVISIONS OF THE ACT RELATING TO TIME LIMITATIONS AND TAKING EFFECT OF REGULATIONS FROM CERTAIN PROVISIONS OF THE PAPERWORK**4360 *47 REDUCTION ACT, THE REGULATORY FLEXIBILITY ACT, AND [E.O. 12291](#).

THE DEPARTMENT STRONGLY OPPOSES THIS AMENDMENT BECAUSE IT IS CONTRARY TO OUR EFFORTS TO MINIMIZE REGULATORY BURDENS. THE ADMINISTRATION HAS CONSIDERED SIMILAR PROVISIONS UNACCEPTABLE. WE UNDERSTAND THE FRUSTRATIONS OF THE COUNCILS WITH THE LENGTHY FMP PROCESS, BUT WE BELIEVE THE DEPARTMENT'S COMMITMENT TO STREAMLINING ITS ADMINISTRATIVE PROCEDURES IS PREFERABLE TO EXEMPTION FROM IMPORTANT REGULATORY REFORM MEASURES. HOWEVER, [WE WOULD BE WILLING TO WORK WITH THE COMMITTEE TO CONSIDER WHETHER AMENDMENTS COULD BE DRAFTED THAT WOULD INCOR-](#)

PORATE THE ESSENTIAL ELEMENTS OF THE REGULATORY FLEXIBILITY ACT, THE PAPERWORK REDUCTION ACT, AND E.O. 12291 INTO THE MANAGEMENT PLANS.

SECTION 10. STATE JURISDICTION

SECTION 306 WOULD BE AMENDED TO CLARIFY AUTHORITY FOR FISHERY MANAGEMENT WITHIN THE FEDERAL ENCLAVES OF THE FCZ.

WHILE THE DEPARTMENT SUPPORTS THE INTENT OF THE AMENDMENT TO ALLOW STATE FISHERY MANAGEMENT AUTHORITY TO BE EXERCISED IN THESE AREAS, A TECHNICAL CHANGE IS NEEDED TO CLARIFY THAT THE SECRETARY COULD PREEMPT SUCH AUTHORITY UNDER THE PROVISIONS OF SECTION 306(B) OF THE ACT IF SUCH WERE TO BECOME NECESSARY. THIS COULD BE ACCOMPLISHED BY ADDING THE WORDS 'EXCEPT AS PROVIDED IN SUBSECTION (B)' FOLLOWING THE FIRST CLAUSE IN THE SENTENCE TO BE ADDED IN SECTION 306(A).

SECTION 306 WOULD BE AMENDED BY ADDING A NEW SUBSECTION (C).

THE INTENDED EFFECT OF THIS AMENDMENT, AS THE DEPARTMENT UNDERSTANDS IT, WOULD BE TO ALLOW FOREIGN VESSELS TO PROCESS FISH WITHIN THE INTERNAL WATERS OF A STATE, PROVIDED:

1. THE FLAG NATION OF THE VESSEL IS PARTY TO A GOVERNING INTERNATIONAL FISHERIES AGREEMENT (GIFA) WITH THE UNITED STATES; AND
2. THE ALLOCATIONS OF THAT NATION ARE NOT BEING SIGNIFICANTLY REDUCED UNDER THE PROCEDURES SPECIFIED UNDER SECTION 201, AS THE BILL WOULD AMEND THEM; AND
3. THE GOVERNOR OF THE STATE DETERMINES THAT FISH PROCESSORS WITHIN THE STATE WILL NOT UTILIZE ALL OF THE U.S. HARVESTED FISH FROM THE FISHERY CONCERNED THAT ARE LANDED IN THE STATE.

THE AMENDMENT WOULD NOT RELIEVE A FOREIGN FISH PROCESSING VESSEL OF ITS DUTY TO COMPLY WITH ALL OTHER APPLICABLE LAWS.

THE DEPARTMENT OPPOSES THIS AMENDMENT AS CURRENTLY DRAFTED FOR THE FOLLOWING REASONS OF POLICY:

1. THE GIFA REQUIREMENT MAY BE UNDULY BURDENSOME, THUS RESTRICTING THE NUMBER OF NATIONS WHOSE VESSELS ARE ELIGIBLE TO ENGAGE IN JOINT VENTURES WITH U.S. FISHERMEN;
2. NO PROVISION IS MADE FOR REVIEW OF GUBERNATORIAL DECISIONS BY THE REGIONAL FISHERY MANAGEMENT COUNCILS AND THE DEPARTMENT OF COMMERCE TO ENSURE COMPATIBILITY WITH THE REGULATORY PROGRAMS FOR THE FISHERY CONSERVATION ZONE;
3. FOREIGN PROCESSING VESSELS WOULD NOT HAVE ACCESS TO STATE WATERS OUTSIDE THE BASELINE; THUS ONLY THE FISHERMEN OF THOSE STATES WITH SIGNIFICANT INTERNAL WATERS WOULD BENEFIT FROM THE IMPROVED MARKET PROVIDED BY FOREIGN PROCESSORS; AND
- **4361 *48** 4. NO PROVISION IS MADE FOR THE POSSIBILITY THAT OUT-OF-STATE PROCESSORS MIGHT HAVE ADEQUATE CAPACITY AND WOULD UTILIZE SUCH CAPACITY IF FOREIGN PROCESSING VESSELS WERE NOT ALLOWED.

THE DEPARTMENT ADHERES TO THE POSITION TAKEN IN ITS TESTIMONY BEFORE THE SUBCOMMITTEE LAST FALL. THE FCZ AND ALL STATE WATERS SHOULD HAVE SIMILAR STANDARDS FOR GRANTING ACCESS TO FOREIGN PROCESSING VESSELS. THE GOVERNOR SHOULD HAVE THE

INITIAL DECISION WITH RESPECT TO STATE WATERS, BUT THAT DECISION SHOULD BE REVIEWED BY THE SECRETARY OF COMMERCE AND THE REGIONAL COUNCILS TO ENSURE COMPATIBILITY WITH REGULATORY DECISIONS IN THE FCZ AND TO ENSURE THAT OUT-OF-STATE U.S. PROCESSORS ARE NOT DEPRIVED OF THEIR FISH SUPPLY BY DECISIONS MADE IN STATES NEARBY.

WE WOULD LIKE TO SUGGEST THAT A PROVISION BE MADE TO RESOLVE POTENTIAL CONFLICTS BETWEEN GOVERNORS OF ADJACENT STATES IF PROCESSORS IN ONE STATE HAVE THE CAPACITY AND INTENT TO USE ALL THE FISH LANDED IN THE STATE, BUT PROCESSORS IN A NEIGHBORING STATE DO NOT. IF A GOVERNOR IN A NEIGHBORING STATE GIVES APPROVAL FOR A FOREIGN VESSEL TO BUY FISH IN THAT STATE'S INTERNAL WATERS, THE APPROVAL MAY CAUSE A SHIFT IN U.S. LANDINGS TO THE STATE IN WHOSE WATERS THE FOREIGN VESSEL OPERATES.

AS A TECHNICAL MATTER, THE PHRASE 'INTERNAL WATERS' SHOULD BE DEFINED AS 'ALL WATERS SHOREWARD OF THE BASELINE FROM WHICH THE TERRITORIAL SEA IS MEASURED.' AS PRESENTLY WRITTEN, THE DEFINITION OF 'INTERNAL WATERS OF A STATE' WOULD OPEN A LOOPHOLE FOR FOREIGN PROCESSING IN STATE WATERS BY PERMITTING PROCESSING TO OCCUR SEAWARD OF THE BASELINE OFF FLORIDA (WEST COAST), PUERTO RICO, AND TEXAS, WHERE STATE BOUNDARIES EXTEND SEAWARD OF THE TERRITORIAL SEA. CURRENTLY, FOREIGN PROCESSING IN STATE WATERS SEAWARD OF THE BASELINE IS PROSCRIBED.

FURTHERMORE, THE CRITERIA OF ELIGIBILITY OF FOREIGN VESSELS SHOULD BE CLARIFIED. PARAGRAPH (C)(4)(C) STATES THAT THE NATION UNDER WHICH THE VESSEL IS FLAGGED MUST 'BE PARTY TO A GOVERNING INTERNATIONAL FISHERY AGREEMENT OR TREATY'. SINCE NEARLY ALL NATIONS ARE PARTY TO SOME FORM OF TREATY WITH THE UNITED STATES, AND SINCE ALL NATIONS QUITE LIKELY ARE PARTIES TO TREATIES WITH OTHER NATIONS, BEING PARTY TO A GIFA BECOMES A MEANINGLESS CRITERION; IN OTHER WORDS, FISHING VESSELS FROM ALL NATIONS WOULD QUALIFY. IT DOES NOT APPEAR THAT THAT RESULT WAS INTENDED.

SECTION 11. SUBPENA POWER

SECTION 308 WOULD BE AMENDED BY ADDING SUBSECTION (E) AUTHORIZING THE SECRETARY TO ISSUE SUBPOENAS FOR THE ATTENDANCE AND TESTIMONY OF WITNESSES, AND THE PRODUCTION OF RELEVANT PAPERS, BOOKS, AND DOCUMENTS, FOR THE PURPOSE OF CONDUCTING CIVIL PENALTY HEARINGS.

THE DEPARTMENT SUPPORTS THIS AMENDMENT.

SECTION 12. OFFENSES

SECTION 309(B) WOULD BE AMENDED TO ALTER THE CRIMINAL PENALTY PROVISIONS OF THE ACT BY REMOVING IMPRISONMENT AS A PUNISHMENT FOR CONSERVATION-RELATED OFFENSES BY FOREIGN FISHERMEN. THE BILL RETAINS THE CRIMINAL FINE PROVISIONS FOR THESE OFFENSES AND CONTINUES ****4362 *49** TO AUTHORIZE IMPRISONMENT AS A POSSIBLE REMEDY FOR ENFORCEMENT-RELATED OFFENSES BY FOREIGN AND DOMESTIC FISHERMEN.

THE DEPARTMENT SUPPORTS THE AMENDMENT, WHICH NOT ONLY WILL BRING THE UNITED STATES INTO ACCORD WITH CUSTOMARY INTERNATIONAL LAW, BUT WILL ALSO PLACE US IN A

BETTER POSITION TO CALL ON OTHER NATIONS TO AVOID IMPRISONMENT OF OUR OWN DISTANT-WATER FISHERMEN. SINCE IMPRISONMENT IS AN EXCESSIVE PENALTY FOR VIOLATIONS OF A PURELY FISHERIES NATURE, THE DEPARTMENT SUPPORTS THIS AMENDMENT.

SECTION 13. CIVIL FORFEITURES

SECTION 310(A) WOULD BE AMENDED TO AUTHORIZE THE SECRETARY TO SEIZE THE MONETARY VALUE OF FISH TAKEN OR RETAINED IN VIOLATION OF THE ACT, RATHER THAN THE ACTUAL FISH THEMSELVES. THE SECRETARY WOULD BE PERMITTED BY THIS AMENDMENT TO USE THE CIVIL FORFEITURE PROVISIONS OF THE STATUTE, AND FOREGO REDUCING THE FISH TO POSSESSION, A PRACTICE WHICH HAS CREATED DELAYS AND RESULTED IN NEEDLESS SPOILAGE OF PERISHABLE FISH BECAUSE THE GOVERNMENT LACKS APPROPRIATE STORAGE FACILITIES.

THE DEPARTMENT SUPPORTS THIS AMENDMENT, WHICH WILL BRING THE ACT INTO LINE WITH OTHER LAWS AUTHORIZING FISH SEIZURES AND WILL MINIMIZE LOSSES IN VALUE OF SEIZED PROPERTY.

SECTION 14. AUTHORIZATION OF APPROPRIATIONS

SECTION 406 WOULD BE AMENDED TO AUTHORIZE CERTAIN APPROPRIATIONS FOR FISCAL YEARS ENDING SEPTEMBER 30, 1983, SEPTEMBER 30, 1984, AND SEPTEMBER 30, 1985.

THE DEPARTMENT OPPOSES THE AUTHORIZATION LEVELS CONTAINED IN THIS AMENDMENT. THE DEPARTMENT'S VIEWS ON APPROPRIATE AUTHORIZATION LEVELS WERE TRANSMITTED TO THE HOUSE ON MARCH 17, 1982. IN THAT TRANSMITTAL, THE DEPARTMENT PROPOSED AUTHORIZATIONS OF \$41,605,000 FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1983, AND SUCH SUMS AS MAY BE NECESSARY FOR THE FISCAL YEARS ENDING SEPTEMBER 30, 1984 AND SEPTEMBER 30, 1985.

SECTION 16. TECHNICAL AMENDMENTS

SECTION 3(10)(D) AND (11)(B) WOULD BE AMENDED BY STRIKING 'AT SEA.'

THE DEPARTMENT IS OPPOSED TO THIS CHANGE, WHICH WOULD EXPAND THE DEFINITION OF FISHING TO ENCOMPASS FISHERY SUPPORT OPERATIONS OCCURRING ON LAND. A TECHNICAL AMENDMENT TO THIS PROVISION IS UNNECESSARY.

SECTION 306(A) WOULD BE AMENDED TO ADD THE WORDS 'OR NUMBERED UNDER THE FEDERAL BOATING SAFETY ACT OF 1971 (46 U.S.C. 1451 ET SEQ.)' TO THE PRESENT LANGUAGE.

WITH RESPECT TO SECTION 306(A) THE DEPARTMENT BELIEVES THE ADDITIONAL LANGUAGE WOULD BE HELPFUL. SECTION 306(A) PERMITS STATES TO REGULATE THE FISHING OF CERTAIN VESSELS BEYOND STATE BORDERS WHEN NOT IN CONFLICT WITH FEDERAL LAW, INCLUDING ANY APPLICABLE FMP. TO ASSERT SUCH AUTHORITY, THE VESSEL MUST BE 'REGISTERED UNDER THE LAWS OF SUCH STATE.' SOME INDIVIDUALS HAVE SUGGESTED THAT CONGRESS INTENDED THESE WORDS TO REFER TO THE FEDERAL BOATING SAFETY ACT PROCEDURES. WE HAVE NOT ADOPTED THIS INTERPRETATION. WE BELIEVE ****4363 *50** THAT, IN THE ABSENCE OF CONFLICT

WITH FEDERAL LAW, STATES SHOULD BE FREE TO REGISTER VESSELS OPERATED BY STATE CITIZENS OR BY CITIZENS OF OTHER STATES WITH FREQUENT IN-STATE CONTRACTS. OBTAINING A VESSEL NUMBER UNDER THE BOATING SAFETY ACT IS ONE, BUT NOT THE ONLY, EXAMPLE OF SUCH REGISTRATION. THE BILL'S ADDITIONAL LANGUAGE WOULD CONFIRM OUR INTERPRETATION.

H.R. 5002, AS INTRODUCED, WOULD HAVE ADDED SIMILAR LANGUAGE TO SECTION 3(27) OF THE ACT. THE DEPARTMENT OPPOSED THE AMENDED LANGUAGE ON TECHNICAL GROUNDS, HOWEVER, WE DISAGREE WITH THE SUBCOMMITTEE'S ACTION IN DELETING ANY CHANGE TO SECTION 3(27). AFTER DISCUSSIONS WITH THE COAST GUARD WE SUPPORT AN AMENDMENT TO SECTION 3(27) TO DEFINE 'VESSEL OF THE UNITED STATES' AS 'ANY VESSEL DOCUMENTED UNDER THE LAWS OF THE UNITED STATES OR, IF MEASURING LESS THAN FIVE NET TONS, NUMBERED UNDER THE FEDERAL BOATING SAFETY ACT OF 1971.'

AS AN ADDITIONAL TECHNICAL POINT, WITH DELETION OF SECTION 15, JURISDICTION OF CARIBBEAN COUNCIL, THE TECHNICAL AMENDMENTS SECTION SHOULD BE RENUMBERED.

SECTION 307(A) WOULD BE AMENDED TO MAKE IT CONSISTENT WITH THE RECREATIONAL FISHING EXEMPTION UNDER SECTION 201(J).

THE DEPARTMENT SUPPORTS THIS AMENDMENT.

SECTION 311(A) WOULD BE AMENDED TO REPEAL THE REQUIREMENT FOR THE SEMIANNUAL REPORT ON COMPLIANCE WITH THE ACT BY THE COAST GUARD AND THE DEPARTMENT.

THE DEPARTMENT FAVORS THIS AMENDMENT AS BEING CONSISTENT WITH ADMINISTRATIVE EFFORTS TO CURTAIL REPORTING REQUIREMENTS.

SECTION 13(D) WOULD AMEND APPROPRIATIONS AUTHORIZATION LANGUAGE OF THE ATLANTIC TUNAS CONVENTION ACT OF 1975 TO REQUIRE ALL OBSERVER PROGRAM EXPENDITURES BE MADE FROM FEES COLLECTED FROM FOREIGNERS FOR SUCH SERVICES.

THE DEPARTMENT SUPPORTS THIS AMENDMENT.

WE HAVE BEEN ADVISED BY THE OFFICE OF MANAGEMENT AND BUDGET THAT THERE IS NO OBJECTION TO THE SUBMISSION OF THIS LETTER TO THE CONGRESS FROM THE STANDPOINT OF THE ADMINISTRATION'S PROGRAM.

SINCERELY,

IRVING P. MARGULIES

(FOR SHERMAN E. UNGER, GENERAL COUNSEL).

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***70** ADDITIONAL STATEMENT ON HON. GENE SNYDER ON H.R. 5002

THE BILL WHICH MAKES SUBSTANTIVE CHANGES TO THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT ALSO AUTHORIZES \$55 MILLION FOR FISCAL YEAR 1983, \$60 MILLION FOR FISCAL YEAR 1984, AND \$65 MILLION FOR FISCAL YEAR 1985. THE ADMINISTRATION OPPOSES THESE FUNDING LEVELS AND WOULD SUBSTITUTE \$41.6 MILLION FOR FISCAL YEAR 1983 AND SUCH SUMS AS MAY BE NECESSARY FOR FISCAL YEARS 1984 AND 1985.

GENE SNYDER.

1 THIS PURPOSE IS MADE MORE EXPLICIT BY SECTION 233 OF [PUBLIC LAW 96-561](#), THE AMERICAN FISHERIES PROMOTION ACT.

(Note: 1. PORTIONS OF THE SENATE, HOUSE AND CONFERENCE REPORTS, WHICH ARE DUPLICATIVE OR ARE DEEMED TO BE UNNECESSARY TO THE INTERPRETATION OF THE LAWS, ARE OMITTED. OMITTED MATERIAL IS INDICATED BY FIVE ASTERISKS: *****. 2. TO RETRIEVE REPORTS ON A PUBLIC LAW, RUN A TOPIC FIELD SEARCH USING THE PUBLIC LAW NUMBER, e.g., TO(99-495))

H.R. REP. 97-549, H.R. Rep. No. 549, 97TH Cong., 2ND Sess. 1982, 1982 U.S.C.C.A.N. 4320, 1982 WL 25149 (Leg.Hist.)

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